



CONSERVATION COMMISSION MINUTES

131 Pleasant Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Thursday, June 18, 2026 – 5:00 p.m.

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

<https://youtube.com/live/h6z1q8jKrxg>

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: Will Dell Erba, Conservation Agent
 Attending Members: Engelbourg, Braine, Misurelli, Schafer, Turcotte, Plandowski and Williams
 Absent Members: -
 Members Left Early: -

I. Call To Order

II. Acceptance of the Agenda

Discussion: (00:01:40)	Engelbourg notes the continuances
Motion:	Motion to accept the agenda (Made by: Misurelli) (Seconded by: Williams)
Vote:	Vote Carried: 7:0: Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

III. Announcements

Discussion: (00:02:43)	Engelbourg announced that the meeting is being audio and video recorded.
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IV. Update on Public Comment Questions from Prior Meetings

Discussion: (00:03:02)	none
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V. Public Comment

Chair Engelbourg called for public comment

Discussion: (00:03:06)	Burton Balkind, Nantucket Coastal Conservancy - Asks if the Baxter Road Geotube project is going to be a public discussion or just amongst Commission members. Engelbourg - I'm willing to allow public comment for that portion of the meeting.
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VI. Public Hearing

A. Notice of Intent- No Waiver Required (none)

B. Notice of Intent- Waiver Required

- Robert F. Greenhill Revocable Trust- 16 Hoicks Hollow Road (23-1) SE48-3917

Action:	CONTINUED UNTIL JULY 2, 2026
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- Town of Nantucket- Polpis Harbor & Hither Creek Dredging Plan (various) SE48-3973

Action:	CONTINUED UNTIL JULY 2, 2026
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- 240 Polpis LLC- 240 Polpis Road (26-23 & 23.1) SE-3975

Sitting:	Engelbourg, Misurelli, Plandowski, Schafer, Turcotte, and 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: (00:04:36)	Engelbourg - Due to Commissioner Braine did not attend the last meeting and did not submit the read in form, he will not be sitting on the application. Madden - We had initially presented this application on May 7th with a subsequent on-site visit on May 19th. - We met on the May 21st meeting, where there was no new testimony provided, but we just indicated that the representatives were working on revised material. - Reviews the revised site plan, which was submitted on May 29th which includes reducing the size of the pool as well as being shifted further away from the resource areas with a revised deck configuration. - Other revisions included the removal of a westerly deck, the expansion of the revegetated area along the North side, and the proposal of a selective invasive species management as previously discussed. - The revised project furthers the significant long-term net benefit that we're proposing to the offsite resource areas. - Reiterates that the dwelling will be moved further away from the resource areas with the removal of all structural components from the 25-foot buffer zone. Turcotte - Asks what the total square footage of the developed area is now on site compared to what's proposed. Madden - It's decreasing from 0 to 75-foot buffer zone by 459 square feet and refers to the table comparing the areas of what's existing versus proposed. Turcotte - I always love seeing a building and infrastructure move back from the resource area but believe that it doesn't offset the impacts from the pool and decking, which are so close to Polpis Harbor. - Reminds the Commission that we also have Coastal Storm Flooding pool performance standards, and I'm not convinced that this pool won't interact with storm waters during storm events. - I want to believe that our pool regulations will help but if you ask the folks about wastewater, they don't get a single truck of pumped pool water coming into the facility. - For these reasons, I'm opposed to this one. Misurelli - I think that we could put in the Order of Conditions that there would need to be proof provided for the pool to be pumped down in the season. - I don't love the project myself, but I do think that the offsets that they're doing are good overall for the site. Williams - Agrees with Misurelli and that there is a net benefit and we can apply the standard pool conditions and due to it going inside the existing foundation. Madden - The pool elevations are at elevation 12 and so the flood elevation is down at elevation 8, so there is some separation there. Turcotte - I think that the language for that performance standard is that it can't interact and I'm not convinced that it's not going to. Engelbourg - Reads the definition of the long-term net benefit performance standards. It's within our role to ensure that the Conditions on the Order of Conditions reflect the protection of the resource area. - I think what Misurelli is saying about having a condition on this permit and ever other about proof of delivery to wastewater treatment is a great idea for the future.

