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November 14, 2022

Jason Bridges, Chair
Nantucket Select Board
16 Broad Street
Nantucket, Ma 02554

Re: Petition to Discontinue Baxter Road and Create Statutory Private Way;

Dear Chair Bridges and Select Board members,

The Nantucket Land Council is a 501(c)(3) nonprofit with a mission to protect Nantucket's natural resources. As our community continues to grapple with the ever-growing list of coastal resilience challenges around Nantucket, and in consideration the Superior Court's recent decision upholding the Conservation Commission's geotube removal order we present this Board with an alternative path forward for Baxter Road that would save the Town millions and preserve 'Sconset beach.

We propose that the Board use tools unique to the Commonwealth to discontinue the most vulnerable segment of Baxter Road, from Bayberry Lane north to Sankaty Lighthouse, and create a Statutory Private Way in its place. This 0.52 miles of road represents a tiny fraction (~0.002%) of Nantucket's ~270 miles of roads, yet in recent history has taken up an inordinate amount of taxpayer resources and time.

The first segment of this letter will lay out ***why*** this strategy should be pursued, and the second segment will explain ***how*** it can be implemented.

The Case for Discontinuing Baxter Road as a Public Way:

With the delivery of the Coastal Resilience Plan (CRP) in November 2021, our community faces a reckoning it has never faced before. The plan lays out the need for projects island-wide that will cost nearly a billion dollars in the next decade and a half: **“\$830,000,000 to \$900,000,000 over the next 15+ years with \$11,000,000 in annual operations and maintenance costs. These estimates do not include staff and volunteer time to implement...”**

This figure is staggering. As of June 2021, the Baker-Polito Administration has dedicated approximately \$300 million to support climate resilient infrastructure *across Massachusetts*. Although more funding is available than ever before at the State and Federal levels, competition for these funds is fierce. Major metropolitan centers not only tend to receive the lions' share of grant funding for resilience, but their large populations allow project costs per capita to be lower. Residents of small coastal communities must contribute far more per capita to fund their coastal resilience projects.

The total cost in the CRP is unevenly divided between forty or more projects on varying timelines. There is currently only one Town employee, the Coastal Resilience Coordinator, to lead our community on resilience. The Resilience Coordinator must work with all departments



of Town government, Coastal Resilience Advisory Committee (CRAC), State and Federal agencies, and the community. Any one of the projects highlighted in the CRP¹, if accomplished, is a career’s worth of work. We’re lucky to have Vince Murphy at the helm as Nantucket’s Coastal Resilience Coordinator.

Not only must the community pull together with enormous effort, but we must be careful with our time and limited resources. Unfortunately, we will not be able to save everything, and even if we succeed, Nantucket will look very different in the years to come. To quote a poignant NPR piece on sea level rise and our collective race for coastal resilience, “*this is Dunkirk, not Normandy.*”²

That brings us to ‘Sconset bluff and Baxter Road. For centuries, the bluff has eroded uninterrupted. **The original layout of Baxter Road by William Flagg in 1883 strategically included paired lots along the western side of Baxter Road for homeowners to retreat to as the bluff inevitably eroded.** This foresight came long before climate change.

Despite careful planning in the layout of paired lots, the seasonal homeowners along northern Baxter Road have taken every opportunity to try to impede the natural process along the bluff. Over the last three decades, the Siasconset Beach Preservation Fund (SBPF) has tried everything to stop the elemental forces of nature, including beach dewatering systems, a proposal to inject grout at the base of the bluff, a proposal to install thousands of feet of stone revetment, and the installation of the present-day geotubes.

Throughout, SBPF has been at odds with the Nantucket Conservation Commission for nearly a decade. Despite multiple different members over the years, the Commission has never been persuaded that geotubes provide a long-term solution to halting the erosion of the dynamic bluff. The Commission was overruled in 2013 by the State DEP’s approval of the emergency order that led to the current installation.

