

Rec. @ 9/10/15  
Hearing by D. Roggeveen  
on behalf of Quidnet  
Squam Association

## MEMORANDUM

Date: September 10, 2015  
To: Nantucket Conservation Commission  
From: Dirk Roggeveen, representing the Quidnet Squam Association  
Re: Conservation Commission Review of Baxter Road Geotube Installation

As you are aware, the Quidnet Squam Association is an association of homeowners to the north and downdrift of this coastal engineering project. As built, this project has a significant likelihood of impacting the beaches, barrier beaches, and coastal dunes to the north, properties owned by members of the Quidnet Squam Association.

The Association continues to be opposed to any armoring of the natural shoreline. Even with the mitigation required by DEP's Superseding Order of Conditions, we anticipate the project will have long term impacts on sediment transport to the north. To that extent, the Association incorporates all of the evidence presented and concerns expressed over the last several years of hearings on this matter, as well as the arguments presented to DEP on behalf of and in support of the Conservation Commission's earlier denial of this permit.

Additionally, the Association supports the concerns and recommendations expressed to the Commission by others including, but not limited to, the Nantucket Land Council and Nantucket Coastal Conservancy and their representatives and consultants.

In the event the Commission elects to issued a permit allowing the structures to remain as presently constructed for some period of time, The Quidnet Squam Association respectfully makes the following recommendations.

- I. The permit issued under the local bylaw must, at a minimum, contain all of the requirements contained in DEP's SOC.

In the event the Town or SBPF fails to live up to the requirements presently contained in the SOC, the Commission, as well as other affected parties, need to be able to seek enforcement through the courts as well as DEP. DEP is an independent agency and may not, in the future, have the same interest in enforcing the requirements as might the Conservation Commission. Unless those provisions are also contained in the local permit, Con Com will be limited in its enforcement capacity to DEP's interpretation of DEP's requirements and restrictions.

- II. The permit issued under the local bylaw must be explicit about the temporary nature of the protection for the roadway.

DEP's Superseding Order of Conditions is quite clear that that portion of its permit that is to protect the roadway is only for the time period necessary to provide alternative access to the houses served by Baxter Road. "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." SOC Special Condition 22. The permit considers extending that time frame only for three additional years, and only "upon good cause shown," indicating its expectation of a good-faith effort by the Town. It anticipates, and requires, that the Town actually will relocate the access and infrastructure, and it

requires that the Town provide to DEP periodic updates, every six months, on the status of the Town's efforts. Special Condition 20.

These provisions need to be incorporated into the Order issued under the bylaw. Including this provision will allow the Commission to seek enforcement through Superior Court if DEP should for some reason become hesitant to do so. And we suggest that the Commission might rightfully be concerned. Rather than making efforts to relocate the access, all we have heard from the Town and SBPF have been efforts to obtain alternative access in the event Baxter Road becomes unsafe. This creates the perpetual state of emergency that SBPF's counsel spoke to. But if alternative access is provided, as required by the permit, Baxter Road will no longer be relevant to the health and safety of the residents, and the temporary geotube installation can be removed. The state SOC anticipates this. Con Com should anticipate it as well. And it should be explicit in the Order. Including a "good faith" provision in the language might also be considered.

III. Each lot needs to be considered separately when considering the geotextile structure to which it might be entitled, as well as the time frame for such a structure.

The Commission has one NOI before it, but as the state made clear in how it sliced and diced the application when it issued its SOC, there actually are four NOI's before the Commission at this point. Each should be considered independently. The first is the permit for the three tier geotube to temporarily protect Baxter Road while access and infrastructure are relocated. We discussed that above. The second, third, and fourth, are for the three buildings, located at 93, 97, and 99 Baxter Road. Each must be considered separately. While the Commission may have sufficient evidence for it to extend permanent protection to 93, and 97 Baxter Road, there is no such evidence with regards to 99 Baxter Road. In fact, SBPF itself, in the letter to this Commission entered in the record as the 9-8-15 letter, provides the evidence by which this Commission must deny the permit. In that letter, SBPF admits that the building that predated 1978 that used to be on this lot was removed in 2005. Thereafter the lot was vacant. At that point in time, the lot was no longer entitled to any protection provided by the pre-1978 provision. Then, according to SBPF, in 2010, a shed was moved onto the lot. The shed may or may not have pre-dated 1978; that is unclear, but is not relevant in any case. The law does not protect buildings moved onto eroding coastal banks, even if the buildings themselves are quite old. One can only imagine the wholesale relocation of old sheds from around the island onto lots with eroding coastal banks, if that, alone, would allow for construction of a coastal engineering structure.

Finally, please continue to be aware that the Commission has the legal authority to place requirements and restrictions that are more restrictive than those placed by the state. We appreciate all your efforts in this regard.