



# CONSERVATION COMMISSION

## PUBLIC MEETING

131 Pleasant Street  
Nantucket, Massachusetts 02554

[www.nantucket-ma.gov](http://www.nantucket-ma.gov)

Thursday, January 6, 2022 – 5:00 p.m.

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

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

Called to order at 5:00 p.m. by Ms. Erisman

Staff in attendance: Jeff Carlson, Natural Resources Director; Morgan Sayles, Coastal Resource Technician; Terry Norton, Town Minutes Taker

Attending Members: Erisman, Golding, Engelbourg, Phillips, Beale, Williams

Absent Members: LaFleur

\*Matter has not been heard

### **I. PUBLIC MEETING**

#### **A. Announcements**

**B. Public Comment** – Introduced Coastal Resource Technician Morgan Sayles.

### **II. PUBLIC HEARING**

#### **A. Notice of Intent**

1. Lower Pocomo Nominee Trust – 88 Pocomo Road (15-42) SE48-3432 (**Cont. to 1/27**)
2. Pocomo Point Realty Trust – 90 Pocomo Road (15-43) SE48-3438 (**Cont. to 1/27**)
3. Land Bank – 1,3,5,7,9,11,13,15,15A Miacomet Road (67-49,345,346,679,680,681,682) SE48-3480

Sitting: Erisman, Golding, Engelbourg, Phillips, Beale, Williams

Documentation: Site and topographical plans, photos, requisite departmental reports, and correspondence.

Representative: Rachael Freeman, Nantucket Islands Land Bank

Public: None

Discussion (5:05) **Freeman** – This is for a single-track trail across about 13 acres. The trail’s designed to minimize disturbance. Received a letter from Massachusetts Natural Heritage (MNH) stating there is no adverse impact to wildlife habitat.

**Williams** – She no longer has concerns about this. It gets cyclists and walkers off Miacomet Road.

**Phillips** – There were a lot comments from abutters taken into account; this looks fine. Her only concern is if this has been up long enough for the public, who had comments, to look at.

**Freeman** – She has been in communication with a number of abutters. We received the MNH letter yesterday at 4 pm; she contacted several persons with concerns immediately.

**Phillips** – She is okay with this.

**Erisman** – She’s noticed that mid-island open space tends to be abused with trash; asked what type of monitoring of the trail there will be.

**Freeman** – We have property management staff who visit our properties to record any issues; if trash becomes an issue, their visits would increase. Currently they are at the Dog Park daily.

**Beale** – At the southern end near the 25’ zone, asked why it couldn’t go nearer the road.

**Freeman** – There are topographical issues and we’re mindful of not being in the road layout and there are areas cut in for stormwater drainage we don’t want to impact.

**Golding** – Confirmed it will be strictly dirt.

**Williams** – They should be careful about saying it will be all dirt because it has to be handicapped accessible. They might have to use a stabilizing material.

Staff recomm. Have everything needed to close.

Motion **Motion to Close.** (made by: Williams) (seconded)

Vote Carried 6-0//Beale, Engelbourg, Erisman, Golding, Phillips, and Williams-aye

4. Spencer – 3 Fulling Mill Road (27-27) SE48-3483

Sitting: Erisman, Golding, Engelbourg, Phillips, Beale, Williams

Documentation: Site and topographical plans, photos, requisite departmental reports, and correspondence.

Representative: None

Public: None

Discussion (5:00) None

Staff recomm. Mr. Madden requested this be continued.

Motion Continued to January 27<sup>th</sup>.

