

# Town and County of Nantucket Select Board • County Commissioners

Dawn E. Hill Holdgate, Chair  
Jason Bridges  
Matt Fee  
Kristie L. Ferrantella  
Melissa Murphy



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C. Elizabeth Gibson  
Town & County Manager

***AGENDA FOR THE MEETING OF THE  
SELECT BOARD  
FEBRUARY 10, 2021 - 5:00 PM  
REMOTE PARTICIPATION VIA ZOOM WEBINAR  
PURSUANT TO GOVERNOR BAKER'S MARCH 12, 2020  
ORDER REGARDING OPEN MEETING LAW  
NANTUCKET, MASSACHUSETTS***

***YOU TUBE LINK:***

<https://youtu.be/fKcXEVmGxqo>

***I. CALL TO ORDER***

***II. SELECT BOARD ACCEPTANCE OF AGENDA***

***III. ANNOUNCEMENTS***

1. The Select Board Meeting is Being Audio/Video Recorded.
2. Council for Human Services: "Parenting Through Covid" Virtual Zoom Forum to be Held Friday, February 12, 2021, 6:30 - 8:00 PM; Register at [https://zoom.us/webinar/register/WN\\_M2vRQgfTTPePiaDxTdwGyg](https://zoom.us/webinar/register/WN_M2vRQgfTTPePiaDxTdwGyg).
3. Affordable Housing Trust - Housing Production Plan Survey open until February 12, 2021; go to <https://www.nantucket-ma.gov/184/Affordable-Housing-Trust> to Participate.
4. Town Offices will be Closed Monday, February 15, 2021 in Observance of Presidents' Day.

***IV. COVID-19 WEEKLY UPDATE***

1. Public Comment.
2. Report(s) from Public Health Director and/or Nantucket Cottage Hospital President:  
- COVID-19 Case Metrics, Including Massachusetts COVID-19 Community-Level Data Map

- COVID-19 Testing
- Stop the Spread Testing Program
- Vaccine Distribution Plan Update
- COVID19 Task Force: Weekly Report
- Economic Task Force Update
- Board of Health Orders
- Other
- Select Board Comments/Questions

**V. PUBLIC COMMENT\* FOR ITEMS NOT RELATED TO COVID-19 OR OTHER AGENDA ITEMS**

**VI. NEW BUSINESS\***

**VII. APPROVAL OF MINUTES, WARRANTS AND PENDING CONTRACTS**

1. Approval of Minutes of February 3, 2021 at 5:00 PM.
2. Approval of Payroll Warrants for February 7, 2021.
3. Approval of Treasury Warrants for February 10, 2021.
4. Approval of Pending Contracts for February 10, 2021 - as Set Forth on the Spreadsheet Identified as Exhibit 1, Which Exhibit is Incorporated Herein by Reference.

**VIII. TOWN MANAGER'S REPORT**

1. Review of Final Per- and Polyfluoroalkyl Substances (PFAS) Town-wide Risk Assessment Report.
2. Review of Proposed Request for Proposals and Term Sheet for Five-year Lease Agreement (2022 - 2026) for Jetties Beach Concession, Retail Shop, Bathhouse and Beach Event Area.
3. 2021 Annual Town Meeting: Warrant Development Update; Including Select Board Review/Discussion of Housing-related Articles.

**IX. SELECT BOARD'S REPORTS/COMMENT**

1. Committee Reports.

**X. ADJOURNMENT**

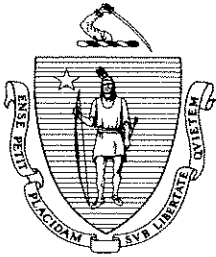
*\*Identified on Agenda Protocol Sheet*

*Select Board Agenda Protocol:*

- **Roberts Rules:** *The Select Board follows Roberts Rules of Order to govern its meetings as per the Town Code and Charter.*
- **Public Comment:** *For bringing matters of public interest to the attention of the Board. The Board welcomes concise statements on matters that are within the purview of the Select Board. At the Board's discretion, matters raised under Public Comment may be directed to Town Administration or may be placed on a future agenda, allowing all viewpoints to be represented before the Board takes action. Except in emergencies, the Board will not normally take any other action on Public Comment. Any personal remarks or interrogation or any matter that appears on the regular agenda are not appropriate for Public Comment.*

*Public Comment is not to be used to present charges or complaints against any specifically named individual, public or private; instead, all such charges or complaints should be presented in writing to the Town Manager who can then give notice and an opportunity to be heard to the named individual as per MGL Ch. 39, s 23B.*

- **New Business:** *For topics not reasonably anticipated 48 hours in advance of the meeting.*
- **Public Participation:** *The Board welcomes valuable input from the public at appropriate times during the meeting with recognition by the Chair. For appropriate agenda items, the Chair will introduce the item and take public input. Individual Board Members may have questions on the clarity of information presented. The Board will hear any staff input and then deliberate on a course of action.*
- **Select Board Report and Comment:** *Individual Board Members may have matters to bring to the attention of the Board. If the matter contemplates action by the Board, Board Members will consult with the Chair and/or Town Manager in advance and provide any needed information by the Thursday before the meeting. Otherwise, except in emergencies, the Board will not normally take action on Select Board Comment.*



OFFICE OF THE GOVERNOR  
**COMMONWEALTH OF MASSACHUSETTS**  
STATE HOUSE • BOSTON, MA 02133  
(617) 725-4000

**CHARLES D. BAKER**  
GOVERNOR

**KARYN E. POLITO**  
LIEUTENANT GOVERNOR

**ORDER SUSPENDING CERTAIN PROVISIONS  
OF THE OPEN MEETING LAW, G. L. c. 30A, § 20**

**WHEREAS**, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”); and

**WHEREAS**, many important functions of State and Local Government are executed by “public bodies,” as that term is defined in G. L. c. 30A, § 18, in meetings that are open to the public, consistent with the requirements of law and sound public policy and in order to ensure active public engagement with, contribution to, and oversight of the functions of government; and

**WHEREAS**, both the Federal Centers for Disease Control and Prevention (“CDC”) and the Massachusetts Department of Public Health (“DPH”) have advised residents to take extra measures to put distance between themselves and other people to further reduce the risk of being exposed to COVID-19. Additionally, the CDC and DPH have advised high-risk individuals, including people over the age of 60, anyone with underlying health conditions or a weakened immune system, and pregnant women, to avoid large gatherings.

**WHEREAS**, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise authority over public assemblages as necessary to protect the health and safety of persons; and

**WHEREAS**, low-cost telephone, social media, and other internet-based technologies are currently available that will permit the convening of a public body through virtual means and allow real-time public access to the activities of the public body; and

**WHEREAS** section 20 of chapter 30A and implementing regulations issued by the Attorney General currently authorize remote participation by members of a public body, subject to certain limitations;

**NOW THEREFORE**, I hereby order the following:

(1) A public body, as defined in section 18 of chapter 30A of the General Laws, is hereby relieved from the requirement of section 20 of chapter 30A that it conduct its meetings in a public place that is open and physically accessible to the public, provided that the public body makes provision to ensure public access to the deliberations of the public body for interested members of the public through adequate, alternative means.

Adequate, alternative means of public access shall mean measures that provide transparency and permit timely and effective public access to the deliberations of the public body. Such means may include, without limitation, providing public access through telephone, internet, or satellite enabled audio or video conferencing or any other technology that enables the public to clearly follow the proceedings of the public body while those activities are occurring. Where allowance for active, real-time participation by members of the public is a specific requirement of a general or special law or regulation, or a local ordinance or by-law, pursuant to which the proceeding is conducted, any alternative means of public access must provide for such participation.

A municipal public body that for reasons of economic hardship and despite best efforts is unable to provide alternative means of public access that will enable the public to follow the proceedings of the municipal public body as those activities are occurring in real time may instead post on its municipal website a full and complete transcript, recording, or other comprehensive record of the proceedings as soon as practicable upon conclusion of the proceedings. This paragraph shall not apply to proceedings that are conducted pursuant to a general or special law or regulation, or a local ordinance or by-law, that requires allowance for active participation by members of the public.

A public body must offer its selected alternative means of access to its proceedings without subscription, toll, or similar charge to the public.

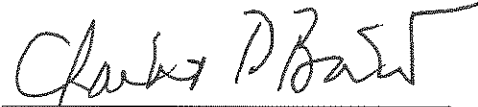
(2) Public bodies are hereby authorized to allow remote participation by all members in any meeting of the public body. The requirement that a quorum of the body and the chair be physically present at a specified meeting location, as provided in G. L. c. 30A, § 20(d) and in 940 CMR 29.10(4)(b), is hereby suspended.

(3) A public body that elects to conduct its proceedings under the relief provided in sections (1) or (2) above shall ensure that any party entitled or required to appear before it shall be able to do so through remote means, as if the party were a member of the public body and participating remotely as provided in section (2).

(4) All other provisions of sections 18 to 25 of chapter 30A and the Attorney General's implementing regulations shall otherwise remain unchanged and fully applicable to the activities of public bodies.

This Order is effective immediately and shall remain in effect until rescinded or until the State of Emergency is terminated, whichever happens first.

Given in Boston at 6:40 PM this 12th day of  
March, two thousand and twenty.

A handwritten signature in cursive script that reads "Charles D. Baker". The signature is written in dark ink and is positioned above a horizontal line.

CHARLES D. BAKER  
GOVERNOR  
Commonwealth of Massachusetts



The Nantucket Council for Human Services presents

# ***Parenting Through COVID*** ***A Virtual Forum on Zoom***

**Friday, February 12, 2021 @ 6:30 – 8:00 PM**

**Featuring:**

The Family Resource Center

A Safe Place

Fairwinds: Nantucket's Counseling Center

Gosnold

Health Imperatives/WIC

Nantucket Food, Fuel & Rental Assistance

The Nantucket Community School

**LEARN ABOUT SERVICES AVAILABLE TO FAMILIES  
DURING THE COVID 19 PANDEMIC**

Zoom webinar: [https://zoom.us/webinar/register/WN\\_M2vRQgfTTPePiaDxTdwGyg](https://zoom.us/webinar/register/WN_M2vRQgfTTPePiaDxTdwGyg)

Watch LIVE on YouTube: <https://youtu.be/xIUle9ctYkE>

**EXHIBIT 1**  
**AGREEMENTS TO BE EXECUTED BY TOWN MANAGER**  
**UNLESS RESOLUTION OF DISAPPROVAL BY SELECT BOARD**  
**February 10, 2021**

Type of Agreement/Description	Department	With	Amount	Other Information	Source of Funding	Term
Professional Services Agreement	Town of Nantucket (Select Board/Town Admin)	Arcadis	\$157,978	Baxter Road Alternative Access Options Study	Article 10 from 2019 ATM	Feb 10, 2021 - Dec 31, 2021



## Scope of Work

### Baxter Road Engineering Feasibility Assessment, Town of Nantucket, MA

January 29, 2021

The scope of work for the Baxter Road Engineering Feasibility Assessment covers Baxter Road and related public infrastructure from the Sankaty Lighthouse to Butterfly Lane in Siasconset, including the adjacent private parcels.

**A summary of work for each project task included in the scope of work is provided below.**

#### Task 1 – Review of existing information

Task 1 involves a review of existing conditions and information to inform analysis and community engagement steps. This includes the following:

- Previous planning studies
- Prior bluff coastal analysis and monitoring reports
- Prior Conservation Commission submittals and findings

Task 1 will also include an assessment of the impacts to the tax base for one selected alternative, as listed under Task 3.

**Assumptions:** Nantucket staff will provide the relevant previous reports and documentation. For the tax base impacts analysis, Nantucket will provide assessors data by parcel in GIS and spreadsheet format for use in analysis.

#### Task 2 – Stakeholder engagement

The goal of Task 2 is to reach consensus on:

- acceptable risk
- consequences of alternatives and consequences of inaction
- the path forward based on technically feasible alternatives
- 

Stakeholders we will work with include the following:

- Sconset Beach Preservation Fund
- Nantucket Coastal Conservancy
- Nantucket Land Council
- Sconset Trust
- Select Board
- Conservation Commission
- Sankaty Golf Club
- Sconset Residence Association

- Town Staff
- Quidnet Squam Association
- Coastal Resilience Advisory Committee

Arcadis will lead and facilitate all stakeholder engagement meetings. The meetings include in the scope are as follows:

- Up to three 1:1 or Group Interviews
- Three Focus Group meetings x 2 for a total of six meetings. Currently it is envisioned that we will split the above list of stakeholders into three groups. We will hold two meetings with each group to reach goals of consensus building.
- Two Community or at large Meetings
- Attendance at up to three Board or Committee meetings to provide updates on materials presented/findings from the other meetings.
- An additional item included in the public engagement is an overview of information on assessments/betterments as a funding alternative. This will show cases throughout the country and specific to Mass General Law. It does not include actual calculations of betterment fees for the work of this project.

**Assumptions:** Town will provide staffing support and attend all meetings. Nantucket will coordinate, select attendees, provide announcements/advertisements/postings of materials for all Task 2 meetings, including any requirements under Massachusetts Open Meeting Law. All meetings are assumed to be virtual.

### **Task 3 – Alternatives / Engineering Feasibility Analysis**

This high-level alternatives / feasibility assessment will focus on the following considerations for up to five alternatives:

**Definition of purpose** – what is the alternative intended to do?

**Service life** – for what period of time would the alternative be effective in preventing significant bluff erosion.

**Initial construction cost** – order of magnitude estimates for comparison between alternatives.

**Operations and Maintenance** – costs and other considerations; order of magnitude to compare between alternatives.

**Constructability** – identify likely issues which could impact the ability to implement the alternative.

**Other feasibility issues** – will vary with alternative but items may include supply (for sand); need for land acquisition; access; emergency services; adjacent impacts; etc.

The team will consider up to five alternatives within the framework outlined above. These alternatives include:

- Bluff stabilization
- Nourishment – sand replacement, plantings
- Retreat /Relocate road
- No Action
- Homeowner/Community Outreach on SOP (Standards of Practice) & BMP (Best Management Practices)

The alternative analysis will be presented in a narrative format with limited quantitative values as appropriate. A matrix summary will also be provided to support outreach activities. The matrix would be suitable for ranking and scoring, but that work would be completed as part of other tasks.

No additional modeling will be completed at this time. Note we will need to utilize the modeling results being provided from the ongoing Coastal Resilience Plan. Service life and feasibility assessments will be based on previous studies, ongoing work, available published standards, and expert opinion. Engineering analysis will be limited during this phase to only as needed to supplement existing data sources in order to develop construction cost estimates, O&M estimates or make high-level feasibility assessments.

#### **Task 4 – Summary of Findings & Recommendations**

Prepare a memorandum summarizing the alternatives and concept plan for moving forward based on analysis and community engagement. Provide a prioritized action plan outline for adaptation over time based on selected alternative. Includes overview of near-term next steps and longer-term critical milestones/decision points the Town can use to focus investment based on changing conditions.

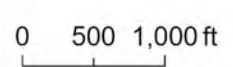


Buildings in Coastal Erosion Hazard Zone

- Outside
- 2030
- 2050
- 2100

DRAFT

Scale: 1:9,000





Roads in Coastal Erosion Hazard Zone

- 2030
- 2050
- 2100

DRAFT

Scale: 1:9,000

0 500 1,000 ft





# Baxter Road Engineering Feasibility Assessment

TASKS	2021							
	February	March	April	May	June	July	August	September
Notice to Proceed / Kickoff	NTP Kickoff ●							
Task 1 – Review of Existing Information		★						
Task 2 – Stakeholder Engagement *		★						
Task 3 – Alternatives and Engineering Feasibility Analysis			★					
Task 4 – Final Memorandum						★		

★ Significant Deliverable

● Meetings

\* Meetings assumed to be virtual



**Person Hour and Fee Schedule**  
 for  
**Baxter Rd Engineering Feasibility**  
 Town of Nantucket, MA



Task	Task Description	PD / QA/QC/ SE II	PM/SE	E	TS/A	C	Total Hours	Subtotals	Other Direct Costs	Totals
100	Project Kickoff, Initial Information Gathering	38.00	16.00	20.00	0.00	4.00	78.00	\$ 16,971	\$ -	\$ 16,971
200	Community and Stakeholder Engagement	40.00	150.00	60.00	0.00	60.00	310.00	\$ 52,490	\$ 800	\$ 53,290
300	Methodology, Environment, and Identifying Coastal Flood and Erosion Hazards	55.00	116.00	88.00	124.00	0.00	383.00	\$ 64,600	\$ 400	\$ 65,000
400	Summary of Findings & Recommendations	24.00	40.00	30.00	0.00	40.00	134.00	\$ 22,417	\$ 300	\$ 22,717
<b>Total Project Costs</b>		<b>157</b>	<b>322</b>	<b>198</b>	<b>124</b>	<b>104</b>	<b>905</b>	<b>\$ 156,478</b>	<b>\$ 1,500</b>	<b>\$ 157,978</b>

Notes:

1) PD: Project Director / QA/QC: Quality Assurance / Quality Control (Technical Expert) / SE II: Staff Engineer II; PM: Project Manager; SE: Staff Engineer; E: Engineer; TS/A: Technical Support / Admin, Project Assistant; C: Clerical

**From:** [danneatherton@comcast.net](mailto:danneatherton@comcast.net)  
**To:** [Dawn Hill Holdgate](#); [Jason M. Bridges](#); [Matt Fee](#); [Kristie Ferrantella](#); [Melissa B. Murphy](#); [Libby Gibson](#)  
**Cc:** [Erika Mooney](#)  
**Subject:** NCC COMMENT RE PROPOSED ARCADIS SCOPE OF WORK FOR BAXTER ROAD  
**Date:** Monday, February 8, 2021 6:39:02 AM  
**Attachments:** [SB PACKET FOR 2.10.21 MEETING.pdf](#)  
[NCC COMMENTS RE BAXTER ROAD PROPOSAL 2.7.21.pdf](#)

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TO: MEMBERS OF THE BOARD, TOWN MANAGER

FROM: THE NCC TEAM

RE: PROPOSED ARCADIS SCOPE OF WORK FOR BAXTER ROAD

COPY: ERIKA MOONEY

**PROPOSED CONTRACT ON AGENDA FOR WEDNESDAY, FEBRUARY 10**

Attached please find NCC Comment regarding the proposed Arcadis Scope of Work for Baxter Road.

This matter is on the agenda for the SB meeting this Wednesday, February 10.

We are sending our comments to you directly because they were not completed in time to submit for the packet.

We would like to thank Dawn for agreeing to defer action on this contract, originally scheduled for last week (February 3), and to Libby for providing us with a copy of the proposed contract last Sunday.

We hope that Erika might be able to include our comment in the packet if amended.

This issue is very important to our entire community, and to the coastal-resilience planning process; our team respectfully requests that you take the time to closely read and consider our comments.

We would appreciate an acknowledgement that you have received this communication and attachments.

Thank you.

D. Anne  
for the  
NCC Team

PS For your convenience we will also attach the proposed Scope of Work (extracted from the SB packet).



ATTACHMENTS (2):

PROPOSED ARCADIS SCOPE OF WORK FOR BAXTER ROAD

NCC COMMENT RE PROPOSED SCOPE OF WORK FOR BAXTER ROAD

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[www.savenantucketbeaches.org](http://www.savenantucketbeaches.org)

[info@savenantucketbeaches.org](mailto:info@savenantucketbeaches.org)

PO Box 2050 | Nantucket, MA | 02584

D. Anne Atherton, Administrative Coordinator

TO: MEMBERS OF THE SELECT BOARD

FROM: NCC TEAM

RE: COMMENTS RE PROPOSED ARCADIS SCOPE OF WORK FOR BAXTER ROAD

DATE: FEBRUARY 7, 2021

## SUMMARY OF COMMENTS

We are writing to register two serious concerns about the proposal for additional work regarding Baxter Road. Below is a summary; a more complete explanation follows.

First and most fundamentally: **The June 2020 contract with Arcadis already covers Sconset.** That contract covers the entire island and specifically mentions Sconset as an area that is included. Moreover, the Select Board's Strategic Plan and the Arcadis proposal both emphasize **equity**: the equitable distribution of costs, benefits, and risk.

Second, there is another problem: **The lead engineer of the technical design team for the overall Arcadis project team was the Project Principal and Engineer of Record for the current SBPF geotube project.**

Nantucket urgently needs a Coastal Resilience Plan. We need a plan that is **comprehensive and fair** — and that is created in a process that islanders will see as comprehensive and fair.

We urge the Select Board **not to approve special treatment for Sconset.** Other areas of the island, such as Town and Madaket, desperately need attention, too.

We also request that the Select Board consider and remedy the problems created by the apparent **conflict of interest.**

TO: MEMBERS OF THE SELECT BOARD

FROM: NCC TEAM

RE: COMMENTS RE PROPOSED ARCADIS SCOPE OF WORK FOR BAXTER ROAD

DATE: FEBRUARY 7, 2021

Thank you for providing an opportunity for the public to comment on the proposed Scope of Work: **Baxter Road Engineering Feasibility Assessment** submitted by Arcadis. As we know, this is the same consulting firm that is presently working with the Town and the community to develop a comprehensive Coastal Resilience Plan (CRP) for the entire island, including Tuckernuck and Muskeget. This project has been underway for five months.

In attempting to understand the pending Arcadis proposal for Baxter Road (on the Select Board agenda for Wednesday, February 10), we reviewed the [Request for Proposals](#) (RFP) issued by the Town for a Coastal Resilience Plan, as well as the original proposal (187 pages) submitted by **Arcadis** last June in response to the RFP. The proposals received at that time were reviewed by an internal staff review committee; a recommendation as to which firm to hire was made by that committee.

#### TWO MAIN POINTS FOR CONSIDERATION

After reviewing the June 2020 Arcadis proposal as well as the proposed January 2021 Scope of Work for Baxter Road, we have **two main points** for your consideration: **one**, we question the need for a separate contract to assess engineering alternatives for Baxter Road when this task is already encompassed within the main Arcadis contract; and, **two**, we have serious concerns about a previously undisclosed possible conflict of interest regarding the lead engineer for the Arcadis Technical Design team who, according to his resume at page A-9 of the Arcadis

June 2020 proposal, was retained by the Siasconset Beach Preservation Fund (SBPF) as the “Project Principal and Engineer of Record” for the current **geotube** project installed on the public beach below the bluff. Additionally, he conducted the follow-up monitoring required of SBPF. SBPF is an organization comprised of and largely funded by **Baxter Road** property owners. This engineer, Mr. Joe Marrone, is listed on the SBPF website under “Experts.” [Attachment I: Screen Shot, SBPF website, About SBPF, Experts.]

#### POINT ONE: FURTHER DETAIL

#### **One, why separate out Baxter Road for a special contract when this work is already encompassed in the June 2020 Arcadis contract?**

The Request for Proposals (RFP) issued by the Town explicitly called for the development of a Coastal Resilience Plan (CRP) for the **entire island** of Nantucket, as well as for Tuckernuck and Muskeget. [Attachment II: RFP, Attachment A, II. Scope of Services, A. Overview, pages 14 -15.] Baxter Road in Sconset is a part of Nantucket Island. **Any resilience planning for Baxter Road and adjacent properties should be included in the current Arcadis contract.** Thus, the planning already included in the current contract should include the services delineated in the January 2021 special contract: review of existing information, stakeholder engagement, alternative engineering feasibility analysis, and summary of findings and recommendations. In fact, the Sconset Bluff area is identified in the graphic on page 15 of the June 2020 Arcadis proposal, with this notation: “Sconset: Bluff erosion impacting roads/access and structures.” [Attachment III: Arcadis 2020 Proposal, page 15.] The RFP also explicitly encompasses risk assessment, resiliency planning, and prioritization for infrastructure, including roads. [Attachment IV: RFP, Attachment A, II. Scope of Services, B. Purpose, page 15.]

#### **Why separate out Baxter Road when there are other areas of the island that are at risk?**

Sheep Pond Road, Madaket (Ames and Massachusetts Avenues, as well as Millie’s Bridge), the

historic downtown, and Brant Point are notable examples. Since there has been **no public discussion** about the need for a special contract for Baxter Road, citizens have no idea why the Town has singled out Baxter Road for special treatment.

The Select Board's Strategic Plan, as well as the coastal-resilience planning process delineated in the June 2020 Arcadis proposal, both emphasize **equity**: the equitable distributions of costs, benefits, and risk as core values. [Attachment V: Arcadis 2020 Proposal, page 45.] How is separating Baxter Road out for an additional and costly contract equitable for others parts of the island, especially as we are in the middle of the coastal-resilience planning process? Taxpayers should note that the cost of the proposed Scope of Work for Baxter Road (\$157,000) **adds almost 30% above the cost of the current Arcadis contract (\$550,000)**.

And finally, if the Town should determine that Baxter Road is in fact more in need of immediate attention than are other areas of the island, the current Arcadis proposal provides options to **fast-track priority projects**; in fact, 5% is factored into the current contract fee (\$550,000) to enable Arcadis to deal with such issues if the client team so requests. [Attachment VI: Arcadis 2020 Proposal, Cover Letter.]

#### POINT TWO: FURTHER DETAIL

**Two, we have serious concerns about a previously undisclosed possible conflict of interest regarding the lead engineer for the Arcadis Technical Design team.**

A review of the 2020 Arcadis proposal reveals that **the lead engineer of the technical design team of the overall Arcadis project team** for the development of Nantucket's comprehensive Coastal Resilience Plan **was in fact the Project Principal and Engineer of Record for the current SBPF geotube project**. [Attachment VII: Arcadis 2020 Proposal, Project Team, page 21.] According to his resume in the Arcadis June 2020 proposal, he also monitored the geotube

project for three years. [Attachment VIII: Arcadis 2020 Proposal, Joe Marrone, PE, Task Lead – Resilient Design, Pages A-9 and A-10.]

Since they were installed on the public beach below the bluff under an Emergency Order in the winter of 2013 and 2014, the 947 feet of geotubes (hard-armoring) have been controversial. SBPF is currently in litigation with the Conservation Commission (and the Town) in regard to the ConCom's decision to deny quadrupling the current geotube installation and thereby hard armoring nearly 7% of Nantucket's otherwise natural eastern shoreline. [See Attachment IX: From Superior Court document, George Pucci, Town Counsel.]

The citizens of Nantucket deserve to have a coastal-resilience planning process that is **transparent, objective, and fair for the entire island** with no favoritism to SBPF and no pre-determined bias in favor of any particular solution to erosion and flooding. Why was this conflict — or perceived conflict — not previously disclosed and addressed by the Select Board before the Town entered into the contract with Arcadis? Arcadis was forthright with this information in its proposal. Perhaps the conflict was simply missed? Whatever the case, the situation needs to be rectified immediately in a way that allows island residents to have confidence in this critical process going forward.

## IN CLOSING

In order to be successful, the coastal-resilience planning process must be transparent, objective, and fair. The final plans and decisions regarding implementation will inevitably require difficult decisions regarding prioritization and allocation of limited funds. It is therefore imperative that the process be worthy of the trust and confidence of the community-at-large in order to result in a successful outcome. Separating out Baxter Road for special consideration when there has been no public discussion or transparency regarding this decision erodes that trust (especially when the community is in the middle of an island-wide, coastal-resilience

planning process). The failure to disclose a previous professional relationship between the lead engineer on the Technical Design Team and a private-interest group of property owners further erodes that trust. We respectfully request that the members of the Select Board carefully consider these concerns and proceed accordingly.

On behalf of the NCC Team, including Elin Anderwald, Burton Balkind, Joyce Berruet, Barbara Bund, Janie Hobson-Dupont, Susan Landmann, Susan McFarland, Kate Shea, Liz Trillos, Mary Wawro, and Karen Werner,



D. Anne Atherton

#### ATTACHMENTS (9)

Attachment I: Screen Shot, SBPF website, About SBPF, Experts.

Attachment II: RFP, Attachment A, II. Scope of Services, A. Overview, pages 14 -15.

Attachment III: Arcadis 2020 Proposal, page 15.

Attachment IV: RFP, Attachment A, II. Scope of Services, B. Purpose, page 15.

Attachment V: Arcadis 2020 Proposal, page 45.

Attachment VI: Arcadis 2020 Proposal, Cover Letter.

Attachment VII: Arcadis 2020 Proposal, Project Team, page 21.

Attachment VIII: Arcadis 2020 Proposal, Joe Marrone, PE, Task Lead – Resilient Design, Pages A-9 and A-10.

Attachment IX: From Superior Court document, George Pucci, Town Counsel.





## ATTACHMENT I

### ABOUT SBPF

Siasconset Beach Preservation Fund is a non-profit 501(c)3 organization formed by 'Sconset homeowners concerned about erosion of the Sankaty Bluff and the threat it poses to the village of 'Sconset. Since the early 1990s, SBPF has researched and installed, on an experimental basis, a series of measures that might control the erosion of the 'Sconset Beach from south of Sesachacha Pond to south of the 'Sconset sewer beds. Our goal is to find an effective, environmentally sound and economically feasible approach. Funding for SBPF's work is provided by our members, local community organizations, and the general public.

### Audio Tour – now available!

Listen to our audio tour, highlighting the major aspects of the erosion control project at 'Sconset Bluff by calling 508-443-6443.

### Donations

To donate to the Siasconset Beach Preservation Fund please enter a donation amount below.

### EXPERTS

Our recommendations are based on careful consultation with a number of experts in the field, including:

- > Les Smith and Maria Hartnett, [Epsilon Associates](#) (environmental)
- > **Joe Marrone**, COWI (environmental)
- > Jamie Feeley, Cottage and Castle, Inc. (construction)
- > Steven Cohen, Cohen and Cohen





# Town of Nantucket

## ATTACHMENT A

### II. SCOPE OF SERVICES.

#### A. GENERAL:

##### A. Overview

Nantucket had approximately 10,000 residents in the 2010 census and more recent information puts the resident population in the region of 17,000. This is a vacation island with a seasonal summer population of approximately 50,000. One of the most striking features of the island for all residents and visitors is the 88 miles of coastline (including ocean, sound and harbor facing coastlines in the county), and the variety that it offers. Exposed southern and eastern shore of the island can have high rolling waves. Northern beaches, facing into Nantucket Sound are lower energy beaches and popular with families with younger swimmers. Nantucket and Madaket Harbors are used to moor boats, and like all other shores are used for swimming, walking and fishing. All these coastal areas are susceptible to Sea Level Rise (SLR) and various levels of erosion. The land, houses, businesses, roads and infrastructure adjacent to these coastal areas are at risk. In more local contexts, much of the downtown area and neighboring residential areas are low lying and already susceptible to Storm Surge (SS). Some areas are susceptible to high tide flooding. This may be through seawater actively flowing onto streets and properties; and, through rainwater backing up in storm water systems when flap gates etc. are closed during or after rainfall at high tide. Several other low-lying areas of the island, including parts of downtown Nantucket, Brant Point neighborhood, adjacent to Madaket Harbor, along Polpis Road and occasionally Siasconset (A.K.A. 'Sconset), also experience flooding at high tides and during SS events.

Erosion has led to the loss or moving of substantial numbers of houses in recent decades. Parts of the south facing shore are eroding at around 5-12 feet per year and the east shore is retreating at around 0.5 to 4 feet per year (Data from Mass CZM MORIS mapping tool). By contrast, most of the Nantucket Sound facing shoreline of Coatue is accreting from around 0.5 to 3 feet per year. The north shore from Jetties to Eel Point has areas of accretion and erosion, but most of this shoreline is eroding at around 0.2 to 2 feet per year.

Most of the downtown streets and buildings were laid down and developed more than a century ago. Over the last 100 years the sea level in Nantucket Harbor has risen by approximately 14 inches. Nantucket is already feeling the effects of SLR with high tide flooding. These issues are compounded by SS and Storm Water Drainage (SwD) issues. NOAA reports that storm frequency and intensity are increasing as a result of Climate Change (CC). This is and will lead to more impactful SS. Whether due to high tide flooding or due to SS, some downtown and low-lying properties now experience regular inundation. Nantucket's downtown was one of the first Historic Districts established due to its prevalence of historic buildings,



# Town of Nantucket

many of which predate the Civil War and include some pre-Revolutionary War buildings. Maintaining the centuries-past charm of the island with respect to SLR, SS and other impacts is a high priority.

The harbor areas and shoreline will continue to be impacted by SLR into the future. By the year 2100, sea levels in Nantucket Harbor are projected to rise by about 2.5 to 3.2 feet using average projection data (Northeast Climate Science Center at the University of Massachusetts Amherst. Massachusetts Climate Change Projections, 2013). This is average projection data. The full range of the projection data for 2100 is predicted to be between 1.8 to 10.1 feet above 2000 sea level.

In 2019, Nantucket Select Board accepted both a Municipal Vulnerability Preparedness (MVP) Community Resilience Workshop Report and a Hazard Mitigation Plan (HMP). The MVP states that the Town of Nantucket requires a Coastal Resilience Plan (CRP). Both the MVP and HMP reports have actionable items that take in some coastal resilience measure. However, there are coastal areas and low-lying areas that require a Coastal Resilience Plan to mitigate against the worst impacts of rising coastal waters.

The Town of Nantucket requires a Coastal Resilience Plan to deal with the current and future impacts of Sea Level Rise, and more frequent and powerful storms in the face of Climate Change.

## B. Purpose

The purpose of this Request for Proposal (RFP) is to seek proposals from qualified consultants, or firms, to provide professional services to the Town of Nantucket to develop a Coastal Resilience Plan. The Coastal Resilience Plan will serve to analyze risks to the Town's population, housing stock, public infrastructure, economy, civic spaces and historic and natural resources, and propose projects for specific locations, and recommended priorities and implementation timeframes, along with guidelines for implementation. The plan will also include Coastal Resilience Planning Policies covering adaption and retreat policies for low-lying and eroding areas. Protection and adaption strategies shall also be developed, particularly for the Downtown and historic areas.

The plan should create a roadmap for community wide and island wide coastal resilience, with in-depth considerations for Sea Level Rise, storm surge / storm tide pathway projections, and erosion at multiple time intervals (2030, 2050, and 2100). For our critical infrastructure, plans and infrastructure that can be adapted over time to outlast 2100 would also be beneficial to include century to century longevity for coastal resilience.

## C. Project Background & Resources

### 1. Background

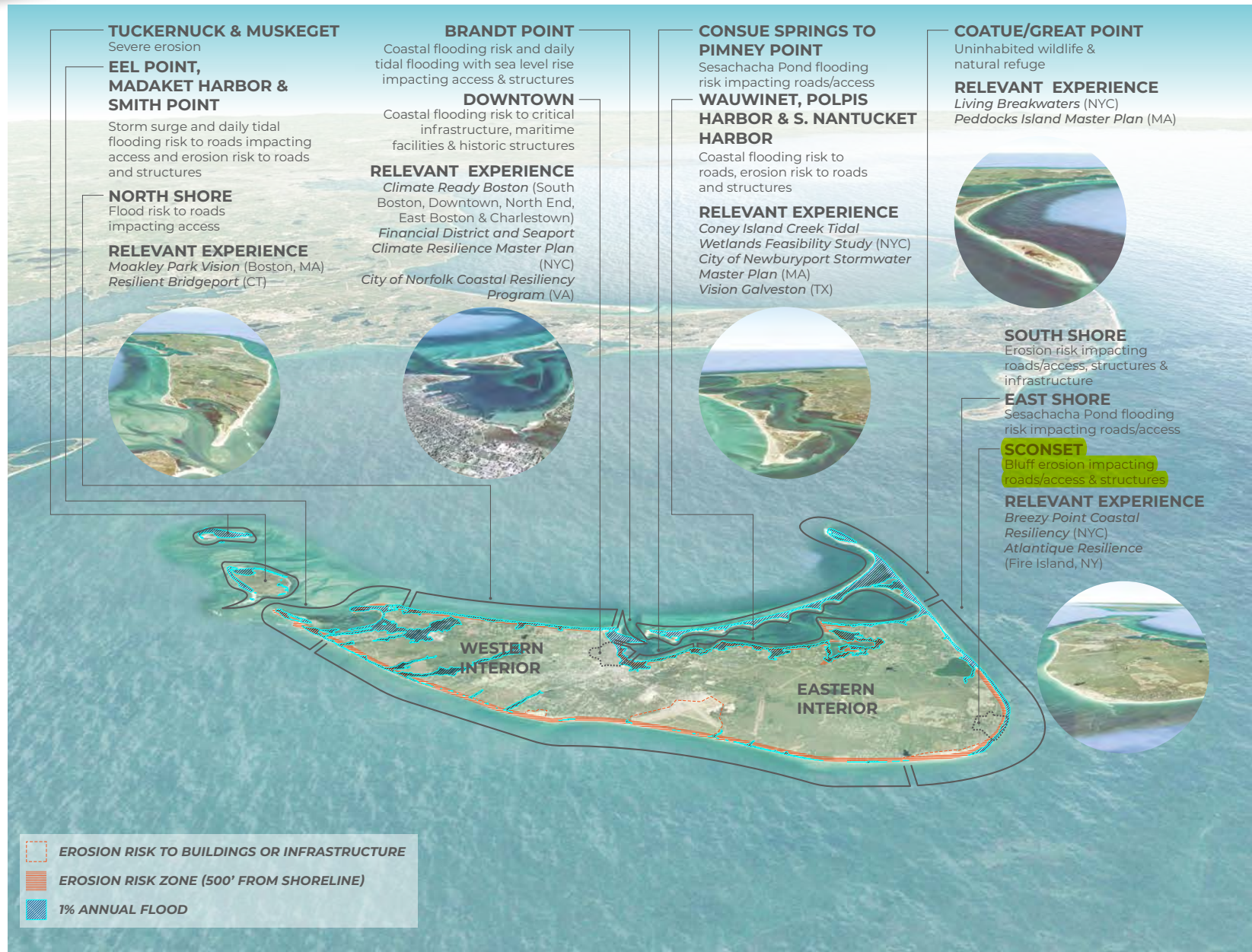
The Town of Nantucket is a Municipal Vulnerability Preparedness (MVP) community. The MVP was

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Relevance to Nantucket

Our Team's successful partnerships with coastal municipalities with character, attributes, or challenges that are similar to Nantucket's prepares us to deliver the experience and expertise required for the development of the Coastal Resilience Plan. Presented below are the Arcadis Team's representative projects in response to the risks that Nantucket faces.







