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CONSERVATION COMMISSION MINUTES

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, May 8, 2025 – 5:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.

<https://youtube.com/live/ySkz9c5y3j8>

Commissioners: Seth Engelbourg (Chair), Linda Williams (Vice Chair), Tim Braine, Mike Misurelli, Joe Plandowski, John Schafer, and RJ Turcotte

Called to order at 5:00 p.m. by Chair Engelbourg

Staff in attendance: Jeff Carlson, Natural Resources Director, Will Dell’Erba, Conservation Agent
Attending Members: Engelbourg, Misurelli, Plandowski, Schafer, Turcotte, & Williams. Braine (arrived at 5:03pm)
Absent Members: -
Members Left Early: -

I. Acceptance of the Agenda

Motion	Motion to accept Agenda (Made by: Misurelli) (Seconded by: Plandowski)
Vote	Vote Carried: 6-0 Engelbourg, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

II. Public Comment

Chair Engelbourg called for public comment

Public Comment (00:02:53)	none
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III. Public Hearing

A. Notice of Intent- No Waiver Required: Pre-January 1st Submissions

1. 3 Star Farm LLC- 76 Eel Point Road (32-31) SE48-3884

Sitting:	Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	Engelbourg
Representatives:	Mark Rits, Site Design Engineering, presented the item and responded to the Commissioners’ questions.
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	Willa Arsenault- Nantucket Land & Water Council Natalie Kaufman, council for abutters, the Benders & Knise families.
Discussion: (00:03:30))	Rits - Reviews the additional information and a revised site plan, which was requested by the Commission at the last meeting. - The revised plan reflects a cross section through jurisdictional areas of work, a description of construction sequencing where the fence installations will be done at the limit of work followed by clearing and construction of retaining walls. - There is also increased infiltration on the property within jurisdictional areas. Williams - Asks when the proposed project is planned as neighbors were worried about the access during the summer months. Rits Williams - The applicant doesn’t have a specific start time of year.

	Dell’Erba - It seems that you’re representation is being made with everything 100% on site, that solved one of the neighbor’s biggest issues. Asks Dell’Erba if he’s comfortable with what the applicant proposed. - Thinks it’s a very complicated plan and that any questions in relation to directing the water need to be addressed by the engineer. - There is probably limited to what they can do to divert storm water to where we would like it to be.
	Misurelli - Approved the updated plan in terms of the drainage and grading. It seems to be catching all of the storm water from the grading.
	Turcotte - Asks Rits if the infiltration is going to be at the same elevation or similar elevation to the subsurface propane, pool, and cabana.
	Mulloy - The infiltration will start at grade where it will be collected, and the pits will be all located below the utilities and below the propane tank.
	Turcotte asks how far below the utilities and propane tank
	Mulloy - Bottom of the leech pits around elevation 12 and in some cases down around 10.
	Turcotte - Discusses the elevation difference and “wrestling with” the fact on how that meets the performance standard and isn’t going to change how this wetland functions. - I personally have never dealt with a project with this amount of fill.
	Plandowski and Braine have no comments at this time.
	Schafer - Asks if he still thinks 70% of the material will come from the excavation site.
	Rits - Believe there will be about 50-75% will come out of the excavation and evening out of the driveway.
	Williams - The only things we have jurisdiction over at this moment is just left and above the blue line on the plan.
	Rits - Most of the fill will be between the 50-foot wetland buffer and the 100-foot buffer zone.
	Williams - Is there a reason you didn’t consider the existing topography to eliminate so much fill on top of that hill? - Is there a reason that more of the existing grade didn’t get followed?
	Rits

