



Dear Mary,

The Coastal Resilience Advisory Committee extends our deep appreciation for your outstanding contributions during your four-year tenure as Chair. Thanks in large part to your leadership, CRAC made extraordinary progress — most notably the adoption of Nantucket's first Coastal Resilience Plan, the integration of CRP guidance throughout town government, and successfully implementing several priority projects.

Beyond these accomplishments, you helped build a team culture that we will strive to preserve. Your belief in CRAC's mission instilled a collective sense of purpose in the committee. With Vince Murphy's and Leah Hill's help, your unwavering strategic focus kept our meetings on track, and helped ensure that our objectives were consistently met. Your respect for each member's perspective — and for the outstanding talents of town staff — reinforced a sense of unity within CRAC, earning us credibility and a reputation for getting things done.

Above all, we were inspired by your vision of resilience as much more than playing defense; it is an opportunity to imagine a better Nantucket.

Your tenure as Chair has been a period of remarkable achievement, and we are grateful for the opportunity to have worked alongside you. As you embark on new endeavors, we hope you take pride in the positive impact you've had as the inaugural chair of CRAC, and on the future of this beautiful island.

With deepest appreciation,

On behalf of the Coastal Resilience Advisory Committee (CRAC)



Dear Ian,

The Coastal Resilience Advisory Committee extends our deep appreciation for your service during your four years with the committee. Thanks in no small part to your contributions, CRAC made extraordinary progress – most notably the adoption of Nantucket’s first Coastal Resilience Plan, the integration of CRP guidance throughout town government, and the successful implementation of several priority projects.

Beyond helping to achieve these milestones, you were also an important contributor to a team culture that we will strive to preserve. From your belief in the importance of CRAC’s mission and your personal passion for promoting the health of Nantucket’s wetlands, to your vast institutional knowledge from your years with ConCom — all of these qualities made you an invaluable member of the CRAC team.

We also appreciate the unique intangibles that you brought to this team. Your candor, and your ability to deliver an important point with wit and good humor, will be missed.

Your tenure as a member of CRAC has been a period of remarkable progress, and we are grateful for the opportunity to have worked alongside you. As you assume your new responsibilities as the chair of the Conservation Commission, we hope you take pride in the positive impact you have had as an inaugural member of CRAC, and on the future of this beautiful island.

With appreciation,

On behalf of the Coastal Resilience Advisory Committee (CRAC)

Overview

Select Board consensus request for input from Coastal Resilience Advisory Committee on developing guidance for Coastal Resilience Districts (CRD's).

CRD's are mapped districts in coastal areas where projects that aid in the retreat, protection or adaptation of the mapped area to be developed. This is a way of apportioning costs.

Timeline

Feedback to Select Board by September 1.

Suggest the introduction to the topic on 7/25, and collect initial reactions. Discuss and collect CRAC feedback on 8/8. Draft document on 8/22

Background

Review supplied background documents and legal opinion on Coastal Resilience Districts.

See legal opinion on using Home Rule Petition to create Coastal Resilience District(s).

Request

Bullet point guidance and / or succinct recommendations on Coastal Resilience District. This will be used to guide and draft the Home Rule Petition. Staff, consultants, and legal council will undertake the drafting.

Possible guidance on;

- How are districts defined and mapped?
- Is the whole island the district and specific benefit sub-districts are mapped on a needs basis?
- Is inclusion based on direct benefits? Should this include people who may benefit in the future?
- Guidance on benefits. 100% on beneficiaries or percentage on the Town
- Problems with Operation & Maintenance of projects.
- Easements for utilities.
 - Town – Water and Sewer
 - Private – Electric and telecommunications (phone, internet, cable)
- Hold harmless clause.
- Define coastal area; or risk area; or who may not benefit.
- Different or same benefits in flood zones or erosion zones
- Include sea level rise so that the districts can migrate as waters rise? Done by periodic review or is line with set parameters?

Coastal Protection Districts Introductory Fact Sheet (DRAFT)

What is a Coastal Protection District?

- Purpose of a District

The purpose of a district generally is to enable a municipality to be able to manage a particular issue in a particular geographical part of the municipality with defined boundaries. The district can address different issues such as environmental questions, stormwater management, wastewater, or roadway matters as a few examples. In this case the district is being established to address the effects of erosion and to a certain degree flooding which result in damage to homes, personal property, roadways and utilities.

