Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK
Governor

MAEVE VALLELY BARTLETT
Secretary

DAVID W. CASH
Commissioner

DEC 19 2014

Siasconset Beach Preservation Fund
c/o David S. Weiss, Esq.
Goulston & Storrs
400 Atlantic Avenue
Boston, Massachusetts 02110-3333

RE: NANTUCKET—Wetlands
File No. SE 48-2610
Superseding Order of Conditions
87-105 Baxter Road

Dear Attorney Weiss:

Following an in-depth review of the above-referenced file and in accordance with Massachusetts General Laws, Chapter 131, Section 40, the Massachusetts Department of Environmental Protection (Department) has issued the enclosed Superseding Order of Conditions (SOC). This Order approves portions of the proposed project subject to certain conditions. The Department has determined that the project area is significant to the statutory interests of flood control and storm damage prevention.

The Notice of Intent (NOI) was jointly filed by the Siasconset Beach Preservation Fund (SBPF) and the Town of Nantucket and seeks to permit and allow the ongoing maintenance of the existing three tiers of Geotubes, installation of a fourth tier of Geotubes to provide a higher level of storm protection, installation of smaller geotextile tubes as returns on the ends of the Geotubes to prevent flanking, planting of vegetation on the face of the coastal bank above the Geotubes, coastal bank drainage improvements and ongoing mitigation (beach nourishment) and monitoring.

The three existing tiers of sand-filled Geotubes were installed under an Emergency Certification issued by the Nantucket Conservation Commission on December 19, 2013. The total length of the Geotubes is approximately 852 feet long. The Department has determined that the coastal bank (Sconset Bluff) acts both as a sediment source and as a vertical buffer to elevated storm waters.

The Geotube proposal has been represented to be a temporary project lasting for approximately 3-6 years. The SBPF indicated that this timeframe will allow a long-term protection project, such as a longer Geotube or rock revetment to be identified, permitted and implemented. The Town of Nantucket also indicated that it will take a similar amount of time to undertake actions necessary to relocate the Baxter Road access to homes and the co-located water and wastewater infrastructure serving those homes in order to mitigate the imminent threat to public health and safety that warranted the issuance of the Emergency Certification. As a result, the Department's SOC approves the Geotubes as a temporary installation for a period of up to 6 years.

The Wetland Regulations at 310 CMR 10.30(3) provides, in part, that a coastal engineering structure "shall be permitted" when required to protect buildings constructed prior to 1978 from storm damage. Three of the seven ocean-side properties within the project area currently contain pre-1978 buildings (lots 93, 97 and 99) that are located in close proximity to the top of the coastal bank. Further, the Geotubes may remain on the adjoining lot 91 to provide an adequate level of storm damage protection to the dwelling on lot 93. Consequently, the enclosed SOC allows the installation of the fourth tier of Geotubes on lots 91, 93, 97 and 99 in order to prevent storm damage to pre-1978 dwellings in the project area.

In the northern project area (lots 101 and 105) and in the southern project area (lot 87) where the existing three tiers of Geotubes directly protect Baxter Road (and essential public utilities), the Geotubes may remain for up to 6 years or until such time when alternative access to the northern end of Baxter Road has been provided and the imminent threat to public health and safety has abated, whichever is earlier.

The enclosed SOC denies the installation of the fourth tier of Geotubes along lots 87, 101 and 105 because the Geotubes in these areas don't serve to directly protect pre-1978 buildings. However, five pre-1978 buildings within the project area are currently located on the landward side of Baxter Road on lots 92, 96, 100, 104 and 106. These dwellings are located sufficiently back from the top of the coastal bank such that they do not appear to be presently threatened by erosion. The enclosed SOC provides an opportunity for the landward pre-1978 owners (on lots 92, 96, 100, 104 and 106) to file a new Notice of Intent (NOI) to maintain the Geotubes in that stretch of the project area prior to the 6 year expiration date of the SOC. Any such future NOI must demonstrate that there are no feasible alternatives to the Geotubes such as relocation of threatened buildings, that the buildings are threatened at the time of the application and that the Geotubes or an alternative coastal structure are necessary to prevent storm damage to such pre-1978 buildings.