	- We are cutting down the grade considerably to get the house in. We're cutting down on the top of the hill to get the house situated and this is just to even out everything around the house. - This project is under a separate review with Heritage prior to the filing of the NOI. - It's my understanding that those projects can be closed and conditioned to comply with whatever the outcome of the review is.
Turcotte	
Mulloy	- I would like to get the volume of fill that's planned to be put in there. - We haven't calculated the volume of fill, so I don't have a number for you. - The volume of fill in any other project that we've done has never been questioned.
Arsenault	- Emphasized that the need for revisions to the plan confirms that the original proposal as submitted and the current proposal doesn't meet the performance standard of 3.02B2 - The mitigations clearly change the flood protection function as we're now having to mitigate for it.
Kaufman	- Urges the commission to require a waiver for this case. - Concerned about the volume of fill and the cumulative impact with so much happening. - Doesn't believe this much development needs to be done in such a delicate area. - The abutters don't support a lot of this project but ask that the Commission put in as much protection and mitigation as possible.
Rits	- We don't acknowledge that this project requires a waiver under the bylaw and feel that the project as originally designed was compliant. - We don't feel that there will be adverse impacts to the Wetland hydrology and have included the infiltration systems and the storm water capture as a response to requests from Commissioners.
Braine	- I think it's a lot but I think all of our requirements are met.
Staff Recommendation:	Dell'Erba confirms that they have everything needed to close
Motion:	Motion to close (Made by: Misurelli) (Seconded by: Schafer)
Vote:	Carried://4:2 Braine, Misurelli, Schafer, Williams (aye) Plandowski, Turcotte (nay) Engelbourg (recused)

B. Notice of Intent- No Waiver Required

1. Nantucket Islands Land Bank- Smooth Hummocks Way (82-30) SE48-3893

Action:	CONTINUED UNTIL MAY 22, 2025
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2. Purcell- 32 Dukes Road (56-188) SE48-3904

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	----
Representatives:	Joseph Topham, Topham Deign
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments
Discussion: (33:16)	No questions or comments from Commissioners

Staff Recommendation:	Dell’Erba confirms they have everything needed to close
Motion:	Motion to close (Made by: Misurelli) (Seconded by: Turcotte)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Schafer, Plandowski, Turcotte, Williams (aye)

C. Notice of Intent- Waiver Required: Pre-January 1st Submissions

1. Sconset Beach Preservation Fund- 59-83 Baxter Road (various) SE48-3759

Action:	CONTINUED UNTIL MAY 22, 2025
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2. The Summer House of Nantucket Realty Trust- 10 & 16 Ocean Avenue (73.2.4-15, 23, & 21) SE48-3824

Action:	CONTINUED UNTIL MAY 22, 2025
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3. West Ashored LLC- 62 Wanoma Way (92-16) SE48-3869

Action:	CONTINUED UNTIL MAY 22, 2025
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D. Notice of Intent- Waiver Required (none)

E. Amended Orders of Conditions- No Waiver Required (none)

F. Amended Orders of Conditions- Waiver Required:

1. *Nantucket Islands Land Bank- 48 South Cambridge Street (9.3-42) SE48-3055

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	---
Representatives:	Elizabeth Phelps, Nantucket Islands Land Bank
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (34:35)	Phelps - The property is currently approved with a parking area, walkways, a sitting area, and an elevated walkway to a pier on Long Pond. - We have been informed that our geogrid, crush gravel, walkway, sitting areas and parking lot surfaces are not ADA compliant. - We are requesting the AOOC to perform ADA upgrades at the site. - We had originally requested a waiver but don’t feel that it’s needed. - The only portion of structure that’s within the 50-foot buffer zone to the BVW is a portion of the wood walkway. No questions or comments from Commissioners
Motion:	Motion to close (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

IV. Public Meeting

A. Orders of Conditions/ Amended Orders of Conditions- Waiver Required: Pre-January 1st Submissions

1. 3 Star Farm LLC- 76 Eel Point Road (32-31) SE48-3884

Sitting:	Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	Engelbourg
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (38:25)	Dell’Erba presents the item Williams requests to add finding #2- “No work may commence until NHESP review is complete and submitted to staff.”

