

Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-2610  
MassDEP File #

eDEP Transaction #  
Nantucket  
City/Town

**A. General Information (cont.)**

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):

Nantucket See attached list  
a. County b. Certificate Number (if registered land)

c. Book d. Page

7. Dates: October 25, 2013 5/14/2014 6/3/2014  
a. Date Notice of Intent Filed b. Date Public Hearing Closed c. Date of Issuance

8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):

Record Drawing Emergency Installation of Sand Filled Geotubes

a. Plan Title

Blackwell & Associates, Inc. Leo C. Asadoorian, P.L.S.

b. Prepared By c. Signed and Stamped by

4/24/2014 1"=30'

d. Final Revision Date e. Scale

f. Additional Plan or Document Title g. Date

**B. Findings**

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

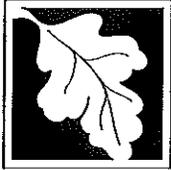
Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- a.  Public Water Supply
- b.  Land Containing Shellfish
- c.  Prevention of Pollution
- d.  Private Water Supply
- e.  Fisheries
- f.  Protection of Wildlife Habitat
- g.  Groundwater Supply
- h.  Storm Damage Prevention
- i.  Flood Control
- j.  Wetland Scenic Views (bylaw)
- k.  Recreation (Bylaw)

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a.  the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



**WPA Form 5 – Order of Conditions**

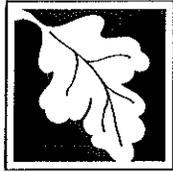
**B. Findings (cont.)**

Denied because:

- b.  the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c.  the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
- 3.  Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) \_\_\_\_\_ a. linear feet

**Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)**

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement	
4. <input type="checkbox"/> Bank	_____ a. linear feet	_____ b. linear feet	_____ c. linear feet	_____ d. linear feet	
5. <input type="checkbox"/> Bordering Vegetated Wetland	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet	
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet	
	_____ e. c/y dredged	_____ f. c/y dredged			
7. <input type="checkbox"/> Bordering Land Subject to Flooding	_____ a. square feet	_____ b. square feet	_____ c. square feet	_____ d. square feet	
	Cubic Feet Flood Storage	_____ e. cubic feet	_____ f. cubic feet	_____ g. cubic feet	_____ h. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	_____ a. square feet	_____ b. square feet			
	Cubic Feet Flood Storage	_____ c. cubic feet	_____ d. cubic feet	_____ e. cubic feet	_____ f. cubic feet
9. <input type="checkbox"/> Riverfront Area	_____ a. total sq. feet	_____ b. total sq. feet			
	Sq ft within 100 ft	_____ c. square feet	_____ d. square feet	_____ e. square feet	_____ f. square feet
	Sq ft between 100-200 ft	_____ g. square feet	_____ h. square feet	_____ i. square feet	_____ j. square feet

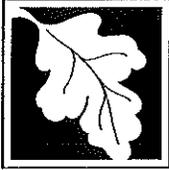


**WPA Form 5 – Order of Conditions**

**B. Findings (cont.)**

**Coastal Resource Area Impacts:** Check all that apply below. (For Approvals Only)

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
10. <input type="checkbox"/> Designated Port Areas	Indicate size under Land Under the Ocean, below			
11. <input type="checkbox"/> Land Under the Ocean	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
12. <input type="checkbox"/> Barrier Beaches	Indicate size under Coastal Beaches and/or Coastal Dunes below			
13. <input type="checkbox"/> Coastal Beaches	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
14. <input type="checkbox"/> Coastal Dunes	_____	_____	_____ cu yd	_____ cu yd
	a. square feet	b. square feet	c. nourishment	d. nourishment
15. <input type="checkbox"/> Coastal Banks	_____	_____		
	a. linear feet	b. linear feet		
16. <input type="checkbox"/> Rocky Intertidal Shores	_____	_____		
	a. square feet	b. square feet		
17. <input type="checkbox"/> Salt Marshes	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
18. <input type="checkbox"/> Land Under Salt Ponds	_____	_____		
	a. square feet	b. square feet		
	_____	_____		
	c. c/y dredged	d. c/y dredged		
19. <input type="checkbox"/> Land Containing Shellfish	_____	_____	_____	_____
	a. square feet	b. square feet	c. square feet	d. square feet
20. <input type="checkbox"/> Fish Runs	Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above			
	_____	_____		
	a. c/y dredged	b. c/y dredged		
21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage	_____	_____		
	a. square feet	b. square feet		