Please be advised that during the period prior to construction of an alternative means of access and relocation of utilities and in the event the existing three tiers of Geotubes on lots 87, 101 and 105 are not adequate to protect Baxter Road and essential public utilities, then a new Emergency Certification request may be filed with the Nantucket Conservation Commission pursuant to the criteria and process set forth at 310 CMR 10.06.

The Secretary of Energy and Environmental Affairs' October 3, 2014 MEPA Certificate (EEA#15240), directed the Department to address whether there are feasible alternatives to the fourth tier of Geotubes and returns, construction period measures to ensure that the project is installed in accordance with the proposed methodology, and an evaluation of the adequacy of the monitoring program design, including monitoring frequency and timely distribution of monitoring reports. In response, SBPF submitted a supplemental alternative analysis evaluating alternatives to the proposed fourth tier of Geotubes and returns. Although the supplemental analysis supported SBPF's need for a fourth tier and returns composed of geotextile, it did provide an alternative design to the returns that included a gentler slope and reduced elevation compared to the original design, both of which will tend to further minimize adverse effects. The SOC requires that alternative design to be constructed.

The SOC requires that the position of the mean high water (MHW) line be staked prior to construction of the fourth tier and returns and that it represent a limit of work line. In addition, the SOC requires that the frequency of monitoring be increased to quarterly (from semi-annual) in order to timely identify beach impacts that may be attributable to the Geotubes and that the monitoring reports be distributed within 30 days from data collection.

In the opinion of the Department the reasons given here are sufficient to justify this SOC. However, the Department reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions concerning this matter please contact Jim Mahala at (508) 946-2806.

Very truly yours,

Elizabeth A. Koulobheras

Elizabeth A. Koulobheras, Chief
Wetlands & Waterways Program

K/JM

Enclosure

CERTIFIED MAIL #7013 1090 0000 9295 7285

cc: Nantucket Conservation Commission

Nantucket Board of Selectman
16 Broad Street
Nantucket, MA 02554

Nantucket Department of Public Works
16 Broad Street
Nantucket, MA 02554
ATTN: Kara Buzanoski, Director

George X. Pucci, Esq.
Kopelman & Paige, P.C.
101 Arch Street
Boston, MA 02110

Epsilon Associates, Inc.
3 Clock Tower Place, Suite 250
Maynard, MA 01754
ATTN: Maria Hartnett

WPA Form 5 – Superseding Order of Conditions
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

SE 48-2610

A. General Information

1. From: **Massachusetts Department of Environmental Protection**
   Issuing Authority
2. This issuance is for (check one): a. ☒ Superseding Order of Conditions
   b. ☐ Amended Superseding Order of Conditions
3. To: Applicant:

a. First Name	b. Last Name

Siasconset Beach Preservation Fund and the Town of Nantucket
c. Organization

16 Broad Street
d. Mailing Address Line 1

e. City/Town	f. State	g. Zip Code
Nantucket	MA	02554

4. Property Owner (if different from applicant):

a. First Name	b. Last Name
See Attached List	

c. Organization

d. Mailing Address Line 1

e. City/Town	f. State	g. Zip Code

5. Project Location:

a. Street Address	b. City/Town
87-105 Baxter Road	Nantucket

c. Assessors Map/Plat Number	d. Parcel/Lot Number
48	8, 14, 14.1, 15, 17, 18, 19, 21, 22, 35

Latitude and Longitude, if known:

e. Latitude	f. Longitude
41°16'36.748"N	69°57'40.559"W

A. General Information (cont'd)

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

Nantucket
a. County

See attached list
b. Certificate (if registered land)

c. Book

d. Page

7. Dates: 10/25/2013 (a. Date NOI Filed) 5/20/2014 (b. Date of Site Visit) 6/3/2014 (c. Date of Issuance of Local Order)

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

Record Drawing Emergency Installation of Sand Filled Geotubes
a. Plan Title

Blackwell & Associates, Inc.
b. Prepared By

Leo C. Asadoorian, P.L.S.
c. Signed and Stamped By

Rev. 4/24/2014
d. Final Revision Date

1 inch = 30 feet
e. Scale

Plan View and Typical Cross-Section of Slope Stabilization (Stamped by OCC)
f. Additional Plan or Document Title

Rev. 10/28/2014
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, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection 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

2. This Department hereby finds the project, as proposed, is (check one):

Approved subject to:

a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department 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.