	- Maybe there needs to be an annual submittal and mentions that “failure to submit this report will result in an automatic Enforcement Order.” - We have put specific failure criteria into permits many times before and we can say if you don’t do this, the project is in failure.” - In this site, to provide the project purpose as proposed, there is probably no alternative. - I think there is enough evidence, in my opinion, that this project could meet the net benefit requirement as long as we put some stringent conditions on the pool.
	Williams
	- Due to the height being so far above any flooding that would take place, the likelihood of a wash over on this pool with the chlorine in it is slim to none.
	Engelbourg
	- I don’t think that the issue is the flood waters hitting the bottom of the pool, but that the pool water shall not be allowed to interact in any way. - It’s important not to just think about the design for the flood elevation, but about the conditions to minimize any unanticipated impacts.
	Schafer
	- Agrees with Engelbourg and thinks that we also need to evaluate these projects on their own merits and not like some other project that we approved of two years ago.
	Engelbourg
	- We must evaluate the project on the basis of the individual site and what’s presented to us. - Suggests other conditions that I think might mitigate against some potential issues- we could put in some type of monitoring requirement where if specific storm is forecast, then the pool needs to be drained. - We can also put Mike’s recommended condition that there is proof of delivery to the wastewater treatment facility and would be considered a failure of the project if reports aren’t submitted.
	Madden
	- I think whatever the Commission is comfortable conditioning, making sure everything is done appropriately and avoiding any adverse effects, by all means.
	Turcotte
	- I appreciate the enthusiasm on how to try and figure out how to make this work regulatorily, I don’t know how this can be conditioned in a way that’s enforceable. - If they aren’t in compliance and they have to remove the pool, that’s even more disturbance right on top of an impaired waterbody that we’re letting them install in the first place. - These pools are just tricky, and I’m just not convinced that it has no ability to interact with the flood waters during a storm event, and I think it’s going to really complicate it for staff to figure out whether this is being followed or not.
	Engelbourg
	- We can condition projects that require pretty much anything to protect the resource areas.
	Schafer
	- Asks Madden if there would need to be about 4 feet of flood surge to interact with the level of the pool.
	Madden
	- It’s AE flooding, which is still water flooding so it’s not velocity zone and a pretty good separation between that flood zone elevation and the top of the pool.
	Dell ’Erba
	- Kindly request that when the Commission discuss this Order that we allow staff to draft it for next meeting.
	Madden
	- With the Order now being voted on at the next meeting, asks if that gives the opportunity for Plandowski and Braine to review the minutes and vote.

	Engelbourg - Mentions that Plandowski is eligible, but Braine is not as he has now missed two meetings.
Action:	Motion to close: (Made by: Williams) (Seconded by: Misurelli)
Vote:	Vote Carried: 6:0: Engelbourg, Misurelli, Plandowski, Schafer, Turcotte, & Williams (aye)

4. *Nantucket Islands Land Bank-25 New Lane & 10 Grove Lane (41-275.1 & 275.2) SE48-3979

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
Recused:	
Representatives	Elizabeth Phelps, Nantucket Islands Land Bank
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	Burton Balkind, speaking on behalf of a citizen
Discussion: (00:32:24)	Phelps - Describes the proposed project of invasive species management using grazing pigs at the site. - There are several invasive species that have taken hold in the meadow including Velvet Grass, Bittersweet, Honeysuckle, Porcelain Berry and Poison Ivy throughout. - We are preparing to remove the invasives by mowing the area and fencing pigs in to graze and root out the vegetation and then restoring the field conservation seed mix. - The pigs would be fenced into different sections as reflected in the site plan over two growing seasons. - A silt fence would be installed adjacent or on the edge of the Bordering Vegetated Wetland to prevent erosion and sedimentation into the resource area. - A waiver is required for restoration seeding in the 25-foot buffer zone on the basis that removing the invasives and restoring the field would be a long-term net benefit. Misurelli - Pig grazing is a bit strange, but I'm assuming no pigs will be able to get lose and find ourselves with wild pigs around the island. Engelbourg - There will be a fence installed to keep them in and there will be a designated person to overlook the grazing. - This is not the first Land Bank property to which we have approved pig grazing on Nantucket. - I think that pigs are incredibly effective at getting rid of all vegetation. Phelps - We'll have two layers of fencing, one to keep other animals outside of the area and also a strand of electric wire inside that. - People will be checking them every day and keeping a good eye on them. Braine - Asks where the pigs come from. Phelps - They're coming from Eat Fire Farm. Balkind - Asks if pigs more or less effective than goats. Engelbourg - If you want vegetation removed, pigs are the most effective form of animal that you can use. - If you're worried about it being completely muddy and denuded of all vegetation, using something like a sheep or goat probably would make more sense. Balkind - We put up a barn owl nest box there a few years ago on that property and I couldn't tell on the map if that's going to be in the pig enclosure. Phelps

	- I am not aware of one that's still there but can look into it and get back to you on that. Balkind - That was about six years ago with Dr. Kennedy for Maria Mitchell. - If there is a nest box in there and you could find out what the least disturbance that the pigs would cause, I would appreciate that. Phelps - The fencing will just be within the field and it's not going to be close to the shrubs, but I will look for that, and we'll get ahold of you if we have any questions.
Action:	Motion to close: (Made by: Misurelli) (Seconded by: Braine)
Vote:	Vote Carried: 7:0: Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

C. Amended Order of Conditions- No Waiver Required (none)

D. Amended Orders of Conditions- Waiver Required (none)

IV. Public Meeting

A. Orders of Conditions/ Amended Order of Conditions- No Waiver Required (none)

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

1. 240 Polpis LLC- 240 Polpis Road (26-23 & 23.1) SE48-3975 (Madden)

Sitting:	Engelbourg, Misurelli, Plandowski, Schafer, Turcotte, and 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:(00:40:50)	Engelbourg - We must discuss potential ideas for this Order to be approved at the July 2nd meeting. Misurelli - Requests that we put in a condition that proof of the pool water getting to the water treatment facility annually. Engelbourg - I think we would ask that every time pool water is delivered to the wastewater treatment plant, a report indicating the date, contractor, and the number of gallons be submitted to staff with some sort of verification from the wastewater department. - The two departments within the town could coordinate the verification. Turcotte - Asks how often a pool gets drained, once annually in the fall. Engelbourg - We're asking regularly, upon every instance no matter how often through the year. - We could require that because the winter is pretty much storm season, that the pool is drained by a specific date in the year. - We could also require that the pool is drained in advance of storm. Dell 'Erba - Asks if the Commission would request the pools to be empty for certain storm events as I'm considering the drought scenario. Williams - They don't drain the pools completely; they take them down about half way there. Engelbourg - Sometimes they drain them part of the way or sometimes they're drained most of the way depending on what the height of the pool is. - I think in the next couple of weeks, we could figure out some details about that.