# Town of Nantucket

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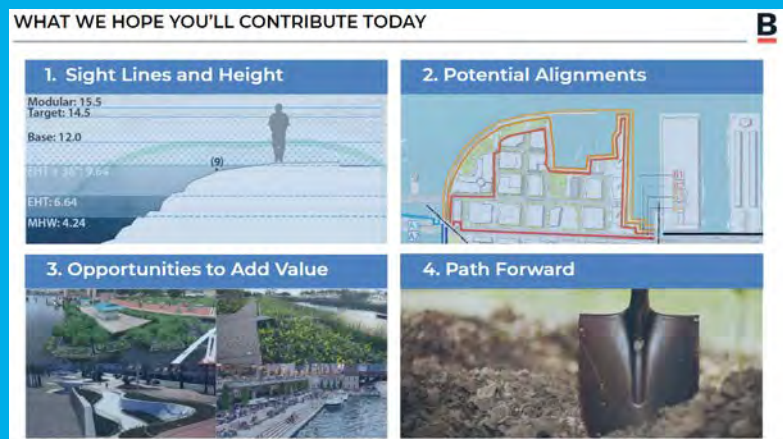
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## Risk Tolerance, Shared Vision, and Shared Understanding of Challenges and Opportunities

Each community has a different set of values and interests when it comes to the future, and the ways in which these goals may be hindered by identified risks must be articulated in order to understand what tradeoffs might be acceptable for a community. We will leverage the stakeholder engagement process to ensure that we (Arcadis Team, Nantucket and stakeholders) share an understanding of the challenges we are facing together and the opportunities that could help us both address those challenges and achieve a resilient future.



While developing Coastal Resilience Solutions for South Boston our engagement process sought to highlight the tradeoffs between flood recurrence and the preservation of views of the water to arrive at consensus around the level of risk that would be tolerable in order to maintain views. This conversation also enabled us to effectively distinguish between types of risk (i.e., coastal storm surge, tidal inundation due to sea level rise, inland stormwater flooding) and how differing scenarios for risk reduction would help address each of these types.

The range of scenarios we develop will be based on a range of factors and inputs stemming largely from our evaluation of current and future risks, assessment of other planning concerns emerging through the process, and the feedback we receive from the stakeholder engagement process. At a minimum, we will consider the potential impacts from sea level rise, coastal flooding, and erosion for 2030, 2050, and 2100 as we develop our resilience strategies and approach to implementation.

In each of these scenarios, the Arcadis Team will focus on developing strategies that:

- **Reduce risk to flood hazards**, including structural and non-structural risk reduction measures, as well as the inclusion of natural and nature-based features to protect and enhance the current environment and ecological system
- Are specifically **adapted to the unique characteristics** of the community, history and ecology of the region and **respond to the vision articulated by Nantucket**
- Utilize actions that are **designed to create social, cultural, economic, ecological, and environmental co-benefits** (i.e., strategies tie actions together to create greater benefits than each action would create on its own)
- The scenarios present the region with **multiple approaches to building resilience and addressing potential flooding hazards** to allow for community discussion and decision-making
- The scenarios are determined to be **equitable in the distributions of costs, benefits, and risk across populations on Nantucket**

Town of Nantucket  
Procurement Office  
37 Washington Street  
Nantucket, MA 02554



TOWN OF NANTUCKET

# COASTAL RESILIENCE PLAN

## SUBJECT

Nantucket Coastal Resilience Plan

Dear Town of Nantucket:

## DATE

June 25, 2020

## CONTACT

Carly Foster, AICP, CFM

## PHONE

850-895-4706

## EMAIL

Carly.Foster@arcadis.com

## OUR REF

10422430

It is our pleasure to respond to this Request for Proposals (RFP) to prepare a Coastal Resilience Plan in coordination with the Town of Nantucket. We have been impressed by Nantucket's work to advance both the understanding of risk and improvement of resilience on the island. We can help you take immediate steps towards coastal resilience by reviewing planned or under-design capital projects to identify opportunities to modify them in ways that enhance flood resilience. Our planning process will lead to both the identification of near-term quick wins to catalyze future investment and longer-term solutions that increase coastal resilience over time.

With roots in the Netherlands, a nation historically adapted to live with water, Arcadis is a global leader in planning, engineering, and implementing climate resilience and has been working with communities to adapt to natural hazards since our inception in 1888. We have carefully selected a Team to meet the diverse needs of Nantucket's coastal resilience planning. The Arcadis Team (the Team) brings together local, regional, and national experts, including Stoss (resilient landscape, ecological design and stakeholder engagement), ONE Architecture (resilient built environment and stakeholder engagement), and Lisa Craig Group (historic preservation). Our Team approach centers around four critical factors for success: honoring identity through adaptation, leveraging a multi-scale approach to adaptation, inclusive stakeholder engagement, and implementation.



**Honoring Identity through Adaptation.** Nantucket's historic maritime character is fundamental to its identity. The Arcadis Team will work with Nantucket to develop a plan that will steward the island's heritage into the future. We will work with stakeholders to develop and iterate coastal adaptation strategies for buildings, infrastructure, districts, and coastal environs that advance resilience while preserving and enhancing the unique historic character and maritime identity of Nantucket.



**Multiscale Approach to Resilience.** A multiscale approach to coastal adaptation will address the wide range of conditions found on Nantucket, from low-lying historic downtown areas, to critical transportation facilities, to exposed coastal bluffs and beaches. Our Team will bring strategies for buildings, sites, districts, coastal reaches, and ecological zones into synch across multiple time frames and climate change scenarios resulting in an integrated resilience roadmap that addresses each scale. This will be an all island plan that clarifies implementation across scales, typologies, and time horizons.



**Inclusive and Responsive Stakeholder Engagement.** Meaningful engagement is a lynchpin in any successful planning process, and is particularly important in resilience building, where all participants and the future are affected. The Arcadis Team will lead a comprehensive and inclusive community outreach effort to ensure community awareness and support throughout the development of the Coastal Resilience Plan, with clearly integrated input from residents, land owners, business owners, and visitors, with special consideration for those voices that might be typically underrepresented, such as socially vulnerable populations. We add innovative digital applications and social media to our toolkit to build awareness and consensus, as well as bring remote stakeholders to the table throughout the process.



**Implementable Solutions.** The Arcadis Team is distinguished by our ability to transition plans into built, enjoyed projects. We begin with the end in mind, and will work with you to develop solutions that are practical, practicable, and achieve the mission and goals of the people of Nantucket. Solutions must be strategic, technically sound, mutually beneficial, recognize long-term lifecycle costs, include benefit-cost analyses, identify responsible and accountable parties, and address funding needs. Arcadis has an excellent long term track record of assisting our clients in obtaining funding for implementation of resilience related solutions. **We are proud to say we have assisted our clients with obtaining over \$5 Billion dollars in funding in the last seven years alone.** Specific examples can be found in Sections 2 and 5 of this document.

Our Team's project approach includes providing a set aside allowance in the budget for this assignment of 5%. We do this to allow the flexibility to incorporate any high priority details that the client team selects.

Thank you for the opportunity to present our approach, qualifications, and resources in this response. We look forward to the opportunity to work with you on this project. Should you have any questions or require additional information, please contact us at your convenience.

Sincerely,

Arcadis U.S., Inc.

Carly Foster, AICP, CFM  
Project Director

Trevor Johnson, AICP  
Project Manager

Jennifer Kelly Lachmayr, PE, BCEE  
Principal in Charge



# 03



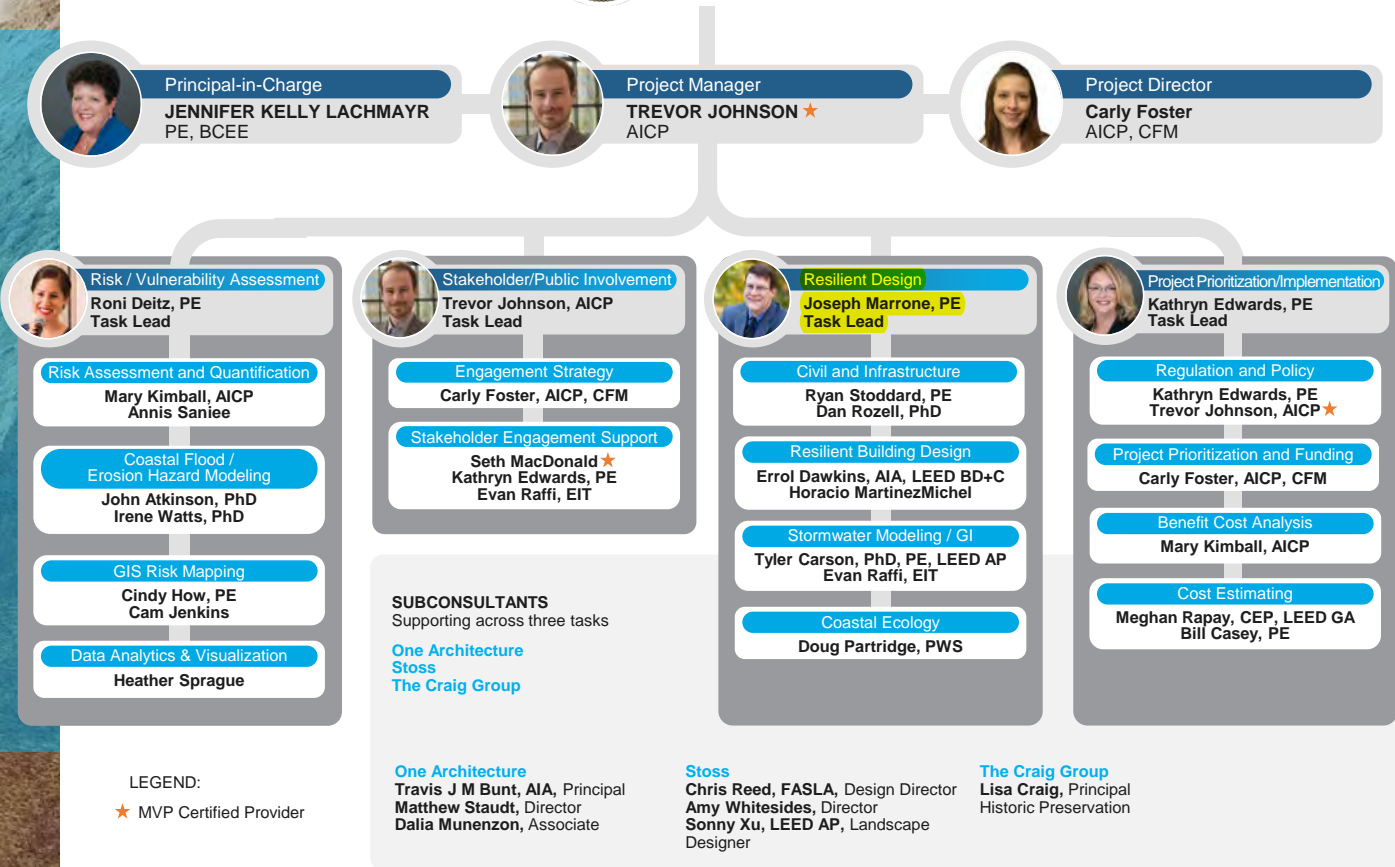
## TOWN OF NANTUCKET: COASTAL RESILIENCE PLAN

# PROJECT TEAM

### Integrated Team

Team comprises local and national experts who are actively entrenched in advancing coastal resilience and water management approaches in the New England region and across the U.S.

Presented on the right is our Organizational Chart followed by our key personnel qualifications. Detailed resumes for all our Team members are presented in Appendix A.



LEGEND:  
★ MVP Certified Provider





## JOE MARRONE, PE

Task Lead - Resilient Design

### EDUCATION

MS, Ocean Engineering, University of New Hampshire, 1990

BS, Naval Architecture and Marine Engineering, Webb Institute, 1987

### YEARS OF EXPERIENCE

Arcadis - 3

Total - 33

### PROFESSIONAL REGISTRATIONS

Professional Engineer – CT, GA, MA, ME, NH, NY, OH, SC

CPR/AED/First Aid/Bloodborne Pathogens Training

OSHA Confined Space Safety Entrant, Attendant & Supervisor (29 CFR 1910.146)

Transportation Worker Identification Credential TWIC Card

### PROFESSIONAL ASSOCIATIONS

American Society of Civil Engineers

Society of Naval Architects and Marine Engineers

**Mr. Marrone is a Technical Expert with over 30 years of experience in the planning and design of waterfront facilities, coastal engineering and resiliency projects. Throughout his career, he has specialized in the design of unique waterfront structures in the challenging marine environment. He has also taught a graduate level course in Coastal Engineering at the University of New Hampshire. He has been responsible for all aspects of the planning, evaluation and design of industrial, commercial and military waterfront structures, coastal protection measures, and community / urban resiliency projects. He has extensive experience with all project phases including conceptual design studies, structural evaluations, final design plans and specifications, cost estimates, and construction administration for a wide variety of coastal structures.**

### Project Experience

#### **‘Sconset Bluff Stabilization**

**Sconset Beach Preservation Fund, Nantucket, Massachusetts**

**Project Principal and Engineer of Record** for the emergency stabilization of a coastal bluff on the southeast side of Nantucket Island. Responsible for coastal analyses to determine design conditions and proposed geometry for the emergency stabilization project consisting of 45-foot circumference (~19 feet wide by ~6.5 feet high), **stacked geotubes**. The analysis was based on standard coastal engineering practices of the U.S. Army Corps of Engineers (USACE) and FEMA “100-year” storm conditions. The top and bottom elevations were specified to prevent undermining from wave induced scour at the base and wave runup at the crest. The design included sand cover not only to protect the tubes from damage, but also as a mitigation measure. **Oversaw the monitoring for shoreline change in the project vicinity for 3 years following construction.**

#### **Fourth Cliff - Coastal Stabilization**

**US Air Force, Scituate, Massachusetts**

Project Manager for the stabilization of an eroding coastal bluff with adjacent historic structures. Conducted a thorough site investigation of this eroding cliff area. The investigation included topographic and hydrographic surveys, soil sampling and testing, historical document research and a wave climate analysis. The surveys provided the data necessary to update the facilities existing site maps and prepare

## PERSONNEL RESUME - JOE MARRONE, PE

beach profiles. The maps, profiles, soil data and wave climate analysis were used to prepare beach and cliff stabilization alternatives for presentation to and review by local, state and federal regulatory agencies. Input received was incorporated into the selected stabilization alternative and all necessary local, state and federal permits were prepared and submitted. The preferred alternative was a composite shore protection structure incorporating both “hard” and “soft” erosion protection features.

### **Climate Ready Boston**

City of Boston, Massachusetts

Technical Expert for the feasibility, implementation, constructability and cost estimate review related to the development of a detailed district level strategy and implementation plan to address sea level rise and recurrent flooding in the Seaport and Southie neighborhoods of the City of Boston, including both technical and policy recommendations.

### **Huntington Coastal Erosion Control Study**

Huntington, New York

Project Manager for development of a coastal management plan Huntington's Long Island shoreline. Work included: storm damage and benefit analysis; coastal process assessment; alternative analysis including buy-outs and non-structural protection measures, and coastal geotechnical assessments. The 2.75-mile-long study area consists of heavily developed coastal bluffs, barrier beaches, and a significant pristine coastal marsh habitat. Incorporated historic maps spanning the last 150 years, soils data, 60 years of aerial photographs, state and federal management zones, and topographic data together with high accuracy global positioning system (GPS) surveys and geo-referenced photographs of the conditions and locations of bluffs, coastal structures, and present shoreline to define persistent trends and the mechanisms of shoreline loss and bluff erosion. Worked with several town departments and state agencies to define practical management areas in terms of regulations, development types, and the coastal processes and trends defined by the data analysis. Generated management recommendations geared toward an overall conservation of sediment within the system. Provided a comprehensive management document and GIS data files (Arc View) with compliant metadata.

### **Breezy Point Coastal Resiliency Project**

NYC Department of Design and Construction, Queens, New York

Project Manager and Technical Expert for the design of a coastal flood risk reduction system for the communities of Breezy Point and Roxbury. Work

includes evaluation of risk reduction strategies, analysis of coastal conditions, consideration of potential interior drainage and groundwater impacts, design of flood walls, gates and dunes, field work coordination, environmental review assistance, and community outreach.

### **Resilient Bridgeport**

Bridgeport, Connecticut

Project Manager and Technical Expert for the National Disaster Resilience Competition (NDRC) project to provide flood risk reduction from both infrequent coastal storms as well as from more frequent rainfall events, while promoting economic development and community benefit. Project components include raised street for dry egress, flood walls and gates, interior drainage improvements and a “resilience trail”. Technical Expert and Engineer of Record for the concept design of a green infrastructure and community storm water improvement project as part of the Rebuild By Design effort. Components include raising streets for dry access, infiltrations/retention/detention strategies, green infrastructure and an improved drainage system. Community and stakeholder outreach and engagement were key to developing and refining the project. Both project components include robust community and stakeholder outreach programs. Work includes supporting the environmental review process and field data acquisition.

### **FEMA Coastal Flood Mapping Revisions**

Federal Emergency Management Agency (FEMA), Various Locations, New England

Responsible for Federal Emergency Management Agency (FEMA) coastal flood zone mapping and revision projects including flood map updates for 10 counties in New England. Directly responsible for all coastal modeling including developing technical approaches, providing QA/QC, and driving compliance with FEMA and project requirements.

### **Fore River Station Bulkhead Repair**

Exelon Fore River Station, Weymouth, Massachusetts

Evaluated the existing timber bulkhead, develop repair and replacement alternatives, obtain required approvals from local, state, and federal authorities for the most desirable alternative, and provided construction administration services for the replacement of 1500 LF (500m) of bulkhead. Selected stabilization solutions included an innovative revetment/precast concrete seawall design, along with sections of stone revetment and steel sheet pile bulkhead.

## ATTACHMENT IX

along the coastline to the Sankaty Lighthouse located at 122 Baxter Road. Id. See also, AR, 0699. The Existing Project consists of three and four tiers of “geotextile tubes” (massive sandbags of 45-foot circumference, approximately 19 feet wide by 6-7 feet tall, encased in an inorganic woven polyester material) installed and maintained at the base of the Sconset Bluff between 87-105 Baxter Road, consisting of 947 linear feet. AR, 0020-21, 0078-79. The Commission permitted the Existing Project in an Order of Conditions issued on September 30, 2015, under the circumstances further described below. AR, 0472-499. **The Existing Project, at approximately 947 linear feet, constitutes approximately 2% of the approximately 10 miles of the mostly unarmored eastern shoreline of Nantucket.** AR, 1129.

On January 5, 2018, SBPF filed a Notice of Intent with the Commission seeking approval of a proposed expansion (“Expansion Project”) of the Existing Project. AR, 0002-0021, 0060-61. The Expansion Project proposes to add two new sections of tiered geotextile tubes, 1) north from the current northern terminus of the Existing Project, to 119 Baxter Road, and 2) south from the current southern terminus of the Existing Project, to 59 Baxter Road. Id. The Expansion Project from 59 to 119 Baxter Road would add 2,873 linear feet to the 947 linear foot Existing Project (895 feet to the north, and 1,978 feet to the south), for a **new total of 3,820 linear feet** along the base of the Sconset Bluff. Id. The Expansion Project includes sections where there are vacant lots abutting the bluff, and areas south of the Existing Project where there is existing coastal dune between the bluff and the coastal beach. Id. **The Expanded Project would constitute approximately 7% of the otherwise mostly unarmored eastern shoreline of Nantucket.** AR, 1129. In SBPF’s Memorandum in Support of Motion for Judgment on the Pleadings (“Plaintiff’s Memorandum”), SBPF asserts that the Expansion Project would complete a so-called “Full-Length Project” agreed to in a Memorandum of Understanding entered into between



## Agenda Item Summary

<b>Agenda Item #</b>	VIII. 1.
<b>Date</b>	2/10/2021

### Staff

Town Manager, Assistant Town Manager, Director of Strategic Projects

### Subject

Per- and Polyfluoroalkyl Substances (PFAS) Risk Assessment Report (Final) from CDM Smith for Select Board Review

### Executive Summary

Final town-wide PFAS Risk Assessment Report from CDM Smith. The full report can be found at <https://nantucket-ma.gov/1574/PFAS>

The draft report was submitted for technical peer review and to the Select Board on 11/20/2020. The 103-page report identifies areas of potential PFAS infiltration from municipal sources and provides recommendations to effectively and swiftly address the problems.

### Staff Recommendation

N/A

### Background/Discussion

On July 22, 2020 the Town engaged in a contract with CDM Smith, Inc. to perform an initial risk assessment of potential sources contributing to PFAS contamination of municipal properties across the island. This study is intended to expand the Town's understanding of the other potential sources of PFAS on the island building upon readily available public information. No sampling or testing was in this scope. Focus is on municipal facilities (sources and receptors of PFAS), including water, sewer and solid waste. This contract is Phase 1 of a long-term multi-phase evaluation and response effort. The six tasks of this contract include:

- Task 1: Provide information materials to serve as an introduction to PFAS.
- Task 2: Identify locations of possible wells at risk (public and private) from potential PFAS pollution sources.
- Task 3: Monitoring assistance.
- Task 4: Meetings and update reports.
- Task 5: Initial public communications assistance
- Task 6: Project Management

A draft report was submitted for peer review on 11/20/2020. This report addresses the technical notes and comments from the peer review. On 12/16/2020 CDM Smith's contract was extended to amend the draft report with the technical peer review edits.

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Note that this scope is very different than the much larger project at the Nantucket Memorial Airport being conducted under a Notice of Response Action (NORA) from the Massachusetts Department of Environmental Protection (DEP) issued on 12/6/2019. The Town's current assessment is not under a DEP directive and undertaken proactively to address potential PFAS issues.

**Impact:** Environmental  Fiscal  Community  Other

Public Health Impact, too. PFAS study and mitigation will have impact on all areas.

**Board/Commission Recommendation**

N/A

**Public Outreach**

- [Webpage](https://nantucket-ma.gov/1574/PFAS): nantucket-ma.gov/1574/PFAS
- 7/22/2020 CDM Smit awarded a contract at Select Board meeting.
- 9/3/2020 CDM Smith presented initial public outreach strategies to engage the public.
- 10/28/2020 Select Board CDM Smith was awarded a two-year, not-to-exceed \$140,000 Communications Strategy and Stakeholder Engagement Plan contract.
- 11/20/2020 Select Board CDM Smith presents initial Risk Assessment Report
- 12/16/2020 Select Board CDM Smith contract extend to incorporate peer review edits

**Attachments**

Executive Summary; Summary of Findings and Recommendations; Link to report at <https://nantucket-ma.gov/1574/PFAS>

# Executive Summary

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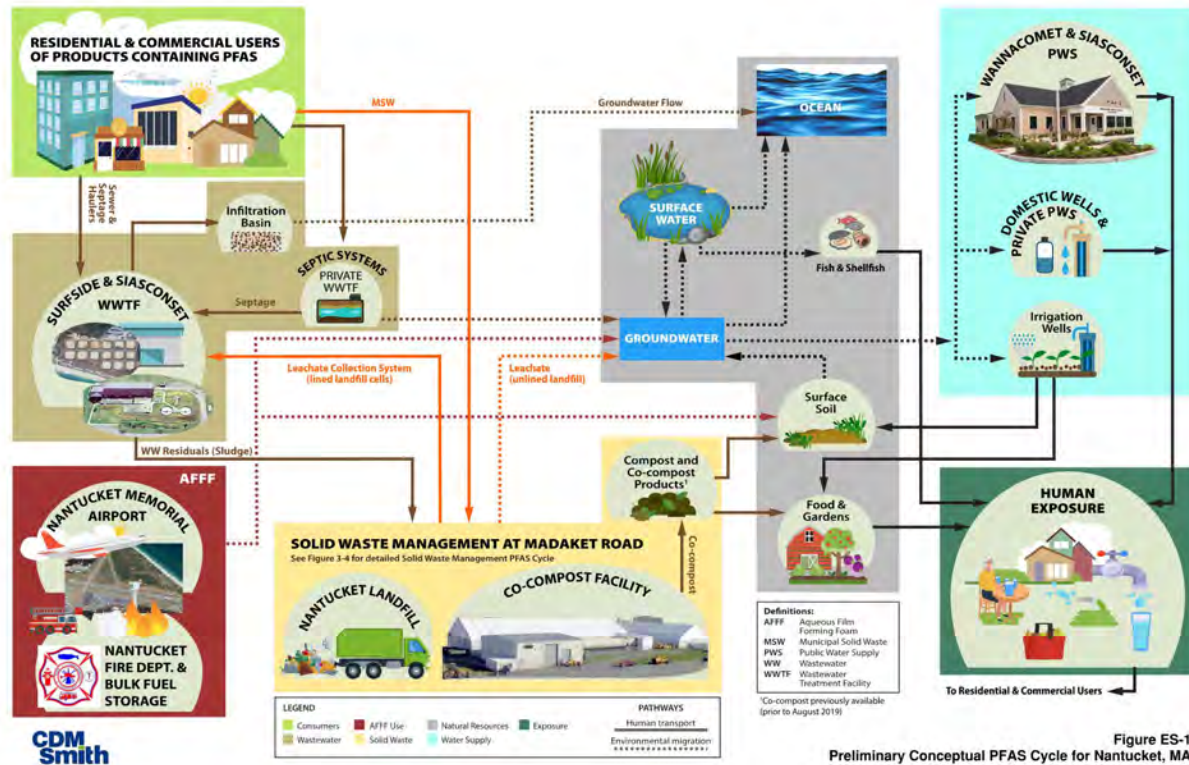
Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that have been manufactured and used in a variety of industries since the 1950s. There is evidence that exposure to PFAS can lead to adverse human health effects. The presence of PFAS in the environment has become of increasing concern in recent years. Its known presence in numerous consumer and commercial products has resulted in PFAS entering the environment via various waste streams such as municipal solid waste, sewer, and septic systems. In addition, PFAS is a known component of certain firefighting foams used at airports, municipal fire departments, and bulk fuel storage facilities to extinguish petroleum fires. As PFAS are highly persistent and cannot biodegrade in the environment, they are considered “forever chemicals”, thus presenting a long-term management challenge. Of primary concern are human health exposure to PFAS through ingestion of contaminated drinking water and consumption of impacted food.

This report represents the first phase of the Town of Nantucket’s effort to develop a unified and proactive town-wide PFAS management plan focused on protecting the valuable groundwater resources of Nantucket used for drinking water. A goal has been to preliminarily identify PFAS contaminant sources on an island-wide basis focusing on Town facilities, and understand the transport mechanisms and migration pathways by which they reach receptors, thus establishing the “PFAS Cycle” on Nantucket.

The PFAS Cycle is critical to understanding the movement of PFAS through the environment from sources to receptors. Only by understanding these transport mechanisms and migration pathways can efforts be undertaken to “break” the cycle in order to achieve PFAS source control and reduction. **Figure ES-1** presents the Nantucket PFAS Cycle, which is discussed in more detail in Section 3.4. Sources are represented as the use of consumer products by residents and businesses, as well as application of aqueous film forming foam (AFFF) at the Nantucket Memorial Airport (the Airport) and by the Town Fire Department. Consumer products once used enter the waste streams as Municipal Solid Waste (MSW) to the Nantucket Landfill, or via wastewater to the Surfside and Siasconset Wastewater Treatment Facilities (WWTF) or septic systems. The Town’s Solid Waste Management Facility on Madaket Road includes the former unlined landfill, active lined landfill cells and the Co-Compost Facility. For the purpose of this study, the WWTFs and Solid Waste Management Facility are considered waste receivers/handlers, as they receive and handle waste containing PFAS, as part of their regular waste management responsibilities.

As PFAS moves through the cycle, it enters groundwater, surface water, and the ocean, as well as soils and sediment. Potential receptors include humans, plant life and animals. Primary human exposure from PFAS on the Island may be by ingestion of contaminated drinking water, consumption of local produce that may have been grown using impacted soil, and consumption of fish and shellfish from contaminated surface water. The goal of the town-wide assessment will be to determine the extent by which the groundwater, soil, and surface water on Nantucket may have been impacted by PFAS and reduce the exposure pathway to receptors.





Based on this study’s findings, presented below is a summary of the potential sources, waste receivers/handlers and receptors identified, and their significance relative to the PFAS Cycle on Nantucket.

### Sources

Central in this evaluation is an inventory of potential PFAS sources on Nantucket focusing on Town facilities. The potential sources of PFAS include: PFAS present in domestic and commercial products used by residents and businesses, respectively; and use of AFFF for extinguishing Class B fires. A summary of these sources and mechanisms of PFAS migration are summarized as follows:

- PFAS in Domestic and Commercial Products:** PFAS is present in many products used on a daily basis by the general population, as well as by commercial entities which in their natural course of business may be introducing PFAS to the environment. Transport mechanisms include: (1) wastewater and MSW waste streams received by the WWTFs and landfill, respectively; (2) waste streams leaching from septic systems to groundwater; and, (3) direct release to ground surface or a water body, which may result in contaminant migration to groundwater.
- AFFF Use at Nantucket Memorial Airport:** As required by the Federal Aviation Administration (FAA) there has been known use of AFFF at the Airport for firefighting testing and training. Discharge of AFFF to the ground has resulted in PFAS entering the subsurface and impacting area domestic wells. Assessment as to the extent of the AFFF PFAS impacts is ongoing in accordance with the Massachusetts Contingency Plan (MCP)

under the regulatory authority of Massachusetts Department of Environmental Protection (MassDEP)<sup>1</sup>.

- **AFFF Use by Nantucket Municipal Fire Department and at Fuel Storage Locations:** To combat flammable liquid fires, the Fire Department stores AFFF for emergency use. Similarly, foam fire suppression systems at fuel storage facilities also store AFFF. In addition, the application of AFFF has been identified anecdotally for several past emergencies. Improved documentation and site assessments could be conducted to assess impacts from known AFFF applications, releases or storage facilities.

## Waste Receivers/Haulers

Neither WWTFs nor the Solid Waste Management Facility utilize or create PFAS chemicals, rather these facilities receive waste streams that may contain traces of PFAS as a result of domestic and commercial product use. The WWTFs receive sewage, septage, and landfill leachate waste streams, while wastewater residuals that may contain PFAS is managed by the Solid Waste Management Facility. PFAS waste receivers/handlers present on Nantucket include, but are not limited to: (1) Siasconset and Surfside WWTFs; (2) septic systems; and (3) the Nantucket Landfill site along with the associated solid waste management operations inclusive of the Co-Compost Facility.

- **Siasconset and Surfside WWTFs:** Wastewater is typically known to contain PFAS from disposal of consumer products. Therefore, it is suspected that effluent discharged from each of the Surfside and Siasconset WWTFs to infiltration beds likely has PFAS present. As the WWTFs are located on the coast, any groundwater flow is toward the ocean, unlikely impacting receptors. However, there are two private public supply wells near the Surfside WWTF which are recommended for PFAS sampling. Residuals produced by the WWTFs are also likely to have PFAS present due to the composition of waste streams received. On Nantucket, wastewater residuals are transported to the Solid Waste Management Facility for use in generating co-compost. Assessment of wastewater residual and other waste stream PFAS concentrations may be appropriate to further understand the contribution to the co-compost product.
- **Private Septic Systems:** Areas not served by the sewer collection system have individual septic systems. Sewage discharged to such systems would be expected to include PFAS from use of consumer products. As such, these systems may release PFAS to groundwater, and a concern may be nearby or area domestic wells. Septic systems also surround Long Pond, Hummock Pond and Miacomet Pond which all have recreational fisheries.
- **Co-Compost Operations:** The Co-Compost Facility generates a co-compost product for land application from a mix of MSW organics, WWTF residuals, and leaf/yard waste. As required by MassDEP, sampling of the co-compost product was initiated for PFAS and will be conducted in accordance with the Approval of Suitability (AOS) Permit. Concentrations of PFAS were detected, however there is no comparable standard in the Commonwealth of

<sup>1</sup> Further information may be found on the Airport webpage <https://www.ack-pfas.com/>



Massachusetts. Public distribution of the co-compost product ceased in August 2019 and will remain on-hold until MassDEP establishes a standard for land application in the Commonwealth, which will be reviewed relative to PFAS concentrations in the co-compost. Prior to August 2019, co-compost was available to the community for use on their property for plantings, gardens and vegetables. PFAS present in co-compost, soil and/or store-bought fertilizer may leach to groundwater and/or be uptake by certain plants and potentially consumed.

- **Landfill Operations:** The former unlined landfill would have received MSW containing PFAS which may be leaching into the groundwater potentially impacting downgradient domestic wells, wetlands, and nearby surface water bodies. Other considerations are potential infiltration and leaching from the reclaimed soil stockpiles (mined from the unlined landfill), co-compost windrows, and stormwater system. The active lined landfill cells are designed to isolate and contain MSW, complete with a leachate collection system. Leachate is collected and trucked to the WWTF.

### Potential Receptors

Of critical importance to this study is identification of receptors that could be impacted by PFAS and protection of human health and the environment. While the receptors are humans, animals, and plants, the primary exposure pathways are via drinking water ingestion and food consumption of locally grown produce and fisheries stock from area ponds.

Sampling to date has indicated that the Wannacomet Water Company wells do not have PFAS exceedances of Massachusetts drinking water standards. Sampling of the Wannacomet Wells and Siasconset Water Department wells must be periodically conducted in accordance with Massachusetts Drinking Water Regulations (310 CMR 22.00). Protection of the Zone II wellhead protection areas is critical to ensuring safe drinking water. It is known that there are PFAS exceedances within the Wannacomet Water Company Zone II at its southern extent onto Airport property. Other sources of concern may be septic systems and commercial entities within the Zone II areas. Vigilance and monitoring by the Wannacomet Water Company and Siasconset Water Department will be necessary to ensure protection of these drinking water sources. Private wells may also be impacted by PFAS in groundwater such as at the Airport site, being managed under the MCP.

In addition to potential drinking water receptors, local or home grown produce as well as the fish and shellfish in surface water bodies caught for food consumption can contribute to the PFAS loading into human bodies. There is no current data to suggest PFAS has impacted food products or aquatic life on Nantucket, however as part of the continuing work to understand the PFAS Cycle these potential exposure pathways and receptors should be considered.

### Recommendations

The Town's ultimate objective in undertaking this island-wide PFAS assessment is to develop a planning approach to managing the presence of PFAS in Nantucket. Central to this effort is building a PFAS reduction and control strategy by "breaking" the PFAS Cycle.

**Table ES-1** summarizes key Action Items recommended for the Town’s consideration. These are presented in further detail in Section 6.3.2. Those Action Items considered of primary importance relative to subsequent next steps are identified as a priority item in Table ES-1. In general, all the Action Items listed aim to help provide protection of receptors, manage information and data, inform the public, and build towards source reduction strategies.

**Table ES-1 - Summary of Action Item Recommendations**

Action Item	Description	Priority
<b>Sampling and Assessment</b>		
▪ PFAS Screening at Nantucket Landfill	Develop and implement a screening level PFAS sampling program at the Landfill site to assess on-site impacts and potential off-site migration in groundwater, nearby surface waters and wetlands	√
▪ Sampling and Protection of Municipal Water Supply Wells	Perform required PFAS sampling of the Wannacomet and Siasconset water supply wells, in accordance with Massachusetts Drinking Water Regulations (310 CMR 22.00)	√
▪ Sample Private Public Water Supply Wells near Surfside WWTF	Perform PFAS sampling on two private public water supply wells located east of the Surfside WWTF infiltration beds	√
▪ Co-Compost and Compost	Perform PFAS sampling of co-compost product in accordance with the AOS permit for land application and continue to prevent off-site distribution of co-compost until a MassDEP land application standard is established; distribution of leaf/yard compost may continue with sampling if desired by the Town	√
▪ Ongoing MCP Process at the Nantucket Memorial Airport	Airport to continue the assessment and remedial action phases in accordance with the Massachusetts Contingency Plan (MCP) (310 CMR 40.000), with focus on impacts to groundwater and nearby domestic wells	√
<b>Management Approaches to Facilitate Understanding of PFAS Presence</b>		
▪ Build Database of Domestic Well Water Quality	Initiate assessment of the distribution of PFAS across the Island by building a MassGIS database of groundwater quality (domestic, municipal, and monitoring well data); residents may submit domestic well water quality data to the Town for incorporation into the database; can be expanded to other media	
▪ Develop Town-wide AFFF Management Approach	Develop a town-wide management approach for AFFF use and storage, for both town facilities and private fuel storage areas; at known or suspected AFFF release areas not applicable to Airport MCP work, collect information to determine if they warrant further investigations and perform actions, as applicable	
▪ WWTF Influent Sampling and Management	Perform PFAS sampling of WWTF influent and as necessary, implement a comprehensive influent source identification program	
<b>Public Outreach Implementation</b>		
▪ Public Outreach Planning & Communication	Develop a comprehensive public communication strategy to facilitate information delivery and ensure consistent messaging; support public education of PFAS, sampling protocols, and actions to help “break” the PFAS Cycle	√
▪ Maintain Regulatory Awareness	Remain aware of regulatory changes as well as MassDEP programs and outreach materials that offer support to domestic well owners relative to PFAS presence in their drinking water	√
▪ Public Education	Through public education, work to reduce use of consumer products on the Island that contain PFAS	√

**Table ES-1 - Summary of Action Item Recommendations (Continued)**

Action Item	Description	Priority
<b>Efforts Directed toward Source Reduction &amp; Control</b>		
<ul style="list-style-type: none"> <li>Continued Evaluation of the Nantucket PFAS Cycle</li> </ul>	Update the Nantucket PFAS Cycle as additional information becomes available to further efforts at determining the best means for source control/reduction and protection of human health and the environment	√
<ul style="list-style-type: none"> <li>PFAS Mass Balance Assessment of Co-Compost</li> </ul>	Perform a mass balance of co-compost components (MSW organics and wastewater residuals) to help inform PFAS source control/reduction strategy development	
<ul style="list-style-type: none"> <li>Bench-scale Leachability Analysis of Co-Compost</li> </ul>	Consider impacts from land application of co-compost by performing a bench-scale leachability study to assess potential to leach PFAS to soil and groundwater	
<ul style="list-style-type: none"> <li>Inventory and Assessment of Other Potential Sources</li> </ul>	Perform an island-wide inventory of commercial users of PFAS containing products to identify additional potential sources to help inform source control/reduction strategy development	
<ul style="list-style-type: none"> <li>Develop Source Reduction Strategies</li> </ul>	Goal is to “break” the PFAS cycle by identifying and developing source control/reduction strategies for implementation over time	

**Acronyms:**

AFFF: aqueous film forming foam

AOS: Approval of Suitability

MassDEP: Massachusetts Department of Environmental Protection

MassGIS: Massachusetts Geographic Information System

MCP: Massachusetts Contingency Plan

MSW: municipal solid waste

PFAS: per- and polyfluoroalkyl substances

WWTF: Wastewater Treatment Facility

## Section 6

# Summary of Findings and Recommendations

This section summarizes the findings detailed in previous sections of the report and provides recommended next steps for further assessment as the Town of Nantucket (the Town) continues efforts to develop and implement a unified town-wide management plan to address the use and presence of per- and polyfluoroalkyl substances (PFAS) on the Island. The overall objective remains to reduce risks to human health and the environment from PFAS particularly with regard to protection of drinking water sources.

