



CONSERVATION COMMISSION

PUBLIC MEETING

2 Bathing Beach Road
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Monday, May 17, 2021

4 Fairgrounds Road, Training Room – 4:00 p.m.

*This meeting was held via remote participation using ZOOM and YouTube,
Pursuant to Governor Baker’s March 12, 2020 Order Regarding Open Meeting Law*

Commissioners: Ashley Erisman (Chair), Ian Golding (Vice Chair), David LaFleur, Joe Topham,
Seth Engelbourg, Maureen Phillips, and Mark Beale

Called to order at 4:08 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Joanne Dodd, Natural Resources Coordinator; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips, Beale

Late Arrivals: Phillips 4:11 p.m.; Beale, 4:38 p.m.

Town Representation: Greg Berman, 3rd-Party Review; George Pucci, K&P Law P.C., Town Counsel

I. PUBLIC MEETING

A. Announcements

B. Annual Review

1. *Sconset Beach Preservation Fund – 87-105 Baxter Road (48-various) SE48-2824

Sitting	Erisman, Golding, LaFleur, Topham, Engelbourg, Phillips
Recused	None
Documentation	Monitoring Reports, PowerPoint® presentation, and correspondence
Applicant	Steven Cohen, Cohen & Cohen LP
Representatives	Dwight Dunk, Epsilon Associates Inc. Josh Posner, 77 Baxter Road, Chairman 'Sconset Beach Preservation Fund Frank Weymar, 79 Baxter Road
SBPF Abutters & Representatives	Dennis Murphy, Legal Counsel for Greenhills at 8 & 16 Hoicks Hollow
Public	David Kriebel, Coastal Analytics, LLC, 3 rd -Party Review for Greenhills at 8 & 16 Hoicks Hollow Rick & D. Anne Atherton, 48 Squam Road, Nantucket Coastal Conservancy (NCC) Burt Balkind, 10A Scotts Way, NCC Barbara Bund, NCC Emily Molden, Executive Director Nantucket Land Council (NCL) R.J. Turcotte, Nantucket Land Council, Inc. Trey Ruthven, Applied Coastal, 3 rd -Party Reviewer for Nantucket Land Council
Discussion	<p>Dunk – Summary presentation of 2020 Annual Report ‘Sconset Bluff Geotextile Tube Project hit on high points of Mr. Berman’s comments. Findings: stabilizing bank, shoreline monitoring data, 2019 Bluff survey indicating sand contribution is greater than unprotected bluff, and no indication of adverse effects. Shoreline Monitoring: shoreline is similar to position in 2008-2010 timeframe, near-project profile, north and south Profile 90, sand delivery, and net loss of unprotected bluff. Looking at whether or not cobble habitat has changed, coverage is similar in the near shore as in 2007. Mr. Berman commented that the sand volume Table 1 shows a 26,637cy deficit; there is a shortfall relative to the permit, but more sand is being contributed to the littoral system than from off the bluff - 12 cy per linear foot per year is delivered off the template. There is no accelerated loss of beach.</p> <p>Erisman – Asked Mr. Berman to summarize the high points of his findings. Stated the permit holders are required to meet the conditions of the permit. This permit came from Massachusetts Department of Environmental Protection (DEP).</p> <p>Berman – Summarized the high points of his review: sand deficiency is increasing over time, overfilling of template, bluff drone accuracy better this time, shoreline level of sediment flow could be overshadowed with time, underwater video could be better using side-span sonar to track the cobble habitat, no mention of the drainage system in this report, and there is a deficiency in the sediment requirement.</p> <p>Engelbourg – Relating to Mr. Dunk’s draft, the evidence for 12cy is an 8-year-old estimate; he’s not sure it is still relevant for this dynamic shoreline. The permitted volume hasn’t been met; to say it is okay from the littoral system point of view is a distraction. He wants to see compliance with required sand delivery by December 31st; if they don’t comply by then, he would move for a point of failure. The placement of the mitigation plan, he doesn’t agree that you can’t put it to the side of the template.</p> <p>Phillips – Underscore’s Mr. Engelbourg’s comments. This is a long-term relationship; the applicant should continue with measures approved at the start - such as using the mean-low water line and using coble surveys and using a sediment transfer budget - are not being responded to. The applicant claims meeting the Order of</p>

Conditions has become difficult; the definitive measure of contribution to be made every year has not been met and the applicant has repeatedly requested adaptive mitigation program. You can't change the Order of Conditions without a formal change request. If SBPF wants to change the contribution sand numbers, they have to make a formal amendment and it has to be approved. SBPF has been in violation for many months; she feels waiting until December 31st isn't appropriate for such a long-standing violation. We have enough evidence to find this to be in failure and that needs to be addressed at this meeting.

Topham – Asked Mr. Berman the proper timeline to get the sand delivery up to requirements.

Berman – There is no clean number; typically having a supply of sediment prior to winter storms is a good idea. Erosion is punctuated along such dynamic shorelines. Underwater monitoring is more important now with putting down more sand than historically.

Phillips – If we were to allow make-up contributions, asked if we should require they have side-span sonar and a sediment transport volume.

Berman – He's always for better monitoring; as far as the sonar, there would be increased interest in that since the underwater video won't clearly show changes to the bottom. You have a lot of underlying data to create a shoreline volume survey.