	- Our goal is to have it be sufficiently low enough that it's not splashing or getting out of the area. Misurelli - It shouldn't be too hard to figure out what the gallonage is on that pool, just based on that size. Turcotte - I think it's going to be difficult to have it drained down before storms come as everyone is scrambling so would it be possible to mention to drain it before hurricane season starts and refill a date in the spring when it's the season. Engelbourg - We could just say that the pool must be seasonally drained between the two dates. Turcotte - Asks Dell 'Erba what happens if staff don't get the receipts. Engelbourg - We can be a little bit more stringent than we've been on other applications and maybe this will be a paradigm shift that we do more often. - There has been specific projects that have specific failure criteria put on them so we could have a whole section of the conditions that say, "this project will be considered failure if any of these things happen." - If the annual disposal is not submitted, the project will be considered in failure and the Commission at the time will issue an Enforcement Order to either remedy the situation or to violate the Order of Conditions. Turcotte - We can't see this pool from a public way, how are we even going to know what's going on with the pool. Dell 'Erba - That was one of the things that I was thinking about and there should be a stretch of dates that pools must be drawn down by. - We could use a database like Microsoft access, and you could just have it ping that certain ones didn't turn them in. Engelbourg - We could put in requirements that "notification comes to the Natural Resources Department with the date and name of contractor when filled and drained with photo evidence and receipt from the wastewater treatment is submitted by specific dates. - If these conditions allow us to uphold the performance standards of the resource areas, we should put as many in as possible. Plandowski - I'm not comfortable about it as this is a monumental task and not easy to get done. Engelbourg - We can't change any conditions on previous permits, and we can't deal with pools that aren't in our jurisdiction area so we would be starting with this one. - We could even put in a condition that states that "prior to construction, they have to have a signed letter from the wastewater treatment facility saying they will accept this water. Dell 'Erba - It could be that we have a set of pool conditions that we use for a pool such as this and then we have our standard pool conditions. Engelbourg - We're trying to justify a waiver for long-term net benefit so maybe these conditions are much more stringent than a project that meets the performance standards and we're still regulating but maybe not as strict as this. Misurelli - This is a much more sensitive pool than what we've talked about in previous meetings and we're going ahead to put this Order of Conditions on it, but we
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	could always revisit this at our regulatory meeting if we decided we wanted to put that on for all pools in our jurisdiction. Engelbourg - If some properties don't need this high standard, then we don't need to put it but if they do, we do. - This pool is in a sensitive area and there are legitimate regulatory concerns about the flood waters mixing with pool waters.
Action:	CONTINUED UNTIL JULY 2, 2026

2. Nantucket Islands Land Bank-25 New Lane & 10 Grove Lane (41-275.1 & 275.2) SE48-3979

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and 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:(00:57:55)	Dell 'Erba presents the item.
Action:	Motion to issue OOC as drafted: (Made by: Misurelli) (Seconded by: Braine)
Vote:	Vote Carried: 7:0: Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

C. Request for Determination of Applicability- Delineation Only (none)

D. Request for Determination of Applicability- Work Requested (none)

E. Minor Modifications

1. Maria Mitchell Association- 33 Washington Street (42.3.2-82.1) SE48-3772

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams
Recused:	-
Representatives:	Paul Santos, Nantucket Surveyors
Documentation:	Site and topographical plans, photos, requisite departmental reports and correspondence.
Public Comment:	There were no public comments
Discussion:(01:01:37)	Santos - This is a request to extend for a period of one-year conditions that were placed on a dual application that was filed by the Land Bank and Maria Mitchell. - The ticket booth that had long been standing on the property across the street was re-located to 33 Washington Street. It was not set there permanently but is currently there. - Maria Mitchell is undergoing plans to develop the property with the intent to incorporate into the ticket booth, however the provision that it could only stay on this property for a period of 2 years needs to be amended for an additional year. - Ultimately you will see the final plans filed as a Notice of Intent. Engelbourg - In the Order of Conditions that was approved, there is an additional finding that was put on to which Santos is referring to, requiring that the ticket booth structure be on the site temporarily for a period of two years or that an Amendment to the Order be submitted. - An Amendment was not submitted but, in its place, a Minor Modification, which is not what the Order says, but I think it's fine. - There's no real change here that would rise to the level of being an Amendment as they're just asking the structure that is already there to stay longer. - However, I think we should do some housekeeping to make more sense because the Land Bank was originally involved but aren't involved any longer.] - The site where the ticket booth was moved to the property that's held completely by the Maria Mitchell Association, but in the Order it says that the Land Bank has to file for the Amendment.

	- If this is going to happen again because I could foresee that it might happen again, as there is a larger plan in place for redevelopment of the aquarium. - I wonder if we could say “the permit holder(s), if they need additional time for this ticket booth, apply for a future Amendment or Minor Modification for additional time. - If we were in the Amended Order process, we could easily do that by having the black text added to the Order and maybe that’s why we intended it to be an Amendment in the first place. - We could ask the applicant’s representatives to submit an Amendment. Dell ‘Erba - Turcotte had asked why it can’t be an Extension because it’s technically not an Extension to the Order but to a finding that had its own time frame on it. Engelbourg - Agrees the Order is still valid and active. - The purpose of the additional finding at the time for us was not to allow a structure to go into an area that otherwise would not be permitted. - There was an effort to retain the historic contributing structure, and they eventually want to use it as part of their new aquarium design. Santos - The work of this Order is already complete so if we close this Order and then if the ongoing condition is that the ticket booth structure is to be incorporated into the new design, would that get too complicated? Engelbourg - There is potentially a way to do that, but we can’t do it now because the Certificate of Compliance request hasn’t been filed. Dell ‘Erba - I think because it’s an additional finding and not a condition, this seems to pass muster but If Santos were to submit a memo listing the housekeeping that we would do if it were an Amended Order, I would feel comfortable just to memorialize it. - I think that if we close it out then the condition is gone and we can’t have an ongoing finding. Engelbourg - We should have that Condition in there as it’s more binding and it can be dealt with in better ways later. - The best way to do this is to have the applicant submit an Amended Order that would allow us to put in that black, bold text of what the changes are. - It’s the best regulatory way to do this. Santos - Agrees to submit an Amended Order.
Action:	Motion to strike the Minor Modification from the agenda: (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried:/7:0: Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

F. Certificate of Compliance

1. 27 North Liberty LC- 27 North Liberty Street (41-453) SE48-544 (Reissue)

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and 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:(01:17:29)	The Commission approved by consent style
Action:	Motion to Reissue the Certificate of Compliance: (Made by: Misurelli) (Seconded by: Williams)
Vote:	Vote Carried: 7:0: Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

G. Extension Requests (none)

H. Other Business

1. Approval of Minutes 06/04/2026

Discussion: (001:17:54)	No Comments, questions or additions to the Minutes
Action:	Motion to approve the Minutes for 06/04/2026: (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried:/7:0: Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, Williams (aye)

2. Monitoring Reports

Discussion: (01:18:33)	none
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3. Reports: CRAC, CPC, NP&EDC, Harbor Plan, Offshore Wind Work Group, etc.

CRAC:	Braine - Nothing new
CPC:	Schafer - I was unable to attend but I believe we have a meeting next week.
NP& EDC:	Misurelli - Nothing to report but there is an upcoming meeting next week.
Harbor Plan	Williams - We sent the edited plan back to the state and waiting for it to return.

4. Enforcement Actions/ Potential Enforcement Actions

Discussion: (01:19:16)	Engelbourg asks Dell 'Erba if there are any new potential Enforcements to which he states, there isn't.
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21R Madaket Road

Action:	CONTINUED UNTIL JULY 2, 2026
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Baxter Road Geotubes

Sitting:	Engelbourg, Braine, Misurelli, Plandowski, Schafer, & Williams
Recused:	Turcotte
Representatives:	Meredith Moldenhauer, representing Sconset Beach Preservation Fund Dwight Dunk, Epsilon Associates Vince Murphy, Town of Nantucket
Public Comments:	Burton Balkind, speaking on behalf of a private citizen D Ann Atherton, Nantucket Coastal Conservancy Emily Molden, Nantucket Land & Water Council
Discussion: (01:19:32)	Moldenhauer - We are here to provide some information on the repair plans for the geotubes as well as our proposal to provide updated reports. Dunk - Reviews the figures from the repair narrative that was sent in on Friday. - SBPF commissioned new topographic survey of the project area that was conducted in March. - Having had the survey completed, the construction manager visits the site with the geotube manufacturer, and discussions with the Geotech engineer, we developed an approach to re-repair the damaged geotubes. - The damaged geotube tier was the second tier of geotube but with that damage deflation of that tier, the third and fourth tier also got damaged as they lost the underlying support. - The geotubes when constructed overlap each other so you would need to remove the tier on top of the damaged ones in order to repair. The work area is going to be wider than the damaged area.

	- The extent of the damaged area is the southern half of the geotube area and the approximate limits being from southern property limit of 87 up to about 99Baxter Road. - Before we remove anything for the demolition, the Geotech engineer suggested some type of shoring fronting 93 and potentially 97 8if the damage requires removal fronting 97 to make sure that the bluff base remains stable because those buildings are so close to the top of the bluff. - Once we start demolishing it and taking out that stabilization, the toe could potentially become unstable and then destabilize the bluff going up. - The shoring hasn't been designed but the idea would be either a sheet pile shoring or in beams with timbers in between to provide that shoring. - Once that shoring is in, they would start from the southern end and start to remove the sand from the top and deposit to the northern end of the template and potentially into the return area. - Once the sand is removed, they will cut open the top of the geotube, take out the sand and remove the geotextile fabric and move down to each tier in that manner. - Then to rebuild the geotubes, there will need to be a reservoir of temporary excavation to provide some water storage. - That water would be used to be mixed with sand into a hopper to make sand slurry. - The sand slurry is pumped into the geotube to deflate it and the pressure forces the water out and entraps the sand into the bag. - Once the damaged geotube sections are repaired, the template will be recovered with compatible sand size. - We are proposing to extend geotubes to reach angled returns to the bluff base, so we don't have the potential for erosion behind them. - All the construction equipment will access the beach via Hoicks Hollow ramp.
	Moldenhauer - We asked the Commission to hear this case back in March and asked staff to engage to figure out what the process would be to correct and repair the vandalized geotubes. - We communicated multiple times in February and then presented asking for this voluntary, friendly Enforcement Order, and continued to update the Commission. - We don't know what path forward this will be we wanted to propose inspections and review of the existing condition. - In our submission, we also had the idea of providing twice a month an inspection and report submitted to the Commission which would evaluate and look at any possible loose geotextile fabric that may have come loose. - This would allow us to inspect, review, and hopefully prevent any loose materials from having an adverse impact on marine life or navigation. - The reports would include dates of observations, someone walking the beach which would be allowed, taking pictures, and then potentially reporting on if there's any additional dislodged material.
	Schafer - Asks Dunk if the temporary shoring be removed.
	Dunk - The buildings are very close to the top of the bank as the intent of the shoring is to make sure that the section of the bluff is stable so that when those geotubes are removed, that's providing toe protection and that the bank remains stable. - When the shoring is installed and removed, there is some vibration. When there is some vibration, there is potential for destabilization. - There are benefits of removing it but if it remains, there is some benefit for leaving it in place for long term stabilization of those structures. - We don't have an answer as to whether or not it will be proposed to be removed.
	Schafer

	- Will there be monitoring of those houses while the shoring is installed with the zero-moment hammer and however they do it.
Dunk	- What we have identified is the approach for demolition and repairs and the details still need to be hammered out with the Geotech engineer. - I think it would make sense to monitor the distance from the top of the bluff to the structures while this work is ongoing.
Misurelli]	- Asks Dunk what period of time they think this work would take to do and how deep the shoring planks that are going in.
Dunk	- I don't know how exactly how deep the shoring planks would be, but they would need to be a few feet in the ground to maintain shoring because there will still be sand behind the geotube, and there will be sand in there. - In a project like this, it's almost like build design because as it's taken apart and demolished, we find out just what the extent of the actual damage is that needs to be repaired. - I'm thinking it would be a few weeks to get this job completed but can ask to get a better answer on that.
Misurelli	- I assume it would have to fit in a weather window that's feasible to work down there.
Dunk	- I believe the 947 feet original was done in just over 30 days with construction without demolition. That's why I'm thinking it would be 2 to 3 weeks.
Plandowski	- Asks what they are waiting for in terms of approval.
Moldenhauer	- Our partner, the Town is a landowner, so we are waiting to hear back from them following the vote that occurred in May. - We need to engage with town council to review and confirm those different requirements. - We need to understand where that path is leading; If that path is leading towards continued effort for the project and another vote at Town Meeting which would allow the repairs. If it's not then obviously, the repairs will be tabled, and the removal will then be engaged.
Murphy	- We had a conversation internally to figure out a path forward on this and it was determined that we would have to take this to a Select Board meeting in the coming weeks. - We need to get directions on a path forward on how they wish to proceed with taking this back-to-town meeting. - We are also reviewing the 2013 license to see how that currently stands to see if there's any possible paths forward but that would also have to be reviewed by the Select Board.
Engelbourg	- Asks what percentage of the geotube structure is being proposed to be removed and replaced.
Moldenhauer	- We don't have a percentage.
Engelbourg	- But it's ostensibly at least 50% of that, if not more just based on what's out on site.
Moldenhauer	- I'm not sure what percentage it is.
Engelbourg	- I'm not there in the geotechnical engineer world will confirm this but if you just look at the plans that are submitted with what's being called the approximate limits of damaged geotube demolition, it's like 75% of the structure.

	- I just raised this issue because we have to think about what our capacity is here as a Commission. - I've tried to think about this creatively and with an open mind, despite what other people in the community think, this proposal that's being put forth here is not really a repair proposal. - It's almost an entirely new system as you're talking about probably replacing almost all the geotubes, adding returns that were originally contemplated but not currently built, adding metal shoring to the system which would be considered a separate Coastal Engineering structure, and having a reservoir on the town-owned beach. - The point of Enforcement Orders is to remedy or mitigate issues to the Wetland Resource areas. - When we go through an Enforcement Order process, we need to think about whether doing this will achieve that or is too late and do we need to go back to our other alternative, which is seeking removal of the structure. - If this was a project that was being contemplated, it would be a Notice of Intent with probably months of testimony with significant more than what we have today. - I personally don't feel comfortable approving this type of repair through an Enforcement. - There are also other things that are even beyond our purview such as if the 2013 license is still valid. If not then in order to do this project, whether through the Enforcement process or a new Notice of Intent, then that would still require a vote at Town Meeting. - I know the shoring and part of the structure is on the private property and part of the structure is on town property but the access, the sand reservoir, and equipment, and the construction is going to be on the town land. - I think we need to seek town councils advise on if we can even do this because if we have an expired Order and an expired license then there's no point of the Enforcement because they can't be built anyway. - I have tried to wrap my brain around any way to get this done and to me the path just keeps getting slimmer.
Dunk	- In terms of the percentage, it's about 50% of the length of the second tier of the geotubes have been damaged. - We know there's going to be time now when the survey was done and work occurs and whether more damage is done due to storms. - We just wanted to provide some flexibility or some float in our length because things can change over time. - We can leave the terms just the way they are, but the intent of the original plan was for the returns to tie into the bluff face. - The purpose of the return is to prevent the flanking in erosion that can occur behind them. If they are going to be repaired, it makes sense to then extend those returns so that we have a stable structure.
Engelbourg	- I understand it from an engineering perspective, but the party here is subject to this violation is asking to have a structure rebuilt and expanded beyond it's final as-built condition. - The reality is that if this so-called repair project were to be allowed and were to happen, the new structure that was there would be enlarged and different than what currently exists.
Moldenhauer	- If the returns in your mind or for other Commissioners may not agree are an expansion, we can always do that in a two-part process where we get a friendly Enforcement Order for the repair of the geotubes. We could always file the returns as a separate portion down the road. - I think the comment about the degree of the repair; it's the Commission's interest to remedy and mitigate against current conditions that doesn't create adverse impact on the resource area.
Engelbourg	

