



# CONSERVATION COMMISSION SPECIAL MEETING

131 Pleasant Street  
Nantucket, Massachusetts 02554  
[www.nantucket-ma.gov](http://www.nantucket-ma.gov)  
Thursday, September 29, 2022

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

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

Called to order at 5:02 p.m. by Ms. Erisman

Staff in attendance:	Jeff Carlson, Natural Resources Director; Terry Norton, Town Minutes Taker; Vince Murphy, Natural Resources
Attending Members:	Erisman, Golding, Engelbourg, Beale, Williams, Misurelli, and Plandowski
Late Arrivals:	Williams, 5:49 pm
Earlier Departure:	Beale, 5:55 pm; Golding, 6:07 pm
Counsel:	Benjamin Tymann, Tymann, Davis and Duffy LLP

**I. PUBLIC MEETING**

**A. Announcements**

**B. Public Comment – None**

**C. 2021 Annual Review SBPF**

1. 'Sconset Beach Preservation Fund – 87-105 Baxter Road (48-various) SE48-2824

Sitting	Erisman, Golding, Engelbourg, Beale, Williams??, Misurelli, Plandowski
Recused	None
Documentation	SBPF 2021 Annual Report; 3 <sup>rd</sup> party review by Gregg Bergman
Applicant Rep	Dwight Dunk, Epsilon Associates Inc.
Public	D. Anne Atherton, Nantucket Coastal Conservancy

**Discussion** **Dunk** – He didn't receive Gregg Bergman's response to the report until today. The most pressing topic is the sand deliveries. This 2021 annual review is for April 2020 to March 2021; working with the Town to create an operation and maintenance plan as well as a sand make-up plan. Reviewed Table 1 Summary of Sand Deliver in Cubic Yards December 2013 - March 2021. Understands the requirements of the Order of Conditions but thinking about the littoral system, sufficient sand has been delivered meaning there has been no deficit to the littoral drift. Feels the length of coastline overshadows the geo-tube system. The project was designed and is maintained consistent with Massachusetts Department of Environmental Protection (DEP) and Coastal Zone Management (CZM) criteria.

**Misurelli** – You said 68,305 yards were delivered for 2022, asked who monitors deliveries.

**Dunk** – The required compensatory sand, after the array was lengthened, is 25,084 annually. The contractor notifies Mr. Carlson when the work is occurring and delivers the requisite reports. The sand comes from an excavation site on Island. The grain size is tested for compatibility and to ensure no anthropogenic contamination will occur.

**Engelbourg** – Asked if we'll be scheduling 2022 annual review.

**Dunk** – The annual review is for the calendar year to report monitoring and sand delivery for the previous calendar year. The 2022 review will be done after December 31, 2022. The sand year is April to March.

**Erisman** – We need to streamline the sand year with the report.

**Carlson** – We run through these reports when they come in; should have that to Commissioners by mid-day tomorrow.

**Erisman** – The sand deficit is still growing but our Order of Conditions was written with DEP and CZM weighing in. That growing deficit is concern.

**Dunk** – The deficit is stagnant at 40,000.

Opened to public comments for the annual review:

**Atherton** – Asked how long the geo-tubes were uncovered in 2021.

**Dunk** – He doesn't have the number of days; we do provide the quarterly report. Geo-tubes are inspected weekly and after every storm and wave event. We're talking a matter of days regarding the extent of exposure. We did provide the information on the strength of the poly-propylene material, which remains strong.

**Erisman** – If there is no further public comment, thanked Mr. Dunk for presenting the report. We will be hearing from SBPF about the 2022 Annual Report and any other issues.

Motion **No action at this time.**

Vote N/A

**D. Orders of Conditions**

1. Sunset House, LLC – 15 Hallowell Lane (30-10) SE48-3570

Sitting           Erisman, Golding, Engelbourg, Beale, Misurelli, Plandowski  
Documentation   Draft positive and negative Order of Conditions  
Staff               Reviewed the positive order: Condition 24 requires removed wood material to be tested PCBs and heavy metals, especially ethyl mercury used in creosote. Reviewed the Findings. Condition 25 addresses sealant treating. Reviewed the negative order: Finding 10 addresses the need to protect the coastal bank and Finding 16 states the applicant didn't meet the burden of proof. Findings addresses the resource areas. Added the Performance standard for land under the ocean. In the discussion section, he could capture Mr. Engelbourg's concerns about meeting the conditions extending the scope of work beyond simple maintenance. We can keep this open for the next meeting; we will still be within the 21-day requirement. Suggested people read the Order of Conditions and email him comments.

