



CONSERVATION COMMISSION

PUBLIC MEETING

131 Pleasant Street
Nantucket, Massachusetts 02554
www.nantucket-ma.gov
Thursday, February 15, 2024 – 5:00 p.m.

This meeting was held via remote participation using ZOOM and YouTube.
<https://www.youtube.com/watch?v=dI4hUBzum5Q>

Commissioners: Ian Golding (Chair), Seth Engelbourg (Vice Chair), Mark Beale, Tim Braine, Mike Misurelli, Joe Plandowski, and Linda Williams

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

Staff in attendance: Will Dell'Erba, Conservation Agent; Jeff Carlson, Natural Resources Director
Attending Members: Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, and Williams
Absent Members: None
Members Left Early:

*Indicates items not previously opened/discussed

I. PUBLIC MEETING

A. Public Comment - Chair Golding called for Public Comment on items not on the agenda.

Burton Balkind

- Questioned if members of the public would be allowed to comment on the Emergency Certification Request Baxter Road Coir Terrace Maintenance- 61-83 Baxter Road. Chair Golding confirmed that the public will have an opportunity to make comments following Commissioner questions.
- Requested sand data related to the geo tube project at 79 Baxter Road from the Natural Resource Department.
- Received a response from Jeff acknowledging the request and the effort to resolve the issue, but no hard data was provided.
- Expressed frustration over the lack of actual data regarding the amount of sand mined and transported.
- Suggested that Mr. Dunk, if available, could provide specific details, including the sand ticket, before the conversation on the emergency order.

II. PUBLIC HEARING

A. Notice of Intent

1. Lagoon Nominee Trust- 6 Westco Place (42.4.3-49) SE48-3715 (Gasbarro) **(Continued until 03/07)**
2. Carol W. Dean Revocable Trust- 48 West Miacomet Road (86-4) SE48-3737 (Santos)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski	
Recused:	Williams	
Representative:	Paul Santos, Nantucket Surveyors, Brian Madden, LEC Environmental Consultants, Inc.	
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.	
Discussion: (00:12:51)	Beale	- Expressed reservations about the proposed pool and house located approximately a thousand feet from a recent 40-foot erosion site. - Questioned the longevity of the pool and house, predicting they may not survive more than two or three years due to potential erosion. - Described the approval of the application as potentially regrettable, foreseeing future issues with wash away but stopped short of labeling the decision or application as irresponsible.
	Santos	- Acknowledged retreat criteria provided in Brian's report and the option for the speaker to elaborate.

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	- Pointed out a perceived disconnect regarding the understanding of the dune's stability; it is described as a stable vegetated dune, with recent erosion primarily occurring from the dune crest, forming since the 1980s and 1990s after erosion events. - Mentioned that the proposed pool is positioned forward of the existing dwelling, indicating that if erosion threatens the dwelling, it would be relocated before the pool faces danger. - Brian's report addresses short-term erosion rates and includes voluntary criteria for pool removal if necessary. - Highlighted a restriction on a neighboring property at 49 West Miacomet Road, owned by the current applicant, that prevents development until the house at the application site (48) needs to be relocated due to erosion. This lot provides an option for relocating the dwelling across the street, but it cannot be developed independently of this condition. Beale - Clarified that the expression of frustration was not directed at the technical or legal aspects of the situation. Engelbourg - Expressed concerns about the landward or lateral migration of the dune. - Stated satisfaction with the applicant's willingness to include a condition in the order that mandates the voluntary removal of the pool should the dune encroach within 25 feet of it. - Indicated that incorporating this condition into the order of conditions alleviates concerns. Madden - Supported Seth's comment on the condition but suggested that it should be linked to the definition of an eroding shoreline for clarity and accuracy, considering the possibility of the dune eroding away and exposing a coastal bank. - Agreed with Paul's observation that the house, being more seaward, would likely be the primary concern in case of erosion, but emphasized the importance of tying the pool's removal condition to a specific measurement related to the eroding shoreline due to the standalone nature of the pool application. Engelbourg - Expressed initial agreement with Mr. Madden's viewpoint on relocating the pool if an eroding shoreline approaches within 25 feet but then clarified a misunderstanding after reevaluating the statement. - Suggested a modification to the condition to specify action if the dune, rather than the shoreline, is within 25 feet of the structure, emphasizing the importance of dune migration (both landward and lateral) as a performance standard. - Proposed that the condition could allow for flexibility by potentially requiring the permit holder to seek approval from the commission for a new notice of intent or an amendment for the structure, rather than mandating immediate removal. - Highlighted a primary concern with immediate dune migration impacts over longer-term shoreline erosion, advocating for proactive measures to address potential dune encroachment.
Public Comment: (00:21:46)	Bryan Swain, Abutters Representative - Reminded the Commissioners of the parcel's location in a region with fragile and unique temperate zone heaths and moorlands, emphasizing their endangered status both on Nantucket and in North America, warranting utmost protection.

	- Highlighted the parcel's rapid erosion without human interference, criticizing the applicant's proposal to further disturb the land for a luxury accessory in a seasonal home. - Pointed out the property's current impervious surface area exceeds bylaw limits, with the proposed pool increasing it to nearly two and a half times the allowed amount. - Reiterated opposition based on environmental contamination risks, drainage and runoff issues, harm to endangered species, equipment operation in protected habitats, aquifer contamination, and well pollution. - Stressed the need for coring samples to determine the current classification of the area between the beach and landward as a dune or a bank, citing the use of outdated data in the site plan. - Urged for updated resource demarcation based on recent data, including the loss of 40 feet at the sewer plant post the most recent data collection. - Advocated for a case-by-case evaluation of the unique application, calling for current data to inform the commission's decision-making. - Suggested engaging a geologist to obtain and analyze samples from the resource area for accurate classification and boundary identification. - Criticized the applicant's response to performance standards as lacking rationale, data, or justification, concluding that the application does not meet the burden of proof and is ripe for denial. - Asserted the board's authority to either deny the application outright or require further geological analysis for substantiated, credible information. Thomas Barada - Discussed the rarity of pool water being processed at the wastewater plant, noting that the director mentioned it's infrequent and there's no formal record-keeping on this. - Observed firsthand instances of pools being emptied directly onto roads, suggesting this is a common practice contrary to claims of responsible disposal. - Highlighted the Morland Management District's purpose to protect not just the moors but also local wildlife, mentioning a decline in short-eared owls due to infrastructure changes and the presence of other bird species like barn owls and hawks. - Provided evidence of coastal bank and dune erosion, mentioning a recent storm that undermined the foundation of beach stairs, illustrating ongoing environmental impact. - Expressed concern about the process and timing of the application, noting it has been prolonged and suggesting a rush to approval before potential changes in buffer zone criteria could affect the outcome. - Raised environmental concerns about the impact of saltwater and chlorine pools on the local ecosystem, especially within the context of the Morland Management District's broader environmental protection goals. - Urged consideration of these points in decision-making, emphasizing the drawn-out nature of the application process and the importance of comprehensive environmental protection. RJ Turcotte, Nantucket Land and Water Council - Reported NLWC's ongoing efforts to find a coastal geologist to assess the neighboring property, noting the difficulty in securing one. - Highlighted observations of erosion on either side of the property, emphasizing the dynamic nature of the area and suggesting that conditions have changed since it was designated as a dune in 2022. - Argued that the area is no longer a coastal dune but rather a coastal bank with glacial material, indicating a different formation process not influenced by wind.
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	- Proposed that the commission consider hiring a geologist to accurately delineate the area as a coastal bank, which could clarify the erosion rate and ensure proper permitting of the pool. - Emphasized the unique classification of a coastal dune field behind a coastal bank, specific to Nantucket, and the importance of this distinction for regulatory decisions. - Warned against potential future issues similar to emergency actions required at Tom Nevers, underscoring the need for accurate delineation and responsible permitting to avoid environmental impact. Chris Donelan - Identified as a neighbor of the property on West Miacomet Road, providing context for their perspective. - Noted that the dune measurement on January 9th did not account for the storm that occurred on the night of January 9th. - Stated they submitted time-stamped photos on January 10th to document the storm's impact. - Expressed a preference for the dune crest to be remeasured, citing significant concerns due to the proximity to water. - Clearly opposed the installation of a pool in the Morland Management area, emphasizing the location's closeness to the water as inappropriate for such development. Madden - Affirmed that the coastal dune boundary is recognized as a valid boundary under the 2022 order of conditions. - Contested the notion of a separation between coastal beach, coastal bank, and a dune field, clarifying that the dune must connect to the coastal beach. - Acknowledged the presence of glacial material beneath the coastal dune but maintained it is considered part of the same resource area as the coastal dune. - Reiterated that the boundary has already been approved under the existing order of conditions. Steven Cohen - Clarified that the dune has been rechecked and there exists a legally binding set of boundaries that are being adhered to, emphasizing there's no need for daily updates. - Suggested focusing on the fact that the proposed pool is within an area where pools are permitted, based on a valid delineation and within bylaw parameters. - Asserted that many objections raised are irrelevant to the application's legality or practicality, noting the distinction between personal preferences and legal standards. - Supported the idea of including a removal trigger for the pool based on its proximity to the bank or shoreline, considering both options viable. - Indicated the homeowner's willingness to comply with future requirements for moving the pool in tandem with the relocation of the house to a lot across the street, advocating for a condition to ensure proper management of the pool at that time. - Stressed the importance of focusing on existing regulations rather than personal opinions or irrelevant planning board rules, acknowledging people's right to their opinions but differentiating them from legal requirements. Engelbourg - Expressed appreciation on behalf of the applicant for the willingness to add a condition.
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	- Clarified that delineations within the past three years from a different order of conditions or an RDA are valid unless new, materially significant information arises. - Indicated uncertainty about whether this applies in the current case and refrained from commenting further. - Emphasized the importance for the commission to remember that delineations are not automatically valid for three years and can become invalidated if there are material changes.
	Glenn Wood - Highlighted the Frost decision's relevance, noting it determined a dune must touch a beach to be jurisdictionally regulatable, rendering any bank immediately landward of the beach non-jurisdictional. - Focused on legal stipulations regarding jurisdiction and environmental impact, mentioning the construction of a pool in an approved lawn area signed off by natural heritage, indicating no environmental impacts from the project. - Addressed concerns about pool construction compliance as an enforcement issue rather than a permitting issue, emphasizing that non-compliance with an Order of Conditions (OOC) falls under enforcement by the town and Conservation Commission (ConCom).
	Paul Santos - Confirmed the accuracy of the coastal dune delineation at the time of the Order of Conditions SE48-3535 issuance on May 17, 2022. - Noted Nantucket Surveyors LLC reset the 2017 Coastal Dune flags and had David Haines of Haines Hydrogeologic Consulting verify their accuracy on January 11, 2024. - Emphasized the extra steps taken to rehang the flags and have David Haines confirm the dune boundary's accuracy, directly addressing Brian Swain's initial concerns to the commission.
	RJ Turcotte - Pointed out and reminded the commission of the Frost decision's relevance to coastal dune fields, referencing a precedent from 36 and 34 Washing Pond Road handled by the commission approximately two years ago. - Clarified that an area qualifies as a coastal dune field if it touches the beach at least once a calendar year, even if a coastal bank exists on one property with a coastal dune field behind it. - Expressed the opinion that material changes have occurred on the ground in a dynamic area, particularly after a heavy storm year, suggesting the commission needs to investigate further before proceeding.
	Bryan Swain - Highlighted the presence of many unknowns associated with the case, advising against rushing into a decision. - Emphasized the commission's authority to request additional information, noting this is clearly supported by law. - Urged the board to seek more information and have an independent third party verify the flags, suggesting a re-evaluation once substantial, relevant, and current data is available.
	Steven Cohen - Criticized the strategy of repetitively questioning the commission's diligence as a means to indefinitely delay proceedings. - Asserted that Paul Santos confirmed the dune was updated on January 11, post-storm, countering claims of insufficient work or information. - Stressed that all necessary work has been completed, and the commission possesses all information required for decision-making.