Vote N/A

5. \*Nantucket Memorial Airport – 14 Airport Road (88-15&16) SE48-3490  
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
 Documentation Site and topographical plans, photos, requisite departmental reports, and correspondence.  
 Representative Jed Merrow, McFarland Johnson Consultants  
 Brett Trowbridge, Botanist  
 Public None  
 Discussion (5:20) **Merrow** – This is so we can be prepared to move the Perimeter Road and fence on the ocean side of the airport. There is some encroachment of beach and dune onto the road and fence location; this is an area of active erosion. The road and fence are Airport safety and security features and are a Federal requirement. The proposed road would be similar in nature to the existing. Resource areas are Land Under the Ocean, Coastal Beach, and Coastal Dunes. Reviewed other restrictions which need to be adhered to. Explained removal of the existing fence that minimizes disturbance to the resource areas. The existing road would be left in place and could serve as a foot path.  
**Engelbourg** – This is a beneficial project that allows for dune migration. He would prefer to see the existing road revegetated; he doesn't want people using it for access into the dune field.  
**Merrow** – We aren't opposed to doing that; however, we have experience with revegetating habitat and found areas are better at naturally revegetating themselves than using seed mixed. They tend to be more robust.  
**Engelbourg** – He's seen that self-revegetation; however, he wants to minimize traffic into that area.  
**Beale** – He's surprised they didn't go with running the road in a straight line across; feels they are off the inevitable with erosion at about 7' per year. The concrete footings could quickly end up on the beach; he thinks they should be removed.  
**Merrow** – We're happy to do it either way. We could have a condition that we remove the footers when they're exposed. We're trying to minimize the disturbance. We'd love to do it all at once; the issue is we have to work with Federal funding and Federal Aviation Administration constraints; explained those constraints. Asked for a 3-week continuance.  
 Staff recomm. Waiting to hear from MNH on this.  
 Motion Continued to January 27<sup>th</sup>.  
 Vote N/A
6. \*Taccat, LLC – 14 Union Street (42.3.2-17) SE48-\_\_\_\_  
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (5:39) **Gasbarro** – This is for work within land subject to coastal storm flowage. Asked for a 3-week continuance.  
 Staff recomm. None  
 Motion Continued to January 27<sup>th</sup>.  
 Vote N/A
7. \*Still Dock Nantucket, LLC – 14 Oakland Street (59.4-255) SE48-\_\_\_\_  
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (5:41) **Gasbarro** – This is for renovation of a residential lot within land subject to coastal storm flowage and buffer to bordering vegetated wetlands. Work is within the existing footprint. Asked for a 3-week continuance.  
 Staff recomm. None  
 Motion Continued to January 27<sup>th</sup>.  
 Vote N/A
8. Still Dock Nantucket, LLC – 40 Tennessee Avenue (59.4-84) SE48-\_\_\_\_  
 Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
 Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.  
 Representative Art Gasbarro, Nantucket Engineering & Survey  
 Public None  
 Discussion (5:44) **Gasbarro** – This is within the buffer to a bordering vegetated wetland. This is for renovation and an addition and new deck outside the 50' buffer. Looking to relocated the septic tank, which is within land subject to coastal storm flowage. Asked for a 3-week continuance.  
 Staff recomm. None  
 Motion Continued to January 27<sup>th</sup>.  
 Vote N/A