- Benefits to the Town

The benefits to the Town are dependent upon the types of prevention and protection the Town may wish to undertake to protect the residents, the homes, the roadways and utilities. With the creation of a district, the Town can determine how best to target a specific geographical area to better prevent the erosion and to prepare for it by implementing certain protection projects. The creation of a district furthermore will enable the Town to be able to respond to a particular area of Town with certain response measures and reduce the potential damage from erosion by implementing certain projects such as the Baxter Road relocation of roadway access and utilities. Lastly, the creation of a district may enable the Town to either reduce the costs for these projects or at least help to fund these measures by the use of betterments of the residents in the district who will receive the benefit of these projects. Since the project will benefit a particular group of residents that other citizens of the Town are not benefitting from, the Town in my opinion, will be able to assess betterments to those residents in the district.

- Benefits to those in the District

The benefits to those in the district is to provide clarity to the residents that they are located in the geographical boundaries of the district, rather than wondering who will receive any services by the Town from the effects of erosion. Furthermore, they may have some input as to the type of protection they may require from the Town. But most importantly it will enable them to benefit from the Town's planning of prevention projects to protect their properties from the effects of erosion and planning of any projects such as the Baxter Road plan to provide them with access to their homes and to preserve the utility services.

- Can this be created for use island wide? Does it have to just cover Baxter Rd at this time? Can Home Rule Petition be generic to allow for creation of districts throughout the island for this need?

Briefly, the establishment process of a district could be applied to other areas on the island. However, you would need to determine the boundaries for each district established and provided each district does not have individual needs that need to be addressed. However, the authority that is granted to the Town could be more generic so that it can provide prevention

and protection from the effects of erosion as well as the payment for these projects and services. So it does not need to be created to apply to just Baxter Road. We would also need to create a process to establish the districts and the geographical boundaries of a district.

Steps to Create a District

The following items listed are issues that need to be addressed in establishing the district and also in drafting the Home Rule Petition.

- Define geographical boundaries, types of projects to be implemented, funding needed, etc.
- Town Meeting on Home Rule Petition
- Special legislation
- Set fee / betterments structure

Timeline Range (provide minimum, maximum, typical)

- Must go to Town Meeting (May 2024) to approve Home Rule Petition?

In order to file a Home Rule Petition with the Legislature, Town Meeting must first authorize the Select Board to file the Petition with the Legislature. Once it is filed with the Legislature it will need to move through hearings and vote so f Legislative committees before being voted on by the Legislature. Before the Petition is drafted the Select Board must decide the purposes to be accomplished by the special legislation. Then if the Select Board is requesting the authority to assess betterments to residents of the established district, the Select Board will want to review the assessments and the municipal financing questions to make sure they will be permissible under Massachusetts law. In addition, there will need to be an assessment of the coastal resiliency committee with the Arcadis consultants as to the geographical locations of the district. These are just a few of the considerations. Therefore, this will take some time to address these issues and draft the Home Rule Petition. It is my opinion that we should have enough time to have a Home Rule Petition drafted by January for review for the Articles on the Warrant.

- Is it possible to go to a Special Fall Town Meeting?

In my opinion, I do not think there is enough time to draft this Article thoughtfully with the necessary input and have it ready to be approved for the Special Town Meeting in November.

Estimate of Resources to Create the District

- Town Resources and time
- Legal / Engineering Fees
- Other

Fee / Charge Structure

- What is charged - Fees, Betterments, etc.?

Fees are often charged or assessed to residents for wastewater projects and water pollution projects as there is generally a finite amount that can be assessed yearly or a one-time assessment. However, in this case, betterments may be beneficial as each owner if the district will pay their proportionate share for the costs for the project to be constructed or service provided in the district. The Town may also wish to review how other states handle their coastal resiliency projects. Some states have established a coastal resiliency fund that is a state fund to address erosion and flooding prevention and protection.

Also in reviewing the assessment of betterments the Town will need to consider the term of the payment for the assessment of the betterments and the interest to be assessed.

- Funds must cover design, permitting, construction, operation and maintenance of any projects.

In order to assess a betterment pursuant to G.L. c. 80 the Town will need to have a cost of the contract for the project to be constructed and the owners then will be assessed their proportionate cost of the contract.

- Allow for other funding sources (grants, donations, etc.)

There are state grants and possibly federal grants available but they will need to be reviewed to see if the Town will qualify, the amounts of the grants, when the funds will be available and then the Town will need to complete the grant application. The question is the amount of grant funds that are available.

MEMORANDUM

TO: C. Elizabeth Gibson, Town Manager

**CC: William D. Arcadis, P.E. Project, Manager, Arcadis, Jennifer Lachmayr
Vincent Murphy and John W. Giorgio**

FROM: Vicki S. Marsh, Esq.