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:

SE48-2610

MassDEP File #

eDEP Transaction #

Nantucket

City/Town

**B. Findings (cont.)**

22.  Restoration/Enhancement \*:

\_\_\_\_\_ a. square feet of BWW

\_\_\_\_\_ b. square feet of salt marsh

23.  Stream Crossing(s):

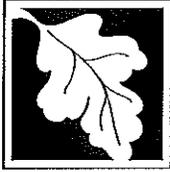
\_\_\_\_\_ a. number of new stream crossings

\_\_\_\_\_ b. number of replacement stream crossings

**C. General Conditions Under Massachusetts Wetlands Protection Act**

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - a. the work is a maintenance dredging project as provided in the Act; or
  - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on 6/3/2017 unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:

SE48-2610

MassDEP File #

eDEP Transaction #

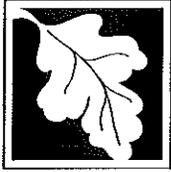
Nantucket

City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,  

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]  
"File Number            SE48-2610 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:

SE48-2610

MassDEP File #

eDEP Transaction #

Nantucket

City/Town

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

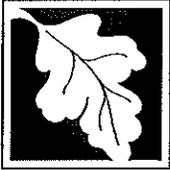
**NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS**

19. The work associated with this Order (the "Project") is (1)  is not (2)  subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:

- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
- ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
- iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
- iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
- v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

## WPA Form 5 – Order of Conditions

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:

SE48-2610

MassDEP File #

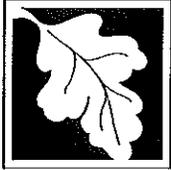
eDEP Transaction #

Nantucket

City/Town

### C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following: *i.*) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and *ii.*) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.
- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



**WPA Form 5 – Order of Conditions**

**C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)**

- g) The responsible party shall:
  1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
  2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
  3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
  
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

---



---



---



---



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-2610  
MassDEP File #

eDEP Transaction #  
Nantucket  
City/Town

**D. Findings Under Municipal Wetlands Bylaw or Ordinance**

- 1. Is a municipal wetlands bylaw or ordinance applicable?  Yes  No
- 2. The Nantucket hereby finds (check one that applies):  
Conservation Commission
  - a.  that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw \_\_\_\_\_ 2. Citation \_\_\_\_\_

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b.  that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

1. Municipal Ordinance or Bylaw \_\_\_\_\_ 2. Citation \_\_\_\_\_

- 3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.  
The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):  
Please view additional findings and conditions page(s)

---



---



---

## DENIAL

Massachusetts Wetlands Protection Act (MGL Chapter 131, Section 40)  
Town of Nantucket Wetlands Bylaw (Chapter 136)

Address: 85-107A Baxter Road  
Assessor's Map and Parcel: 48-8, 14, 14.1, 15, 17, 18, 19, 21, 22, 35  
Property Owner: Town of Nantucket/see attached list  
Applicant: Siasconset Beach Preservation Fund, Inc. and Town of Nantucket  
DEP File Number: SE48-2610  
Filing Date: October 25, 2013  
Date Hearing Closed: May 14, 2014  
Date Orders Issued: June 3, 2014  
Plan of Record Information: "Record Drawing Emergency Installation of Sand Filled Geotubes", dated 1/27/2014, Final revision of 4/24/2014, and stamped by Leo C. Asadoorian, P.L.S.