Engelbourg – Asked Mr. Carlson, if we were to issue an Enforcement Order (EO) for the deficiency, could we require heightened monitoring of the increased sediment. We should issue an EO detailing what we expect at what time and what happens if that monitoring is not met.

Carlson – We could issue out findings and conditions to bring the project back into compliance. We should have some form of public hearing to discuss the EO and Findings.

Posner – We recognize we are short on the permit and have made it clear for a number of years; at the beginning of the process, we indicated the 22 cy was not sustainable. We agreed with the expectation we could change it. We indicated from the beginning that we would turn the project over to the Town if we could not reach an agreement on the expansion and on a reasonable amount of sand delivery.

Erisman – When we issue a permit, there is no contingency for its waiting on something.

Carlson – The Order of Conditions is signed only by the Commission; the Order of Conditions can be appealed by the applicant within the appeal period.

Erisman – We are talking about the permit SBPF holds with the ConCom; that is what the discussion should revolve around.

Posner – If something comes out of the ARCADIS report that goes against the project, we will remove it.

Cohen – It's important to focus on the purpose on tonight's presentation of the annual report and performance of the project. The ConCom can consider changes to the project based upon what comes out of this presentation. Asked to remain focused on information Mr. Dunk has presented.

Dunk – A technical point about the changes of rates, the DEP and Coastal Zone Management (CZM) have a long-standing approach of looking at contribution prior to construction and that becomes the mitigation amount going forward. That's why we look at erosion north and south of the project.

Engelbourg – As the project goes on, the rate will change. He doesn't suggest making any motions at this meeting, but it's warranted at future meetings.

Berman – A lot of recent data shows zero erosion; that's why DEP and CZM look at pre-construction erosion.

Ruthven – CZM/DEP criteria looks at long-term erosion rate against the short-term rate because erosion isn't consistent. At the beginning, we looked at 1:1 contribution and that's how it was set up. If this project is working or not working, ARCADIS needs to know so they can look at that. Erosion has been accelerating since this project went on board; the transect to the south has seen 90% increase with 117% increase across transects to the north. One thing that is critical is that up to 40% of mitigation volume is being lost. They are causing erosion on their neighbor's lots; that's why they want to expand the project. If they can't properly supply mitigation sand for the existing project, they can't adequately mitigate the expanded project. They have been in breach for the full 6 years the project has been in place. In his opinion, the project is unsustainable and should be pulled.

Kriebel – There needs to be a volumetric accounting; a sediment budget is to keep track of mitigation. In his mind there is a design template and a mitigation template. Mitigation volumes are further behind schedule than shown in the report; that deficit will continue to grow.

Weymar – There is no evidence of long-term loss. The deficit is because of the arbitrary 22cy of sand for a "temporary pilot" project.

Golding – He's not arguing about the recent data, but he has to characterize potential annual losses differently. Asked Mr. Kriebel if there is a better way to design these geo-tube projects in the future, such as no 4th tube and smaller 3rd-tier tube. He'd like that change to be considered going forward.

Murphy – The proponent acknowledges there is a deficit and that they have no intention of coming into compliance; the Order of Conditions specifies what is required. It is time to take action.

Bund – In May 2015, there was a quorum about beach erosion where an engineer stated his clients agreed to the ConCom Order of Conditions then did what they wanted. We need a ConCom that will enforce permits; you couldn't have a clearer example where everyone agrees the requirements have not been met.

Turcotte – There is nothing stopping ConCom from making a finding of failure at this meeting. This cannot be kicked down the further road. Asked on behalf of NCC that be done this evening.

Carlson – Mr. Balkind feels a motion is required to find the applicant is not in compliance.

Dunk – Regarding the comment that there is accelerated erosion, data does not show that, and the project is not showing erosion is caused by the geo-tubes. Erosion continues to be about the same rate as pre-construction.

Erisman – It is laid out clearly in the 2020 report how far behind they are in sand delivery; that is a failure criterion.

Phillips – The original order has a provision for an escrow fund to be maintained to ensure the availability of funds for removal of the geo-tube array. Asked that be looked into to ensure it has been maintained.

Discussion on Ms. Phillips motion.

Carlson – We try to keep matters like this off the regular meeting agenda; he can provide a number of dates at the May 27th meeting to schedule a follow up.

Phillips – Wants this done by a date certain.

Topham – Two seats are coming up; we should push this quickly.

Erisman – The discussion will continue on May 27th.

Motion

Motion that, due to the uncontested admissions made by the applicant and confirmed by other testimony that sand delivery has not been made as required under Special Condition 34 of the Order of Conditions, they have met failure the criterion, and Special Condition 35 states that with a Finding of Failure, the applicant shall make an appearance before the ConCom at the next available hearing. (made by: Phillips) (seconded)

Roll-Call Vote

Carried unanimously//Beale, Erisman, Engelbourg, Golding, LaFleur, Phillips, and Topham-aye

C. Adjournment:

Motion

Motion to Adjourn at 5:30 p.m. (made by: Engelbourg) (seconded)

Roll-Call Vote

Carried unanimously// Erisman, Engelbourg, Golding, LaFleur, Phillips, and Topham-aye

Submitted by:

Terry L. Norton