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	Thomas Barada - Clarified the timeline of recent erosion storms, specifying that the major storm occurred on January 16th, not on January 9th, which was the date of the first storm.
Staff Recommendation:	All necessary items have been received in order to close.
Motion:	Motion to close. (Made By: Plandowski) (Seconded By: Misurelli) (00:44:49)
Vote:	Carried: //6:0 – Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski (aye)

3. Minella- 5 Giny Lane (41-852) SE48-3735 (Rits) **(Continued until 03/07)**

4. Osprey Way Real Estate Trust- 1 Osprey Way (65-19) SE48-3741 (Santos)

Sitting:	Golding, Beale, Braine, Misurelli, Plandowski, Williams
Recused:	Engelbourg
Representative:	Paul Santos, Nantucket Surveyors
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (00:51:30)	Beale - Expressed general approval for most of the application but conveyed concerns regarding building within the 50-foot no-build zone, indicating uncertainty about supporting such a proposal. Santos - Highlighted a smaller shaded area of 60 square feet within the most restrictive zone, identified as the policy Coastal Bank. - Described the small rectangle, not the larger one, as the area of concern, which falls within the 50-foot no-build zone and currently houses an existing deck that provides access to the structure. - Explained the proposal to infill this deck area, which would transform it from just a deck into part of an entryway or dwelling, while still being considered a structure within the 50-foot setback. - Detailed the 50-foot no-build zone as it extends and wraps around the site, intersecting with the vegetated wetland, and provided specific ground cover measurements to illustrate the extent of the no-build zone around the property. Golding - Expressed agreement with Mark's reservations and skepticism towards justifying any construction within the 50-foot no-build zone. - Criticized the presentation of the 50 and 25-foot delineations on the plan, suggesting that using different colors or clearer demarcations would have been more helpful. Noted difficulty in deciphering the current presentation, particularly where the dotted and dashed line representing the 50-foot boundary becomes obscured as it passes through the building. - Voiced opposition to the proposed addition, even though it only encompasses 60 square feet. Misurelli - Acknowledged the apprehension expressed by others regarding applications for existing houses, especially concerning minor expansions like the mentioned 60 square feet. - Recognized that while 60 square feet might seem insubstantial, the concern lies with the principle of building within restricted zones. Santos - Proposed addressing the concerns raised about the specific area by consulting with the project's architects, Botticelli & Pohl, regarding potential modifications. - Expressed willingness to remove the contentious component from the application to address the concerns of three commission members.

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	- Mentioned the possibility of returning with an amended application if an alternative solution more acceptable to the Commission could be devised. - Indicated readiness to discuss this specific section further if the applicant and architects believe pursuing an alternative is worthwhile. - Clarified that by definition, a deck is considered a structure, and there is an existing deck in the contentious location. - Explained that the existing deck serves primarily as a landing or access point to the dwelling. - The proposal sought to transform this deck into actual living space, thereby changing its function while technically remaining a structure. - Highlighted the distinction between the existing structure and the proposed change, emphasizing the conversion from non-living to living space as the core of the modification.
Public Comment:	Burton Balkind - Shared personal observations as the caretaker of the neighboring property, mentioning significant changes in water levels. - Despite Paul's mention of survey measurements taken during high water, highlighted recent weather conditions, including a drought followed by excessive rain, which have led to unusually high-water levels near the bulkhead. - Suggested a site visit for the commission to assess the current water level situation on the pond, implying that firsthand observation of these conditions could provide valuable context, even if it might not change the commission's decision. Santos - Explained that the specific water level used for the application is based on data from 2014 when the pond was at an extremely high level. This historical data was used to determine groundwater elevation for septic system designs and repairs around the pond. - Highlighted that the water level recorded in November 2023 (elevation 3.5) was significantly lower than the 2014 high water level (elevation 5.7), used as a reference for past projects. - Mentioned uncertainty about the current water level but emphasized the 2014 level as a significant point of reference for previous work on the pond. - Announced the decision to remove the request for the 60-square-foot addition within the 50-foot no-build zone from the application.
Staff Recommendation:	All necessary items have been received in order to close.
Motion:	Motion to close on the condition to exclude the 60 square foot deck from the application. All other aspects are approved. (Made By: Beale) (Seconded By: Plandowski) (01:02:00)
Vote:	Carried: //6:0 – Golding, Beale, Braine, Misurelli, Plandowski, Williams (aye)

5. Third Point Holdings LLC- 39 Quaise Road (26-3) SE48-3738 (Gasbarro)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Representative:	Art Gasbarro
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (01:07:05)	Engelbourg - Expressed uncertainty about the statutory protection of a structure from 1999 and mentioned that in some cases, applicants argue that a bulkhead could qualify for protection. - Noted the ongoing wait for a legal opinion regarding the bulkhead's status as a protective structure.