### Permit Overview:

This order **denies** a permit to maintain a three tier geotube system with sand nourishment, and replanting of the bank face on a Coastal Bank, Coastal Beach and Land Subject to Coastal Storm Flowage.

### Project Proposal:

The Order of Conditions is based on information submitted in the Notice of Intent dated October 23, 2013, its attachments and the plan of record, "Record Drawing Emergency Installation of Sand Filled Geotubes", dated 1/27/2014, Final revision of 4/24/2014, and stamped by Leo C. Asadoorian, P.L.S. The Commission also considered and relied upon other pertinent supplemental information including and not limited to:

1. Original Filing Package by the Town of Nantucket (TON) and the Siasconset Beach Preservation Fund (SBPF), dated 10/23/2013
2. 2014-5-14 NLC Submission
3. 2014-5-14 Van Lieu Submission
4. 2014-5-14 Roggeveen Quidnet Squam Submission
5. 2014-5-14 Atherton Submission
6. 2014\_5\_9 SBPF Submission
7. 2014\_5\_9 SBPF Submission Regulatory Compliance
8. 2014-5-2 Trillos Submission
9. 2014\_4\_30 Van Lieu Submission
10. Sconset Presentation 2014-4-30
11. 2014\_4\_28 Sconset Bluff Updated Returns Plans
12. 2014\_4\_25 SBPF Submission
13. 2014\_4\_2 Ian Golding Submission
14. Applied Coastal 2013\_11\_8
15. Baxter Road Homeowners 2013\_11\_12
16. Case Study 2013\_10\_30
17. Cottage and Castle 2014\_2\_17
18. DPW Submission 2013\_11\_13
19. Enforcement Order 2014\_2\_5

Town of Nantucket and Siasconset Beach Preservation Fund, SE48-2610; 85-107A  
Baxter Road

20. FishTec Inc 2014\_2\_12
21. Flint Industries 2014\_2\_18
22. Jim OConnell Letter 2013\_11\_4
23. Kopelman and Paige 2013\_11\_13
24. Mary Wawro Submission 2013\_11\_6
25. Memo from Ocean and Coastal Consulting 2013\_12\_6
26. Milone and MacBroom 2013\_10\_25 Attachments
27. Milone and MacBroom 2013\_10\_25 Narrative and Plans
28. Milone and MacBroom 2013\_11\_1
29. Milone and MacBroom 2013\_11\_05
30. Milone and MacBroom 2013\_11\_19
31. Milone and MacBroom 2013\_12\_03
32. Milone and MacBroom 2013\_12\_03\_Nantucket\_PlanSet
33. Milone and MacBroom Letter 2013\_11\_12
34. Milone and MacBroom Plans 2013\_10\_30
35. Nantucket Land Council and Applied Coastal 2013\_11\_1
36. Nantucket Land Council Letter 2014\_2\_18
37. NLC 2013\_11\_01
38. NLC Submission 2014\_3\_28
39. Notice of Intent Application
40. Posner Letter 2013\_11\_18
41. Quidnet Squam 2013\_11\_19
42. Roggeveen Submission 2013\_10\_30
43. SBPF- ASBUILT-JAN-30-2014
44. SBPF Letter 2014\_2\_12
45. SBPF Letter 2014\_3\_28
46. SBPF Submission 2013\_11\_1
47. SBPF Submission 2013\_11\_6
48. SBPF Submittal 2014\_3\_19
49. Submission from D. Anne Atherton
50. USACE 2014\_2\_4

**Findings:**

1. The Commission finds that areas subject to regulation are land under the ocean coastal beach, coastal bank, land subject to coastal storm flowage and their associated buffer zones.
2. The Commission finds that the property is not located within Priority Habitat of Rare Species or Estimated Habitat of Rare Wildlife as defined by the Massachusetts Natural Heritage and Endangered Species Program.
3. The Commission finds that the geotube system is a coastal engineering structure.