Motion:	Motion to approve the OOC as Amended (Made by: Schafer) (Seconded by: Misurelli)
Vote:	Carried://4:2 Braine, Misurelli, Schafer, Williams (aye) Turcotte, Plandowski (opposed) Engelbourg (recused)

2. Nantucketshire LLC- 30 Dukes Road (56-189) SE48-3687 (REISSUE)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	-
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (59:34)	Dell’Erba presents the item
Motion:	Motion to Reissue the Permit (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Schafer, Plandowski, Turcotte, Williams (aye)

B. Orders of Conditions/ Amended Orders of Conditions- Waiver Required

1. *Nantucket Islands Land Bank- 48 South Cambridge Street (9.3-42) SE48-3055

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	-
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:45:07)	Dell’Erba presents the item and mentions that Phelps believed waivers were not required. Engelbourg - The discussion essentially relates to whether we think the wood path is water dependent or not. If it’s not, it extends into the 25-foot buffer zone so it would need a waiver. Williams - Handicap accessibility to access water is water dependent. You can’t get to the water legally under the AAB or the ADA. It would be water dependent as you would have to use it to get to the water. Misurelli - To get to the boardwalk and then the boardwalk is in water, so I don’t see harm in adding the waiver. Turcotte and Engelbourg confirm that if it’s water dependent, it wouldn’t need a waiver. Engelbourg - <u>Requests to add the permit overview changes.</u>
	Motion to approve the OOC as Amended (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

C. Orders of Conditions/ Amended Orders of Conditions- No Waiver Required

1. Purcell- 32 Dukes Road (56-188) SE48-3904

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	-
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:50:32)	Dell’Erba presents the item

Motion:	Motion to approve the OOC as drafted (Made by: Williams) (Seconded by: Plandowski)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

2. Madron Lake LLC- 26 Monomoy Road (54-146) SE48-3881

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	-
Representatives:	Paul Santos, Nantucket Surveyors, LLC
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:52:08) Discussion continued at (01:12:47)	Dell’Erba presents the item Santos - The original order was for the grading for cellar access. This Amended Order was for the wood retaining wall and patio. Engelbourg - We will hold this one over until the end of the meeting tonight. Dell’Erba presents the item at (01:12:47) and reviews Order
Motion:	Motion to Issue the AOOC as Amended (Made by: Williams) (Seconded by: Braine)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

D. Request for Determination of Applicability- Delineation Only

1. *Steamship Authority- 1 Steamboat Wharf (42 & 42.4.2-14) (Amundsen)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	-
Representatives:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:54:21)	Dell’Erba - This RDA was just for the emergency work to rescue the stranded dolphin off of the slip. - Recommends giving the filing a -5 determination: “The works displays the requirements for exemption for emergencies. No Notice of Intent is required.
Motion:	Motion to Issue with a -5 Determination (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

2. *Sankaty Head Golf Club Inc- 100 Sankaty Road (49-2, 163 & 164)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	-
Representatives:	Brian Madden, LEC Environmental Consultants
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:56:37)	Madden - The proposed RDA is just for confirmation of a total of 5 resource areas. Details the location of each.
Staff Recommendation:	Dell’Erba recommends a positive 2A Determination

Motion:	Motion to Issue with Positive 2A Determination (Made by: Turcotte) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

E. Request for Determination of Applicability- Work Requested

1. Nantucket Islands Land Bank- 101 Hummock Pond Road and 13 Millbrook Road (56-67 & 324.2)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	
Representatives:	Elizabeth Phelps, Nantucket Islands Land Bank
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (00:59:57)	Phelps - This RDA is for removing four discarded vehicles and debris that's within the buffer to a BVW.
Staff Recommendation:	Dell'Erba recommends a negative 2 and a negative 3 Determination
Motion:	Motion to Issue with -2 & -3 Determination (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

F. Minor Modifications

1. Nantucket Islands Land Bank- 19 Wauwinet Road (20-35) SE48-3636

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte
Recused:	Williams
Representatives:	Elizabeth Phelps, Nantucket Islands Land Bank
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (01:03:35)	Phelps - The modification is to allow Fog Town Farm to apply nitrogen and potassium sulfate to the berry field of the property. Misurelli - It was a very responsible, well laid out soil test and I'm fine with it.
Motion:	Motion to approve the Minor Modification (Made by: Turcotte) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