	- Discussed the site plan involving steel sheeting placed behind timber, pointing out that any claim of the new structure protecting the old one is factually incorrect since the timber, positioned in front of the steel, would eventually be removed. - Stressed the importance of understanding the statutory protection history of the house and the need for correct permitting and appropriate waivers, especially considering the prevalence of large-scale bulkhead fields in the area.
Beale	- Highlighted the increasing tide levels and their impact on areas where the tide reaches bulkheads, emphasizing the environmental and public access concerns. - Argued against permitting an additional structure that would reduce public access, especially given the existence of legal public access rights along the property line. - Clarified that the access in question is through an easement rather than a public way, shared with neighbors. - Expressed opposition to approving a second set of stairs leading to the beach, which could further restrict fishing and other activities along the shoreline.
Golding	- Expressed agreement on the concerns raised regarding the stairs and the bulkhead. - Expressed a personal preference for obtaining a legal opinion before proceeding further with decisions related to these issues.
Gasbarro	- Stressed the historical context of the dwelling, emphasizing that its footprint has not moved closer to critical areas and challenged the notion that replacing a house lost to fire negates the property's eligibility for coastal engineering structure protection. - Suggested the fairness issue, highlighting the homeowners' plight of rebuilding after a fire and the implication that they should not be penalized by losing the ability to maintain existing coastal defenses. - Highlighted the current state of the bulkhead as failing and the potential consequences of not addressing its deterioration, including debris and risk to adjacent structures. - Argued for the project's justification and compliance with regulations, emphasizing that the bulkhead restoration is consistent with the area's character and does not introduce new environmental risks. - Questioned the value and outcome of seeking further legal counsel on the bulkhead, suggesting that the project's merits and adherence to guidelines should suffice for approval. - Addressed concerns regarding the proposed stairs, mentioning that any construction extending below the bulkhead would require a Chapter 91 license, ensuring public access is maintained. - Contended that the new stairs would not obstruct lateral shore access and could, in fact, facilitate it during high tide events by providing an alternative path over temporarily submerged areas. - Argued against delaying the project for additional legal consultation, advocating for the commission to consider the comprehensive benefits and minimal environmental impact of the proposed work.
Misurelli	- Expressed support for the previous arguments, indicating agreement that the changes to the house were minimal or nonexistent. - Raised concerns about the potential risks to neighboring properties if action is not taken on the application, suggesting it's imprudent to delay.

	- Voiced support for proceeding with the application as presented, emphasizing the importance of addressing the issue without further delay.
Engelbourg	- Expressed the belief that seeking a legal counsel opinion might not be necessary but emphasized the importance of adhering to the regulations as written. - Highlighted the formality and adherence to performance standards within Coastal Bank regulations, which generally do not permit new bulkheads for structures built after 1978. - Acknowledged the clear indication that the structure in question was built after 1978 and stated that while outright denial of the bulkhead might not be necessary, compliance through an appropriate waiver request or demonstrating there is no environmentally better erosion control alternative is essential. - Urged the applicant to consider their approach carefully, warning against moving forward without a waiver due to the risk of setting a problematic precedent.
Williams	- Expressed agreement with the points made by Mike, Art, and partially with Seth. - Indicated the belief that it is not necessary to seek advice from legal counsel on this matter.
Beale	- Found agreement with Seth's comment regarding the lack of alternative solutions, particularly noting the presence of established bulkheads on either side of the proposed area. - Argued that installing a bulkhead in the middle would create continuity, preventing an increase in erosion that could occur if the application were denied, leading to end scouring at both ends. - Voiced a decision to support approval based on the waiver criteria, reasoning that failure to approve the rebuild could exacerbate erosion issues, thus falling short of their responsibilities.
Gasbarro	- Expressed the view that the project does not involve constructing a new bulkhead but rather replacing an existing one, which does not alter the fact that the shoreline already has bulkhead protection. - Highlighted that the replacement material is chosen for its durability, aligning with the commission's interests by reducing the need for frequent interventions. - Interpreted the term "new bulkhead" as applicable to cases where bulkhead protection is introduced to a previously unprotected shoreline, clarifying that since the bulkhead in question already exists, the project should not be classified as introducing a new bulkhead.
Engelbourg	- Highlighted that the distinction between a new bulkhead and a rebuilt one might be moot in the context of regulatory compliance, as the performance standard requires any bulkhead, whether new or rebuilt, to be permitted only if the commission determines there are no environmentally better alternatives for erosion control. - Emphasized that regardless of the bulkhead's classification, it must either satisfy the criteria under the alternatives analysis or be granted a waiver to proceed.
Gasbarro	- Addressed the commission's concerns by referencing the alternatives analysis included in the application, asserting no environmentally superior solution exists for the site's specific conditions.

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	- Detailed consideration of various erosion control methods, such as coir fiber geotubes and gabions, arguing that implementing these would entail dismantling existing structures, potentially causing more harm than the proposed steel sheeting installation. - Emphasized the proposed solution as the environmentally best option for controlling erosion while maintaining the integrity of the site's existing coastal engineering structures. - Expressed willingness to discuss further but remained confident that the application already addresses the commission's criteria for alternatives analysis, suggesting that a continuance might not be necessary unless additional specific concerns need addressing. Golding - Highlighted concerns regarding the proposed stairs, specifically considering the impact of sea level rise and how the installation of a steel bulkhead could potentially limit future generations' access to the water as levels rise. - Also brought attention to the issue that the structure in question was built post-1978, further complicating compliance with regulatory standards regarding coastal engineering structures. Engelbourg - Clarified that the commission has the authority to grant a waiver in the order of conditions, regardless of whether the applicant has explicitly applied for one. - Stressed that if there is a disagreement over the need for a waiver between the applicant and the commission, the commission retains the ultimate discretion to decide if such a waiver is necessary. Gasbarro - Decided to request a continuance based on the Commission's reactions, aiming to gather and provide more information on the discussed matters. - Acknowledged the importance of the stairs to the property owner and expressed intent to offer more detailed justification for them. - Committed to submitting a plan that compares the existing and proposed structures, along with additional information to further clarify the proposal.
Action:	Continued until March 7, 2024.

6. *90 North Liberty Preservation Trust- 90 North Liberty Street (41-22) SE48- (Gasbarro)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Representative:	Art Gasbarro
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (01:30:00)	There were no questions or comments.
Staff Recommendation:	All necessary items have been received in order to close.
Motion:	Motion to close. (Made By: Plandowski) (Seconded By: Misurelli) (01:30:30)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

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7. *Nantucket Islands Land Bank- 204 & 212 Cliff Road, 111 & 113 Madaket Road (40-57 & 56, 25.5 & 25.4) SE48-3742 – Referred to as Maxey Pond (Gasbarro)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Representative:	Art Gasbarro
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (01:37:03)	Golding - Referenced a letter received from Adrian Block.
Action:	Continued until March 7, 2024.

8. *Van Den Born- 135 Wauwinet Road (11-12) SE48-3743 (Gasbarro)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	Art Gasbarro
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (01:44:15)	Engelbourg - Enquired if the curvature of the reconfigured elevated walkway could be slightly reduced to remain within the 135-foot footprint, seeking alternatives that might reduce its impact. - Questioned the proximity of the shed's edge extending into the 50ft buffer zone, estimating it to be about one foot based on the plans, and proposed reducing the shed size from 7x14 to 6x14 to minimize encroachment. - Asked about the nature of the proposed parking area, specifically if it is intended to be a surface area or simply composed of sand or grass. - Raised concerns about an existing deck with an outdoor shower and HVAC unit, noting these seemed to have been added without proper permits and fall within the 25-foot buffer zone. Suggested relocating the HVAC unit to a more appropriate area on the porch or deck and expressed reservations about the appropriateness of requesting an outdoor shower in this sensitive area according to regulations. Gasbarro - Expressed willingness to address the concerns raised about various project elements. - Indicated an understanding of the project's complexity and the range of concerns discussed. - Suggested likely requesting a continuance to have sufficient time to consider and apply adjustments in response to the feedback received. Misurelli - Viewed the curved walkway as an improvement, expressing satisfaction with this aspect of the project. - Based on the commission's track record and discussions from earlier in the meeting, encouraged efforts to reduce encroachments within the 50-foot buffer or to consider cantilevering structures where possible, suggesting such actions would ultimately benefit the applicant. Beale - Approved of the curved walkway as a valuable addition, inquired about the inclusion of a railing, and was satisfied to learn it would not have one. - Expressed concerns regarding the placement of an outdoor shower, suggesting it might not be the most appropriate location. - Considered the possibility of improving the outdoor shower by draining it to a tight tank, acknowledging that outdoor showers typically do not connect to septic systems but proposing that in this specific situation, such a connection might be advisable. - Aside from these points, expressed general approval of the project.