SBPF has not hesitated to be litigious early and often and has sued the Town five times in the last ten years in 2012, 2014, 2019, and 2021. It has never won a single case. Instead, SBPF has used the Town’s obligation to maintain Baxter Road and associated infrastructure as a means of circumventing the Conservation Commission’s decisions. Repeated threats of litigation against the Town have created a rift between the Select Board and Conservation Commission, leading to the repeated requests by this Board that the Commission “reconsider” its decision to order the removal of the geotubes. This lack of trust between two of our community’s most critical Boards has led to increased legal costs and animosity.

Nantucket now has the dubious distinction of both hard-armoring and retreating from the same coastline, an inefficient use of staff time and taxpayer funds. Although SBPF paid for an independent study of the road, much of both the hypothetical geotube expansion project and road relocation fall on Town officials and staff.

As a result, the Town of Nantucket has been spending an inordinate amount of time on Baxter Road. First, let’s look at Executive Sessions in which SBPF/Baxter Road was on the agenda:

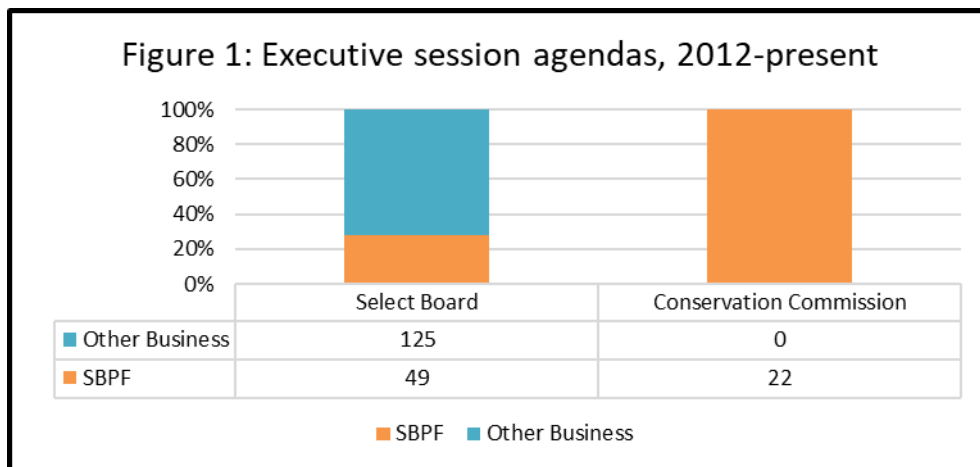


Figure 1: Select Board & Conservation Commission Executive Session agendas which included SBPF/Northern Baxter Road.

As you can see from Figure 1, above, **28% of Select Board Executive Sessions since 2012 have included SBPF/northern Baxter Road on their agendas.** The only issues which appeared more on these agendas were union contract negotiations. No individual project comes close regarding time spent deliberating behind closed doors. For the Conservation Commission, **100% of Executive Sessions included SBPF/northern Baxter Road on the agenda.** For the past decade, Select Board has averaged **4.9** executive sessions annually regarding SBPF, and ConCom has averaged **2.2** SBPF executive sessions.

In 2021, after completing the Arcadis study of Baxter Road, it was revealed that our Coastal Resilience Coordinator would be managing the proposed expansion of the geotube array along Baxter Road.

At the February 17th, 2022 Compliance Workshop Town Manager Libby Gibson stated “*Three Town staff are assigned to this issue: myself, Mr. Beaugrand, and Vince Murphy; We also have a consulting team and Town Counsel. Town is meeting with ‘Sconset Beach Preservation Fund (SBPF) frequently to be on top of this more so than in the past.*”³