2. DJS Realty Trust- 11 Oak Hollow Lane (56-127) SE48-3834

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	-
Representatives:	Ryan Maxwell, Bracken Engineering
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (01:05:29)	Maxwell - The modification is just to rotate the tiny house 180 degrees further away from the Wetland.
Motion:	Motion to approve the Minor Modification (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

G. Certificate of Compliance

1. Golden Sunshine Realty Trust- 100 Cliff Road (41-14) NAN-139

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	
Representatives:	Ryan Maxwell, Bracken Engineering
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (01:07:45)	Dell 'Erba confirms that everything is in compliance but would continue the lighting condition #20
Motion:	Motion to approve the COC with ongoing condition #20 (Made by: Braine) (Seconded by: William)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

2. Nantucket Islands Land Bank- 46 & 48 Cambridge Street (59.3-41 & 42) SE48-2871

3. Nantucket Islands Land Bank- 48 Cambridge Street (59.3-42) SE48-2938

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	
Representatives:	Elizabeth Phelps, Nantucket Islands Land Bank
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (01:08:33)	Phelps - SE48-2871 & SE48-2938 are both for Long Pond Landing Engelbourg - Yes, we can take both applications together. Phelps - Both permits have expired. - The first one (SE48-2871) is for demolishing the house and abandoning the septic system. - The second is for the work that was done with the current parking lot, pathways, and sitting area. - Dell'Erba confirms that the site is in compliance and doesn't see the need for ongoing conditions
Motion:	Motion to approve both COC (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

4. Friedman- 35 Pilgrim Road (41-16.3) SE48-3896

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	
Representatives:	Patricia Halsted, Halsted Law
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (01:11:22)	Dell'Erba - The OOC involved the connection to the town sewer. - Site was in compliance and there are no ongoing conditions.
Motion:	Motion to approve the COC (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

H. Extension Requests (none)

I. Other Business

1. Approval of Minutes 01/23/2025, 03/06/2025, 03/12/2025, 03/20/2025

Motion:	Motion to approve all the Minutes (Made by: Schafer) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

2. Monitoring Reports – None

3. Reports: CRAC, CPC, NP&EDC, Harbor Plan, Offshore Wind Work Group, etc.

CRAC:	Braine - No report.
CPC:	Schafer - No report
NP&EDC:	Misurelli - No report
Harbor Plan	Williams - We are almost finished going through it and waiting for another draft so we can get closer to an approval.

4. Commissioner's Comments

Discussion: (01:15:35)	Turcotte - Asks if there will be a list of procedural and regulation updates for the fall meeting. Engelbourg - Once the poll is sent out, we'll get that meeting scheduled and Commissioners can send individually their topics that they want to discuss at the meeting to Will.
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5. Enforcement Actions

1. 14 Plover Lane

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams
Recused:	
Representatives:	Brian Madden, LEC Environmental Consultants- representing the applicant Dan Bailey, representing the abutters Glenn Wood, representing the property owner George Pucci, Town Council
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	Tony Cahill, concerned citizen Doug Delaney, Owner of 16 Plover Lane
Discussion: (01:17:13)	Dell'Erba - Dell'Erba met Brian Madden on site yesterday and delivery of the plate material and commencement of planting activities took place yesterday. - It was nice to see that in a lot of the disturbed area, there were some desirable wetland plants coming back. - Brian walked me through how things are going and where they're planning to go. - We have council here today to have a discussion about what we can do about fines. Engelbourg - There's a couple of parallel processes here, requiring the planning through the Enforcement Order and we also require a Notice of Intent to be submitted to continue dealing with the work on site. - It has come to my attention that a Notice of Intent application had been submitted but had not met the deadline for tonight's meeting. - This will be up for discussion at the May 22 nd meeting.