The following findings pertain to the Commonwealth of Massachusetts Wetlands Protection Act (MGL Chapter 131 Section 40)

4. The Commission finds that land under the ocean is determined to be significant to the protection of marine fisheries, protection of wildlife habitat, storm damage prevention and flood control.

5. The Commission finds that coastal beach is determined to be significant to storm damage prevention, flood control and protection of wildlife habitat.
6. The commission finds that the coastal bank is determined to be significant to storm damage prevention and flood control because it supplies sediment to the coastal beach.
7. The Commission finds that the coastal bank is determined to be significant to storm damage prevention and flood control because it is a vertical buffer to storm waters
8. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.25 (5) that projects not included in 310 CMR 10.25(3) or 10.25 (4) which affect nearshore areas of land under the ocean shall not cause adverse effects by altering the bottom topography so as to increase storm damage or erosion of coastal beaches, coastal banks, coastal dunes, or salt marshes.
9. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.25 (6) that projects not included in 310 CMR 10.25(3) which affect land under the ocean shall if water-dependent be designed and constructed, using best available measures, so as to minimize adverse effects, and if non-water-dependent, have no adverse effects, on marine fisheries habitat or wildlife habitat caused by: (a) alterations in water circulation; (c) alterations in the distribution of sediment grain size; (d) changes in water quality, including, but not limited to, other than natural fluctuations in the level of dissolved oxygen, temperature or turbidity, or the addition of pollutants.
10. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.27 (3) that any project on a coastal beach, except any project permitted under 310 CMR 10.30 (3)(a), shall not have an adverse effect by increasing erosion, decreasing the volume or changing the form of any such coastal beach or an adjacent or downdrift coastal beach.
11. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (3) that no new bulkhead, revetment, seawall, groin or other coastal engineering structure shall be permitted on such a coastal bank except that such a coastal engineering structure shall be permitted when required to prevent storm damage to buildings constructed prior to the effective date of 310 CMR 10.21 through 10.37 (August 10, 1978), including reconstructions of such buildings subsequent to the effective date of 310 CMR 10.21 through 10.37, provided that the following requirements are met:
  - a. A coastal engineering structure or a modification thereto shall be designed and constructed as to minimize, using best available measures, adverse effects on adjacent or nearby coastal beaches due to changes in wave action, and
  - b. The applicant demonstrates that no method of protecting the building other than the proposed coastal engineering structure is feasible.
  - c. Protective planting designed to reduce erosion may be permitted.
12. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (4) that any project on a coastal bank or within 100 feet landward of the top of a coastal bank, other than a structure permitted by 310 CMR 10.30(3), shall not have an adverse effect due to wave action on the movement of sediment from the coastal bank to coastal beaches or land subject to tidal action.

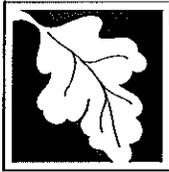
13. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (6) that any project on such a coastal bank or within 100 feet landward of the top of such coastal bank shall have no adverse effects on the stability of the coastal bank.
14. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with 310 CMR 10.30 (7) that bulkheads, revetments, seawalls, groins or other coastal engineering structures may be permitted on such a coastal bank except when such bank is significant to storm damage prevention or flood control because it supplies sediment to coastal beaches, coastal dunes and barrier beaches.

The following findings pertain to the Town of Nantucket Wetlands Protection Bylaw (Chapter 136)