### 6.1 Overview of PFAS

PFAS represent a class of anthropogenic emerging compounds considered “forever chemicals” due to their strong chemical bond, stability, and the fact that many PFAS cannot biodegrade in the environment. These man-made chemicals have been in use since the 1950s and are commonly present in many consumer products like cookware, food packaging, waterproof fabrics, stain repellants, and consumer care products. Once used, these PFAS-containing products enter municipal sewer waste streams, septic systems, municipal solid waste (MSW), and other types of direct waste discharge. Other uses of PFAS include PFAS-containing aqueous film forming foam (AFFF) to extinguish Class B fuel fires. Disposal of PFAS-containing consumer products and use of AFFF for Federal Aviation Administration (FAA) required testing or emergency response has resulted in PFAS entering the environment, causing contamination of groundwater, surface waters, soils, and sediment. Once in the environment, exposure pathways include groundwater and surface water transport to drinking water and other sensitive receptors, leaching from soil, and uptake by sediment, biota, plants, and animals. The uses, disposal, and transport mechanisms/migration pathways of PFAS contribute to the global, regional, and local “PFAS Cycle”, which refers to the movement of PFAS from sources to environmental and human receptors. Humans are exposed to PFAS through ingestion of contaminated drinking water and consumption of impacted food such as seafood, wild game, produce, dairy products, and agricultural products. Humans can also be exposed to PFAS via dermal contact if present at high enough concentrations. Based on a long history of using PFAS containing products, their unique chemical properties, persistence, and mobility, PFAS have become ubiquitous in the global environment.

Epidemiological studies have suggested that exposure to PFAS over certain levels may result in adverse health effects such as developmental defects to fetuses or breastfed infants, certain cancers, immunological effects, and thyroid conditions. For these reasons, the US Environmental Protection Agency (EPA) has established a lifetime drinking water Health Advisory Level (HAL) of 70 ng/L (nanograms per liter) or 70 ppt (parts per trillion) for the combined concentration of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), which are the two most well-known PFAS. Many states are moving forward with more stringent criteria, including Massachusetts which has established a Maximum Contaminant Level (MCL) in drinking water of 20 ppt for a combination of six PFAS compounds (referred to as PFAS6).

## 6.2 Summary of Findings

The PFAS Cycle is critical to understanding the movement of PFAS through the environment from sources to receptors. Only by understanding these transport mechanisms and migration pathways can efforts be undertaken to “break” the cycle in order to achieve PFAS source control and reduction.

A significant effort of this Phase 1 assessment has been to develop the Nantucket PFAS Cycle, unique to the Island. The Nantucket PFAS Cycle is presented in Figure 3-3 and conceptualizes the movement of PFAS on Nantucket from source to receptor. Sources are represented as the use of consumer products by residents and businesses, as well as application of AFFF at the Nantucket Memorial Airport and by the Town Fire Department. Consumer products once used enter the waste streams as Municipal Solid Waste (MSW) to the Landfill site or via wastewater to the Wastewater Treatment Facilities (WWTF) or septic systems. For the purpose of this study, the WWTFs and Landfill site are considered waste receivers/handlers, as they receive and handle waste containing PFAS as part of their regular waste management responsibilities. The Landfill site has a number of activities, inclusive of the Co-Compost Facility, which lends itself to development of a focused PFAS Cycle of the Madaket Road Solid Waste Management Site (see Figure 3-4).

As PFAS moves through the cycle, it enters groundwater, surface water, and the ocean, as well as soils and sediment. Potential receptors include humans, plant life and animals. Primary human exposure from PFAS on the Island can occur by ingestion of impacted drinking water, consumption of local produce that may have been grown using impacted soil, and consumption of fish and shellfish from impacted surface water.

Presented below is a summary of the potential sources, waste receivers/handlers and receptors identified through this study. **Table 6-1** provides a corresponding summary of the assessment findings relative to these PFAS Cycle categories as well as identification of the associated impacted media, migration pathways, and related investigation status.

### 6.2.1 Potential PFAS Sources

#### ***PFAS in Domestic and Commercial Products***

PFAS is present in many products used on a daily basis by the general population, as well as by commercial entities which in their natural course of business may be introducing PFAS to the environment. Examples of such commercial entities might be mariners (boat waxes), carwashes (car waxes), or other facilities that utilize products containing PFAS. This Phase 1 assessment has focused on municipal entities that may be sources or waste handlers/receivers of PFAS. If information is identified during future work that suggests that releases to the environment have occurred from other facilities that use PFAS containing materials as part of their regular business operations, additional review could be conducted to determine the presence of receptors and potential for risk.

#### ***Use of AFFF at Nantucket Memorial Airport***

As required by the FAA, there has been known use of AFFF at the Airport for FAA-mandated testing of ARFF (aircraft rescue and firefighting) vehicles and fire suppression operating systems, as well as fire fighter training.

**Table 6-1**  
**Summary of Assessment Findings**  
Preliminary Assessment of PFAS - Town-wide Planning Approach  
Nantucket, Massachusetts

Area of Assessment	Potentially Impacted Media	Potential PFAS Source(s)	Pathway to Receptor(s)	Potential Receptor(s)	Status of Sampling/ Investigations
<b>Potential PFAS Sources</b>					
<b>Use of AFFF at Nantucket Memorial Airport</b>	- Drinking Water - Groundwater (drinking water source) - Soil	- AFFF used as part of airport fire fighting (confirmed via Airport MCP work)	- Runoff, infiltration and groundwater flow to domestic wells	- Domestic wells - Wannacomet Wells	Ongoing. PFAS impacts confirmed via sampling.
<b>Use of AFFF by Nantucket Municipal Fire Department and Fuel Storage Facility Fire Suppression Systems</b>	- Groundwater - Surface water - Drinking water - Soils	- Class B Foams	- Runoff, infiltration and groundwater flow	- Drinking water wells	- No assessments to date
<b>PFAS Waste Receivers/Handlers</b>					
<b>Wastewater Treatment Facilities (WWTF)</b>					
WWTF Residuals (Sludge)	- Co-compost	- Sewer collection - Septage haulers - Landfill leachate	- Refer to "Co-Compost Facility"	- Refer to "Co-Compost Facility"	No PFAS sampling
WWTF (Effluent)	- Groundwater	- Sewer collection system - Septage haulers	- Infiltration and groundwater flow to ocean	- Ocean - Privat public supply wells near the Surfside WWTF	- No PFAS sampling - Consider confirmation sampling/analysis of
<b>Private Septic Systems</b>	- Groundwater	- PFAS containing consumer products into septic waste	- Groundwater flow to potential domestic wells and surface water	- Drinking water wells - Fish & shellfish in Long Pond, Hummock Pond & Miacomet Pond	None
<b>Madaket Road Solid Waste Management</b>					
<b>Co-Compost Facility <sup>(1),(2)</sup></b>					
Co-Compost Windrows (stockpiles at Madaket Road site)	- Groundwater - Soil	- WWTF residuals and MSW	- Stormwater, infiltration and groundwater flow	- Domestic wells - Fish & shellfish in Long Pond - Wetlands biological species	Ongoing. Sampling of Co-Compost product initiated October 2020
Co-Compost Available to Residents/Businesses	- Soil - Groundwater	- WWTF residuals and MSW	- Plant uptake - Co-Compost leaching to soil and groundwater	- Gardening and human consumption - Drinking water wells	
<b>Nantucket Landfill</b>					
Unlined Landfill and Site Operations	- Groundwater - Surface water - Drinking water	- MSW (disposal of PFAS containing consumer products)	- Infiltration and groundwater flow to potential domestic wells and surface water	- Domestic wells - Fish & shellfish in Long Pond - Wetlands biological species	No PFAS sampling to date
Lined Landfill and Leachate Collection System	- Leachate	- MSW (disposal of PFAS containing consumer products)	- Landfill leachate to WWTF for processing	- Refer to "Co-Compost Facility" and "Wastewater Treatment Facilities"	
Reclaimed Soil Stockpiles (from unlined landfill mining)	- Groundwater - Soil	- MSW from the unlined landfill	- Stormwater flow, infiltration and groundwater flow	- Domestic wells - Fish & shellfish in Long Pond - Wetlands biological species	
<b>Receptors</b>					
<b>Drinking Water Wells (Identified Receptors)</b>					
Municipal Water (Wannacomet and Siasconset)					- Ongoing sampling of Wannacomet Wells, no PFAS exceedances detected to date. <sup>(3)</sup> - Assess PFAS plume extent from Airport, and monitor its relationship to the Wannacomet Zone II - Pending sampling of Siasconset Water Department Wells
Municipal Water Zone II Wellhead Protection Areas (Wannacomet and Siasconset)					- Potential PFAS source unknown - Potentially impacted media may include groundwater and drinking water - Potential receptors are the associated municipal wells within Zone II.
Domestic Wells and Private PWS (excluding Airport investigation)					- Domestic wells - no requirements, private homeowners may elect to sample - Private PWS - future sampling required per MassDEP

Notes:

- (1) Co-Compost product comprised of MSW organics, residuals, and leaf & yard waste  
(2) WON collected preliminary "For Information Only" samples in 2019, prior to approved laboratory methods and protocol. See Section 4. MassDEP required sampling initiated 10/2020.  
(3) First round of sampling the five Wannacomet Water wells less than MassDEP MCL of 20 ng/L for all wells. Second round of sampling two wells with detections also < 20 ng/L. Sampling ongoing.

Abbreviations:

- AFFF: Aqueous Film Forming Foam  
MCL: Maximum Contaminant Level  
MCP: Massachusetts Contingency Plan  
MassDEP: Massachusetts Department of Environmental Protection  
MSW: Municipal Solid Waste  
PFAS: per- and polyfluoroalkyl substances  
ppt: parts per trillion. MassDEP MCL is 20 ppt.  
PWS: Public Water Supply  
WWTF: Wastewater Treatment Facility



These testing and training locations have resulted in nine documented discharge locations contributing to the presence of PFAS in on-site groundwater and detections in downgradient private domestic wells. (Note that this testing is now performed using FAA-approved AFFF testing equipment which does not require AFFF to be discharged externally from the vehicle.) Assessment as to the extent of the AFFF PFAS impacts from Airport operations continues in accordance with the Massachusetts Contingency Plan (MCP). While known discharges of AFFF at the airport are well documented, other sources of PFAS at locations in the vicinity of the Airport may be present and may be incorporated into future updates of the Town-wide PFAS Assessment.

#### ***Use of AFFF by Nantucket Municipal Fire Department***

The Nantucket Fire Department must be prepared to respond to several different classes of fires, and as such store both Class A fire fighting foam to extinguish ordinary combustibles such as wood, and Class B AFFF to combat flammable liquids such as petroleum. Based on available information, the Nantucket Fire Department applied AFFF as part of their response to two emergencies: a 500-gallon release of fuel at the downtown tank farm, and a plane crash in the vicinity of 54 Low Beach Road. Both of these sites are located on the coast and any PFAS release would likely have infiltrated to groundwater and ultimately discharged to the ocean in the direction of groundwater flow. Although there are no immediate or identifiable receptors, additional review could be conducted to confirm that the exposure pathway is incomplete.

Additionally, there have been several fires at the Nantucket Landfill site and associated facilities over the years including a 2005 landfill fire at which the Nantucket Fire Department may have sprayed foam. Recommended assessment activities for the landfill site are presented in Section 6.3.2.1.

#### ***Use of AFFF at Fuel Storage Locations on Nantucket***

Several fuel storage facilities are located on the Island with foam fire suppression systems. Of the identified facilities, the downtown tank farm (near Commercial Wharf), bulk fuel storage at Sun Island Fuel, and the boat basin fuel dock are known to utilize a PFAS containing foam. Madaket Marine fueling does not have a fixed fire suppression system, but reportedly maintains two, 5-gallon buckets of AFFF in the event of an emergency. The new tank farm on Industrial Road, reportedly utilizes a fluorine-free (F3) foam that does not contain PFAS. CDM Smith has not reviewed any documented information of releases from any fuel storage fire suppression systems; however, if information is identified during future work that suggests releases to the environment have occurred from fuel storage facilities, additional review would be suggested to assess the presence of receptors.

### **6.2.2 PFAS Waste Receivers/Handlers**

#### ***Wastewater Treatment Facility Effluent***

There are two municipal WWTFs on the Island, Surfside and Siasconset. Wastewater is typically known to contain PFAS from disposal of household goods, personal care products, and any manufactured products that enter the sewer collection system. In addition, Surfside receives septage from haulers including both residential and commercial/business waste, as well as leachate generated in the lined landfill cells at the Nantucket Landfill. Each of the Surfside and Siasconset WWTFs have groundwater discharge permits. Treated effluent is discharged to infiltration beds at each site, which flow to groundwater. At both WWTF locations, the infiltration

beds are located along the coast. Therefore, it is expected that any effluent entering the groundwater flows directly into the ocean via the subsurface. There does not appear to be any nearby domestic wells which could be impacted; however, there are two private public water system (PWS) wells near the Surfside infiltration bed. There is no history of effluent sampling for PFAS at the WWTFs, as there is no such requirement. Such sampling will be required by the Massachusetts Department of Environmental Protection (MassDEP) when the groundwater discharge permits come up for renewal.

### ***Wastewater Treatment Facility Residuals***

Each of the WWTFs produce residuals. The Siasconset residuals are hauled to the Surfside WWTF, from which all residuals are transported to the Co-Compost Facility for generation of the co-compost product. The residuals may be a contributor of PFAS to the co-compost product. Sampling would be required to assess the contribution and any associated impacts. Depending on sample results, there may be need or interest in working to reduce the PFAS concentrations in wastewater residuals. This may require a greater effort to assess sources delivered by various haulers and determine the appropriateness/need for any controls such as pretreatment.

### ***Private Septic Systems***

Not all of Nantucket is connected to Town sewer and there are a number of areas with private septic systems. Sewage discharged to such systems would be expected to include PFAS. As such systems release to groundwater, a concern may be nearby or area domestic wells. An understanding of well depth, well construction, water elevation, and geologic stratigraphy would be necessary to assess local impacts from individual septic systems, coupled with groundwater sampling. There are also known septic systems surrounding Long Pond, Hummock Pond and Miacomet Pond, all of which have known recreational fishing and shell fishing activities.

### ***Co-Compost Operations***

The Madaket Road Solid Waste Management site includes a Co-Composting Facility that generates co-compost from a mix of MSW organics and WWTF residuals delivered from the Surfside WWTF. That resulting product is then mixed with leaf and yard waste to prepare a co-compost material that was previously available to residents and businesses for land application. The final co-compost product has reportedly been land applied voluntarily by property owners at a number of locations around the Island as a soil enhancement. According to Waste Operations Nantucket (WON) (operator of the Landfill site and Co-Compost Facility for the Town), as of August 2019 co-compost has not been available to the public and has been used entirely on-site. Currently only leaf and yard waste compost is available to the public. MSW is typically known to contain PFAS, as are residuals generated from WWTF, and as a result there remains a concern that the co-compost distributed prior to August 2019 may have had PFAS present. Per MassDEP requirements, sampling was completed in October 2020 to assess the PFAS concentrations of the final co-compost product. Results are presented and discussed in Section 4. Sampling of the individual co-compost components may be appropriate to perform a mass balance analysis of the co-compost and understand which material(s) is contributing PFAS to the co-compost and what to focus on for a reduction strategy. Human health may be of concern from consumption of produce in contact or grown using the co-compost previously distributed, if impacted. PFAS tends to bind to soils and research suggests it may only be minimally leachable in soils once land applied, thus

having limited impact to the underlying groundwater. However, this would have to be assessed further specific to the co-compost material produced.

### ***Unlined Landfill and Site Operations***

The original unlined Nantucket Landfill (Phase 1 Landfill) is located at the 188 Madaket Road Site along with other Nantucket solid waste management operations. The presence of PFAS in municipal MSW has been studied in recent years. The nature and extent of PFAS impact can vary depending on the sources of MSW, the design, age and operation of the landfill, and the landfill's status as active or closed. The PFAS sources in MSW depends on manufacturing history and use of consumer products that have been disposed in the landfill. Although no PFAS sampling of groundwater or surface water has been performed in the Nantucket Landfill vicinity, based on the long-term uses of PFAS containing products, there is a potential for PFAS to be present in the landfill and its leachate. Infiltration of precipitation through the unlined landfill may generate leachate which would then be mobilized in the subsurface. Similarly, the unlined/uncovered reclaimed soil stockpiles (mined from the landfill) and co-compost windrows present on the site, may also be a PFAS contributing source via infiltration. Stormwater runoff to basins and surrounding wetlands may also be a contributing factor. Potential receptors of concern would be adjacent wetlands, Long Pond, and nearby Jeremy Cove all of which are in the direction of downgradient groundwater flow from the landfill. These surface water bodies are known locations for fishing and shell fishing, thus having potential for human consumption. Similarly, any downgradient domestic wells from the landfill may be impacted. Groundwater and surface water at the landfill would require sampling for PFAS to assess its presence and impacts to the environment. Note that the unlined landfill is no longer used for landfilling, however, it does still require installation of a standard solid waste cap to eliminate future infiltration.

### ***Lined Landfill Cells and Leachate Collection System***

The Nantucket Landfill includes several lined landfill cells at the Madaket Road site, which prevents the migration of contaminants in groundwater, as the lined cells are equipped with a leachate collection system. Collected leachate is hauled and treated at the Surfside Wastewater Treatment Facility (as mentioned above). Essentially the lined landfill operation is a contained system, thus itself is not a PFAS source to the surrounding environment. It is of course critical to maintain the leachate collection system, so it remains in good working order.

### ***Siasconset Dumps***

Siasconset Dump 1 and Dump 2 located on the eastern portion of Nantucket reportedly accepted MSW from local Siasconset residents during the period 1938 to 1971. These informal dumping grounds were reported to commonly conduct occasional controlled burns to reduce household trash. Further information on these sites was not readily available but could be researched and assessed in the future.

## **6.2.3 Potential Receptors**

### ***Municipal Public Water Supply Wells***

Municipal public water supply on the Island is provided by groundwater supply wells serviced by two distribution systems, operated by the Wannacomet Water Company and the Siasconset Water Department, respectively. The MassDEP approved Zone II wellhead protection areas (see Figure 3-1) identify the area of groundwater contribution to these wells. The outer edge of the

Wannacomet Wells Zone II extends onto the Airport property, including some areas where PFAS exceedances in private domestic wells have been detected. Efforts to minimize PFAS contributions to groundwater within the Zone II is critical. Sampling to date at the Wannacomet Wells has indicated PFAS concentrations below MCLs; the Siasconset Wells have yet to be sampled.

### ***Private Water Supply Wells***

There are two types of private water wells on Nantucket: Private PWS Wells (or non-community water systems that serve a specific business or property), and private domestic drinking water wells serving individual homes or properties. Several private PWS wells were identified through MassDEP records and are shown on Figure 3-1. Properties outside the two municipal PWS distribution systems are assumed to have their own private domestic wells. In addition, property owners with access to municipal water can opt for a private domestic well, further increasing the number of private domestic drinking water wells on the Island.

### ***Local Agriculture Products and Food Consumption***

Plant uptake of PFAS from contaminated soils, sediments, or irrigation water may be an exposure pathway to humans if local or home grown produce is consumed. If impacted by PFAS, fish and shellfish consumed from local surface water bodies may also contribute to the PFAS exposure to humans. There is no current data to suggest PFAS has impacted food products or aquatic life on Nantucket, however as part of the continuing work to understand the PFAS Cycle, these potential exposure pathways and receptors should be considered.

## **6.3 Recommendations**

Given the health concerns associated with PFAS, there is a significant interest in achieving source control and/or reductions, with the goals being to protect drinking water sources and to reduce risks to human health and the environment. The PFAS Cycle is critical in understanding where and how this may be accomplished. There are two sets of recommendations presented below. The first focuses on establishing a strategy for PFAS reduction and control, the second is a detailed list of Action Items directed at moving the strategy implementation forward.

### **6.3.1 Building a PFAS Reduction and Control Strategy**

The Town's ultimate objective in undertaking this island-wide PFAS assessment is to develop a planning approach to managing the presence of PFAS in Nantucket. Central to this effort is building a PFAS reduction and control strategy by "breaking" the PFAS Cycle. **Table 6-2** outlines the beginning of such a strategy to be further developed over time as additional information becomes available from further assessment. The strategy consists of three components:

- Protection of Receptors – Short-term Strategy
- Source Reduction – Interim Strategy
- Breaking the PFAS Cycle – Long-term Strategy

**Table 6-2**  
**Strategy Approach - PFAS Reduction & Control**  
 Preliminary Assessment of PFAS -Town-wide Planning Approach  
 Nantucket, Massachusetts

Strategy	Use of AFFF at Nantucket Memorial Airport	Use of AFFF by Town Fire Department and Private Fire Suppression Systems	Wastewater Treatment Facilities Surfside and Siasconset		Domestic Septic Systems	Co-Compost Facility Compost including WWTF Residuals	Nantucket Landfill (Unlined Landfill and Lined Cells) and Onsite Stockpiles	Municipal Water Public Water Supply Wells	Domestic Wells and Private PWS (excluding Airport MCP site domestic wells)	Other Potential Sources	
			Wastewater	Wastewater Residuals							
Protection of Receptors Short-Term Strategy	Regulatory Compliance Value(s)	MCL for Drinking Water MCL: 20 ng/L (sum of PFAS6)  MCP Criteria for Groundwater and Soil: - MCP Groundwater, GW-1: 20 ng/L (sum of PFAS6)  - MCP Groundwater, GW-1: 20 ng/L (sum of PFAS6)  - MCP Soil, GW-1/S-1: PFDA (0.30 ng/g), PFHpA (0.50 ng/g), PFHxS (0.30 ng/g), PFNA (0.32 ng/g), PFOS (2.0 ng/g), and PFOA (0.72 ng/g)	MCP Criteria for Groundwater and Soil: - MCP Groundwater, GW-1: 20 ng/L (sum of PFAS6)  - MCP Soil, GW-1/S-1: PFDA (0.30 ng/g), PFHpA (0.50 ng/g), PFHxS (0.30 ng/g), PFNA (0.32 ng/g), PFOS (2.0 ng/g), and PFOA (0.72 ng/g)	NA	NA	NA	NA	MCL: 20 ng/L (sum of PFAS6)  MCP Criteria for Groundwater and Soil: - MCP Groundwater, GW-1: 20 ng/L (sum of PFAS6)  - MCP Soil, GW-1/S-1: PFDA (0.30 ng/g), PFHpA (0.50 ng/g), PFHxS (0.30 ng/g), PFNA (0.32 ng/g), PFOS (2.0 ng/g), and PFOA (0.72 ng/g)	MCL: 20 ng/L (sum of PFAS6)  Domestic Wells MCP GW-1: 20 ng/L (sum of PFAS6)  Private PWS MCL: 20 ng/L (sum of PFAS6)	NA	
	Regulatory Monitoring	Ongoing Airport PFAS monitoring program under the MCP	None	Future requirement of groundwater discharge permit renewals	None. Dependent on AOS co-compost sample results.	None	Sampling of co-compost in support of AOS permit for Land Application	No current PFAS sampling. See Mitigation Measures	Sampling in accordance with MassDEP monitoring requirements.	-Domestic well sampling not required -Private PWS sampled per MassDEP	To be determined
	Communication	- Notification of assessment progress and exceedances - Public communications via webpage updates, public meetings, and MCP report releases	- Communicate with private properties regarding presence, use and volume of AFFF	Educate public regarding PFAS containing products in sewage and septage	Educate public regarding PFAS containing products in sewer waste	Develop message about land application of co-compost; dependent on sample results and future MassDEP requirements.	Educate public regarding PFAS containing consumer products in MSW.	- Keep public informed, consistent with pending Public Outreach Plan - Notify MassDEP in accordance with regulations, regarding PFAS6 greater than 10 ppt and 20 ng/L (see note 1)	- Public education regarding PFAS and sampling protocol - Communications consistent with pending Public Outreach Plan	Keep public informed	
	Mitigation Measures	Water Supply Options for Impacted Domestic Well Users: - Bottled water (temporary solution) - POET system (current method), effectiveness may vary - Future connection to distribution system	- Assess potential impacts from past application of AFFF (tank farm release, plane crash, etc.) - Inventory location, presence, use, volume of AFFF at both Town and private facilities - Develop a AFFF management approach for storage and handling of AFFF (BMPs, recordkeeping, training)	- No effluent sampling proposed at this time. - Sample influent to determine if there is PFAS coming into the WWTFs. Based on results, additional steps including an influent source identification program and selective sampling of influent sources and/or effluent could be conducted.	If residuals analysis is necessary based on AOS co-compost sample results: 1. Develop residual sampling program (# samples, frequency, duration, representativeness; timing of septage deliveries) 2. Implement sample program 3. Determine need for PFAS source reduction program 4. Calculate mass distribution	- Proper disposal of household materials - Increase hazardous waste collection days - Consider impacts to nearby drinking water sources	- Site visit to review co-compost facility operations and recommend actions. - Temporarily cease distribution of co-compost product to public, until MassDEP Land Application standard is available for comparison - at that time a decision would be made regarding future product distribution. - Consider signage regarding potential concern of PFAS in co-compost; avoid direct contact.	- Site visit to assess solid waste management operations relative to potential leachate sources. - Develop sampling program. - Implement GW/ SW monitoring program. - Sample reclaimed soil stockpiles. - If exceedances, assess impacts to receptors and pathways. - Develop strategy for landfill cap and reclaimed soil management.	- Perform MassDEP compliance monitoring at wellheads. - Assess of PFAS plume extent within Wannacommet Well Zone II relative to wellhead protection.	1. Consider sample collection with proper PFAS protocols 2. If exceedance: - Remove any Teflon and pipe dope in domestic plumbing - Consider bottled water - Consider POET systems - Evaluate potential for distribution system connection 3. Build a database of available PFAS data in wells 4. Consider connection to public water if available	- Assess/investigate other potential sources including such as historic Siasconset Dumps. - As needed assess facilities handling PFAS containing products in their business - Identify other potential sources
Source Reduction Interim Strategy	- Implement cleanup action to remediate soil and groundwater at the Airport site under the MCP - Reduce AFFF use if possible - Ensure proper storage / containment of AFFF	- Implement management strategies to better control use and release of AFFF - Consider reductions in AFFF storage if possible	If necessary, - Develop influent source reduction program - Perform mass balance calculations - Consider additional treatment needs	If necessary, - Develop influent source reduction program - Perform mass balance calculations - Consider alternate residuals treatment/management	- Assess impacts by groundwater monitoring; if concerns consider sewer collection extension	Dependent on AOS sampling results, - Consider sampling of upstream components of co-compost (i.e. wastewater residuals, MSW) to identify potential material(s) to target for PFAS reduction, if determined necessary - Leachability study.	- Implement landfill cap and reclaimed soil management plan to reduce groundwater infiltration, leachate generation/migration - If needed, implement a pretreatment program for leachate prior to WWTF - Perform post-cap monitoring to confirm effectiveness	- Implementation of MassDEP regulatory monitoring program	If exceedance, work with MassDEP on source identification	To be determined	
Breaking the PFAS Cycle Long-term Strategy	- Use alternatives to AFFF; depends on regulatory and FAA approval - Connections to public water supply	- Consider AFFF replacement with fluorine free foams	- Long term outreach and education to reduce the use of PFAS containing products to reduce PFAS mass loading into WWTF and subsequently reduce PFAS in the effluent - Implement and monitor effectiveness of treatment approach	Implement and monitor effectiveness of residuals management approach	Tie-in to the sewer collection system	- Reduce or eliminate PFAS impacted materials entering composting process through long-term education and public outreach	- Continue use of lined landfill cells with leachate collection systems - Work to reduce PFAS containing consumer products in MSW	- Prevent PFAS migration into public water supply wells through source reduction and regular monitoring	- Elimination of source, if possible - Connection to public water if available	To be determined	

**Notes:**

(1) PFAS6 detection above 10 ppt has to be notified to MassDEP within 7 days of receipt of the results. If a result exceeds 20 ppt and a confirmatory sample also comes back above 20 ppt, PWS must provide "public education" materials that includes the notice of the exceedance within 30 days after receipt of confirmatory samples.

**Abbreviations:**

AFFF: Aqueous Film Forming Foam  
 AOS: Approval of Suitability  
 BMP: Best Management Practice  
 FAA: Federal Aviation Administration

**Abbreviations (Continued):**

GW: Groundwater  
 GW-1: MCP Groundwater Criteria, GW-1  
 MCL: Maximum Contaminant Level  
 MCP: Massachusetts Contingency Plan  
 MassDEP: MA Department of Environmental Protection  
 MSW: Municipal Solid Waste  
 NA: Not applicable  
 ng/L: nanograms per liter, also "parts per trillion", ppt

PFAS: per- and polyfluoroalkyl substances  
 PFAS6: MassDEP's six PFAS compounds: perfluorooctane sulfonic acid (PFOS), perfluorooctanoic acid (PFOA), perfluorohexanesulfonic acid (PFHxS), perfluorononanoic acid (PFNA), perfluoroheptanoic acid (PFHpA), and perfluorodecanoic acid (PFDA).  
 POET: Point of Entry Treatment, water treatment  
 ppt: parts per trillion. MassDEP MCL is 20 ppt.  
 PWS: Public Water Supply  
 S-1: MassDEP MCP Soil Criteria, S-1 Soil  
 SW: Surface Water  
 WWTF: Wastewater Treatment Facility

The approach is to implement certain actions immediately (short-term) that can work to enhance the protection of receptors, while building toward source reduction (interim-term). Long-term efforts would be directed at implementing a town-wide source elimination program which would “break” the PFAS Cycle while offering protection of the Island and reducing PFAS management costs. This would be supplemented with performance effectiveness monitoring to confirm success.

Recommended strategies are provided in Table 6-2 to address each of the primary areas of assessment: AFFF use by the Airport, Town Fire Department, and private fuel storage facilities; WWTF effluent and residuals; septic systems; generation and use of the Co-Compost product; lined and unlined landfill operations; municipal water and Zone II protection; impacts to domestic and private public water supplies; and other potential PFAS sources such as businesses. For the Short-Term Strategy, public communication and mitigation measures are identified that may be considered for immediate action. Many of these are subsequently addressed in the specific list of Action Items presented in Section 6.3.2.

### 6.3.2 Action Items

Outlined below are recommended Action Items for the Town as the island-wide PFAS assessment efforts move forward. Those Action Items considered a *priority* item relative to the assessment process are so identified. In general, all the Action Items listed aim to help provide protection of receptors, manage information and data, inform the public, and build towards source reduction strategies.

#### 6.3.2.1 Sampling and Assessment

- **PFAS Screening at Nantucket Landfill (*Priority*):** Develop and implement a screening level PFAS sampling program at the Nantucket Landfill site at Madaket Road to assess for the potential presence and migration of PFAS into the environment. This effort should include a site visit to review operations and select appropriate sample locations. The following onsite media are prioritized for sampling: groundwater, surface water, stormwater, soils/sediment, reclaimed soil stockpiles, and any active leachate seeps observed. Based on results, further sampling and modifications to site operations may be recommended.
- **Sampling and Protection of Municipal Water Supply Wells (*Priority*):** The Wannacomet Water Company has already initiated drinking water sampling for PFAS from the Wannacomet Wells. Such PFAS sampling must continue in accordance with MassDEP Drinking Water Regulations (310 CMR 22.00). In addition, initiate sampling of the Siasconset Water Department wells in accordance with MassDEP regulations. As new data and information become available, continue to evaluate the potential for impacts to the Wannacomet Water Company and Siasconset Water Department Zone II MassDEP Approved Wellhead Protection Areas. As a Zone II serves as a protective boundary around a water supply well, continuous assessment and consideration will provide early screening as to the potential for PFAS to impact the PWS wells, and identify the need for further investigation if warranted, and treatment in the unlikely event it is necessary.



- **Sample Private Public Water Supply Wells near Surfside WWTF (*Priority*):** Two privately owned PWS wells have been identified near the effluent discharge/infiltration bed at the Surfside WWTP (see Figure 3-1). Collect information regarding these wells including ownership, operations/usage, condition, well construction logs, sampling taps, etc. On the basis of the information gathered, and with the cooperation of the owner, sampling of these two wells is recommended.
- **Co-Compost and Compost (*Priority*):** Continue to meet quarterly sampling requirements in accordance with the Approval of Suitability (AOS) Permit for the co-compost material being produced by WON at the Madaket Road landfill site. Continue to prevent off-site distribution of the co-compost product until MassDEP establishes a land application standard for comparison or further research supports use of the co-compost product by the public. Given the Town's desire to proactively address the community's concerns, it remains an option to sample the leaf and yard waste compost that is currently still available to residents. Such sampling would be for information purposes only, as there is no regulatory standard to compare to; it is assumed that off-site distribution of this material can continue. Given the absence of standards, it is recommended that MassDEP be consulted in advance of any media sampling beyond that required by the AOS Permit. The advantage of sampling is that it may help inform town objectives of achieving source reduction and receptor protection.
- **Ongoing MCP Process at the Nantucket Memorial Airport (*Priority*):** The Airport has completed the Phase I Initial Site Assessment and Tier Classification phase of the MCP process and submitted its report to MassDEP in December 2020. As a result, the Airport site will be proceeding into the Phase II Comprehensive Site Assessment (CSA) phase which focuses on nature and extent, risk characterization, and identification of the need for remedial actions. Remedial work may then be performed under the Immediate Response Action (IRA) Plan or an Updated IRA Plan, or the project may progress to a Phase III Remedial Action Plan (RAP) summarizing remedial action alternatives, followed by the Phase IV Remedy Implementation Plan (RIP) detailing how the work will be implemented. Plans for a watermain extension to serve residents on Madequecham Valley Road are in process.

### 6.3.2.2 Management Approaches to Facilitate Understanding of PFAS Presence

- **Build Database of Domestic Well Water Quality:** To facilitate an understanding of island-wide PFAS concentrations in groundwater, build a database of available data. Such a database could be developed in Geographic Information Systems (GIS) to map sample location, along with the associated PFAS sample results. The initial focus would be incorporation of domestic well data received from residents, as well as data provided by the Airport, Wannacomet Water Company, and groundwater sampling at the landfill. The intent would be to grow this database overtime, with opportunity to include other media such as soils and surface water. The result will be a comprehensive data management tool to support future assessment and development of an understanding of island-wide background concentrations.

- **Develop Town-wide AFFF Management Approach:** Develop a Town management approach for the storage and handling of AFFF on the Island, including Best Management Practices (BMPs), recordkeeping, and training. Such a program would be led by the Town Fire Department and take into consideration fuel storage areas with fire suppression systems. Consider AFFF use reduction or replacement with fluorine free foams if and when possible. Additionally, at known or suspected AFFF release areas not already being investigated as part of the Airport MCP work, research these areas to determine if they warrant further investigations. If yes, determine if there are any sensitive receptors in the area and provide a recommendation if sampling should be conducted.
- **WWTF Influent Sampling and Management:** Evaluate the influent to the WWTFs; their respective sewer collection systems, septage haulers, leachate from the landfill and any other significant sources to each WWTF. The first step will be to sample the influent to each plant. If PFAS is present, implement a comprehensive influent source identification program to look upstream and identify those sources to the WWTFs and primary potential users of PFAS containing materials. These sources can be prioritized for further sampling as part of the influent source identification program. The influent source identification program would also include creation of a simple database to record the qualitative characteristics of all hauled waste sources, leachate, significant contributors to the collection system, and any influent source with its own pre-treatment system. This database will help determine potential source reduction strategies if they are determined necessary.

### 6.3.2.3 Public Outreach Implementation

- **Public Outreach Planning & Communication (*Priority*):** As described in Section 5 of this report, continue efforts at developing a comprehensive strategy for communications with the public and prepare the recommended Public Outreach Plan. Public education of PFAS, sampling protocols, and actions that residents and businesses can take on their own to help “break” the PFAS Cycle will be critical to success.
- **Maintain Regulatory Awareness (*Priority*):** Continue to monitor available MassDEP programs and support for residents (see Section 2.3.4). Inform residents of available MassDEP programs and regulations. Keep open channels of communication between MassDEP, the Town and the residents. Of particular interest may be future programs like the MassDEP funded domestic well sampling program and source identification assistance.
- **Public Education (*Priority*):** Provide public education on the presence of PFAS in consumer products. This can lead to a long-term mitigation plan to reduce the purchase of such products by residents and business on the Island. The goal of this effort is to reduce future PFAS contributions to waste streams such as septic systems, WWTFs, and the landfill.

#### 6.3.2.4 Efforts Directed toward Source Reduction and Control

- **Continued Evaluation of the Nantucket PFAS Cycle (*Priority*):** As new data and information regarding PFAS is received, regularly update and revise the Town-wide PFAS Cycle.
- **PFAS Mass Balance Assessment of Co-Compost:** Perform a mass balance of co-compost components for future source reduction analysis. To understand the potential PFAS contributing components of the co-compost, this would entail sampling of the MSW organics and residuals used in the co-compost process, as well as collecting a corresponding sample of the final co-compost product. The results would then be used to perform a mass balance analysis of the co-compost, to understand which material(s) is contributing PFAS to the co-compost and what to focus on for a reduction strategy. Sample collection and analysis of the WWTF influent to both Surfside and Siasconset would help support the mass balance calculations relative to the residuals, and further support future development of management/control strategies.
- **Bench-scale Leachability Analysis of Co-Compost:** The co-compost product generated at the landfill site has been available in the past to residents and businesses for use on their properties. As a means of preliminarily assessing potential impacts to soil and groundwater, perform a bench-scale leachability study of the co-compost material to evaluate its leachability. Such a study is a recommended first step to understand any impacts resulting from land application of this product.
- **Inventory and Assessment of Other Potential Sources:** Perform an island-wide inventory of business and commercial users of PFAS containing products (e.g., car washes, marinas, etc.) to begin identifying other potential sources or receivers/handlers of PFAS or PFAS containing waste. This investigation of other potential sources may include the inactive Siasconset Dumps (see Figure 3-1).
- **Develop Source Reduction Strategies:** As additional information becomes available, identification and development of PFAS source reduction strategies may proceed. This could be applicable to such items as: capping of the unlined landfill; alternative management options for the Solid Waste Management Site to reduce infiltration; AFFF management and planning; and improved record keeping and information management as discussed above to support the development of additional source reduction strategies.

# Preliminary Assessment of PFAS - Town-wide Planning Approach

*Town of Nantucket, MA*

Andrew Miller, P.E.

February 10, 2021



**CDM  
Smith**

# Island-Wide PFAS Assessment Objectives

- Short-Term
  - Identify key potential and known PFAS sources and receptors focusing on Town facilities
  - Initiate unified planning approach to Town-wide PFAS source control and reduction
- Long-Term
  - Protect drinking water resources
  - Maintain compliance with state and federal regulations
  - Protect community wellbeing and health
  - Promote good health of natural and ecological resources

# Scope of Work

- Understand Island-Wide PFAS Cycle on Nantucket
  - *Identify key* potential / known sources and migration pathways through interviews and document reviews
- Qualitatively assess potential PFAS migration and exposure pathways
- Initiate development of PFAS source control and reduction planning action items
- Develop Town-wide public communication and outreach strategy



# PFAS Cycle – Town-wide

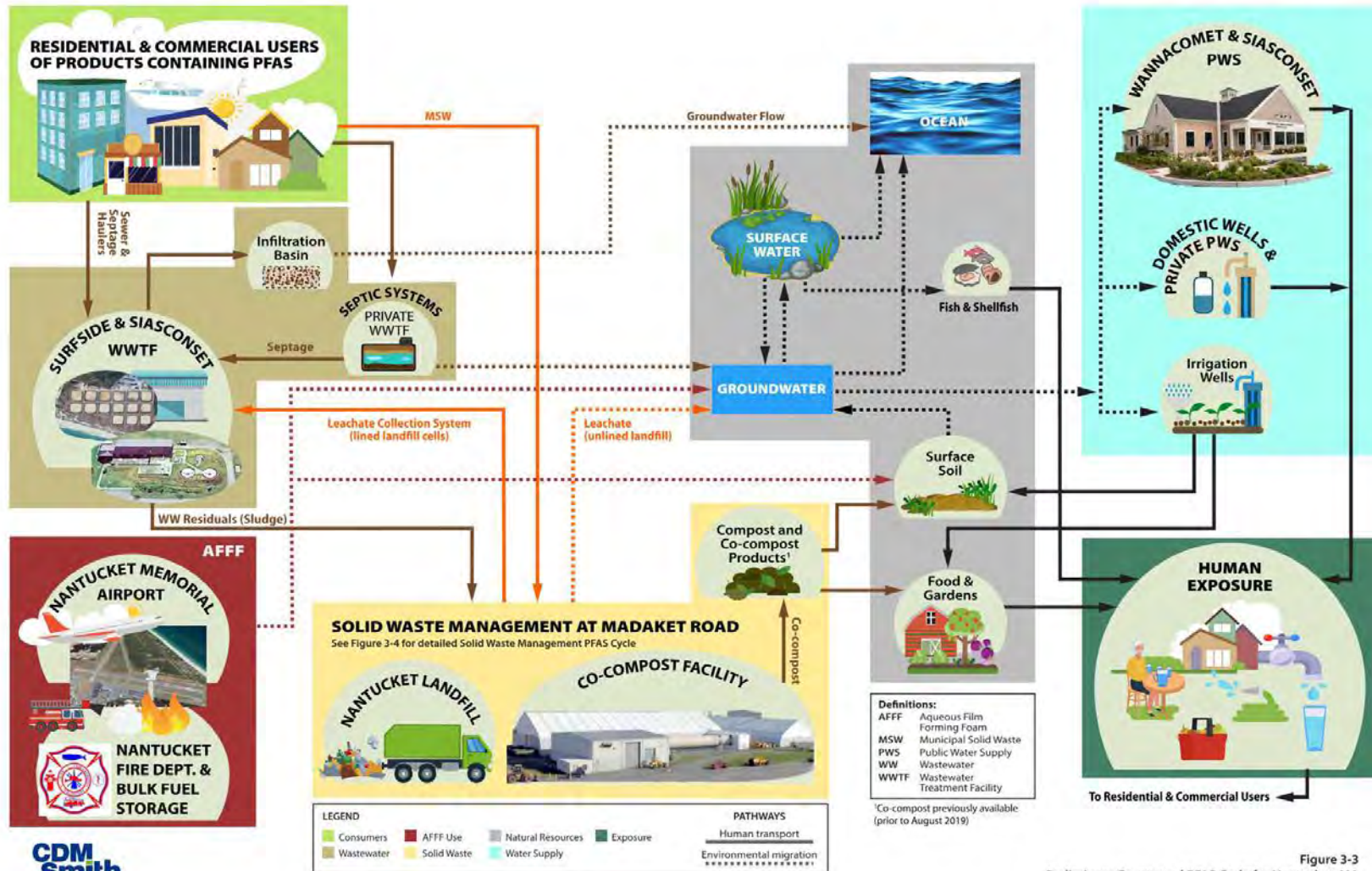
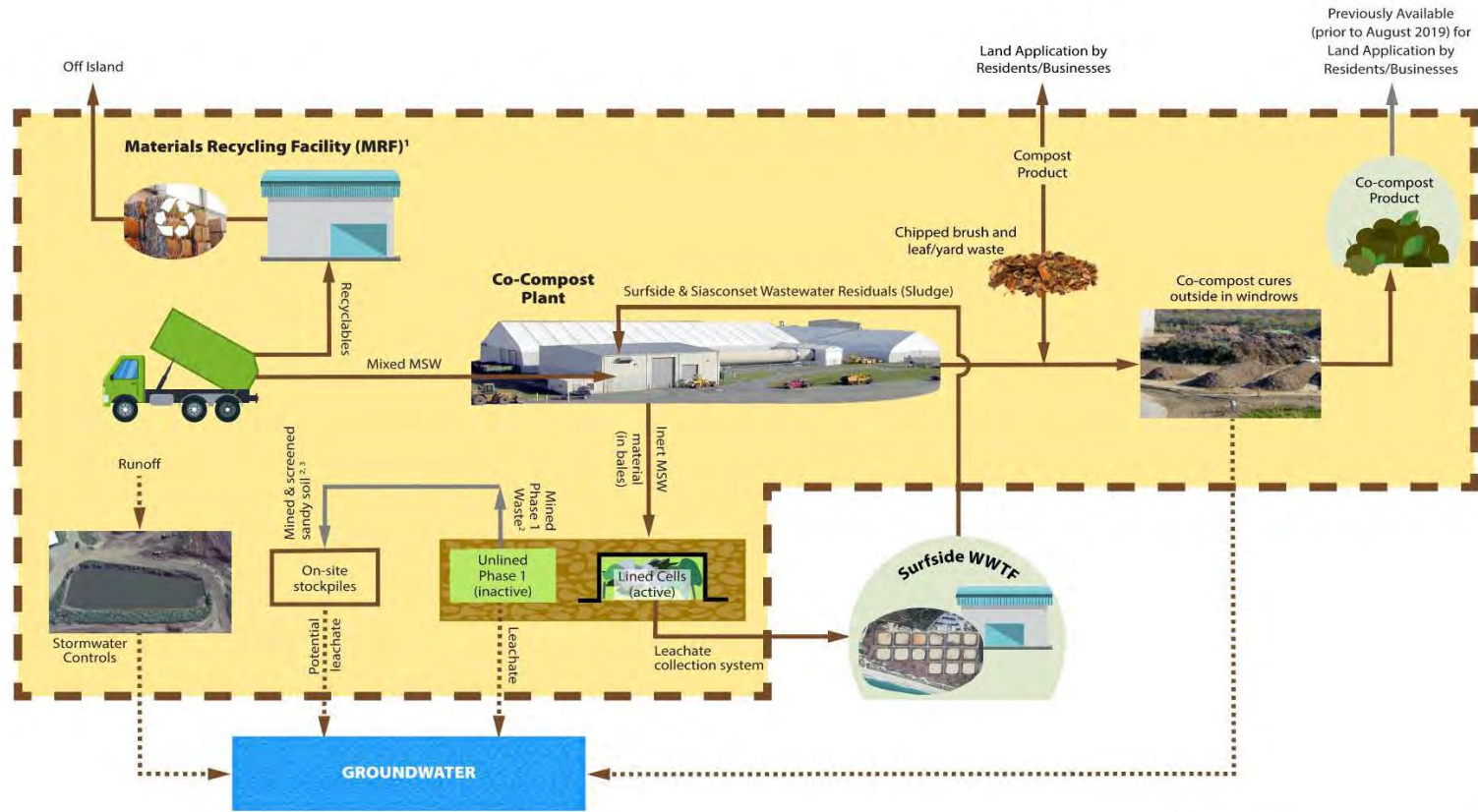


Figure 3-3  
Preliminary Conceptual PFAS Cycle for Nantucket, MA

# PFAS Cycle – Nantucket Solid Waste Management Facility



**Footnotes:**

- <sup>1</sup> MRF recyclables are baled and sent to mainland for processing.
- <sup>2</sup> Phase 1 mining of the unlined landfill ceased in 2019. Mined MSW re-landfilled; mined screened soil used as daily cover materials in the lined cells or is stockpiled on site.
- <sup>3</sup> Screened soil stockpiles intended to be used for final landfill cover during capping. Decision on use still pending.

**Note:**

This represents the solid waste operations relative to the PFAS cycle. All operations may not be reflected here if they are not believed to impact the PFAS cycle.

Definitions:	
MRF	Materials Recycling Facility
MSW	Municipal Solid Waste
WWTF	Wastewater Treatment Facility
→	Former Activity

# Qualitative Assessment of PFAS Concern

Area of Assessment <sup>1</sup>	Potential PFAS Source	Impacted Media	Potential Receptors
Airport	Past AFFF use	DW, GW, Soil	- Domestic Wells near Airport
Co-Compost Use at Residents/ Businesses	Co-compost comprised of WWTF residuals and MSW organics	Soil, GW	- Gardening and human consumption - Drinking Water Wells <sup>2</sup>
Municipal Fire Protection and Fire Suppression Systems	Class B Foams	GW, SW, DW, Soil	- Drinking Water Wells <sup>2</sup>
Private Septic Systems	PFAS containing consumer products	GW	- Drinking Water Wells <sup>2</sup> - Fish & shellfish in ponds
Solid Waste Management	Unlined Landfilled MSW and onsite soil and compost piles	GW, SW, DW, Soil	- Domestic Wells - Fish & shellfish in Long Pond - Wetlands biological species
WWTF Effluent and Residuals	- Sewer collection - Septage haulers - Landfill leachate	Residuals -> Co-compost	Refer to Co-Compost
		WWTF discharge -> GW	- Ocean - Private public supply wells near Surfside WWTF infiltration beds
Zone II Wellhead Protection Area	Unknown	DW, GW	- Municipal wells (Zone II)

<sup>1</sup>Area of Assessment in alphabetical order <sup>2</sup>Drinking water wells include public supply (including Zone II) and private wells

<sup>3</sup>Zone II is Commonwealth of Mass. wellhead protection area

# Building a PFAS Reduction and Control Strategy

- Phased efforts to meet goals
  - Short-term Strategy – Protection of Receptors
  - Interim Strategy – Source Reduction
  - Long-term Strategy – Break the PFAS Cycle
- Evolving process
  - Further research to fill source and exposure data gaps
  - Multi-media sampling to assess potential community exposure
  - Continuously update Island-wide PFAS Cycle
- Collaboration amongst stakeholders
- Support MassDEP investigation(s) of potential PFAS sources relative to domestic well water testing by homeowners
- Public outreach planning and implementation

# Action Items to Move Forward (1 of 2)

	Action Item	Priority
Sampling & Assessment	PFAS screening at landfill	√
	Municipal well drinking water sampling	√
	Sample private drinking water wells near Surfside	√
	Co-compost sampling; continue availability of leaf/yard compost	√
	Continue MCP process at Airport	√
Management Approaches	Build island-wide database of well water quality	
	Develop town-wide AFFF management approach	
	WWTF influent sampling and management	
Public Outreach	Public outreach planning & communication	√
	Maintain regulatory awareness	√
	Public education (reduce use of consumer products)	√

# Action Items to Move Forward (2 of 2)

Efforts Directed  
at Source  
Reduction &  
Control

Action Item	Priority
Continue evaluation/update of Nantucket PFAS Cycle	√
PFAS mass balance assessment of co-compost	
Bench-scale leachability analysis of co-compost	
Inventory/assess other potential sources	
Develop source reduction strategies	



# Questions ?

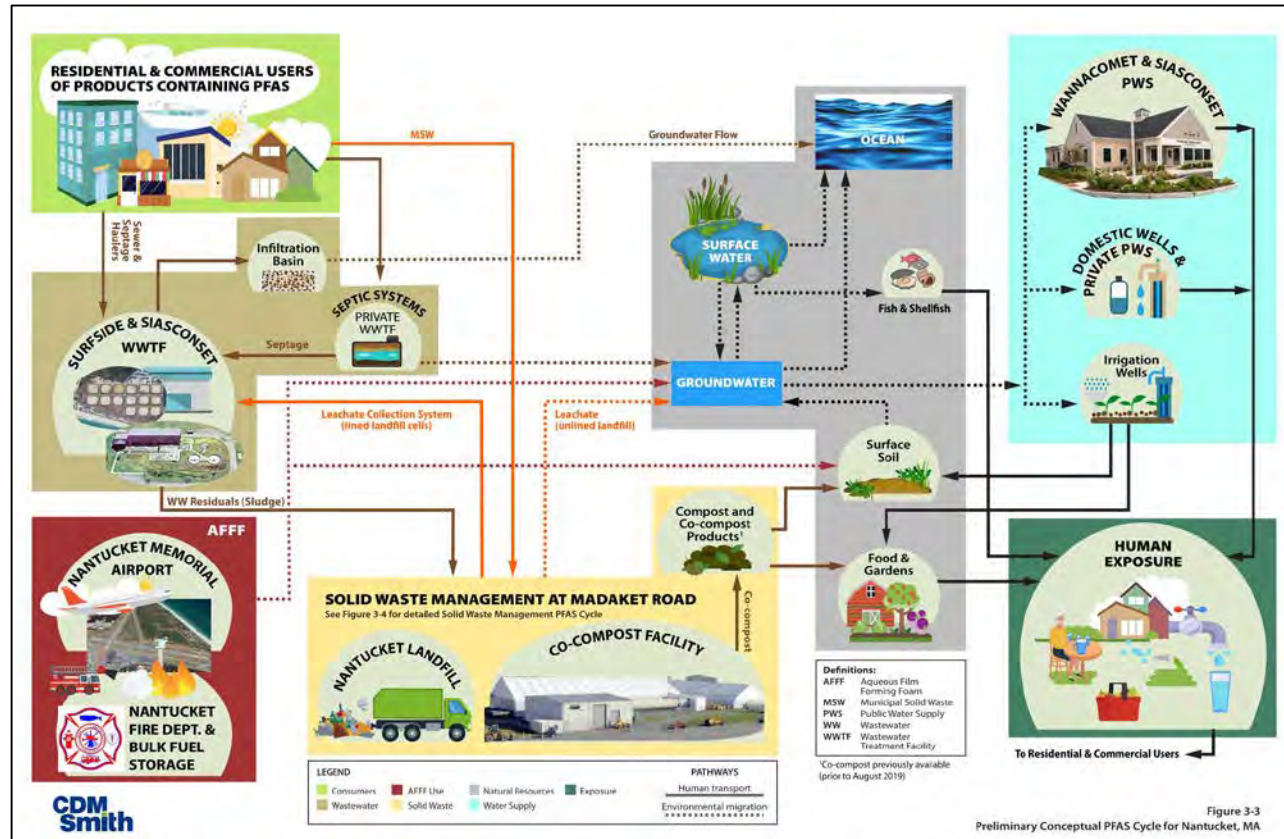


Figure 3-3  
Preliminary Conceptual PFAS Cycle for Nantucket, MA

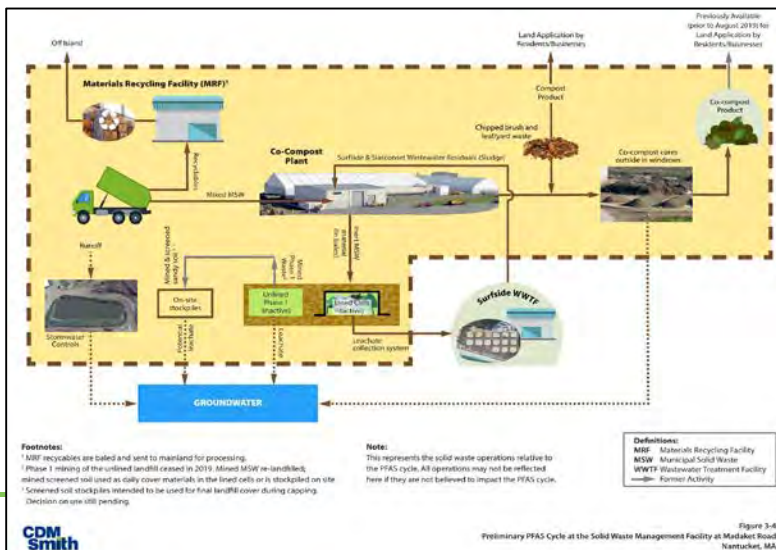


Figure 3-4  
Preliminary PFAS Cycle at the Solid Waste Management Facility at Madaket Road, Nantucket, MA



## Agenda Item Summary

<b>Agenda Item #</b>	XI. 2.
<b>Date</b>	2/10/2021

### Staff

Assistant Town Managers, Director of Culture and Tourism, Licensing Agent, Finance Director (Work Group)

### Subject

Jetties Beach Concession 2022-2026 Lease RFP

### Executive Summary

Proposed RFP and Term Sheet for a 5-year lease agreement for the Jetties Beach concession, retail shop, bathhouse and beach event area. This is a real property transaction and regulated under Ch30B, Sec. 16: Real Property; Disposition or Acquisition.

### Staff Recommendation

Using the current concession lease agreement as a model, staff recommends the following:

- A Request for Proposals (RFP) under Ch30B, Sec. 16 to publicly solicit bids. An RFP includes comparative criteria to ensure the Town can choose the most responsive and responsible bid. Price (Lease Payment in this case) is submitted separately and not considered until comparative criteria are reviewed, graded and the most advantageous bid is selected.
- 5-year lease agreement
- Minimum 2022 Lease Rent = \$150,236; 3.0% increase over 2021 as base (2021 Lease Rent = \$145,860).
- Minimum annual lease rent payment increase at 3.0%
- Minimum revenue share of 5.0% over \$1,000,000 in gross food, retail and event revenue
- Remove alcohol sales from Revenue Share due to restrictions on the Town having beneficial interest in an alcohol license it awards to a Town vendor.
- No more than 15 permitted events (May-October)
- No more than 4 private events (May, June, September, or October only)

### Background/Discussion

The current 5-year lease agreement for the Jetties Beach Concession expires at the end of the 2021 season (2017-2021). Disposition of real property is regulated by M.G.L. Ch30B, Sec. 16 therefore the concession lease must be publicly bid via a Request for Proposals (RFP). In order to give enough lead time for the winning vendor to prepare for the 2022 season, an RFP is issued before the 2021 season begins.

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Starting in October 2020 a staff work group was assembled by the Town Manager to review the concession RFP process and contract language. The work group looked at a few other towns' RFPs or agreements but nowhere did the work group find a seasonal concession with as complex an operation as Jetties that includes a large dine-in and take-out restaurant with full liquor license, a large retail shop, bathhouse facility and a beach event area. The work group also reviewed the last two Jetties RFPs and contracts and came up with the following revised documents, eliminating quite a bit of unnecessary or repetitive language and correcting a few contradictions and inconsistencies (dates, contact information, missing Exhibits, extra Exhibits, inconsistent terms, spelling, etc.).

In an attempt to make the RFP (and eventually the lease agreement) more manageable and less prone to inserting new language in one location and forgetting to do it in another, the work group pulled out all the lease terms from the body of the previous RFPs and the contracts and put them into "Exhibit A". Within Exhibit A the Jetties Agreement Lease Terms are grouped into 8 sections to better capture the different complex business areas of the operation and avoid repeating language in each function area:

- Section I - General Lease Terms
- Section II - Premises Maintenance, Custodial and Litter
- Section III - Concession Service (Food and Alcohol)
- Section IV - Concession Building
- Section V - Retail Shop
- Section VI - Bathhouse
- Section VII - Function Area
- Section VIII - Insurance and General Obligations

After the work group completed its efforts, the draft RFP and Term Sheet were circulated to Town Departments for input and edits. The attached RFP and nine Exhibits are the final version.

The current Lease Agreement payment terms for Sandbar, LLC are as follows:

- a. **Lease Amount:**            ~~\$663,075.00~~  
     (\$593,617.50 – first 2020 payment waived due to COVID)
- b. **Payment Increments**  
**(3.0% increase annually required; 5.0% increase annually bid):**
- |               |   |                 |                    |
|---------------|---|-----------------|--------------------|
| July 1, 2017: | \$60,000.00 (paid)                                    | August 1, 2017: | \$60,000.00 (paid) |
| July 1, 2018: | \$63,000.00 (paid)                                    | August 1, 2018: | \$63,000.00 (paid) |
| July 1, 2019: | \$66,150.00 (paid)                                    | August 1, 2019: | \$66,150.00 (paid) |
| July 1 2020:  | <del>\$69,457.50</del> (waived by Board due to COVID) | August 1, 2020: | \$69,457.50 (paid) |
| July 1, 2021: | \$72,930.00   | August 1, 2021: | \$72,930.00        |
- c. **Monthly Sales Percentage Over \$1,000,000 Gross Sales**  
**(3.0% increase annually required):**
-

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2017: 5.0% (\$85,797 all deposited to General Fund)  
2018: 5.0% (\$102,500 - \$61,856 General Fund; \$40,635 to A Safe Place)  
2019: 6.0% (\$132,892 - \$87,978 to General Fund; \$44,914 to ASAP Inc)  
2020: 6.0% (\$91,871 - \$53,405 to Gen Fund; \$38,467 to Food, Fuel & Rental Assist)  
2021: 6.0%

It was determined after the 2017 season that the Town cannot have a beneficial interest (e.g. revenue share) in a liquor license that is awarded by the Town. Per Kris Foster, General Counsel to the ABCC, that per G.L.c.44, §58:

“No city or town shall pay a bill incurred by any official thereof for wines, liquors or cigars – would prohibit a municipality from having an interest in a liquor license, absent a special act that permitted it. . . It is the ABCC’s position that (1) a lessor or landlord may not receive a percentage of alcohol sales without being listed as a beneficial interest holder in the license, and (2) a municipality may not hold such an interest in a license without authority from a special act.”

Since 2017 the current concessionaire, Sandbar LLC, has been donating the contracted revenue share of liquor sales to a local human services agency. This was deemed appropriate by Town Counsel.

**d. Gross Sales:**

2017: \$2,715,940  
2018: \$3,050,000  
2019: \$3,214,867  
2020: \$2,531,184  
2021:

---

Regarding the awning, Town Counsel had offered the following opinion:

Since the awning structure is attached to the building and has been maintained by the Town, in my opinion, if the Town were to include a requirement in the lease that the concessionaire keep the awning in good repair, the work of the concessionaire in doing so would be subject to the public construction laws, including the Prevailing Wage Law, in the same manner that as the Town would be.

While you could certainly require the concessionaire to perform the repair work on the awning, I am not sure what advantage the Town achieves from a cost standpoint. Further, it may be a challenge to insure proper repairs are made and that compliance with the public construction laws is achieved if a private party performs the work

One option you may want to consider is to include in the RFP a requirement that the concessionaire maintain a maintenance and repair reserve fund out of proceeds from operating the concession. While this will likely reduce the revenue the Town sees from the concession, this would insure a dedicated fund is available which the Town would have available to maintain the awning. The lease could provide that the concessionaire is required a set aside a designated amount each month to maintain the awning with

either the concessionaire or the Town having access to the fund depending on how you wish to set this up.

**Impact:** Environmental  Fiscal  Community  Other

Fiscal: Annual lease payments and revenue share to the Town

Community: A long-serving island tradition for the enjoyment of residents and visitors

**Board/Commission Recommendation**

N/A

**Public Outreach**

Public Procurement under Ch30B outreach requirements to include posting in local newspaper, Town website and bulletin board. Optional site walk-through.

**Attachments**

Draft 2022-2026 Jetties Concession RFP; Exhibits A thru H; Concession Lease and Revenue Actuals 2017-2020



# Town of Nantucket

## REQUEST FOR PROPOSALS

### LEASE AGREEMENT FOR CONCESSION AND RETAIL SERVICES AT JETTIES BEACH 4 BATHING BEACH ROAD, NANTUCKET, MA 02554

The Town of Nantucket invites qualified responders to submit proposals for a 5-year lease agreement for Concession and Retail Services at Jetties Beach, Nantucket, MA. This contract begins January 1, 2022 and expires on December 31, 2026. This procurement shall be governed by the requirements of G.L. c. 30B, §16.

#### IMPORTANT DATES

- 1<sup>st</sup> Advertising: Thursday, February 18, 2021 (Inquirer & Mirror)
- 2<sup>nd</sup> Advertising: Thursday, February 25, 2021 (Inquirer & Mirror)
- RFP Available Online: Friday, February 26, 2021
- Optional Pre-Proposal Site Tour: Friday, March 12, 2021 at 10:00 AM – 12:00 PM
- Written Inquiries Deadline: Friday, March 26, 2021 by 12:00 PM
- Inquiries Answered by: Friday, April 2, 2021 by 12:00 PM
- Bid Submission Deadline: Friday, April 16, 2021 by 12:00 PM
- Public Opening: Tuesday, April 6, 2021 at 10:00 AM (Zoom)
- Award Selection by: Friday, April 30, 2021

#### I. GENERAL INFORMATION AND SUBMISSION REQUIREMENTS.

1. Requests for Proposals can be obtained from, and proposals will be accepted at the Town of Nantucket, Procurement Office, 37 Washington Street, Nantucket, MA 02554, until **2:00 PM, THURSDAY, APRIL 1, 2021. Five (5) copies and one (1) electronic copy of the proposal are required.**
2. Proposals must be submitted in **A SEALED ENVELOPE** clearly marked:
  - *PROPOSAL FOR JETTIES BEACH CONCESSION LEASE*





# Town of Nantucket

Please note that unlike the Chapter 30B RFP requirements for supplies and services, the Chapter 30B requirements for real property transactions under Section 16 do not allow for separate submissions of price and non-price (technical) proposals. They are to be included in the same sealed envelope. Moreover, real property proposals, including price proposals, are opened publicly and are not confidential after they are opened.

If the proposal is mailed, the sealed proposal must be enclosed in a sealed envelope for mailing. Failure to comply strictly with these requirements may result in the rejection of a proposal.

## **Proposals shall be opened publicly.**

At the opening of the proposals the Chief Procurement Officer or his/her Designee shall prepare a Register of Proposals which shall include the name of each Bidder and the number of modifications, if any, received. The Register of Proposals shall be open for public inspection.

3. Award date. Award will be made within forty-five (45) days after proposal opening unless otherwise stated in the specifications or the time for award is extended by mutual consent of all parties. All submittals shall be valid for a minimum period of sixty (60) calendar days following the date established for acceptance. The Town shall award a contract, if at all, to the responsible Bidder whose proposal is responsive and the most advantageous taking into consideration price and the evaluation criteria set forth in this Request for Proposals.
4. If any changes are made to this RFP, an addendum will be issued. Addenda will be mailed or faxed to all companies and individuals on record as having requested the RFP. Each responder shall acknowledge receipt of any and all addendum issues by submitting acknowledgment forms provided with any Addenda; and if no such forms are provided with the addenda, on the face of the Bidder's non-price proposal. Failure to do so shall be cause to reject the submittal as being unresponsive.
5. Optional site visit and walk through of the property at Jetties Beach Concession and Retail Shop located at 4 Bathing Beach Road, Nantucket, MA 02554 on **FRIDAY, MARCH 12, 2021 from 10:00 AM – 12:00 PM**
6. Questions concerning this RFP must be submitted in writing **before 12:00 PM, FRIDAY, MARCH 26, 2021** to [procurement@nantucket-ma.gov](mailto:procurement@nantucket-ma.gov)

**Attempts made by proposers to contact Town employees directly with questions may subject the proposer to disqualification.**



# Town of Nantucket

Questions must be emailed (procurement@nantucket-ma.gov). Written responses, if any, will be in the form of addenda to this RFP and will be posted on the Town website and emailed or faxed to all companies and individuals on record as having requested the RFP.

7. Responses may be modified, corrected or withdrawn only by written notice received by the Town of Nantucket prior to the time and date set for the response opening, except as provided in the next paragraph. Modifications must be submitted in a sealed envelope clearly labeled "Modification No. \_\_\_" and must reference the original RFP response.
8. An Bidder may correct, modify, or withdraw a proposal by written notice received in the office designated above prior to the time and date set for the receipt of all proposals. After such time and date, an Bidder may not change the price or any other provision of the proposal in a manner prejudicial to the interests of the Town or fair competition. The procurement officer shall waive minor informalities or allow the Bidder to correct them. If a mistake and the intended bid are clearly evident on the face of the proposal document, the procurement officer shall correct the mistake to reflect the intended correct offer and so notify the Bidder in writing, and the Bidder may not withdraw the proposal. An Bidder may withdraw a proposal if a mistake is clearly evident on the face of the proposal document, but the intended correct offer is not similarly evident.
9. Negligence on the part of the responder in preparing the proposal confers no rights for the withdrawal of the proposal after it has been opened.
10. The Town of Nantucket reserves the right to reject any and all proposals, to waive any minor informalities, and to cancel this procurement at any time, whenever such rejection, waiver, or cancellation is in the best interest of the Town.
11. The Town of Nantucket will not be responsible for any expenses incurred in preparing and submitting proposals. All submittals shall become the property of the Town of Nantucket. All plans, specifications and other documents resulting from this contract shall become the property of the Town of Nantucket. All proposals shall be deemed a public record.
12. Responders must be willing to enter into the Town of Nantucket's standard form of lease in accordance with the terms of this RFP.
13. Sealed proposals received prior to the date of opening will be kept unopened. No responsibility will attach to an officer or person for the premature opening of a proposal not properly addressed, sealed and/or identified.



# Town of Nantucket

14. Any proposals received after the advertised date and time for opening will be returned to the responder unopened.
15. Purchases by the Town of Nantucket are exempt from federal, state and municipal sales and/or excise taxes.
16. The Tax Compliance Certification and the Certificate of Non-Collusion, included in this RFP, must be completed, signed, and enclosed with the proposal. These forms must be signed by the authorized individual(s).
17. Unexpected closures. If, at the time of the scheduled response opening, Town offices are closed due to uncontrolled events such as pandemic response, fire, snow, ice, wind or building evacuation, the response opening will be postponed until 3:00 PM on the next normal business day. Proposals will be accepted until that date and time.
18. The Town of Nantucket is an Affirmative Action/Equal Opportunity Employer. The Town encourages submittals from qualified MBE/DBE/WBE firms.
19. Responders should be aware that many overnight mailing services do not guarantee service to Nantucket.
20. Responses to the RFP must be prepared according to the guidelines set forth herein. Selection of the successful responder will be based upon an evaluation and analysis of the information and materials required under the RFP, and in accordance with section 16 of Chapter 30B of the General Laws.
21. Bidders must submit a **bid deposit of ten percent (10%) of the amount of the total base bid for the first year of the lease**. Bid deposit may be in the form of a certified check; a bank, treasurers or cashier's check; or a bid bond from a surety company. Bid deposits of bidders not awarded the contract will be returned. The bid deposit of the winning bidder will be applied to the first-year lease payment.



# Town of Nantucket

## II. LEASE AGREEMENT TERMS.

See **Exhibit A: Jetties Beach Concession, Retail Shop, Bathhouse and Function Area 2022-2026 Term Sheet**

## III. PROPOSAL SUBMISSIONS.

### Non- Price (Technical) Proposal:

Proposal: The Proposal shall include a business plan that clearly addresses the Lease Agreement Terms of this RFP. See **Exhibit A** for Lease Agreement Term Sheet.

Experience: Proposals must provide proof that the business or members of the business, as currently constituted, has been regularly and actively engaged on a full-time basis in the type of work described in the section of this RFP entitled “LEASE AGREEMENT TERMS” for a **minimum** of the past **five (5) years** either working on Nantucket or **ten (10) years** in a similar busy seasonal beach environment such as Nantucket. Such proof must include contact information for all owners for whom the Bidder has performed services over the past five (5) years.

Financial stability: Proposer must also include proof of financial stability. This shall be in the form of a bank reference or audited financial statements of the business entity.

Required Forms: Proposer must sign and return the Tax Compliance Certification Form and Certificate of Non-Collusion Form with the sealed bid. The Tax Compliance and Certificate of Non-Collusion Forms are included in this RFP. Proposer must also complete and return Exhibit A (Lease Agreement Term Sheet) and Exhibit B (Bid Price Proposal) with the sealed bid.

Please note that there are eight (8) Exhibits associated with this bid but only Exhibit A and Exhibit B are required to be returned.

References: References are to be included with the Proposal. Please include a list of at least five (5) references that can adequately attest to the Proposer’s ability to perform the concession, retail, bathhouse and event venue provisions outlined in this RFP. The Town expects to check references. One or more poor references may be a basis for determining that a proposer is not responsible and result in a rejection of the proposal. Reference questions will include but may not be limited to service quality, Nantucket community involvement, and general customer satisfaction.



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Insurance Required: Proof of the following insurance is required to be submitted with the Proposal.

- (a) Workers' Compensation, covering the obligations of the CONTRACTOR in accordance with applicable Workers' Compensation or Benefits laws.
- (b) Commercial General Liability Insurance on an occurrence basis with a combined single limit of not less than \$2 million. Coverage is to include premises and operations, coverage for liability of subcontractors. The policy shall contain an endorsement stating that the aggregate limits will apply separately to the work being performed under this Agreement.
- (c) Automobile Liability Insurance of not less than \$1 million combined single limit covering owned, hired and non-hired vehicle use.

## Price Proposal:

Please provide a Price Proposal within the sealed Proposal. Bidders must use the **Proposal Response Form (Bid Form)** contained within this RFP (**Exhibit B**).

## IV. PROPOSAL EVALUATION PROCEDURE

The Chief Procurement Officer shall designate one or more persons to a Review Committee to evaluate the proposals according to the evaluation criteria contained below. Submittals that comply with the minimum qualification requirements will be further evaluated based on the comparative criteria detailed below and the price.

### Minimum Quality Criteria/Requirements

Proposals must meet the following minimum criteria/requirements:

- a. In order for a bid proposal to get to the Review Committee, Bidders must provide all of the items described in Section I and below. This includes but is not limited to one sealed envelope that includes
  - Bid deposit of 10%
  - Bid Proposal
  - Price Proposal (Exhibit B)
  - Evidence of financial stability
  - Proof of insurance



# Town of Nantucket

- List of references
- Certificate of Non-Collusion
- Tax Compliance Form
- Exhibit A – Lease Agreement Term Sheet
- Exhibit B – Bid Price Proposal
- All official Addenda if any are issued by the Town

## Comparative Criteria

The Town will evaluate all applications submitted. Any application which fails to meet any of the minimum qualifications will be rejected as non-responsive. In addition to the minimum qualifications, the Town will consider the following comparative criteria. These matters should be addressed in the written application and will be explored further in any interview with the applicant.

The following schedule will be utilized:

<b>Grade</b>	<b>Mark</b>	<b>Measure</b>
<i>Highly Advantageous</i>	HA	Response is superior and excels on the specific criterion
<i>Advantageous</i>	A	Response is satisfactory and meets evaluation standard for the criterion
<i>Not Advantageous</i>	NA	Response does not fully meet the criterion or leaves a question or issue not fully addressed
<i>Unacceptable</i>	U*	Does not address the criterion

\*Proposal may be automatically eliminated from further consideration if “U” is received in any category.

## Comparative Criteria:

### **1. Plan of Services (Business Plan):**

HA – Proposer’s response is superior and excels at addressing the Lease Agreement Terms (Exhibit A) and displays the resources, and specifically states the ability, to meet the requirements of a seasonal beach restaurant, bar, retail shop, bathhouse and event venue with a focus on the island community from the third weekend in May through Columbus Day with potentially limited hours in May, June, September and October.

A - Proposer’s response is satisfactory and meets the Lease Agreement Terms (Exhibit A) and displays the resources, and specifically states the ability, to meet the requirements of a seasonal beach restaurant, bar, retail shop, bathhouse and event venue with a focus on the island





# Town of Nantucket

community from the third weekend in May through Columbus Day with potentially limited hours in May, June, September and October.

NA – Proposer’s response does not fully meet the criterion or leaves a question or issue about ability to address Lease Agreement Terms (Exhibit A) and does not display the resources, or specifically states the ability, to meet the requirements of a seasonal beach restaurant, bar, retail shop, bathhouse and event venue with a focus on the island community from the third weekend in May through Columbus Day with potentially limited hours in May, June, September and October.

U - Does not address the criterion.

## 2. **Quality Control:**

HA – Proposal clearly demonstrates superior quality control and superior availability of resources, staff and relevant experience to perform the Lease Agreement Terms (Exhibit A) requested.

A – Proposal demonstrates satisfactory quality control and satisfactory availability of resources, staff and relevant experience to perform the Lease Agreement Terms (Exhibit A) requested.

NA – Proposal does not demonstrate adequate quality control, and leaves questions of availability of resources, staff or experience to perform the Lease Agreement Terms (Exhibit A) requested.

U - Does not address the criterion.

## 3. **Experience working with Concessions, Municipal Concessions or on Nantucket Island specifically:**

HA – Proposer clearly demonstrates superior community-focused concessions, retail shop, bathhouse and event venue experience on Nantucket or a similar busy seasonal beach environment as Nantucket for more than five (5) years.

A -- Proposer demonstrates satisfactory concessions, retail shop, bathhouse and event venue experience on Nantucket or a similar busy seasonal beach environment as Nantucket for more than three (3) year but less than five (5) years.

NA -- Proposer does not demonstrate adequate concessions, retail shop, bathhouse and event venue experience or has worked on Nantucket or a similar busy seasonal beach environment as Nantucket for less than three (3) years or leaves questions about it.



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U - Does not address the criterion.

## 4. Reference

HA – Proposer provides more than five (5) relevant professional or community references that clearly identifies superior service quality, community commitment and general customer satisfaction.

A – Proposer provides more than three (3) but less than five (5) relevant professional or community references that satisfactorily address service quality, community commitment and general customer satisfaction.