	- It's within our discretion to do this process through the Enforcement, if we feel fit.
Misurelli	- On the shoring, that's obviously necessary but in the long term, it would probably be best if we try to find a way to not keep it in there, just to not complicate things going forward. - On the licensing side, that's going to have to happen outside of this Commission. - Overall, I am in favor of finding a way to repair the structure. I don't like being in disrepair any more than anyone. - I thought that at some point there would be some sort of Emergency Order that we would at least consider.
Murphy	- This will end up in front of the Select Board in a short amount of time; there is nothing that says you and the Select Board cannot work in parallel tracks. - The Commission can work to have whatever form of Enforcement Order so that you can allow the repairs and if the licensing gets resolved at the Select Board level in the near term, and then after that meeting you could issue your findings in order to allow that. - That would allow repairs to start before the winter storm season.
Braine	- Agrees with Misurelli, we should try to find a way to repair this. We have to check the legal aspects of it, but I do see it as a repair and not a new structure.
Misurelli	- I see what Engelbourg is saying, but it's a big structure overall and the damage, allegedly occurred by vandalism at this point.
Engelbourg	- Normally if we're looking at projects that someone's seeking to repair, not rebuild, we've often said in this Commission that if it's more than 50% replacement of materials, that's a rebuild. - If over 50% or tier 2 must be replaced and all of the tubes above that damaged part of tier two are also going to have to be taken out because they're not structurally sound anymore. - We need to get more clarity about what we are talking about here. - If any project, anywhere on the island came t us and said "we want to put a metal sheeting of some kind right on a Bank or right in front of one to prevent erosion, I doubt we would permit that. - I'm almost thinking these are two separate things. The shoring, although needed, rises to the level of almost being a separate Coastal Engineering Structure needed to be put in to protect the houses on the Bank, while the other Coastal Engineering Structure is being rebuilt. - I would never want that to be permanent. I think it would be dereliction of duty if we allowed that to be permanent. I have personal concern about it being temporary.
Williams	- Agrees with Misurelli and Braine, I'm willing to listen to what everyone has to say.
Misurelli	- I see the shoring as more of a safety procedure, people are going to be working underneath, and it would be temporary.
Moldenhauer	- Thought that Engelbourg's analogy of the questions of materials and there is actually a lot that's going to be reused. - In regard to the shoring, I actually came in front of the Commission years ago and went through all the entire removal plan process, I know we always submitted plans. - As part of those removal plans, it was an engineering solution to not require the homes to be removed, but to have temporary shoring for safety purposes during the repair as well as protecting the homes while the project is restored in its condition.