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	Braine - Approved of the walkway as presented. - Supported the suggestion to reduce the size of the shed. - Expressed uncertainty regarding the proposed outdoor shower. Engelbourg - Highlighted that while some might view the impact of the outdoor shower as negligible, frequent use by multiple people daily could lead to soapy water draining into the 25-foot buffer zone, posing a potential pollution source. - Emphasized the need for caution regarding the environmental implications of the shower's placement and use. Williams - Expressed a lack of concern for the walkway, aligning with others' views. - Agreed with the proposed changes to the shed. - Shared uncertainty about the outdoor shower, noting that such features are common in beachside homes around the island, indicating a degree of familiarity and acceptance. Golding - Expressed satisfaction that the walkway design does not include a handrail. - Indicated comfort with the walkway's curvature, differing from concerns possibly raised by Seth regarding its extent. - Suggested exploring a compromise on the walkway's design between the current plan and potential concerns raised.
Action:	Continued until March 7, 2024.

9. Sconset Bluff Preservation Trust- 41-119 Baxter Road (various) SE48-3736 (Posner)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	Representative not present. Jeff Carlson provided an overview.
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (01:50:47)	Jeff Carlson, Natural Resources Director - Updated on the process of seeking independent legal counsel and independent reviewers for a project, noting that it had been rescheduled for further discussion. - Informed that responses from legal firms are awaited, with one firm indicating they would provide a response to the select board's questions, which then need approval before addressing the commission's queries. - Reported receiving positive responses from two companies for independent review of the application, with formal terms of engagement expected soon. - Named the Center for Coastal Studies and a company called Beta as the responding entities, the former also partnering with the Commonwealth for independent reviews offered to commissions. - Apologized for delays in the process, attributing them to the limited number of responses due to potential conflicts of interest among reviewers who may have worked within the project area or have other conflicts. - Assured that efforts are being made to expedite the process and secure the necessary reviews. Steven Cohen - Sconset Beach Preservation Fund (SBPF) aims to be agreeable and cooperative, mirroring the town's approach. - Highlights a desire to reach a decision before the town meeting in early May, suggesting a shared responsibility among the commission, the town, and the applicant to achieve this.

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	- Notes the commission's membership change in June, emphasizing the importance of concluding matters before this transition to avoid complications. - Expresses a preference to proceed with the meeting scheduled for the 22nd, suggesting that reviewers and counsel can engage remotely via video recordings and submit information accordingly. - Advocates for a timeline that would wrap up discussions by the end of March, allowing the commission April to formulate its decision. This schedule aims to ensure readiness before the main Town meeting in May, marking it as a highly preferred outcome.
	Misurelli - Expressed a desire to maintain a productive schedule, emphasizing efficiency in proceeding with discussions. - Reflected on the last meeting's format, which focused on presentations, identifying it as a wise use of time and suggesting a continuation of such an approach if possible. - Voiced personal preference for continuing with the progress made so far, with an optimistic outlook on obtaining counsel shortly to facilitate ongoing inquiries.
	Engelbourg - Suggested dedicating the February 22nd meeting to the second half of SBPF's presentation to advance the process. - Recommended postponing subsequent meetings until legal counsel and reviewers are engaged and have reviewed the meeting videos, aiming for a comprehensive understanding before proceeding. - Expressed optimism that responses from legal counsel and reviewers would arrive within a week or two, making a March meeting feasible with all parties informed. - Inquired about an ongoing enforcement order regarding removal, specifically asking for a reminder of its deadline to assess if adjustments are necessary.
	Vince Murphy - Confirmed that the deadline is March 7th.
	Engelbourg - Recommended postponing the deadline to a later date to accommodate the necessary timeframe for compliance or decision-making.
	Beale - Agreed with other commissioners on the importance of hearing the second half of the presentation. - Expressed hope that counsel and an expert would be on board soon to assist further. - Supported the idea of scheduling subsequent discussions based on the completion of the second presentation, indicating it's a logical next step.
	Cohen - Identified three issues for brief discussion: • The next presentation is anticipated to occur next week. • Legal questions are pending and should await counsel's input, suggesting that written correspondence be prepared before the next hearing. • Addressed the interest from public members in making presentations or providing expert witnesses, recommending such contributions be scheduled through Jeff. This is to differentiate between standard public comments and more substantial presentations or expert testimonies, aiming to

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	manage time effectively and maintain the hearing's structure.
Action:	Continued until February 22, 2024.

B. Amended Order of Conditions

1. 8 High Brush Path, LLC- 8 High Brush Path (56-370) SE48-3702 (Madden) **(Continued until 03/07)**

III. PUBLIC MEETING

A. Requests for Determination of Applicability

1. *Cherner- 190 Hummock Pond Road (65-33) (Haines)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	David Haines
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (02:03:00)	There were no questions from Commissioners.
Staff Recommendation:	Staff recommended a negative-3 determination, indicating that although the project is within the buffer zone, it is not expected to adversely impact the resource area.
Motion:	Motion to Approve the Request for Determination of Applicability. (Made By: Misurelli) (Seconded By: Plandowski) (02:03:20)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

B. Minor Modifications

1. Jones-6 E Lincoln Avenue (42.4.1-49.1) SE48-3384 (Blackwell)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Representative:	Jeff Blackwell
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion:	There were no questions from Commissioners.
Motion:	Motion to Approve the Minor Modification. (Made By: Plandowski) (Seconded By: Beale) (02:06:30)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

2. Nantucket Conservation Foundation- Windswept Bog (28-38) SE48-3329 (Beattie)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Representative:	Karen Beattie, Science & Stewardship, Nantucket Conservation Foundation/Julie Busa, Fuss & O'Neill Engineers
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion:	There were no questions from Commissioners.
Motion:	Motion to Approve the Minor Modification. (Made By: Braine) (Seconded By: Misurelli) (02:12:10)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

C. Certificate of Compliance

1. Monomoy Road LLC- 41 Monomoy Road (54-79.1) SE48-3536 (Bracken)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski
Recused:	Williams
Representative:	Representative not present. Will Dell'Erba provided an overview.
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (02:12:57)	Will Dell'Erba , Conservation Agent, Natural Resources Department

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	- The Certificate of Compliance (COC) pertained to the dwelling, pool, associated landscaping, and other external features like the porch and patio. - Confirmed that everything was in accordance with the required standards. - Recommended continuing specific conditions related to pool and lighting (conditions 19 through 23) and the prohibition of fertilizers or chemicals within the 100-foot buffer zone (condition 26) to ensure ongoing compliance and protection of the resource area.
Motion:	Motion to approve the Certificate of Compliance with Conditions 19 through 23 and 26. (Made By: Plandowski) (Seconded By: Misurelli) (02:13:46)
Vote:	Carried: //6:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Golding (aye)

2. Shriberg- 60 West Chester Street (41-374) SE48-3536 (Bracken) **(Continued until 03/07)**

3. 196 Hummock Pond Road LLC- 196 Hummock Pond Road (65-30) SE48-3538 (Haines)

Sitting:	Golding, Engelbourg, Beale, Braine, Misurelli, Plandowski, Williams
Representative:	David Haines, Haines Hydrogeologic Consulting
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion:	There were no questions from Commissioners.
Motion:	Motion to approve the Certificate of Compliance with specified conditions to continue include: • Pool and lighting conditions (19 through 23). • Prohibition of fertilizer and agricultural chemicals within the 50-foot buffer zone (condition 26). • Requirement for native plantings and the exclusion of cultivars. (Made By: Plandowski) (Seconded By: Misurelli) (02:16:05)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

4. MacLean- 100 Madequecham Valley Road (88-62) SE48-3623 (Madden)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	Brian Madden, LEC Environmental Consultants, Inc.
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (02:16:50)	Dell’Erba - Recalled the property case from early last year, noting its distinct order related to snow fencing on the property. - Reported that the former lawn area has been successfully revegetated, fulfilling the conditions of the permit as proposed. - Observed that the snow fencing is now completely buried. - Mentioned Condition 22, which requires a Notice of Intent (NOI) for snow fence removal but did not specify a timeframe. Suggested continuing this condition due to the current impossibility of removal. - Confirmed having discussed this issue with Brian earlier in the day. - Noted that the permit has been active for only about a year, having been closed in April, with all work completed except for the matter of the snow fencing. Engelbourg - Expressed the position that a Certificate of Compliance (COC) cannot be issued due to the lack of a received Notice of Intent (NOI), as stipulated in the order. - Acknowledged the applicant's statement that the snow fencing is currently completely buried but emphasized the need for an NOI to permit the structure, regardless of its being under the current sand elevation.