NA – Proposer provides less than three (3) relevant professional or community references that address service quality, community commitment and general customer satisfaction or leave questions.

U - Does not address the criterion.

## V. RULE FOR AWARD.

The Town will award the lease to the most advantageous proposal from a responsible and responsive proposer, taking into consideration price and all evaluation criteria set forth in the RFP.

## VI. TERM OF CONTRACT.

The lease agreement awarded will be for five (5) years ending on December 31, 2026.



# Town of Nantucket

## REQUIRED FORMS (Sign and Include with Proposal)

### CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

\_\_\_\_\_  
Signature of person signing bid or proposal

\_\_\_\_\_  
Name of Business



# Town of Nantucket

## TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Federal Employer ID Number

\_\_\_\_\_  
Name of Corporation

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_

DRAFT



# Town of Nantucket

## CHECKLIST

- Bid arrives before deadline
  - Consider the weather, COVID restrictions and other factors that could delay delivery of the proposal
- Sealed envelope containing another sealed envelope containing:
  - Bid deposit of 10%
  - Bid Proposal
  - Price Proposal (Exhibit B)
  - Evidence of financial stability
  - Proof of insurance
  - List of references
  - Certificate of Non-Collusion signed
  - Tax Compliance Form signed
  - Exhibit A – Lease Agreement Term Sheet signed
  - Exhibit B – Bid Price Proposal filled-out and signed
  - Any Addenda IF issued by the Town



# Town of Nantucket

Sign and date  
last page and  
return with  
Proposal

## EXHIBIT A

### **Jetties Beach Concession, Retail Shop, Bathhouse and Function Area 2022-2026 Lease Agreement Term Sheet**

The Jetties Beach Concession, Retail Shop, Bathhouse and Function Area Lease Agreement Term Sheet is divided into eight Sections to better understand the multiple business operations covered by this Lease Agreement.

The Term Sheet Sections include:

Section I – General Lease Terms	Page 2
Section II – Premises Maintenance, Custodial and Litter	Page 4
Section III – Concession Service	Page 7
Section IV – Concession Building	Page 10
Section V – Retail Shop	Page 13
Section VI – Bathhouse	Page 14
Section VII – Function Area	Page 15
Section VIII – Insurance and General Obligations	Page 18





# Town of Nantucket

## SECTION I - GENERAL LEASE TERMS

- Lease Term:** Five years beginning **January 1, 2022 and expiring December 31, 2026**
- Leased Area:** See **Exhibit F: Jetties Beach Concession Lease Area**. Lease Area, or “Premises”, consists of (a) Concession Building, (b) Bathhouse, (c) Retail Shop, and (d) Function Area (180’ from the Concession Building north towards the shoreline and 100’ from eastern edge of Concession Building west towards the dune).
- Operating Dates:** Occupancy and operations on Premises allowed beginning the second week of May through Columbus Day Weekend each year
- Security Deposit:** The Concessionaire shall file with the Town of Nantucket a \$5,000.00 security deposit; refundable at the end of the lease term, without interest to the Concessionaire within sixty (60) days, after determination has been made that the Concessionaire has fulfilled all of the terms of the contract and left the premises in adequate condition according to the Town and after presenting proof that all utility payments as well as landfill and sewer fees have been made and no defaults are left outstanding.
- Bid Deposit:** 10% of the first-year base bid required; applied to winning Bidder’s first year’s lease payment.
- Lease Fee:** Minimum bid **\$xxx,xxx** with minimum **x.x%** increase annually.
- Revenue Share:** **Minimum % above Gross Sales or:**  
Minimum bid x.x% of food sales  
Minimum bid x.x% of retail sales  
Minimum bid x.x% of event sales  
Health and Human Services contribution from alcohol sales?
- State and Federally Protected Species:** The Concessionaire must be aware that Jetties Beach is a known traditional habitat area for State and Federally listed species, such as the Piping Plover. Such listed species are protected under the Endangered Species Act and are monitored and protected by the Town of Nantucket’s Endangered Species Program. The Town’s Endangered Species Program is based on set State and Federal Guidelines. Failure to follow the rules, regulations and guidelines created by the State and Federal



# Town of Nantucket

Government and implemented by the Town of Nantucket's Endangered Species Program may result in the potential closure of Jetties Beach. The Concessionaire is required to abide by all rules and regulations set forth regarding the "State and Federally listed species" and therefore must notify the Town of any "Private Function, Special Event or Activity" as soon as they are scheduled and no later than one week in advance of the event. See **Exhibit D – Nantucket Endangered Species Program**.

**Signs and Structures:**

Before any temporary or permanent signs or structures are erected the Concessionaire shall first obtain such written approvals as may be required under existing Town regulations including but not limited to a Certificate of Appropriateness from the Historic District Commission of the Town. The Concessionaire shall then obtain the written permission of the Town of Nantucket.

**Beach Access:**

The Concessionaire will contact the Town of Nantucket if he/she requires vehicle access to the beach. The Town of Nantucket may deny access to the beach for motorized vehicles at the Town's discretion.

**Boardwalk/  
Mobility Mat:**

The Boardwalk/Mobility Mat will be installed each season on or around April 15<sup>th</sup> by the Department of Public Works in concert with the Town of Nantucket. The Boardwalk/Mobility Mat will be placed to the far right, between the leased area and the parking area, and will be flush with the sand. The Boardwalk/Mobility Mat will remain in place for the summer season. The only event for which the Boardwalk/Mobility Mat may be moved is the Hospital Fundraiser. Problems with this provision should be brought to the attention of the Town of Nantucket at least 48 hours prior to the event.

**Service Animals:**

The Concessionaire and/or its employees are prohibited from bringing animals to work anywhere on the Premises, unless a certified service animal.

**Keys:**

Provide keys to the Town for all locked areas within the Premises.



# Town of Nantucket

## SECTION II – PREMISES MAINTENANCE, CUSTODIAL AND LITTER

**Utility Payments:** The Concessionaire shall pay all water, power, gas, sewer, landfill, oil and telephone costs incidental to its Concession operation. This obligation includes but is not limited to payment of water and electric bills, Landfill and Sewer User Fees for both the Concession, Retail Shop, Bathhouse, and Function Area of the Premises. The Concessionaire is also responsible for turning on and turning off of all utilities and any and all utility deposits required doing so. The Concessionaire shall present proof of payment of all utilities to the Town of Nantucket within thirty days (30) of closing for the season. Should proof of payment not be presented the Concessionaire shall be considered in default and the Town of Nantucket has the right at its discretion to pay any outstanding amounts from the security deposit.

**Other Utilities and Fees:**

The Concessionaire shall also be responsible for all licensing fees as determined by the Town, all utilities, small and large event permitting fees, entertainment or pouring licenses, and all other costs associated with the operation of the Premises including events; including any additional fees brought on by the presence of listed shorebirds and the protection plan implemented by the Town of Nantucket's Endangered Species Program, through the Beach Management Plan. Those items specifically provided herein are excluded.

**Ownership:**

Any improvements made by the Concessionaire to the Premises during the term of the contract including any structure, fixture or equipment affixed permanently to the premises shall become the property of the Town of Nantucket except as agreed upon in writing prior to installation.

**Building Improvement**

**Consent:**

The Concessionaire shall not undertake any improvements to the Premises without having first received the written consent of the designated contact with the Town of Nantucket. Should the Town of Nantucket consent to such improvements the Concessionaire shall obtain all required permits and present copies of all permits to the Town of Nantucket prior to starting work. Any improvements to the premises shall be completed before May 15<sup>th</sup>. Should there be an emergency need for improvements after May 15<sup>th</sup> the Town must be provided with copies of the permits and details of the work. Before any work begins an assessment may be made by the Town of Nantucket based on the current status of the State and Federally listed species and the effect the work may have on their habitat/productivity.



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## **Custodial and Litter**

### **Maintenance:**

The Concessionaire shall provide all custodial clean-up and litter maintenance inside and outside the Premises including the Lower Parking Lot in the Maintenance Area indicated on **Exhibit F**, policing the beach and Lower Parking Lot areas daily to keep it free of all litter and other trash generated by the patrons of the concession and beach. All rubbish/trash collected by the Concessionaire or generated from the concession's operation will be sorted appropriately, secured, removed from the beach and disposed of at the Concessionaire's expense including landfill fees. The Concessionaire is not responsible for trash deposited in official Town of Nantucket trash and recycling receptacles in the parking lot, tennis and playground area.

Once a pair of potentially nesting listed shorebirds has been recognized, all cleaning of the beach's litter must be done by hand. NO beach raking will be permitted until the status of the State and Federally listed shorebirds has been examined by the Town and has been deemed permissible. Removal of the wrack line by hand or machine is prohibited. The Town is responsible for beach raking.

## **Non-Emergency**

### **Repairs:**

Concessionaire shall request prior written approval from the Town for any non-emergency repairs to be made to the Premises at Concessionaire's expense. If the work is scheduled between May 15<sup>th</sup> and Labor Day the Town must also sign off on any non-emergency repairs. Pending the status of the State and Federally listed species and the description of the non-emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the approved repairs.

## **Emergency**

### **Repairs:**

Any emergency repairs Concessionaire will confirm in writing; responsibility for payment of such repairs will be determined in accordance with the terms herein. If the work is scheduled between May 15<sup>th</sup> and Labor Day the Town must also sign off on any emergency repairs. Pending the status of the State and Federally listed species and the description of the emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the repairs.

## **Premises Facility**

### **Maintenance:**

The Concessionaire shall provide all day-to-day light operational maintenance, upkeep and non-M.G.L. Ch. 149 facility maintenance inside and outside the Premises, with the approval of the designated Town of Nantucket contact. Examples include but are not limited to touch-up painting, loose deck board repairs, power-washing, broken screens or windows, shingle replacement, loose railings or



# Town of Nantucket

steps, changing lightbulbs, standard plumber and electrician calls, etc. The Concessionaire should not engage in any facility maintenance or capital improvement project in excess of state procurement thresholds (e.g. M.G.L. Ch. 30 B and Ch. 149) without written approval from the Town.

The Town is responsible for Premises capital projects (over \$50,000). These include code upgrades, major plumbing and electrical/lighting fixes, facility-wide window or screen replacement, painting, roofing, awning, decking, flooring, engineering studies, etc. The Town strictly follows state procurement laws (e.g. M.G.L. Ch. 30B and Ch. 149).

All significant repairs, maintenance construction, power washing, or any other action that may involve excessive noise must be completed prior to May 15<sup>th</sup>.

## **End of Season Premises Inspection:**

The Concessionaire shall schedule with the Town of Nantucket a date and time for the end of season inspection by November 15 or when the Town shuts off utilities, whichever comes first. The purpose of the inspection is:

- a) To ascertain any and all repairs necessary prior to opening for the upcoming season.
- b) To make sure the premises are clean and all items are secured prior to closing for the season.
- c) To make sure the Concessionaire adequately performed the annual maintenance on kitchen equipment prior to closing the Concession Building for the fall. A schedule of the minimum annual maintenance requirements is attached hereto, and incorporated herein, marked **Exhibit G**.



# Town of Nantucket

## SECTION III - CONCESSION SERVICE

### **Concession/Food**

#### **Service:**

Concessionaire agrees to operate a community-oriented concession facility of a typical beach “family-friendly” snack bar restaurant with alcohol service and a small retail business in accordance with the applicable rules and regulations and to obtain appropriate licenses before operating the facility and presenting the Town of Nantucket with the same. The Concessionaire is responsible for compliance with all laws and regulations applicable to the operation of the premises, including but not limited to compliance with applicable ADA regulations.

### **“Family-Friendly”**

#### **Service:**

“Family-friendly” Services includes but is not limited to such elements as:

- a Children’s Menu;
- no cover charges;
- use of picnic tables and casual furniture with no abundance of couches and lounge furniture;
- no over-crowding of furniture on the patio or beach to allow for a more open and relaxing atmosphere leaving room for the public to set up beach chairs to enjoy the sand;
- unamplified music indoors only; non-club hours (8:00 am to 10:00 pm); and
- no more than fifteen (15) permitted events per season (May-October), which includes no more than four (4) private events that close down the Concession to the public; and
- community-focus.

The Concessionaire is responsible to offer food service including breakfast (optional), lunch and dinner service. The concessionaire shall operate the premises to enhance the public’s use and enjoyment of the adjacent public beach facility and in the best interest of the Town of Nantucket with focus on supporting and building community (e.g. support of local non-profits or youth groups).

### **Concession Service**

#### **Area:**

See **Exhibit F: Jetties Beach Concession Lease Area**. Concession Building consists of the kitchen area, raised indoor bar area, awning-covered indoor seating area, two restrooms, two second-floor apartments/office space and 100’ of outside dining area on decking and beach area.





# Town of Nantucket

The outdoor restaurant food/alcohol service area is limited within the Leased Area to within 100' from the Concession Building north towards the beach for the purposes of food and alcohol services. Concession patrons are not allowed to take alcoholic beverages beyond the 100' area defined for the purposes of food and alcohol services, which must be approved by the Town annually and clearly marked by the Town's Facility Manager or his/her designee at the beginning of the season. No alcohol can be served outside of the legally defined and approved premises. The remaining 80' Function Area may be used for events (see FUNCTION AREA).

The Lower Parking Lot may be used by the Concessionaire for an optional mobile food unit operated by the Concessionaire in a designated spot upon approval of the Town.

**Mobile Food Truck:** Concessionaire may operate an optional mobile food truck in the Lower Lot to expand its food service operation upon approval of the Town.

## **Alcoholic Beverage Service:**

In accordance with Section 54-1C of the Nantucket Code, the Town of Nantucket hereby grants its consent to the Concessionaire to serve alcoholic beverages for possession and consumption on the premises subject to the following condition:

- a) Concessionaire must obtain a liquor license from the Nantucket Select Board in accordance with all local, state and federal rules and regulations.
- b) The area of the Premises in which alcoholic beverages will be served and consumed shall be limited and clearly delineated to the satisfaction of the Town of Nantucket. Appropriate precautions shall be taken to assure that alcoholic beverages are not consumed outside the premises.
- c) The Concessionaire will be responsible for compliance with all Massachusetts and Nantucket laws, regulations and ordinances governing the serving and consumption of alcoholic beverages on the premises including the consumption of alcoholic beverages by minors.
- d) Alcohol may only be served as indicated on the Concessionaire's liquor license.

**If it is the intent of the successful concessionaire to extend the liquor license hours they will be required to obtain Select Board approval in advance.**

- e) The Concessionaire shall hire a police detail for any private function at which alcohol will be served where more than 150 persons are expected to attend. The number of details required for events is at the discretion of the Nantucket Police



# Town of Nantucket

Department. The cost of such police detail will be paid by the Concessionaire or the sponsor of the function.

- f) The Concessionaire hereby agrees to indemnify and hold harmless the Town and County of Nantucket and all of their officials, members, officers, employees and agents from any and all claims arising out of the sale or consumption of alcoholic beverages on the premises and all other costs (including legal fees) related thereto. The Concessionaire will maintain liability insurance with respect to the serving of alcoholic beverages as required by the laws and regulations of the Commonwealth of Massachusetts and the Town and County of Nantucket. All Such policies of liability insurance shall name the Town and County of Nantucket and all other indemnified parties as additional insured parties under the policy. The Concessionaire shall deliver written proof of such insurance, by a certificate of insurance or otherwise as required by the Town, to the Town's designee on or before March 1 of each year during the term herein.
- g) Such provisions are subject to review, modification or termination by the Town of Nantucket at its sole discretion at any time.
- h) Tents set up on the beach portion of the premises cannot be set up until the day of the event for which they are being used and must be removed by Noon on the day after the event without written approval by the Town of Nantucket. Problems with this provision should be brought to the attention of the Town of Nantucket at least one week prior to the event if not previously addressed during the permitting process. Before erecting or removing a tent and/or floor on Jetties Beach, the Licensing Agent/Events Manager and the Chief Procurement Officer must be notified of the size of the tent(s), the times and the date(s). If the Town feels it is necessary, the Concessionaire will hire monitor(s) through the Town's Endangered Species Program to be present during both the erection of the tent and/or floor and the removal. Failure to contact the Town regarding a tent and/or floor may result in the loss of future tent/floor use.



# Town of Nantucket

## SECTION IV - CONCESSION BUILDING

### **Kitchen**

#### **Equipment:**

The Town of Nantucket provides various kitchen equipment for use by the Concessionaire. See **Exhibit G – Jetties Beach Concession Asset List**. The Concessionaire is responsible for upkeep and preventive maintenance for the equipment provided by the Town of Nantucket.

The Concessionaire shall provide and install additional kitchen equipment and food and drink equipment not already provided by the Town of Nantucket, at the Concessionaire's expense as approved by the Town of Nantucket. Any purchase of equipment by Concessionaire from a previous Concessionaire is a private agreement and is not part of this Lease Agreement for use of the facilities and said equipment is property of the Concessionaire. Concessionaire is responsible for maintenance, replacement, sale and/or removal of his/her own equipment. Any equipment affixed permanently to the premises shall immediately become the property of the Town of Nantucket subject only to the Concessionaire's right to use such equipment during the term hereof.

In addition, the Concessionaire agrees to perform annual maintenance on kitchen equipment prior to closing the Concession Building each fall. See "End of Season Inspection". A schedule of the minimum annual maintenance requirements is attached hereto, and incorporated herein, marked **Exhibit G**.

The Concessionaire shall not use the kitchen as a commercial kitchen for other off-premise catering services or for a third-party catering business. The kitchen may be used for a mobile food truck owned and operated by the Concessionaire for use only in the Jetties Beach Lower Parking Lot with approval of the Town of Nantucket. Kitchen equipment may be used for on-premises catering when the restaurant is closed to the public for approved and permitted Private Event Functions.

Any such equipment remaining after the expiration of this contract shall, at the option of the Town of Nantucket, either become the property of the Town of Nantucket or be removed and disposed of by the Town of Nantucket at the expense of the Concessionaire.

### **Concessionaire**

#### **Restrooms:**

The Concession Building has two (2) restrooms for private use by the Concessionaire to ensure safe and accessible restroom facilities for Concessionaire



# Town of Nantucket

staff. The Concessionaire is responsible for cleaning and daily maintenance of these two (2) restrooms. Repairs and upgrades are the Town's responsibility except in case of emergency. See Concession Building Emergency Repairs.

## **Awning:**

The Jetties Beach Concession Building awning is owned by the Town of Nantucket. The awning is a custom-made, non-retractable, non-sliding fixed aluminum frame structure permanently attached to the Concession Building. The awning consists of the aluminum frame, canvas/vinyl canopy, and canvas/vinyl side panels and sliding doors. Per M.G.L. Ch. 149 renovations and maintenance are the responsibility of the Town to comply with state public procurement and living wage requirements. The Concessionaire is responsible for daily upkeep and routine maintenance in accordance with installation guidelines approved by the Facility Manager. The Town is responsible for capital repairs and replacement.

## **Concession Building Use for Dwelling**

### **Purposes:**

The Concessionaire is expressly prohibited from using any part of the premises for dwelling purposes except upon the following terms and conditions:

- a) Only that portion of the second floor of the main building known as the apartment ("Apartment") may be used for dwelling purposes and may be so used only by the Concessionaire or employees of the Concessionaire during the period of Occupancy if approved by the Town. If allowed to be used by the Concessionaire, immediate family only may enter the Apartment two weeks prior to the occupancy period or two weeks prior to opening the concession whichever is later for the sole purpose of preparing the buildings for the summer season. The Concessionaire with immediate family only may remain in the Apartment for up to two weeks after the occupancy period or two weeks after closing the concession whichever is earlier for the sole purpose of closing and winterizing the buildings.
- b) Use of the Apartment is specifically restricted to a single-family occupancy with the number of occupants allowed determined by the Nantucket Building Inspector.
- c) Leasing of the Apartment or rooms or space to transients or in any temporary basis is strictly prohibited.
- d) The Apartment may not be sublet.
- e) Occupancy of the Apartment for dwelling purposes may commence only after it has been inspected and approved by the Nantucket Building Inspector. Concessionaire shall be responsible for requesting this inspection by the Nantucket Building Inspector and for complying with all required safety requirements. The Nantucket Building Inspector shall have the right from time to time and upon reasonable notice to the Concessionaire to inspect the premises to see that all terms and



# Town of Nantucket

conditions of these specifications are being met.

- f) No structural changes or improvements may be made to the Apartment by the Concessionaire without written consent of the Town of Nantucket. Any improvements made to the Apartment including those necessary to meet building codes are the sole responsibility of the Concessionaire.

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# Town of Nantucket

## SECTION V - RETAIL SHOP

**Retail Sales:** Retail Sales are required in the Retail Shop. The Retail Shop Area cannot be used as an extension of the Concession Service area nor sublet to a third party. The business plan for retail sales is at the discretion of the Concessionaire but expected to serve the beach-going public with common beach-related items in addition to other retail options.

**Retail Shop Area:** The Retail Shop Area is denoted in **Exhibit F: Jetties Beach Concession Lease Area**. The Concessionaire is allowed to extend Retail Sale into the Concession Service Outside Area if desired but not into the Parking Lot or Function Area.

**Retail Shop Hours of Operation:** Retail Shop Hours of Operations are to be similar to the Concession Service Operation hours. It is the intent to not just have a retail shop on the premises without having food and beverage service. It is, however, sufficient to have food and beverage service without a retail shop on occasion.



# Town of Nantucket

## SECTION VI - BATHHOUSE

### **Public Restrooms, Bathhouse and Shower Facilities:**

All areas designated as Public Restrooms, Bathhouse and Shower facilities shall be available as such for the public's use. At a minimum when the concession is not in operation the Concessionaire shall operate the Bathhouse, toilet and shower facilities between the hours of 9:00 am and 5:30 pm seven (7) days per week from the second weekend in May through Columbus Day Weekend each year. Concession operating hours may be different than the Public Restroom, Bathhouse and Shower Facilities hours above, however the Concessionaire shall open the Bathhouse and toilet facilities at all times while the concession is operating. The Town of Nantucket reserves the right to open and staff the toilet facilities only at other hours for special events. Toilet room facilities must remain open even in inclement weather. The Concessionaire shall be responsible for the cleanliness of the Public Restroom facility and area surrounding the Public Restroom facility.

### **Bathhouse Custodial Services:**

The Concessionaire shall clean the Bathhouse/Restrooms as often as required to maintain them in a condition satisfactory to the Town of Nantucket. The Concessionaire shall supply and maintain paper, soap and supplies as needed.





# Town of Nantucket

## SECTION VII - FUNCTION AREA

**Function Area:** The Function Area is denoted **Exhibit F: Jetties Beach Concession Lease Area**. For additional restrictions to the Function Area see the State and Federally Protected Species provision in **Section I – General Lease Terms**.

### **Private Functions/**

**Special Events:** An Event Permit is required for each special event. Contact the Town's Licensing and Permit office. No more than fifteen (15) permitted events per season (May-October), which includes no more than four (4) private events that close the Concession to the public. These fifteen permitted events do not include events permitted by the Town for other organizations such as the Nantucket Cottage Hospital's Boston Pops, the Nantucket Triathlon, the Opera House Cup, the Swim Across America, etc.

No Private Functions or Private Special Events resulting in the closure of the Concession shall occur in July and August. Private Functions or Private Special Events may occur in July and August however Concession operations cannot be interrupted. Tented events are not permitted in July and August unless tents do not obstruct the view from the Concession Facility as approved by the Town. No closing of the Concession and Retail Shop in July and August except for the Nantucket Cottage Hospital Boston Pops Event or extreme weather-related instances.

Events will be limited to under 250 people per Event in July and August, with the exception of the Fourth of July Fireworks Event and the Nantucket Cottage Hospital Boston Pops Event.

Concessionaire is subject to the published Event Permitting Fees for Special Events (under 250 persons) and Public Assembly Events (over 250 persons) for any Private Function or Special Event on the Premises.

In the shoulder months (May, June, September and October) only four (4) Private Functions or Private Special Events that close the Concession operations to the public are allowed in total during these months. The Concessionaire may have additional Events under 250 persons each in the shoulder months as long as the Concession operations are not closed to the public.

Prior to holding any Private Function, Special Event or Public Assembly Event, the



# Town of Nantucket

Concessionaire shall obtain in writing approval from the Town of Nantucket and the Events Manager.

A list of upcoming events, as well as completed Beach Event Forms (**Exhibit C**) must be submitted to Natural Resources Department, Licensing and Permit Office and the Chief Procurement Officer by May 1st. Any additional events after May 15<sup>th</sup> will require a Beach Event Form to be completed and submitted to the Town of Nantucket as soon as the event is scheduled and approved by the Town. The Town of Nantucket shall have full discretion to deny permission to hold any Private Function, Special Event, or activity.

Should the Town of Nantucket approve such a function all of the following conditions must be met:

- a) If a fire on the beach is planned the Concessionaire must obtain a permit from the Fire Department. A copy of the permit will be give to the Town of Nantucket prior to the day of the function.
- b) Concessionaire will be responsible for compliance with all Massachusetts, County and Town laws regulations and ordinances governing noise.
- c) Private functions at the concession will be held in the premises only as shown on **Exhibit F** and not on the remainder of the beach or dunes. The Town of Nantucket's policy is to disallow private functions on the remainder of the property.
- d) Section C 2 Private Functions may be overridden by the additional provisions of this lease. Not any other part of the lease is affected by any such changes.
- e) A completed copy of the Beach Event Form (**Exhibit C**) must be submitted to the Events Manager and the Chief Procurement Officer.
- f) Depending on the status of the State & Federally listed species and after the review of the Town, the Concessionaire may be required to hire monitor(s) through the Town's Endangered Species Program. If the hiring of monitor(s) is deemed necessary a completed Detail Form must be completed and submitted to the Events Manager before the event (**Exhibit D**)

## **Hospital Event:**

The Nantucket Cottage Hospital will have the use of the beach and the concession for two days during the summer to use for a major fundraiser. The Town of Nantucket will be responsible for providing the Concessionaire with up to three alternate dates for this event six months prior to the date of the event and providing the concessionaire the final date and dollar amount of compensation to be paid to the Concessionaire at least six months prior to the event. The Concessionaire can charge up to but no more than twenty-five thousand dollars (\$25,000) to the



# Town of Nantucket

Nantucket Cottage Hospital for disruption of operations during this time.

## **Fourth of July Fireworks:**

The Town has discretion to schedule this event at Jetties Beach at any time from July through Labor Day in consultation with the Concessionaire, weather dependent. Concession operations are not required to be closed during this event and are encouraged to stay open to serve the public during this event. The Town of Nantucket will not reimburse the Concessionaire for disruption of services for this event.

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# Town of Nantucket

## **SECTION VIII – INSURANCE AND GENERAL OBLIGATIONS:**

**Insurance:** The Concessionaire will maintain insurance as listed below and will deliver certificates to the Town of Nantucket, on or before March 1 of each year during the term, stating this insurance is in force, in any calendar year for the duration of this Agreement before he enters the premises:

- 1) **Worker’s Compensation:** Worker’s Compensation insurance in accordance with Massachusetts General Laws Chapter 152, as amended.
- 2) **Liability:** Comprehensive General Liability insurance including products liability for a combined single amount of \$2,000,000. This policy must have as one of its terms a provision that the Town and County of Nantucket and its Town of Nantucket are additional insured parties. A copy of this policy showing the Town as an additional insured is to be provided to the Town of Nantucket annually on or before March 1. Such policy must also contain a provision that the Town of Nantucket will be provided with ten (10) days written notice by the insurer of any intent to cancel or a determination that such insurance will not be renewed.

**Disclosure Statement  
Disposition of  
Real Property:**

Per M.G.L. Ch. 7 §40J, the Concessionaire is required to provide a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in a public real estate transaction. This disclosure must be filed with the Massachusetts Division of Capital Planning and Operations prior to the conveyance or execution of a lease for real property. See **Exhibit H – Disclosure Statement Disposition of Real Property**

**Indemnification:** The Concessionaire agrees at all times during the term of this contract to indemnify, hold and save harmless, the Town of Nantucket and the Town of Nantucket and its officials, employees and agents from and against any and all action or causes of actions, claims, demands, liabilities, losses, damages or expense of whatsoever kind and nature including all legal costs arising out of or in connection with the operation and rental by Concessionaire of the premises or its performance or failure to perform or any provision of this contract.

**Waiver of Rights  
of Recovery:**

The Concessionaire also agrees to waive all rights of recovery it may have against the Town of Nantucket and the Town and County of Nantucket for any loss to property or person for which the Concessionaire is insured.



# Town of Nantucket

## Waiver of Liability

1. **Town of Nantucket's Obligation:** Except as a result of its failure to perform the obligations specifically provided herein within a reasonable period after receipt of written notice thereof, the Town of Nantucket shall not be liable to the Concessionaire for any injury or damage to the Premises or to any property of the Concessionaire or to any property of any third person, firm, association or corporation on or about the Premises.
2. **Beach Use:** Operation of the Premises by the Concessionaire is independent of the operation of the beach. The Town of Nantucket of Town may from time to time close the beach, acting in the public's interest or in the interest of the State and Federal regulations and guidelines set in place for the protection of listed species. The Town of Nantucket shall not be financially or otherwise liable to the Concessionaire or to the Concessionaire or its agents for any such closure, and such closure shall not change the Concessionaire's obligations as detailed elsewhere in this lease.

**Events of Default:** The occurrence of any of the following shall constitute an Event of Default by the Concessionaire hereunder:

**Failure to Make Payment:** The Concessionaire shall default in the payment of any installment of rent, utility, fee, or other sum herein specified on or before the date such payment is due; or

**Failure to Operate in the Public Interest or to Fulfill Other Non-Monetary Terms:** The Town of Nantucket determines that the Concessionaire has failed to operate the Premises in the best interest of the Town and/or has failed to operate in accordance to the guidelines set for the management/protection of the State and Federally listed species, or the Concessionaire shall default in the observance or performance of the Concessionaire's non-financial covenants, agreements or obligations hereunder, and such default shall not be corrected within twenty (20) days after written notice thereof; or

**Bankruptcy:** The Concessionaire shall be declared bankrupt or insolvent according to the law, or, if any assignment be made of the Concessionaire's property for the benefit of creditors.

**Termination:** Upon the occurrence of any Event of Default hereunder, the Town of Nantucket



# Town of Nantucket

shall have the right thereafter, in its discretion, to re-enter and take complete possession of the Premises, to declare the term of this Agreement ended, and to remove the Concessionaire's effects, without prejudice to any remedies which might otherwise be used for arrears of rent or other default.

## **Remedies:**

The Concessionaire shall indemnify the Town of Nantucket against all loss of rent and other payments which the Town of Nantucket may incur by reason of such termination during the residue of the term. If the Concessionaire shall default (after reasonable notice thereof in the case of non-monetary default) in the observance or performance of any conditions or covenants on Concessionaire's part to be observed or performed under or by virtue of any of the provisions in any article of this lease, the Town of Nantucket, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the Concessionaire. If the Town of Nantucket makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of the Prime Rate plus two percent (2%) per annum and costs, shall be paid to the Town of Nantucket by the Concessionaire as additional rent. "Prime Rate" shall be the interest rate published from time to time in the Wall Street Journal as the prime rate charged by the US money center commercial banks.

## **Late Charges:**

A late charge of three percent (3%) of any amount due and unpaid fifteen (15) days after due date shall be added to the amount due from Concessionaire and a finance charge of one point five percent (1½%) per month will be added to all amounts remaining unpaid thirty (30) days after the date the amount was originally due, such charge constituting a charge equal to eighteen percent (18%) per annum.

## **Compliance with M.G.L. Ch. 7:**

The Concessionaire covenants and agrees that it will comply with the requirements of M.G.L. Ch. 7, § 40J, including but not limited to, the filing with the Massachusetts Executive Office for Administration and Finance, Division of Capital Asset Management of a disclosure statement in connection with the disposition of an interest in real property by the Town of Nantucket. A copy of the Disclosure Statement is attached hereto.

## **Independent Concessionaire**

### **Relationship:**

There is no relationship of joint venture, partnership, employment or agency between the Town of Nantucket, on the one hand, and the Concessionaire on the other, and neither party shall have nor exercise any control or direction over the





# Town of Nantucket

method by which the other performs its work or functions, aside from such control or direction as provided in this Agreement, which the parties view as consistent with their independent Concessionaire relationship.

## **Binding Obligations,**

**Related Obligor:** It is further intended by the Concessionaire and its principals as a condition to this Agreement, that any corporations or other entities which control or are under direct or indirect common control of or with the Concessionaire or which may otherwise be reasonably considered to be a part of its operating business, shall be jointly and severally liable with the Concessionaire for its liabilities as a party to the Town of Nantucket hereunder.

## **Successors and Assigns;**

**No Right to Assign:** Concessionaire shall have no right to assign this Agreement or the rights granted hereby with respect to the Premises, or otherwise delegate any of its duties hereunder without the prior written consent of the Town of Nantucket, which may be withheld at the sole discretion of the Town of Nantucket. Any such attempted disposition without the consent of the Town of Nantucket in writing shall be null and void and of no force and effect. The terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the respective parties hereto.

## **Decisions by the**

**Town of Nantucket:** Except as otherwise expressly provided in this Agreement, any decision or action taken by the Town of Nantucket relating to this Agreement or its operation or its termination shall be made by a majority vote of the Select Board. Responsibilities to monitor obligations shall be undertaken by the Procurement Office.

## **Notices:**

All notices required or permitted to be given to Town of Nantucket or Concessionaire shall be in writing and shall be given personally, or sent by certified mail return receipt requested, addressed to such party at its latest address of record. Notices to and payments to the Town of Nantucket shall be addressed to the Town of Nantucket at its offices, Two Bathing Beach Road, Nantucket, MA 02554 and notices to the Concessionaire addressed to it at its principal business address, which Concessionaire represents as appearing on the first page of this Agreement, or to such other addresses as the parties may designate to each other by such notice from time to time.

## **Governing Law:**

This Agreement is governed by the laws of the Commonwealth of Massachusetts. In any controversy, litigation or action arising hereunder, each party, including successors and assigns, irrevocably consents to the jurisdiction of the courts of





# Town of Nantucket

Massachusetts, agrees that venue shall be proper only there; and waives personal service of any summons, complaint or other process and agrees that service thereof may be made in the manner of other notice given hereunder.

## Entire Agreement; Amendment

**Interpretation:** This Agreement and the specifications advertised by the Town of Nantucket constitute the entire agreement between the parties superseding all prior or contemporaneous oral or written understandings. No amendment or other modification of the terms of the Agreement shall be binding unless in writing, and duly executed by the parties hereto. No waiver of default by either party of any of the terms, covenants, and conditions of this Agreement shall be deemed continuing or extending beyond the terms specifically waived in writing. If any provision of this Agreement shall be held unlawful, invalid, or unenforceable, the remainder of the Agreement shall not be affected thereby. Paragraph headings contained herein are for reference only and are not intended to define or limit the scope of any provisions of this Agreement.

**Accidents:** Concessionaire shall report any emergencies, accidents or incidents that occur within the Premises to the Town in a timely manner. See **Exhibit E – Incident Report Form.**

Parties shall in good faith negotiate the terms and conditions of the Lease in accordance with the terms contained in this term sheet as well as all customary and usual lease provisions.

CONCESSIONAIRE

NANTUCKET SELECT BOARD

\_\_\_\_\_

\_\_\_\_\_

Printed Name and Title

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Printed Name and Title

\_\_\_\_\_



# Town of Nantucket

## EXHIBIT B PROPOSAL RESPONSE FORM (BID FORM)

**(Submit in sealed envelope with Bid Proposal)**

### JETTIES BEACH CONCESSION LEASE 2022-2026

The undersigned proposes to the Town of Nantucket the lease price specified below for the specifications contained herein. Proposal Price must include all costs and all other expenses. There will be no reimbursable expenses allowed in the lease.

CONTRACT YEAR	ANNUAL RENTAL FEE (MINIMUM 3.0% INCREASE ANNUALLY)	REVENUE SHARE (MINIMUM 5.0% OVER \$1.0M GROSS SALES ANNUALLY; EXCLUDING ALCOHOL SALES)
Year 1: Jan. 1, 2022 – Dec. 31, 2022	\$	_____ % above \$1,000,000 gross sales.
Year 2: Jan. 1, 2023 – Dec. 31, 2023	\$	_____ % above \$1,000,000 gross sales.
Year 3: Jan. 1, 2024 – Dec. 31, 2024	\$	_____ % above \$1,000,000 gross sales.
Year 4: Jan. 1, 2025 – Dec. 31, 2025	\$	_____ % above \$1,000,000 gross sales.
Year 5: Jan. 1, 2026 – Dec. 31, 2026	\$	_____ % above \$1,000,000 gross sales.
<b>TOTAL PROPOSAL AMOUNT FOR 5 YEAR LEASE:</b>	\$	Average %: _____ %

Total proposal amount in words:

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# Town of Nantucket

**PROPOSAL RESPONSE FORM (BID FORM)**  
(Submit in separate, sealed envelope clearly marked "Price Proposal")

**JETTIES BEACH CONCESSION LEASE 2022-2026**

---

Name of proposer

Telephone Number

---

FEIN or SSN

---

Address, City, State and Zip Code

---

---

Signature of proposer's authorized individual

Date

---

Printed Name & Title

*NOTE: If the proposer is a corporation, indicate state of incorporation under signature and affix corporate seal; if a partnership, give full names and residential addresses of all partners; if an individual, give residential address if different from business address.*

# Exhibit C

## JETTIES CONCESSION – BEACH EVENT FORM

One of these forms must be completed and submitted to the Natural Resources Department and Licensing/Permit Office for each event; either before the initial May 15<sup>th</sup> deadline or directly after any event at Jetties Beach has been scheduled. Failure to do so may result in the loss of Jetties Beach use for future events. It is required by the state that the Town of Nantucket implement a Beach Management Plan, including an Endangered Species Program, to protect both state and federally listed species. The following information will be required for any event held within proximity of any state or federally listed species habitat, nesting adults, juvenile chicks, and or unfledged chicks. Each event must hire endangered species monitor(s) through the Town to be present during the event and, if necessary, during the set up and removal of any tent(s), tables, floors and etc. There will be a ***\$15/hr fee (per monitor)\**** for any additional use of the monitors outside of their scheduled times, usually 8am-6pm. If needed, alterations may be made to this information within 48 hours of the event.