	Engelbourg - It's ironic that the same construction procedure couldn't have been contemplated at that time, but I hear what you're saying about it being a safety thing. - I think that if it happens, it must be temporary. Dunk - It's more like a supportive excavation, that is a safety thing, and I think it can be temporary because we would have the repair geotube structure in place. - Speaking as a citizen, when a criminal act is conducted and now that damage caused by that criminal act needs to be repaired, this is not what SBPF wanted to be doing. Engelbourg - There is no evidence that this is a criminal act, it's purely conjecture at this point. Moldenhauer - I do have police report that identifies it as vandalism. It states, "under investigation as vandalism". Misurelli - Asks Moldenhauer if the police are going to make a final ruling on anything like that. Moldenhauer - I would love to have that information; I have not been able to obtain it. Engelbourg - Until we have proof from either a court or police department, we are not going to definitively on public record call it a criminal act. Williams - Asks what is the result of what we're doing today, is it to go forward with an Enforcement Order, remove it, approve something, or are we waiting for them to come back with an application? Engelbourg - We can do any of those things if people feel like they have enough information to allow us to proceed. - If we think we need more information about what the exact construction methodology is, what percentage of the structure that needs to be repaired is, more specifics about the shoring being temporary and how it's being installed and removed. - The issue for us isn't that the structure is in disrepair, the issue is that because the structure is in disrepair it's causing adverse impacts to the Bank and Beach. - It is our job through some Enforcement Order to pick a process that fixes that. - We could come to the conclusion that rebuilding this is the process, they could just add sand onto the damaged structure until there is more clarity on what the town is going to do, or that the rebuild process is actually going to cause more adverse impacts to which the Enforcement Order can be for the removal. - I think we should speak with legal council on some of the legal issues and get some clarity on the construction design before we proceed today. Misurelli - I think we have laid out some work that's going to happen on the town's side and I think by default there have come across some questions to be answered, especially on some percentages. - Asks the representatives if it's reasonable to get some information on all those things and come back in two weeks. Moldenhauer - Agrees that they can provide that information and come back in two weeks. Williams - Let's say for a moment it was a deliberate vandalism, does that impact on how we must view this project? Engelbourg
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	- We can certainly ask Town Council for their opinion, but we are sort of agnostic to how violations occur. Our job can be to impose penalties on violators when it's clear that they were deliberately acting in ways that subvert the regulations. - Even if we had definitive proof that it was vandalism, we would still be asking to do the same thing. - For us, it doesn't matter how the violation occurred, but it matters that the violation did occur. Williams - Understands what Engelbourg is saying but if we go the worst-case scenario, that the person, hypothetically who did this is getting exactly what they wanted. Dell 'Erba - I'm going to put my private citizen hat on for a moment, it does not matter how the damage has happened, our job is to figure out what happens next. - I'm just having a hard time ignoring the fact that it would have been harder for the geotubes to be vandalized if they were covered with sand. Moldenhauer - If you had a shovel and wanted to get down there, you could move sand pretty easily. Engelbourg - Part of what Will is saying is relevant, as the structure was out of compliance before this for years. - Maybe this vandalism did happen, and it caused us to be in this very uncomfortable scenario of no one feels good about this philosophically. - Moldenhauer mentions that they voluntarily brought this in March, that's partially true. But last fall we were asking them to come in with plans for how they were going to add more sand to the structure. - Part of it was manmade but part of it was already out of compliance, so we're kind of in this weird scenario. Moldenhauer - We had come before this Commission and told that we were putting sand on the geotubes in January and mid-February. - We also asked the Commission in April to put sand down in order to potentially provide sand and mitigate the resource area in March. - We have put in every effort to bring the project into compliance. Balkind - Engelbourg agrees that this project has been out of compliance for a long time and I'm not going to argue the semantics of vandalism versus damage. - Asks if there is still a valid removal Order on the project. Engelbourg - I will defer that question until we get additional information for you. Balkind - If there is a valid removal Order, I think it should be brought up at the next discussion in two weeks because that's another option here. - There are a lot of things that are going to happen in order to bring this back up to where it was before. - As we have seen in the last 10 years, it has not been kept into compliance, and I don't know how you're going to Condition a project that they haven't been able to keep in compliance. - My other thought was the reason why the removal Order wasn't exercised, even when affirmed by a superior court judge was because the town was trying to work with the proponents to come to some kind of resolution that would make Baxter Road stable and by time in order for the alternative access to come into play. - I feel like since that's off the table, I'm trying to understand why we are even discussing rebuilding something if it does have a valid removal Order and there's no path forward for the expansion at this point.
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	- I would like to ask the Commissioners, however you are deliberating this project, to please require sand if there's no action taken to removal as there's a time lapse between what the town decides. - This project has not been contributing sand to the littoral system; it's been causing adverse effects to resource areas for years. - There is no other project that I can recall that this Commission has stood beside and has allowed these kinds of violations to happen for so long. Engelbourg - So, there is a removal Order that was affirmed by the Superior Court and in my opinion remains valid. - There was a date on that Order that needed to continue to be extended and we've passed the expiration date. I don't think it invalidates the Order, but we will get legal council's opinion on that. - A comment that was made by Balkind about there being no path for expansion, I would say that's categorically not incorrect. - Just because the Town Meeting vote failed, doesn't prevent the town, applicants, or anyone else really from seeking a new vote at Town Meeting for however long of a time they would like. - There are a lot of halts from allowing this project to continue, the license can't be granted, DEP is looking at the appeals process for the state order, the local order is under appeal by the Superior Court. - If some point in the future, if all those things went in favor for SBPF and the Town, it could be built. - What they are trying to do is to keep all their options open and go through all the processes at the same time to figure out what can happen, which I think is entirely reasonable. - I appreciate them being here tonight and going before the Select Board, engaging with the Town, engaging with lawyers. - I've often taken a hardline approach here, but what they're doing coming before us is certainly the right thing to do. Moldenhauer - This has been a very long and ongoing process, and I think we all need to go back, re-read and review the record but it was my understanding that as you mentioned the removal order had been continued and continued. - When we had started the Notice of Intent process for the new application, there was a reference in that process that if the application was approved, the removal order would have then become expired or dissolved or superseded, something to that effect. - It is my understanding that given that the Commission voted in support of the expansion project, is that the removal order is no longer valid. Engelbourg - We will have to ask Town Council about that but my understanding on how the process works is because the permit was appealed, it's not considered approved by the historic Commission. - It doesn't become approved until it clears all legal and regulatory hurdles. Moldenhauer - I want to make sure the record is clear that on March 6th, we asked to put sand down on the project, we emailed and conferred again with staff and were told on March 13th that we could not. Molden - We are also concerned that the work that's being requested and the intensity of that work, especially considering the status of the existing permits, is not necessarily appropriate for consideration through an Enforcement Order - The Commission really needs to consider whether it was going to approve these repairs, it needs to make sure that it finds and determines that all the work is in compliance with the Town's bylaws and regulations, as well as any state requirements. - I think the additional shoring up, even if it's temporary, more intensive and the returns that extend the length of the structure beyond what was originally allowed certainly raise some flags.
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	- Logistically it would be very challenging for the Commission to have proper oversight into this type of project, which sounds like it would require some significant changes and updates to the plans and designs as it proceeds. - I'm not sure if an Enforcement Order is an appropriate means to allow this type of work. - It also sounds as though SBPF has represented that there I no intention to do this immediately, so I think it makes sense to hold off on taking any action until after there has been discussion with the Select Board. - I would also implore the Commission tonight to require that mitigation sand be placed on this structure. - Sand would prevent ongoing damage from the surrounding resources as well as potentially additional damage to the structure itself.
Engelbourg	- We have the full authority to have an Enforcement requiring sand to be delivered. - If we went through a process at a hearing to have the Enforcement Order, we could have done it.
Atherton	- It's our understanding that there are two structures above the current geotubes at #93 and #97, can we please be told how close is #93 from the edge of the bluff?
Murphy	- Refers to Dunk to reference what is in the report. - We do not have the right to go onto those properties to undertake measurements.
Moldenhauer	- That information is par of a filing to the Mass DEP, which Atherton may have a copy of.
Dunk	- We submitted these to the Commission, which are also in the packet which were not done on the field but from the survey. - #93 is about 2 feet from the top of the bluff. - #97 is about 12 feet and #99 is about 14 feet.
Atherton	- Just 2 feet from the edge of the bluff sounds like a public safety hazard and we'll pursue that with the Town. - Asks if the Commission approves the repair, is part of the proposal that once the repairs are made, the project will be brought into compliance.
Engelbourg	- That would be what we would contemplate in the Enforcement process.
Murphy	- Asks Dunk how much movement has there been with those numbers over the lifetime of the geotube project as it sits today, has it decreased by much? - There is a vegetated Bank between the top tier of the geotubes going up the Buff face that largely holds it in place, so I imagine it has changed very little.
Dunk	- I will check our records and get back to you on that.
Engelbourg	- The reason the project didn't have an emergency certification come through the Commission, as it would have needed to be documented with purpose of health and safety for citizens of the Commonwealth. - We aren't the people that declare emergencies, we certify that they exist. The Select Board, Board of Health, there's a couple state entities that can and a few more on the list. - It's certainly a potential path for the work that is being contemplated here and it's something that SBPF and the Town should discuss.
Dunk	- Thanks, the Commission members for acknowledging that there is a lot going on behind the scenes for the applicants, the Town, and SBPF.
Engelbourg	