B. Findings (cont'd)

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 these interests, 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.**

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

3. ☐ Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) _____ a. linear feet

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
4. ☐ Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. ☐ Bordering Vegetated Wetland	a. square feet	b. square feet	c. square feet	d. square feet
6. ☐ 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. ☐ 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. ☐ 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. ☐ Riverfront area	a. total sq. feet	b. total sq. feet		
Sq feet within 100 feet	c. square feet	d. square feet	e. square feet	f. square feet
Sq feet between 100-200 feet	g. square feet	h. square feet	i. square feet	j. square feet

B. Findings (cont'd)

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

10. ☐ Designated Port Areas - Indicate size under Land Under the Ocean, below

	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
11. ☐ Land Under the Ocean	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
12. ☐ Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below.				
13. ☒ Coastal Beaches	35,500 a. square feet	35,500 b. square feet	c. c/y nourish.	d. c/y
14. ☐ Coastal Dunes	a. square feet	b. square feet	c. c/y nourish.	d. c/y
15. ☒ Coastal Banks	900 a. linear feet	900 b. linear feet		
16. ☐ Rocky Intertidal Shores	a. square feet	b. square feet		
17. ☐ Salt Marshes	a. square feet	b. square feet	c. square feet	d. square feet
18. ☐ Land Under Salt Ponds	a. square feet	b. square feet		
	c. c/y dredged	d. c/y dredged		
19. ☐ Land Containing Shellfish	a. square feet	b. square feet	c. square feet	d. square feet

20. ☐ 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. ☒ Land Subject to Coastal Storm Flowage	35,500 a. square feet	35,500 b. square feet

C. General Conditions Under Massachusetts Wetlands Protection Act

(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 for 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 Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on _____ 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.

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 Department 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 then two square feet or more than three square feet in size bearing the words,
    "Massachusetts Department of Environmental Protection" [or, "MA DEP"]
    "File Number SE48-2610"

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

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 DEP.

12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.

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 Department 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 Department.

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 Department, 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.

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

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.

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 19(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 BMPs 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, and 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 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(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.

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.

Brief Project Description: After-the-fact installation of 3 tiers of sand-filled Geotubes, addition of a 4th Geotube, returns, coastal bank drainage system, vegetative plantings and ongoing monitoring and mitigation (beach nourishment).

Special Conditions (See attached sheet(s) for additional Special Conditions numbered 1 through 26.

D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions 4 or 6.

Issued by: **Massachusetts Department of Environmental Protection:**

Signature: Elizabeth A. Koulouheras

Elizabeth A. Koulouheras, Chief
Wetlands & Waterways Program

This Order is issued to the applicant as follows:

☐ by Hand delivery on:

Date

☒ by certified mail on:
DEC 19 2014

Certified Mail #7013 1090 0000 9295 7285

F. Recording Information

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 Page 10 of this form shall be submitted to the Department.

Massachusetts Department of Environmental Protection – Southeast Region
Issuing Authority

To: Massachusetts Department of Environmental Protection – Southeast Region
Issuing Authority

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

87-105 Baxter Road, Nantucket
Project Address – Street & Town

SE48-2610
DEP File Number

Has been recorded at the Registry of Deeds of:

Nantucket
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

K/JM

G. Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP
20 Riverside Drive
Lakeville, MA 02347

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

(a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;

(b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;

(c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;

(d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that lead to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;

(e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;

(f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error in inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c.131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;

(g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;

(h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and

(i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04, a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars ($100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Special Conditions:

1. This Superseding Order of Conditions (SOC) permits the ongoing maintenance of the existing three tiers of Geotubes, installation of a fourth tier of Geotubes along lots 91, 93, 97 and 99 in order to prevent storm damage to pre-1978 homes, installation of smaller geotextile tubes as returns on the ends of the Geotubes to prevent flanking and minimize end effects, planting of vegetation on the face of the coastal bank, coastal bank drainage improvements and ongoing mitigation (beach nourishment) and monitoring. This SOC approves the Geotubes as a temporary installation for a period of three years with the option for the proponents to request an extension of the term for a maximum of three additional years in accordance with the provisions set out in Special Conditions #21 and 22. This SOC denies the installation of a fourth tier of Geotubes along lots 87, 101 and 105.

2. Notice of work commencement shall be given to the Nantucket Conservation Commission (NCC) and the Department at least 48 hours prior to the commencement of work.

3. Prior to installation of the fourth tier of Geotubes on lots 91, 93, 97, and 99 and returns, the proponents shall ascertain the width of the beach seaward of the existing Geotubes to determine whether there is sufficient beach width landward of mean high water (MHW) to conduct activities associated with the installation of the fourth tier and returns in accordance with the proposed construction methodology. In the event the beach is not sufficiently wide to allow Geotube installation in accordance with the proposed construction methodology, the proponents shall submit an alternative construction methodology for the Department's review and approval.

4. Prior to installation of the fourth tier of Geotubes on lots 91, 93, 97, and 99 and returns, the proponents shall mark the MHW line with surveyed stakes, obtain Global Positioning System (GPS) coordinates along the MHW line and shall maintain the stakes throughout the duration of construction. GPS coordinates shall be submitted to the Department and the NCC within 2 weeks of collection.

5. The staked position of the MHW line shall serve as a limit of work throughout the duration of construction. No work is allowed seaward of the MHW line under this SOC.

6. Access to the beach shall be from Hoick's Hollow north of the project area. A gate or similar structure shall be installed to control vehicular access to the beach at the Hoick's Hollow access point.

7. All sand used to fill and cover the Geotubes shall be imported from an off-site source and shall be compatible in terms of grain size with the existing beach sediments.

8. As proposed, the sand-filled Geotube returns shall be installed in a manner to form closure between the existing Geotubes and the adjacent bluff without excavation into the coastal bank. All beach sand excavated to install the returns shall remain on the beach and shall be used to restore the beach following construction.

9. The ongoing beach monitoring/survey program currently conducted by the Woods Hole Group shall continue. The monitoring program shall be conducted on a **quarterly basis for the first 2 years** in order to timely identify beach impacts that may be attributable to the Geotubes and to assess whether the mitigation program is adequate. Beach profiles shall be taken on a quarterly basis along the 44 proposed profile lines. Beach profiles shall be taken from the toe of the coastal bank, coastal dune or Geotube seaward to the –5 foot MLW contour. Beach profile data and analysis shall be submitted to the Department and the NCC within 30 days of completion of the quarterly survey. Following 2 years of quarterly surveys, the proponents may request the Department to re-assess the need for quarterly beach profiles. Such a request shall be accompanied with a report that provides reasonable justification for a reduced survey schedule. The final decision on any changes to the monitoring program rests with the Department.

10. As proposed, offshore (bathymetric) profiles shall be taken on an annual basis. Offshore profiles shall be taken out to the –25 foot to -35 foot MLW92 contour or 2,000 to 3,000 feet offshore, whichever is less. The bathymetric survey transects shall overlap the beach profiles (no gaps) and the tide gage used during the survey shall be surveyed into the same datum as the beach profiles. Bathymetry profile data and analysis shall be submitted to the Department and NCC within 30 days of completion of the survey.

11. An annual assessment report summarizing the beach and bathymetric profile monitoring program shall be submitted to the Department and the NCC each year. This report shall, at a minimum, provide an analysis of beach changes including volumetric changes between surveyed transects, assess location of the top of coastal bank and estimate bank retreat over the previous 12 months and calculate bank volume loss in the project area and 300 feet to the north and south. In addition, the report shall recommend any necessary changes to the beach nourishment program for the Department's review and approval.

12. Post-Storm monitoring reports shall be submitted following all significant storms. A storm will be considered "significant" if there are sustained winds over 40 mph over at least a 6 hour period according to NOAA's National Climate Data Center, Nantucket Memorial Airport station. The post-storm monitoring report shall include, at a minimum, photo-documentation of the condition of the Geotubes and nourishment sand within the project area, estimate of the volume of sand lost from the sand template, estimate of the beach level in front of the Geotubes to determine if replenishment is needed, estimate of volume of sand (if necessary) and schedule for delivery, identification of the location of any exposed geotextile or of any repair required to the geotextile, and visual observation of the ends of the Geotubes to determine if flanking is occurring. Such reports shall be submitted to the Department and the NCC as soon as possible following all significant storms but no later than 7 days from the end of the storm.

13. Sand mitigation shall be at a rate of 22 cubic yards per linear foot (cy/lf) per year in accordance with the following schedule:

    a. Provide initial cover of 22 cy/lf during and/or immediately following construction of the fourth tier and returns.

    b. Annually in April: Provide additional sand and/or adjust the existing template to obtain a minimum two foot cover over the Geotubes to protect them from UV degradation. The volume of any sand placed in April shall be recorded and counted towards the annual 22 cy/lf requirement.

    c. Annually in September-November: Place an additional volume of sand, to ensure a substantial portion of the sand template volume (10-15 cy/lf) is available at the onset of the winter storm season. Throughout the winter, place additional sand on an as-needed basis, in accordance with the replenishment trigger in the Milone & MacBroom's November 12, 2013 letter (i.e., if half the vertical height of the lowest Geotube is exposed, place a minimum of 2 cy/lf). If the balance of the 22 cy/lf volume is not placed in its entirety before March 1, the balance of the sand will be placed by March 31.

    d. Delivery tickets from sand supplier shall be provided annually to the Department and the NCC to document the total volume of sand provided on a yearly basis.

14. If there is not adequate space to provide the entire mitigation volume within the project area footprint, then any remaining sand shall be placed in a berm at the toe of the coastal bank and landward of MHW within 300 feet of the ends of the Geotubes. Any additional sand placed outside of the project area shall be equally distributed to the areas north and south of the project area.

15. Failure of the Siasconset Beach Preservation Fund (SBPF) to conduct the actions set out in subsections (a) to (e) herein shall constitute a project failure ("failure criteria") if not performed within the stipulated timeframes or within such other reasonable periods of time as determined by the Department in the event of a delay in performance outside the control of SBPF, or if there are unmitigated adverse impacts from the project. The "failure criteria" include:

a. Failure to provide the sand mitigation as required in Special Conditions #s 13 and 14.

b. Failure to conduct the shoreline monitoring and post-storm monitoring as required in Special Conditions #s 9 through 12.

c. Failure to repair and/or replace damaged geotextile tubes in a timely manner. If repair or replacement cannot be accomplished within 30 days from the date of the damage, SBPF shall notify the Department and the NCC before 30 days have elapsed and provide a repair schedule for Department review and approval.

d. Excessive loss in updrift or downdrift beach cross section that can be attributed to the project. If the quarterly monitoring program identifies excessive loss to the adjacent shoreline (compared to historical data) that may be attributable to the project, then SBPF shall contact the Department and the NCC within 30 days of the completion of the quarterly survey. Upon notice, the Department shall commence an information gathering and consultation process to evaluate whether the shoreline loss is a result of the project. Following the conclusion of the evaluation the Department shall determine an appropriate course of action to address the beach loss associated with the project which may include, but is not limited to, changes to the placement of the sand template, an increase in the volume of sand mitigation, or project removal if impacts cannot be effectively mitigated. SBPF shall implement the Department's required mitigation within 30 days of receipt of written notification from the Department.

e. Failure to maintain adequate beach width in front of the Geotubes. If the beach in the project area erodes so that the position of MHW migrates landward to the seaward edge of the second tier of geotextile tubes for any two consecutive quarterly surveys, then within 30 days of completion of the second quarterly survey SBPF shall contact the Department and the NCC. Upon notice, the Department shall commence an information gathering and consultation process. Following the conclusion of the evaluation, the Department shall determine an appropriate course of action which may include, but is not limited to, changes to the placement of the sand template, an increase in the volume of sand mitigation, or Geotube removal if impacts cannot be effectively mitigated. SBPF shall implement the Department's required mitigation within 30 days of receipt of written notification from the Department.

16. In the event certain failure criteria have been met and the Department orders Geotube removal, then the geotextile fabric shall be cut, removed and properly disposed of. Following removal of the geotextile fabric, sand from the Geotubes shall be spread along the beach landward of MHW. SBPF and the Town shall maintain the escrow fund in place as of the date of this SOC to ensure the availability of funds to pay for the removal of the Geotubes. Lack of adequate funds in the escrow account shall not negate SBPF's requirement for Geotube removal.

17. The SBPF shall be responsible for the retrieval and proper disposal of all geotextile products associated with this project in the event wave action and erosion destroys or otherwise causes damage to the Geotube system.

18. This SOC approves the connection to the previously installed coastal bank drainage system on Lot 91 (Baxter Road).

19. As proposed, exposed areas on the face of the coastal bank, other than the upper 5-7 feet, may be stabilized using biodegradable erosion control blankets planted with beach grass and/or other indigenous coastal vegetation. The erosion control blankets and plantings shall be installed with hand tools with workers repelling down the bank face.

20. The town of Nantucket shall provide the Department with periodic updates (every 6 months) on the status of efforts to relocate alternative access and public utilities' infrastructure at the northern end of Baxter Road.

21. The Geotubes may remain in place along lots 91, 93, 97 and 99 for three years from the date of issuance of this SOC, provided that, if requested to issue an Extension Permit the Department may extend the SOC three additional years upon good cause shown. Said six year duration may be further extended in the event that an appropriate applicant files a new Notice of Intent (NOI) and diligently pursues a Final Order of Conditions (FOC) to maintain, modify or replace the Geotubes prior to the SOC or Extension Permit expiration date. In the event the Order of Conditions on the new NOI is appealed, the Geotubes may remain until a FOC is issued by the Department. If the Final Decision of the Department allows for the continuation of the Geotubes or an alternative coastal structure, it shall supersede this SOC.

22. The Geotubes may also remain in place along lots 87, 101 and 105 for up to three years from the date of issuance of this SOC or until alternative access and infrastructure to homes on the northern end of Baxter Road has been provided, whichever period of time is shorter. If alternative access and infrastructure has not been provided within 3 years, and upon request to issue an Extension Permit, the Department may extend the SOC three additional years upon good cause shown. Alternatively, the Geotubes may remain in place along said lots if the owners of pre-1978 homes landward of said lots, in or to protect their homes, file a new NOI and diligently pursue a FOC to maintain, modify or replace the Geotubes prior to the SOC or Extension Permit expiration date. In the event the Order of Conditions on the new NOI is appealed, the Geotubes may remain until a FOC is issued by the Department. If the Final Decision of the Department allows for the continuation of the Geotubes or an alternative coastal structure, it shall supersede this SOC.

23. Until such time as a final decision on a subsequent NOI is filed, this SOC, as may be modified, shall remain in force and effect. In the event a final decision on a subsequent NOI allows for the continuation of the Geotubes or an alternative coastal structure, it shall supersede this SOC. In the event a final decision denies the NOI, the applicable provisions of this SOC, as may be modified, shall continue to be implemented.

24. All construction refuse shall be removed from the site and disposed of in compliance with all local, State, and Federal laws and regulations.

25. Upon completion of the proposed installation of the fourth tier of Geotubes on lots 91, 93, 97 and 99 and returns, a partial Certificate of Compliance shall be requested in accordance with General Condition No. 11, and under the provisions of 310 CMR 10.05 (9)(d). A statement from a Professional Engineer or a Professional Land Surveyor registered in the Commonwealth of Massachusetts certifying compliance with the plans and conditions of this Order shall accompany the request for a partial Certificate of Compliance.

26. This SOC does not relieve the applicant/owner from complying with the Town of Nantucket Wetland Bylaw.

Massachusetts Department of Environmental Protection

Adjudicatory Hearing Fee Transmittal Form

IMPORTANT! This form is intended for fee transmittal only. The contents of a request for an adjudicatory appeal (Notice of Claim) are established at 310 CMR 1.01(6) and the substantive statutes and regulations governing the Department's action.

A. Person/Party Making Request

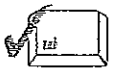
1. Name and address of person or party making request:

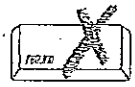
Name - If appropriate, name group representative

Street Address

City | State | Zip Code

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.





2. Project Information:

Street Address

City | State | Zip Code

DEP File or ID Number | $ Amount of filing fee attached

Email Address

B. Applicant (if applicable)

1. Name and address of applicant:

Name - If appropriate, name group representative

Street Address

City | State | Zip Code

Email Address

C. Instructions

1. Send this form and check or money order of $100.00 payable to the Commonwealth of Massachusetts to the MassDEP Lockbox at:

   Department of Environmental Protection
   P.O. Box 4062
   Boston, MA 02211

2. Send a **copy** of this form and a **copy** of the check or money order with the Request for Adjudicatory Appeal (Notice of Claim) to:

   Case Administrator
   Office of Appeals and Dispute Resolution
   One Winter Street
   Boston, MA 02108