15. The Commission finds that the coastal beach is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, fisheries, shellfish, wildlife, recreation and wetland scenic views.
16. The Commission finds that the coastal bank is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, wildlife, and wetland scenic views.
17. The Commission finds that land subject to coastal storm flowage is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, water quality, erosion and sediment control, and wildlife.
18. Pursuant to Section 2.02B(1) of the Nantucket Wetlands Protection Regulations the provisions of Section 2.01B(1-8)(Land Under the Ocean) shall apply to coastal beaches and tidal flats. Therefore the Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.01B(7) that no new bulkheads or coastal engineering structures shall be permitted to protect structures constructed or substantially improved after 8/78. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to 9/78, but not substantially improved, from imminent danger.
19. Pursuant to Section 2.02B(1) of the Nantucket Wetlands Protection Regulations the provisions of Section 2.01B(1-8)(Land Under the Ocean) shall apply to coastal beaches and tidal flats. Therefore the Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.01B(8) that water dependent projects shall be designed and performed so as to cause no adverse effects on wildlife, erosion control, marine fisheries, shellfish beds, storm damage prevention, flood control and recreation.
20. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.02B(2) that new bulkheads or coastal engineering structures shall be permitted to protect structures constructed, or substantially improved, after 8/78. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear

- showing that no other alternative exists to protect a structure built prior to 9/78, but not substantially improved, from imminent danger.
21. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.02B(4) that clean fill of compatible grain size may be used on a Coastal Beach but not on a Tidal Flat, only if the Commission authorizes its use, and only if such fill is to be used for a beach or dune nourishment project. All possible mitigation measures shall be taken, as determined by the Commission, to limit the adverse effects of the fill.
  22. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.05B(1) that new bulkheads or coastal engineering structures shall be permitted to protect structures constructed, or substantially improved, after 8/78 except for public infrastructures. Bulkheads and groins may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including in appropriate cases the moving of the threatened buildings and/or public infrastructure. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure that has not been substantially improved or public infrastructure built prior to 9/78, from imminent danger.
  23. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.05B(3) that all projects shall be restricted to an activity as determined by the Commission to have no adverse effect on bank height, bank stability, wildlife habitat, vegetation, wetland scenic view or the use of a bank as a sediment source.
  24. The Commission finds that the applicant has not met the burden of proof to demonstrate compliance with Section 2.10B(1) that the work shall not reduce the ability of the land to absorb and contain flood waters, or to buffer inland areas from flooding and wave damage.

Therefore, based on the referenced findings, the Nantucket Conservation Commission **DENIES** the project SE48-2610 for the Town of Nantucket and the Siasconset Beach Preservation Fund at 85-107A Baxter Road pursuant to the Massachusetts Wetlands Protection Act (MGL Chapter 131§40), Massachusetts Wetlands Protection Regulations (310CMR 10.00), the Town of Nantucket Wetlands Protection Bylaw (Chapter 136) and the Town of Nantucket Wetlands Protection Regulations. The Commission finds that the given information, historical site conditions and current site conditions that no conditions can be set for the project as proposed that would adequately protect the wetland resources and wetland interests protected by the Massachusetts Wetlands Protection Act and the Town of Nantucket Wetlands Protection Bylaw. Further the Commission finds that the applicant has not met the burden of proof required for the Nantucket Conservation Commission to grant a permit.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-2610  
MassDEP File #

eDEP Transaction #  
Nantucket  
City/Town

**E. Signatures**

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

6/3/2014  
1. Date of Issuance

Please indicate the number of members who will sign this form.

6

This Order must be signed by a majority of the Conservation Commission.

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:

Ernest Steinauer  
Ernest Steinauer

Sarah Oktay  
Sarah Oktay

Andrew Bennett (opposed)  
Andrew Bennett

Ian Golding  
Ian Golding

Michael Glowacki  
Michael Glowacki

Jennifer Karberg  
Jennifer Karberg

by hand delivery on  
6/4/2014  
Date

by certified mail, return receipt requested, on  
Date

**F. Appeals**

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request of Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands

**WPA Form 5 – Order of Conditions**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
And the Town of Nantucket Wetlands Bylaw Chapter 136

Provided by MassDEP:  
SE48-2610  
MassDEP File #

eDEP Transaction #  
Nantucket  
City/Town

**G. Recording Information**

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Conservation Commission

Please be advised that the Order of Conditions for the Project at:

Project Location

MassDEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for: Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant