

# Town and County of Nantucket Select Board • County Commissioners

Jason Bridges, Chair  
Matt Fee  
Kristie L. Ferrantella  
Dawn E. Hill Holdgate  
Melissa Murphy



16 Broad Street  
Nantucket, Massachusetts 02554

Telephone (508) 228-7255  
Facsimile (508) 228-7272  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

C. Elizabeth Gibson  
Town & County Manager

## ***AGENDA FOR THE MEETING OF THE SELECT BOARD MARCH 23, 2022 - 5:30 PM PSF COMMUNITY ROOM, 4 FAIRGROUNDS ROAD AND REMOTE PARTICIPATION VIA ZOOM WEBINAR NANTUCKET, MASSACHUSETTS***

***YOU TUBE LINK FOR VIEWING ONLY:***  
<https://youtu.be/fA3INA76Ykc>

***ZOOM WEBINAR REGISTRATION LINK TO VIRTUALLY ATTEND MEETING:***  
[https://us06web.zoom.us/webinar/register/WN\\_AOjc7HTWS3qz-ZaaG9ZgYQ](https://us06web.zoom.us/webinar/register/WN_AOjc7HTWS3qz-ZaaG9ZgYQ)

***I. CALL TO ORDER***

***II. SELECT BOARD ACCEPTANCE OF AGENDA***

***III. ANNOUNCEMENTS***

1. The Select Board Meeting is Being Audio/Video Recorded.
2. No Select Board Meeting on Wednesday, March 30, 2022 (5<sup>th</sup> Wednesday)
3. Select Board Announcements/Comments.

***IV. FOLLOW-UP ON COMMENTS FROM PRIOR SELECT BOARD MEETINGS***

1. March 16, 2022 Public Comments/Inquiries: 1) Status of Walter Barrett Pier Reconstruction Project, F Street, Madaket; 2) Dredging of "Ditches in Madaket".

***V. PUBLIC COMMENT\****

***VI. COVID-19 UPDATE***

1. Public Health Department Update.

***VII. NEW BUSINESS\****

***VIII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS***

1. Approval of Minutes of March 16, 2022 at 5:30 PM.
2. Approval of Payroll Warrants for March 20, 2022.

3. Approval of Treasury Warrants for March 23, 2022.
4. Approval of Pending Contracts for March 23, 2022 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

***IX. CITIZEN/DEPARTMENTAL/COMMITTEE REQUESTS***

1. Applicant Introduction/Review of Applications and Appointment to Planning Board (Alternate Seat), Pursuant to Select Board Committee Appointment Policy.
2. Habitat for Humanity Nantucket: Request for Waiver of 50% of Building Permit Fees for Duplex at 9A Benjamin Drive and Single-Family Dwelling at 9B Benjamin Drive.
3. Nantucket Conservation Foundation: Request for Approval of Conservation Restriction to be Held by Nantucket Conservation Foundation, Inc. for Land Located at 35 Shawkemo Road.
4. The Surf LLC: Request to Approval to Construct New Deck and Porch Roof at Children's Beach Concession, 15 Harbor View Way.
5. Winthrop Nantucket Nominee Trust/Harbor Fuel Oil Corp.: Request for Extension of Bulk Fuel License at 6 New Whale Street (fka 9 Salem Street, fka 8 New Whale Street) to December 31, 2022.

***X. PUBLIC HEARINGS***

1. Public Hearing Pursuant to MGL Ch. 148 § 13 to Consider an Application for New Bulk Fuel Storage License for Winthrop Nantucket Nominee Trust/Harbor Fuel Oil Corp. for Two New Fuel Tanks (Class I Gasoline, 9,999 Gallon Tank and Class II Diesel Fuel, 9,999 Gallon Tank), Located at 6 New Whale Street (fka 9 Salem Street, fka 8 New Whale Street), Nantucket, MA 02554 (Map 42.3.1, Parcel 89.1).

***XI. TOWN MANAGER'S REPORT***

1. Monthly Town Management Report.

***XII. SELECT BOARD'S REPORTS/COMMENT***

1. Action on Memorandum of Understanding with Siasconset Beach Preservation Fund (SBPF).
2. Committee Reports.

***XIII. ADJOURNMENT***

***\*Identified on Agenda Protocol Sheet***

## **SELECT BOARD AGENDA PROTOCOL:**

**Roberts Rules:** The Select Board follows Roberts Rules of Order to govern its meetings as per the Town Code Charter.

**Public Comment:** Public Comment is to bring matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Select Board. At the Board's discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action, if any. Except in emergencies, the Board will not normally take any other action on Public Comment in its sole discretion.

To facilitate that any individual who wishes to provide Public Comment has the opportunity and to ensure the ability of the Board to conduct its business in an orderly fashion, the following rules and procedures are adopted consistent with state and federal free speech laws:

- The agenda for regular Select Board meetings will include a Public Comment period at the beginning of the meeting unless there is more urgent business for the Board to take up first. This time is reserved for speakers to address the Board on matters that are not related to any other Agenda item. If a speaker wishes to address the Board on a matter that is related to another Agenda item, the Chair will accept public comment when that Agenda item is reached during the meeting.
- All speakers are encouraged to present their remarks in a respectful manner.
- All remarks will be addressed through the Chair of the meeting.
- The Chair of the meeting may not interrupt speakers who have been recognized to speak, except that the Chair reserves the right to terminate speech which is not constitutionally protected because it constitutes true threats, incitement to imminent lawless conduct, comments that were found by a court of law to be defamatory, and/or sexually explicit comments made to appeal to prurient interests. Verbal comments may also be curtailed if they exceed three (3) minutes and to the extent they exceed the scope of the Board's authority.

*Disclaimer: Public Comment is not a time for debate or response to comments by the Board. Comments made during the Public Comment period do not reflect the views or positions of the Board. Because of constitutional free speech principles, the Board does not have authority to prevent all speech that may be upsetting and/or offensive made during the Public Comment period.*

**New Business:** For topics not reasonably anticipated by the Chair 48 hours in advance of the meeting may be brought up for discussion in accordance with the Open Meeting Law.

**Public Participation:** The Board welcomes valuable input from the public at appropriate times during the meeting with recognition from the Chair at his/her sole discretion. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Board Members may have questions on the clarity of the information presented. The Board will hear any staff input and then deliberate on a course of action.

**Select Board Report and Comment:** Individual Board Members may have matters to bring to the attention of the Board during a meeting. If the matter contemplates action by the Board, Board Members will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting and/or schedule the matter for a future Board meeting. Otherwise, except in emergencies, the Board will not normally take action on Select Board Comment.

*Approved on February 17, 2021*

**From:** [Town Manager](#)  
**To:** [Bob DeCosta](#)  
**Subject:** Walter Barrett Pier  
**Date:** Thursday, March 17, 2022 12:49:55 PM

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Bobby - in response to your first public comment last night about the status of the Barrett Pier:

The pier work is basically finished. All that remains is the final asphalt top-coat and re-setting the pier floats. We were delayed early on because of steel supply. When we finally received the steel order, the asphalt plant had closed so the Contractor couldn't finish. As soon as the asphalt plant opens, the top coat will be installed. Victor has been contacted and he expects to get there in early April, depending on the weather. Fortunately, we have a second boat ramp in Madaket.

C. Elizabeth Gibson, ICMA-CM  
Town Manager  
Town of Nantucket  
(508) 228-7255

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This email was scanned by Bitdefender

**From:** [Libby Gibson](#)  
**To:** [Dawn Hill Holdgate](#); [Jason M. Bridges](#); [Kristie Ferrantella](#); [Matt Fee](#); [Melissa B. Murphy](#)  
**Cc:** [Erika Mooney](#); [Jeff Carlson](#); [Vincent Murphy](#); [Bob DeCosta](#)  
**Subject:** FW: Madaket Ditches - public comments at 3/16 SB Meeting  
**Date:** Friday, March 18, 2022 8:55:54 AM

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FYI

C. Elizabeth Gibson, ICMA-CM  
Town Manager  
Town of Nantucket  
(508) 228-7255

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**From:** Jeff Carlson  
**Sent:** Friday, March 18, 2022 8:01 AM  
**To:** Libby Gibson <LGibson@nantucket-ma.gov>; Vincent Murphy <vmurphy@nantucket-ma.gov>  
**Cc:** Gregg Tivnan <gtivnan@nantucket-ma.gov>; Chuck Larson <clarson@nantucket-ma.gov>; Thaïs Fournier <tfournier@nantucket-ma.gov>  
**Subject:** Re: Madaket Ditches - public comments at 3/16 SB Meeting

Hello everyone,

The Coastal Resilience Plan contains a recommendation for raising Madaket Road at First and Second Bridges (CRP Recommendation 3-1) to deal with coastal flooding risk at both locations that will be exacerbated and worsened as sea levels rise in coming decades. As part of the road raising strategy, there is also a recommendation to significantly resize the existing culverts to accommodate a greater flow of water over time. This could potentially also become a low bridge. Further design is needed. Whether a substantially larger culvert or bridge, we need to first understand the flow rates that will need to flow through the larger culvert/bridge at Madaket ditch. Once we know those flow rates and the increased flow rates over time as sea level rises, that will then serve as the guide to the dredging depth and volume that will need to flow through Madaket Ditch for the next several decades, with the appropriately sized culverts in place.

Not undertaking this action first may cause excess water to build on either Madaket Ditch side of the Long Pond side if undersized or excessive flow with channel and bank scouring if oversized. The culvert is the flow control mechanism that regulates the area and is the primary consideration before dredging between two large waterbodies.

Dredging should be coordinated as part of the road raising and culvert resizing plan, not ahead of culvert resizing.

There was a meeting held by the former DPW Director regarding resizing the culverts connecting Hither Creek to Long Pond (via the ditch) for more improved flow. The meeting was with DPW's contractors Fuss and O'Neil and reviewing the linked presentation. A follow up meeting was held via Zoom with all relevant permitting agencies like U.S. Fish and Wildlife, Mass DEP, NHESP, CZM and

impacted local landowners like the Nantucket Conservation Foundation. There were concerns raised due to protected fish and plant species that utilize the ditch and a need to permit the project in totality to avoid segmentation issues. Discussion included management of the constructed mosquito ditches that flow into the ditch and possible restoration in those areas.

Efforts from the Department of Public Works (DPW) including landfill capping and mining which has reduced the potential for nitrogen loading to the groundwater that ultimately flows into the watershed via Long Pond, Madaket Ditch, Hither Creek and ultimately Madaket Harbor. The Town's Annual Water Quality testing results confirmed that mining is helping to reduce the Nitrogen load to Long Pond as the pond is the only pond to meet its TMDL.

The presentation which discusses the dredging and resizing of culverts: <https://www.nantucket-ma.gov/DocumentCenter/View/24250/Madaket-Culverts-Evaluation---March-2019-Presentation>.

I will be in attendance at the 3/23 Select Board meeting to discuss this if needed. It is a project that significant progress is being made on but coordinating it with other efforts like the potential of sewers or other resiliency projects is critical and takes time for those aspects to be defined and properly integrated.

Thanks,

Jeff Carlson  
Natural Resources Director  
Town of Nantucket  
2 Bathing Beach Road  
Nantucket, MA 02554  
508-228-7230

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This email was scanned by Bitdefender

**EXHIBIT 1**  
**AGREEMENTS TO BE EXECUTED BY TOWN MANAGER**  
**UNLESS RESOLUTION OF DISAPPROVAL BY SELECT BOARD**  
**March 23, 2022**

| Type of Agreement/Description         | Department        | With                                                    | Amount       | Other Information                                                                                                                                                  | Source of Funding           | Term                                                     |
|---------------------------------------|-------------------|---------------------------------------------------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------|
| Amendment to Intramunicipal Agreement | Town of Nantucket | Nantucket Memorial Airport & Nantucket Water Department | n/a          | Amendment to intramunicipal agreement to permit certain residences to connect to municipal water due to PFAS concerns to include paving a portion of Skyline Drive | ARPA Funding                | March 23, 2022 - Project Completion                      |
| License Agreement                     | Town Admin        | National Grid                                           | \$16,650     | License for Town to use Candle St., lot for valet parking                                                                                                          | Town Admin Budget           | March 23, 2022 - September 30, 2022 & December 2-4, 2022 |
| License Agreement                     | Town Admin        | Mass Park d/b/a Valet Park of America, Inc.             | (\$16,650)   | License for seasonal valet parking lot at Candle St. lot                                                                                                           | n/a                         | March 23, 2022 - September 30, 2022 & December 2-4, 2022 |
| Professional Service Agreement        | Town Admin        | PES Associates                                          | \$2,500      | Phase 1 environmental site assessment report for 16 Vesper Lane                                                                                                    | Town Admin Budget           | March 23, 2022 - June 30, 2022                           |
| Service Agreement                     | DPW               | Landscaping by J Michael                                | \$350,030    | Year-round maintenance services for municipal playing fields - Nobadeer, Delta, & Tom Neves Fields                                                                 | Facilities Budget           | March 23, 2022 - December 31, 2024                       |
| Service Agreement                     | DPW               | Tom Hanlon Landscaping                                  | \$412,745.13 | Year-round landscaping services for town properties                                                                                                                | Facilities Budget           | March 23, 2022 - December 31, 2024                       |
| Purchase Agreement                    | DPW               | Cape Cod Aggregates Corp.                               | \$150,000    | Supply of road construction materials                                                                                                                              | Various (Per Project Basis) | March 23, 2022 - April 1, 2025                           |
| Purchase Agreement                    | DPW               | Toscana Corp.                                           | \$150,000    | Supply of road construction materials                                                                                                                              | Various (Per Project Basis) | March 23, 2022 - April 1, 2025                           |
| Purchase Agreement                    | DPW               | Victor-Brandon Corp.                                    | \$150,000    | Supply of road construction materials                                                                                                                              | Various (Per Project Basis) | March 23, 2022 - April 1, 2025                           |
| Service Agreement                     | Marine            | AGM Marine Contractors, Inc.                            | \$27,700     | Repair of 2 damaged sections of Town Pier                                                                                                                          | Marine Budget.              | March 23, 2022 - June 30, 2022                           |
| Professional Service Agreement        | Our Island Home   | Nantucket Cottage Hospital                              | \$150,000    | Occupational, physical, and speech therapy services for OIH residents                                                                                              | OIH Budget                  | March 1, 2022 - February 28, 2023                        |
| Professional Services Agreement       | Town Admin        | Eisenstein Flaherty & Associates                        | \$120,000    | Management Support Services for Our Island Home                                                                                                                    | OIH Budget                  | March 23, 2022 - March 22, 2023                          |

**Select Board**  
**Planning Board Alternate Vacancy Appointment Timeline**  
*As of 2/4/2022*

**February 4** – Advertise Planning Board Alternate vacancy on Town’s website

**February 10 and February 17** – Advertise Planning Board Alternate vacancy in the Inky

**February 16 and February 23** – Planning Board Alternate vacancy to be added to Select Board agendas as announcement

**February 25 at 12:00 PM** – Deadline for submitting applications for Planning Board Alternate vacancy

**March 9 and March 16** – The names of applicants who have submitted applications will be read aloud and applications will be included in the Board’s packet.

**March 23** – Meeting for applicants to introduce themselves and review their applications; Planning Board Alternate appointment.

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**Planning Board Alternates (3-yr terms)**

|                 |           |      |
|-----------------|-----------|------|
| Campbell Sutton | Alternate | 2022 |
| Stephen Welch   | Alternate | 2023 |
| VACANT          | Alternate | 2024 |

**Applicants:**

Jennifer L. Porter  
F. Scott Wilson  
Carl K. Borchert  
Colin Wyatt Leddy



## TOWN OF NANTUCKET COMMITTEE INTEREST FORM/NEW APPLICANT

*For Appointment by the Select Board*

*Please return this form to the Town Administration offices by the advertised due date.  
Please call for date of the Public Hearing for applications review or refer to the Public Notice.*

**Name:** Jennifer L Porter

**Home Phone:** 617-480-6561

**Mailing**

**Address:** 60 Squam Road, Nantucket MA 02554

**Alternate Phone:** 617-480-6561

**Email Address:** jporter@bodagroup.com

**Date Submitted:** 2.28.22

REQUESTING APPOINTMENT TO: Planning board

*Reasons for Committee Interest*

- Have you ever attended a meeting of the committee/board/commission? No, but I have reviewed the past minutes posted on the website.
- Why are you interested in this committee/board/commission? We moved to Nantucket full time a year ago and would like to get involved with and contribute to the community. I care about our zoning policies and the look and feel of the island.
- Are you prepared to commit to the meeting schedule of the committee/board/commission? Yes

*Relevant Experience*

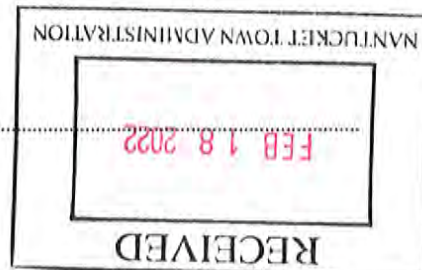
- What experience, skills or insight would you bring to the committee/board/commission?

I am an organized and thoughtful person who cares about following guidelines and processes to ensure a fair and equitable experience for people that upholds the town's policies. Before moving into leadership and team development 17 years ago, I spent 15 years in operating roles, mostly as COO. I think my background in planning for and growing companies operationally will help me to support the planning board's mission.

- What would you hope to accomplish on the committee/board/commission? I would like to support a fair and equitable process around the review and approval of development plans, as this is very important to the island community.

*Potential Conflicts of Interest*

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members. Member of the Nantucket Conservation Foundation. Volunteer at the Hospital Thrift Shop and the Food Pantry.
- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket? No





**TOWN OF NANTUCKET**  
**COMMITTEE INTEREST FORM/NEW APPLICANT**  
*For Appointment by the Select Board*

*Please return this form to the Town Administration offices by the advertised due date.  
Please call for date of the Public Hearing for applications review or refer to the Public Notice.*

**Name:** F. SCOTT WILSON

**Home Phone:** 508-901-5961

**Mailing Address:** 6 CURLEWCOURT

**Address:** NANTUCKET MA 02554

**Alternate Phone:** 860-881-0609 (\*)

**Email Address:** fscottwilson@mac.com

**Date Submitted:** 23 FEB 2022

**REQUESTING APPOINTMENT TO:** Alternate - Planning Bd. (\*) PREFERRED

**Reasons for Committee Interest**

- Have you ever attended a meeting of the committee/board/commission?
  - Why are you interested in this committee/board/commission?
  - Are you prepared to commit to the meeting schedule of the committee/board/commission?
- 
- Yes, I have attended numerous meetings.
  - I have had a long-time interest in land use and urban planning, and I have been involved through my years of service on various homeowners associations.
  - Yes, I am prepared to commit to the meeting schedule.

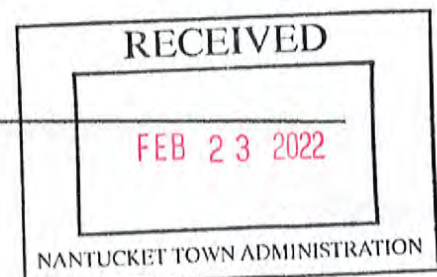
**Relevant Experience**

- What experience, skills or insight would you bring to the committee/board/commission?
  - What would you hope to accomplish on the committee/board/commission?
- 
- I have been an attorney since 1981 and have had considerable experience in negotiation and resolving disputes. At college I majored in political science and minored in urban studies. I also have a law degree and a MA in public policy. I also have considerable experience as a board member with three different homeowners associations, including one on Nantucket.
  - I hope to contribute to discussion by helping to define and describe issues associated with the work of the Planning Committee.

**Potential Conflicts of Interest**

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members. Member of the Board of Trustees of Newshop HO Trust. Board member of Nantucket Lights, Inc.
- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket?

NO





**TOWN OF NANTUCKET**  
**COMMITTEE INTEREST FORM/NEW APPLICANT**  
For Appointment by the Select Board

RECEIVED

FEB 24 2022

Please return this form to the Town Administration offices by the advertised due date.  
Please call for date of the Public Hearing for applications review or refer to the Public Notice ADMINISTRATION

Name: Carl K. Borchert

Home Phone: 508-228-0905

Mailing Address: P.O. Box 2122, 02584

Alternate Phone: 774-236-9313

Email Address: borchert654@hotmail.com Date Submitted: 2-24-22

REQUESTING APPOINTMENT TO: Planning Board - Alternate Seat

**Reasons for Committee Interest**

- Have you ever attended a meeting of the committee/board/commission?
- Why are you interested in this committee/board/commission?
- Are you prepared to commit to the meeting schedule of the committee/board/commission?

I served on the Planning Board as an Alternate From 2013-2018.  
I would like to serve again and review important development proposals  
as they come before the Board.  
I am prepared to commit to the meeting schedule.

**Relevant Experience**

- What experience, skills or insight would you bring to the committee/board/commission?
- What would you hope to accomplish on the committee/board/commission?

During my previous service I learned the language of zoning and the  
rules and regulations governing residential and commercial applications.  
I listened carefully to all applicants, their attorneys and concerned  
neighbors and citizens. If appointed I would continue to listen  
carefully to all applicants and review all relevant data. I am a  
moderate and I would continue to strive for fairness and equal  
treatment to all applicants. I also get along well with other members and staff.

**Potential Conflicts of Interest**

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members.

My wife and I serve on the Board of Trustees for the Unitarian  
Church here in Nantucket.

- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket?

No



**TOWN OF NANTUCKET**  
**COMMITTEE INTEREST FORM/NEW APPLICANT**

For Appointment by the Select Board

Please return this form to the Town Administration offices by the advertised due date.  
Please call for date of the Public Hearing for applications review or refer to the Public Notice.

Name: Colin Wyatt Ledy Home Phone: 508 901-9177

Mailing Address: DOB 537 Alternate Phone: N.A.

Email Address: ColinWyattLedy@GMail.com Date Submitted: 2/25/2022

REQUESTING APPOINTMENT TO: Planning Board (Alternate)

**Reasons for Committee Interest**

- Have you ever attended a meeting of the committee/board/commission? No
- Why are you interested in this committee/board/commission? Interested in Island's future
- Are you prepared to commit to the meeting schedule of the committee/board/commission?

Possibly, will try my utmost.

**Relevant Experience**

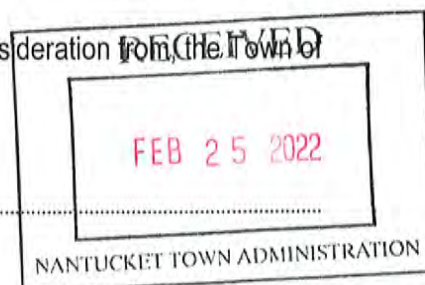
- What experience, skills or insight would you bring to the committee/board/commission? [\* 2 Term Beach Comm. Member] variegated deep experience
- What would you hope to accomplish on the committee/board/commission?

Real Control mechanisms for what goes forward!

**Potential Conflicts of Interest**

- Please list any committees appointed by the Select Board, local agencies or non-profit organizations of which you or a member of your immediate family are current members.
- Are you or any member of your family employed by, or receive any financial consideration from, the Town of Nantucket?

No





## Agenda Item Summary

|                      |           |
|----------------------|-----------|
| <b>Agenda Item #</b> | IX. 2.    |
| <b>Date</b>          | 3/23/2022 |

### Staff

Erika Mooney, Operations Administrator

### Subject

Habitat for Humanity Request for Waiver of 50% of Building Permit Fees

### Executive Summary

Habitat for Humanity seeks waivers of 50% of the building permit fees for its duplex at 9A Benjamin Drive and single-family dwelling at 9B Benjamin Drive.

### Staff Recommendation

Approve waiver of 50% of building permit fees in accordance with the intent of the Board's Policy for Building Permit Fee Waiver Requests

### Background/Discussion

At its 12/21/2016 meeting, the Select Board voted to develop a policy that would allow for the waiver of 50% of the building permit fees for permanently restricted affordable/workforce housing. A draft policy was presented to the Board at its 2/22/2017 meeting. The Board approved the policy but agreed that before applying the policy to any building, a Certificate of Occupancy (CO) must be approved.

Following the Board's approval, Town Administration forwarded the policy to PLUS staff seeking input on appropriate language for the condition the Board placed on the policy. PLUS staff suggested that rather than tying the fee waiver to documentation of an affordability restriction prior to the issuance of a CO, that the Board vote to waive a portion of the fee and at the same time vote to record a lien against the property that would eventually be released when the affordability restriction is finalized. Town Administration was not in favor of this suggestion because it would impose a significant burden and expense on the Town. In consultation with Town Counsel, an alternative discussed was to possibly require the landowner to execute an agreement with the Town that required a repayment of the waived building fee amount if at some point in the future the property no longer qualified under the building permit fee waiver policy. Town Administration had concerns over who would monitor that.

Unfortunately, the policy has not yet been finalized as to the process. However, at its 5/16/2018 meeting, the Board waived 50% of the building permit fees for Habitat's buildings on Waitt Drive, as well as on 8/12/2020 for Habitat's duplex at 31 Beach Grass Road.

**Impact: Environmental** ☐ **Fiscal** ☐ **Community** ☐ **Other** ☒

50% waiver of building permit fees will help Habitat provide affordable housing.



### Board/Commission Recommendation

n/a

### Public Outreach

n/a

### Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Strategic Plan: Affordable Housing

### Attachments

- Letter from Habitat for Humanity
- Draft Policy for Building Permit Fee Waiver Requests





We build strength, stability, self-reliance *and* shelter.

February 24, 2022

Members of the Select Board  
Town of Nantucket  
16 Broad Street  
Nantucket, MA 02554

Dear Members:

Habitat Nantucket is in the process of applying for the building permits -- and is seeking the Town's approval of the waiver of 50% of the building permit fees -- for its next three dwellings located at 9A Benjamin Drive (duplex) and 9B Benjamin Drive (single family home). Each of these units will be approximately 1,300 square feet and will have 2 bedrooms.

The Town has customarily waived 50% of the building permit fees in recent years.

Applicant households must be income-eligible with a maximum 80 percent of area median income by household size, currently \$84,150 for a family of four. These homes will be forever deed-restricted as affordable housing, with subsequent buyers having to meet the same requirements as original owners.

Further these homes have been approved as part of Nantucket's Subsidized Housing Inventory (SHI List), and contribute to Nantucket's current "Safe Harbor" designation.

The lots have been cleared, and we are in the process of installing sewer, power and water. We anticipate delivery of the modular buildings in late spring, with the goal of completion and family move-in by the end of 2022.

Feel free to contact me if you need additional information.

Many thanks,

A handwritten signature in blue ink that reads "R. J. Hussey".

Richard Hussey  
Habitat Nantucket

TOWN & COUNTY OF NANTUCKET  
BOARD OF SELECTMEN  
POLICY FOR BUILDING PERMIT FEE WAIVER REQUESTS  
*Adopted: 02/22/2017*

*I. Policy.*

The Board of Selectmen, in accordance with Chapter 38, Article III, section 38-3B of the Code of the Town of Nantucket, has the authority to waive any town fee or charge, upon a determination that the public interest so requires.

The Board of Selectmen hereby determines that it is in the public interest to encourage the production of affordable housing, including workforce housing units for the Island's working population. Therefore, the Board of Selectmen will consider, on a case-by-case basis, waivers of fifty (50) percent of the Town's building permit fees as mandated by Chapter 139, Article V, section 139-26 (I) of the Code of Nantucket.

*II. Building Permit Fee Waivers*

The Board of Selectmen may, at its discretion, waive fifty (50) percent of the building permit fee upon the request of an individual, non-profit organization, or public entity seeking to construct one or more dwellings that are bound by a permanent affordable housing deed restriction in a form acceptable to the Town and enforceable by the Town, and provided that dwelling unit or units are eligible for inclusion on the Town's Subsidized Housing Inventory ("SHI") as maintained by DHCD or any successor agency and provided that the developer and/or unit owner shall cooperate fully with the Town in obtaining SHI status for the unit or units. In the case of dwelling units that are subject to a permanent affordable housing covenant meeting the requirements of Chapter 301 of the Acts of 2002, and Chapter 100 of the Code of Nantucket, the Board of Selectmen may, in its discretion, waive fifty (50) percent of the building permit fee.

*III. Process*

- BOs wants issuance of Certificate of Occupancy tied to ensuring covenants are in place.
- Could a lien be put on their property if they don't do it?
- What is the mechanism to make sure it happens? (and sticks!)



## Agenda Item Summary

|               |           |
|---------------|-----------|
| Agenda Item # | IX. 3.    |
| Date          | 3/23/2022 |

### Staff

Erika D. Mooney, Operations Administrator

### Subject

Request for approval of Conservation Restriction (CR) for 35 Shawkemo Road to be held by Nantucket Conservation Foundation.

### Executive Summary

Pursuant to the Board's Conservation Restriction and Preservation Restriction Policy, the CR for 35 Shawkemo was presented to the Board at its 1/26/2022 meeting for review, and the Board voted to send the CR to Town Counsel for review. Town Counsel's report is attached, and the CR is approved form. It does note that the CR being presented to the Select Board does not grant any interest in the property to the Town or to the general public. That being said, the CR describes conservation values that will be protected by the CR that support the CR as being in the public interest.

### Staff Recommendation

Approve the CR for 35 Shawkemo Road and find that it is in the public interest.

### Background/Discussion

N/A

**Impact: Environmental** ☒ **Fiscal** ☐ **Community** ☒ **Other** ☐

The CR purposes are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition, and to prevent any use or change that would materially impair the Conservation Values, including open space, wildlife habitat, biodiversity, water quality, climate change resiliency and scenic views.

### Board/Commission Recommendation

N/A

### Public Outreach

N/A

### Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Master Plan conservation policy



## Attachments

Conservation Restriction and Preservation Restriction Policy; Town Counsel report; final Conservation Restriction for 35 Shawkemo Road





## TOWN OF NANTUCKET

### CONSERVATION RESTRICTION AND PRESERVATION RESTRICTION POLICY

*Effective date: February 23, 2011*

*Adopted: February 23, 2011*

#### *I. Purpose*

This policy is implemented to ensure that proposed conservation and preservation restrictions are submitted to the Board of Selectmen for preliminary review and comment to make certain that a restriction complies with the requirements of Massachusetts General Laws Chapter 184 section 31 and is found to be in the public interest.

#### *II. Policy*

Proposed conservation and preservation restrictions must be submitted to the Board of Selectmen for preliminary review and comment, either before or concurrently with a submission to the state Division of Conservation Services or Massachusetts Historical Commission.

#### *III. Process*

Proponents must submit a copy of a preliminary restriction to the Board of Selectmen requesting review and comment. Once the Board's preliminary review is complete, and the state has reviewed the restriction and it is in its final form, the proponent must then submit the final document to Town Administration which will forward it to Town Counsel for review (see checklist for assembly of Town Counsel package). Once Town Counsel has prepared its report and returned the restriction package to the Board of Selectmen, the restriction will be placed on a Board of Selectmen agenda for final review and approval.

#### *IV. Fee*

Proponents of conservation and preservation restrictions are responsible for prompt payment of Town Counsel legal review. The proponent will be sent the legal bill to pay through the Town to Town Counsel. If the Board of Selectmen approves the restriction and once the legal bill has been paid, the restriction will be processed. If timing is an issue, and payment is in process, exceptions may be made.

#### *V. Noncompliance*

Any conservation and preservation restrictions submitted to the Board of Selectmen at the final stage, without preliminary review and comment, risk a delay in their approval while the Board of Selectmen reviews the restriction and possibly offers new input on the restriction.

March 16, 2022

**Vicki S. Marsh**  
vmarsh@k-plaw.com

Hon. Jason Bridges and  
Members of the Select Board  
Nantucket Town Hall  
16 Broad Street  
Nantucket, MA 02554

Re: Conservation Restriction – David A. Rosenzweig to Nantucket Conservation Foundation, Inc. (35 Shawkemo Road, Nantucket, MA)

Dear Members of the Select Board:

I have been asked to review a proposed Conservation Restriction (“CR”) on a parcel of land located at 35 Shawkemo Road, in the Town of Nantucket (the “Property”), and to provide a report to the Select Board. The CR is being granted by David A. Rosenzweig (“Grantor”) to the Nantucket Conservation Foundation, Inc. (“NCF”) as the owner of the Property as evidenced by Certificate of Title No. 16573 filed with the Nantucket Registry District of the Land Court. The Property is approximately 7.05 acres in size and is shown on a plan of land as “Lot 92” on Exhibit B to the CR, entitled “Being a Division Plan of LCC 13364-J, Lot 16; LCC 13364-N, Lots 52-5559-65, Division Plan of Land in Nantucket, MA Prepared for David Rosenzweig,” dated August 30, 2021, prepared by Blackwell & Associates, Inc. filed with said Registry District of the Land Court as Land Court Plan No. 13364-R (the “Plan”). As explained below, the proposed CR does not grant any interest in the Property to the Town or to the general public, but the CR is being presented to the Select Board for its approval, before being submitted to the Secretary of Energy and Environmental Affairs for the Secretary’s approval as being in the public interest.

I have been provided with a copy of the proposed CR, including Exhibit B as described above. It is my understanding that John Gioia, the former Conservation Restriction Reviewer of the Division of Conservation Services (“DCS”) has given preliminary approval to the CR. I have also reviewed the deed by which the Grantor acquired the Property as well as the Land Court Plan Nos. 13364-J and 13364-N, which describe the lots that comprise the Property. I approve of the final CR as to form.

The CR describes the conservation values that will be protected by the CR and that support the approval of the CR as being in the public interest. The protection of the Property will contribute to the protection of abutting and surrounding permanently protected land. The CR will contribute to the protection of the scenic and natural character of the surrounding and abutting parcels that are already restricted, by providing significant open space corridors to approximately eighty (80) acres of permanently conserved lands. Since the Property is located in the Nantucket Harbor watershed, the CR will also contribute to the protection of water quality of the Nantucket Harbor and associated estuaries and Nantucket’s sole source aquifer. In addition, the Property is categorized as an Open

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Scrub Oak Habitat by The Nature Conservancy's 1999 Island Vegetation Analysis and includes significant plant and animal habitats. Furthermore, MA Division of Fisheries and Wildlife acting by and through its Natural Heritage and Endangered Species Program (NHESP) has designated portions of the Property as "Priority Habitats of Rare and Endangered Species" and as a Core Habitat which are areas most critical for long term protection of rare and other native species and their habitats, as described in *BioMap 2*, published in 2010. Preservation of the Property through the acquisition of a CR is consistent with the conservation policy objectives of the Nantucket Master Plan, the Nantucket Comprehensive Community Plan, and Nantucket's Goals and Objectives for Balanced Growth.

With the exceptions described in the next paragraph, activities prohibited within the Property by the CR include the construction of temporary and permanent buildings or other structures; excavation and removal of soils, sand, and gravel; and cutting or removing trees, grasses, and other vegetation (except for limited mowing and cutting to maintain the condition of the Property).

Notwithstanding the general prohibitions of various activities, the CR preserves the rights of the Grantor and its successors and assigns to make use of the Property for several purposes including the right to use the Property with prior written approval of NCF for conducting measures for the restoration of native biotic communities, enhance or restore wildlife and wildlife habitats, ecosystems function, or rare and or endangered species including planting native, trees, shrubs and other vegetation; the construction, maintenance, repair and replacement of alternative energy structures; and the maintenance of existing trails which may include widening trail corridors up to six (6) feet in width overall, with a treadway up to six(6) feet in width; and with the prior written approval of NCF to construct energy producing structures and associated transmission lines that produce negligible or no pollution or carbon emissions ("Green Energy Structures") for the purpose to supply power for any of the permitted uses of the Property. The Grantor retains the right to allow hiking, cross-country skiing, snowshoeing, nature observation and other non-motorized pedestrian outdoor recreational or educational activities. These reserved rights may be conducted on the Property provided they do not materially impair the conservation purposes of the CR and may be subject to Grantee's approval as set forth in the CR.

In addition, the CR reserves the right for the Grantor to use a portion of the Property shown as "Residential Use Area" on a reduced copy of plan attached as Exhibit C of the CR entitled "Exhibit C Plan of Land" dated October 24, 2021, Prepared by Blackwell & Associates, Inc. recorded with Nantucket County Registry of Deeds as Plan No. 2022- 13 as "Residential Use Area" for the following uses and activities: (1) the use, maintenance, repair and replacement of the existing primary and secondary single-family dwellings with the associated pool, pond, decks, greenhouse, shed, fences and other associated improvements; (2) construction , use, maintenance, repair or replacement of the existing driveway, yard, lawns, gardens, parking areas, well and septic system which serve the permitted structures located within the Residential Use Area; (3) maintenance of

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flower, vegetable and lawn gardens in accordance with the Town of Nantucket's "Best Management Practices for Fertilizer Use on Nantucket Island," or other similar Town document; and (4) construction of additional structures provided such additional structures are not used for residential purposes.

As the Grantee of the CR, NCF has the right to enforce compliance with the terms of the CR. As noted above, certain activities within the Property are permitted only with the prior approval of NCF. The CR does not grant any enforcement authority to the Town, nor does the CR grant any public right of access to, or use of, the Property. NCF has a limited right of access to the Property for the purpose of inspecting and ensuring compliance with the CR. The CR runs with the Property, in perpetuity, and is enforceable against the original Grantor and its successors and assigns. The terms of the CR are to be incorporated in any deed conveying an interest in the Property, and NCF is to be notified of any transfer of interests.

Where the CR is to be held by a charitable corporation (i.e., NCF) and not by the Town itself, G.L. c. 184, §32 requires that the CR must be approved by the Select Board, as well by as the Secretary of Energy and Environmental Affairs, as being in the public interest. For this reason, the CR is being submitted to the Select Board for your approval and signatures. After you have approved and signed the CR, it will then be submitted to the Secretary by NCF and, upon the Secretary's approval, will be filed with the Nantucket Registry District of the Land Court.

Please feel free to contact me with any questions concerning this matter.

Very truly yours,



Vicki S. Marsh

VSM/dmm

cc: Town Manager  
Nantucket Conservation Foundation, Inc.

804756/NANTCR/0001

**GRANTOR:** DAVID A. ROSENZWEIG

**GRANTEE:** NANTUCKET CONSERVATION  
FOUNDATION, INC.

**ADDRESS OF PREMISES:** 35 Shawkemo Road,  
Nantucket, Massachusetts

**FOR GRANTOR'S TITLE SEE:** Nantucket County  
Registry District of the Land Court, Certificate of  
Title No. 16573

## **CONSERVATION RESTRICTION**

### **I. STATEMENT OF GRANT**

I, DAVID A, ROSENZWEIG, of 20 Crowninshield Road, Marblehead, Massachusetts, being the sole owner of the Premises as defined herein, for my successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant, with QUITCLAIM COVENANTS, to NANTUCKET CONSERVATION FOUNDATION, INC., a Massachusetts charitable corporation with an address of 118 Cliff Road, Nantucket, Massachusetts, its permitted successors and assigns ("Grantee"), for no consideration, as this conveyance is to be considered and characterized as a gift, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in Nantucket containing the entirety of a 7.05 +/- acre parcel of land ("Premises"), which Premises is more particularly described in Exhibit A and shown in the attached reduced copies of survey plans in Exhibit B and C as Lot 92; all of which are incorporated herein and attached hereto.

### **II. PURPOSES:**

This Conservation Restriction is defined in and authorized by Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws and otherwise by law. The purposes of this Conservation Restriction ("Purposes") are to ensure that the Premises will be maintained in perpetuity in its natural, scenic, or open condition, and to prevent any use or change that would materially impair the Conservation Values (as defined below).

**The Conservation Values protected by this Conservation Restriction include the following:**

Open Space. The Premises contributes to the protection of the scenic and natural character of the coastal moraine ecosystem of Nantucket Island and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises is categorized primarily as Open Scrub Oak habitat by The Nature Conservancy's 1999 Island Vegetation Analysis and provides significant plant and animal habitat. The Premises will enhance abutting and surrounding open space providing critical connections to approximately 80 acres of permanently conserved lands.

- Wildlife Habitat. The Premises includes areas designated by the MA Division of Fisheries and Wildlife acting by and through its Natural Heritage and Endangered Species Program (NHESP) as “Priority Habitats of Rare and Endangered Species”, the protection of which aligns with NHESP’s wildlife and habitat protection objectives.
- Biodiversity. The Premises includes areas designated as Core Habitat as defined by the Massachusetts Natural Heritage and Endangered Species Program. BioMap2, published in 2010, was designed to guide strategic biodiversity conservation in Massachusetts over the next decade by focusing land protection and stewardship on the areas that are most critical for ensuring the long-term persistence of rare and other native species and their habitats, exemplary natural communities, and a diversity of ecosystems. *BioMap2* is also designed to include the habitats and species of conservation concern identified in the State Wildlife Action Plan.
- Water Quality. The Premises are located in the Nantucket Harbor watershed, and therefore permanently protecting the Premises will further water quality protection of Nantucket Harbor and associated estuaries. Protection of the Premises will also help protect Nantucket’s sole source aquifer, which is the island’s only source of drinking water.
- Climate Change Resiliency. A portion of the Premises is identified as an area of average Terrestrial Resilience while the remainder is identified as slightly above average Terrestrial Resilience according to The Nature Conservancy’s (TNC) Resilient Land Mapping Tool. TNC’s Resilient Land Mapping Tool was developed in order to map ‘climate-resilient’ sites that are ‘more likely to sustain native plants, animals, and natural processes into the future.’ The protection of these climate resilient sites is an important step in both reducing human and ecosystem vulnerability to climate change and adapting to changing conditions.
- Scenic Views. The Premises provide significant scenic views or undisturbed open space that can be seen from Nantucket Harbor and surrounding access roads.
- Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy.
  - Preservation of the Premises is pursuant to clearly delineated conservation policy expressed in Nantucket’s Master Plan, adopted by Nantucket voters at the Annual Town Meeting in April 2009, and also stated in the Town of Nantucket 2007 Open Space and Recreation Plan as Goal/Objectives 1C: “The Town should encourage the use of creative regulatory and non-regulatory land protection tools such as conservation restrictions, tax abatements, gifts and zoning measures; and in the Nantucket Comprehensive Plan (NCCP), including the following objectives therein: Objective 4.1, “To aggressively acquire land and conservation restrictions to protect natural ecosystems;” Objective 4.2, “To encourage land management activities by the Land Bank and nonprofit entities to provide permanent resource protection”.

- Preservation of the Premises as open space is further pursuant to clearly delineated governmental conservation policy expressed in “Nantucket’s Goals and Objectives for Balanced Growth”, which was adopted in November 1990 by Town Meeting and states as Objective A-1: “To identify and acquire critical open spaces through outright ownership or by less-than-fee means, such as conservation restrictions, scenic easements, and the purchase of development rights in order to complete the Island’s open space network.

### **III. PROHIBITED and PERMITTED ACTS AND USES**

#### **A. Prohibited Acts and Uses**

The Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

1. Structures and Improvements. Constructing, placing, or allowing to remain any temporary or permanent structure including without limitation any building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, graveled area, roads, sign, fence, gate, billboard or other advertising, antenna, utilities or other structures, utility pole, tower, solar panel, solar array, conduit, line, septic or wastewater disposal system, storage tank, or dam;
2. Extractive Activities/Uses. Mining, excavating, dredging, withdrawing, or removing soil, loam, peat, gravel, sand, rock, surface water, ground water, or other mineral substance or natural deposit, or otherwise altering the topography of the Premises;
3. Disposal/Storage. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings, liquid or solid waste or other substance or material whatsoever;
4. Adverse Impacts to Vegetation. Cutting, removing, or destroying trees, shrubs, grasses or other vegetation;
5. Adverse Impacts to Water, Soil, and Other Features. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, natural habitat, archaeological conservation, or ecosystem function;
6. Introduction of Invasive Species. Planting or introducing any species identified as invasive by the Massachusetts Invasive Plant Advisory Group or identified as invasive in such recognized inventories as the Massachusetts Introduced Pests Outreach Project, the Northeast Aquatic Nuisance Species Panel, or other such inventories, and any successor list as mutually agreed to by Grantor and Grantee;
7. Motor Vehicles. Using, parking, or storing motorized vehicles, including motorcycles, mopeds, all-terrain vehicles, off-highway vehicles, motorboats or other motorized watercraft, snowmobiles, launching or landing aircraft, or any other motorized

vehicles, acknowledging that vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) may have a legal right to enter the Premises;

8. Subdivision. Subdividing or conveying a part or portion of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), it being the Grantor's and Grantee's intention to maintain the entire Premises under unified ownership;
9. Use of Premises for Developing Other Land. Using the Premises towards building or development requirements on any parcel other than the Premises;
10. Residential or Industrial Uses. Using the Premises for residential or industrial purposes;
11. Inconsistent Uses. Using the Premises for commercial purposes that are inconsistent with the Purposes or that would materially impair the Conservation Values, or for any other uses or activities that are inconsistent with the Purposes or that would materially impair the Conservation Values.

## **B. Permitted Acts and Uses**

Notwithstanding the Prohibited Acts and Uses described in Paragraph III.A., the Grantor may conduct or permit the following acts and uses on the Premises, provided they do not materially impair the Purposes and/or Conservation Values. In conducting any Permitted Act and Use, Grantor shall minimize impacts to the Conservation Values to ensure any such impairment thereto is not material.

1. Vegetation Management. Maintaining vegetation, including pruning, trimming, cutting, and mowing, and removing brush, all to prevent, control, and manage hazards, disease, insect or fire damage, and/or in order to maintain the condition of the Premises as documented in the Baseline Report (see Paragraph XV.);
2. Non-native, Nuisance, or Invasive species. Removing non-native, nuisance, or invasive species, interplanting native species, and controlling species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
3. Composting. Stockpiling and composting stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises.
4. Natural Habitat and Ecosystem Improvement. With prior written approval of the Grantee, conducting measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, ecosystem function, or rare or endangered species including planting native trees, shrubs, and other vegetation;
5. Archaeological Investigations. Conducting archaeological activities, including without limitation archaeological research, surveys, excavation and artifact retrieval, but only in accordance with an archaeological field investigation plan, which plan shall also

address restoration following completion of the archaeological investigation, prepared by or on behalf of the Grantor and approved in advance of such activity, in writing, by the Massachusetts Historical Commission State Archaeologist (or appropriate successor official) and by the Grantee. A copy of the results of any such investigation on the Premises is to be provided to the Grantee;

6. Trails. Conducting routine maintenance of existing trails, which may include widening trail corridors up to 6 feet in width overall, with a treadway up to 6 feet in width.
7. Signs. Constructing, installing, maintaining, and replacing signs and informational kiosks with respect to the Permitted Acts and Uses, the Purposes, the Conservation Values, trespass, public access, identity and address of the Grantor, sale of the Premises, the Grantee's interest in the Premises, boundary and trail markings, any gift, grant, or other applicable source of support for the conservation of the Premises;
8. Motorized Vehicles. Using motorized vehicles by persons with mobility impairments (provided, however, the manner of such motorized vehicle use is approved in advance by Grantee) and as otherwise permitted herein.
9. Outdoor Passive Recreational and Educational Activities. Hiking, cross-country skiing, snowshoeing, nature observation, nature and educational walks and outings, outdoor educational activities, and other non-motorized outdoor recreational and educational activities;
10. Green Energy. With prior written approval of the Grantee, constructing energy producing structures and associated transmission lines that produce negligible or no pollution or carbon emissions ("Green Energy Structures") to supply power for any Permitted Acts and Uses on the Premises. In addition to the terms of Paragraph III.E., when considering whether to grant approval, the Grantee will take into consideration the energy needs related to the relevant Permitted Act(s) and Use(s). While it is agreed that some power may be fed back into the public power grid during high production periods, such Green Energy Structures shall be limited to a capacity not higher than that necessary to meet, or exceed by up to 20% at the time of installation, the power requirements of the Permitted Acts and Uses. Such Green Energy Structures shall be located within the Residential Use Area (see Paragraph III.C) unless there is no feasible location within the Residential Use Area for such Green Energy Structures;
11. Improvements.
  - a. Existing Improvements. Maintaining, using, repairing, and replacing, and removing the existing improvements including the Dirt Driveway as shown on Exhibit B (which may be improved with gravel or shells, but not with any impermeable materials), driveway vehicle sensor, driveway lights, irrigation equipment, septic system, fenced garden, wildflower meadow, lawn, stone walk and steps, wells, the existing landscaped area lying between the Residential Use Area (see Paragraph III.C) and Shawkemo Road, landscaping material storage

bins, irrigation and electrical panel, and mosquito control boxes, all as documented in the Baseline Report (see Paragraph XV). Any activities carried out in accordance with the above use, maintenance, repair, or replacement of existing improvements that includes the use of fertilizers shall be done in accordance with the Town of Nantucket's "Best Management Practices for Fertilizer Use on Nantucket Island" or similar subsequent document published by the Town of Nantucket that is intended to reduce fertilizer leaching and protect down-gradient water resources.

- b. New Improvements and Expansion of Existing Improvements. With prior written approval of the Grantee, the installation of additional driveway lights along the Dirt Driveway, the expansion of the existing septic system to serve the buildings within the Residential Use Area (see Paragraph III.C), and the installation of a gate across the Dirt Driveway.

### **C. Residential Use Area.**

The Grantor reserves the right to conduct or permit the following activities and uses only within the area shown on the plan in Exhibit C as "Residential Use Area," in addition to the Permitted Acts and Uses described in Paragraph III.B., and otherwise subject to this Conservation Restriction:

1. Existing Structures and Improvements. Using, maintaining, repairing, and replacing the existing primary and secondary single-family dwellings in substantially their same locations, with associated pool, pond, decks, greenhouse, shed, fences, utility lines, parking area and retaining wall, all as documented in the Baseline Report (see Paragraph XV.). The total ground cover of structures, as defined in the Nantucket Zoning By-law, shall not exceed 3% of the total lot area of the Premises with the maximum height of the highest point of any structure not to exceed the elevation of comparable portions of the existing structures, as shown upon Exhibit C; provided, however, that the portion of the primary dwelling which is designated as "A" upon the attached Exhibit C may be increased in height, with the maximum elevation thereof to be 65.37 feet above Nantucket Half-Tide Datum of 1934. Constructing, using, maintaining, repairing, improving, or replacing, the existing driveway, yard, lawns, gardens, parking area, well, and septic system ("Improvements") and provided that any of these Improvements serves only the permitted structures located within the Residential Use Area. Maintenance of flower, vegetable and lawn gardens shall be in accordance with the Town of Nantucket's "Best Management Practices for Fertilizer Use on Nantucket Island", or a similar subsequent Town document, that is intended to reduce fertilizer leaching and protect down-gradient water resources.
2. New Structures. Constructing additional structures provided any such additional structures are not used for residential purposes. The location of any new structures shall be subject to approval by the Grantee, which shall not be unreasonably withheld. The elevation of the highest point of any new structures shall not exceed 55 feet above the Nantucket Half Tide Datum of 1934. The provisions of this paragraph as to siting and elevation of structures may be modified in any instance by written instrument executed in advance by the Grantee at the request of the Grantor, in the sole discretion of the Grantee, so long as the scenic vistas and open space values of the Premises are not impacted.

#### **D. Site Restoration**

Upon completion of any Permitted Acts and Uses, any disturbed areas shall be restored substantially to the conditions that existed prior to said activities, including with respect to soil material, grade, and vegetated ground cover.

#### **E. Compliance with Permits, Regulations, Laws**

The exercise of any Permitted Acts and Uses under Paragraph III.B. shall be in compliance with all applicable federal, state and local laws, rules, regulations, zoning, and permits, and with the Constitution of the Commonwealth of Massachusetts. The inclusion of any Reserved Right requiring a permit, license or other approval from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit, license, or other approval should be issued.

#### **F. Notice and Approval.**

1. Notifying Grantee. Whenever notice to or approval by Grantee is required, Grantor shall notify or request approval from Grantee, by a method requiring proof of receipt, in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question, unless a different time period is specified herein. The notice shall:
  - a. Describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity;
  - b. Describe how the proposed activity complies with the terms and conditions of this Conservation Restriction, and will not materially impair the Purposes and/or Conservation Values;
  - c. Identify all permits, licenses, or approvals required for the proposed activity, and the status of any such permits, licenses, or approvals.
  - d. Describe any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purposes and Conservation Values.
2. Grantee Review. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall only be granted upon a showing that the proposed activity will minimize impacts to the Conservation Values and will not materially impair the Purposes and/or Conservation Values. Grantee may require Grantor to secure expert review and evaluation of a proposed activity by a mutually agreed upon party.
3. Resubmittal. Grantee's failure to respond within sixty (60) days of receipt shall not constitute approval of the request. Grantor may subsequently submit the same or a similar request for approval.

#### **IV. INSPECTION AND ENFORCEMENT**

##### **A. Entry onto the Premises**

The Grantor hereby grants to the Grantee, and its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction.

##### **B. Legal and Injunctive Relief.**

1. Enforcement. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain compensatory relief and equitable relief against any violations, including, without limitation, injunctive relief and relief requiring restoration of the Premises to its condition prior to the time of the injury (it being agreed that the Grantee will have no adequate remedy at law in case of an injunction). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction.
2. Notice and Cure. In the event the Grantee determines that a violation of this Conservation Restriction has occurred and intends to exercise any of the rights described herein, the Grantee shall, before exercising any such rights, notify the Grantor in writing of the violation. The Grantor shall have thirty (30) days from receipt of the written notice to halt the violation and remedy any damage caused by it, after which time Grantee may take further action, including instituting legal proceedings and entering the Premises to take reasonable measures to remedy, abate or correct such violation, without further notice. Provided, however, that this requirement of deferment of action for thirty (30) days applies only if Grantor immediately ceases the violation and Grantee determines that there is no ongoing violation. In instances where a violation may also constitute a violation of local, state, or federal law, the Grantee may notify the proper authorities of such violation.
3. Reimbursement of Costs and Expenses of Enforcement. Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including counsel fees) incurred by the Grantee in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey by a Massachusetts licensed professional land surveyor and to have the boundaries permanently marked.

##### **C. Non-Waiver.**

Enforcement of the terms of this Conservation Restriction shall be at the sole discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

#### **D. Disclaimer of Liability**

By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

#### **E. Acts Beyond the Grantor's Control**

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from natural causes beyond the Grantor's control, including but not limited to fire, flood, weather, climate-related impacts, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

#### **V. PUBLIC ACCESS**

This Conservation Restriction does not grant any right of access to the general public and the Grantor retains its rights to prohibit access to the Premises by the general public.

#### **VI. TERMINATION/RELEASE/EXTINGUISHMENT**

##### **A. Procedure**

If circumstances arise in the future that render the Purposes impossible to accomplish, this Conservation Restriction can only be terminated, released, or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, or successor official ("Secretary"), and any other approvals as may be required by Section 32 of Chapter 184 of the Massachusetts General Laws.

##### **B. Grantor's and Grantee's Right to Recover Proceeds**

If any change in conditions ever gives rise to termination, release, or extinguishment of this Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph VI.C., subject, however, to any applicable law which expressly provides for a different disposition of the proceeds, and after complying with the terms of any gift, grant, or funding requirements. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

##### **C. Grantee's Receipt of Property Right**

Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. The proportionate value of the Grantee's property right is as of the Effective Date (See Paragraph XII.) and will be determined by an appraisal. Such proportionate value of the Grantee's property right shall remain constant.

#### **D. Cooperation Regarding Public Action**

Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph VI.B. and Paragraph VI.C. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of any proceeds in a manner consistent with the Purposes or the protection of the Conservation Values.

### **VII. DURATION and ASSIGNABILITY**

#### **A. Running of the Burden**

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

#### **B. Execution of Instruments**

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction. The Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

#### **C. Running of the Benefit**

The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except when all of the following conditions are met:

1. the Grantee requires that the Purposes continue to be carried out;
2. the assignee is not an owner of the fee in the Premises;
3. the assignee, at the time of the assignment, qualifies under and 26.U.S.C. 170(h), and applicable regulations thereunder, if applicable, and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the Massachusetts General Laws; and

4. the assignment complies with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

## **VIII. SUBSEQUENT TRANSFERS**

### **A. Procedure for Transfer**

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee not less than twenty (20) days prior to the effective date of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. If the Grantor fails to reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, then the Grantee may record, in the applicable registry of deeds, or registered in the applicable land court registry district, and at the Grantor's expense, a notice of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

### **B. Grantor's Liability**

The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

## **IX. ESTOPPEL CERTIFICATES**

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

## **X. NON MERGER**

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction following the terms set forth in Paragraph VII.C to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

## **XI. AMENDMENT**

### **A. Limitations on Amendment**

Grantor and Grantee may amend this Conservation Restriction only to correct an error or oversight, clarify an ambiguity, maintain or enhance the overall protection of the Conservation Values, or add real property to the Premises, provided that no amendment shall:

1. affect this Conservation Restriction's perpetual duration;
2. be inconsistent with or materially impair the Purposes;
3. affect the qualification of this Conservation Restriction as a "qualified conservation contribution" or "interest in land" under any applicable laws, including 26 U.S.C. Section 170(h), and related regulations;
4. affect the status of Grantee as a "qualified organization" or "eligible donee" under any applicable laws, including 26 U.S.C. Section 170(h) and related regulations, and Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws; or
5. create an impermissible private benefit or private inurement in violation of federal tax law, as determined by an appraisal, conducted by an appraiser selected by the Grantee, of the economic impact of the proposed amendment; or
6. alter or remove the provisions described in Paragraph VI (Termination/Release/Extinguishment); or
7. cause the provisions of this Paragraph XI to be less restrictive; or
8. cause the provisions described in Paragraph VII.C (Running of the Benefit) to be less restrictive

## **B. Amendment Approvals and Recording**

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor, approved by the Town of Nantucket and by the Secretary in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws, and recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **XII. EFFECTIVE DATE**

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the Massachusetts General Laws have been obtained, and it has been recorded in the applicable registry of deeds or registered in the applicable land court registry district.

## **XIII. NOTICES**

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: David A. Rosenzweig  
20 Crowninshield Road  
Marblehead, Massachusetts 01945

To Grantee: Nantucket Conservation Foundation, Inc.

118 Cliff Road  
Nantucket, Massachusetts 02554

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

#### **XIV. GENERAL PROVISIONS**

##### **A. Controlling Law**

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

##### **B. Liberal Construction**

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in order to effect the Purposes and the policy and purposes of Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes that would render the provision valid shall be favored over any interpretation that would render it invalid.

##### **C. Severability**

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction shall not be affected thereby.

##### **D. Entire Agreement**

This instrument sets forth the entire agreement of the Grantor and Grantee with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

#### **XV. BASELINE DOCUMENTATION REPORT**

The Conservation Values, as well as the natural features, current uses of, and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, as applicable, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, (iii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein, and

(iv) may be supplemented as conditions on the Premise change as allowed over time. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant in addition to the Baseline Report.

## **XVI. MISCELLANEOUS**

### **A. Pre-existing Public Rights**

Approval of this Conservation Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary, is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

### **B. Release of Homestead**

The Grantor attests that there is no residence on or abutting the Premises (including areas excluded from the Premises) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.

### **C. Subordination**

The Grantor shall record at the applicable registry of deeds or register in the applicable land court registry district simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

### **D. Prior Encumbrances**

This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.

**E.** Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor

Grantee Acceptance

Approval of Town of Nantucket Select Board

Approval of the Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

Exhibits:

Exhibit A: Description of Premises

Exhibit B: Reduced Copy of Recorded Plan of Premises

Exhibit C: Reduced Copy of Plan Showing Residential Use Area Boundary

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_, duly authorized  
David A. Rosenzweig

COMMONWEALTH OF MASSACHUSETTS

Essex County, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

### ACCEPTANCE OF GRANT

The foregoing Conservation Restriction from David A. Rosenzweig was accepted by Nantucket Conservation Foundation, Inc. this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_

Its: \_\_\_\_\_, duly authorized

### COMMONWEALTH OF MASSACHUSETTS

Nantucket County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## APPROVAL OF TOWN OF NANTUCKET SELECT BOARD

We the undersigned, being a majority of the Select Board of the Town of Nantucket, hereby certify that at a public meeting duly held on \_\_\_\_\_, 2022, the Select Board voted to approve the foregoing Conservation Restriction from David A. Rosenzweig to Nantucket Conservation Foundation, Inc. in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

### TOWN OF NANTUCKET SELECT BOARD

\_\_\_\_\_  
Jason Bridges

\_\_\_\_\_  
Kristie L. Ferrantella

\_\_\_\_\_  
Matthew G. Fee

\_\_\_\_\_  
Dawn E. Hill Holdgate

\_\_\_\_\_  
Melissa K. Murphy

### COMMONWEALTH OF MASSACHUSETTS

Nantucket County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared Jason Bridges, Kristie L. Ferrantella, Matthew G. Fee, Dawn E. Hill Holdgate and Melissa K. Murphy, Members of the Select Board of the Town of Nantucket and proved to me through satisfactory evidence of identification which was personal knowledge of the undersigned to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as Members of the Select Board of the Town of Nantucket.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL OF SECRETARY OF ENERGY AND ENVIRONMENTAL  
OF THE COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from David A. Rosenzweig to Nantucket Conservation Foundation, Inc. has been approved in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Kathleen A. Theoharides  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was \_\_\_\_\_ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

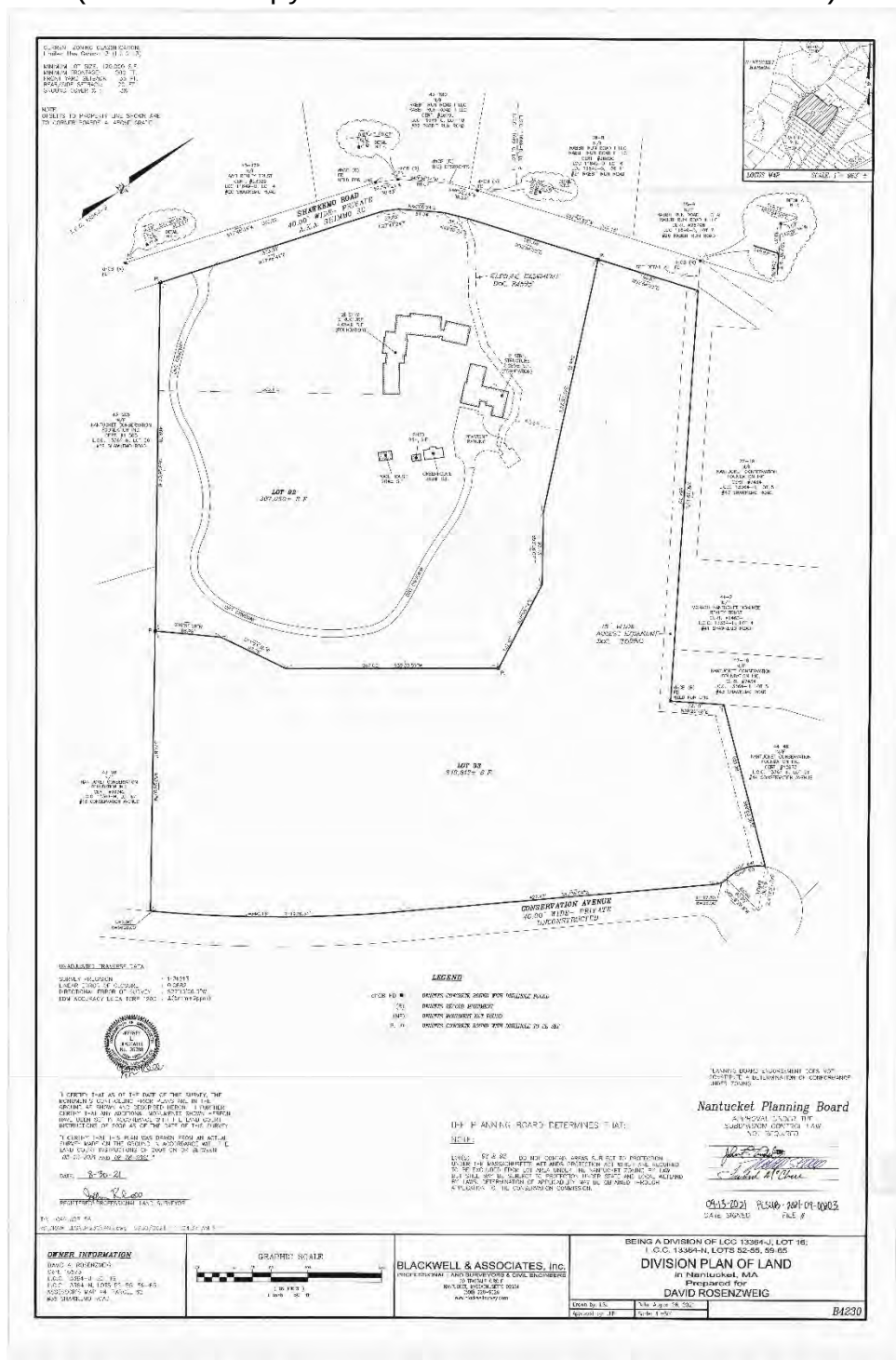
## **EXHIBIT A**

### **(Description of the Premises)**

The Premises subject to the foregoing Conservation Restriction is the land in Nantucket, Nantucket County, Massachusetts, shown as Lot 92 on a plan by Blackwell & Associates, Inc., dated August 26, 2021, containing 307,050± square feet, filed with the Land Court as Plan No. 13364-R, having a street address of 35 Shawkemo Road, Nantucket, Massachusetts.

# EXHIBIT B

(Reduced Copy of Recorded Plan of Premises)



(Reduced Copy of Plan Showing Residential Use Area Boundary)

[illegible]



## Agenda Item Summary

|               |           |
|---------------|-----------|
| Agenda Item # | IX. 4.    |
| Date          | 3/23/2022 |

### Staff

C. Polachi, Manager of Parks and Recreation; P. Berard, Facilities Manager

### Subject

Children's Beach Concession Building Porch Roof and Decking by Concessionaire

### Executive Summary

The current contracted concessionaire at Children's Beach concession building located at 15 Harbor View Way, The Surf LLC, is requesting permission to seek appropriate Town approvals (HDC, Building, Parks and Recreation and any others) to construct an elevated wooden deck and fixed wooden overhang roof without sides on the northwest side of the concession building of equal height and dimensions as the existing decking and roof on the northeast ("front") side of the building at their own expense per their lease agreement with the Town. The [Surf's 2022-2026 Lease Agreement](#) is not specific regarding this request.

The Surf LLC wishes to build this structure under Town Facility Department and Parks and Recreation guidance. They have not retained the services of an architect as of this meeting.

The Surf LLC understands per their [2022-2026 Lease Agreement](#) with the Town that this deck and roof will become the property of the Town and a permanent asset of the concession building at no cost to the Town through an amendment of their current Lease Agreement. The Surf LLC further understands that they will be responsible for maintenance and upkeep of the structure, with Facility Department oversight, for the length of their contract per their Lease Agreement with the Town.

### Staff Recommendation

Because this is an enhancement to an existing Town facility at no cost to the taxpayer and not new construction in a FEMA flood area, Staff feel the Coastal Resilience Advisory Committee's [Interim Sea Level Rise Recommendation](#) approved by the Select Board on 8/5/2020 is important to acknowledge but not an impediment to this request.

Staff recommends authorizing the Surf LLC to seek the appropriate approvals to construct an elevated wooden deck and fixed wooden overhang roof without sides on the northwest side of the concession building at the 15 Harbor View Way property with their own funds with the understanding that:

- Written approval from the Parks & Recreation Commission is received,

- 
- an amendment to the current 2022-2026 Lease Agreement is signed and approved prior to any site preparation or construction,
  - approval from the Conservation Commission that no shorebirds are nesting prior to construction,
  - no construction between April 15 and Labor Day annually without written approval,
  - The Surf LLC obtain engineering documents at its own expense,
  - there is no adverse impact to existing concession building structure as signed-off by the Town's Facility Manager,
  - The Surf LLC obtains all relevant permits at its own expense,
  - The Surf will make a gift to the Town of Nantucket of the design (engineering plans) of the structure,
  - The Town of Nantucket will follow all applicable procurement laws and will procure the construction of the overhang and decking. Prior to the award of the construction contract The Surf LLC will make a gift to the town in the full amount of the contract award.
  - the final product becomes a Town of Nantucket asset at no cost to the Town,
  - the Surf LLC provides a written annual maintenance plan for the new structure approved by the Town's Facility Manager, and
  - the Surf LLC provides all ongoing maintenance and repairs of the roof per their Lease Agreement.

## **Background/Discussion**

### BRIEF HISTORY:

- Per Chapter 290 of the Acts of 1914: "[Children's Beach] accepted by the Town of Nantucket at its annual town meeting held February 8, 1915, the Selectmen of said Town of Nantucket under and by the authority given use by said Act do hereby take "the following described tract of land and flats situated at the "clean shore", so called, in said Nantucket, which said land and flats shall hereafter be kept and maintained as a public park."
- Article 80 of the 1961 Annual Town Meeting, the Parks and Recreation Commission was "instructed to lay out and construct a Community park at Children's Beach"
- 1961 Town Report states that the Parks and Recreation Commission has "charge of maintenance of Children's and Jetties Beaches."
- Awarding and maintaining a concessionaire at Children's Beach has been challenging; Between 2011 and 2021, the Children's Beach Concession had to be bid seven times due to lack of bidder interest, unanticipated concessionaire turnover, or contract expiration.
- Due to Concession turnover, as well as facility issues and COVID-19 response, \$83,180 of contracted payments at Children's Beach is lost since 2013.

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The feedback from concessionaires and potential bidders is that lease payments for a facility

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that size with limited capacity for the volume and turnover needed to make a profit deters interest in bidding for the lease; or sticking it out. Concessionaires state that the condition of the facility, remote location and size, lack of storage and prep areas, wear-and-tear of the equipment, and contracted responsibilities of the concessionaire (trash pick-up, restroom monitoring and cleaning, lease amount) makes it impossible to earn a living while providing a service to the community.

The current Lease Agreement neither specifically permits nor restricts the construction of a wooden overhang, decking or any type of shade structure.

The relevant excerpts from the Lease Agreement are:

**Ownership:** Any improvements made by the Concessionaire to the Premises during the term of the contract including any structure, fixture or equipment affixed permanently to the premises shall become the property of the Town of Nantucket except as agreed upon in writing prior to installation.

**Consent:** The Concessionaire shall not undertake any improvements to the premises without the written consent of the Parks and Recreation Commission and the Town of Nantucket in advance. Should the Parks and Recreation Commission and the Town of Nantucket consent to such improvements the Concessionaire shall obtain all required permits and present copies of all permits to the Town of Nantucket prior to starting work. In the event the Beach area becomes a habitat area for any State and Federally listed species then any improvements to the premises shall be completed before April 15<sup>th</sup>. Should there be an emergency need for improvements after April 15<sup>th</sup> the Town of Nantucket must be provided with copies of the permits and details of the work. Before any work begins an assessment may be made by the Town of Nantucket based on the current status of the State and Federally listed species and the effect the work may have on their habitat/productivity.

**Maintenance:** The Concessionaire shall provide all custodial maintenance inside the buildings and outside the buildings in the Premises Area indicated on Exhibit C, policing the Premises area at least twice daily to keep it free of all litter and other trash generated by the patrons of the beach. All rubbish/trash collected by the Concessionaire or generated from the Concession's operation will be secured, removed and disposed of at the Concessionaire's expense including landfill fees. The Concessionaire is responsible for repairing and maintaining any and all windows and door screens and informing the Department of Public Works immediately of any and all repairs so made. The Concessionaire will be required to provide a work order for all exterior and structural repair work to be performed by the Public Works Department.

**Repairs:** To make exterior and structural repairs to the premises subject to funding by Town Meeting or annual budget appropriations. This would include the Concession facility, the Bathrooms, the deck, the Playground, parking lot maintenance, bike rack maintenance, beach ramps, and safety inspections (with 24 hour notice to the Concessionaire). The Town of Nantucket is also responsible for sewer and water lines, repair of plumbing and wiring faults due to normal use, recreational equipment and providing trash barrels during occupancy period.

**Non-Emergency Repairs:** Concessionaire shall request prior written approval from the Public Works Department for any non-emergency repairs to be made to the Premises at Concessionaire's expense. In the event the Beach area becomes a habitat area for any State and Federally listed species then any improvements and/or work to the premises is scheduled between April 15<sup>th</sup> and August 31<sup>st</sup> the Town of Nantucket must also sign off on any non-emergency repairs. Pending the status of the State and Federally listed species and the description of the non-emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the said repairs.

**Signs and Structures:** Before any temporary or permanent signs or structures are erected the Concessionaire shall first obtain such written approvals as may be required under existing Town regulations including but not limited to a Certificate of Appropriateness from the Historic District Commission of the Town. The Concessionaire shall then obtain the written permission of the Town of Nantucket.

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Town staff sees no downside to the installation of a fixed wooden overhang structure and elevated patio decking over the existing area if all appropriate fees are paid by The Surf LLC and permits obtained by The Surf LLC and the Lease Agreement amendment is signed **before** installation (and as outlined above). Benefits to the Town include:

- Capital improvements of a Town facility paid by the Lessee,
  - Improved quality of a Town-owned facility,
  - Additional revenue-share to the Town due to less days interrupted by weather,
  - Opportunity for local Nantucketers and guests to have a beach venue to visit during less-than optimal beach days.
- 

|                              |                          |        |                                     |           |                                     |       |
|------------------------------|--------------------------|--------|-------------------------------------|-----------|-------------------------------------|-------|
| <b>Impact:</b> Environmental | <input type="checkbox"/> | Fiscal | <input checked="" type="checkbox"/> | Community | <input checked="" type="checkbox"/> | Other |
|------------------------------|--------------------------|--------|-------------------------------------|-----------|-------------------------------------|-------|

**Fiscal:** Revenue-share receipts per the Lease Agreement are expected to increase with less service interruption; Facility improvement paid by the Lessee; Increased value of a Town property.

**Community:** Children's Beach is an important asset to the many families who either live on or visit Nantucket. Construction of the roof and proper decking will allow the many families who use Children's Beach to do so in a safer and more welcoming environment.

|                                        |
|----------------------------------------|
| <b>Board/Commission Recommendation</b> |
|----------------------------------------|

N/A

|                        |
|------------------------|
| <b>Public Outreach</b> |
|------------------------|

N/A

|                    |
|--------------------|
| <b>Attachments</b> |
|--------------------|

- [2022-2026 Children's Beach Lease Agreement – The Surf LLC](#)
- Children's Beach Overhang and Deck Request 3-7-2022

March 7, 2022

Dear Select Board,

We are writing to propose a new 20x30 wooden overhang and proper wood decking for the Children's Beach Concession. This building enhancement will serve a dual purpose:

1. weather protection for the customers on inclement days, as well as allowing the business to remain open
2. improvement for the disabled customers to have easier access to any of the seating options

By adding an HDC approved solid wood overhang and proper deck flooring, we would see a marked improvement to the overall seating configuration compared to the current arrangement, which is uneven sand along with a few unattached wooden slat boards.

We look forward to working with the Select Board and architect to improve the esthetics and functionality of this new space. We plan to fund the project in full and then gift it to the Town. We have received quotes and understand 3 quotes are required as well as paying the prevailing scale wages.

If this proposal is considered, our next step would be to have the architect draw up the plan, we will then submit to the Town for the proper approvals.

Kindest,  
Stacey and Abby

Current  
Configuration



Current  
Configuration





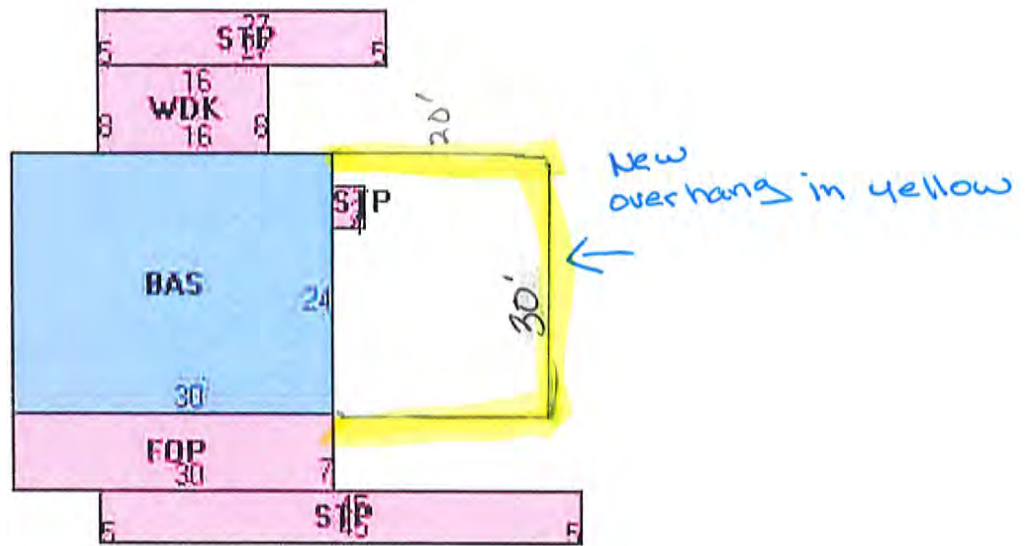
- Overhang will cover Dining area
- Sanded area will have Complete Coverage of wooden Decking



Overhang  
TO  
Cover  
Dinning  
area

Architect will  
draw different  
Roof Line pitches  
for HDC's  
Preference.

## Building Layout



([http://images.vgsi.com/photos/NantucketMAPhotos//Sketches/10397\\_119](http://images.vgsi.com/photos/NantucketMAPhotos//Sketches/10397_119);

| Building Sub-Areas (sq ft) |                       |            | Legend      |
|----------------------------|-----------------------|------------|-------------|
| Code                       | Description           | Gross Area | Living Area |
| BAS                        | First Floor           | 720        | 720         |
| FOP                        | Porch, Open, Finished | 210        | 0           |
| STP                        | Stoop                 | 372        | 0           |
| WDK                        | Deck, Wood            | 128        | 0           |
|                            |                       | 1,430      | 720         |

## Extra Features

## Legend

No Data for Extra Features

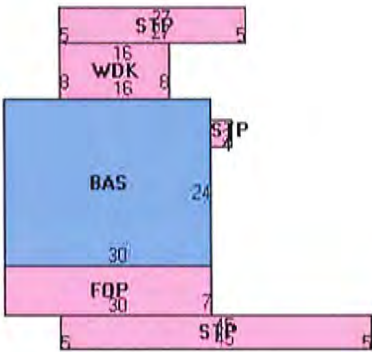
|                  |                    |
|------------------|--------------------|
| Grade            | Average            |
| Stories:         | 1                  |
| Occupancy        | 1.00               |
| Exterior Wall 1  | Wood Shingle       |
| Exterior Wall 2  |                    |
| Roof Structure   | Gable/Hip          |
| Roof Cover       | Wood Shingle       |
| Interior Wall 1  | Plywood Panel      |
| Interior Wall 2  |                    |
| Interior Floor 1 | Pine/Soft Wood     |
| Interior Floor 2 |                    |
| Heating Fuel     | Coal or Wood       |
| Heating Type     | None               |
| AC Type          | None               |
| Struct Class     |                    |
| Use:             | MUNICIPAL IMPROVED |
| Total Rooms      |                    |
| Total Bedrms     | 00                 |
| Total Baths      | 2                  |
| 1st Floor Use:   | 9400               |
| Heat/AC          | NONE               |
| Frame Type       | WOOD FRAME         |
| Baths/Plumbing   | EXTENSIVE          |
| Ceiling/Wall     | NONE               |
| Rooms/Prtns      | AVERAGE            |
| Wall Height      | 7.00               |
| % Corn Wall      | 0.00               |

Building Photo



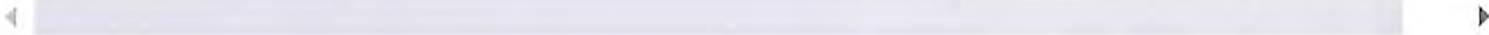
(<http://images.vgsi.com/photos/NantucketMAPPhotos/A00\00\10\01.jpg>)

Building Layout



([http://images.vgsi.com/photos/NantucketMAPPhotos/Sketches/10397\\_119](http://images.vgsi.com/photos/NantucketMAPPhotos/Sketches/10397_119)):

| Building Sub-Areas (sq ft) |                       |            | Legend      |
|----------------------------|-----------------------|------------|-------------|
| Code                       | Description           | Gross Area | Living Area |
| BAS                        | First Floor           | 720        | 720         |
| FOP                        | Porch, Open, Finished | 210        | 0           |
| STP                        | Stoop                 | 372        | 0           |
| WDK                        | Deck, Wood            | 128        | 0           |
|                            |                       | 1,430      | 720         |



Extra Features

| Extra Features             | Legend |
|----------------------------|--------|
| No Data for Extra Features |        |

Land

Land Use

Land Line Valuation

|               |                    |                |             |
|---------------|--------------------|----------------|-------------|
| Use Code      | 9310               | Size (Acres)   | 2.74        |
| Description   | MUNICIPAL IMPROVED | Frontage       | 0           |
| Zone          | R40                | Depth          | 0           |
| Neighborhood  | 850                | Assessed Value | \$6,340,100 |
| Alt Land Appr | No                 |                |             |
| Category      |                    |                |             |

Outbuildings

| Outbuildings |               |          |                 |              |           | Legend |
|--------------|---------------|----------|-----------------|--------------|-----------|--------|
| Code         | Description   | Sub Code | Sub Description | Size         | Value     | Bldg # |
| DCK1         | DOCK-WOOD AVG |          |                 | 1464.00 S.F. | \$732,000 | 1      |
| CNP2         | CANOPY GD     |          |                 | 1026.00 S.F. | \$27,300  | 1      |
| SHD1         | SHED FRAME    |          |                 | 48.00 S.F.   | \$600     | 1      |
| SHD1         | SHED FRAME    |          |                 | 144.00 S.F.  | \$1,600   | 1      |

Valuation History

| Assessment     |              |             |             |
|----------------|--------------|-------------|-------------|
| Valuation Year | Improvements | Land        | Total       |
| 2022           | \$855,100    | \$6,340,100 | \$7,195,200 |
| 2021           | \$855,100    | \$5,839,600 | \$6,694,700 |
| 2020           | \$846,800    | \$5,839,600 | \$6,686,400 |
| 2018           | \$832,100    | \$5,839,600 | \$6,671,700 |
| 2017           | \$252,200    | \$5,839,600 | \$6,091,800 |



**Property Information**  
Property ID 42.4.2.9  
Location 15 HARBOR VIEW WY  
Owner NANTUCKET TOWN OF



**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**

Town and County of Nantucket, MA makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 03/02/2022  
Data updated Jan. 2021

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.



## Agenda Item Summary

|               |           |
|---------------|-----------|
| Agenda Item # | IX. 5.    |
| Date          | 3/23/2022 |

### Staff

Stephen Murphy, Fire Chief

### Subject

Bulk Fuel Storage License Extension at 6 New Whale Street (f/k/a 9 Salem Street; f/k/a 8 New Whale Street)

### Executive Summary

At its December 16, 2020 meeting under New Business, the Select Board voted to approve a three-month extension to an approved bulk fuel storage license for Winthrop Nantucket LP/Harbor Fuel Oil Corp. In December 2020, Winthrop had submitted a request to extend the license for one year, with three-month extensions. The original license, granted on December 18, 2019, had the applicants agreeing to discontinue and decommission 9 of 11 aboveground fuel storage tanks, leaving one 48,000 gallon tank for Class I Gasoline and one 56,000 gallon tank for Class III Diesel Fuel, located at 6 New Whale Street (f/k/a 9 Salem Street; f/k/a 8 New Whale Street), Nantucket, MA 02554 (Map 42.3.1, Parcel 89.1). The original license was granted contingent on conditions from the Nantucket Fire Dept. and allowed three-month extensions if necessary. The conditions for the one-year license had not been met but extension was supported to allow for extra time to complete. Plans were in development to meet conditions of the license and expected to be finalized before the end of the 2021.

At current, the tanks able to be removed have been demolished and trucked off Island. A major delay in the project included the presence of asbestos found in the gaskets of some valves. This caused a rework of the project plans and remediation to handle the found asbestos. The final tank removals of the first phase were accomplished around the end of 2021. Now in a parallel course with the permanent solution and the installation of the new tanks to supply the Boat Basin fuel dock, the applicant is asking for an extension until the end of 2022. This extension will allow the completion of the installation of the new tanks to supply the fuel dock and then the decommissioning and removal of the remaining three tanks of the old tank farm.

### Staff Recommendation

Extend the license until the end of 2022 and no further, so that Winthrop/Harbor Fuel can complete the final installation of the permanent facility (tanks) to supply gasoline and diesel to the Boat Basin fuel dock.

One condition I would add to this extension is a timeline for the removal of the tanks after commissioning of the permanent tank system. I would suggest 3 months be allowed for removal of the



decommissioned tanks with a 3 month extension allowed by the Fire Chief if proper progress is being attained. All other conditions had been met and I am comfortable with this extension.

### Background/Discussion

Harbor Fuel has moved the majority of its bulk fuel storage operation to its new facility at 11 Industry Road. Two bulk fuel storage tanks are to remain downtown to provide fuel storage for the Boat Basin. Winthrop states that it is working on a plan to design and locate two 9,999-gallon aboveground tanks to service the Boat Basin.

A new license will be required for the long-term plans to supply the Boat Basin with new tanks and has been applied for.

Conditions not met prior to the extension of the original permit (12/31/2020) are being addressed. The dismantling of the decommissioned equipment is being drafted and proper documents being developed for submission to regulatory agencies for permitting.

With the current license conditions set forth by the Fire Dept. still being met, we request the extension until 12/31/2022 to allow Winthrop/Harbor Fuel to come into compliance. This will also allow the Boat Basin operations to continue through the season and avoid disruption of the marine fueling for the harbor.

**Impact: Environmental** ☒ **Fiscal** ☐ **Community** ☒ **Other** ☐

Nantucket Fire Dept. wants to ensure compliance with the current license and proper permitting for dismantling of the facility to avoid possible environmental issues. The parties involved have been responsive and cooperative in the process.

### Board/Commission Recommendation

N/A

### Public Outreach

N/A

### Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Strategic Plan (Environmental Leadership, Goal 2); Master Plan

### Attachments

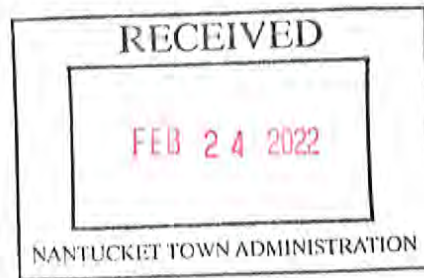
Letter from VHB requesting extension of existing bulk fuel storage license

Minutes from 4/7/2021 Select Board minutes



February 18, 2022

Ref: 07924.11



Select Board  
Town of Nantucket  
16 Broad Street  
Nantucket, MA 02554

Re: Extension to Fuel Storage License  
8 New Whale Street

Dear Chair Jason Bridges,

On behalf of Peter Braverman and Michael Ashner, Trustees of Winthrop Nantucket Nominee Trust (Trust), Vanasse Hangen Brustlin, Inc. (VHB) is submitting this application for amendment to extend the existing fuel storage license for the Tank Farm at 8 New Whale Street. The Parcel is also listed as 9 Salem Street by the Town's Assessor's Office. At its April 7, 2021 hearing, the Select Board voted to approve the application for extension of our amended bulk fuel storage license, which proposed the discontinuance and decommissioning of nine aboveground fuel storage tanks, and the continued use of the remaining two aboveground fuel storage tanks. The present Operator of the Tank Farm, Harbor Fuel Oil Corporation, has moved the majority of their operation to a new location on the Island. In accordance with the conditions set in the amended license last year, the Trust has closed nine (9) of the eleven (11) fuel storage tanks. The nine (9) tanks have been emptied, cleaned and certified gas free. All piping connecting the closed tanks has been disconnected or blanked off to prevent future use. Eight of the tanks have been demolished and removed from the Site. Two tanks (M-1 and S-6, refer to attached plan) remain in operation and currently provide fuel to the Boat Basin. The Trust has a contractual obligation to provide fuel storage for the Boat Basin's fuel dispensers.

Harbor Fuel Oil Corporation is currently working on a plan to design and locate two 9,900-gallon aboveground tanks for gasoline and diesel fuel to service ongoing operation at the Nantucket Boat Basin. They anticipate that the completion of the work should take, in total, about 6 to 12 months for all approvals, demolition and installation of the new tanks. Once the plan for the new tanks has been reviewed and approved by necessary regulatory boards, they will submit a final amendment to the fuel storage license to the Select Board.

101 Walnut Street

PO Box 9151

Watertown, Massachusetts 02471

P 617.924.1770

F 617.924.2286

Engineers | Scientists | Planners | Designers

Town of Nantucket  
Ref: 07924.11  
February 18, 2022  
Page 2



In accordance with the Nantucket Fire Chief's conditions dated December 18<sup>th</sup>, 2019, all of the conditions have been met. The Trust has completed the first phase of demolition including the dismantling and removal of eight of the eleven existing tanks. The Trust will continue working with the Chief regarding the removal procedures and sequencing of the dismantling of the existing tanks.

This application seeks to extend, on a temporary basis, the right to use the two operational, temporary tanks through the end of 2022.

We respectfully request that we be placed on the next available agenda for the Select Board. We will continue to work closely with Town Officials to respond to any questions or issues prior to the hearing.

If you have any questions or require additional information, please contact me at (617) 607-2171 or [wtaber@vhab.com](mailto:wtaber@vhab.com).

Sincerely,

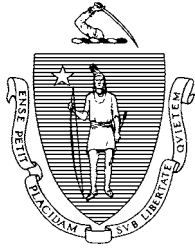
Vanasse Hangen Brustlin, Inc.

A handwritten signature in black ink that reads "William S. Taber". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

William S. Taber, PE

Senior Project Manager  
[wtaber@vhab.com](mailto:wtaber@vhab.com)

cc: Peter Braverman



FP-002A  
(Rev. 1.2018)

*The Commonwealth of Massachusetts*

*City/Town of* Nantucket

## Application For License

Massachusetts General Law, Chapter 148 §13

☐ New License ☒ Amended License

GIS Coordinates

41.283472

LAT.

-70.09587

LONG.

License Number

Application is hereby made in accordance with the provisions of Chapter 148 of the General Laws of Massachusetts for a license to store flammables, combustibles or explosives on land in buildings or structures herein described.

Location of Land: 6 New Whale Street 4231/89/1 (Formerly 8 New Whale Street)  
Number, Street and Assessor's Map and Parcel ID

Attach a plot plan of the property indicating the location of property lines and all buildings or structures.

Owner of Land: Winthrop Nantucket Nominee Trust

Address of Land Owner: Two Liberty Square, Ninth Floor, Boston, MA 02109

Use and Occupancy of Buildings and Structures: Petroleum Fuel Storage

If this is an application for amendment of an existing license, indicate date of original license and any subsequent amendments

Original License 2/1/1917, Amendments 6/8/1932, 1/19/1970, 2/10/1988, 9/6/1989, 12/18/2019

Attach a copy of the current license

4/7/2021

### **Flammable and Combustible Liquids, Flammable Gases and Solids**

Complete this section for the storage of flammable and combustible liquids, solids, and gases; see 527 CMR 1.00 Table 1.12.8.50;

Attach additional pages if needed. All tanks and containers are considered full for the purposes of licensing and permitting.

| PRODUCT NAME | CLASS | MAXIMUM QUANTITY | UNITS<br>gal., lbs,<br>cubic feet | CONTAINER<br>UST, AST, IBC,<br>drums |
|--------------|-------|------------------|-----------------------------------|--------------------------------------|
| Gasoline     | I     | 48,000           | Gallons                           | AST                                  |
| Diesel Fuel  | III   | 56,000           | Gallons                           | AST                                  |
|              |       |                  |                                   |                                      |
|              |       |                  |                                   |                                      |
|              |       |                  |                                   |                                      |

Total quantity of all flammable liquids to be stored: 48,000

Total quantity of all combustible liquids to be stored: 56,000

Total quantity of all flammable gases to be stored:                     

Total quantity of all flammable solids to be stored:

**LP-gas** (Complete this section for the storage of LP-gas or propane)

Indicate the maximum quantity of LP-gas to be stored and the sizes and capacities of all storage containers.  
(See 527 CMR 1.00 Table 1.12.8.50)

- ❖ Maximum quantity (in gallons) of LP-gas to be stored in aboveground containers: \_\_\_\_\_

List sizes and capacities of all aboveground containers used for storage: \_\_\_\_\_

- ❖ Maximum quantity (in gallons) of LP-gas to be stored in underground containers: \_\_\_\_\_

List sizes and capacities of all underground containers used for storage: \_\_\_\_\_

Total aggregate quantity of all LP-gas to be stored: \_\_\_\_\_

**Fireworks** (Complete this section for the storage of fireworks)

Indicate classes of fireworks to be stored and maximum quantity of each class. (See 527 CMR 1.00 Table 1.12.8.50)

- ❖ Maximum amount (in pounds) of Class 1.3G: \_\_\_\_\_ Type/class of magazine used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.4G: \_\_\_\_\_ Type/class of magazine used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.4: \_\_\_\_\_ Type/class of magazine used for storage: \_\_\_\_\_

Total aggregate quantity of all classes of fireworks to be stored: \_\_\_\_\_

**Explosives** (Complete this section for the storage of explosives)

Indicate classes of explosive to be stored and maximum quantity of each class. (See 527 CMR 1.00 Table 1.12.8.50)

- ❖ Maximum amount (in pounds) of Class 1.1: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.2: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.3: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.4: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.5: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.6: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

I, Peter Braverman, hereby attest that I am authorized to make this application. I acknowledge that the information contained herein is accurate and complete to the best of my knowledge and belief. I acknowledge that all materials stored pursuant to any license granted hereunder must be stored or kept in accordance with all applicable laws, codes, rules and regulations, including but not limited to Massachusetts Chapter 148, and the Massachusetts Fire Code (527 CMR 1.00). I further acknowledge that the storage of any material specified in any license granted hereunder may not exceed the maximum quantity specified by the license.

Signature  Date 2-21-22 Name Peter Braverman

**Fire Department Use Only**

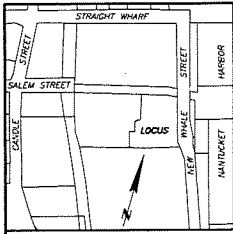
I, \_\_\_\_\_, Head of the \_\_\_\_\_ Fire Department endorse this application with my

☐ Approval ☐ Disapproval

Signature of Head of the Fire Department

Date

Recommendations: \_\_\_\_\_



LOCUS MAP NOT TO SCALE

# LEGEND

- ..... BOLLARD
- ..... POST
- ..... SIGN
- ..... STAND PIPE/GAMESE CONNECTION
- ..... DECORATIVE TREE
- ..... GATE POST
- ..... TOP
- ..... BOTTOM CURB
- ..... IS
- ..... BOTTOM STEP
- ..... CONCRETE CURB
- ..... CLIFF
- ..... CHAIN LINK FENCE
- ..... CORRUGATED
- ..... CONCRETE
- ..... CONCRETE RETAINING WALL
- ..... DOCUMENT
- ..... LAND COURT CASE
- ..... LANDSCAPE THIMBERS
- ..... M&S
- ..... MTL
- ..... MTL
- ..... NOT TO SCALE
- ..... 50 FT. SQUARE TIE
- ..... STOCKADE FENCE
- ..... TOP CURB
- ..... TS
- ..... TOP STRIPS
- ..... TOP WALL
- ..... VERTICAL GRANITE CURB
- ..... WOOD FENCE
- ..... METAL FENCE
- ..... FUEL LINE

## REFERENCES

NANTUCKET COUNTY REGISTRY OF DEEDS

- PLAN 44
- PLAN 19-99
- PLAN 52-P
- PLAN 52-W
- PLAN 2005-40
- PLAN 2020-53

BOOK 1775, PAGE 246

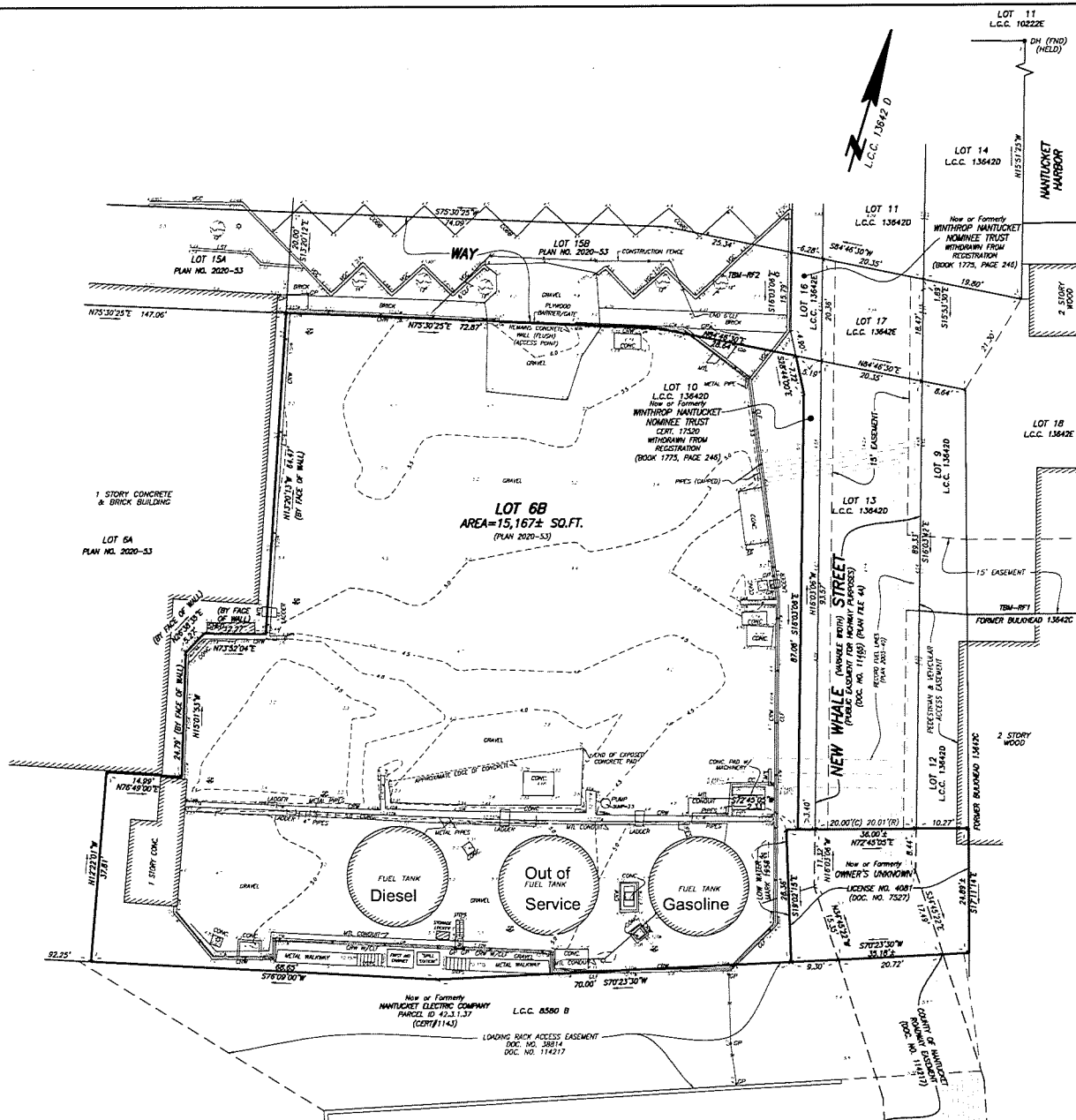
(VOLUNTARY WITHDRAWAL)

MASSACHUSETTS LAND COURT

- LCC 8580 B
- LCC 8904 B
- LCC 8434 E
- LCC 10222 E
- LCC 10148 B
- LCC 13542 A
- LCC 13542 B
- LCC 13542 C
- LCC 13542 D
- LCC 13542 E
- LCC 13542 F
- LCC 35222 A

## OWNER OF RECORD

WINTHROP NANTUCKET  
NOMINEE TRUST  
CERTIFICATE 17520  
BOOK 1775, PAGE 246



## NOTES

- 1) BENCH MARK INFORMATION:  
TEMPORARY BENCH MARKS SET:  
TBM-RT1: RIGHT CORNER OF CONCRETE AND WITH ELECTRIC TRANSFORMER  
CLOSEST TO NEW WHALE STREET. ELEVATION=5.84'  
TBM-RT2: SPK IN TREE ON THE WESTERN SIDE OF NEW WHALE STREET  
ELEVATION=7.38'
- 2) ELEVATIONS WERE ESTABLISHED BY GPS OBSERVATIONS ON JANUARY 10,  
2022 ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD83).
- 3) CONTOUR INTERVAL EQUALS HALF (0.5) FOOT
- 4) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING TOPOGRAPHY WITHIN THE  
LIMITS OF LOT 68.
- 5) NO UTILITY COMPILATION WAS PERFORMED FOR THIS SURVEY.
- 6) THIS DOCUMENT IS AN INSTRUMENT OF SERVICE OF FELDMAN LAND SURVEYORS  
ISSUED TO OUR CLIENT FOR PURPOSES RELATED DIRECTLY AND SOLELY TO  
FELDMAN LAND SURVEYORS' SCOPE OF SERVICES UNDER CONTRACT TO OUR  
CLIENT FOR THIS PROJECT. ANY USE OR REUSE OF THIS DOCUMENT FOR ANY  
REASON BY ANY PARTY FOR PURPOSES UNRELATED DIRECTLY AND SOLELY TO  
OUR CONTRACT SHALL BE AT THE USER'S SOLE AND EXCLUSIVE RISK AND  
LIABILITY, INCLUDING LIABILITY FOR VIOLATION OF COPYRIGHT LAW, UNLESS  
WRITTEN CONSENT IS PROVIDED BY FELDMAN LAND SURVEYORS.

I CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL FIELD  
SURVEY AND THE LATEST RECORD PLANS, DEEDS AND  
CERTIFICATES OF TITLE.

DRAFT 02/08/2022

DAVID J. RAFFLE, PLS. (441) 496279 DATE  
DAVID@FELDMAN.COM

## PARTIAL EXISTING CONDITIONS PLAN 9 SALEM STREET NANTUCKET, MASS.

FELDMAN GEOSPATIAL DECEMBER 8, 2021  
152 HAMPOEN STREET PHONE: (617)357-9740  
BOSTON, MASS. 02119 www.feldmangeo.com

FELDMAN  
GEOSPATIAL



| RESEARCHER | FIELD CHECK | ST   | PROJ. MGR | DATE | APPROVED | SHEET NO. 1 OF 1 |
|------------|-------------|------|-----------|------|----------|------------------|
| DATE       | DATE        | DATE | DATE      | DATE | DATE     | DATE             |
| FELDMAN    | DATE        | DATE | DATE      | DATE | DATE     | DATE             |

quietly as possible. He said that the request is actually for 5:00 AM not 4:00 AM as listed on the agenda. Some discussion followed as to the nature of the noise. Ms. Ferguson commented on noise from gas delivery trucks and garbage trucks. Chair Holdgate said this is only for the tree spraying, not those other activities. Mr. Fee asked Mr. Cook about the frequency of the tree spraying work. Mr. Cook explained. Discussion followed as to alternatives to a noise bylaw waiver. Ms. Murphy noted that if this is a significant neighborhood problem, the neighborhood association should send the Board a letter for its consideration next year. Ms. Murphy added that the tree work is requested by the property owners in the area. Ms. Murphy moved to approve the request and encouraged the neighbors to work with Bartlett Tree directly if need be; seconded by Mr. Bridges. So voted by roll call vote. Chair Holdgate – Yes; Mr. Bridges – Yes; Mr. Fee – No; Ms. Murphy – Yes. Ms. Ferguson said that Town noise bylaws are in place to protect citizens.

**2. Winthrop Nantucket LP/Harbor Fuel Oil Corp.: Request for Extension of Bulk Fuel License at 9 Salem Street (fka 8 New Whale Street) to December 31, 2021.** Fire Chief Stephen Murphy provided an overview of the extension request and explained the timing of this license with respect to plans to remove the bulk fuel storage tanks at the subject property. He noted that this is for the current tanks, not any new tanks. Mr. Fee moved approval; seconded by Ms. Murphy. So voted by roll call vote. Chair Holdgate – Yes; Mr. Bridges – Yes; Mr. Fee – Yes; Ms. Murphy – Yes.

#### X. PUBLIC HEARING

1. Public Hearing to Consider Applications for 2021 Outdoor Dining Expansion/ Alteration of Premises. Ms. Murphy recused from this matter. Chair Holdgate opened the hearing. Licensing Administrator Amy Baxter provided an overview of what is being requested and explained the three categories of outdoor dining with the individual requests in each category. She reviewed the specifics of the State's order as to outdoor dining for establishments with liquor licenses. Chair Holdgate asked for any public comment, for each of the categories. Ms. Baxter reviewed the recommended conditions that would be applicable to each approval, as well as the particular closures for each impacted street. She said that if dining tables will be set up outside of abutting properties, their permissions will have to be secured. She also noted the situations which would be similar or the same as what was in place last year. Mr. Stephen Bowler, of Nautilus restaurant, spoke on the options presented for Cambridge Street and emphasized the importance of outdoor dining. Mr. Kenneth Gullicksen representing an abutting property owner, stated that his client is willing to accept the proposal provided that the conditions are clear and that there are dining tables in front of Nautilus restaurant only. Ms. Baxter said that last year, Nautilus did have more seating than it normally would; however, because there is a bar in the restaurant, that will be difficult to replicate, outdoors. Police Chief William Pittman spoke on the need to keep a portion of Cambridge Street open, from a public safety perspective with respect to traffic backups that occurred last year as a result of the closure of Cambridge Street. Mr. Bowler spoke in favor of closing Cambridge Street for his restaurant. Mr. Bridges concurred with Chief Pittman that complete closure is a public safety issue, also noting that he realizes the difficulty for the restaurant. Mr. Fee said he wished there was a way to keep the street partially open but add more tables; however, without the approval of the abutting property owners, that will be difficult. Mr. Fee disclosed that some of the restaurants impacted are customers of his business. Chair Holdgate agreed this is a difficult situation but believes if the additional tables cannot be accommodated, the street should be closed. Mr. Ryan Williams spoke in favor of closing the street for Nautilus. Mr. Bowler said he is open to exploring ways to keep the street open during the day and closed at night. Some discussion followed. Mr. Bridges said he would support a way to keep it open as described by Mr. Bowler if he pays for any costs related to that sort of arrangement. Ms. Courtney Mackey, owner of PPX spoke in favor of complete closure of Cambridge Street. Chief Pittman suggested that vehicles could be used as barriers, which could be readily moved every day. Mr. Fee asked about numbers of seats in each location pre-COVID and with the arrangement(s).



## Agenda Item Summary

|               |           |
|---------------|-----------|
| Agenda Item # | X. 1.     |
| Date          | 3/23/2022 |

### Staff

Stephen Murphy, Fire Chief

### Subject

New Bulk Fuel Storage License application for 6 New Whale Street (f/k/a 9 Salem Street; f/k/a 8 New Whale Street)

### Executive Summary

The new license being requested is for the installation of two tanks containing gasoline and diesel to supply the Boat Basin fuel dock. The two tanks will each have a capacity of approx. 9,999 gallons and will be located as shown on the plan in the corner of the lot. Truck access to fill/refill product will be from New Whale Street. Both tanks will be double wall tanks with required spill containment within the tank design. Both tanks will be on a concrete pad and secured to the pad to protect against tidal surge. In addition, a concrete wall will surround both tanks to act as vehicle and debris protection in the case of flooding in the area. This wall will not be a moat for spill containment and will be able to allow water to drain from the location around the tanks. In addition, this project includes the replacement of a large portion of the supply line from the tanks to the dock during this project.

An existing bulk fuel storage license at this property covers the old tank farm that is being decommissioned, of which the majority of the tanks has been removed. Remaining are three (3) tanks, two (2) of which are in service under the existing bulk fuel storage license. The final tank removals of the first phase were accomplished around the end of 2021. The last three tanks from the old fuel farm will be decommissioned and removed after the new tanks are in place and operational.

### Staff Recommendation

Recommend approval of the new license for the final installation of the permanent facility (tanks) to supply gasoline and diesel to the Boat Basin fuel dock.

The only condition I would recommend is the testing of the underground piping supplying the fuel dock in the following manner:

1. Yearly inspection of all connections and any possible sump pits by a 3rd party certified and licensed company
2. Testing of the supply line to the fuel dock, through pressure testing every three years or industry standard if agreed to by the Fire Chief
3. Visual inspection of the buried supply line to the fuel dock at minimum two separate locations as determined and agreed to by the Fire Chief to inspect for supply line integrity and safety.



### Background/Discussion

Two bulk fuel storage tanks are to remain downtown to provide fuel storage for the Boat Basin. Winthrop is presenting a design for two 9,999-gallon aboveground tanks to service the Boat Basin.

This new license is required for the tanks to supply the Boat Basin with new tanks.

**Impact:** Environmental ☐ Fiscal ☐ Community ☐ Other ☐

N/A

### Board/Commission Recommendation

N/A

### Public Outreach

Public hearing advertised for two weeks in the newspaper; abutter notification by applicant

### Connection to Existing Applicable Plan (i.e., Strategic Plan, Master Plan, etc.)

Strategic Plan (Environmental Leadership, Goal 2); Master Plan

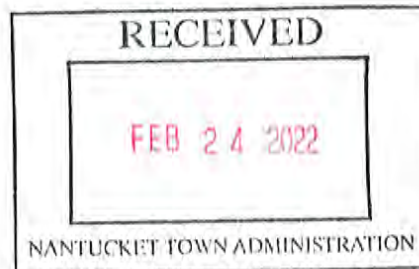
### Attachments

New bulk fuel storage license application submission from VHB

Abutter notification



February 22, 2022



Ref: 07924.11

Select Board  
Town of Nantucket  
16 Broad Street  
Nantucket, MA 02554

Re: New Fuel Storage License  
Two 9,900 Gallon Tanks  
8 New Whale Street

Dear Chair Jason Bridges,

On behalf of Peter Braverman and Michael Ashner, Trustees of Winthrop Nantucket Nominee Trust (Trust), Vanasse Hangen Brustlin, Inc. (VHB) is submitting this application for a new fuel storage license for two new fuel tanks at 8 New Whale Street. The Parcel is also listed as 9 Salem Street by the Town's Assessor's Office. The two proposed tanks will be approximately 9,999 gallons each for a total of 19,998 gallons. The tanks will store gasoline and diesel fuel for the Nantucket Boat Basin. Harbor Fuel Oil Corporation will be operating the new tanks.

The Trust has a contractual obligation to provide fuel storage for the Boat Basin's fuel dispensers. Two tanks (M-1 and S-6, refer to attached plan) are presently in operation and currently provide fuel to the Boat Basin. These two tanks will be taken out of service, cleaned and removed from the Site when the two new tanks have been installed and in use.

The attached plan provides an approximate layout for the new tanks for use during the licensing process. The new tanks will be temporarily connected with aboveground piping onsite prior to the demolition of the remaining tanks, their offsite disposal and installation of new piping. Once this is complete new piping will be installed from the tanks to the Boat Basin. Then a new off street fuel delivery spot will be constructed.

Harbor Fuel Oil Corporation is currently working on a plan to design and locate the two new aboveground tanks for gasoline and diesel fuel to service ongoing operations at the Nantucket Boat Basin. The specifications for the new tanks are attached. A final plan locating the two new tanks will be developed during the permitting process with the Fire Chief. Harbor Fuels anticipates that the completion of the

Engineers | Scientists | Planners | Designers

101 Walnut Street  
PO Box 9151  
Watertown, Massachusetts 02471  
P 617.924.1770  
F 617.924.2286

Town of Nantucket  
Ref: 07924.11  
February 22, 2022  
Page 2



work should take, in total, about 6 to 12 months for all approvals, demolition and installation of the new tanks.

We respectfully request that we be placed on the next available agenda for the Select Board. We will continue to work closely with Town Officials to respond to any questions or issues prior to the hearing.

If you have any questions or require additional information, please contact me at (617) 607-2171 or [wtaber@vhab.com](mailto:wtaber@vhab.com).

Sincerely,

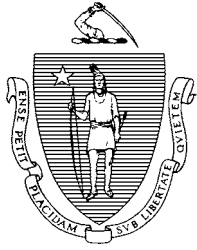
Vanasse Hangen Brustlin, Inc.

A handwritten signature in black ink that reads "William S. Taber".

William S. Taber, PE

Senior Project Manager  
[wtaber@vhab.com](mailto:wtaber@vhab.com)

cc: Peter Braverman



FP-002A  
(Rev. 1.2018)

*The Commonwealth of Massachusetts*

*City/Town of* Nantucket

## Application For License

Massachusetts General Law, Chapter 148 §13

☒ New License ☐ Amended License

GIS Coordinates

41.283472

LAT.

-70.09587

LONG.

License Number

Application is hereby made in accordance with the provisions of Chapter 148 of the General Laws of Massachusetts for a license to store flammables, combustibles or explosives on land in buildings or structures herein described.

Location of Land: 6 New Whale Street 4231/89/1

Number, Street and Assessor's Map and Parcel ID

Attach a plot plan of the property indicating the location of property lines and all buildings or structures.

Owner of Land: Winthrop Nantucket Nominee Trust

Address of Land Owner: Two Liberty Square, Ninth Floor, Boston, MA 02109

Use and Occupancy of Buildings and Structures: Petroleum Fuel Storage

If this is an application for amendment of an existing license, indicate date of original license and any subsequent amendments

Attach a copy of the current license

### **Flammable and Combustible Liquids, Flammable Gases and Solids**

Complete this section for the storage of flammable and combustible liquids, solids, and gases; see 527 CMR 1.00 Table 1.12.8.50; Attach additional pages if needed. All tanks and containers are considered full for the purposes of licensing and permitting.

| PRODUCT NAME | CLASS | MAXIMUM QUANTITY | UNITS<br>gal., lbs,<br>cubic feet | CONTAINER<br>UST, AST, IBC,<br>drums |
|--------------|-------|------------------|-----------------------------------|--------------------------------------|
| Gasoline     | I     | 9,999            | Gallons                           | AST                                  |
| Diesel Fuel  | II    | 9,999            | Gallons                           | AST                                  |
|              |       |                  |                                   |                                      |
|              |       |                  |                                   |                                      |
|              |       |                  |                                   |                                      |

Total quantity of all flammable liquids to be stored: 9,999

Total quantity of all combustible liquids to be stored: 9,999

Total quantity of all flammable gases to be stored:                     

Total quantity of all flammable solids to be stored:

**LP-gas** (Complete this section for the storage of LP-gas or propane)

Indicate the maximum quantity of LP-gas to be stored and the sizes and capacities of all storage containers.  
(See 527 CMR 1.00 Table 1.12.8.50)

- ❖ Maximum quantity (in gallons) of LP-gas to be stored in aboveground containers: \_\_\_\_\_

List sizes and capacities of all aboveground containers used for storage: \_\_\_\_\_

- ❖ Maximum quantity (in gallons) of LP-gas to be stored in underground containers: \_\_\_\_\_

List sizes and capacities of all underground containers used for storage: \_\_\_\_\_

Total aggregate quantity of all LP-gas to be stored: \_\_\_\_\_

**Fireworks** (Complete this section for the storage of fireworks)

Indicate classes of fireworks to be stored and maximum quantity of each class. (See 527 CMR 1.00 Table 1.12.8.50)

- ❖ Maximum amount (in pounds) of Class 1.3G: \_\_\_\_\_ Type/class of magazine used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.4G: \_\_\_\_\_ Type/class of magazine used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.4: \_\_\_\_\_ Type/class of magazine used for storage: \_\_\_\_\_

Total aggregate quantity of all classes of fireworks to be stored: \_\_\_\_\_

**Explosives** (Complete this section for the storage of explosives)

Indicate classes of explosive to be stored and maximum quantity of each class. (See 527 CMR 1.00 Table 1.12.8.50)

- ❖ Maximum amount (in pounds) of Class 1.1: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.2: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.3: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.4: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.5: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

- ❖ Maximum amount (in pounds) of Class 1.6: \_\_\_\_\_ Number of magazines used for storage: \_\_\_\_\_

I, Peter Braverman, hereby attest that I am authorized to make this application. I acknowledge that the information contained herein is accurate and complete to the best of my knowledge and belief. I acknowledge that all materials stored pursuant to any license granted hereunder must be stored or kept in accordance with all applicable laws, codes, rules and regulations, including but not limited to Massachusetts Chapter 148, and the Massachusetts Fire Code (527 CMR 1.00). I further acknowledge that the storage of any material specified in any license granted hereunder may not exceed the maximum quantity specified by the license.

Signature  Date 2-22-22 Name Peter Braverman

---

Fire Department Use Only

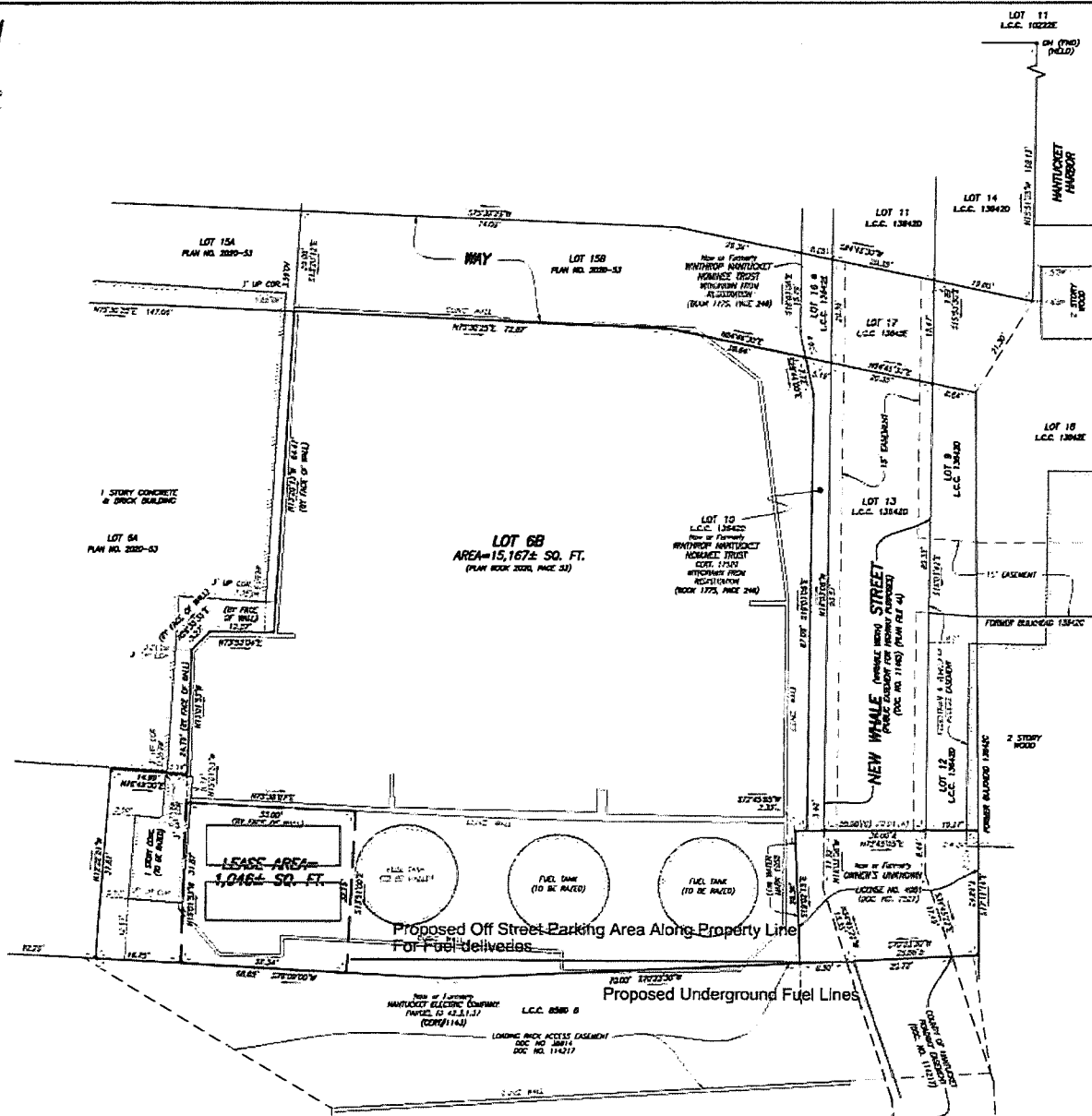
I, \_\_\_\_\_, Head of the \_\_\_\_\_ Fire Department endorse this application with my

☐ Approval ☐ Disapproval

Signature of Head of the Fire Department \_\_\_\_\_

Date \_\_\_\_\_

Recommendations: \_\_\_\_\_



**REFERENCES**  
NANTUCKET COUNTY REGISTRY OF DEEDS  
PLAN 44  
PLAN 19-89  
PLAN 33-P  
PLAN 33-W  
PLAN BOOK 2020, PAGE 51  
BOOK 1775, PAGE 246  
(VOLUNTARY WITHDRAWAL)  
NANTUCKET COUNTY REGISTRY OF DEEDS  
LCC 8300 V  
LCC 8300 W  
LCC 8404 V  
LCC 10272  
LCC 10148 V  
LCC 13612 A  
LCC 13612 B  
LCC 13612 C  
LCC 13612 D  
LCC 13722 A

**LOCUS**  
B DRILL HOLE  
C BRICK  
CERT CERTIFICATE  
COR CORNER  
CONC CONCRETE  
DA DELTA ANGLE  
DN DRILL HOLE  
FND FOUND  
LW ARC LENGTH  
LCC LAND COURT CASE  
ON OVER  
R RADUS  
SQ FT SQUARE FEET  
TYP

**OWNER OF RECORD**  
WHITWORTH NANTUCKET  
NANTUCKET TRUST  
CERTIFICATE 1700  
BOOK 1775, PAGE 246

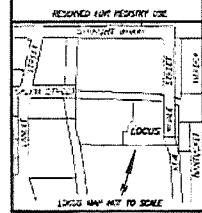
**NOTES**  
1 THE FIELDWORK WAS COMPLETED IN APRIL 2019 AND UPDATED ON JANUARY 10, 2020.

I CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTRARS OF DEEDS.  
I CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY AND THE LATEST RECORD PLANS, DEEDS AND CERTIFICATES OF TITLE.

DAVID C. HOLLAND, PLS (NMF 55782)  
DCH@LANDMANLLC.COM

**FELDMAN**  
GEOSPATIAL

BOSTON HEADQUARTERS  
152 HAMPODEN STREET  
BOSTON, MA 02119  
WORCESTER OFFICE  
27 MECHANIC STREET  
WORCESTER, MA 01608  
(617)357-9740  
www.feldmango.com

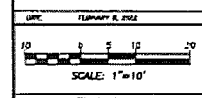


9 SALEM STREET  
NANTUCKET, MASS.

|          |         |
|----------|---------|
| SEARCHED | INDEXED |
| FILED    | FILED   |
| FILED    | FILED   |

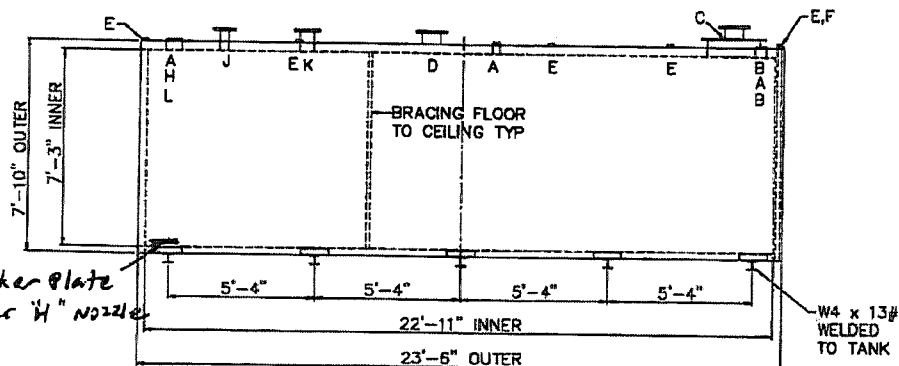
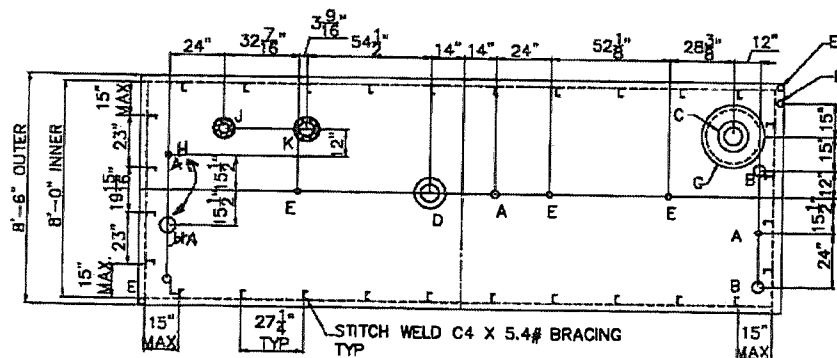
|           |
|-----------|
| REVISIONS |
|           |
|           |
|           |
|           |
|           |

**LEASE PLAN**



SHIP LOOSE PER TANK

(2) 8" FLANGED EMERGENCY VENTS 802



3" LIGHT WEIGHT INSULATION MATERIAL WITHIN INTERSTICE ON BOTTOM AND SIDES EXCEPT MONITOR PIPE END; TOP AND MONITOR END TO BE 4"

TOUCH UP BY FINISHED PARTY IS REQUIRED BY INSTALLATION CONTRACTOR. TOUCH UP PAINT SHIPPED WITH TANK.

NOTE: ALL RIGHTS RESERVED. THIS DRAWING MUST NOT BE REPRODUCED IN ANY FORM WITHOUT THE WRITTEN PERMISSION OF HIGHLAND TANK. HIGHLAND TANKS SHALL BE RESPONSIBLE ONLY FOR ITEMS INDICATED ON THIS FABRICATION DRAWING UNLESS OTHERWISE NOTED. CUSTOMER IS RESPONSIBLE FOR VERIFYING CORRECTNESS OF SIZE AND LOCATION OF FITTINGS, ACCESSORIES, AND CONTROLS SHOWN ON THIS DRAWING.

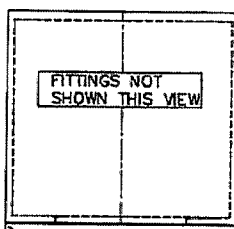
### DESIGN DATA

|                                                       |
|-------------------------------------------------------|
| CAPACITY : 9,800 GALLONS                              |
| TYPE: FIREGUARD® RECTANGULAR                          |
| FIREGUARD® IS A TRADEMARK OF THE STEEL TANK INSTITUTE |
| NO. REQ. - 1                                          |
| OPERATING PRESSURE - ATMOSPHERIC                      |
| SPECIFIC GRAVITY = 1.0                                |
| TANK MATERIAL - MILD CARBON STEEL                     |
| THICKNESS - INNER - 1/4"                              |
| THICKNESS - OUTER - 1/4"                              |
| MIN. GAUGE OR THICKNESS (PER U.L. 2085)               |
| CONSTRUCTION - INNER - LAP WELD OUTSIDE ONLY          |
| CONSTRUCTION - OUTER - LAP WELD OUTSIDE ONLY          |
| TANK TEST - INNER - 1.5 TO 3 PSIG                     |
| TANK TEST - OUTER - 1.5 TO 3 PSIG                     |
| INT. FINISH - NONE                                    |
| EXT. FINISH - SP-6 BLAST, FINISH PAINT WHITE          |
| LABEL - UL 2085 AND FIREGUARD® PER §11                |

### LEGEND

|   |                                                                                                                    |
|---|--------------------------------------------------------------------------------------------------------------------|
| A | 2" FEMALE FIREGUARD COUPLING                                                                                       |
| B | 4" FEMALE FIREGUARD COUPLING                                                                                       |
| C | 8" FFSD 150# FLANGE - PRIMARY EMERGENCY VENT USE ONLY                                                              |
| D | 8" FFSD 150# FLANGE THROUGH OUTER SHELL ONLY, MARK WITH SPECIAL WARNING LABEL INTERSTITIAL EMERGENCY VENT USE ONLY |
| E | 2" FITTING THROUGH OUTER SHELL ONLY WITH CAST IRON PLUG - FOR MFG USE ONLY                                         |
| F | 2" INTERSTITIAL MONITOR PIPE - MALE NPT END                                                                        |
| G | 24" TIGHT BOLT MANWAY WITH "C" MOUNTED IN COVER & 1/2" FIBREFLEX GASKET                                            |
| H | 6" FEMALE FIREGUARD COUPLING                                                                                       |
| J | 4" X 150# RFSD FLANGE                                                                                              |
| K | 6" X 150# RFSD FLANGE                                                                                              |
| L | 3" FEMALE FIREGUARD COUPLING                                                                                       |

SHEET1 - GASOLINE TANK  
SHEET2 - DIESEL TANK



8" Ø GROUNDING HOLE IN SUPPORT

*R. A. Capaldi*  
MPE Inc  
1-4-22

DIESEL TANK



**Highland Tank**

UNLESS NOTED, TOLERANCES ARE +/- 1"

9,900 GAL REC. FIREGUARD®

PATENT: 3,885,088 PATENT: 5,808,830

CUSTOMER: MPE

PROJECT: WYNNIS-PORT MA

QUOTE NO. 507971

CHG'D BY

SCALE: 1/4"=1'-0"

DATE: 12/08/21

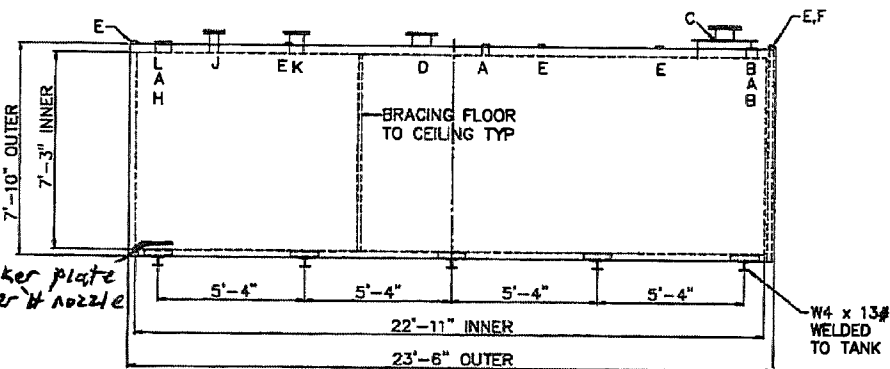
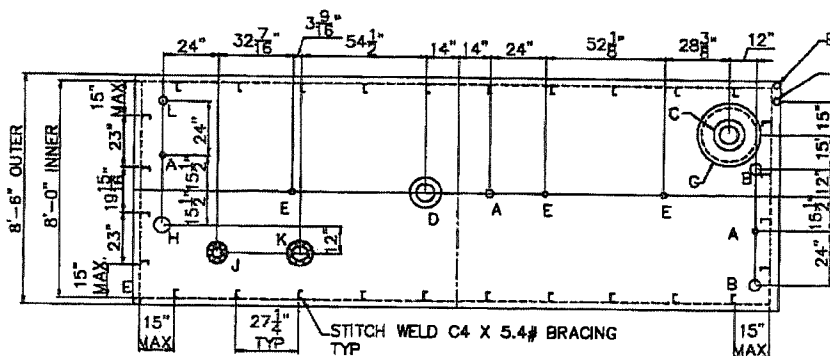
REV: 001

119300-2

NOTE:  
STRIKER PLATES ARE NOT SUPPLIED ON FIREGUARD® UNLESS SPECIFIED

SHIP LOOSE PER TANK

(2) 8" FLANGED EMERGENCY VENTS 160Z



3" LIGHT WEIGHT INSULATION MATERIAL WITHIN INTERSTICE ON BOTTOM AND SIDES EXCEPT MONITOR PIPE END; TOP AND MONITOR END TO BE 4"

NOTES:  
STRIKER PLATES ARE NOT SUPPLIED ON FIREGUARD® UNLESS SPECIFIED

TOUCH UP OF FINISHED PAINT IS REQUIRED BY INSTALLATION CONTRACTOR. TOUCH UP PAINT SHIPPED WITH TANK.

NOTE: ALL RIGHTS RESERVED. THIS DRAWING MUST NOT BE REPRODUCED IN ANY FORM WITHOUT THE WRITTEN PERMISSION OF HIGHLAND TANK. HIGHLAND TANK SHALL BE RESPONSIBLE ONLY FOR ITEMS INDICATED ON THIS FABRICATION DRAWING UNLESS OTHERWISE NOTED. CUSTOMER IS RESPONSIBLE FOR VERIFYING CORRECTNESS OF SIZE AND LOCATION OF FITTINGS, ACCESSORIES, AND COORDINATES SHOWN ON THIS DRAWING.

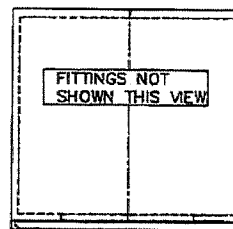
### DESIGN DATA

CAPACITY : 9,900 GALLONS  
TYPE: FIREGUARD® RECTANGULAR  
FIREGUARD® IS A TRADEMARK OF THE STEEL TANK INSTITUTE  
NO. REQ. - 1  
OPERATING PRESSURE - ATMOSPHERIC  
SPECIFIC GRAVITY = 1.0  
TANK MATERIAL - MILD CARBON STEEL  
THICKNESS - INNER - 1/4"  
THICKNESS - OUTER - 1/4"  
MIN. GAUGE OR THICKNESS (PER U.I. 2085)  
CONSTRUCTION - INNER - LAP WELD OUTSIDE ONLY  
CONSTRUCTION - OUTER - LAP WELD OUTSIDE ONLY  
TANK TEST - INNER - 1.5 TO 3 PSIG  
OUTER - 1.5 TO 3 PSIG  
INT. FINISH - NONE  
EXT. FINISH - SP-6 BLAST, FINISH PAINT WHITE  
LABEL - UL 2085 AND FIREGUARD® PER st

### LEGEND

|   |                                                                                                                    |
|---|--------------------------------------------------------------------------------------------------------------------|
| A | 2" FEMALE FIREGUARD COUPLING                                                                                       |
| B | 4" FEMALE FIREGUARD COUPLING                                                                                       |
| C | 8" FF50 150# FLANGE - PRIMARY EMERGENCY VENT USE ONLY                                                              |
| D | 8" FF50 150# FLANGE THROUGH OUTER SHELL ONLY, MARK WITH SPECIAL WARNING LABEL INTERSTITIAL EMERGENCY VENT USE ONLY |
| E | 2" FITTING THROUGH OUTER SHELL ONLY WITH CAST IRON PLUG - FOR MFG USE ONLY                                         |
| F | 2" INTERSTITIAL MONITOR PIPE - MALE NPT END                                                                        |
| G | 24" TIGHT BOLT MANWAY WITH "C" MOUNTED IN COVER & 1/2" FIBREFLEX GASKET                                            |
| H | 6" FEMALE FIREGUARD COUPLING                                                                                       |
| J | 4" X 150# RF50 FLANGE                                                                                              |
| K | 6" X 150# RF50 FLANGE                                                                                              |
| L | 3" FEMALE FIREGUARD COUPLING                                                                                       |

SHEET1 - GASOLINE TANK  
SHEET2 - DIESEL TANK



8# GROUNDING HOLE IN SUPPORT

R. J. Gynn  
MPE Inc  
1-4-22

### GASOLINE TANK

|                                                                                                                                                                              |          |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----|
| DELETED 4", CHANGED (1) 4" TO 3", ADDED 6", MOVED (2) 4", ADDED 4" FLG, ADDED 6" FLANGE, MOVED MW, MOVED E-VENT, MOVED (2) 2", ADDED SHEET2 FOR TANK B, E-VENTS TO FUEL TYPE | 12/30/21 | 001 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-----|

|                                                                                                            |                |
|------------------------------------------------------------------------------------------------------------|----------------|
|  <b>Highland Tank</b> |                |
| UNLESS NOTED, TOLERANCES ARE +/- 1"                                                                        |                |
| 9,900 GAL REC. FIREGUARD®                                                                                  |                |
| PATENT: 5,685,008 PATENT: 5,608,830                                                                        |                |
| CUSTOMER: MPE                                                                                              |                |
| PROJECT: NANTUCKET                                                                                         |                |
| PROJECT: HANNAIS BORT MA                                                                                   |                |
| QUOTE NO: 507971                                                                                           | CR'D BY:       |
| SCALE: 1/4"=1'-0"                                                                                          | DATE: 12/08/21 |
| 001                                                                                                        | 119300-1       |

TOWN OF NANTUCKET

LIST OF PARTIES IN INTEREST IN THE MATTER OF THE PETITION OF:

PROPERTY OWNER ..... MCCREADY RICHARD J ETAL TRSTS  
C/O NEW ENGLAND DEVELOPMENT  
MAILING ADDRESS ..75.PARK.PLAZA.#3,.BOSTON.MA.02116-3934  
PROPERTY LOCATION ..... 6 NEW WHALE ST  
4231-89.1  
ASSESSORS MAP/PARCEL .....  
SUBMITTED BY ..... YATES GAS

SEE ATTACHED PAGES

I certify that the foregoing is a list of persons who are owners of land directly adjacent to the subject property or directly opposite the subject property on any public or private street or way, all as they appear on the most recent applicable tax list.

03-02-2022  
DATE

Digitally signed by Rob Ranney  
DN: cn=Rob Ranney, o=Town of Nantucket,  
ou=Assessor's Office,  
email=rranney@nantucket-ma.gov, c=US  
Date: 2022.03.02 15:56:28 -05'00'  
ASSESSOR'S OFFICE  
TOWN OF NANTUCKET

Abutters Listing

| MBLU   | Lot | Lot Cut | Owner Full Name            | Co-Owner Full Name                       | Address Line 1   | City    | State | Zip   | Location        |
|--------|-----|---------|----------------------------|------------------------------------------|------------------|---------|-------|-------|-----------------|
| 4224   | 2   |         | NIR RETAIL LLC             | C/O NEW ENGLAND DEVELOP-<br>ACCTING DEPT | 75 PARK PLAZA #3 | BOSTON  | MA    | 02116 | OLD SOUTH WF    |
| 4231   | 37  |         | NANTUCKET ELECTRIC COMPANY | C/O PROPERTY TAX DEPT                    | 40 SYLVAN RD     | WALTHAM | MA    | 02451 | 10 NEW WHALE ST |
| 4231   | 87  | 1       | NIR NEW WHALE ST LLC       | C/O NEW ENGLAND<br>DEVELOPMENT           | 75 PARK PLAZA    | BOSTON  | MA    | 02116 | 2 NEW WHALE ST  |
| 4231   | 88  |         | NIR SALEM ST LLC           | C/O NEW ENGLAND<br>DEVELOPMENT           | 75 PARK PLAZA #3 | BOSTON  | MA    | 02116 | 4 NEW WHALE ST  |
| 4231   | 88  | 1       | NIR SALEM ST LLC           | C/O NEW ENGLAND<br>DEVELOPMENT           | 75 PARK PLAZA #3 | BOSTON  | MA    | 02116 | 4 NEW WHALE ST  |
| 4231   | 89  |         | NIR SALEM ST LLC           | C/O NEW ENGLAND<br>DEVELOPMENT           | 75 PARK PLAZA #3 | BOSTON  | MA    | 02116 | 9 SALEM ST      |
| Count: | 6   |         |                            |                                          |                  |         |       |       |                 |

## **ABUTTER NOTICE**

---

### **PUBLIC HEARING**

Please be advised that the Select Board, pursuant to MGL Ch. 148 § 13, will hold a public hearing on Wednesday, March 23, 2022 at 5:30 PM to consider an application for a new bulk fuel storage license for Winthrop Nantucket Nominee Trust/Harbor Fuel Oil Corp. to construct two new fuel tanks (Class I Gasoline, 9,999 gallon tank and Class II Diesel Fuel, 9,999 gallon tank), located at 6 New Whale St (fka 9 Salem St, fka 8 New Whale St), Nantucket, MA 02554 (Map 42.3.1, Parcel 89.1). The hearing will be held in-person at the first floor Community Room of the Public Safety Facility, 4 Fairgrounds Road as well as via Zoom Webinar. Please see meeting posting for remote participation and viewing links. For further information, please email [TownManager@nantucket-ma.gov](mailto:TownManager@nantucket-ma.gov).

**SELECT BOARD**

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## Monthly Town Management Activities Report

March 23, 2022

As of 03/17/22

### Highlights (major projects):

#### Plans/Reports/Studies\*

- Coastal Resiliency Plan – endorsed by Board on 1/5; Next Steps: 2 day “Design Thinking Workshop” with Arcadis scheduled for 3/7-8; **Workshop successful – outcome presentation in process/tentative for 4/6 SB; plus update re: CRP from Coastal Resilience Coordinator**
- **Sustainability framework from 2019/2020 KLA report to be resurrected and implemented; integration of HMP, CRP, St Plan, Master Plan and others needs to be managed; on hold until staffing available**
- Strategic Plan (implementation on-going); updated Strategic Plan for 2020-21 adopted at 1/13/21 Select Board meeting; staff working on implementation planning; reviewed status of implementation with SB 10/13/21; need to schedule follow-ups re: solid waste, IT, form of government study committee; solid waste l-t planning workshop scheduled for 11/15; next l-t planning workshop scheduled for 2/7/22; **next long-term planning workshop TBD; Staff to work on St Plan update; “State of the Town” update scheduled for 4/27 SB**
- Madaket Water Quality Improvement Plan – review of final Weston & Sampson report with updated Madaket sewer cost estimate and scope scheduled for Feb 2; staff meeting to follow up on 2/2 SB discussion; **in process of evaluating options**
- Facilities Master Plan – Select Board workshops in November and January; follow-up workshop with Town Admin recs scheduled for ~~June 28~~ **July 8** August 19; concession planning led by Facilities working with Park & Recreation Commission and other stakeholders for input (Coastal Res; Historic Pres, etc); contract with Weston & Sampson for professional assistance – *this will need to be put on hold for now until Facilities Director position is filled*; need direction from SB re: DPW facility; continuing exploratory review of Delta area property; **Energy Reduction Plan (Green Communities) needs to be integrated into Facilities Master Plan (Energy Office and Facilities Director)**
- Baxter Road long-term planning – contract executed with Arcadis at 2/10/21 SB meeting; update expected in early April; update given at 4/14 SB meeting; update provided to SB on 7/14; stakeholder final input meeting 9/14; final report to be presented 10/6; SB Position statement endorsed at 11/3 mtg; Town Admin working to secure professional assistance for relocation plan; scope of work for relocation services scheduled for review with SB in Jan; scope of work approved at 1/12 SB meeting; **relocation planning efforts underway (some property owner meetings have occurred; regular internal meeting scheduled)**
- PFAS Town-wide Risk Assessment – report presented at 2/10/21 SB meeting; staff working with consultant on next steps; inquiries rec’d and responses provided to Airport area (and beyond) residents; update on PFAS efforts provided to SB on 7/7; working with CDM Smith on Phase II assessment; facilitated public information session 8/17/21; numerous PFAS issues being worked on; update provided to SB 9/22; next public info session October 21; Sampling plan submitted to MassDEP 12/1/21. Waste water PFAS destruction new technologies report an analysis compiled 10/30/21; UMASS private well sampling project almost completed; AFFF site visit report received 1/18/22; MassDEP SRF application for possible project; **next public info session TBD after further info to be provided by DEP**

### Meetings

- Department Heads 1:1
- Cabinet Monthly
- Cabinet Problem-Focused Retreat quarterly
- Town Admin Staff – 2 separate meetings monthly
- Agenda Prep – weekly meetings
- Select Board – individual meetings, weekly
- **2022 ATM outreach prep**
- Cape Cod Managers – monthly
- Summer Issues Team (this has transitioned into a business license/issues team)
- PFAS 2x-weekly – communications, planning; MassDEP solid waste testing

- Solid waste long-term planning
- DPW Spring/summer prep
- Stormwater/Children's Beach
- Behavioral Health Steering Committee
- OIH
- SBPF
- Baxter Rd relocation
- USACE Supply Chain – Revisions by USACE underway; project stalled
- ICMA Regional Conference (Boston April 6-8)

#### *Events*

#### *Projects/Other\**

- COVID-Related: working on restoring “normalcy” with meetings, projects; addressing/dealing with COVID-related delays and impacts
- Nobadeer Field House – **construction underway**
- Town Pier – waiting on final federal permitting; hope to bid out in spring 2022, start work fall 2022
- Harbor Place – no recent activity
- Third Sewer Force Main – planning underway; bids due end of October; **contract approved; project to commence in March – reviewed with SB 3/9/22**
- Waitt Dr – **construction underway**
- Washington/Francis Street; **short-term fixes (paving, drainage, rounding of corner) underway for Spring 2022**
- SBPF/Baxter Rd – **on-going; substantial staff time**
- Coastal Resiliency Plan “Design-Thinking” Workshop short-term projects; Madaket/Ames fortification; Polpis/Sesachacha Pond; in development
- DEI Strategic Plan – consultant engaged, Leadership Readiness Sessions completed with dept heads and some community members; **employee engagement underway**
- Classification & Compensation Study – contract award pending; **initial meeting with Town Manager and HR Director; Cabinet – project underway**
- Succession Planning and Retention long-term strategy – **underway with consultant**
- Development/update of fall/winter projects map/timeline – regular monitoring, updating
- Seasonal AND year-round employee housing site design – met with AHT rep; met with architect for seasonal housing at 2FG/Waitt Dr; mtgs with union reps as to housing ideas; **employee survey sent - results under evaluation; other town employee housing initiatives under active discussion; pilot program for Town employee housing assistance under development**
- Procurements for: shooting range RFP out, due back 4/11
- Prioritization of DPW projects - ongoing
- OIH (New Facility)
- Potential Water Main Extension West of Airport (PFAS-related) – **exploration underway/reviewed with SB 3/16/22**
- “State of the Town” update April 27
- Lamppost repair and LED lighting review project - underway

*MANY ITEMS HAVE HAD TO BE PUT ON HOLD DUE TO COVID-19 PANDEMIC RESPONSE – some of these include:*

- *Revisions/Updates to the Real Estate Yard Sale Program* – working on review of proposed revisions with Board
- *Pool Discharge (and/or Stormwater) Regulations* – **underway**
- *Marijuana License Regulations*

- *Sheep Pond Road – **working on alternative access options***
- *Regulations Codification project – have rec'd codified regs; need to schedule public hearings with 8 Boards/Commissions – ~~in-queue~~ **underway***

*Personnel (highlights)*

- Collective Bargaining Negotiations (all units)
- Performance Reviews (on-going)
- Deputy DPW Director/Ops
- Assistant Town Manager for Administration
- Fire Chief (Sept) –
- Collector (June)
- Town Accountant
- Procurement Assistant

Summary

## **Terms of Draft Memorandum of Understanding as of 3/2/22**

### **Baxter Road Long Term Planning Project**

The following are the terms of the enclosed Memorandum of Understanding (the "MOU") which the Board and SBPF agree to work together for the maintenance of the Existing Project and any phased expansion, the Relocation Plan for Baxter Road and the cost sharing for the maintenance of the Existing Project and any phased expansion and the Relocation Plan for Baxter Road.

#### **Existing Project- Sections 1-3 of the MOU**

, The Board and SBPF shall:

- Bring Existing Project into compliance with sand requirements of the Order of Conditions;
- Present the Conservation Commission with proposed Operations and Maintenance Manual;
  - (a) Procedures for operation and maintenance of the Existing Project;
  - (b) Improved communication between Board, SBPF and Conservation Commission;
  - (c) Regular monitoring of obligations or duties of SBPF; and
  - (d) Ability to amend and update the Operations and Maintenance Manual; and
- File Notice of Intent for Phased Expansion by Board and SBPF, as co-applicants;
  - (a) SBPF undertakes with Board's support and cooperation, planning and permitting for offshore sand source and slurry delivery system ("Sand Bank") ;
  - (b) Town provides suitable locations for storage of sand for the Sand Bank.
  - (c) SBPF identifies, subject to Board approval, on and off island sand sources.

#### **Relocation Plan for Baxter Road- Sections 4 and 5 of MOU**

SBPF and Board will work together to agree on relocation plan for Baxter Road as follows:

- Public walking areas- Town and SBPF shall work with other Town boards and Land Bank to determine feasibility to create public walkways along Baxter Road and Bluff Walkway to Sankaty Lighthouse.
- Relocation Plan for Baxter Road-
  - (a) SBPF shall work with Board to agree on Relocation Plan;
  - (b) SBPF shall use its best efforts to deliver to the Town Relocation Documents:
    - (i) Hold harmless agreements from those benefitted parties;
    - (ii) "Springing easements" to relocate roadway in accordance with Relocation Plan;

- (iii) Forms approved by Town Counsel and without Eminent Domain Takings which run with land, held in escrow by Town, unless and until approval of phased expansion;
- (iv) Relocation Documents recorded upon approval of phased expansion if any;
- (v.) Board makes its best efforts to obtain any Relocation Documents not obtained by SBPF; and if unable to do so, may terminate MOU on fourteen (14) days' notice.
- (c) If no agreement on Relocation Plan, parties may terminate MOU on fourteen (14) days' notice.

**Cost Sharing of the Relocation Plan- Section 6 of the MOU**

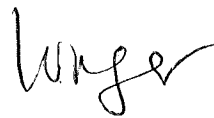
SBPF, with assistance of Town as required, shall:

- Create an arrangement such as a Coastal Resiliency District (the "District") or comparable entity for cost sharing among benefitted parties;
- Record District documents which will run with land; and
- Record District documents prior to commencement of site activities for any phased expansion.

**Performance Bond and Escrow- Section 7 of the MOU**

SBPF shall obtain and deliver to the Board:

- Performance Bond in an agreed upon amount for maintenance and/or removal of the Existing Project and any phased expansion;
- Increased Escrow held by the Town; and
- Delivery of Performance Bond and Increased Escrow prior to commencement of site activities for any phased expansion.



## **Terms of Draft Memorandum of Understanding as of 3/2/22**

### **Baxter Road Long Term Planning Project**

The enclosed Final Draft of the Memorandum of Understanding (the “MOU”) between the Town, by its Select Board and the Siasconset Beach Preservation Fund, Inc. (“SBPF”) as of March 2, 2022, is created by the parties to address issues with the existing Baxter Road Stabilization Project (the “Existing Project”) and to outline the terms for the Board and SBPF to work together for a phased expansion of the Existing Project and a Relocation Plan for Baxter Road.

#### Existing Project

As provided in Sections 1-3 of the MOU, in order to resolve the permit compliance issues for the Existing Project, the Board and SBPF shall:

1. Bring the Existing Project into compliance with the sand requirements of the Order of Conditions to resolve the enforcement order issued by the Order of Conditions and in accordance with Geotube Compliance Proposal;
2. Present the Conservation Commission with a proposed Operations and Maintenance Manual which provides for:
  - (a) The procedures for operation and maintenance of the Existing Project in accordance with the Order of Conditions for the Existing Project;
  - (b) An improved means of communication between the Board, SBPF and the Conservation Commission;
  - (c) Regular monitoring of the obligations or duties of SBPF; and
  - (d) Ability to amend and update the Operations and Maintenance Manual as needed in the event of the Conservation Commission’s grant of a permit for the phased expansion of the Existing Project.
3. Upon resolution of enforcement issues and compliance with the permits for the Existing Project, the Board and SBPF shall proceed as co-applicants to file a notice of intent for the Phased Expansion of the Existing Project with a goal of the issuance of an Order of Conditions for the expanded project no later than Summer, 2022 provided:
  - (a) SBPF undertakes with the Board’s support and cooperation, the planning and permitting for an offshore sand source and slurry delivery system (“Sand Bank”) to provide source for affordable and suitable quality sand for future phases of the Existing Project and for other Nantucket projects;
  - (b) The Town providing suitable locations for storage of sand for the Sand Bank.
  - (c) SBPF identifies, subject to Board approval, on and off island sand sources (which may include sand from a future Sand Bank storage location) for operation and maintenance of the Existing Project and any initial phased expansion which will comply with the Operations and Maintenance Manual and all applicable local, state and federal permits.

### Relocation Plan for Baxter Road

As set forth in Sections 4 and 5 of the MOU, SBPF and the Board will work together to agree on a relocation plan for Baxter Road as follows:

1. Public walking areas- In order to address the possibility of creating public walking areas along Baxter Road and the Bluff Walk to the Sankaty Lighthouse provided safety allows, the Town and SBPF shall work with other Town boards and the Land Bank to determine the feasibility to acquire, restrict and manage vacant land on the ocean side of Baxter Road.
2. Relocation Plan for Baxter Road-
  - (a) SBPF shall cooperate with the Board for the planned relocation of Baxter Road, as recommended by the Town's engineering consultants and legal counsel.
  - (b) Upon agreement of the relocation plan, which includes agreement on layout and location, and the trigger points and timeline for implementation of the road relocation (the "Relocation Plan"), SBPF shall use its best efforts to deliver to the Town (i) hold harmless agreements approved by Town Counsel from the property owners abutting the roadway relocation and those property owners benefited by the Existing Project and any phased expansion; and (ii) "springing easements" approved by Town Counsel which will enable the Town to relocate the roadway in accordance with Relocation Plan, without the need for eminent domain takings which run with the land and will be binding upon all successors and assigns and successors in control of affected properties (together the "Relocation Documents").
  - (c) Relocation Documents delivered to the Town by SBPF shall be fully executed and held in escrow and the easements shall not be recorded, unless and until the Conservation Commission approves a phased expansion of the Existing Project under conditions agreed to by SBPF and the Town.
  - (d) Upon such approval by the Conservation Commission, the Relocation Documents shall be released from escrow and SBPF shall record the easements with the Nantucket Registry of Deeds, prior to the commencement of any site disturbance or construction for any phased expansion of the Existing Project.
  - (e) If SBPF is unable to deliver all of the Relocation Documents, the Board shall make its best efforts to obtain the remaining Relocation Documents and if the Board is unable to do so, it has the right to terminate this MOU on fourteen (14) days' notice.
  - (f) In the event SBPF and the Board are unable to reach an agreement on the Relocation Plan, then the parties have the right to declare the MOU null and void on fourteen (14) days' notice.

### Cost Sharing of the Relocation Plan

Section 6 of the MOU provides that SBPF, with the assistance of the Town as required, shall prepare documents to create an arrangement such as a Coastal Resiliency District (the "District") or comparable arrangement designed for the proportionate sharing of costs for the ongoing and

future operations of the Existing Project and proposed phased expansion as well as the relocation of the roadway in accordance with the Relocation Plan to be shared by private, non-profit and governmental entities, which receive benefit from the Existing Project or any phased expansion of the Existing Project as well as from the maintenance and relocation of the existing roadway in accordance with the Relocation Plan.

The District will be created by acceptable recorded documents, provided or approved by Town Counsel to be recorded on the title of the property owners in the defined District in the Registry of Deeds, prior to any site disturbance or commencement of construction activities in the event of the Conservation Commission's approval of a phased expansion of the Existing Project.

#### Performance Bond and Escrow

As set forth in Section 7 of the MOU, in order to pay for the removal and/or to cover the costs for maintenance of the Existing Project or any phased expansion in the event that SBPF dissolves or refuses to continue to maintain the structure in accordance with the permit requirements or the removal of the structure by a court order and a final judgment entered thereon, SBPF shall obtain and deliver to the Board (1) a Performance Bond in an agreed upon amount to provide funding to continue maintenance of the Existing Project and any phased expansion of the Existing Project and or to remove the same, and (2) shall increase the amount of the escrow being held by the Town deemed sufficient by both the Town and SBPF to pay for the removal of the Existing Project and the expansion elements to be constructed. A copy of the Performance Bond and the increased escrow shall be delivered to the Board prior to commencement of any site disturbance or commencement of construction activities in the event the Conservation Commission approves of any phased expansion of the Existing Project.

MOU

**Final Draft As of 03/02/22**  
**Memorandum of Understanding**  
**Baxter Road Long-Term Planning Project**  
**Between**

**Town of Nantucket, by its Select Board and the Siasconset Beach Preservation Fund Inc.**

This Memorandum of Understanding (“MOU”) is entered into this, 2022, by and between the Select Board (“Board”) of the Town of Nantucket (“Town”) and the Siasconset Beach Preservation Fund Inc. (“SBPF”), a Massachusetts 501(c)(3) corporation.

WHEREAS, the Board is undertaking efforts to address the Town’s coastal protection and resiliency, and SBPF has been working in cooperation with the Board to address issues specific to the area in and around the Siasconset Bluff in the Village of Siasconset;

WHEREAS, the Village of Siasconset contains important municipal, historic, community, recreational and environmental resources, including the Flagg Beach, the Bluff Walk, and Baxter Road, which provides utilities and access to a neighborhood of historic homes and to the Sankaty Head Lighthouse;

WHEREAS, this area is subject to significant impacts of coastal erosion, sea level rise, and similar events;

WHEREAS, there is an existing Baxter Road Stabilization Project duly permitted as a pilot project (“Existing Project”), pursuant to a prior Memorandum of Understanding between the Board and SBPF dated July 5, 2013 (attached hereto as Attachment No. 1), as well as an Amendment of the First Memorandum of Understanding dated October 9, 2013 (attached hereto as Attachment No. 2), and an existing License Agreement between the Town, SBPF, and other involved Baxter Road property owners (Attachment No. 3), consisting of the installation and maintenance of sand-filled “geotubes” at the toe of the Siasconset Bluff from 87-105 Baxter Road which has been in place for 8 years and has demonstrated significant successes, including protection of the roadway and public infrastructure along Baxter Road, protection of access to existing homes on the north end of Baxter Road, as well as protection of continued public access to the Sankaty Head Lighthouse, and public access for passive recreation and sightseeing;

WHEREAS, the Board and SBPF both value the substantial benefits of the public-private partnership between them initiated in 2013, including SBPF’s cooperation and assistance reaching agreement with involved property owners for alternative access to the north end of Baxter Road in the event of an imminent threat to the roadway, and plans for a “shovel-ready” roadway relocation project in the event of such threat, as well as One Big Beach Easements from property owners benefited by the Existing Project, all as set forth and agreed to in the Memorandum of Understanding for Alternative Access to North End of Baxter Road attached hereto as Attachment No. 4;

WHEREAS, the Board and SBPF desire to resolve permit compliance issues which have led to an enforcement order issued by the Nantucket Conservation Commission (“Commission”) to remove the project and strengthen the means by which the Board and SBPF can better

communicate with the Commission in order to ensure compliance with the terms and conditions of the permit for the Existing Project in a timely manner;

WHEREAS, should the Board be satisfied that the existing permit conditions are met and compliance is underway and established for the future pursuant to an approved Operations and Maintenance Manual, as referenced and described in paragraph 2 below, and on the further condition the Board is satisfied there is significant community benefit to maintaining the existing Baxter Road until relocation is designed and applicable triggers are met, the Board and SBPF desire also to seek permitting, as co-applicants, for a phased expansion of the Existing Project to areas where erosion is undermining the toe of the natural bluff and threatening failure of the existing public way, public infrastructure and pre-1978 residences, in order to create an economically and environmentally sustainable system based on the lessons learned from the Existing Project, and so that the Board, on behalf of the Town, and SBPF may best serve their respective interests in a mutually beneficial public-private partnership, with private funding;

To accomplish the foregoing, the Board and SBPF hereby agree as follows:

1. The Board and SBPF shall work together to bring the Existing Project into compliance with the compensatory sand requirements of the Order of Conditions for the project in order to resolve the enforcement order issued by the Commission on September 2, 2021, in accordance with the Geotube Compliance Proposal attached hereto as Attachment No. 5, as may be revised in accordance with feedback from the Commission at future workshops and/or public meetings or hearings on the proposal.
2. The Board and SBPF shall also present the Commission with a proposed Operations and Maintenance Manual ("O&M Manual"), attached hereto as Attachment No. 6, which sets forth required procedures for operation and maintenance of the Existing Project in accordance with the terms and conditions of the Order of Conditions governing the Existing Project, and provides for better means of communication between the Board, SBPF and the Commission, and which can be amended and adjusted in the event the Commission later grants a permit for the phased expansion of the Existing Project.
3. Once the enforcement issues are resolved and compliance with the existing permit conditions achieved, the Board and SBPF shall proceed, as co-applicants, with a notice of intent for the phased expansion of the Existing Project (with the objective of obtaining an order of conditions for the expanded project no later than Summer 2022), predicated upon SBPF undertaking, with the Board's support and cooperation, the planning and permitting for an offshore sand source and slurry delivery system ("Sand Bank") which shall serve as a source of affordable and suitable quality sand for future permitted phases of the proposed expansion of the Existing Project, as well as potentially for other projects on Nantucket, with the Town providing suitable location(s) for storage of sand for the Sand Bank. It is anticipated that the Sand Bank will take a number of years for requisite permitting and implementation. In the meantime, SBPF shall identify for the Board's approval suitable on and/or off island sand sources (which may include sand from a future Sand Bank storage location) for operation and maintenance of the Existing Project

and any initially phased expansion in full compliance with the O&M Manual and any and all applicable local, state or federal permit conditions.

4. The Board and SBPF shall coordinate with other Town boards and the Land Bank to determine the feasibility of the acquisition, restriction and management of vacant land on the ocean side of Baxter Road for the purpose of public walking access to the Sankaty Lighthouse along the Bluff Walk and in the roadways, in both instances when safety permits.
5. SBPF shall cooperate with the Board for the planned relocation of Baxter Road, in accordance with the recommendations of the Town's engineering and legal consultants. Once SBPF and the Board have agreed to the relocation plan, including agreement on layout and location, and trigger points and/or timeline for implementation (the "Relocation Plan"), SBPF shall use best efforts to provide the Town with hold harmless agreements, in form and substance provided or approved by Town Counsel, from property owners abutting the layout of the roadway relocation and/or property owners otherwise benefited by the Existing Project and any phased expansion, as well as "springing" easements, in form and substance provided or approved by Town Counsel, to enable the Town to relocate the roadway in accordance with the agreed Relocation Plan, without the need for eminent domain takings, which shall run with the land and be binding upon all successors in interest or successors in control of involved properties (the "Relocation Plan Documents"). Should the parties be unable to reach agreement on the Relocation Plan, the parties shall have the right to declare this MOU null and void on 14 days notice. Any Relocation Plan Documents SBPF obtains shall be fully executed but held in escrow and the easements shall not be recorded unless and until the Conservation Commission approves a phased expansion of the Existing Project under conditions which are agreed to by SBPF and the Town. Thereafter, those Relocation Plan Documents shall be released from escrow, and SBPF shall record the easements in the registry of deeds, with recording information delivered to the Board, prior to the commencement of any site disturbance or commencement of construction activities in the event the Commission approves any phased expansion of the Existing Project. Should SBPF be unable, despite best efforts, to deliver all of the Relocation Plan Documents to the Board's satisfaction, the Board shall make its best efforts to obtain the remaining Relocation Plan Documents and, if the Board is unable to do so despite its best efforts, the parties shall have the right to terminate this MOU on 14 days notice.
6. SBPF, with the assistance of the Town when required, shall prepare documents evidencing a sustainable system for the ongoing and future operations of the Existing Project and proposed phased expansion project, as well as relocation of the roadway in accordance with the agreed Relocation Plan, such as a Coastal Resiliency District or comparable arrangement (the "District"), designed for the proportionate sharing of costs for private, non-profit, governmental, or other entities, which receive benefit from the Existing Project or any phased expansion project, as well as from maintenance of the existing roadway and relocation of the roadway in accordance with the agreed Relocation Plan. The District shall be defined and established by a suitable recordable instrument or instruments, in form and substance provided or approved by Town Counsel, to be

recorded against the title to the property owners in the District, setting forth the rights and obligations of the Town and the property owners and shall be recorded in the registry of deeds, with recording information furnished to the Board, prior to any site disturbance or commencement of construction activities in the event the Commission approves any phased expansion of the Existing Project.

7. SBPF shall also obtain and deliver to the Board a Performance Bond in an agreed upon amount to provide funding to continue maintenance of the Existing Project and any phased expansion of the Existing Project and/or to remove the Existing Project or any phased expansion, and shall update the amount of the escrow being held so that it is deemed sufficient by both the Town and SBPF to pay for the removal of the Existing Project and the expansion elements to be constructed in the event SBPF dissolves, or is otherwise unable to or refuses to continue to maintain the structure in accordance with applicable permit requirements, or the structure must be removed pursuant to a court order and final judgment entered thereon. The Performance Bond and the increased escrow shall be in place prior to commencement of any site disturbance or commencement of construction activities in the event the Commission approves of any phased expansion of the Existing Project.

This MOU supplements and is not intended to rescind any of the provisions of the 2013 MOU, as amended, or of the Alternative Access Agreement or License Agreement referred to above, to the extent the terms and conditions of those agreements are otherwise consistent with this MOU. In the event of inconsistency between any terms or conditions of the prior agreements or this MOU, the terms and conditions of this MOU shall govern.

Town of Nantucket,  
By its Select Board

Siasconset Beach Preservation Fund, Inc.,  
By its President

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