9. \*Lauretta Lane N.T. – 7 Lauretta Lane (14-53) SE48-\_\_\_\_
- Sitting           Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
Documentation   Site and topographical plans, photos, requisite departmental, reports and correspondence.  
Representative   Art Gasbarro, Nantucket Engineering & Survey  
Public            None  
Discussion (5:46) **Gasbarro** – This is installation of a new I/A septic placed out of land subject to coastal storm flowage and away from Polpis Harbor and to preclude the need for a mound system. Explained installation of the new system. Requested a waiver for work through the resource area for the installation of the force main which should take no more than 1 day.  
**Beale** – Asked if the tanks are within the 25’ buffer. It looks like all the tanks are within the 25’.  
**Gasbarro** – No, they shouldn’t be; he’ll double-check the plans for any error. They are outside the 25’ but within the 50’.  
**Beale** – Asked if they could be moved north out of the no-build zone.  
**Gasbarro** – There’s low land and limitations on the tanks. Asked for a 3-week continuance.
- Staff recomm.   None  
Motion           Continued to January 27<sup>th</sup>.  
Vote              N/A
10. \*Wauwinet Inn, LLC – 120 Wauwinet Road (11-17) SE48-\_\_\_\_
- Sitting           Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
Documentation   Site and topographical plans, photos, requisite departmental, reports and correspondence.  
Representative   Katie Barnicle, Ilex Environmental  
Public            None  
Discussion (5:53) **Barnicle** – This is to replace the leaching field, which is 20 years old. Explained how that would be done. There is no expansion of the system. The resource area is a bordering vegetated wetland to the north and a coastal dune on the west. Work is outside the 50’ buffer within the 100’ buffer so requires a waiver. Flood plains surround the leaching field. Some work would be within 25’ of a rare species but no waiver is necessary because it’s outside the Field Boundary.  
**Phillips** – Asked for clarification between the straight-line MNH boundary and the Field boundary.  
**Barnicle** – We believe the dune is the edge of the protected species habitat along the western side. We are requesting that our Field verified coast delineated and coastal dune boundary is the rare species boundary. Through the Order of Conditions, we are asking for approval of our opinion that we’re outside the 25’ setback.  
**Engelbourg** – Asked if MNH has weighed in.  
**Barnicle** – No, we aren’t within the rare species habitat.  
**Engelbourg** – He thinks they still need to request a waiver for the habitat, rare species, and wildlife.  
**Erisman** – Burton Balkind said there have been nesting Plovers in this area in the past; asked when work would be done.  
**Barnicle** – The Wauwinet opens in April so work should be done before that. Construction isn’t long term.  
**Golding** – Asked why they are doing it this year.  
**Barnicle** – The leeching field needs to be replaced ASAP; we can’t go another season with this field.  
**Golding** – Asked how they figured out it was failing.  
**Barnicle** – There was ponding on the lawn after the Wauwinet had closed but staff were still there. Asked for a 3-week continuance.
- Staff recomm.   The delineations as represented are accurate.  
                      He agrees they should request a waiver for the habitat.  
                      Typically for any work after April 1<sup>st</sup>, we would have a condition requiring an ornithologist inspect the site for the presence or absence of Plovers.  
                      Ponding is the 1<sup>st</sup> symptom of large-scale leech field failure.
- Motion           Continued to January 27<sup>th</sup>.  
Vote              N/A
11. \*Bartholomae – 52 Tennessee Avenue (59.4-95) SE48-\_\_\_\_
- Sitting           Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
Documentation   Site and topographical plans, photos, requisite departmental, reports and correspondence.  
Representative   David M. Haines, Haines Hydrogeologic Consulting  
Public            None  
Discussion (6:07) **Haines** – Asking to add a septi-tech processor to the existing leech field. Work is within existing lawn and the 100’ buffer to salt marsh and within land subject to coastal storm flowage. The leech field passed Title 5 inspection and still viable. Asking for a waiver for the work. A silt fence will be installed with all work above it. All areas will be loamed and seeded back to its original grade. Asked for a 3-week continuance.
- Staff recomm.   None  
Motion           Continued to January 27<sup>th</sup>.  
Vote              N/A

