

NOTICE OF INTENT: SCONSET BLUFF GEOTEXTILE TUBE PROJECT
SUBMITTED BY: THE SIASCONSET BEACH PRESERVATION FUND
PUBLIC COMMENT: NANTUCKET COASTAL CONSERVANCY
DATE: SEPTEMBER 10, 2015

On behalf of the NCC Coordinating Team and the many citizens of Nantucket who have indicated support for our mission, which is to preserve and protect Nantucket's coastal resources through education, research and advocacy, ensuring that future generations can use and enjoy them, we thank the Commission for its steadfast adherence to both the Nantucket Wetlands By-law and the State Wetland Protection Act, particularly as they relate to the matter before you.

We have been in attendance for the many, many months of hearings that have led up to this point. Throughout this process, the Commission has conducted fair and full hearings that reflect positively on our Town and its regulatory process. Now, as a result of what has been for the most part political pressure outside of your purview, you have before you a "new" Notice of Intent, not only for the installed seawall, but also for extensions and enhancements to the project.

It is important to note that, in the "[Settlement Statement](#)," the parties acknowledge the following:

However, it is recognized that there are no precedents, pre-conditions or expectations for any future ConCom actions. **All parties recognize that the ConCom is the regulatory body with the responsibility to make decisions in this matter**, subject to the established appeal process, if a party chooses to pursue such a course of action. [Emphasis added.]

We believe that the Commission's appeal of the Superseding Order, as outlined in the [Notice of Appeal](#), is **very** strong. The arguments put forth are not only consistent with the provisions of the local by-law and the State act, but also with the best practices promoted by the Commonwealth through the Office of Coastal Zone Management (CZM). We have had confidence that the Commission would pursue its appeal with vigor and determination.

However, we understand that a majority of the Commission might choose not to do so, given the reality of the current circumstances, especially the implied threat that a majority of the Board of Selectmen might not provide the funds necessary to underwrite the cost of continued litigation.

If this is to be the case, then we respectfully ask you to impose conditions on the project that provide, to use your words in the Appeal Letter, “greater protections and more stringent controls” than are contained in the Superseding Order issued by the DEP. Along with such protections and controls should be a rigorous **enforcement** component: if necessary, the hiring of a special Agent to take on the enforcement responsibilities of whatever Order the Commission issues, given the limits on the Commission’s staff. (As an aside, we recommend that the Commission retain an Agent to monitor all projects and provide enforcement oversight, not just in regard to this project.)

Specifically, we request that the Commission engage a knowledgeable, truly **independent** consultant, accountable to the Commission and at the expense of the applicant, to develop a comprehensive monitoring program that will accomplish, but not be limited to, the following:

1. **GATHER RELIABLE, OBJECTIVE DATA IN AN UNDERSTANDABLE FORMAT:** Provide reliable, objective data, in an understandable format, that will clearly document any adverse impacts of the geotube seawall in the immediate project area and on downdrift properties, as well as land under the ocean.
2. **PLACE BURDEN OF PROOF ON THE APPLICANT, NOT DOWNDRIFT PROPERTY OWNERS:** Place the burden of proof squarely on the applicant, not the downdrift property owners, nor the public, to demonstrate that no adverse impacts have occurred and that, if they have, that they are not attributable to the geotubes seawall. As Dr. Robert Young has pointed out, it is very difficult, if not impossible, to “prove” a causal effect between a seawall such as the geotubes and negative downdrift impacts. It simply is not fair to transfer the risk for the property owners within the geotube area who knowingly invested in real estate on an eroding bluff to downdrift property owners who did not.
3. **ESTABLISH FAILURE CRITERIA THAT MEAN FAILURE:** Establish “failure” criteria that mean failure, plain and simple: that is the removal of the geotubes, not merely the convening of a hearing to discuss the matter. The consequences need to be such that the applicant will assiduously adhere to the conditions imposed, rather than being given, in effect, another “chance.” In fact, the Commission should require the preparation of a comprehensive removal plan for the geotubes now, should it be needed within the three years of the permit.

4. ESTABLISH SUCCESS CRITERIA: Establish “success” criteria so that the Commission can determine if the geotube seawall is “doing its job.” How is the “success” of the installation to be measured? The applicant has been publicly touting the “success” of the geotubes saying they are “doing their job,” without defining what their “job is.”

According to the two most recent quarterly reports conducted by consultants retained by the applicant, data indicate that: one, the “transects within the geotube installation have generally **exhibited erosion over the 18 months since the geotube installation.**” [Emphasis added. See attached “Interpretative Statement” prepared by COWI, dated June 3, 2015.] And, two, from the “Southeast Nantucket Beach Monitoring Report” prepared by the Woods Hole Group, August, 2015, Summary 4.4, p. 22: “Since the last survey in April 2015, **the dominant trend for beach volume change was erosion** (41 profiles eroding and 5 accreting).” [Emphasis added.]

If the “job of the geotubes” is to prevent erosion, then according to these assessments, they are not doing their job. If they are not doing their job, then, given the environmental harm that the whole project has caused (loss of 900 linear feet of a natural, public beach, as one example), and will continue to cause, why permit the project to remain?

5. MONITOR NEARBY SOFT INSTALLATION: Provide monitoring of one of the “soft” installations in the area that is being actively maintained to ascertain, one, if it is being effective and, two, to compare its performance with the geotubes. With the coir installation so nearby, this is an ideal opportunity to monitor both projects to see how they each perform under identical conditions. If it’s data the parties hope to gain, then why not gather data from both the “soft” and “hard” installations during the same timeframe?