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	- Stated that issuing a COC would be impossible with a non-compliant structure explicitly mentioned in the order, due to how the order of conditions is written.
Dell’Erba	- Highlighted an additional finding within the order stating that it does not cover the snow fencing. - Noted that the description of work within the permit does not mention the snow fencing.
Engelbourg	- Acknowledged the points raised by others and suggested that while the issues could be considered independent, the presence of a non-compliant, non-permitted structure on the property necessitates action. - Proposed issuing an enforcement order to require the property owner to address the non-compliant structure.
Misurelli	- Questioned whether the property owner is required to remove the non-compliant structure or if they plan to remove it voluntarily. - Inquired about what the removal procedure would entail.
Brian Madden	- Suggested that the commission should decide how to address the buried, non-compliant structure, acknowledging it's currently buried and might not be practical to remove at this stage. - Opened the possibility of removing the structure if it becomes fully exposed, as per the commission's preference. - Noted the uncertainty regarding when such exposure might occur, leaving the timing of potential action to the commission's discretion.
Williams	- Recalled a previous discussion suggesting that removing the buried structure could cause more damage than leaving it buried. - Mentioned the understanding that if the structure became unburied in the future, then it would be removed, indicating this was the essence of the earlier conversation.
Misurelli	- Expressed support for the approach of not actively removing the buried structure at this time but advocated for its removal if it becomes unburied in the future.
Engelbourg	- Opined that the proposed activity cannot be linked to the Certificate of Compliance due to the absence of a submitted Notice of Intent regarding the snow fencing. - Highlighted that the commission retains the authority to issue an enforcement order, suggesting that if the snow fencing becomes visible and unburied, the commission can and should issue an enforcement order to compel the property owner to address the situation.
Dell’Erba	- Suggested that continuing specific conditions from the existing order is a viable option, specifically pointing to Condition 22, which requires the submission of a Notice of Intent (NOI) for the snow fence, though it currently lacks a specific timeframe. - Proposed that continuing Condition 22 could serve as a provisional measure, allowing for the possibility of issuing an enforcement order if the snow fencing becomes highly visible and is not addressed by the property owner.
Madden	- Suggested addressing the issue through an ongoing condition related to monitoring requirements that are part of the revegetation effort.

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	- Recommended including a status update on the snow fencing as part of the monitoring activities. - Indicated that if the snow fencing becomes exposed and warrants removal, this could be reviewed and addressed under the specified monitoring condition.
Dell'Erba	- Proposed continuing the existing condition related to the annual monitoring report.
Madden	- Suggested that the condition related to revegetation monitoring should extend for three years. - Expressed belief that within this three-year period, the outcome and condition of the area in question, including the snow fencing, will become clear.
Beale	- Expressed uncertainty about the feasibility of issuing a Certificate of Compliance when there is a known violation on the property.
Madden	- Clarified that the snow fencing in question is located on Town property, not on the private property being discussed. - Noted that any application for installing sturdier fencing on Town property would require Town approval. - Added context by stating the snow fencing was installed by a previous property owner and was already present when the current owner purchased the house.
Engelbourg	- Argued that a Certificate of Compliance (COC) can be issued for the work covered under the Notice of Intent (NOI) because the NOI did not include the snow fencing, which is a separate issue. - Suggested the possibility of issuing the COC for the completed work per the order of conditions while simultaneously addressing the snow fencing issue through an enforcement order. - Pointed out that it's not unprecedented to issue a COC for a project and later address unrelated violations, indicating that finding violations not related to the initial order has occurred before. - Sought clarification from staff on the practice of issuing ongoing conditions, querying whether these conditions can be set for a specific duration rather than being perpetual.
Carlson	- Noted that some ongoing conditions may have a specified duration, particularly if linked to the length of the permit, meaning they could expire when the permit does, as observed with practices by the Department of Environmental Protection (DEP). - Acknowledged that while it's common for some conditions to expire with the permit, explicitly specifying a time limit for a condition (e.g., "condition 19 is ongoing for seven years or nine years") is not a practice they've encountered before. - Expressed openness to further explore the possibility of setting specific durations for conditions and committed to seeking clarification on this matter.
Golding	- Expressed surprise upon learning the snow fencing is located on Town property, raising questions about the commission's authority to mandate the adjacent property owner's involvement in its removal.

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	Carlson - Discussed the complexity of addressing the snow fencing issue, given it is on Town property but benefits the adjacent private property owner. - Suggested ideally, the adjacent property owner would be ordered to remove the fencing, potentially leading them to seek recourse from the installer (in this case, a previous property owner). - Highlighted that if the party benefiting from the fencing is willing to undertake its removal, it could simplify the situation and prevent bureaucratic complications. - Acknowledged the uncertainty regarding when the snow fencing might reemerge and in what condition, given it is currently completely buried and its reappearance could be imminent or many years away.
Motion:	Motion to approve the Certificate of Compliance. (Made By: Misurelli) (Seconded By: Plandowski) (02:33:34)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

5. 46 Union Trust- 46 Union Street (42.2.3-28) SE48-3436 (Santos)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	Paul Santos, Nantucket Surveyors
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion:	There were no questions from Commissioners.
Motion:	Motion to approve the Certificate of Compliance. (Made By: Plandowski) (Seconded By: Misurelli) (02:35:54)
Public Comment: (02:36:02)	Art Gasbarro - Apologized for the late notice and expressed reluctance to speak in opposition to another application but highlighted concerns about the absence of grades on the plan. - Noted the project's location within land subject to coastal storm flowage and mentioned the potential implications for neighboring properties, specifically referencing a drainage pit or similar feature. - Suggested that the lack of grade information on the plan complicates the evaluation of potential filling within land subject to coastal storm flowage or compliance with other conditions. Santos - Expressed willingness to follow the commission's guidance, despite noting the presence of animosity between neighbors that might be influencing the scrutiny of the application. - Stated readiness to comply with any requests or requirements set forth by the commission to address the concerns raised. - Confirmed that the general intent of the plan was executed, and the development conducted on the site was in general compliance with the proposals submitted to the board. Misurelli - Expressed willingness to comply with the commission's decisions and voiced a commitment to remaining impartial, especially in the context of neighborly animosity. - Emphasized the importance of not letting conflicts between neighbors influence decision-making. - Suggested that acquiring more information would be beneficial for making informed decisions, clarifying a stance of neutrality without favoring any side. Engelbourg - Referenced the relevant section of the state wetlands regulations pertaining to Certificates of Compliance, which mandates that the

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	required as-built plan must include all wetland areas, buffer zones, topography, and other landscape features. - Pointed out that elevations are considered part of the required topography information, concluding that a plan with elevations is indeed necessary to comply with these regulations.
Vote:	No vote was taken. This item was continued until March 7, 2024.

D. Orders of Conditions (If the public hearing is closed – for discussion and/or issuance)

1. Carol W. Dean Revocable Trust- 48 West Miacomet Road (86-4) SE48-3737 (Santos)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Recused:	Williams
Representative:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion:	Engelbourg - Expressed the opinion that proceeding with a positive order would be feasible, provided that appropriate conditions are established to guide the project's execution. Beale - Reluctantly accepted the proposal, acknowledging that it meets the regulatory requirements but expressed concern about the project's long-term viability, anticipating potential issues or loss due to future environmental conditions. Dell'Erba - Discussed crafting a specific condition (Condition 26) to address concerns related to potential erosion. - Suggested wording for the condition to address if the eroding shoreline, coastal bank, or dune—depending on classification—migrates within 25 feet (or possibly less) of the pool. - Proposed that, in such a scenario, the pool shall either be removed by the owner, or the owner must come before the commission to submit a Notice of Intent (NOI) for addressing the issue. Misurelli - Expressed the opinion that the threshold for action regarding the eroding shoreline, coastal bank, or dune in proximity to the pool should not be set at less than 25 feet, considering that distance to be already quite close. Engelbourg - Clarified that the coastal dune is the most landward resource area currently and is subject to performance standards regarding landward migration. - Suggested specifying in the condition that if the coastal dune migrates to within 25 feet of the pool, the permit holder must submit a Notice of Intent (NOI) to the Conservation Commission. This NOI would outline plans either to remove the pool or to consider alternative strategies for addressing the landward migration of the coastal dune. - Recommended including a reporting condition to monitor the situation, with agreement on its necessity. Dell'Erba - Discussed the desire for both annual measurements and photographs to monitor the migration of the coastal dune. - Considered specifying a fixed annual date for these measurements, suggesting February 15th or the date of the hearing as potential options. - Debated the most effective timing for these annual reports to avoid an end-of-year influx and ensure consistent monitoring.