**B. Amended Order of Conditions**

1. Rabil – 141 Cliff Road (30-1,2,3,4,5,6&7) SE48-3026
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Documentation Site and topographical plans, photos, requisite departmental, reports and correspondence.
  - Representative Paul Santos, Nantucket Surveyors  
Seth Wilkinson, Wilkinson Environmental
  - Public None
  - Discussion (6:10) **Santos** – The amended order request is to replace the existing Wilkinson array.  
**Wilkinson** – The replacement raises the height of the array. This array has been overtopped several times. The initial design was less robust. Explained the work to be done, including vegetating the bank.  
**Erisman** – Asked if this property is pre-1978.  
**Wilkinson** – He doesn’t know the exact status; the pool is about 50’ from the top of bank.  
**Santos** – It is post-1978, circa 1980s, and has been completely renovated and remodeled.  
**Engelbourg** – He’s confused why this qualifies as an amended order as opposed to a new NOI; they are asking for removal and replacement of a structure which is usually an NOI.  
**Erisman** – She’s concerned because the projects were sold as eco-friendly; now it’s being removed, replace, and enlarged within 5 years of initial installation. We are transferring these areas into permanent construction sites for maintenance of the structures.  
**Engelbourg** – It seems there’s been some over topping; asked if that has reached a level where the array is failing to do as it’s supposed to. If it’s just not as good as a new array, going through all that work puts more stress on the resourced area.  
**Wilkinson** – Even if we repair this, it would require some hefty work at the east end where end scour has occurred. Regarding the native plant community, it is being undermined currently.  
**Golding** – He shares Mr. Engelbourg’s reservations. Aerials show it is starting to have a peninsular effect. Suggested a site visit.  
**Phillip** – She agrees about a site visit; it might also help to look at the array at Washing Pond.  
**Engelbourg** – Asked how often this technology changes; concerned there will be another change in 3 years and another request to upgrade.  
**Wilkinson** – The biggest challenge here is the height; they could increase it up to the scarp. This is the first technological innovation in at least 5 years. The client isn’t looking to abandon this; if no changes are permitted, they will maintain what they have.  
**Erisman** – When these designs first came in, the rolls were wrapped in poly-plastic netting; when we realized that there was a plastic component, that’s when there was a commissioner-driven shift.  
**Wilkinson** – He’d be willing to meet the commissioners out there during a site visit. Asked for a 3-week continuance.
  - Staff recomm. The reason this is an amended order is that there’s a valid open order, which allows changes to the order. An Amended Order has all the same requirements as an NOI regarding notice.  
He will schedule this for a site visit on the 24<sup>th</sup>.
  - Motion Continued to January 27<sup>th</sup>.
  - Vote N/A
2. Ang – 11 Jonathan Way (75-42) SE48-3217
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Documentation Site and topographical plans, photos, requisite departmental, reports and correspondence.
  - Representative Jeff Blackwell, Blackwell & Associates  
Ben Champoux, Champoux Landscaping
  - Public None
  - Discussion (6:31) **Champoux** – This is for a landscape plan in proximity to two wetland resource areas; he’s tried to limit the work to that which has been approved and increase the buffering. The mounded septic surround will be planted with native species. Reviewed the areas of disturbance, which come out to a maximum of 3,125 square feet. The pool is longer in the same location and orientation has changed, it’s outside the 50’ buffer, added a patio area, and added a concrete retaining wall to stop leachate. Reviewed the planting list to confirm they are all native species. He’d like to memorialize an irrigation system directed away from the wetlands.  
**Blackwell** – The septic leech area has not changed from the original approval.  
**Erisman** – Confirmed any irrigation would be on the developed side only and not around the shed.
  - Staff recomm. Have everything needed to close and issue
  - Motion **Motion to Issue.** (made by: Golding) (seconded)
  - Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye

- 3. 56 Monomoy N.T. – 56 Monomoy Road (43-41) SE48-3362
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Documentation Site and topographical plans, photos, requisite departmental reports and correspondence.
  - Representative Paul Santos, Nantucket Surveyors
  - Public None
  - Discussion (6:47) **Santos** – The lot is within the buffer to a bordering vegetated wetlands and coastal bank; this is for invasive species removal and replanting with native species. Work would occur between the 25’ and 50’ buffers and will follow best management practices; reviewed those practices.  
**Engelbourg** – Assumes we’ll incorporate all the standard monitoring. Bittersweet is difficult to remove by hand only; suggested they consider use of herbicide.  
**Golding** – Asked if the want to add use of an herbicide in this amended order.  
**Santos** – He’s put together an invasive species removal protocol; he’ll incorporate that into it.
  - Staff recomm. Have everything needed to close and Issue.
  - Motion **Motion to Issue.** (made by: Williams) (seconded)
  - Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye

**III. PUBLIC MEETING**

**C. Certificates of Compliance**

- 1. Biggio – 155 Wauwinet Road (11-1) SE48-2808
- 2. Biggio – 155 Wauwinet Road (11-1) SE48-3192
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Representative None
  - Staff recomm. These are tied together. Work is completed and signed off. Recommend issuance with no on-going conditions
  - Discussion (6:53) None
  - Motion **Motion to Issue SE48-2808 and SE48-3192 with no on-going conditions.** (made by: Williams) (seconded)
  - Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye
- 3. 60 Madaket Road N.T. – 60 Madaket Road (41-200.11) SE48-2882
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Representative David M. Haines, Haines Hydrogeologic Consulting
  - Staff recomm. Work is completed and signed off. Recommend issuance with no on-going conditions
  - Discussion (6:53) **Haines** – Not much work was done on the house. All the other work is in compliance.
  - Motion **Motion to Issue with no on-going conditions.** (made by: Beale) (seconded)
  - Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye
- 4. North Pond Trust – Tuckernuck (96-13) SE48-3000
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Representative None
  - Staff recomm. Work is completed and in compliance. Recommend issuance with no on-going conditions
  - Discussion (6:53) None
  - Motion **Motion to Issue with no on-going conditions.** (made by: Williams) (seconded)
  - Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye

**D. Orders of Condition**

- 1. Land Bank – 1,3,5,7,9,11,13,15,15A Miacomet Road (67-49,345,346,679,680,681,682) SE48-3480
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Documentation None
  - Staff No order has been drafted at this time.
  - Discussion (6:55) None
  - Motion Continued to January 27<sup>th</sup>.
  - Vote N/A

**E. EXTENSION REQUEST**

- 1. Ang – 11 Jonathan Way (75-42) SE48-3217
  - Sitting Erisman, Golding, Engelbourg, Phillips, Beale, Williams
  - Representative Jeff Blackwell, Blackwell & Associates  
Ben Champoux
  - Staff Requesting two 1-year extensions; recommend granting that.
  - Discussion (6:58) None
  - Motion **Motion to Issue two 1-year extensions.** (made by: Golding) (seconded)
  - Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye

**F. Other Business**

- 1. Approval of Minutes 12/2/2021:
  - Motion Continued to January 27<sup>th</sup>.
  - Vote N/A
- 2. Monitoring Reports
  - a. 34 West Chester/3 Wesco Place
  - b. 102 Wauwinet Road
  - c. 12 North Road

3. Enforcement updates

a. Pocomo Area, 4&5 Coskata Course Way

Sitting           Erisman, Golding, Engelbourg, Phillips, Beale, Williams  
Speakers        Art Gasbarro, Nantucket Engineering & Survey for Pocomo Neighbors  
                    Sarah Alger, Sarah F. Alger P.C., for the Shapiros  
                    Jeff Shapiro, 57 Pocomo Road  
                    Varoujan Hagopian, GEI Consultants, for the Shapiros

Discussion (7:00) **Carlson** – This is all inclusive; we’ve had a number of responses come in; some issues have been addressed some not. Reviewed the debris found as a results of Ms. Sayles inspection. Don’t think all of it is coming in with the sand material. There have been questions about natural erosion as opposed to scour and allegations of sand being taken for use on other projects. Sand delivery points are specifically identified for each project.

**Alger** – Her clients have had on-going concerns about the sand delivery and what’s happening to their property with water runoff, vegetation on the Proprietors Road, erosion, scour, and trucks crossing their beach. They would prefer the sand delivery be moved to one of the roads abutting the property where this array is located. Other residents have experienced problems as well.