	- I heard before that we would like to request additional information and seek some input from Town Council and asks the Commissioners if that's how they would like to proceed.
Misurelli	- That seems like the most logical path, I would hate to move at the speed of government but that's where we are and there's a lot to consider.
Braine	- Asks if we should consider permitting sand to be placed on.
Misurelli	- Personally, I would like to see sand there so if we could find an avenue to do that and allow them to, I think that would be time well spent.
Engelbourg	- Asks Moldenhauer if a sand source is still available to apply to the beach. - Asks Dunk if that sand delivery is safe and able to be accomplished from an engineering perspective given the condition of the site with the damage at this point.
Moldenhauer	- The sand was coming from an excavation site that was down the street and part of the timing and the coordination that we were trying to provide, which is no longer available.
Engelbourg	- If another sand source was to be found available, asks Dunk if it would be feasible to deliver with the condition of the structure.
Dunk	- I will have to ask the construction manager to get a better assessment because he's been managing this for years. - The sand ramp that has traditionally been there was no longer there and may have to be rebuilt or used to build a ramp on the south end to then push the sand up. - With the conditions out there, a fraction of the amount of sand that's available would actually be placed on the template because the sand ramps that were there are no longer there.
Engelbourg	- I would hate to do nothing today but think we should direct those questions to the construction manager to get some clarity as well. - There are a lot of projects going on and if there is a sand source that becomes available but if it's not feasible to actually deliver it, then we need to figure out other things before we even get to that.
Misurelli	- That available sand source was a small amount, which is gone but whether it must be purchased or whatnot, the public and Commission would like to see if placed.
Engelbourg	- We care that the sand source meets the specification needed for grain size and all that, but this project team has successfully delivered quantities of sand to this site and sourced sand from many places.
Willians	- I understand we want to get the sand back on it but from a practical point of view, we're dumping sand on something that must be repaired. Would that not make it more difficult to repair it when it's not intact?
Engelbourg	- That was going to be a point that I brought up, but I think if we have a sand delivery that not necessarily is dumped on top of the tube, but possibly on the sides. The whole point is to feed the littoral system. - I would say that it has inadvertently received some sand because the tubes when they punctured, sand came out.
Moldenhauer	- If the Commission is looking at addressing this, we will wait until after the Select Board identities as our partner to see what path they would go down because obviously that is a critical question to what happens next.

	- We could come back and discuss that in 2 weeks. Murphy - The Select Board must get it on their agenda first and they have a lot going on and in July through August they have fewer meetings. Engelbourg - So, continuing this discussion will not be worthwhile because there won't be any information. - We should pick a date in the near future that at least gives them a reasonable amount of time. - In that time, we can have all these questions from the construction manager answered, more information about the shoring, and all other questions we raised answered. - I think if you're willing to continue the inspections, having more pictures and information about the project is great. Moldenhauer - Agrees to submit them twice a month.
Action:	CONTINUED UNIL JULY 16TH

5. Commissioner's Comments

Discussion: (02:57:03)	none
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6. Administrator/Staff Reports

Discussion: (02:57:28)	Dell Erba - The American Burying Beetle release is next week. - Will meet with Engelbourg and Turcotte about Regulation update conversational topics.
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I. Adjournment:

Motion:	Motion to adjourn at 7:58pm. (Made by: Misurelli) (Seconded by: Williams)
Vote:	Carried://7:0: Engelbourg, Braine, Misurelli, Plandowski, Schafer, Turcotte, and Williams (aye)

Submitted by:
Lisa Graves