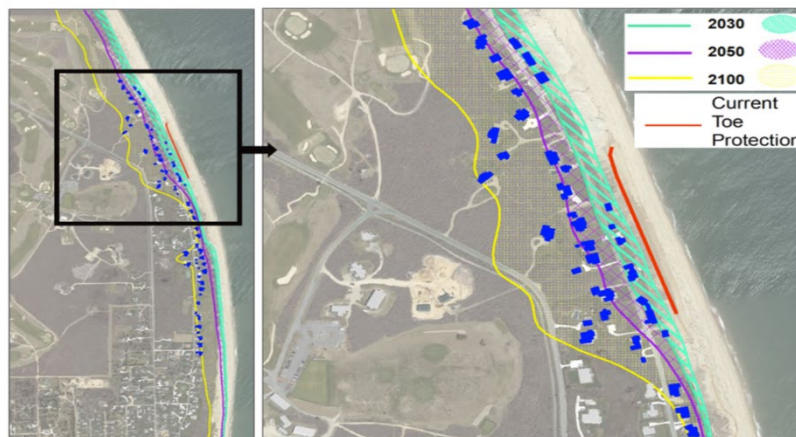
For over five years, the Conservation Commission has been trying to update Nantucket’s Wetland Bylaw. The Bylaw is in dire need of revision because it does not mention climate change or sea level rise. Over a year ago, on October 7th, 2021, during Commissioner’s comments, Chair Ashley Erisman stated “*Jeff and I have been discussing the regs update situation. We will try to schedule the next special meeting once ‘Sconset Bluff calms down.*”⁴ To date, Nantucket’s Wetland Bylaw still hasn’t been updated.

In these various ways, Baxter Road is having an outsized impact and burden on the Town, its staff and residents. There are **40+** other projects, some of which our community’s very survival depends on, which have not received this sort of attention or funding. Impeding our Conservation Commission’s ability to update our Wetland Bylaw impacts every single resident and visitor. No other project has impeded the Commission’s work to better protect all of Nantucket in favor of **two homes, some vacant lots, and a half-mile stretch of road and utilities.**

According to Arcadis’ CRP, within the next five decades, “From now through 2070, 2,373 structures in Nantucket County are at risk from coastal flooding and erosion, with the cumulative expected annual damages totaling \$3.4 billion, including direct physical damage to buildings, anticipated direct and induced economic disruption to businesses, direct social disruption, including relocation costs, health costs from injuries and mental stress, and lost income due to health issues, and Federal, State, and local tax impacts.”⁵

The Baxter Road, Long-Term Planning Study, notes that “the geotubes... running 947 feet alongshore from 87 to 101 Baxter Rd” protect just “**2 houses and that portion of the road and infrastructure.**”⁶ The rest of the lots lying behind the geotubes are vacant. The Long-Term Planning Study identified **70 total structures along the length of Baxter Road in danger from Sea Level Rise (SLR) and year 2100.**

structures of the total buildings in coastal hazards Nantucket.



erosion by the
These
comprise 2.9%
estimated
danger from
across

Figure 3: The 70 buildings which are projected to be at risk by 2100 are shown in blue based on FEMA Coastal Erosion Hazard Maps from July of 2019 (Source: <https://arcg.is/1fuXXD0>)

The cost to relocate Baxter Road will be far less than the cost of holding back the Atlantic Ocean, which all parties agree cannot be done indefinitely. In reviewing the suite of options explored by Arcadis, Applied Coastal, Inc. analyzed long-term costs, including maintenance and mitigation, from the present day to 2100. All costs are in US dollars. Coastal Engineer Trey Ruthven produced the following table based on this information:

Item	Year	Baxter Road Relocation	Existing Geotubes	Expanded Geotubes
Initial Construction Cost		\$11,800,000		\$6,000,000
Bring existing geotubes to compliance (61,870 yd3 @ \$50/yd3)			\$3,093,500	\$3,093,500
Annual Mitigation Sediment Maintenance	2022		\$1,000,000	\$3,000,000
Annual Mitigation Sediment Maintenance	2023		\$1,000,000	\$3,000,000
Annual Mitigation Sediment Maintenance	2024		\$1,000,000	\$3,000,000
Annual Mitigation Sediment Maintenance	2025		\$1,000,000	\$3,000,000
Total Life Cycle Cost at 2025	2025	\$11,800,000	\$7,093,500	\$21,093,500
Total Life Cycle Cost at 2030	2030	\$11,800,000	\$12,093,500	\$36,093,500
Total Life Cycle Cost at 2050*	2050	\$30,000,000	\$32,093,500	\$96,093,500
Total Life Cycle Cost at 2070	2070	\$30,000,000	\$52,093,500	\$156,093,500
Total Life Cycle Cost at 2100	2100	\$30,000,000	\$82,093,500	\$246,093,500
* Phase 2 of Baxter Road Relocation Completed				

Figure 4: Estimated Life Cycle costs based on the Arcadis Baxter Road Long Term Planning Study.

Mr. Ruthven, in his analysis for the Land Council, notes, *“The costs above show that relative to the Adaptation Pathways in the report, the costs do not support waiting to relocate Baxter Road as a Mid-or Long-Term action. By 2030 the costs associated with maintaining the geotube system are larger than relocating the road, which is also reflected in the costs associated with the Phase 2 relocation.”*⁷

Furthermore, the Arcadis Study found that 70 structures will be in danger from SLR-driven erosion by 2100. *All these structures lie along the stretch of Baxter Road we are recommending be discontinued and turned into a Statutory Private Way.*

To forge ahead as the Town is doing now with both expanding hard armoring and simultaneously retreating, the cost accrued by 2030 would be an estimated **\$47,893,500**. This does not include staff time taken away from other critical infrastructure projects such as the historic downtown, sewer beds, ferry

terminals, landfill, or airport.

Coastal Resilience Project	Project Cost*:
Expanded Geotube Array	\$36 million
Relocating Baxter Road Only	\$30 million
Codfish Park Erosion Control & Dune Field	\$19 million
Madaket Road Raising & Bridge Conversion	\$36 million
Downtown Neighborhood Flood Barrier	\$12 million
DPW Facilities & Landfill Resilience	\$300k
Polpis Road Raising & Bridge Conversion, Folger's Marsh	\$18 million
Nantucket Memorial Airport Dune Restoration	\$25 million
Surfside WWTF Dune Restoration	\$25 million
North Shore Dune Restoration & Nourishment	\$34 million
*Projected costs from Coastal Resilience Plan.	

Figure 5: Projects from the CRP which cost as much as or less than expanding geotubes along Baxter Rd.

How To Discontinue the Northernmost half mile of Baxter Road:

The following strategy for discontinuance is based on the Trustees of Reservations document titled “Discontinuing Town and County Roads”⁸

According to Massachusetts General Law Chapter 82, Section 2, the first step of the process is accomplished by this petition for discontinuance:

If common convenience and necessity require a new highway from town to town or from place to place within the same town, or the alteration, relocation, specific repair, discontinuance or discontinuance of maintenance of an existing highway, application therefor shall be made, by petition in writing, to the county commissioners having jurisdiction thereof. The petitioners shall, if so required by the county commissioners, before any action is taken upon such petition, cause a sufficient recognizance to be given to the jurisdiction, with surety to the satisfaction of the commissioners, for the payment of all costs and expenses to the jurisdiction which shall arise by reason of the proceedings on such petition, if the petitioners do not prevail.

This Select Board, acting as County Commissioners, should find that “common convenience and necessity require... discontinuance of an existing highway...”

Second, if requested by another party or deemed necessary by Select Board, a site viewing may be scheduled (MGL Chapter 82, Section 4).

Third, a public hearing must be held concerning the discontinuance (MGL Chapter 82, Section 4). Such a hearing would likely involve multiple sessions where all stakeholders would have the opportunity to be heard. Public notice requirements for viewing and hearing are detailed in MGL Chapter 82, Section 3.

Fourth, this Board will adjudicate and decide on discontinuance after the conclusion of the public hearing process.