**Erisman** – She shares some of those concerns.

**Gasbarro** – The rebar and red brick were remnants from old activity. Wilkinson cleaned up any debris they came across. Regarding the access, he doesn’t believe there is any negative impact to the bank and the consolidated sediment is being eroded by harbor and overland water flow. Reviewed efforts taken to protect the Shapiro’s property. No sand has been delivered to other projects from this location. He believes the project is compliant.

**Carlson** – Our recommendation is to get all questions and concerns out so we can provide written responses. We have a site visit scheduled for the North Shore; we can go see this as well to see what’s going on.

**Erisman** – She saw a bucket loader go from that project around the point to Town property. Pocomo Neighbors have irrigation lines hanging off. There are problems with the Proprietors Road delivery erosion in heavy rain. She’s deeply disturbed by the way the project was executed. The end of June it looked finished and like heavy machinery wouldn’t be needed; this fall huge machinery went around the point there and added rolls to the top. That’s out of the scope of what we permitted. She also noticed the brick and debris that wasn’t being addressed as work was going on. The trucks were in the inter-tidal area.

**Gasbarro** – Regarding the Coscata project, they couldn’t finish going into the summer; we provided notification to ensure we were operating under the order. Thought they were allowed to bring vehicles. We had a ramp for the construction. Work was to end by May 15<sup>th</sup>.

**Vhagopian** – He was part of installing the first array. He walked the site from the Shapiro’s to beyond the project; he pulled a map showing access points. All the sand and maintenance is happening from a single point, an access road that is 20’ wide abutting a wetland. The initial designs were a temporary solution; they have become permanent. The commission needs to reexamine the projects. The continuance delivery and maintenance will continue to provide problems for the Shapiro. He’d like to visit the site with the Commission to explain his position. You’re starting to see toe erosion. With sea-level rise, the arrays will fail.

**Beale** – he would support a site visit; he hasn’t been there in a while.  
Erisman, Golding, and Phillips agree.

**Carlson** – He’ll schedule it for the 24<sup>th</sup>.

**Alger** – Urged everyone to read Mr. Carlson’s report.

Discussion about the logistics of the site visit.

No action at this time.

Motion

Vote            N/A

4. Reports:

a. None

5. Commissioners Comment

a. Engelbourg – It’s his understand we were supposed to have an open-session discussion regarding the Greenhill litigation for today’s agenda. Asked if we could do that then meet in Executive Session.

Erisman – In light of the reply from the Town, we should discuss our access to counsel in general.

Carlson – He’d be happy to draft a request for review and approval.

b. Beale – Asked if there is news on Mr. LeFleur. No

c. Erisman – Asked if the Department of Public Works (DPW) has responded about the Surfside Beach Whale; the DPW removed the trash receptacles but not the debris whale itself. Trash is blowing all over.

Carlson – He is meeting the DPW on the site. He’s been having trouble tracking down the person responsible.

6. Administrator/Staff Reports

a. A week from today we will begin interviews for Ms. Dodd’s position. He hopes to have someone to start before the end of January.

b. Ms. Sayles is putting together a list regarding her inspections; she’ll review those in the meeting.

c. He forwarded an email from Town regarding special counsel for SBPF.

Golding – He’d like to discuss that email in Executive Session.

Engelbourg – Same.

**G. Executive Session**

Motion **Motion to go into Executive Session Pursuant to MGL C. 30A § 21(A) 1. Purpose 3: To Discuss Strategy with Respect to Litigation with Regard to Siasconset Beach Preservation Fund (SBPF) Geotextile Tube Project Removal Order (SBPF v Nantucket Conservation Commission), where an Open Meeting May have a Detrimental Effect on the Litigation Position of the Conservation Commission at 7:38 pm. With no intent to return to open session. (made by: Williams) (seconded)**

Vote Carried 6-0// Beale Engelbourg, Erisman, Golding, Phillips, and Williams-aye

Submitted by:  
Terry L. Norton

PROPOSED