### BASIC INFORMATION

Location of Event:		Type of Event:
Date of Event:	Time of Event (start-finish):	Number of Expected Guests:

### TENT INFORMATION

Is a Tent being used; if yes what Company? <input type="checkbox"/> No <input type="checkbox"/> Yes, _____		Contact person of Tent Company and Phone Number:
If yes to tent:	Date to set up Tent:	Time to set up Tent:
	<i>Contingency date to set up Tent:</i>	<i>Contingency time to set up Tent:</i>
	Date to remove Tent:	Time to remove Tent:
	<i>Contingency date to remove Tent::</i>	<i>Contingency time to remove Tent::</i>

### FLOOR INFORMATION

Is a Floor being used; if yes what Company? <input type="checkbox"/> No <input type="checkbox"/> Yes, _____		Contact person of Floor Company and Phone Number:
If yes to Floor:	Date to set up Floor:	Time to set up Floor:
	<i>Contingency date to set up Floor:</i>	<i>Contingency time to set up Floor:</i>
	Date to remove Floor:	Time to remove Floor:
	<i>Contingency date to remove Floor::</i>	<i>Contingency time to remove Floor::</i>

### MUSIC INFORMATION

Is there going to be Music? <input type="checkbox"/> No <input type="checkbox"/> Yes		If yes by whom/what type?	Contact name & information for Music:
If yes to Music:	Sound Check Date:	Sound Check Time:	

### CATERING INFORMATION

Is it Catered? <input type="checkbox"/> No <input type="checkbox"/> Yes		If yes, by whom?		Contact Number:
If yes to Caterer	Number of Caterers Staff:	Set up time:	Take down time:	
	Are there going to be other structures used at the event, if yes what type (tables, chairs, generators, etc.) and how many? <input type="checkbox"/> No <input type="checkbox"/> Yes, _____			

### REMINDER: A THOROUGH CLEAN UP PLAN IS REQUIRED FOR EVERY EVENT!

Note: Monitors are usually scheduled to be on the beaches from 8:00am to 6:00pm 7 days a week. It is suggested that any preparations for the event, such as tent erection, be done between the hours when monitors are scheduled to be present on the beach. Anything before or after these hours will be ***\$15 per hour/per monitor\****, and will be charged to the event. No event, or setting up/taking down of an event, can take place without a monitor present first. Be sure to contact the Town Licensing and Permit Office (508-325-4100 x-5951) to be sure the appropriate people are present.

CONCESSIONAIRE: \_\_\_\_\_ DATE: \_\_\_\_\_ TOWN OFFICIAL: \_\_\_\_\_ DATE: \_\_\_\_\_

*\* This figure is subject to change at the Annual Town Meeting.*



**Exhibit D  
Nantucket Endangered Species Program  
Beach Event Detail**

**Employer-Billing Information  
Event/Detail Information**

Type of detail: (wedding, cocktail party, Co. event, cookout)		Location:
Date of detail:	Actual detail start time:	Actual detail finish time:
Total hours to be invoiced:	Detail rate*:	Total due:

Name of company or person to be invoiced for this detail:	
Federal tax ID number of company or social security number of person to be invoiced for this detail:	
Has the invoice company/person previously Hired detail beach monitors?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contact name of person to be invoiced for this detail:	
Billing Mailing Street Address:	
City, State, & Zip Code:	

\* RATES: 2 hour minimum charge: 0600 to 2400 \$15.00. 0001 to 0600 \$18.00.  
 \*\* The Town of Nantucket has a 10% Administration Surcharge and a Medicare Charge of 1.45% on all  
 details. This will be added to the total due.

**Beach Monitor Information**

Beach monitor name:	Date:
Beach monitor signature:	

**Exhibit E**  
**BEACH & PAVILION - INCIDENT REPORT FORM**

**INSTRUCTIONS:**

1. This form should be completed by the Concessionaire, Beach Manager and Town of Nantucket when they or their employees are involved with an incident in the vicinity of Jetties Beach.
2. Keep a copy for your records and submit a completed form to the Town of Nantucket, 16 Broad Street, Nantucket, MA

**GENERAL INFORMATION**

1. Individual(s) Involved in the Incident:		
2. Address:		
3. Home Phone:	4. Work Phone:	5. <input type="checkbox"/> Concessionaire <input type="checkbox"/> Beach Management <input type="checkbox"/> Town of Nantucket <input type="checkbox"/> Other: _____
6. Date and Time of Incident:		
7. Exact Location of Incident:		
8. Witness Name:	9. Phone Number:	10. Other Contact Information:

**INCIDENT**

11. How did the Incident occur? Describe fully the events that took place; give details on all facts that led to the incident/accidents. Identify the individuals involved in the incident/accident and what their roles were.	
12. Describe the immediate action taken and state by whom:	
13. Was an Officials Agency Contacted? No Yes	14. If yes, which Officials were Contacted? NPD USF&W EPO Other: _____
15. Contact person at the Official Agency:	16. Phone Number:

**DAMAGE OR THEFT**

17. Exact Description of Damage or Loss:		
18. Describe the property/location in detail:		
19. Was an Official Agency Contacted? No Yes	20. If yes, which Officials were Contacted? NPD USF&W EPO Other: _____	21. Was there a case number and if yes, what was it? No Yes, _____
22. First Noticed by Whom?	23. Phone Number:	

**ADDITIONAL INFORMATION**

24. Person Completing Report:	25. <input type="checkbox"/> Concessionaire <input type="checkbox"/> Beach Management <input type="checkbox"/> Town of Nantucket
26. Phone Number:	27. E-mail Address:
28. Additional Information:	

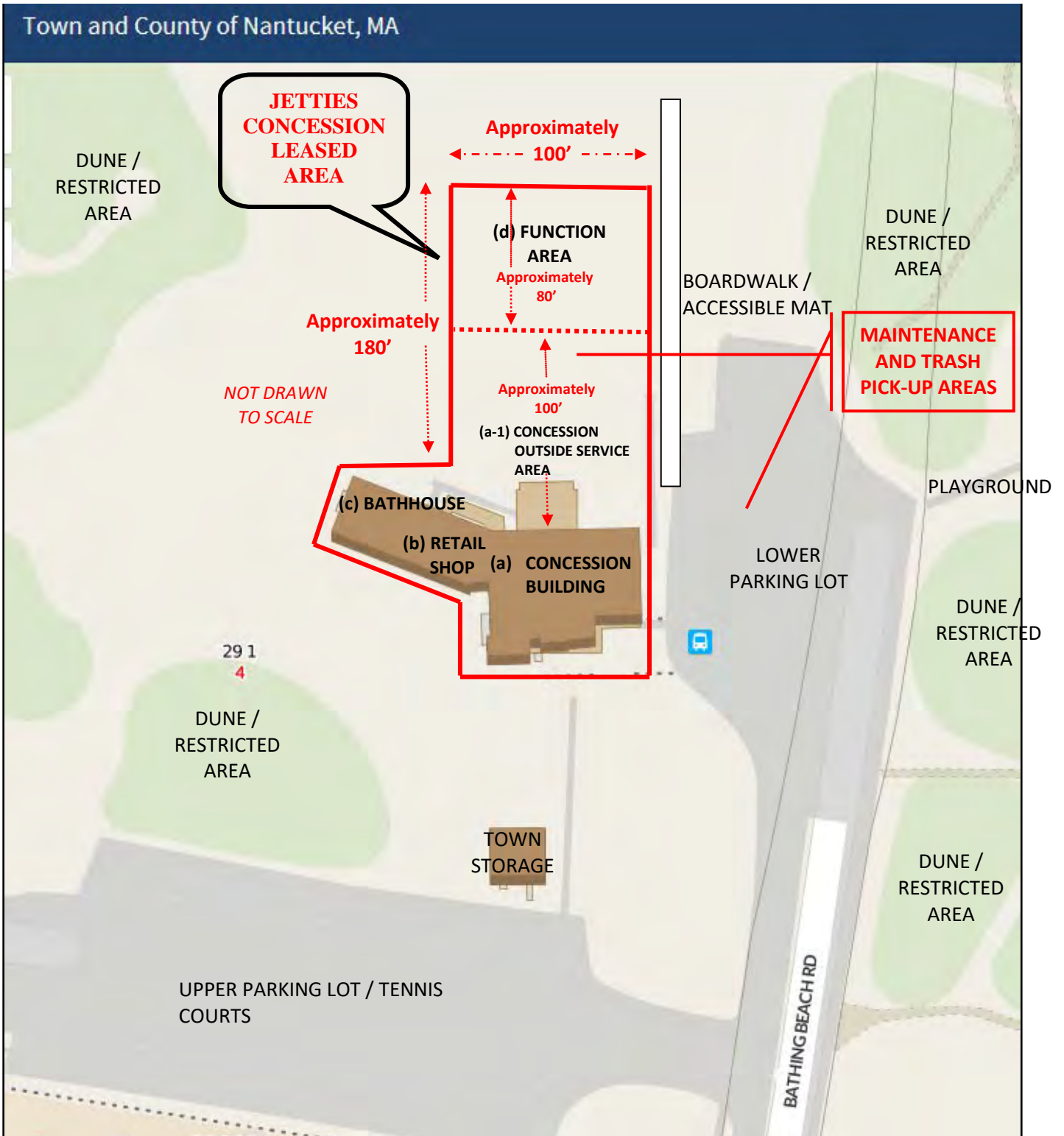


29. I attest that the information given here is accurate to the best of my knowledge.	
30. Person receiving the Incident Report Form:	31. Date Received:

# EXHIBIT F

## JETTIES BEACH CONCESSION LEASE AREA

The Concession premises (hereinafter called the Premises) shall include the Concession building and the Retail Bathhouse and the tent function area; beginning at the corner of the concession deck closest to the Parking lot walking approximately 180' perpendicular towards the ocean at that point turning West, parallel to the Ocean, walking approximately 100' thence turning South heading approximately 180' to the corner to Bathhouse squaring off the parameters of the tent function area. as shown in Exhibit "F".





# Town of Nantucket

## EXHIBIT G JETTIES BEACH CONCESSION ASSET LIST STATEMENT (as of XX XXXX)

### ALL TOWN-OWNED CONCESSIONS:

General Maintenance:

- All equipment is cleaned, oiled and maintained to manufacturer's specifications as needed, i.e. fryolator and grills.
- Concessionaire responsible for light maintenance for screens, screen doors and windows.
- See *Exhibit A, Section II – Premises Maintenance, Custodial and Litter* for additional equipment and facility maintenance information.

End of each season:

- Hoods and fans are cleaned. Hood fan wrapped for winter.
- Grease traps are emptied.
- Walls and floors are scrubbed to remove all grease.
- Nothing is to be stored under concession buildings.
- Nothing is to be left outside, i.e. ice machine and bins
- Concessionaires meet with Town designee to go over Premises and review repairs, upgrades or items to be addressed prior to next season.

### JETTIES BEACH CONCESSION:

The Jetties Beach Concession consists of the following Town owned assets (See *Exhibit F – Jetties Beach Concession Lease Area*):

**Concession Building – Building 1 – Concession:** Two story, wood framed, non-insulated structure on pier type foundations, with water, sewer, electrical and fire alarm system services.

○ First Floor

- Kitchen area (10' x 40") complete with:
  - 1 Large walk-in cooler (10' x 6') with an outdoor condenser.  
Concessionaire is responsible for starting it up for the season and for properly closing it down after the season is over.
  - 1 Vent hood (12 ft.) and exhaust fan over a grill/frying area.  
Concessionaire is responsible for properly cleaning it each season and for



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- cleaning any grease filters etc., as needed.
- 1 Fire suppression system mounted to the Vent hood. Concessionaire is responsible for having it inspected annually and for any ongoing maintenance as necessary.
- 1 kitchen scullery sink (3 bay) connected to the floor level grease trap. The concessionaire is responsible for emptying the grease trap as needed and for draining and cleaning at the end of each season.
- 1 set of kitchen ventilation/cooling fans with an open wall screened vent.. (Currently no AC in the building.) Concessionaire is responsible for cleaning and maintaining the fans on an as needed basis.
- Currently kitchen is not plumbed for a dishwasher.
- Gas lines extending from 3 - 420 lb LP tanks (located outside) and leading to the grill area under the vent hood. (Note: the 12 burner grill, fryolators, and charbroiler are owned by the current concessionaire)
- 1 small, wall mounted hand washing sink (Stainless Steel)
- Misc electrical outlets for convection ovens, steamer, freezers and coolers, etc. (Note: The convection ovens, freezers and coolers are all owned by the current concessionaire)
- Salad, Drink and Order Prep area (12' x 40') with:
  - 1 small, wall mounted, hand washing sink (Stainless Steel)
  - Take-out windows (2)
  - Electrical outlets over the door and take-out window for 2 Air-Doors. (Existing Air Doors are owned by the current concessionaire)
  - (Note: The several, various sized refrigerators, coolers and freezers located in the kitchen and the prep area, are all owned by the current concessionaire.)
  - Hot food transfer counter (from kitchen to order prep)
- Wood Roof covered deck area (14' x 55') with:
  - Outdoor bar, sink, cabinet and counter-top. (Bar stools and beer cooler are owned by the current concessionaire)
  - 1 small wall mounted, hand washing sink (Stainless Steel)
  - The existing 25 or so high top tables are owned by the current concessionaire as do the accompanying bar stools & chairs.
  - The three large ceiling fans are owned by the current concessionaire.
  - Gas line to service two space heaters. Note, existing space heaters are owned by current concessionaire.
  - Two ADA accessible restrooms are entered through this area. Note, the concessionaire is responsible for cleaning and maintaining these restrooms as well as stocking them with appropriate supplies. These restrooms are for both patrons of the restaurant and of the beach. They are to be opened during hours of concession operations or at least 9:00 am to 5:30 pm when concession is closed the second week of May through Columbus Day.



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- Fabric Awning covered deck area (1,350 ft<sup>2</sup>) with:
  - 18 picnic tables
  - Fixed wooden decking with wooden railing and posts
  - Note the fabric awning and the associated metal framing, are owned by the current concessionaire.
  
- Second Floor
  - Office area (Note, office furnishings are owned by the current concessionaire).
  - Bedroom 1
  - Bedroom 2
  - Bathroom
  - Open area for shelving storage

## **Concession Building - Building 2 – Retail Shop:**

- Single-story, single-room wood frame, open construction retail space
- Retail Shop Area (Outfitted by the Concessionaire)

## **Concession Building - Building 3 – Bath House:**

- Single story, wood frame, open construction bath house, with:
  - Public Restrooms
  - Outdoor showers on the beach side wall
  - Storage Rooms for concessionaire use
  - Washer and Dryer are property of current concessionaire
  - 4 chest style freezers are property of current concessionaire

## **Building Surroundings:**

- The concession has its own paved driveway with room to accommodate 2 vehicles, three roll-off dumpsters, three 420 lb propane tanks and a 6' x 8' plastic storage shed (owned by the current concessionaire)
- Leased Beach Area: The concession also has about 500 ft<sup>2</sup> of moveable boardwalk. They are built in sections that can be arranged in a variety of configurations to suit the concessionaire and are often configured to accommodate Concessionaire. The Town's Department of Public Works places the boardwalk sections in the spring and stores them in the fall. Public Works also maintain the boardwalk sections throughout the year.
- Electrical Service is the responsibility of the Concessionaire.
- Water Service
  - The Concession is serviced by Town water – Wannacomet Water Company.
  - Concessionaire is responsible for turning the water off at the end of the season (or the lease) and is responsible for all costs associated with that (plumber and water company charges, etc.) and for all water bills during the term of the



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lease.

- Concessionaire is responsible for turning the water on at the beginning of each season (or the start of the lease) and is responsible for all costs associated with that (plumber and water company charges, etc). Coordination of these efforts is by the concessionaire.
- Sewer Service
  - The Concession is serviced by Town Sewer.

## **Miscellaneous Information of Note**

With the exception of the fire alarm system, the concessionaire is responsible for arranging all necessary permits and inspections (equipment and/or facility) needed for him to operate his business in accordance with all of the applicable laws and ordinances. Concessionaire is also responsible for any costs associated with the permits, the inspections and with bringing everything into compliance.

Concessionaire is responsible for containing and properly disposing of all of his trash in the leased area, including the Lower Parking Lot (See Exhibit F).





# Town of Nantucket

## EXHIBIT H

### DISCLOSURE STATEMENT DISPOSITION OF REAL PROPERTY

#### JETTIES BEACH CONCESSION LEASE 2022-2026

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. Ch. 7 §40J, prior to the conveyance or execution for the real property described below. Attach additional sheets if necessary.

1. Public Agency involved with this transaction: Town of Nantucket, Massachusetts

2. Complete Legal Description of Real Property: Beach Concession Facilities with Restaurant, Retail Shop, Bathhouse, and Beach Area  
4 Bathing Beach Road  
Nantucket, Massachusetts 02554

3. Type of Transaction:  Sale  
 Lease or Rental (Term: Five Years)

4. Seller(s) or Lessor(s): Town of Nantucket  
16 Broad Street  
Nantucket, MA 02554

5. Purchaser(s) or Lessee(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Names and addresses for all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: if a corporation has, or will have, a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock or corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need **not** be disclosed.*

#### Exhibit H – Disclosure Statement for Disposition of Real Property



# Town of Nantucket

Name		Address

None of the persons are elected officials to public office in the Commonwealth of Massachusetts, except as listed below:

Name		Title or Position

- This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in Item 1. If this Form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation. The undersigned acknowledges that any changes or additions to Item 4 of this Form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this Form is complete and accurate in all respects.

<b>Signature</b>		<b>Date</b>
<b>Printed Name</b>		
<b>Title</b>		

## TOWN CONCESSIONS ACTUALS (2017-2020)

2017					2018				
	Gross Revenue	Lease Payment	Revenue Share	Alcohol Revenue Share		Gross Revenue	Lease Payment	Revenue Share <sup>(2)</sup>	Alcohol Revenue Share
Jetties	\$2,715,940	\$120,000	\$85,797	\$0		\$3,050,000	\$126,000	\$61,856	\$40,644
Children's	\$76,159	\$17,000	\$0	N/A		\$95,312	\$17,859	\$0	N/A
Surfside <sup>(1)</sup>	\$385,298	\$2,823		N/A		\$481,114	\$30,500		N/A
<b>TOTALS</b>		<b>\$139,823</b>	<b>\$85,797</b>	<b>\$0</b>		<b>\$174,359</b>	<b>\$61,856</b>	<b>\$40,644</b>	

2019					2020 <sup>(3)</sup>				
	Gross Revenue	Lease Payment	Revenue Share	Alcohol Revenue Share		Gross Revenue	Lease Payment	Revenue Share	Alcohol Revenue Share
Jetties	\$3,214,867	\$132,300	\$87,797	\$44,914		\$2,531,184	\$69,458	\$53,405	\$38,466
Children's	\$77,669	\$18,743	\$0	N/A		\$34,344	\$0	\$0	N/A
Surfside	\$615,777	\$35,500		N/A		\$385,298	\$18,750		N/A
<b>TOTALS</b>		<b>\$186,543</b>	<b>\$87,797</b>	<b>\$44,914</b>		<b>\$88,208</b>	<b>\$53,405</b>	<b>\$38,466</b>	

TOTAL PAYMENTS 2017-2022					
	Gross Revenue	Lease Payments	Revenue Share	Alcohol Revenue Share	TOTAL PAYMENTS TO TOWN
Jetties	\$11,511,991	\$447,758	\$288,855	\$124,024	\$860,637
Children's		\$53,602	\$0	N/A	\$53,602
Surfside		\$87,573	\$0	N/A	\$87,573
<b>TOTALS</b>		<b>\$588,932</b>	<b>\$288,855</b>	<b>\$124,024</b>	<b>\$1,001,812</b>

<sup>(1)</sup> Surfside changed vendors in 2020 ("Jetties at Surfside" 2017-2019; "The Surf" 2020-2024)

<sup>(2)</sup> Revenue share of Gross Revenues is in current Lease Agreement. In 2018 Counsel opined the Town cannot have a beneficial share of alcohol revenue so this portion is gifted to a health and human services agency

<sup>(3)</sup> One contracted lease payment waived for Jetties (\$69,457) and Surfside (\$18,750) and all lease payments waived for Children's (\$19,680) due COVID-19 (\$107,887 total waived)

## **Outline #7 for June 5, 2021 Annual Town Meeting Warrant**

*For 02/10/21 SB review*

*As of 02/05/21*

### Outstanding

1. Citizen Sponsor Request to ADD Revised Article to Warrant (revised from 2020 ATM submittal, which was carried over)  
*Attached: 2020 Article; Revised Article*
2. Citizen Request (made at 2/3/21 Select Board meeting) to ADD (Resubmit) Sense of the Meeting Request Regarding Small Mesh Fishing Gear Closure (from 2019 ATM)  
*Attached: Wording from 2019 ATM*
3. Noise bylaw amendment  
*Attached: draft warrant article with summary*
4. Increase to dog fines – “tiered” option added for discussion  
*Attached: draft revised warrant article per 2/3/21 Select Board discussion*
5. Airport request for amendment to c. 58 of Town Code (rental cars)  
*Attached: draft warrant article; Airport White Paper; related correspondence*
6. Request (FinDir/Town Admin) to ADD new article for special legislation regarding issuance of Pension Obligation Bonds to reduce long-term Pension Obligation funding  
*Attached: rough draft of special legislation; verbal update to be given by Finance Director*
7. Continued Review/Discussion regarding Housing-related Articles  
*Attached: Outline of articles; articles*

## ARTICLE 73

### (Bylaw Amendment: Single-Use Plastics)

To see if the Town will vote to:

1) make certain amendments to the bylaw “The Regulation of Commercial Sale, Distribution and Use of Single Use Plastics” as approved in Special Town Meeting 2018, Article 16 (Called”STM2018-16”);

2) request that the Board of Public Works vote to rescind Board of Public Works Regulation 71.00 (“Regulation 71.00”) as adopted by the Board of Public Works pursuant to the authority granted under section 125-3 of the Code of the Town of Nantucket and the general authority of the Board of Public Works pursuant to Chapter 169 of the Acts of 1965, as amended by Chapter 259 of the Acts of 1987, in order to incorporate the purpose and intent of that Regulation into the bylaw STM2018-16;

3) to remove from the Code of the Town of Nantucket § 125-3 Biodegradable Packaging [Amended 12-12-1989 STM by Art. 2, approved 3-14-1990]; and

4) once Regulation 71.00 is rescinded, and § 125-3 Biodegradable Packaging is removed from the Code of The Town of Nantucket, replace both with the revised bylaw “The Regulation of Commercial Sale, Distribution and Use of Certain Single Use Plastics” the text of which follows (with underlined text below showing additions to the version of the bylaw that was approved at STM 2018 as printed in the Warrant, double strike throughs (==) to

show deletions and *underlined italic blue* font to indicate language transferred from Regulation 71.00 and Code of the Town of Nantucket § 125-3 Biodegradable Packaging. None of these markings shall appear in the final version of the bylaw.);

the purpose of which is to make certain correction, clarifications; additions of definitions and items to be banned effective June 1, 2021 or take any other action relative thereto.

**To Be Rescinded if Board of Public Works so votes:**

Board of Public Works vote to rescind Board of Public Works Regulation 71.00 as adopted by the Board of Works pursuant to the authority granted under section 125-3 of the Code of the Town of Nantucket and the general authority of the Board of Public Works pursuant to Chapter 169 of the Acts of 1965, as amended by Chapter 259 of the Acts of 1987

**To Be Removed:**

§ 125-3 Biodegradable packaging. [Amended 12-12-1989 STM by Art. 2, approved 3-14-1990] All packaging added to or supplied by vendors or commercial establishments within the Town of Nantucket for merchandise of any type being removed from the establishment shall comply with such rules and regulations requiring the use of biodegradable packaging to the maximum extent reasonably practicable as might be established by the

Board of Public Works after a public hearing; provided, however, that this section shall take effect April 15, 1990. "Biodegradable packaging" means any packaging other than plastic or Styrofoam.

## To Be Replaced with The Following:

### Section I. Definitions and Purpose

#### Definitions:

Single-use plastics - are petroleum-based plastic products that are intended to be used only once before they are thrown away. They are "disposable" products. The items covered by this Bylaw are listed herein.

Commercial use - using the petroleum-based plastic products listed herein by a business, directly/indirectly for financial gain or convenience.

Petroleum -based plastic - plastics manufactured using petroleum derived polymers. Plant-based plastics are exempted from this Bylaw.

Compostable - This category of plastic is comprised of two basic types. 1) a material that breaks down without mechanical assistance, which is defined herein as "compostable"; and 2) materials requiring mechanical assistance such as the application of high temperatures not achievable in backyard compost piles for a period of several days, which is defined herein in as "commercially compostable".



Compostable plastic is defined by the standards association ASTM International (ASTM) as “a plastic that undergoes degradation by biological processes during composting to yield carbon dioxide (CO<sub>2</sub>), water, inorganic compounds, and biomass at a rate consistent with other known compostable materials and that leaves no visible, distinguishable, or toxic residue.” All petroleum-based plastics that are compostable break eventually breakdown into smaller pieces of petroleum-based plastics, some of which are not visible to the unaided human eye. These particles are known as micro-plastic particles and have been found in most bottled waters and in the human and other animals’ bodies due to ingestion of affected food sources.

They are made from materials that can naturally breakdown into usable compost material in back yard compost piles. These materials will enrich the soil and returns nutrients to the earth. According to the US Federal Trade Commission Green Guide updated October 2012, “Some materials break down into usable compost material that enriches the soil and returns nutrients to the earth.”

Compostable plastics are typically made from some type of renewable raw material. Corn starch is one of the most common materials, as is hemp, but there are other similar options. Regardless of what compostable plastic is made from, it’s transformed into a polymer that looks and feels like traditional plastic. Compostable plastics can be difficult to recycle. Most of them require commercial/industrial

composting facilities. Compostable plastic material cannot breakdown through natural processes and must be sent off island to a commercial composting facility where it is processed at high heat for several days. Nantucket currently does not have the commercial composting capabilities.

Commercially Compostable - The American Society for Testing and Materials (now known as ASTM International) has published specific guidelines that must be met for a material to be labeled as commercially compostable. In broad terms, those guidelines are:

- “It must be able to be broken down by biological treatment at a commercial or industrial composting facility”;
- “Decomposition of the plastic must occur at a rate similar to the other elements of the material being composted (within 6 months)”;
- It will “Leave no toxic residue that would adversely impact the ability of the finished compost to support plant growth”

It is compostable material that cannot breakdown through natural processes and must be sent off island to a commercial composting facility where it is processed at high heat for several days.

Biodegradable - According to the US Federal Trade Commission Green Guide updated October 2012, “Something that’s biodegradable, like food or leaves, breaks down and decomposes into elements found in

nature when exposed to light, air, moisture, certain bacteria, or other organisms.”

According to the Federal Trade Commission (FTC), a biodegradable product is one that in its entirety will *“completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time (one year) after customary disposal”*.

The American Society for Testing and Materials (now known as ASTM International) defines biodegradable plastic as *“a plastic in which all the organic carbon can be converted into biomass, water, carbon dioxide, and/or methane via the action of naturally occurring microorganisms such as bacteria and fungi, in timeframes consistent with the ambient conditions of the disposal method.”*

Currently there is no data to support that many of the things claiming to be biodegradable will be broken down in landfills.

Drinking Water - is potable, unflavored, non-carbonated water that is safe to drink or to use for food preparation.

Flavored Water - a category of beverage marketed as water which contains an array of additional ingredients, including, but not limited to, natural and artificial flavors, sugars, sweeteners, vitamins, minerals and other “enhancements”. (source: Medical Dictionary)

Carbonated Water - water that contain dissolved carbon dioxide gas, either artificially injected under pressure or occurring due to natural geological processes.

Carbonation causes small bubbles to form, giving the water an effervescent quality. Also known as “sparkling water”, “tonics”, “soda water”, “club soda”, “tonic water”, “seltzer” “pop” and the like. (source: Wikipedia and The Free Dictionary)

Boxed Water - Any type of drinking water, flavored water, carbonated water packaged in an aseptic carton, like the type often used for holding coconut water, soymilk, soups and the like. These cartons are typically promoted as being more than 75% made from recycled paper or other fibers, but the rest of it is often a set of plastic parts such as a cap and pouring ring and internal layers made from petroleum-based plastics such as polyethylene and aluminum.

Energy Drink - a type of drink containing sugar and/or other stimulant compounds when packaged in a petroleum based plastic container or packaged in a paper or similar fiber package like the containers used for Boxed Water.

**Purpose:**

The purpose of the Bylaw 2018-16 and the amendments to Bylaw 2018-16 proposed herein is to protect the health and safety of Nantucket’s present and future generations, protect the Town’s single source aquifer, its scenic visage, historic status, reduce litter, reduce the threat to the

environment caused by rapid filling of the landfill space and by possible introduction of toxic by-products into the groundwater and general environment, protect marine animals and food sources and save the citizens of the Town money. There are safe alternatives for each of the single-use ~~petroleum-based~~ plastic items banned. This bylaw applies to commercial sale, distribution and use of these plastic products. However, individuals need to do their part to strive to conserve, protect and preserve our environment.

*The Town of Nantucket recognizes that discarded packaging constitutes the largest single category of waste within the Town and County of Nantucket's waste stream and is, therefore, a necessary focus of any effort towards reducing the filling of the Towns landfill as well as towards reducing the economic and environmental costs of waste management.*

*The Town finds that discarded non-biodegradable packaging and plastic contained within the waste stream of Nantucket is a fundamental cause of problems associated with solid waste disposal.*

*The Town understands that the landfill space within the Town and County of Nantucket is diminishing rapidly; that the availability of solid waste receiving areas outside the Island of Nantucket is becoming increasingly uncertain and expensive; and, that for both economic and environmental reasons, measures to simplify the chemical*

complexity of solid waste and, thereby, to streamline solid waste management must be vigorously pursued.

The Town finds that the chemical composition and the ability of a substance to biodegrade are meaningful and useful criteria to focus upon when establishing public policy that is intended to improve the management and disposal of solid waste, reduce the cumulative impact of litter, encourage composting and other forms of recycling, and otherwise anticipate environmental problems that may be caused by municipal solid waste disposal programs.

The Town finds and determines that the use of plastics and other non-biodegradable packaging has become widespread throughout the island and the resulting mixed substance waste stream is a serious impediment to solid management programs for the Town and County of Nantucket.

The Town further finds that the widespread use of plastics and non-biodegradable packaging poses a threat to the environment on the Island of Nantucket by causing rapid filling of the landfill space and by the possible introduction of toxic by-product into the groundwater and general environment of the island of Nantucket.

The economic and environmental problems associated with the mixed substance waste stream are so severe that a program of incrementally simplify the chemical composition of solid waste, thereby encouraging the composting of putrescible wastes and encouraging other

forms of recycling of solid waste substances, is a policy goal of the Town of Nantucket.

**BY-LAW:**

**Section II. ~~Commercial~~ Sale, distribution and ~~commercial~~ use of petroleum-based single use plastic products.**

It shall be unlawful to commercially sell, distribute or otherwise ~~commercially~~ use the following single-use petroleum-based plastic products in the Town and County of Nantucket on or after June 1, 2020:

Straws and drink stirrers;

~~Six-pack~~ Can and bottle flexible yokes (no limit on capacity size);

Single use drinking cups and lids;

Plates and ~~non-compostable~~ eating utensils;

Drinking water in single-serve polyethylene terephthalate (PET) containers of 1 liter (34 ounces) or less; ~~and~~

Single use, non-biodegradable ~~recyclable~~ coffee or other beverage pods

It shall be unlawful to commercially sell, distribute or use the following single-use petroleum-based plastic and other listed products in the Town and County of Nantucket on or after June 1, 2022:

Flushable wipes containing plastic fibers, cloth fibers and/or anti-bacterial chemicals;

Cellulose acetate and or any other type of plastic fiber cigarette filters;



Plastic mesh tea bags;

Any type of non-deposit, plastic beverage container of 63 ounces or less, including, but not limited to water, flavored water, sparkling water, soda, energy drinks;

Boxed water containers with components of petroleum based plastic materials such as pouring spouts, caps and as a liner;

Plastic and glass nip bottles with capacities of up to 200ml;

Plastic stick ear buds;

Small, individual plastic bottles of body wash, shampoo, conditioner, body lotion with capacities of up to 200ml;

Plastic shopping bags, take-out bags, take-out containers, clam-shell containers and similar containers;

Any and all non-recyclable petroleum based plastic products with resin identification codes #3 through #7

*Any and all packaging added to or supplied by a vendor within the Town of Nantucket for the purpose of transporting merchandise of any type shall be biodegradable and compostable.*

*Reusable compostable ~~€~~containers and recyclable paper or cardboard containers are allowable alternatives and, where not a health hazard as determined by the Board of Health or public law, vendors shall encourage the use of such containers by allowing customers to bring their own containers or by providing such reusable containers at no charge or for a reasonable fee.*

Each vendor within the Town of Nantucket shall display a notice proximate to the point of sale device ~~cash register~~ and plainly visible to its patron stating the following:

“All packaging added or supplied by this vendor or commercial establishment for merchandise of any type being removed from this establishment must be biodegradable, compostable packaging. No non-biodegradable packaging may be added to or supplied by this vendor or commercial establishment for merchandise of any type being removed from the establishment.”

### **Section III. Exemption for Emergencies and other**

Drinking water (plain, unflavored) - Sales occurring after a declaration of an emergency adversely affecting availability and/or quality of drinking water to Nantucket residents by the emergency Management Director or other duly authorized Town, Commonwealth or United States official shall be exempt from this Bylaw until seven (7) calendar days after such declaration has ended.

Medical packaging and medically required usage are exempted providing no recyclable alternatives are available.

Plant-based, biodegradable or compostable plastics are exempted from this Bylaw.

### **Section IV. Enforcement Process**

Enforcement of this Bylaw shall be the discretionary responsibility of the Town Manager or her/his designee.

Police officers and Health Agents have the authority to enforce this Bylaw. The Town Manager shall determine the inspection process to be followed, incorporating the process into other Town duties as appropriate. Any establishment conducting sales, distribution or otherwise engaging in the commercial use of the prohibited plastic products in violation of this Bylaw shall be subject to a noncriminal disposition fine as specified in Article II of Chapter 1 of the Code of the Town of Nantucket under M.G.L. Chapter 40, § 21D. Any such fines shall be paid to the Town of Nantucket. Enforcement shall be through the process of noncriminal disposition under MGL c. 40, § 21D and Article II of Chapter 1 of the Code of the Town of Nantucket.

#### **V. Suspension of the Bylaw**

If the Town Manager determines that the cost of implementing and enforcing this Bylaw has become unreasonable, then the Town Manager shall so advise the Select Board, and the Select Board shall conduct a public hearing to inform the citizens of such costs. After the public hearing, the Select Board may continue this Bylaw in force or may suspend it permanently or for such length of time as they may determine.

#### **VI. Severability**

The provisions of this bylaw and article are severable. If any part of this section should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the

remainder of the bylaw or article, and the remainder of the bylaw or article shall stay in full force and effect.

*(Bruce Mandel, et al)*

*NOTE: Due to formatting restrictions, the references to "underlined italic blue" are shown in underlined italic black text.*

**FINANCE COMMITTEE MOTION: Moved to take no action on the Article.**

To see if the Town will vote to:

1) make certain amendments to Chapter 124A Single-Use Plastics of the Code of the Town of Nantucket, ~~the bylaw~~ "The Regulation of Commercial Sale, Distribution and Use of Certain Single Use Plastics as described herein.

Amend the Definitions section as follows: (shown in underlined font below):  
**§ 124A-1 Definitions and purpose.**

A. Definitions:

### **COMMERCIAL USE**

Using the petroleum-based plastic products listed herein by a business, directly/indirectly for financial gain or convenience.

### **PETROLEUM-BASED PLASTIC**

Plastics manufactured using petroleum-derived polymers. Plant-based plastics are exempted from this bylaw.

### **SINGLE-USE PLASTICS**

Petroleum-based plastic products that are intended to be used only once before they are thrown away. They are "disposable" products. The items covered by this bylaw are listed herein.

### **DRINKING WATER**

Potable, unflavored, non-carbonated water that is safe to drink or to use for food preparation.

### **FLAVORED WATER**

A category of beverage marketed as water which contains an array of additional ingredients, including, but not limited to, natural and artificial flavors, sugars, sweeteners, vitamins, minerals, and other "enhancements". (source: Medical Dictionary)

### **CARBONATED WATER**

Water that contains dissolved carbon dioxide gas, either artificially injected under pressure or occurring due to natural geological

processes. Carbonation causes small bubbles to form, giving the water an effervescent quality. Also known as “sparkling water”, “tonics”, “soda water”, “club soda”, “tonic water”, “seltzer” “pop” and the like. (source: Wikipedia and The Free Dictionary)

## **BOXED WATER**

Any type of drinking water, flavored water, carbonated water packaged in an aseptic carton, like the type often used for holding coconut water, soymilk, soups, and the like. These cartons are typically promoted as being more than 75% made from recycled paper or other fibers, but the rest of it is often a set of plastic parts such as a cap and pouring ring and internal layers made from petroleum-based plastics such as polyethylene and aluminum.

## **ENERGY DRINK**

A type of drink containing sugar and/or other stimulant compounds when packaged in a petroleum based plastic container or packaged in a paper or similar fiber package like the containers used for Boxed Water.

**BY-LAW:**

§ 124A-2 Sale, distribution, and commercial use of petroleum-based single-use plastic products. IS REVISED TO READ: “Commercial sale, distribution and use of petroleum-based single use plastic products.”

It shall be unlawful to commercially sell, distribute or otherwise ~~commercially~~ use the following single-use petroleum-based plastic products in the Town and County of Nantucket on or after June 1, 2020:

Straws and drink stirrers.

~~Six-pack~~ Can and bottle flexible yokes (no limit on capacity size);

Single use drinking cups and lids;

Plates and ~~non-compostable~~ eating utensils;

Drinking water in single-serve polyethylene terephthalate (PET) containers of 1 liter (34 ounces) or less; and

Single use, plastic beverage pods

It shall be unlawful to commercially sell, distribute or use the following single-use petroleum-based plastic and other listed products in the Town and County of Nantucket on or after June 1, 2021:

Flushable wipes containing plastic fibers, cloth fibers and/or anti-bacterial chemicals;

Cellulose acetate and or any other type of plastic fiber cigarette filters;

Plastic mesh, non-paper, tea bags

Any type of non-deposit, plastic beverage container of 63 ounces or less, including, but not limited to water, flavored water, sparkling water, soda, energy drinks;

Mixed material boxed containers with metal and/or plastic materials such as pouring spouts, cap, plastic liners;

Plastic and glass nip bottles with capacities of up to 200ml;

Plastic stick ear buds;

Small, individual plastic bottles of body wash, shampoo, conditioner, body lotion with capacities of up to 200ml;

Clam-shell plastic containers and similar containers

**Section III. Exemption for Emergencies and other**

Drinking water (plain, unflavored) - Sales occurring after a declaration of an emergency adversely affecting availability and/or quality of drinking water to Nantucket residents by the emergency Management Director or other



duly authorized Town, Commonwealth or United States official shall be exempt from this Bylaw until seven (7) calendar days after such declaration has ended.