The discontinuance of this portion of Baxter Road would require an alternative means of access for the

general public to visit Sankaty Lighthouse, a popular and historic attraction in Siasconset. The alternative access agreement that has been in place for several years lays out such alternative access and we recommend that the Select Board simultaneously lay out the Statutory Private Way and, at Annual Town Meeting, accept it formally.

The relief sought by this Petition is consistent with the advice of Town Counsel. Over a decade ago on October 17th, 2012, Kopelman & Paige attorney Shirin Everett authored a memo that laid out the possibility of the Town discontinuing the road that discounted as “unlikely” the chance that the Town would be liable for damages. In her memo, attorney Everett states that “The statutes provide that damages may be due for a discontinuance of maintenance of a public way. However, because a discontinuance of maintenance transforms the way into a statutory private way as to which the public still has rights of access (Coombs v. Board of Selectmen, 26 Mass. App. Ct. 379 (1988)), abutting lot owners and others needing the road for access will still have the right to use this now private way to access their lots. In my opinion, such property owners also have a right to repair and maintain such private ways themselves. Thus, it is my opinion that a successful claim for damages is unlikely...”⁹

Conclusion

Via this Petition, we request that the Nantucket Select Board, acting as County Commissioners, move to discontinue the northernmost 0.52 miles of Baxter Road, from Bayberry Lane to Sankaty Light, and simultaneously lay out a Private Statutory Way to be accepted at Annual Town Meeting.

By this action, Select Board will accomplish multiple goals- by discontinuance, the Town will no longer be liable for damage to Baxter Road from natural erosion. It will be able to then step away from controversial hard armoring on the bluff and redouble its efforts to relocate the road. The Town will successfully maintain public access to Sankaty light while freeing up town staff and funds for other coastal resilience projects, such as nearby Codfish Park, where over three dozen structures are at high or moderate risk for coastal hazards within the next 50 years.

Lastly, SBPF and affected residents along northern Baxter Road can continue to work on any strategy they wish to protect existing properties and the existing road.

Therefore, we request this Board to adjudicate that “Common convenience and necessity” require that the Town focus on relocation of Baxter Road and discontinue the northernmost 0.52 miles of Baxter Road while maintaining public access to Sankaty Lighthouse.

I look forward to discussing this with each of you in further detail at the next available meeting.

Respectfully submitted,



RJ Turcotte
Nantucket Waterkeeper

¹ Nantucket Coastal Resilience Plan <https://www.nantucket-ma.gov/DocumentCenter/View/40278/Nantucket-Coastal-Resilience-Plan-PDF>

² <https://hiddenbrain.org/podcast/we-broke-the-planet-now-what/>, https://www.researchgate.net/publication/354086314_Adapting_to_Sea_Level_Rise_Insights_from_a_New_Evaluation_Framework_of_Physical_Design_Projects

³Conservation Commission/Select Board Geotube Joint Compliance Workshop 2/17/2022
<https://www.youtube.com/watch?v=2Lc6MY7nMq4>

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- ⁴ Conservation Commission Meeting 10/07/2021 <https://www.youtube.com/watch?v=vbwVrFxryyA>
- ⁵ Nantucket Coastal Resilience Plan <https://www.nantucket-ma.gov/DocumentCenter/View/40278/Nantucket-Coastal-Resilience-Plan-PDF>
- ⁶ Baxter Road Long-Term Planning Assessment <https://nantucket-ma.gov/2122/Baxter-Road-Engineering-Feasibility-Asse>
- ⁷ Applied Coastal Comments: <https://drive.google.com/drive/folders/0AOBYT81ZENfOUk9PVA>
- ⁸ Trustees of Reservations Discontinuing Town and County Roads
<https://www.burgy.org/sites/g/files/vyhlf1451/f/events/discontinuing-town-county-roads-5.pdf>
- ⁹ 2012 Town Counsel Memo https://drive.google.com/drive/u/0/folders/1FJipoeO1WDMNF46NP-_FVj-Dsxzo0ssz