	- If anyone in the public has any questions in reference to the Notice of Intent application, please hold off until the next meeting. - Tonight, we solely have to talk about the planting activities that happened already through the Enforcement Order, the fining structure if we decide to move forward with that, and any additional Amendments we wish to make to the Enforcement Order in order to continue this process.
Misurelli	- Asks Madden to give an update on the planting progress and has the applicant taken any deer protection.
Madden	- The plantings were completed today along with preliminary invasive species management work that was specific to 14 Plover Lane - Waterworks was in the process of setting up the temporary irrigation system. - The temporary deer fencing is temporarily completed, but still in progress.
Schafer	- Has there been any further discussion with the abutters with restoration on their land too?
Madden	- No planting has occurred on the abutting properties. - All the plantings on the restoration plan have been installed on 14 Plover Lane.
Wood	- Mr Bailey and I continue to be in discussion to accomplish the plantings which plan to be placed at these other two properties. As yet, we haven't reached a final agreement on full terms.
Bailey	- The Enforcement Order issued by the Commission directed the owner of 14 Plover Lane to restore plantings that were taken out without any authority. - The abutters are not going to wave claims for trespass, property damage as well as wanting to make sure the plan submitted for the Notice of Intent is completed correctly. - In terms of the lighting and installed fence on the property, the owner is not complying with what the Commission has requested them to do through the Enforcement Order.
Madden	- I don't believe there has been any action yet on the lighting. As it relates to the fencing, we would like to temporarily keep the deer fencing to protect the plantings that were recently just installed. - We are proposing to remove that deer fencing once the plantings will be established and then a split rail fence will be installed.
Engelbourg	- In terms of the lighting, I agree that's it's completely non-compliant with the Nantucket code. - I think we should Amend the Enforcement Order to set a specified date to which the lighting needs to be removed. - The town has a lighting enforcement which he asks Dell'Erba to notify them of the situation.
Dell'Erba agrees to notify Marcus asap	
Engelbourg	- Moves a motion to amend the Enforcement Order to require lighting to be removed by a specific date and asks who has thoughts on a reasonable timeline.
Schafer	- Maybe by next meeting since we're going to be talking about it anyway.
Misurelli	- I would agree but not sure if that's a realistic timeframe- mentions possibly 30 days.
Engelbourg	

	- Respectfully, we have given them all this time to take the lights out, since the last meeting but if everyone agrees on 30 days, it's 30 days. Williams - Marcus doesn't go out to the properties at night so he will not send a letter of violation unless someone documents it at night. Engelbourg - It just needs to say that it needs to be in compliance with the Town of Nantucket's code for lighting by a certain date - Two days have been put before you- May 22nd or 30 days, we'll have to calculate what date that would be. Misurelli - I said 30 days but if 28 days falls on one of our meetings, I would be fine with that too. Madden - Clarifies that the NOI will be heard on June 5th.
Motion:	Motion to Amend the Enforcement Order to come into compliance with the Nantucket Lighting Code by June 5th (Made by: Schafer) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)
Continued Discussion: (01:34:32)	Engelbourg - Regarding the deer fencing, which is also installed without benefit of permit, how does the Commission feel about this topic? Plandowski - The fencing should stay for some period of time until the plantings survive Misurelli - Doesn't see the fencing as effective at all as the deer could jump it easily. - I think the fence should come down. Williams - If it all comes down, the deer will wipe it out again. They should have an 8ft fence and not a 6ft fence. Engelbourg - The fence is on one side and the deer could easily move around it but we won't allow fencing along the whole property given the impacts of that. - We should be moving towards individual plant protections and other tools and techniques that exist that haven't been employed. - It's been suggested in previous Enforcement Order hearings that the applicant intends to install protection of plants in some way, but we can't discuss the details of the NOI yet. Madden - The intent to be to encircle the clusters of planting areas with additional deer fencing within the Wetland and within the buffer zone areas. Engelbourg - I think the cluster model for some areas is totally reasonable. Dell'Erba - Believes the current fencing is protecting the bulk of the clusters of plantings. - Even though 6ft of fencing isn't ideal, it's potentially achieving some of the goal. Engelbourg - I think it's more of a privacy fencing and we should move to have it removed and appropriate species deterrence be installed. - If the removal of the current fence is motioned to approve, it makes sense to follow the same timeline as the lighting.
Motion:	Motion to Amend the Enforcement Order to remove the unpermitted fence by June 5th (Made by: Misurelli) (Seconded by: Braine)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)
Discussion Continues: (01:41:29)	Cahill - Doesn't believe there is enough planting along Wauwinet Road or along the property lines.