Medical packaging and medically required usage are exempted providing no recyclable alternatives are available.

~~Plant based plastics are exempted from this Bylaw.~~

#### **Section IV. Enforcement Process**

Enforcement of this Bylaw shall be the discretionary responsibility of the Town Manager or her/his designee. Police officers and Health Agents have the authority to enforce this Bylaw. The Town Manager shall determine the inspection process to be followed, incorporating the process into other Town duties as appropriate. Any establishment conducting sales, distribution or otherwise engaging in the commercial use of the prohibited plastic products in violation of this Bylaw shall be subject to a noncriminal disposition fine as specified in Article II of Chapter 1 of the Code of the Town of Nantucket under M.G.L. Chapter 40, § 21D. Any such fines shall be paid to the Town of Nantucket. Enforcement shall be through the process of noncriminal disposition under MGL c. 40, § 21D and Article II of Chapter 1 of the Code of the Town of Nantucket.

#### **V. Suspension of the Bylaw**

If the Town Manager determines that the cost of implementing and enforcing this Bylaw has become unreasonable, then the Town Manager shall so advise the Select Board, and the Select Board shall conduct a public hearing to inform the citizens of such costs. After the public hearing, the Select Board may continue this Bylaw in force or may suspend it permanently or for such length of time as they may determine.

#### **VI. Severability**

The provisions of this bylaw, as may be amended from time to time are severable. If any part of this section should be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of the bylaw, and the remainder of the bylaw shall stay in full force and effect.

**SENSE OF THE MEETING REQUEST  
REGARDING SMALL MESH FISHING GEAR CLOSURE**

In the continuing efforts to be excellent stewards of the waters and fisheries around Nantucket Island the citizens of Nantucket are requesting improved management of our waters for present and future generations. Protection of spawning squid and squid mops, river herring, and sea herring are critical components to managing these resources. To that end Nantucket is requesting equivalent protection to the other 90% of Massachusetts coastal communities as shown on the attached map. This map shows 70 coastal communities in Massachusetts, 63 of which have a great level of habitat and fisheries protection. Nantucket has not been afforded such protection to date. The citizens of Nantucket are all taxpayers in the Commonwealth of Massachusetts like the other coastal communities on the attached map and should be afforded the same protection as the majority of the Commonwealth's coastal communities.

The citizens of Nantucket are requesting a mobile gear closure (bottom and midwater draggers and hydraulic and regular clam dredges) with no waivers, letters of authorization or other means of waving the closure. This area would extend out to 3 miles from the Nantucket archipelago including Nantucket, Tuckernuck and Muskeget from May 1 thru October 31.

*(Select Board)*

Proposed Amendments to Noise Bylaw – Summary  
02/05/21

Because of numerous complaints during the summer of 2020 about construction and other noise (and a notable increase in construction noise related complaints in the prior couple of years); and, a recommendation (attached) from the Advisory Committee of Non-voting Taxpayers (ACNVT), with Select Board support, Town Administration asked PLUS to work with the ACNTV and other stakeholders (such as Builder’s Assoc, Civic League, landscaper, Chamber of Commerce) on proposed amendments. The Deputy Director of Planning compiled a small group of representatives, they met in November and December and “although we didn’t reach full consensus on everything because obviously, everyone had a viewpoint based on their individual interest/business sector, we did however, agree to some suggestions that the group supports”. These suggestions are incorporated into the proposed amendments. The Deputy Police Chief also reviewed the amendments and provided additional wording for enforcement purposes. The proposed amendments relate to:

- “cleaning” up the bylaw – over the years wording has been added to address particular “problems of the times” and we are trying to make it clearer
- The noise tables were removed because they aren’t user friendly to the public or those who need to enforce the bylaw
- The districts were updated; the ones in the current bylaw are outdated and reference districts that don’t exist anymore and have no reference to new districts
- The decibel levels in the charts are questionable because they reference “districts” that no longer exist and if new “districts” were established, those numbers would need to be reexamined by a noise specialist. Regardless, as mentioned in a prior bullet, the tables aren’t user friendly because even if accurate, most people don’t understand them or have any concept of how they apply. Also, section 101-3 references standards prescribed by sound level meter regulations from the 1970’s
- The downtown noise change: No construction between 5PM and 8AM between July 1 and Labor Day, which is a reduction from the current 8PM and 7:30 AM came from a combination of ideas, including that the OHD includes the downtown business area, the area of the island where most of the hotel/motel/inns/guest houses are located, the area of the island that is heavily impacted by tourism, some of our most dense residential areas, and the area of the island that is already subject to some construction limitation when certain permits are needed
- The gas-powered tool phase-out came out of the construction discussion with members of the group expressing concern about all the landscape noise. Tom Hanlon was the landscaping rep and he suggested the phase out, which the group supported
- Added “Vessels”, as the NPD gets numerous complaints from the Boat Basin and also some about vessels moored in the mooring field
- Added “electronic sound producing device” for future proofs for whatever comes up next in new technology
- Edits to make the structure consistent.
- Added “deemed a breach of the peace”. This allows the police to make arrests for disorderly conduct.
- Increased the penalty to \$300 from \$100

**ARTICLE**  
**(Bylaw Amendment: Noise)**

To see if the Town will vote to amend Chapter 101 (Noise) as follows (*NOTE: new language is shown as highlighted text, language to be deleted is shown by strikeout; these methods to denote changes are not meant to become part of the final text; non-substantive changes to the numbering of this bylaw shall be permitted in order that it be in compliance with the numbering format of the Code of the Town of Nantucket*):

Chapter 101  
Noise

**§ 101-4 Prohibited activities; violations and penalties.**

~~A. It shall be unlawful for any person or persons, between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year), occupying or having charge of any building, boat, vehicle, premises or any part thereof; the owner, the owner's agent or other legally responsible person or persons of any building, boat, vehicle, premises or any part thereof in the Town of Nantucket other than as specifically licensed by the Board of Selectmen, to create, assist in creating, cause or suffer or allow any excessive, unnecessary, loud or unusual noise which either annoys, disturbs, injures or endangers the reasonable quiet, comfort, repose or the health or safety of others by the operation of any radio, phonograph or other mechanical sound device or instrument or in the playing of any band, orchestra, musician or group of musicians or in the use of any device to amplify the aforesaid or the making of loud outcries, exclamations, other loud or boisterous noises or loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise where the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle or premises in which or from which it is produced. The fact that the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle or premises in which or from which it originates shall constitute prima facie evidence of a violation of this section. Any person violating this section shall be punished by a fine of not more than \$200 for each offense. Each such act which constitutes a violation of this section, which either continues or is repeated more than 30 minutes after the issuance of a warning to cease said activities, shall be considered a separate offense and shall be prosecuted as a separate offense.~~

**A. Prohibited Noises.** It shall be unlawful for any person or persons, unless specifically authorized by the Select Board, to create, assist in creating, cause or suffer or allow any excessive, unnecessary, loud or unusual noise which either annoys, disturbs, injures or endangers the reasonable quiet, comfort, repose or the health or safety of others by taking any of the following actions:

- a. making of loud outcries, exclamations, other loud or boisterous noises or loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) where the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle, vessel, or premises in which or from which it is produced. The fact that the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle, vessel or premises in which or from which it originates shall constitute prima facie evidence of a violation of this section.

- b. to operate, play or permit the operation or playing of any electronic sound producing device, radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) where the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle, vessel, or premises in which or from which it is produced. The fact that the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle, vessel or premises in which or from which it originates shall constitute prima facie evidence of a violation of this section.
- c. to load, unload, open, close or otherwise handle boxes, crates, containers, building materials, trash cans, dumpsters or similar objects between the hours of 10:00 p.m. and 6:00 a.m. so as to project sound across a real property line.
- d. operating or permitting the operation of any mechanically powered tools or equipment used in building construction, renovation, non-emergency maintenance, or demolition work is prohibited between the hours of 8:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year, except for in the Old Historic District (OHD) as shown on the map entitled "Core Historic Districts", dated April 9, 2019, as may be amended from time to time, where the prohibition is between the hours of 5:00 p.m. and 8:00 a.m. between and including July 1 and Labor Day) Monday through Saturday and before 10:00 a.m. Sunday, that the sound therefrom is plainly audible at a distance of 50 feet from the lot line of the lot on which said activity is located. Work referenced in this section shall include any work for which a building, sidewall or roof, shingle, trench, tent, plumbing, gas, or wiring permit has been issued by the Town of Nantucket and any work for which a Certificate of Appropriateness has been issued by the Historic District Commission.
- e. operating or permitting the operation of any mechanically powered tool (such as saws, drills, sanders, grinders, nail guns) or mechanically powered lawn or garden tool, or similar device used outdoors shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year , except for in the Old Historic District (OHD) as shown on the map entitled "Core Historic Districts", dated April 9, 2019, as may be amended from time to time, where the prohibition is between the hours of 5:00 p.m. and 8:00 a.m. between and including July 1 and Labor Day) Monday through Saturday and before 10:00 a.m. Sunday, so as to be plainly audible at a distance of 50 feet from the lot line of the lot on which said activity is located is prohibited. Lawn and garden tools with gas powered engines shall be prohibited beginning July 1, 2025.
- f. repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat in such a manner as to be plainly audible at a distance of 50 feet from the lot line of the lot on which said activity is located is prohibited between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) Monday through Saturday and before 10:00 a.m. Sunday.

~~B. It shall be unlawful for any person or persons, between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year), being present in or about any building, dwelling, premises, shelter, boat or conveyance or any part thereof in the Town of Nantucket, other than as specifically licensed by the Board of Selectmen, to create, assist in creating, cause or suffer or allow any excessive, unnecessary, loud or unusual~~

~~noise which either annoys, disturbs, injures or endangers the reasonable quiet, comfort, repose or the health or safety of others by the operation of any radio, phonograph or other mechanical sound device or instrument or in the playing of any band, orchestra, musician or group of musicians or in the use of any device to amplify the aforesaid or the making of loud outcries, exclamations, other loud or boisterous noises or loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise where the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle or premises in which or from which it is produced. The fact that the noise is plainly audible at a distance of 100 feet from the building, structure, vehicle or premises in which or from which it originates shall constitute prima facie evidence of a violation of this section.~~

**B. Exemptions.**

The following uses and activities shall be exempt from subsection A of this Chapter:

- a. Noises of safety signals, warning devices and emergency pressure-relief valves.
- b. Noises resulting from any authorized vehicle when responding to an emergency call or acting in time of emergency.
- c. Noises resulting from emergency and maintenance work as authorized by the Town, by the state or by public utility companies.
- d. Noises resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the Town, but only to the extent such activities and the resulting noises are within the scope of such license or permit.
- e. The unamplified human voice.
- f. Bells, chimes or carillons while being used for religious purposes or in conjunction with religious services, and those bells, chimes or carillons that are presently installed and in use for any purpose.

~~C. Any person shall be deemed in violation of § 101-1, who shall make or aid in, cause or suffer or countenance or assist in the making of the aforesaid and described improper noises, disturbance, breach of the peace or a diversion tending to a breach of the peace, and the presence of any person or persons in or about the building, dwelling, premises, shelter, boat or conveyance or any part thereof during a violation of § 101-1 shall constitute prima facie evidence that they are a countenancer to such violation. Any person violating this section shall be punished by a fine of not more than \$200 for each offense. Each such act which constitutes a violation of this section, which either continues or is repeated more than 30 minutes after the issuance of a warning to cease said activities, shall be considered a separate offense and shall be prosecuted as a separate offense.~~

**C. Permit for relief.**

Application for a permit for relief from the requirements designated in this chapter on the basis of undue hardship may be made before the Select Board. Any permit granted by the Select Board shall set forth all conditions pertaining to the specified noise and a reasonable time limit for its abatement. Each such permit shall specify, to the extent applicable, the following:

- a. The specified dates and times of day the excess is permitted;
- b. The particular location, specifying outdoors, indoors or indoors open to the outdoors, and where on the premises the specified noise is permitted to originate; and
- c. The permitted type of noise: amplified music, amplified speaking or singing voice, live band, acoustic musical instrument, or other.

~~§ 101-1.1 Procedure upon violation.~~

- ~~A. It shall be deemed a breach of the peace and it shall be the duty of any police officer of the Town to order any person or persons so acting as to violate the provisions of § 101-1 of this chapter to cease any prohibited activities which are specified in § 101-1 and, if the person or persons so ordered do not forthwith obey, to remove such person or persons or to arrest and/or cause such person or persons to be brought before the Trial Court of the Commonwealth District Court, Nantucket Division, upon a complaint made for a violation of the provisions of § 101-1.~~
- ~~B. If the violation occurs on the premises of rental property, the owner and/or his agent of said property must be notified in writing by certified mail that a violation of § 101-1 has occurred on said rental property and that a complaint for violation of said section may be taken against him if said property owner and/or his agent fails to mitigate the activities of the person or persons who have rented said property.~~
- ~~C. It shall be a defense to any violation of § 101-1 of this chapter that the noise is generated from a private dwelling with the express consent of the owner and that the noise is not clearly audible at any real property boundary of said dwelling.~~

**A. Violations and penalties.**

- a. A violation of this Chapter shall be deemed a breach of the peace. Violators shall first be given a verbal order by the enforcing police officer to cease or abate the noise immediately or within a specified period of time. If the person or persons so ordered do not comply with the verbal order, the enforcing police officer may arrest such person or persons for a violation of this Chapter.
- b. As an alternative to arrest, any police officer of the Town may utilize the noncriminal disposition specified in MGL c. 40, § 21D and Nantucket Code §§ 1-2 through 1-6.
- c. Any person found in violation of § 101.1 A shall be punished by a fine of not more than \$300 for each offense. Each such act which constitutes a violation of this section, which either continues or is repeated more than 30 minutes after the issuance of a warning to cease said activities, shall be considered a separate offense and shall be prosecuted as a separate offense.

~~§ 101-2 Noises prohibited; exemptions.~~

- ~~A. Use districts. It shall also be unlawful to project a sound or noise, excluding noise emanating from cars, trucks or other vehicles, from one property into another within the boundary of a use district, which noise exceeds the limiting noise spectra set forth in Table I below. Sound or noise projecting from one use district into another use district with a different noise level limit shall not exceed the limits of the district into which the noise is projected.~~
- ~~B. Loading and unloading. It shall be unlawful to load, unload, open, close or otherwise handle boxes, crates, containers, building materials, trash cans, dumpsters or similar objects between the hours of 10:00 p.m. and 6:00 a.m. so as to project sound across a real property line, except as exempted under Subsection E below.~~
- ~~C. Construction. Operating or permitting the operation of any power tools or powered equipment used in actual new building construction or renovation, drilling, or demolition work is prohibited between the hours of 8:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) Monday through Saturday and before 10:00 a.m. Sunday that the sound therefrom is plainly audible at a distance of 50 feet from the lot line of the lot on which said activity is located except for emergency work of public service utilities or by special variance issued by the Select Board.~~
- ~~(1) Construction or renovation work shall be defined as any work for which a building permit has~~



been issued by the Town.—

- ~~D. Vehicle or motorboat repairs and testing. Repairing, rebuilding, modifying, or testing any motor vehicle, motorcycle, or motorboat in such a manner as to be plainly audible at a distance of 50 feet from the lot line of the lot on which said activity is located is prohibited between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) Monday through Saturday and before 10:00 a.m. Sunday.—~~
- ~~E. Domestic power tools. Operating or permitting the operation of any mechanically powered saw, drill, sander, grinder, lawn or garden tool, or similar device used outdoors in residential areas between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) Monday through Saturday and before 10:00 a.m. Sunday so as to be plainly audible at a distance of 50 feet from the lot line of the lot on which said activity is located is prohibited.—~~
- ~~F. Radios, television sets, musical instruments and similar devices. It shall be unlawful to operate, play or permit the operation or playing of any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound between the hours of 10:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) in such a manner as to create a noise disturbance across a real property boundary. █~~
- ~~G. Exemptions. The following uses and activities shall be exempt from noise level regulations: (1) —Noises of safety signals, warning devices and emergency pressure relief valves.  
(2) Noises resulting from any authorized vehicle when responding to an emergency call or acting in time of emergency.  
(3) Noises resulting from emergency and maintenance work as performed by the Town, by the state or by public utility companies.  
(4) Noises resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the Town, but only to the extent such activities and the resulting noises are within the scope of such license or permit.  
(5) The unamplified human voice.  
(6) Parades and public gatherings for which the Selectmen have issued a permit.  
(7) Bells, chimes or carillons while being used for religious purposes or in conjunction with religious services, and those bells, chimes or carillons that are presently installed and in use for any purpose.~~

#### **§ 101-2 Air Conditioning and Air Handling Equipment, Pumps, Fans and Compressors Sound Level Limit.**

- A. No person shall operate or cause to be operated any air conditioning or air-handling equipment, swimming pool or spa pump, or an exhaust fan, in such a manner as to exceed 55 dBA over a 10-minute period of time, measured from a distance of 40 feet or more from the source across a residential real property line at any time of the day or night.**
- B. Upon written notice to the owner of the property as recorded with the Nantucket Assessor of a violation of paragraph §101-2 (A), and the property owner fails to mitigate the violation within fourteen (14) days, then the property owner shall be deemed to be in violation of paragraph §101-2 (A).**

#### **§ 101-3 Measurement of noise.**

- A. The measurement of sound or noise shall be made with a sound-level meter meeting the standards prescribed by ANSI S1.4 –1971 Type 1 or Type 2 and IEC 1979. The instrument**

shall be maintained in calibration and good working order. A calibration check shall be made of the system at the time of any noise measurement. Measurements recorded shall be taken so as to provide a proper representation of the noise source. During measurement, the microphone shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used when required. Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements except where such background noise interferes with the primary noise being measured.

- ~~B. The slow meter response of the sound level meter shall be used in order to best determine that the amplitude has not exceeded the limiting noise levels set forth in Table I below.~~
- B. Sound levels limits pursuant to this rule shall be measured over a 10-minute period of time with a sound level meter. Sound levels which exceed the limits set forth in paragraph A above when measured are a violation of this rule.
- ~~C. The measurement shall be made at the location that the noise is perceived by the complainant or upon a public way, at a level of five feet above the ground.~~

**§ 101-4 Noise tables.**

~~A. Table I: Limiting Noise Level for Use Districts. (Use District A represents the LUG-1, LUG-2, LUG-3, ROH and SOH Residential and MMD, AHD, OIH, and ALC Special Districts. Use District B represents the R-1, R-2 and R-10 and SR-1 and SR-2 Residential Districts. Use District C represents the LC, RC and RC-2 Commercial Zones, all as defined and delimited in the Nantucket Zoning Ordinance, as amended.)~~

Use District	Maximum Permissible A-Weighted Sound Level	
	Day	Night
District A:		
L-10 level	55	45
Maximum	68	58
District B:		
L-10 level	60	45
Maximum	70	58
District C:		
L-10 level	60	60
Maximum	70	70

**NOTES:**

- 1. ~~"L-10" refers to a national guideline for measuring noise levels over time and is recommended by the Environmental Protection Agency.~~
- 2. ~~Sound levels are in decibels re: 20 micropascals, measured on the A-weighting network of a sound level meter meeting the standards referenced in § 101-3A.~~
- ~~(1) For the purpose of this table, "day" shall be defined as 7:00 a.m. to 10:00 p.m. (7:30 a.m. between June 15th and September 15th in each year), and "night" shall be defined as 10:00 p.m. to 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year).~~
- ~~(2) If the noise is not smooth and continuous, one or more of the corrections in Table II below shall be added to or subtracted from each of the decibel levels given in Table I of this section.~~

~~B. Table II: Type of Operation in Character of Noise.~~

Character of Noise	Correction
Impulsive (hammering, etc.)	-5
Periodic (hum, screech, etc.)	-5

**§ 101-5 Application for special permit.**

~~Application for a permit for relief from the noise level designated in this chapter on the basis of undue hardship may be made before the Board of Selectmen. Any permit granted by the Selectmen shall set forth all conditions pertaining to the specified noise and a reasonable time limit for its abatement. Each such permit shall specify, to the extent applicable, the following:~~

- ~~A. Whether the specified noise permitted is in excess of the levels barred by §§ 101-2A, 101-3 and 101-4, as well as § 101-1A, B or C, and the extent of the permitted excess;~~
- ~~B. The specified dates and times of day the excess is permitted;~~
- ~~C. The particular location, specifying outdoors, indoors or indoors open to the outdoors, and where on the premises the specified noise is permitted to originate; and~~
- ~~D. The permitted type of noise: amplified music, amplified speaking or singing voice, live band, acoustic musical instrument, or other.~~

**§ 101-6 4 Violations and penalties.**

**A. Any person found in violation of § 101-2 shall be punished by a fine of not more than \$300 for each offense. Each day of such violation shall be considered a separate offense**

~~A. Upon an apparent violation of this chapter, the offending party shall be given a verbal order by the enforcing police officer to cease or abate the noise immediately or within a specified period of time. If the order is not complied with, the person or persons responsible for the noise shall be charged with a violation of this chapter. Anyone who violated this chapter shall be subject to a fine of \$100. Written record of all measured violations shall be kept by the Police Department.~~

**B. Any police officer of the Town may utilize the noncriminal disposition specified in MGL c. 40, § 21D and Nantucket Code §§ 1-2 through 1-6.**

*(Select Board)*

# ADVISORY COMMITTEE OF NON-VOTING TAXPAYERS

Town of Nantucket Select Board  
16 Broad Street  
Nantucket, MA 02554

October 2, 2020

Dear Select Board Member,

The Advisory Committee of the Non-Voting Taxpayers (“ACNVT”), by resolution, asked me to write to the Select Board regarding abatement of excessive noise that deprives residents, both Summer and Year-round, of the peaceful and quiet enjoyment of their property, particularly during the “high season” when Nantucket is filled with Summer visitors.

A. Construction Noise.

Two ongoing construction projects highlight the severity of the problem in recent years based upon complaints from the neighborhoods affected. (1) The massive construction project at 12 Lincoln Circle and (2) the partial razing and relocation of an 80-year old home, and construction of a new one, at 2 and 4 Hulbert Ave. There are many other examples that could be cited throughout the Island.

Section 101-2, Subsection C. governs construction noise:

Construction. Operating or permitting the operation of any power tools or powered equipment used in actual new building construction or renovation, drilling, or demolition work is prohibited between the hours of 8:00 p.m. and 7:00 a.m. (7:30 a.m. between June 15th and September 15th in each year) Monday through Saturday and before 10:00 a.m. Sunday that the sound therefrom is plainly audible at a distance of 50 feet from the lot line of the lot on which said activity is located except for emergency work of public service utilities or by special variance issued by the Select Board.


[Amended 4-4-2006 ATM by Art. 61, approved 8-2-2006; 4-11-2007 ATM by Art. 54, approved 1-28-2008; 4-1-2019 ATM by Art. 66, approved 8-6-2019]

(1)

Construction or renovation work shall be defined as any work for which a building permit has been issued by the Town.

Subsection C permits the operation of “power tools or powered equipment” if the noise is plainly audible 50 feet away for 13 hours a day during the Winter and for 12.5 hours a day in the Summer, Sunday excepted. On Sundays, a full 8 hours, from 10:00 am to 8:00 pm is permitted.

We submit that the unremitting cacophony of sounds from nearby construction projects from early morning to nightfall - seven day a week - is not consistent with a seasonally based vacation retreat such as Nantucket. People come to relax and enjoy the environment that is so carefully protected by other laws. Similar communities facing these issues are adopting solutions to create a proper balance between the demand for construction service and the livelihood of those in the construction trades, on the one hand, and the health, welfare and peaceful enjoyment of residents in construction areas, on the other.



In many seasonal communities in other parts of the country, outdoor construction activities are not permitted at all during the high season, although indoor work is allowed (subject to noise restrictions) and of course exceptions are always permitted for emergency repairs.

The ACNVT is not in favor of anything that radical.

Less sweeping changes would go a long way to improving the situation on Nantucket. We suggest amending the construction noise ordinance to permit outdoor construction in residential neighborhoods only from 9:AM to 5:PM Monday thru Friday during the high season (June 15 – September 15). We suggest a half day on Saturday for those activities and a ban on such activities on Sundays and Holidays.

B. Other Noise.

There are other noise issues as well, that should be addressed in Section 101-2 with regard to HVAC and pool equipment noise, and noise from equipment used in landscaping activities.

For example, one community I know of put in a requirement that landscapers using gas engines include a muffler on their equipment, a small requirement, but a step in the right direction.

Similarly, Section 101-2 should be amended to cover permanently installed residential and commercial equipment such as pool, air-conditioning and ventilation equipment. Such equipment is often placed so neighbors bear the noise burden instead of the owners of the equipment.

We suggest a new subsection after subsection F spelling out that such equipment meet certain noise standards for it to be installed in new construction, or when there is a replacement of existing equipment or the addition of equipment. The closer the location of the equipment to the property line, the quieter the equipment. The objective being that the decibels detected at the property line be 45 db or less.

We hope the Town of Nantucket will consider taking action regarding these concerns at the upcoming spring ATM. If the Town puts together a small group to consider possible noise ordinance improvements, we respectfully request that you include one of our Committee members as a participant in those discussions.

Respectfully submitted,

**Gary Beller**  
**Chair, ACNVT**

**ARTICLE**

**(Bylaw Amendment: Animals)**

To see if the Town will vote to amend Chapter 55 (Animals), section 55-5 (Violations and penalties) as follows (*NOTE: new language is shown as highlighted text, language to be deleted is shown by ~~strikeout~~; these methods to denote changes are not meant to become part of the final text; non-substantive changes to the numbering of this bylaw shall be permitted in order that it be in compliance with the numbering format of the Code of the Town of Nantucket*):

Chapter 55  
Animals

**§12-2 Violations and penalties.**

- A. Fine. Any violation of this chapter shall be subject to a fine of \$50 for the first offense; \$250 for the second offense; \$500 for the third and each subsequent offense. This chapter may be enforced by a police officer or Animal Control Officer utilizing the noncriminal disposition contained in Chapter 1 of this Code.

(Select Board)

**Commented [LG1]:** Added "tiered" fines, per 2/3/21 SB discussion

ARTICLE XX

To see if the Town will vote to amend Chapter 58-3 of the Code of the Town of Nantucket as follows; or to take any other action related thereto:

1. Amending the third sentence of Section A thereof to read as follows “Licenses for rental agencies shall be issued on a calendar-year basis and shall be issued after payment of an annual fee of \$100 per rental motor vehicle for rental agencies renting 1-10 motor vehicles; \$250 per motor vehicle for rental agencies renting 11-50 motor vehicles; and \$500 per motor vehicle for rental agencies renting 51 or more motor vehicles.” **[NOTE TO CLIENT: TIERS AND FEES ARE PLACEHOLDERS AND SHOULD BE REVIEWED]**

**Commented [GJC1]:** Please note that these amendments do not address the issue of ride shares or people who rent out their vehicles along with their house rentals.

2. Replacing Section B with the following:

The total number of motor vehicles available for lease on the island of Nantucket shall not exceed a number to be determined annually by the ~~Select Board of Selectmen~~, provided that said number shall not be below 700. The ~~Select Board of Selectmen~~ shall issue each rental agency one rental vehicle medallion (RVM) for each motor vehicle ~~listed in its annual application to be licensed~~. Each RVM constitutes the right to lease one motor vehicle for one year. ~~An RVM shall be non-transferable without the consent of the Town Manager~~. All RVMs issued prior to January 1, 2021 shall expire on December 31, 2021 and shall be non-transferable thereafter.

**Commented [GJC2]:** Please note that the fee structure in the current version of the Bylaw is established pursuant to a special act of the Legislature, Chapter 266 of the Acts of 1989. Therefore, it is my opinion that the fee structure cannot be changed without an amendment of the special act.

3. Deleting Section D thereof.

VOTERS' GUIDE

This Article would amend the Town's Car Rental Bylaw to allow the Selectmen to adjust the current cap on the number of rental car licenses available in the Town. The cap was implemented in 1996, and all of the licenses have previously been issued, although not all are used. The cap prevents competition by new entrants into the rental car market, especially at the airport, and, given the rise in ridesharing and car-sharing apps, no longer serves as a meaningful restraint on car traffic on the island Town. Under this article, the Board of Selectmen would be able to adjust the cap to meet current conditions. In addition, RVMs would no longer be transferable, preventing car rental agencies from holding onto licenses without using them in order to limit competitors from accessing them.

**Commented [GJC3]:** There are a number of issues with this requirement. When is the determination going to be made? What is it going to be based on? If all of the RMVs are up-for-grabs each year, how are they going to be distributed? What if the first applicant in line takes all of them? What if the Board raises the cap to 1,000 one year and then lowers it back to 700 the following year, how can companies plan?

**Commented [GJC4]:** If the RMV expires at the same time as the license, why do you need it?

**Commented [GJC5]:** What standards is the Town Manager going to apply in determining whether or not to allow a transfer?

**Commented [GJC6]:** I'm not sure that this conclusion is supported. Although the RMVs may not have monetary value in terms of being able to be sold, as long as there is a cap there may be an incentive for one company to have as many licenses as it can afford so that others can't have them.

**Nantucket Memorial Airport**  
**Proposed Bylaw to Amend Chapter 58-3 of the Code of Nantucket**  
**(February/January 2021)**

**Purpose:** The purpose of this paper is to provide the reader with ~~some~~ insight into ~~the~~ current ground transportation situation at the Airport and ~~on the island-wide,~~ and why ~~it is believed that~~ action is ~~recommended~~ needed to amend the current Town bylaw governing Car Rental Agencies. The proposed Bylaw will ~~in order to~~ provide the flexibility to ~~do business~~ equitably engage with vendors that bring the most value and ensure ~~allow more of~~ an open and competitive rental car market.

**Overview:** ~~From a ground transportation perspective,~~ Rental cars are a significant ground transportation option at ~~most~~ airports for travelers arriving at a destination and for residents, ~~or for locals~~ that need a vehicle for a limited period. ~~In addition to rental cars,~~ Other ground transportation options typically available include; taxi, bus, limo, hotel courtesy shuttles, bicycle/scooters, and more recently Transportation Network eCompanies (TNC's) such as Uber and Lyft and car sharing companies (such as Turo). ~~Historically,~~ Airports or their sponsor ~~owners~~ (government entities ~~such as State or local Towns~~) had previously ~~the ability to been able to~~ regulate and control the activities of ~~the various~~ ground transportation providers. However, with new technology, TNC and car sharing providers (app-based) have outpaced the ability ~~either advanced faster or ahead of~~ these regulatory bodies ability to adapt their rules.

In Massachusetts, TNC providers successfully lobbied and had legislation passed that pre-empted most local regulation, including prohibiting regulation by the Airport or Town. ~~permitted only Massport to regulate them.~~ ACK has petitioned our representatives to have this legislation amended, but, ~~However,~~ this effort has stalled in the State Legislature. The Airport will continue to pursue the TNC legislation with ~~is with~~ our local representatives. ~~The Car sharing~~ Share legislation efforts are currently being debated. Without some the mechanism ~~ability for airports and Towns~~ to regulate these car service providers, Airports and Towns ~~they~~ are limited in their ability to ensure that the public is provided quality safe service in a manner equitable across providers.

**Airport** ~~CK~~ **Background:** The three ~~With the three~~ current car rental agreements were set to expire in December of 2020. State procurement requirements require that these agreements are competitively solicited to promote fair and open access. ~~at the end of the calendar year, in the fall 2020 the Airport began drafting a Request for Proposals (RFP) to meet the required procurement rules. Previously consideration was given to the addition of a fourth operator. However, given the impacts of the Covid Pandemic, it was decided to stay with three. Within the past six months, two additional companies have expressed interest in operating at the Airport. During the RFP development process, ACK staff determined that it was uncovered that~~ the current Town bylaw (Chapter 58) could preclude a new business entrant from replacing an existing tenant, due to entering the market due to the limited number of available medallions and the ability of current licensees to control them. Concurrently, the Airport determined not to seek a fourth operator, given the current effects of the COVID-19 pandemic on demand for car rentals.

After communicating the Bylaw findings with the Town Licensing Administrator, who confirmed the Airport's determination, this information was confirmed, ~~and~~ additional issues associated with the current Bylaw were expressed relating to control and use of medallions, enforcement abilities, the cap on number of vehicles and the process of transferring medallions.

Subsequently, ~~conversations have been held~~ between Town Administration, Airport staff, and legal counsel ~~(both Airport and Town),~~ as well as discussion at ~~at a~~ recent Select Board meetings has advanced discussion further. A draft Warrant Article has been developed by Airport Counsel in coordination with Town Administration and is included at the end of this document.



**Current Situation:** The key components of the existing bylaw include:

- A Licenses are issued on a calendar year basis for \$100/annual fee unless excise tax for vehicle is paid to Nantucket.
- B Total number of vehicle medallions on island limited to 700, [based on a temporary action taken in 1996 ATM](#). (+ 2 Additional)
- C Medallions are non-expiring and transferrable with or without consideration
- D Transfers can take place with only notice to Select Board, not permission.

A total of 590 medallions are held between the three operators at the airport: [the](#) - ~~The~~ remaining medallions are controlled by four other operators on the island.

Airport passenger traffic has declined by 23% between FY16 and FY20, yet gross receipts for car rentals have remained flat. This appears to indicate that the rates charged to customers are increasing.

**Implications and Impacts:** ~~The if the~~ initial logic in creating a cap on the number of rental car medallions ~~in 1996~~ was to restrict the number of vehicles on the island. ~~While well-intentioned, it was well intentioned but over time has created challenges that need to be addressed, the passage of time and evolution of technology have created challenges to the efficacy of the cap. Prior to recent large-scale the TNC/Car Share\_ adoption evolution by consumers, the limited supply of medallions commensurately limited the number of commercially-available ground transportation vehicles. The cap no longer serves this purpose: by industry estimates, up to 18% of ground transport trips at ACK involve unregulated TNC/Car sharing transactions. This traffic that results from this shadow market occurs in addition to the traffic generated by the current 700 medallion cap. as demand for rental cars increased, the value of the medallion increased due to the limited availability of supply. With the advent of these new app-based technologies, competition has been created that can impact the rates of car rentals. This can equate to more vehicles in the overall ground transportation market by continuing with the traditional regulated operators and adding the unknown number of unregulated providers. A Rental Car cap contributes to the shadow economy of TNC/Car Sharing through supply and demand. The proliferation of TNC/Car sharing has not resulted in a reduced demand for Rental Car medallions: in fact, rental contract values continue to increase on a per-passenger basis. The Airport's review of the current evidence is that a limited medallion supply may be making car rentals more expensive, which promotes consumer adoption of the alternative ap-based service providers.~~

~~The existence of the cap without a well-defined process to measure and enforce compliance and reallocation of medallions among existing and potential market provides a barrier to new market entrants. Removal of the cap allows the most direct way to manage this ~~deficiency, and deficiency and~~ is unlikely to affect the number of vehicles on the road.~~

~~If the adage that you can't manage something unless you measure it is true, then it would make sense that if you can't measure it, you can't manage it. The inability to measure the new app-based providers impacts the business operations of the operators that are managed/regulated. This scenario may also be true to some extent with the existing traditional operators. While there is a cap of 700 medallions issued, that does not always guarantee that that there are only 700 rental cars on island. Given the deficiencies in the current bylaw, it is challenging to develop an implementation and enforcement strategy that ensures the traditional operators are adhering to the intent of this regulation.~~

**Proposed Resolution:** The Airport is proposing a Warrant Article to amend Chapter 58-3 of the Code of the Town of Nantucket as follows; or to take any other action related thereto:

1. Amending the third sentence of Section A thereof to read as follows “Licenses for rental agencies shall be issued on a calendar-year basis and shall be issued after payment of an annual fee of \$100 per rental motor vehicle for rental agencies renting x-x motor vehicles; \$ \_\_\_\_\_ per motor vehicle for rental agencies renting y-y motor vehicles; and \$ \_\_\_\_\_ per motor vehicle for rental agencies renting zz \_\_\_\_\_ or more motor vehicles.” [NOTE: TIERS AND FEES SHOULD BE DEVELOPED BY TOWN]

2. Replacing Section B with the following:

The total number of motor vehicles available for lease on the island of Nantucket shall not exceed a number to be determined annually by the Board of Selectmen, provided that said number shall not be below 700. The Board of Selectmen shall issue each rental agency one rental vehicle medallion (RVM) for each motor vehicle to be licensed. Each RVM constitutes the right to lease one motor vehicle for one year. An RVM shall be non-transferable without the consent of the Town Manager. All RVMs issued prior to January 1, 2021 shall expire on December 31, 2021 and shall be non-transferable thereafter.

3. Deleting Section D thereof.

#### VOTERS' GUIDE

*This Article would amend the Town's Car Rental Bylaw to allow the Selectmen to adjust the current cap on the number of rental car licenses available in the Town. The cap was implemented in 1996, and all of the licenses have previously been issued, although not all are used. The cap prevents competition by new entrants into the rental car market, especially at the airport, and, given the rise in ridesharing and car-sharing apps, no longer serves as a meaningful restraint on car traffic on the island. Under this article, the Board of Selectmen would be able to adjust the cap to meet current conditions. In addition, RVMs would no longer be transferable, preventing car rental agencies from holding onto licenses without using them in order to limit competitors from accessing them.*

~~The Airport is proposing a Warrant Article to amend Chapter 58-3 of the Code of the Town of Nantucket by deleting the first sentence of Section B thereof; or to take any other action related thereto. Section B currently reads:~~

~~*“The total number of motor vehicles available for lease on the island of Nantucket shall not exceed 700. The Board of Selectmen shall issue each rental agency one rental vehicle medallion (RVM) for each motor vehicle listed in its 1996 application and which received a rental sticker. Each RVM constitutes the nonexpiring right to lease one motor vehicle. A rental agency shall possess one RVM for each motor vehicle listed in its application beginning in 1998.*~~

~~*[Amended 4-13-1998 ATM by Art. 54, approved 7-31-1998; 4-10-2000 ATM by Art. 53, approved 8-2-2000]”*~~

#### VOTERS' GUIDE

~~This Article would amend the Town's Car Rental Bylaw to remove the current cap on the number of rental car licenses available in the Town. The cap was implemented in 1996, and all of the licenses have previously been issued, although not all are used. The cap prevents competition by new entrants into the rental car market, especially at the airport, and, given the rise in ridesharing and car sharing apps, no longer serves as a meaningful restraint on car traffic in the Town.~~

The intent of these changes is to allow the Town to determine the appropriate number of medallions to be issued based on public need, much like taxi and liquor licenses, establish a tiered rate structure and provide the necessary ability for the Licensing Department to develop an implementation process that allows for better to measurement and control of the operators.