RE: Establishment of Coastal Resiliency Districts

DATE: June 19, 2023

You have requested I research the legal procedures available to the Town to establish a coastal resiliency district and the funding of the projects to be undertaken in a coastal resiliency district to address erosion and flooding, as contemplated for the Baxter Road Relocation Plan (the "Project"). The Town has considered the creation of a coastal resiliency district as a means which will enable it to fund the relocation of Baxter Road and its utilities as well as establish other districts in the Town which may similarly need to be created as circumstances may require similar coastal resiliency projects. The creation of a coastal resiliency district with geographical boundaries will enable the Town to fund the projects by means of assessment of betterments or the application for federal or state grants for the benefit of a defined coastal resiliency district.

In Massachusetts, there are generally three lawful procedures available for a municipality to establish a district; (1) Massachusetts General Laws, the applicability of which is dependent upon the purpose to be addressed by the establishment of a district, (2) special legislation filed pursuant to a home rule petition and (3) municipal Zoning and General Bylaws. In order to create a district the Town should consider the purpose of the district, the geographical boundaries of the district, the means to fund the improvements and relocation projects as needed, and consideration of implementing any restrictions or regulations with respect to the construction, repair and use of properties within the district.

Purpose of a District

The creation of a district within a municipality enables the municipality to manage environmental, wastewater or roadway matters for funding and constructing infrastructure improvements, managing the infrastructure projects or providing further erosion and coastal resiliency services. The districts are defined by geographical boundaries to limit the area to benefit from the project or protection contemplated. Similarly, as circumstances dictate, the Town could also create other coastal resiliency districts to address flooding or erosion effects and undertake certain coastal resiliency

projects for a particular district, to be paid by betterments assessed to the property owners benefitted.

In considering a purpose for the establishment of a coastal resiliency district, the Town's purpose for the creation of a Flood Overlay District as set forth in the Town's Zoning Bylaw, §139-12 H could provide the framework for describing the purpose of a coastal resiliency district as follows: "... to ensure public safety by reducing the threats to life and personal injury; prevent the occurrence of public emergencies resulting from water quality contamination and pollution due to flooding; avoid the loss of utility services which if damaged by erosion would disrupt or shut down the utility network and impact the community beyond the site of flooding; reduce costs associated with the response and cleanup of flooding conditions; reduce damage to public and private property resulting from flooding waters." This purpose is similar to the purposes the proposed coastal resiliency districts would serve, but not just limited to flooding, but also include the effects of erosion of the Town's beaches and bluffs.

Establishment of Coastal Resiliency District

In Massachusetts a municipality may establish districts by (1) Massachusetts General Laws, (2) special legislation and (3) municipal Bylaws and Regulations.

1. General Laws- In Massachusetts there is no specific General Law which authorizes the establishment of a district for the purpose of protecting a specific geographical area for the construction and funding of a coastal resiliency district or assessment of betterments to the property owners in that specific district. Although there is a Coastal Management Zone Office created pursuant to G. L. c. 21A, § 4, this statute does not provide the authority for the municipalities to create districts to oversee construction and funding for a coastal resiliency projects. Rather this Office creates policies and guidelines for the Massachusetts coastal zone management program. The purpose of the program is to provide for the same objectives and benefits of the federal Coastal Zone Management Act. The Massachusetts Coastal Zone Management Office also oversees certain Grant Programs; however, those grants will not be sufficient to fund this project. Therefore, there is no state law currently enacted which give municipalities the authority to create a coastal resiliency district for the purposes of assessing betterments for coastal resiliency projects in a particular geographical area.
2. Special Act of the Legislature- The Massachusetts Constitution authorizes municipalities to file home rule petitions with the State Legislature requesting enactment of a special law. Special legislation has been filed by towns to establish a region-wide district or a district within its boundaries to manage a service within its boundaries that goes beyond or is inconsistent with applicable general or special laws. A town's legislative body must approve of a home rule petition before it can be filed with the Legislature. In Nantucket, the Town Meeting is the

Town's legislative body which must vote to approve of the filing of home rule petitions.