	Engelbourg - The planting done initially under this Enforcement Order was a first step and the Notice of Intent will cover any additional plantings, monitoring, replacement, etc as necessary. Delaney - Wanted to notify the Commission that Dan Bailey's comments earlier are accurate and it's just been a complete circus. - We've been trying to go out of our way to be accommodating in order to get this done and it just hasn't happened. Engelbourg - When Enforcement Orders are issued, they require complete restoration of all activities that were done without a permit. Planting needs to happen on other parcels as well. - In order to require the plantings to happen on other properties, we would have to Amend our Enforcement Order to include the adjacent properties and owners as a violator as well. I'm not sure if you want that. - It's in your interest to try and work with the 14 Plover Lane violators, representatives, and attorneys on what will be restored on your site, but we're not required to tell you to let them do anything. Madden - I think that we could modify the existing fence, and we could be more inclusive in the protection area in addition to height. - Asks if the Commission is looking for a modification to the existing fencing to ensure that it's functioning for deer protection as opposed to wholesale removal and reinstalling to cause more disturbance. Engelbourg - I think we're going to keep our Enforcement Order as Amended to require wholesale removal at this time but as it could be Amended it again if needed. - If you wish to submit a written letter and a plan for the May 22nd meeting, we'll take it under advisement. - The one issue that remains that we need to discuss is potential fines. Pucci - The general sentiment addressed in Attorney's Welshire's letter about the ticketing procedure, the non-criminal disposition procedure, is a very cumbersome procedure and does not address the scope of the options for penalties and enforcement authority that you have in your discretionary authority as the Commission. - You have other options beyond the scope in the letter that was previously reported to you. - The unique fee provision in your regulations which include 10x the amount for a Notice of Intent filing once an Enforcement has been issued already includes the amount of \$2,000 that the applicant paid for the recently submitted Notice of Intent, this would clearly be considered a penalty. - If you are contemplating penalties beyond that I would recommend that you take that amount into consideration when making that type of determination. - There are options and hopefully you don't end up in a court action that you're seeking to collect penalties that are contested. - In terms of unauthorized work in a jurisdictional area, there's a \$25,000 penalty that's right under the Wetlands Protection Act that can be pursued but you would need authorization from the Select Board. - I think that you want to have a discussion about what you think would be an appropriate amount in this instance and then we go from there. Engelbourg - Agrees that the role of Enforcements is to mitigate, restore and repair damages done in violations. - Good Commissions should endeavor to treat the violator and their representatives with respect and find a way to amicably solve the situation.
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	- I think that fines or other recourse are necessary as well to rectify the situation that was done. - The fee structure that was established within our updated regulations involved looking into resources from MACC as well as what other towns were modeling. - There seems to be a discrepancy between what is listed as defining amount under the bylaw and what is authorized by the Select Board. The bylaw allows fines up to \$300 a day to be issued but a memo states that the Select Board set a \$50 per day fining limit. - The fees were to begin on the day that the violation was discovered up until the day that the Restoration Order was submitted.
Pucci	- I would have to review the memo with the Select Board cap on the files. - Where the complication comes in it's more the ticketing procedure because the local regulations can provide one thing, but the state statute itself is very cumbersome about how you're supposed to do it as someone would have to issue the fines to the violator daily. - I would recommend coming up with a dollar amount of what you would think would be an appropriate penalty and then let's pursue it.
Engelbourg	- We did some math on the fining, and it was anywhere between 10-15,000. - Even with the restoration plantings that are going forward, the value of the mature trees, soil health, air and water quality that was damaged by the violation far exceeds the amount.
Schafer	- Before we come up with an amount, what is the goal of this fine? Is it to get them to restore the resource area or just to punish them because it was such an egregious violation because I don't think that's the place we want to go with fines.
Plandowski	- I have not been a supporter of fines and probably continually be a non-supporter for someone that's a cooperative violator. For a non-cooperative violator, that's a whole different thing.
Pucci	- I think the discussion about the goal is very important on what you're trying to achieve here. From that point, I'm going to give you the options to pursue that goal. - In the meantime, I will give you a memo clarifying different issues including the cap on the fines and other options that exist that you can continue to discuss.
Engelbourg	- I think it's obviously important to talk about what the goals are and take into consideration how much this violator and their representatives have accommodated us throughout the process with both the Commission and the abutters.
Misurelli	- I think one of our primary goals is compliance and restoration efforts but the fine as a deterrent is also very important for the Commission.
Engelbourg	- Agree and wants to set a clear message that ConCom doesn't stand for unpermitted work, especially in a egregious situations like this.
Williams	- Agrees with Plandowski, Misurelli, and Schafer to some extent. My goal is to compel them to comply and to restore.
Schafer	- Thinks everyone agrees that this case is over the top that we need to make some sort of statement. - The fine is not our only avenue. The DEP fine, the conservation restriction, and a bond that we can consider.
Pucci	