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	- Mentioned the idea of using the hearing date for each permit as a way to schedule these annual measurements, proposing it could establish a systematic approach. - Raised the question of whether a professional survey would be necessary for accurate measurement, recognizing the potential complexity but questioning how else accurate migration could be assessed. Engelbourg - Described the typical process where the project representative measures the distance and takes photographs to monitor conditions. - Mentioned that if there are doubts about the accuracy of these measurements, staff members independently verify them. - Noted this approach has worked well in the past. Dell'Erba - Specified that a report should be submitted to the commission annually, by February 15th. - Stated that the report must include photographs of the location and measurements detailing the migration of the coastal dune in comparison to the original site plan.
Motion:	Motion to approve as amended. (Made By: Misurelli) (Seconded By: Beale) (02:49:50)
Vote:	Carried: //6:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Golding (aye)

2. Minella- 5 Gingy Lane (41-852) SE48-3735 (Rits)

Sitting:	Golding, Beale, Braine, Misurelli, Plandowski, Williams
Recused:	Engelbourg
Representative:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (02:50:51)	Dell'Erba - Noted the project involves the renovation and expansion of an existing dwelling. - Added an additional finding specifying that this order does not permit the proposed enclosure of a deck within the 50-foot buffer to the resource area. - Mentioned conditions 18 and 19, related to project specifics, and condition 20 concerning all exterior lighting. - Included a waiver related to the two-foot distance to groundwater.
Motion:	Motion to approve as drafted. (Made By: Braine) (Seconded By: Plandowski) (02:51:40)
Vote:	Carried: //6:0 – Beale, Braine, Misurelli, Plandowski, Williams, Golding (aye)

3. *90 North Liberty Preservation Trust- 90 North Liberty Street (41-22) SE48- (Gasbarro)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	-
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion:	Dell'Erba - Described the project as involving the replacement of an existing garage building with additions. - Highlighted conditions 18 and 19, which pertain to lighting, and included a waiver regarding the two-foot distance to groundwater.
Motion:	Motion to approve as drafted. (Made By: Engelbourg) (Seconded By: Beale) (02:53:43)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

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E. Extension of Order

1. *Nantucket Conservation Foundation- Long Pond (N/A) SE48-3228 (Beattie)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	Karen Beattie, Vice President of Science and Stewardship with the Nantucket Conservation Foundation
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion:	There were no questions from Commissioners.
Motion:	Motion to approve issue extension. (Made By: Beale) (Seconded By: Misurelli)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

F. Emergency Certification Request

1. Baxter Road Coir Terrace Maintenance- 61-83 Baxter Road (various) (Dunk)

Sitting:	Golding, Engelbourg, Beale, Braine, Plandowski, Williams
Representative:	Dwight Dunk
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Discussion: (02:59:21)	Dunk - Suggested that while the Notice of Intent (NOI) is often submitted after the 30-day emergency certification period, it serves to document the completed work. - Questioned whether the regulations explicitly require the NOI submission within the 30-day timeframe but acknowledged it must be submitted shortly after the emergency period concludes. Carlson - Clarified that the deadline for submitting a Notice of Intent (NOI) is within 30 days after the emergency abatement work has been completed. Dunk - Detailed the scope of work involving the maintenance, repair, and replacement of existing coir terraces. - Specified that the coir terraces currently extend from the southern end of property number 61 up to property number 83. - Clarified that the project does not propose an expansion but focuses solely on work on the existing coir terraces in front of the homes from numbers 61 to 83. Golding - Expressed confusion over the classification of the work as an emergency, given the significant distances of the properties from the cliff and water. - Suggested that the motivation for an emergency request might be to expedite construction before completing the standard NOI process. - Noted that none of the properties involved are entitled to statutory protection. - Questioned the necessity of treating the request as an emergency rather than proceeding with an NOI, as recommended by the DEP. Dunk - Clarified that coir terraces are not classified as Coastal Engineering Structures (CES) by the Department of Environmental Protection (DEP) and were approved under prior orders of conditions as a soft solution. - Indicated that the setbacks mentioned are based on a June 2021 LiDAR survey, and the situation has not improved over the past three years. Previous decisions identified an imminent threat when buildings are within 40 feet of the top of the coastal bluff, with many homes meeting or nearing these criteria. - Observed that the coastal bank shows signs of erosion and instability, suggesting that coir terraces offer some level of protection in this high-energy environment, albeit not robust.

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	- Remarked that the coir terraces had been previously approved by the commission with orders of conditions, and their maintenance has been ongoing with the town's full knowledge. - Discussed damage to the coir terraces from June storms, agreeing with Jeff Carlson that emergency maintenance and repair post-storms was the most suitable approach. - Proposed the emergency certification as a way to "clean up" the permitting for coir terraces that have been installed for nearly 20 years, ensuring everything is currently authorized and allowing for their maintenance going forward.
Golding	- Pointed out that the June 2021 data indicates the coir rolls had effectively stabilized the area up to that point. - Referenced an email from Jeff Carlson on January 24th, which detailed agreement with the DEP's assessment that rebuilding the structure requires a new filing, suggesting that the current situation does not constitute an immediate emergency. - Noted that when the DEP issued its superseding order of conditions in 2013, it was based on the proximity of the closest part of 99 Baxter Road to the edge of the bluff, which was approximately 35 feet at the time.
Engelbourg	- Clarified that the 40-foot "imminent threat" statistic commonly referenced in permit applications for the area was not established by the Town of Nantucket Conservation Commission (ConCom) but by the Town of Nantucket Department of Public Works (DPW) in relation to structural and building concerns. - Emphasized that the ConCom is not obligated to adopt the DPW's designation of an imminent threat without conducting its own evaluation based on the commission's regulations and knowledge of the area. - Suggested that while there may or may not be an imminent threat, the commission should not rely solely on the DPW's 40-foot criterion without conducting a thorough review.
Golding	- Highlighted Lot 63, noting it has a vegetated bank and is 32 feet from the bluff, indicating there's sufficient space to move it back, a situation also true for Lot 65 and Lot 69.
Misurelli	- Acknowledged Seth's perspective on the significance of the 40-foot mark but personally considered a 60-foot distance as indicative of a potential threat, particularly given the elevation of the bank. - Expressed a general feeling of safety with the 40-foot criterion. - Indicated support for conducting maintenance work in the area while awaiting the submission of a Notice of Intent (NOI).
Golding	- Described the situation as an abuse of the emergency provision.
Beale	- Questioned who the applicants were, which have been identified as the homeowners from Lot 61 to 83. - Questioned what guarantees exist regarding the proper maintenance of the proposed interventions by these homeowners.
Dunk	- Explained that addressing active erosion and slope failure through emergency certification allows for immediate protective measures due to the instability of the slope. - Stressed the urgency of providing some level of protection, as alternative measures would require more time to implement.

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	- Mentioned the plan to undertake maintenance and repair, followed by submitting a Notice of Intent (NOI), with the expectation that any resultant order of conditions from the NOI would include ongoing maintenance requirements. - Suggested that such conditions would ensure regular maintenance of the systems, offering short-term protection for the homes by allowing repairs to be conducted within 30 days. - Highlighted that these immediate actions serve as interim solutions pending the advancement of a larger, comprehensive project under its own NOI.
Beale	- Pointed out that the situation involves cooperating homeowners rather than a single entity. - Raised the question of whether these homeowners would be willing to provide a substantial bond to ensure commitment, referencing the instance where the Sconset Beach group discontinued their project.
Dunk	- Indicated a need to discuss the possibility of a bond with the homeowners, as making a financial commitment on their behalf without consultation would not be appropriate. - Clarified that an Order of Conditions is tied to the property itself, meaning it becomes part of the property's title. - Explained that it is the responsibility of the applicant, current owner, and any future heirs or successors to comply with the Order of Conditions as long as it remains valid. - Highlighted that if the property were to be sold, the new owners would also be subject to the Order of Conditions. - Noted that this is the reason why an Order of Conditions is included in the property's chain of title.
Williams	- Expressed agreement with Mike on the appropriateness of the request, considering the seriousness of the issue and the damage involved. - Indicated support for allowing the continuation of the proposed actions while an NOI is being submitted or as they work out other solutions in collaboration with staff. - Stated having no issue with proceeding under the current circumstances.
Engelbourg	- Expressed questions and potential concerns regarding the delineation of setbacks based on LiDAR aerial survey data from 2021. - Inquired if the LiDAR data was part of monitoring reports or submissions related to the geo-tube project or if it was from a separate source.
Dunk	- Clarified that the LiDAR data in question comes from the survey reports related to the southeast Nantucket area, confirming its association with the geo-tube project.
Engelbourg	- Stated curiosity about the LiDAR data not due to suspected flaws but because of a repeated request for Air Shark, the consultant responsible for the survey work, to present their findings to the commission. - Shared personal background as a certified remote pilot with experience in aerial surveying and mentioned having technical questions about Air Shark's methodology from past projects. - Emphasized that if the emergency justification relies on these setbacks, it is crucial that the data be confirmed before proceeding.