Discussion (5:34) Positive Order of Conditions Discussion:  
**Plandowski** – On Condition 24, asked what they do if they find any of the chemicals in sand.  
**Carlson** – He will add testing the soil and for the Commission decide what further action is necessary.  
**Engelbourg** – Regarding Condition 25, asked what treatment for the sheathing we're talking about or would treatment be allowed approval at the staff level.  
**Carlson** – We limited it to once a year; we can add that any treatment must be approved by the Commission.  
**Engelbourg** – Condition 21 regarding photographs, asked if they could be required to update the mean-high-water level twice a year.  
**Erisman** – She agrees with doing that.  
**Carlson** – If they are doing it quarterly, they are updating the mean-high-water level every 3 months.  
**Golding** – Asked if we determined that the house was substantially improved post 1978 and so not eligible for protection. The end scour to the west is staggering.  
**Williams** – She had a question about tying this to a dwelling. This bulkhead predates the Wetlands Act and so is grandfathered. They've been maintaining it and so are entitled to continue maintaining it; she thought we had an opinion from the State.  
**Erisman** – Mr. Carlson talked to the State, and they see this point of view but didn't say we couldn't ask for alternatives. We have not heard from Town Counsel.  
**Engelbourg** – A lot of concerns about this are related to our unique bylaws; there are still performance standards that pierce the veil of being a pre-existing structure.  
**Beale** – He has to leave. He would like to have a chance to discuss both positive and negative orders.  
**Misurelli** – He'd be happy to discuss both but would like to hold the vote for next week to be fair to Mr. Beale.  
Negative Order of Conditions Discussion:  
**Engelbourg** – Part of the structure is within land under the ocean; we need that performance standard in the Order of Conditions as well. It would be good to include all the performance standards having to provide a more environmentally friendly solution. He doesn't disagree with the applicant's points that the coastal engineering structure is eligible to receive the benefits of pre-existing use. His main point of his opposition to a positive order is that conditions required to solve the problems pierce the veil of pre-existing use.  
**Golding** – He too has to depart.  
**Misurelli** – When talking about more environmentally friendly solutions, it seems driving sheathing is less disruptive. Asked what Mr. Engelbourg has in mind.  
**Engelbourg** – The softest solution is bank nourishment. A more naturalize solution would be more resilient to sea-level rise and cause less pollution.  
**Williams** – Asked if the problem with creosote was solved.  
**Erisman** – That was discussed before she came on and is addressed in the positive order.  
**Williams** – She would think ripping this out would cause a significant amount of damage compared to what is planned. Natural plantings haven't worked out there due to movement. She's not sure natural solutions would work here.  
**Engelbourg** – It isn't up to the Commission to decide what we think will work; it's up to the applicant to prove that there is no way to make an alternative work. The alternative analysis isn't substantial or robust enough to prove that.  
Discussion about what would have to be done if the Commission wanted to see a more substantial alternative analysis.  
**Engelbourg** – Asked if the legal services will be rendered within the next 14 days. If Town Counsel stated his rhetoric isn't legally valid, he'd stand down on his opposing position; if there is no legal opinion, he'll remain in opposition.  
**Carlson** – Once we closed the hearing, that got paused. He would have to reactivate the request.

Motin             Continued to October 6<sup>th</sup>.  
Roll-call vote    N/A

2. Rabbit Run Road I, LLC – 26 Rabbit Run Road (28-9) SE48-3574

Sitting Erisman, Engelbourg, Williams, Misurelli, Plandowski,  
Documentation Draft Order of Conditions  
Staff Included standard fill and photo monitoring conditions as well as conditions ensuring water flow. He can add Condition 23 about exterior lighting and referencing Chapter 102 of the Town Code.  
Discussion (6:19) **Erisman** – We had talked about exterior lighting.  
**Engelbourg** – We’ve amended that to reference the bylaw.  
Motion **Motion to Issue as amended.** (made by: Williams) (seconded by: )  
Roll-call vote Carried 5-0//Engelbourg, Erisman, Misurelli, Plandowski, and Williams-aye

3. Jeffrey H. Johnston Trust – 131 Wauwinet Road (12-5) SE48-3578

Sitting Erisman, Engelbourg, Misurelli, Plandowski,  
Documentation Draft Order of Conditions  
Staff Included restored area and Fibergrate conditions and conditioned the equipment to be stored outside the resource area. He’ll add the exterior-lighting condition.  
Discussion (6:22) None  
Motion **Motion to Issue as amended.** (made by: Plandowski) (seconded by: )  
Roll-call vote Carried 4-0//Engelbourg, Erisman, Misurelli, and Plandowski-aye; Williams recused

**E. Adjournment:**

Motion **Motion to Adjourn at 6:24 pm.** (made by: Engelbourg) (seconded by: )  
Vote Carried 5-0//Engelbourg, Erisman, Misurelli, Plandowski, and Williams

Submitted by:  
Terry L. Norton