3. Municipal Bylaws and Regulations- Municipalities in Massachusetts may adopt zoning or general bylaws to regulate a wide range of uses and activities within all or a portion of their boundaries. Bylaws must be reviewed and approved by the Commonwealth's Attorney General. In considering whether to adopt a Zoning Bylaw or a General Bylaw to establish a district, the municipality must determine the purpose for which the district will be serving.
 - A. Zoning Bylaws: A zoning bylaw usually imposes restrictions on different districts or different land uses in a defined geographical area in a municipality. For example in Nantucket in the Zoning Bylaws, §139-12 H the Town has established a Flood Hazard Overlay District. This Zoning Bylaw imposes use regulations on activities in this Flood Hazard Overlay District for new construction, subdivision proposals and development in the district including structural and nonstructural activities must comply with certain regulations among other restrictions. The Town may wish to consider whether, at this time, an imposition of use regulations or restrictions in a coastal resiliency district is one of the intended purposes. If the Town is not seeking to impose restrictions on the use and development of the properties in a district, then it may conclude not to establish a coastal resiliency district by means of a zoning bylaw. Alternatively, the Town may wish to review the creation of a coastal resiliency district by a general bylaw.
 - B. General Bylaws: In comparison to zoning bylaws, general bylaws typically apply uniformly to all existing or new uses or activities subject to the bylaw, and requires only a majority vote of town meeting. An example of a bylaw is a wetlands protection bylaw that implements a local permit program with more stringent requirements than the state Wetlands Protection Act. However, the Town, by creating a district through a general bylaw, may not have the ability to fund the projects contemplated in a coastal resiliency district without additional legislation.

Considerations for Appropriate Legal Mechanism

Sine there is currently no Massachusetts General Law currently enacted which will authorize a municipality to create coastal resiliency districts within its boundaries and to undertake the necessary projects to protect the property within the district and provide for funding sources for such projects, the Town still may draft and file special legislation with the Legislature to meet the purposes of the district. Special legislation filed with the Legislature as a home rule petition allows the Town to create a district that meets its particular needs, by defining the geographical boundaries of the district, the types of projects to be implemented in the event of erosion and flooding in the coastal resiliency district and the funding for these projects.

An example of a municipality which filed special legislation to create a specific district within its boundaries in a manner that is inconsistent with applicable or general laws is Provincetown's passage of Chapter 157 of the Acts of 2000 . This Act provides the authority notwithstanding G.L. c. 83 that governs a municipality's authority to establish and manage a sewer system, that it may create a sewer district that limits the properties that may connect to the sewer to ones where an on-site septic system cannot be constructed on the property in compliance with Title V. As a result of this provision, Provincetown was exempted from the state law to give it the he right to give property owners the right to connect to an abutting municipal sewer line with available capacity. This Act also was contrary to the requirements of G.L. c. 80 governing the assessment of betterments, by allowing the Town to defer imposing a betterment assessment on the properties adjoining the sewer system unless and until the property is actually connected to the sewer lines, rather than upon the completion of the sewer lines.

Although the Town is able to create a coastal resiliency district by approval of a General Bylaw at Town Meeting, the General Bylaw is unable to give the Town the authority to assess betterments for the coastal resiliency projects and costs incurred by the Town in preserving the coastal resiliency district. Chapter 99 of the Town Bylaws created the Nantucket and Madaket Harbor Watershed Districts and defined their locations. In addition it defines the purposes and activities permitted in the Watershed Districts. But it does not impose restrictions similar to those in the Zoning Bylaws and does not authorize any funding sources for the Town's management of the district.

In my opinion, the Town's filing of special legislation provides the best means to establish the coastal resiliency district, to define the geographical boundaries of the district, to authorize the Town to undertake the necessary projects to protect the property and residents in the district and the utilities and public roadways serving the district and to fund the Project by the assessment of betterments on the properties benefitted by the Project. Although the creation of a coastal resiliency district as a General Bylaw could define the geographical boundaries of the district, it will not provide the specific authority to fund the projects and authorize the assessment of betterments for the contemplated Project on Baxter Road.

If you have any questions, please do not hesitate to contact me. Please see attached List of reviewed Legal and Regulatory Statutes and Regulatory References.

Legal and Regulatory Citations

Massachusetts General Laws, Chapter 80 and Chapter 83.

Section 6 of the Home Rule Amendment to the Massachusetts Constitution and
Massachusetts General Laws, Chapter 43B

Authority and Procedures for Adopting and Enforcing Municipal General Bylaws;
Massachusetts General Laws Chapter 40, Sections 21, 31 and 21D

Authority and Procedures for Adopting Zoning Bylaws, Massachusetts General Laws
Chapter 40A

Town of Provincetown Special Legislation, Chapter 157 of the Acts of 2000

Town of Nantucket Code- Bylaws