	- Clarifies that he wasn't referring to the DEP fine but the civil penalty under the Wetlands Protection Act. - There are separate sets of state regulations which are the monetary fee regulations that are specific to DEP. Engelbourg - As part of the Enforcement Order authorized Commission staff to write a letter to the DEP strike force letting them know that this violation happened. - Mentions the conditions of the surety bonds being when the Commission considers the Notice of Intent. Turcotte - We may never know the value of what was lost but there are penalties for the acts. The violator is not forgiven for what they did so fining them from the moment that it was reported until they came back to us with a plan is a good way to ensure compliance in a fast manner. Engelbourg - The applicant had access to the delineation and had actively engaged in ConCom permitting processes in the short months leading up to this act. Braine - I think it's good to have a fine as a deterrent and as a leverage over whoever made the violation. If someone who made the violation is cooperative, we could always reduce the fine. Engelbourg - What we need to do today is to see if we have a majority of members who want to access some type of fine at all. If we do, we will direct attorney Pucci to look at the options that are available and craft a memo to the Commission. - Once we have time to review that memo, we can schedule a discussion at a future meeting to see if we want to adopt any of those options and what the actual dollar amount would be. - Once we authorize all of those things, we would have to authorize town council to act on our behalf and bring that before the Select Board. Misurelli, Turcotte, Plandowski agrees with a fine from the date of violation to where we got compliance. Schafer and Williams would like to explore the options and Plandowski doesn't want to. Engelbourg requests Pucci to get the memo out to the Commission and to be in attendance at the June 5th meeting.
	CONTINUED DISCUSSION UNTIL JUNE 5TH

6. Potential Mechanism for SBPF sand delivery

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Williams
Recused:	Turcotte
Representatives:	Richard Nylen, Representing SBPF Meridith Moldenhauer, Representing SBPF Vince Murphy, Town of Nantucket
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments.
Discussion: (02:32:46)	Engelbourg - Confirms that Schafer is eligible to sit on this as he wasn't for the NOI application due to the filing being accepted prior to when he was in the Commission.