	- Acknowledged Air Shark's strong reputation but expressed concerns regarding the reliance on data that is over three years old and has not been thoroughly reviewed or discussed by the commission.
Plandowski	- Suggested that the discussion might be less contentious if the term "emergency" were substituted with "regular maintenance." - Expressed support for regular maintenance, indicating the current situation seems to align more with maintenance activities than an emergency scenario.
Dunk	- Reached out to the commission staff, specifically Mr. Carlson, after the January storms to discuss maintenance, repair, and maintenance options. - Highlighted the intensity of the southeast storms and the significant damage they caused, which exceeded routine maintenance needs. - Discussed potential approaches for maintaining the coir terraces during the active storm season, deciding on emergency certification for post-storm repairs and maintenance, to be followed by a Notice of Intent (NOI). - Emphasized the goal of installing, maintaining, and repairing the coir terraces as soon as possible, within the 30-day window allowed by the emergency certification. - Noted that additional work beyond the 30-day period would require an Order of Conditions, which would likely include requirements for ongoing inspection and maintenance to ensure the integrity of the coir terraces.
RJ Turcotte	- Expressed confusion regarding the application, noting that it seems these properties are already under consideration for a Notice of Intent (NOI) that is currently being processed by the commission. - Highlighted the Department of Environmental Protection (DEP)'s recent conclusion that, especially for properties near 79, the required work exceeds mere maintenance and repair, necessitating a new NOI and a thorough alternatives analysis. - Acknowledged significant changes over the past 20 years, including substantial improvements to many of the houses, which might warrant reconsideration of protections. - Pointed out that the commission is already reviewing an NOI for potential protections for these houses, suggesting that pursuing another NOI with an emergency certification for the same properties might be redundant.
Burton Balkind	- Asked whether there is a valid permit for the installation that is now almost entirely gone, noting difficulty in obtaining an answer to this question.
Carlson	- Noted that the existing Order of Conditions for the structure in question has expired and that no Certificate of Compliance was ever issued for that previously existing order.
Burton Balkind	- Questioned under what guidelines the emergency order would operate given there are no valid Order of Conditions currently in place for the project, asking what standards or conditions it would adhere to.
Carlson	- Clarified that in the emergency certification process, the commission has the authority to issue conditions related to the work intended to abate the emergency.

	- Explained that the purpose of submitting a Notice of Intent (NOI) afterward is to formalize the permit process and establish long-term conditions for the project. - Described the emergency certification as essentially a temporary permit for immediate construction actions, which is then supplemented by an application that outlines how the work will be maintained over time. - Explained that the determination of emergencies are based on imminent threats from environmental changes, citing past examples like the sewer force main break requiring emergency intervention. - Emphasized the importance of establishing an emergency through appropriate criteria, acknowledging the challenge in predicting emergencies. - Explained permitted only work necessary to abate the emergency, outlining that establishing long-term solutions like nourishment programs exceeds the scope of emergency certification. - Illustrated with an example that relocating a house to prevent imminent damage constitutes abating the emergency, but additional work like new foundations or septic systems requires a Notice of Intent (NOI).
	Burton Balkind - Requested that if the board considers allowing the emergency order, they contemplate specific conditions related to the limited beach space at both low and high tide. - Suggested the board ensure the project's mechanics do not interfere with mean low water or the lower shore system, especially concerning the use of heavy machinery. - Emphasized the importance of thorough monitoring of the project, given past instances of non-compliance. - Highlighted the lack of a valid Order of Conditions currently guiding the project.
	Golding - Expressed surprise at the absence of the Department of Public Works (DPW) in the discussion, given the proximity of unprotected lots on Baxter Road to the bluff, ranging from 46 to 53 feet. - Emphasized skepticism regarding the emergency status of properties, particularly highlighting a property (Lot 61) that is 66 feet away from the edge, with an additional vegetated bluff extending about 60 feet to the beach, arguing this scenario does not constitute an emergency.
	Engelbourg - Clarified that the criteria for designating an emergency are more specific than previously discussed, requiring that the project be necessary for the health and safety of Commonwealth citizens. - Highlighted that emergencies are used for situations like the sewer force main break, where immediate action was needed to address public health risks. - Emphasized the need for the commission to determine that the proposed project will directly protect the health and safety of citizens and that such protection cannot be achieved without the project's execution. - Stressed the importance of making this determination as a prerequisite for certifying the emergency.
	Carlson - Explained that following significant storm damage across the island, inquiries were made with the Department of Environmental Protection (DEP) regarding potential relief for affected projects. - Discussed the need for guidance on handling projects with expired orders or existing orders, particularly regarding what actions should be permitted.

	- Indicated that the DEP clarified that projects with substantial structural losses, especially those without current orders of conditions, would require a new filing for replacement or repair. - Emphasized that consulting with the DEP after major storm events is standard practice to understand any available emergency relief measures, which might include blanket emergency reliefs for widespread damage. - Mentioned that leadership changes within the DEP can lead to variations in interpretations and responses, underlining the importance of these consultations to ensure compliance and appropriate action post-storm. - Appreciated the DEP's directive that a Notice of Intent (NOI) must be filed, acknowledging ongoing concerns about active erosion. - Highlighted the unique aspect of emergency certifications, which necessitate accompanying the NOI, differing from actions like friendly enforcement that may not require subsequent filings. - Discussed instances where properties in imminent danger were addressed through enforcement actions without obligating owners to file an NOI for the removal or demolition of structures, offering a way to enforce compliance while avoiding additional procedural burdens on property owners. - Suggested that using emergency certifications still aligns with fulfilling the DEP's requirement but provides a degree of protection, particularly for safety concerns, in a slightly different manner than direct DEP guidance might suggest.
Williams	- Acknowledged that the request for emergency certification stems from the severe compromise of the installation at the bank's toe, identifying this as an emergency situation. - Solidified the opinion that emergency repairs should be permitted while the Notice of Intent (NOI) is being filed, in line with the DEP's expectation for a filing. - Expressed a clear stance in favor of allowing the proposed emergency actions to proceed, citing agreement with the DEP's guidance and not seeing any issues with this approach.
Braine	- Expressed agreement with the notion of allowing the proposed actions to proceed. - Admitted confusion regarding the various definitions and criteria discussed but concluded that, regardless of the precise definition of "emergency," the proposed response seems appropriate.
D Anne Atherton	- Mentioned the Nantucket Coastal Conservancy commissioned photogrammetry imaging in early January, providing current data throughout the project area for the NOI, which is ready to be submitted. - Questioned the existence of drawings for the installation, noting that the permits originally issued for what was described as "banking and terracing" expired in 2010 and expressing uncertainty about any approved plans for the so-called coir terraces. - Highlighted that the license for the project expired in 2010, emphasizing that the land in question belongs to the people of Nantucket, not private property owners, and that any work requires a license issued by the Town and approved by Town Meeting, a significant factor not yet discussed.
RJ Turcotte	- Agreed with D. Anne's points, emphasizing that the application concerns an installation that expired long ago, and conditions have significantly changed since then.