6. PROVIDE A DRY BEACH SEAWARD OF THE GEOTUBES: Ensure the ongoing presence throughout the year of a dry beach seaward of the geotube installation of a certain width to enable the public to access, recreate on and otherwise enjoy property it owns in a safe manner. Mandate regular weekly, if not daily, photographic inspection reports at both high and low tides. The condition in the Superseding Order relating to this issue is wholly inadequate, in that it contains a “failure” criterion of six months without any beach. This would, in effect, constitute a taking of what is left of the Proprietors Beach below the bluff in the area of the geotube seawall.

7. REQUIRE FINANCIAL GUARANTEES THAT FUNDS FOR MITIGATION AND MAINTENANCE WILL BE PROVIDED THROUGHOUT THE PERIOD OF THE PERMIT: Obtain financial guarantees from SBPF that the costs of the mitigation and maintenance required for the life of the permit (costs that Mr. Robert Greenhill describes in his letter of September 2 as “potentially staggering”) are readily available, despite any contingencies that might arise. As we understand, an amount of money sufficient to remove the geotubes is being held in escrow: a similar account should be established for three years worth of mitigation and maintenance costs. We have heard the applicant say that this is “unnecessary” because if they don’t follow through on mitigation and maintenance, the ConCom can simply have the geotubes removed. This response is unacceptable to downdrift property owners such as Mr. Greenhill, and it should be unacceptable to the Commission.

ADDITIONAL COMMENTS

A. IMPORTANT TECHICAL MATTER: Any Notice of Intent (NOI) should be signed by the property owner, in this case the Town of Nantucket. In the NOI submitted by SBPF, the line for the “Signature of Property Owner” reads: “Per MOU dated July 5, 2013.” What does this mean? Does such notation constitute the “Signature of Property Owner”? If yes, are the public, and the Commission, to understand that an agreement entered into between the applicant and the Town of Nantucket in the summer of 2013 regarding a rock revetment would qualify ad infinitum as the “Signature of Property Owner”? This is no small point. The Commission should seek the opinion of Town Counsel on this matter, or any decision could be appealable on this technicality alone.

B. NEW INFORMATION: The “new information” provided by Commissioner Golding at the September 2 public hearing about the pre-1978 structures within the project area was disconcerting, to say the least. Since the Superseding Order of Conditions (SOC) issued by the DEP was predicated on the information provided by SBPF — that there are two pre-1978 structures within the project area, located at 93 and 97 Baxter Road, that are in imminent danger — then this “new information” (that one of the structures, located at 97 Baxter Road, does NOT meet the criteria for a pre-1978 structure) is of critical importance. If substantiated, it could, and should, cause the Department (DEP) to re-visit the SOC. [Go to <http://www.nantucket.ma.gov/DocumentCenter/Home/View/5106>, page 44 for SBPF submission, “Request for Emergency Certification: Sconset Bluff – Baxter Road,” dated November 26, 2013 and cited in the “Request for a Superseding Order of Conditions,” dated June 17, 2014, page 4, footnotes 4 and 5.]

C. THE GULLY: The proposed alterations to the “gully” on the bluff on the southerly end of the geotube installation were not part of the original application and should require a separate Notice of Intent. Based on historic photos [see below from the NHA historic archive], gullies are part of the natural state of the bluff. To fill this feature in and wall it off would substantially alter the resource. What would be the rationale for doing so, since the property in this area is vacant, so no structure, pre-1978 or not, is threatened? We also note that, according to the schematic contained in the NOI [page 21], the gully appears to be located, in part, on a portion of the lateral way (or paper road) running from Baxter Road to the edge of the bluff, not on any individual property owner’s lot. Action relating to the gully should be undertaken only after a thorough and careful review.



D. LENGTH OF INSTALLATION: In regard to the proposed returns to be installed at either end of the geotube seawall, we have a question. What was the length of the original installation as requested, with the returns? When the current geotubes were installed, was space left at either end for the returns? Or, would the returns as now proposed, in effect, lengthen the project? If so, the “new” NOI should not be used as an opportunity to expand the original project.

E. ALTERNATIVE ACCESS FOR NORTHERN BAXTER ROAD: According to Special Condition Number 20 in the SOC, "The town shall provide the Department [DEP] 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."

[<http://www.nantucket-ma.gov/DocumentCenter/Home/View/7779>, page 18.] Who is going to monitor this condition? The ConCom? The Town? Both? A procedure should be developed to fulfill this special condition. Note, also, that the SOC refers to relocation of public access and infrastructure, NOT the "promise" of relocation of public access, as contained in the "springing" easements now under discussion among SBPF, the Town of Nantucket and impacted property owners. The easements for alternative road access, as promised, should be permanent, not "springing," or else what has been accomplished in the past two years?

F. THE FOURTH GEOTUBE: Allowing the seawall to be increased in height with another hard-armoring tube to withstand a 100-year storm is, simply put, unnecessary. A sand-filled fabric layer would suffice, and would, as we understand, not only mimic the natural processes more closely, but would also have less adverse impacts. The argument that the applicant discounted this alternative because a fourth fabric bag "would not provide support for heavy machinery" is beside the point. Heavy machinery is not a positive for the resources the law protects, and having the work done manually, while perhaps more expensive, would cause less environmental harm.

Respectfully submitted,

The NCC Coordinating Team

D. Anne Atherton
Peter Brace
Barbara Bund
Sunny Daily
Rita Higgins
Susan Landmann

Susan McFarland
Linda Spery
Liz Trillos
Charley Walters
Mary Wawro
Karen Werner



PHOTO: Exposed geotubes at northern end of installation, winter 2015.