	- There is a request from SBPF before the town to use material that's being excavated from a project at 64 Baxter Road to be used as mitigation material for the geotube project. - This request in theory seems simple but in logistics it is very complicated because of the existing permits, licenses, or lack thereof of those things on the project areas. - The project SE48-3736 is subject to two appeals and is not active at this time until the appeals are determined. It is under my understanding that no appeals have been submitted for the local Order yet. (NAN-142) Murphy and Dell'Erba confirm there are no appeals for NAN-142 Engelbourg - Project SE48-2824 expired as of January 2025. There is an existing Enforcement Order for the removal of that structure that went to superior court and was upheld as a final order. - Whatever we do tonight, we don't Amend that Order in any way as it will make it complicated. - If we wish to issue a new Enforcement Order to allow for sand, we can go down that route, but we should consider Amending that final order. - SBPF submitted a narrative and a grand size analysis document to Select Board, which was forwarded to the Commission. - What we put into the new regulations that went into effect on January 1st, 2025, for compatible material is much more encompassing than grain size analysis. - We will have to determine if we allow this sand to be placed if it will need more testing or monitoring prior to its placement. Nylen - The situation is time sensitive as we will lose the 3-4,000 cubic yards of sand if we don't have a decision this evening. - We believe we have compatible sand which is from the same general area of the bluff and have the opportunity to put that onto the property, which is beneficial. - Agrees with Engelbourg about not Amending the Enforcement Order. - The Commission has an open Enforcement Order that you can issue a separate Enforcement Order that would allow the applicant to go forward with placing the sand. - We are very comfortable with the coloration, angularity, and grain size are similar and believe it's compatible. Engelbourg - We need documentation that the compatibility of the sand match and should be sent to the Commission. - Noting 3-4,000 as an estimate, is not sufficient. We need an accurate accounting of the material to the exact volume. - We will also need some photo monitoring or other form of monitoring in place. Nylen - Agrees to send the Commission documentation and encourages them to make a vote contingent upon receipt. - We could also provide you with the volume once it's placed in the truck. Moldenhauer - In the memorandum that was submitted to the Commission, it indicated that we would be more than happy to comply with any conditions for documenting the final amount of sand that's placed. Murphy
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	- Town staff met to discuss these issues earlier this week and the fact that we have been asking for sand to be placed on this area for some time, town staff and representatives from the Select Board were supportive of this. Engelbourg - Asks Pucci if we would be authorized to issue a separate Enforcement Order to allow for the work to proceed. Pucci - Confirms that the Commission could proceed under an Enforcement Order with adequate conditions. Engelbourg - Asks Pucci if in his opinion SBPF have all the other appropriate requirements that they would need such as active license or permitting from the town that they would actually need to place this material. Pucci - They would be able to do this under the Enforcement Order of the condition from the Commission and comply with that. Braine, Williams, Plandowski support it. Misurelli - Supports it also but not sure if the sand would be compatible with the ramp material. Engelbourg - Agrees with Misurelli as the material from the bank versus the beach is different but it's not different than the material that they've used in the past. - I think we can condition the Order on documentation being received prior to the placement of the sand. - Acknowledges the hands raised by the members of the public but not going to allow public comment as I don't think it's necessary for the purpose of this application. Send all specific comments to staff. Dell'Erba presents the draft Order and reviews the item. Engelbourg - Requests that Dell'Erba mention the EO to not be considered failure criteria for NAN-142, which is not under an appeal. - Also requests to delete the time frame of 48 hours - Asks to add condition #6- the final volume of sand to be reported to the Commission. Moldenhauer - Mentioned the equipment that they will be using and wanted to see if the Commission wanted to take note of it. - Wanted to clarify the location of the sand and mentioned that it should be identified. Engelbourg - Recommends changing condition #9 to word "the use of small vehicles" Nylen - Is there a need for an as built plan or are you requiring that? Engelbourg - I think an as built is ultimately a good idea if the Commission agrees but I think a minimum is the delivery volume, photo monitoring, and narrative of what was done. Misurelli - I think if we have documentation of photos and accurate accounting of volume that will suffice for this juncture.
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	Engelbourg - Requests Dell’Erba to change the wording of adding photo documenting on all deliveries and daily monitoring basis while sand placement activities are taking place. - Also requests edits to condition #14 to include narrative on the delivery volume and monitoring photographs shall be submitted to the Commission within 30 days of completion of sand delivery. Due to the time sensitivity of the situation, Engelbourg has Dell’Erba sign the EO as Commission staff and will ratify this EO as a Commission on May 22nd.
Motion:	Motion to approve the Enforcement Order as Amended (Made by: Williams) (Seconded by: Misurelli)
Vote:	Carried://6:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Williams (aye) Turcotte (recused)

6. Administrator/Staff Reports

Discussion: (03:15:51)	none
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Adjournment:

Motion:	Motion to adjourn at 8:16pm. (Made by: Plandowski) (Seconded by: Williams)
Vote:	Carried://7:0 Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

Submitted by:
Lisa Graves