	- Distinguished between the type of erosion seen on the South Shore and the long-standing nature of the structures in question, noting that coir logs have historically held the line. - Raised concerns about the lack of information on current tidal lines and coastal bank features, which could inform decision-making. - Highlighted the commission's challenges with a previous removal order for a nearby location, questioning the wisdom of reinstalling coir logs without a clear understanding of what is legally permissible. - Critiqued the classification of the situation as an emergency, given the distance of structures from the shore and their historical stability, suggesting that proceeding without further review might be a poor decision.
	Dunk - Reiterated the necessity of a follow-up Notice of Intent (NOI) after emergency certification, distinguishing it from a friendly enforcement order. - Stressed the goal to continue repairs and maintenance that have been ongoing for years, ensuring protection against active erosion and bluff instability. - Noted public access along the bluff walk and recent significant erosion, particularly near lot 83 where about five feet of the bluff top gave way. - Clarified the situation at lot 79, explaining that any perceived seaward growth was due to bluff retreat on adjacent properties, not an expansion of the coir terraces. - Mentioned that the intent is to allow post-storm repairs to proceed, followed by an NOI to address long-term maintenance and protection. - Described the design of the coir terraces as stacked coir tubes, with plans for the contractor to repair or replace them as needed and cover them with sand, replicating the existing installation. - Summarized the aim to ensure continued protection through immediate repairs and subsequent formal approval via an NOI.
	Golding - Clarified that the public footpath ends at Lot 65, running along the hedge row on Lot 67. - Noted that at that point, there is a distance of 32 feet and a vegetated bluff for Lot 63, and for Lot 66, there is a distance of 66 feet with a vegetated bluff extending approximately another 80 feet. - Argued that based on these distances and conditions, the footpath does not appear to be in imminent danger.
	Dunk - Noted from the aerial imagery that while the setback at Lot 63 is 32 feet, there is active erosion at the northern edge of Lot 63 and in front of Lot 65, indicating concerns regarding the stability of that section of the bluff.
	Golding - Reported visiting the site a week ago and not feeling endangered while walking down to the beach to observe the condition of the coir remains, which notably had not been cleaned up. - Suggested that if the applications for these properties were reviewed individually, the commission would find the demands for emergency action surprising, especially considering that many of the properties may not be legally entitled to protection. - Highlighted that some coir rolls are entirely missing, and to their knowledge, there are no existing plans for contractors to follow for maintenance.

	- Expressed support for requiring an official Notice of Intent (NOI) to ensure that proposed construction and maintenance efforts are accompanied by detailed drawings.
Engelberg	- Clarified that the definition of emergencies, according to the DEP, limits them to projects necessary for protecting the health and safety of Commonwealth citizens. - Emphasized that emergency certifications should only cover the minimum requirements necessary to address an emergency. - Suggested that if an emergency is perceived on some but not all parcels involved, the commission has the discretion to issue an order for maintenance on only those parcels deemed to have an emergency. - Stressed the responsibility to ensure any work approved under emergency certification is the absolute minimum needed before a Notice of Intent (NOI) is submitted.
Meridith Moldenhauer	- Expressed appreciation for a motion supporting the maintenance of the status quo, highlighting the collective concern of the involved homeowners. - Emphasized the importance of moving forward with maintenance to preserve current conditions, with an openness to addressing various issues in the future. - Noted personal observations and visits to the beach in the last two weeks, affirming a shared desire to resolve the situation. - Conveyed anticipation for addressing the commission's comments and concerns through a Notice of Intent (NOI), if deemed necessary, to continue practices that have been permitted for many years.
Golding	- Acknowledged the purchase of the house on Lot 71, noting the absence of a coir roll in front of this property because the previous owner believed in letting nature take its course. - Added that the same situation applies to Lot 73, with aerial imagery confirming the lack of coir rolls on these two properties.
Moldenhauer	- Coordinated with a contractor upon purchasing the house, who informed them that the installation of coir terraces was permitted, and documentation was provided to support this. - Installed coir terraces from lot 83 down to 61 as permitted. - Expressed willingness to discuss the installation with the commission if necessary, highlighting that the group of homeowners is seeking to maintain the status quo and respond to the significant storm damage experienced in January. - Described the storms as revealing the insufficiency of the coir terraces in the area, noting that while many terraces suffered damage, a majority are still in place. - Reported that their own coir terraces were displaced by the wind and surf but indicated that many others in the area only require basic repairs, such as being tied up or repaired, with a variety of conditions observed among the installations.
Dunk	- Sent correspondence to Jeff Carlson, including photos demonstrating that coir terraces along the entire stretch were exposed and visible after the January storms. - Noted that the 2021 aerial photo might not show some coir terraces because they were covered by sand, which the storms later removed, revealing the coir underneath.

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	- Submitted documentation to Jeff on February 2, evidencing that coir exists along the whole stretch, which may have previously been obscured by sand coverage. Burton Balkind - Questioned the immediacy of the situation, comparing it to clear emergencies like a sewer break or a house on the verge of collapse, and suggested that a more detailed plan be submitted given the lack of a valid permit for the project. - Advocated for the submission of drawings or schematics to clarify what restoring to the "status quo" entails, as the current descriptions leave room for interpretation. - Highlighted that emergency orders should specify the minimum necessary maintenance, agreeing with the point made about the need for a clear plan outlining what this minimum entails. - Argued that approval should not be granted without a specific plan, emphasizing that the term "status quo" is too vague for meaningful action.
Motion:	Motion to approve and allow the minimum necessary maintenance under the condition that an application for a Notice of Intent (NOI) is submitted immediately as part of the emergency provision. (Made By: Williams) (Seconded By: Misurelli) (03:55:35)
Vote:	Carried: //5:2 – Braine, Engelbourg, Misurelli, Plandowski, Williams (aye) // Beale, Golding (Nay)

IV. PUBLIC HEARING

8. Discussion of and potential adoption of the Nantucket Wetlands Regulations update

Discussion:	Carlson - Acknowledged the need for cleanup and consensus on the lengthy nature of the meeting, proposing to postpone the discussion to the next regular meeting on March 7th. - Planned to use additional outreach methods, such as social media, to inform the public about the upcoming discussion. - Agreed to place the topic first on the agenda for the next meeting, before the Notices of Intent.
Action:	Continue until the March 7, 2024, meeting. (03:59:00)

V. PUBLIC MEETING

A. Other Business

1. Approval of Minutes 01/18/2024

Motion:	Motion to approve the minutes of January 18, 2024. (Made by: Williams) (Seconded by: Plandowski) (03:59:15)
Vote:	Carried://7:0 Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

2. Discussion of Meeting Schedule for Town/SBPF NOI SE48-3736

Discussion:	Completed.
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3. Monitoring Reports

Discussion:	Commissioners had no questions.
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4. Enforcement Actions/Potential Enforcement Actions

Discussion:	Nothing to report.
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5. Reports: CRAC, CPC, NP&EDC, Harbor Plan, Offshore Wind Work Group, etc.

CRAC	No report.
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CPC	No report.
NP&EDC	No report.
Harbor Plan	No report.
Offshore Wind Working Group	No report.

6. Commissioner's Comments

Discussion:	Williams - Commended Chair Golding for another good meeting. Engelbourg - Highlighted the urgency of reviewing three articles related to the conveyance of lands controlled or owned by the Town of Nantucket but under the Nantucket Conservation Commission's control, specified as articles 85, 90, and 98 in the Town of Nantucket annual town meeting warrant. - Expressed surprise that the Select Board proceeded to include these articles in the warrant without consulting the Conservation Commission. - Emphasized the need to swiftly schedule a hearing to deliberate on the Commission's stance regarding these articles, stressing the importance due to the approaching town meeting. - Requested that this issue be added as an agenda item for the next meeting to ensure timely discussion and decision-making. - Specified that the articles concern two parcels: the 35 Grove Lane parcel, which is the commission's largest at 10 acres, and a second parcel located within a road layout of Aimes Avenue, previously unidentified due to its location in road layouts but documented in land court records. - Mentioned Articles 85 and 90, which propose conveying these parcels from the Conservation Commission to the Town of Nantucket for potential redistribution. - Detailed Article 98, aiming to convey the parcels to different landowners, with the Land Bank being the designated recipient for the Conservation Commission's case. Plandowski - Expressed surprise over repeated mentions that the pool regulation, which mandates water be pumped out to a sewage plant for disposal, seems to be infrequently adhered to, as indicated by the low number of deliveries made to the sewage plant. - Questioned who bears the responsibility for ensuring compliance with this requirement specified in the orders of condition. Misurelli - Responded to Joe's question, stating that it is the homeowner's responsibility.
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7. Administrator/Staff Reports

Discussion:	Dell'Erba - Apologized for the webinar issues, promising efforts to resolve them. - Mentioned forgetting to bring up an emergency order drafted on the day of the last meeting, intending to inform the commission and send out a signature page the following day. - Detailed the situation at 334 Madaket Road, where a garage was damaged by a storm and was at imminent risk of collapse, leading to authorization for the garage to be moved. - Noted that the signed order remains valid. - Announced that the commission members would receive the signature page the next day for awareness and formal acknowledgment.
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8. Adjournment

Motion:	Motion to adjourn. (Made By: Plandowski) (Seconded By: Braine) (04:06:27)
Vote:	Carried: //7:0 – Beale, Braine, Engelbourg, Misurelli, Plandowski, Williams, Golding (aye)

Submitted by:
Elaina Cano