## Erika Mooney

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**From:** Matt Fee  
**Sent:** Wednesday, February 3, 2021 10:42 AM  
**To:** Erika Mooney  
**Subject:** Fwd: Follow up Airport Request  
**Attachments:** Airport R 2.docx

Please share with Kristie and Melissa and place in record.

Thanks

Begin forwarded message:

**From:** ss <[wmill5229@aol.com](mailto:wmill5229@aol.com)>  
**Subject:** Fwd: Follow up Airport Request  
**Date:** February 3, 2021 at 10:11:25 AM EST  
**To:** "[dawnholdgate@gmail.com](mailto:dawnholdgate@gmail.com)" <[dawnholdgate@gmail.com](mailto:dawnholdgate@gmail.com)>, "[snaturalnantucket@gmail.com](mailto:snaturalnantucket@gmail.com)" <[snaturalnantucket@gmail.com](mailto:snaturalnantucket@gmail.com)>, "[jason@nantucketbybike.com](mailto:jason@nantucketbybike.com)" <[jason@nantucketbybike.com](mailto:jason@nantucketbybike.com)>  
**Reply-To:** ss <[wmill5229@aol.com](mailto:wmill5229@aol.com)>

I am sending you three this because you replied to my previous email.

Please see attached.

Ray

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This email was scanned by Bitdefender

As a follow up to my previous email:

Dawn, Matt & Jason,

I am away on vacation and I just received a print copy of the I&M and read the article (more complete than appeared on ack.net) about the request of the airport commission and their reasons for their seeking a change. In that article I found several glaring inaccuracies.

First – They stated that people were unable to get a rental vehicle at the airport – this is totally not an accurate depiction of the situation. We have not been sold out to the point where we were not able to get a vehicle to anyone (if not immediately within short order) who called or walked up to our counter in recent years.

Second – The airport claims that deliveries to the boat are harming their revenues. Again – not accurate. Any vehicle based at the airport which is rented on or off the airport pays the airport fees.

Third – The addition of more companies and vehicles in a time of excess supply will serve only to depress prices and lower the airport revenues. Any additional companies and vehicles will do nothing to combat Uber and Lyft or people renting personal vehicles. What is needed are more customers getting off planes to rent vehicles and generate enplanement fees for the airport while at the same time taking some of the pressure off congestion at the boats. It would benefit us financially to rent more of our vehicles at the airport versus having to employ drivers for deliveries.

Fourth – Several rental companies that operated a fourth position at the airport have chosen to close. These companies have included Colonial, Avis, Budget, National and Thrifty. Enterprise operated off-airport in the vicinity for a year or two before giving up. I do not want to join this list. Simply too many cars for not enough customers.

In summary, there has been a tremendous drop in customers arriving by air, partially due to current unreasonable pricing, fees and practices. Even during the prime season, the airport often resembles a ghost town – the traffic is so low it cannot even support a gift shop or keep a restaurant busy while in town at the docks gridlock exists.

Raymond Conlon

Cell: 508-221-0354

**From:** [Matt Fee](#)  
**To:** [Erika Mooney](#)  
**Subject:** Fwd: Proposal to remove car rental cap  
**Date:** Wednesday, February 3, 2021 10:44:18 AM  
**Attachments:** [ute \(1\).zip](#)

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For record.

Begin forwarded message:

**From:** DEAN MURPHY <[deanmurphy62@comcast.net](mailto:deanmurphy62@comcast.net)>  
**Subject:** Proposal to remove car rental cap  
**Date:** February 3, 2021 at 12:33:59 AM EST  
**To:** "[dhillholdgate@nantucket-ma.gov](mailto:dhillholdgate@nantucket-ma.gov)" <[dhillholdgate@nantucket-ma.gov](mailto:dhillholdgate@nantucket-ma.gov)>,  
"[jmbridges@nantucket-ma.gov](mailto:jmbridges@nantucket-ma.gov)" <[jmbridges@nantucket-ma.gov](mailto:jmbridges@nantucket-ma.gov)>,  
"[mfee@nantucket-ma.gov](mailto:mfee@nantucket-ma.gov)" <[mfee@nantucket-ma.gov](mailto:mfee@nantucket-ma.gov)>,  
"[kferrantella@nantucket-ma.gov](mailto:kferrantella@nantucket-ma.gov)" <[kferrantella@nantucket-ma.gov](mailto:kferrantella@nantucket-ma.gov)>,  
"[mbmurphy@nantucket-ma.gov](mailto:mbmurphy@nantucket-ma.gov)" <[mbmurphy@nantucket-ma.gov](mailto:mbmurphy@nantucket-ma.gov)>

February 3, 2021  
Select Board  
Town of Nantucket

Hello, my name is Dean Murphy, i grew up on Nantucket and my family has operated the Hertz Car Renal Agency since 1982. I have been involved in its operation since 1989 and I have been the main operator since 2012.

I am writing to you in regards to the proposal set forth by Airport Manager Tom Rafter to remove the car rental cap (medallion system that is currently in place) for rental cars on Nantucket. I understand that Mr. Rafter's job is to oversee what is in the best interest of Nantucket Memorial Airport, but in this instance it is not what is in the best interest of the Town of Nantucket. On several levels this is a flawed proposal. First, I think we can all agree that the last thing the Town of Nantucket needs is more cars. Lift the car rental cap and you will have a disaster on your hands. The medallion system was implemented to protect Nantucket from this type of misguided growth. Furthermore, there is no shortage of rental cars on Nantucket. I am attaching an excel spreadsheet showing Hertz peak season (July & August) utilization numbers for 2018 & 2019. I did not include 2020 numbers since they are skewed because of the pandemic. In 2018 & 2019 our peak season fleet was 240 cars. You can see that in July 2019 our utilization was at 79% based on a fleet of 240 cars that would leave us with approximately 50 idle cars available for rent on any given day. August 2018 & 2019 utilization was 87% again based on a fleet of 240 cars that would leave us with approximately 31 idle cars available for rent on any given day. By any stretch of the imagination those are not numbers that reflect a shortage of available cars for rent. Similar to Hotels, Bed & Breakfasts and Inns that impose a minimum length of stay, car rental companies will at peak times impose a minimum length of rental. So, yes there are times that people cannot get a rental car, just like there are times people cannot get a room at a Hotel, B&B or Inn, doesn't mean Nantucket needs more Hotels, BB's & Inns. Finally, to put it in perspective 500 of the 700 Licensed/Medallion vehicles operate out of the Airport, well above the half quoted by Mr. Rafter in the Inquirer and Mirror. In

summary I do not believe that Nantucket Memorial Airport needs another car rental company and the Island certainly does not need more cars in July and August. Please feel free to contact me if you feel you have any questions.

Thank you

Dean Murphy

Hertz Nantucket

Drm Industries Inc

Cell - 508-367-6958

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This email was scanned by Bitdefender

**Jul**

		Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu
<b>2019</b>		1-Jul	2-Jul	3-Jul	4-Jul	5-Jul	6-Jul	7-Jul	8-Jul	9-Jul	10-Jul	11-Jul	12-Jul	13-Jul	14-Jul	15-Jul	16-Jul	17-Jul	18-Jul
<b>2018</b>		2-Jul	3-Jul	4-Jul	5-Jul	6-Jul	7-Jul	8-Jul	9-Jul	10-Jul	11-Jul	12-Jul	13-Jul	14-Jul	15-Jul	16-Jul	17-Jul	18-Jul	19-Jul
OP Ute	TY	89.71	89.47	92.96	97.49	96.5	93.5	79.6	69.15	61.88	62.44	66.22	71.62	70.27	69.33	61.95	65.49	67.7	70.22
	PY	90.52	89.14	92.31	90.95	91.4	87.33	74.32	61.71	57.21	60.34	65.37	67.69	67.25	63.16	59.39	61.37	61.54	64.26
	% Var	-0.8	0.3	0.7	6.5	5.1	6.2	5.3	7.4	4.7	2.1	0.9	3.9	3	6.2	2.6	4.1	6.2	6

**Aug**

		Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
<b>2019</b>		1-Aug	2-Aug	3-Aug	4-Aug	5-Aug	6-Aug	7-Aug	8-Aug	9-Aug	10-Aug	11-Aug	12-Aug	13-Aug	14-Aug	15-Aug	16-Aug	17-Aug	18-Aug
<b>2018</b>		2-Aug	3-Aug	4-Aug	5-Aug	6-Aug	7-Aug	8-Aug	9-Aug	10-Aug	11-Aug	12-Aug	13-Aug	14-Aug	15-Aug	16-Aug	17-Aug	18-Aug	19-Aug
OP Ute	TY	77.88	82.82	93.48	93.91	98.7	98.26	96.52	98.26	98.29	97.85	87.98	87.19	89.67	88.43	88.48	91.36	91.36	90.16
	PY	82.77	84.45	85.71	88.66	85.71	81.43	84.81	86.5	93.67	91.98	87.87	89.12	92.47	92.47	93.31	91.21	87.45	79.92
	% Var	-4.9	-1.6	7.8	5.3	13	16.8	11.7	11.8	4.6	5.9	0.1	-1.9	-2.8	-4	-4.8	0.2	3.9	10.2



Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	MTD
19-Jul	20-Jul	21-Jul	22-Jul	23-Jul	24-Jul	25-Jul	26-Jul	27-Jul	28-Jul	29-Jul	30-Jul	31-Jul	Total
20-Jul	21-Jul	22-Jul	23-Jul	24-Jul	25-Jul	26-Jul	27-Jul	28-Jul	29-Jul	30-Jul	31-Jul	1-Aug	Avg
73.33	85.78	85.33	78.22	80.89	81.78	82.3	84.51	88.55	87.67	84.51	81.42	77.88	78.69
67.66	73.19	71.06	65.53	65.96	67.66	68.94	72.46	80.59	80.17	77.22	78.48	81.09	72.62
5.7	12.6	14.3	12.7	14.9	14.1	13.4	12.1	8	7.5	7.3	2.9	-3.2	6.1

Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	MTD
19-Aug	20-Aug	21-Aug	22-Aug	23-Aug	24-Aug	25-Aug	26-Aug	27-Aug	28-Aug	29-Aug	30-Aug	31-Aug	Total
20-Aug	21-Aug	22-Aug	23-Aug	24-Aug	25-Aug	26-Aug	27-Aug	28-Aug	29-Aug	30-Aug	31-Aug	1-Sep	Avg
84.43	84.43	85.25	87.7	86.89	83.61	71.84	65.71	64.9	68.78	78.17	87.61	88.05	86.61
84.1	85.77	84.94	85.42	93.13	89.7	88.36	81.39	76.96	77.58	79.19	88.43	93.06	86.72
0.3	-1.3	0.3	2.3	-6.2	-6.1	-16.5	-15.7	-12.1	-8.8	-1	-0.8	-5	-0.1

Article \_\_\_\_.

(Home Rule Petition: Issuance of Pension Obligation Bonds and Notes)

To see if the Town will vote to request its representatives in the General Court to introduce special legislation authorizing the Town to issue pension obligation bonds and notes, and to authorize the General Court, with the approval of the Select Board, to make changes of form to the text thereto as may be necessary or advisable in order to accomplish the intent and public purpose of this legislation in order to secure passage, as follows:

AN ACT AUTHORIZING THE TOWN OF NANTUCKET TO ISSUE PENSION OBLIGATION BONDS OR NOTES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

**SECTION 1.** The town of Nantucket may issue, at 1 time or from time to time, bonds or notes for the purpose of funding the portion of the unfunded pension liability of the Barnstable County retirement association allocable to the town. The proceeds of any such issuance, other than amounts to be applied to issuance costs and expenses, shall be paid by the town of Nantucket to the Barnstable County retirement association, shall be allocated solely to reduce the unfunded pension liability allocable to the town to which the bonds or notes relate, shall be invested in any investments which are permitted under chapter 32 of the General Laws and shall otherwise be held and expended on behalf of the town by the Barnstable County retirement association in accordance with law. The terms of any such bonds or notes shall not exceed 30 years from the date of issuance and the amount of any such bonds or notes shall be outside the limit of indebtedness prescribed in section 10 of chapter 44 of the General Laws. Upon the authorization of the issuance of pension obligation bonds by the town, the town shall submit the vote and a plan demonstrating how the town will finance and allocate the debt service associated with the bonds or notes to the executive office for administration and finance, and no bonds or notes authorized to be issued by this act shall be issued until the secretary for administration and finance has approved the plan and the issuance of such bonds or notes. Except as otherwise provided in this act, such bonds or notes shall be subject to said chapter 44.

**SECTION 2.** The aggregate principal amount of the bonds or notes issued during any calendar year under authority of this act shall not be greater than the amount sufficient to extinguish the unfunded pension liability of the Barnstable County retirement association allocable to the town of Nantucket as of a particular date as determined in accordance with this section, plus an amount to provide for issuance costs and other expenses necessary or incidental thereto. The Barnstable County retirement association shall first determine the amount sufficient to extinguish the unfunded pension liability of the town of Nantucket in accordance with the report of a nationally recognized independent consulting firm, which may be the consulting actuary generally retained by the Barnstable County retirement association, and which amount shall be approved by the public employee retirement administration commission. The report shall also set

forth the present value savings to the town reasonably expected to be achieved as a result of the issuance of such bonds or notes.

**SECTION 3.** The maturities of such bonds or notes shall be scheduled so that the annual combined payments of principal and interest for each issue shall be as nearly equal as practicable in the opinion of the town Treasurer, in any manner that shall provide for a more rapid amortization of principal, or in accordance with any other manner consistent with the town's approved funding schedule, as the secretary for administration and finance shall approve. In granting the approval, the secretary may require the establishment of a reserve to be created from a portion of the amount of the annual savings used to calculate the present value savings. Any such reserve shall be held and controlled by the town and shall be separate from any other reserve or fund of the town allowed or required by statute. The secretary shall establish a method to calculate both the required amount of annual contribution to the reserve and the minimum value to be maintained in the reserve and shall prescribe conditions for expenditure from the reserve, including its use if necessary to prevent or limit any future unfunded actuarial pension liability, and the conditions under which all or a portion of the funds in the reserve may be available for unrestricted purposes in which case such funds or portions thereof shall be transferred to the town treasury. Any funds in the reserve shall be trust funds within the meaning of section 54 of chapter 44 of the General Laws and, expected as otherwise provided in this act, shall be subject to the provisions of said section 54.

**SECTION 4.** Notwithstanding chapter 70 of the General Laws or any other general or special law to the contrary, the portion of the annual debt service paid by the town of Nantucket for bonds or notes issued under this act applicable to school department personnel who are members of the Barnstable County retirement association shall be included in the computation of net school spending for the purposes of said chapter 70 or any other law.

**SECTION 5.** This act shall take effect upon its passage.

Or to take any other action relative thereto.

**2021 ATM Housing Articles (as of 02/05/21)**

1. FY 22 Budget Amendment for Affordable Housing Trust Expenses (\$475,000)  
*Attached: draft article*
2. Authorization to Borrow \$7.5M for Affordable Housing Trust in connection with maintaining “Safe Harbor” from 40B developments  
*Attached: draft article and companion debt exclusion ballot question*
3. Community Preservation Committee Recommendation  
*Attached: CPC Article for FY 22*
4. A. Reade Citizen Warrant Article to Establish Stabilization Fund for Affordable/Year-round Housing Using Room Occupancy Tax Receipts  
*Attached: Submitted article*
5. B. Mohr Citizen Warrant Article for Home Rule Petition to Amend Land Bank Act to Require Transfer of Portion of Land Bank Proceeds to Affordable Housing Trust Fund  
*Attached: Submitted article*

*Pending:*

1. Home Rule Petition for Community Housing Bank  
*Attached: Most recently approved petition from 2019 ATM*
2. *Request to CPC for FY 2023 Funding for Affordable Housing*

*Additional Attached Materials:*

- Select Board Strategic Plan 2021: Housing Goals
- Outline of Town of Nantucket Affordable Housing Requirement Status
- Room Occupancy Tax Receipts – Recent History
- Debt Service/Tax Rate Information for \$7.5m Debt Exclusion Proposal

## 2021 ATM Housing Articles

1.

### **ARTICLE 23**

#### **(Appropriation: Affordable Housing Trust Fund)**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds, the sum of Four Hundred Seventy-five Thousand Dollars (\$475,000) to deposit into the Affordable Housing Trust Fund established pursuant to Mass. General Law c. 44, section 55C for Fiscal Year 2022.

Or, to take any other action related thereto.

*(Select Board)*

Commented [LG1]: Needs TC Review

2.

### **ARTICLE 24**

#### **(Appropriation: Affordable Housing Trust Fund)**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds, the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000) for the purposes of acquiring existing properties for affordable housing purposes, which may include an affordable rental program, and also interest in and/or deed restrictions to properties for affordable housing purposes all of which must qualify for the Town's Subsidized Housing Inventory, to be spent by the Town Manager with the approval of the Select Board which may include a grant or grants to the Nantucket Affordable Housing Trust, with oversight by the Select Board; that to meet said appropriation the Treasurer, with the approval of the Select Board, is hereby authorized to borrow the sum Seven Million Five Hundred Thousand Dollars (\$7,500,000) pursuant to General Laws Chapter 44, Sections 7 or 8, or any other enabling authority, and to issue bonds and notes of the Town therefor; provided, however, that any borrowing authorized hereunder shall be contingent on the passage of a Proposition 2 and ½ debt exclusion vote; that any premium received by the Town upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount. Any affordable housing units developed pursuant to this vote shall be available to tenants with incomes of not less than 30% or more than 200% of area median income for the Town, as most recently determined by the United States Department of Housing and Urban Development, provided said units qualify for the Town's Subsidized Housing Inventory; further, the appropriated funds may only be spent while the Town's Subsidized Housing Inventory is below the Ten Percent (10%) state requirement.

Or, to take any other action related thereto.

*(Select Board)*

Commented [LG2]: NEW – subject to SB approval; needs wording to be updated; Bond Counsel review

3.

**ARTICLE 28**

**(Appropriation: Fiscal Year 2022 Community Preservation Committee)**

To see if the Town will vote to act on the report of the Community Preservation Committee on the Fiscal Year 2022 Community Preservation Budget and to appropriate or reserve for later appropriation monies from the Community Preservation Fund annual revenues or available funds for the administrative and operating expenses of the Community Preservation Committee, the undertaking of Community Preservation Projects and all other necessary and proper expenses for the year.

<b>Purpose</b>	<b>Amount</b>
<b>Historic Preservation</b>	
<b>Nantucket Historical Association</b> Restoration of the exterior and interior integrity of the Hadwen and Barney Oil and Candle factory warehouse, including the replacement of the existing roof with a new slate roof, masonry repointing, window replacement and replacing the failed wheelchair lift to address potential sea level rise	\$395,000
<b>Landmark House- Nantucket Community Service Inc.</b> To restore the exterior trim, to include fascia, rakes, corner boards, soffits, freeze boards, gutters and downspouts on both the Landmark House and the Grossman wing	\$335,000
<b>Sub-total</b>	<b>\$730,000</b>
<b>\$692,000 of the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds, and the balance of the funds used in this category, \$38,000, are from the Historic Preservation reserves.</b>	
<b>Community Housing</b>	
<b>Nantucket Affordable Housing Trust Fund</b> For the creation, preservation, support, rehabilitation and restoration of affordable housing for year-round Nantucket residents in support of plans developed by Habitat for Humanity and Housing Nantucket to create up to six new affordable units.	\$800,000
<b>Nantucket Interfaith Council</b> Nantucket rental assistance program, housing and rental assistance to low and moderate-income Nantucket working families	\$250,000
<b>Town of Nantucket</b> Funds to pay the interest and principal of the Bond authorized at the 2015 Nantucket Town Meeting for the	

balance of the infrastructure at the Sachem's Path affordable housing complex, to close out this obligation	\$296,600
<b>Town of Nantucket</b> Funds to pay the interest and principal of the Five Million Bond authorized at the 2019 Nantucket Town meeting to pay the cost of acquiring land, which may include buildings thereon, for the development of affordable housing and to pay cost of designing, constructing, reconstructing and equipping affordable housing.	\$350,000
<b>Sub-total</b>	<b>\$1,696,000</b>
<b>\$235,715 of the funds utilized in this category is from the Undesignated reserves and the balance of the funds utilized in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Open Space Conservation/Recreation</b>	
<b>Town of Nantucket</b> Funds to pay the interest and principal of the Bond authorized at the 2012 Nantucket Town Meeting for the creation of an artificial turf playing field at Nobadeer Farm Road to close out this obligation	\$199,575
<b>Sustainable Nantucket Community Farm Institute, phase 5</b> Funds for extension of farm heating system, new Bee yard shed, produce preservation equipment and infrastructure	\$55,000
<b>Open Space Designated Reserves</b> To meet 10 percent allocation	\$30,000
<b>Sub-total</b>	<b>\$284,515</b>
<b>All the funds to be utilized in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>Administrative</b>	
<b>Community Preservation Committee</b> Administrative and operating expenses	\$125,000
<b>Sub-total</b>	<b>\$125,000</b>
<b>All the funds to be used in this category are from the Community Preservation surcharge, interest and the State matching funds.</b>	
<b>TOTAL</b>	<b>\$2,835,515</b>

<b>All amounts to be appropriated from the following sources:</b>	
<b>SOURCES</b>	<b>AMOUNT</b>
Raised and appropriated from FY 2019 Community Preservation Surcharge	\$2,250,000
From State matching funds for FY 2018, to be received in 2019	\$330,000
From Interest	\$20,000
From Designated Reserves for Historic Preservation	\$38,000
From Undesignated Reserves	\$235,515
<b>Total Revenues</b>	<b>\$2,835,515</b>
For fiscal year 2022 Community Preservation Purposes with each item considered a separate appropriation to be spent by the Community Preservation Committee.	
Provided however, that the above expenditures may be conditional on the recording of appropriate historic preservation restrictions for historic resources, open space restrictions for open space resources, recreational restrictions for recreational resources and for affordable housing restrictions for community housing; running in favor of an entity authorized by the Commonwealth to hold such restrictions for such expenditures; meeting the requirements of Chapter 184 of the General Laws pursuant to Section 12 of the Community Preservation Act.	

*(Kenneth Beaugrand, et al)*

4.

**ARTICLE 34**

**(Affordable and Year-round Housing Stabilization Fund**

To see if the Town will vote to dedicate, without further appropriation, into a special purpose Affordable and Year-Round Housing Stabilization Fund, created herein in accordance with M.G.L., Chapter 40, Section 5B, which was accepted by the Town at the 2017 Annual Town Meeting, for the purpose of meeting affordable and year-round housing needs, two-thirds (2/3) of the local option rooms excise tax that the Town receives on the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel, pursuant to its acceptance of M.G.L., Chapter 64G, Section 3A, as amended by Chapter 337 of the Acts of 2018; provided that said dedication shall take effect beginning in fiscal year 2022;

or take other action with regard thereto.

*(Arthur I. Reade, Jr., et al)*



5.

### ARTICLE 93

#### **(Home Rule Petition: Reallocate a Minor Portion of the Land Bank Real Estate Transfer Fee to Support Year-Round Housing)**

Preamble:

Nantucket has long been experiencing an acute crisis of affordable and workforce housing that came further into focus during the pandemic. The shortage of stable, suitable housing that is affordable to year-rounders at a variety of income levels carries significant public health consequences with wide-ranging ripple effects. While the pandemic will end, the severe year-round housing shortage on Nantucket will not without further action.

Tremendous work has been done by conservation organizations over the past half century. As a result, over 50% of the Island is now in environmental conservation of one form or another. Thirty-five years after the Land Bank was conceived, it is perhaps time to discuss allocating a minor portion of this steady revenue stream -- for a defined temporary timeframe -- to preserving an equally important resource - our year-round community.

Town Meeting has on three occasions unanimously sent a Home Rule Petition to the State House seeking to establish a separate source of funding, also based on a real estate transfer fee. Yet the legislature has been reluctant to affirm the will of Nantucket voters. Feedback from Boston has suggested that the simple change proposed by this article may be viewed more favorably as it reallocates an existing fee versus adding a new one.

This article seeks to respond to the members of the community who have wondered if the revenue stream of the Land Bank could be shared in a manner that would allow the Land Bank to continue with its land conservation mission while simultaneously allowing another critical community mission to be addressed: to provide safe and stable housing for those who live and work on Nantucket year-round.

It should be noted this article is designed intentionally with a delayed implementation date, in order that it will not result in any financial insecurity or risk for the Land Bank or the Town of Nantucket. Delaying implementation until January 1, 2022 will allow the Land Bank to address the questions of how its outstanding debt and operating expenses can be reconfigured so that an ongoing 1.5% revenue will be adequate to serve their needs and mission during the 20 years the reallocation of the 0.5% portion would be in effect.

It is the intention of this article to ask the Land Bank to refrain from the incurring of any additional debt obligations until it can be determined that the existing and future debt obligations can be supported by 75% of its current fee (1.5%).

A reliable, steady source of funding would allow the Nantucket Affordable Housing Trust

(NAHT) to be able to offer programs it has long envisioned: down-payment assistance for year-round home buyers, more housing options for our seniors, and the ability to incorporate greater buffers and green space in future housing development.

Article:

To see if the Town will vote to authorize the Select Board to petition the General Court for special legislation to modify the Land Bank Act of 1983 (Chapter 669 of the Acts of 1983), as amended, to have 25% of the total Land Bank fee (1/4 of the 2% transaction fee prescribed therein) be transferred directly to the Nantucket Affordable Housing Trust Fund for a period of twenty (20) years to begin on January 1, 2022 for the purposes of the creation and preservation of affordable housing in the Town of Nantucket for the benefit of year-round low and moderate income households, consistent with the Trust's enabling legislation; provided that said special legislation shall include a requirement that the transfer of 25% of the Land Bank fee to the Affordable Housing Trust Fund shall be reduced in any given year by the amount necessary for the Land Bank to meet its then existing debt service obligations and other normal and customary operating expenses of the Land Bank as certified by the Land Bank to the Select Board each on or before June 30; and provided further that the Land Bank shall not incur any additional debt service obligations or other normal and customary operating expenses that cannot be supported by the remaining 75% of the Land Bank fee as so certified each year; and further to direct the Select Board that during the pendency of this Home Rule Petition not to enter into a Memorandum of Understanding as was contemplated in Article 30 of the 2020 Annual Town Meeting that would result in the incurring of a debt obligation of the Land Bank that would exceed its available revenue at the adjusted 1.5% fee; Or to take any other action related thereto.

*(Brooke Mohr, et al)*

**Pending (2019 ATM):**

1.

**ARTICLE 79**

**(Home Rule Petition: Community Housing Bank Real Estate Transfer Fee)**

To see if the Town will vote to request its representatives in the General Court to introduce legislation seeking a special act the text of which is set forth below and to authorize the General Court, with the approval of the Board of Selectmen, to make constructive changes in the text thereto as may be necessary or advisable in order to accomplish the intent of this legislation in order to secure passage; or to take any other action related thereto.

An Act Authorizing the Town of Nantucket to Impose a Real Estate Transfer Fee for Affordable and Workforce Housing and Related Capital Improvements

SECTION 1. For purposes of this act, the words and phrases set forth in this section shall have the following meanings:

"Affordable Housing Restriction" is a recorded instrument held by a qualified holder which encumbers and/or restricts a real property interest so that the real property

interest is perpetually or for a term of at least thirty (30) years limited to use as a residence occupied by a low or moderate income household which earns less than a specified income level, the upper limit of which may not exceed one hundred seventy-five percent (175%) of the Nantucket median income. A "qualified holder" is a governmental body or charitable corporation or trust which qualifies under the terms of Massachusetts General Laws Chapter 184 ("Chapter 184") to hold an affordable housing restriction. Without limiting the generality of the foregoing, "Affordable Housing Restriction" includes but is not limited to any instrument which conforms to the requirements of (i) a Nantucket Housing Needs Covenant as described in Chapter 301 of the Acts of 2002 and defined in the Town of Nantucket Code.

"Housing and Community Development Fund", shall refer to a discrete fund or account, established by the county treasurer of the Nantucket County under the provisions of this act.

"Eligible Applicants", shall refer to non-profit and for-profit corporations and organizations, individuals, and public entities.

"Purchaser", shall refer to the transferee, grantee or recipient of any real property interest.

"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred; all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; the fair market value, at the time of transfer, of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Real property interest", shall refer to any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under chapter 183A of the General Laws; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

"Seller", shall refer to the transferor, grantor or immediate former owner of any real property interest.

"Time of transfer" of any real property interest shall mean the time at which such transfer is legally effective as between the parties thereto, and, in any event, with

respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

“Town” shall refer to the Town of Nantucket acting by and through the Board of Selectmen.

SECTION 2. There is hereby imposed a fee equal to one half per cent (1/2%) of the purchase price upon the transfer of any real property interest in any real property situated in Nantucket County. Said fee shall be the liability of the seller of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the seller. The fee shall be paid to the Town of Nantucket, or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative and the seller or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The Town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The register of deeds for Nantucket County, and the assistant recorder for the registry district of Nantucket County, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, to which has not been affixed such a certificate executed by the Town or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The Town shall deposit all fees received hereunder with the Town treasurer. The treasurer shall deposit such fees as follows: 75% in the Affordable Housing Trust Fund and the remainder in capital project funds as determined by the Board of Selectmen, unless such allocation is changed by the affirmative vote of two-thirds of voters at an annual or special town meeting. The fee imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead, the Town may require payment of the fee referred to in real property interests so conveyed as determined by the Town.

SECTION 3. At any time within seven days following the issuance of the certificate of payment of the fee imposed by section two, the seller or his legal representative may return said certificate to the Town or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be forthwith returned to the seller or his legal representative.

SECTION 4. The following transfers of real property interests shall be exempt from the fee established by section 10. Except as otherwise provided, the seller shall have

the burden of proof that any transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in the event that such transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading the fee imposed by Section 10.

(a) Transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions, including but not limited to transfers to the Town of Nantucket, the County of Nantucket.

(b) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(c) Transfers made as gifts without consideration. In any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interest transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interest transferred and the amount of consideration claimed by the seller to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interest transferred, at the time of transfer.

(d) Transfer to the trustees of a trust in exchange for a beneficial interest received by the purchaser in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(e) Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(f) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(g) Transfers to any charitable organization as defined in clause Third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interest so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

(h) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(i) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (1) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (2) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(j) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited

liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property (including real property interests and other property received) which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a partnership or limited liability company, the transferee receives property (including real property interests and other property received) which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(k) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

(l) Transfers of property consisting in part of real property interests situated in Nantucket County and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Nantucket county; provided that the purchaser shall furnish the Town with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(m) The first \$2 million of the sale price of any transfer or series of transfers of real property interests in a single parcel. Said exemption may be adjusted for inflation as determined annually by the affirmative vote of two-thirds of voters at an annual or special town meeting. For purposes of this subsection, "inflation" shall mean the increases, if any, in the total of prices paid for real property transfers year to year for real property within the Town of Nantucket.

(n) Transfers of minority interests in corporations, trusts, partnerships or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

SECTION 5. (a) The Town treasurer shall keep a full and accurate account stating when, from or to whom, and on what account money has been paid or received relative to the activities of the Trust Fund and the Housing Fund. Said account shall be subject to examination by the director of accounts or his agent pursuant to section forty-four of chapter thirty-five of the General Laws.

(b) Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of partnerships filed with the Trust Fund for the purpose of determining or fixing the amount of the fee imposed under section ten or for the purpose of determining the existence of any exemption under section twelve shall not be public records for the purposes of section ten of chapter sixty-six of the General Laws.

SECTION 6. A seller who fails to pay all or any portion of the fee established by section two on or before the time when the same is due shall be liable for the following additional payments in addition to said fee:

(a) Interest: The seller shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to fourteen per cent per annum.

(b) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee imposed by this chapter, fails to pay all or a portion of the fee within thirty days after the

time of transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the Town for each month or portion thereof thereafter that the fee is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed twenty-five per cent of the unpaid fee due at the time of transfer. Whenever the Town determines that all or a portion of a fee due under this chapter was unpaid due to fraud with intent to defeat or evade the fee imposed by this chapter, a penalty equal to the amount of said fee as determined by the Town shall be paid by the seller in addition to said fee.

SECTION 7. (a) The Town shall notify the purchaser and the seller by registered or certified mail of any failure to discharge in full the amount of the fee due under this Act and any penalty or interest assessed. The Town shall grant a hearing on the matter of the imposition of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received by the Town within thirty days after the mailing of said notice. The Town shall notify the purchaser and the seller in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the Town concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the mailing of notification of the determination of the Town. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser and seller shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the Town. All decisions of said courts shall be appealable. Every notice to be given under this section by the Town shall be effective if mailed by certified or registered mail to the purchaser or the seller at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in Nantucket County, such notice shall be effective when so mailed to the purchaser or seller in care of any person appearing of record to have a fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in Nantucket County.

(b) All fees, penalties and interest required to be paid pursuant to this chapter shall constitute a personal debt of the seller and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the Town; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.

(c) If any seller liable to pay the fee established by this act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the Town upon all property and rights to property, whether real or personal, belonging to either such purchaser or such seller. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. Said lien shall in any event terminate not later than six years following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Town (i) with respect to real property or fixtures, in the registry of deeds for Nantucket County, or (ii) with respect to personal property, in the

office in which a security or financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty-two C of the General Laws.

(d) Sellers applying for an exemption under subsections (a) through (o) of section four shall be required at the time of application for exemption to execute an agreement legally binding on sellers and separately legally binding upon any Legal Representative of the sellers (1) assuming complete liability for any fee, plus interest and penalties if any, waived on account of an allowed exemption subsequently determined to have been invalid, and (2) submitting to the jurisdiction of the trial court of the commonwealth sitting in Nantucket County. Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property transfer. Execution of the above-described agreement shall not be required of any mortgagee, pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the Town.

In any case where there has been a refusal or neglect to pay any fee, interest or penalties imposed by this act, whether or not levy has been made, the Town, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the commonwealth to enforce the lien of the Town under this section with respect to such liability or to subject any property of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such liability.

The Town may issue a waiver or release of any lien imposed by this section. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

SECTION 8. The provisions of this act are severable, and if any provision hereof, including without limitation any exemption from the fee imposed hereby, shall be held invalid in any circumstances such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

SECTION 9. If the Town has determined that a fee is due by asserting the application of the evasion of fee doctrine described in section 13, then the seller shall have the burden of demonstrating by clear and convincing evidence as determined by the Town that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance of the fee set forth in section 10 and (ii) economic substance apart from the asserted fee avoidance benefit. In all such cases, the transferee shall also have the burden of demonstrating by clear and convincing evidence as determined by the Town that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to section 10 to be thereby avoided.

SECTION 10. This act shall take effect ninety (90) days following the date of passage.

*(Select Board)*



*NOTE: The above home rule petition was approved as Article 82 of the 2016 Annual Town Meeting, Article 88 of the 2017 Annual Town Meeting and Article 70 of the 2018 Annual Town Meeting. Home rule petitions currently pending before the legislature, which were not acted upon by December 31, 2018, may expire unless renewed by a confirmatory town meeting vote.*

**FINANCE COMMITTEE MOTION:** Moved that the Town's representatives to the General Court are hereby requested to introduce legislation as set forth below; and, that the General Court, with the approval of the Board of Selectmen, make constructive changes in the text hereof as may be necessary or advisable to accomplish the intent of this proposed legislation in order to secure its passage, as follows:

An Act authorizing the town of Nantucket to impose a real estate transfer fee for affordable and workforce housing.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** For purposes of this act, the words and phrases set forth in this section shall have the following meanings:

"Affordable Housing Restriction" is a recorded instrument held by a qualified holder which encumbers and/or restricts a real property interest so that the real property interest is perpetually or for a term of at least thirty (30) years limited to use as a residence occupied by a low or moderate income household which earns less than a specified income level, the upper limit of which may not exceed one hundred seventy-five percent (175%) of the Nantucket median income. A "qualified holder" is a governmental body or charitable corporation or trust which qualifies under the terms of Massachusetts General Laws Chapter 184 ("Chapter 184") to hold an affordable housing restriction. Without limiting the generality of the foregoing, "Affordable Housing Restriction" includes but is not limited to any instrument which conforms to the requirements of (i) a Nantucket Housing Needs Covenant as described in Chapter 301 of the Acts of 2002 and defined in the Town of Nantucket Code.

"Eligible Applicants", shall refer to non-profit and for-profit corporations and organizations, individuals, and public entities.

"Purchaser", shall refer to the transferee, grantee or recipient of any real property interest.

"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or his nominee, or for his benefit, for the transfer of any real property interest, and shall include, but not be limited to, all cash or its equivalent so paid or transferred; all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or his nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest

transferred remains subject after the transfer, determined at the time of transfer, but excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; the fair market value, at the time of transfer, of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for such real property interest.

"Real property interest", shall refer to any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property, the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under chapter 183A of the General Laws; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

"Seller", shall refer to the transferor, grantor or immediate former owner of any real property interest.

"Time of transfer" of any real property interest shall mean the time at which such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

"Town" shall refer to the Town of Nantucket acting by and through the Board of Selectmen.

SECTION 2. There is hereby imposed a fee equal to one half per cent (1/2%) of the purchase price upon the transfer of any real property interest in any real property situated in Nantucket County. Said fee shall be the liability of the seller of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the seller. The fee shall be paid to the Town of Nantucket, or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or his legal representative and the seller or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The Town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The register of deeds for Nantucket County, and the assistant recorder for the registry district of Nantucket

County, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, to which has not been affixed such a certificate executed by the Town or its designee. Failure to comply with this requirement shall not affect the validity of any instrument. The Town shall deposit all fees received hereunder with the Town treasurer. The treasurer shall deposit such fees in the Affordable Housing Trust Fund. The fee imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead, the Town may require payment of the fee referred to in real property interests so conveyed as determined by the Town.

SECTION 3. At any time within seven days following the issuance of the certificate of payment of the fee imposed by section two, the seller or his legal representative may return said certificate to the Town or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which such certificate was issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be forthwith returned to the seller or his legal representative.

SECTION 4. The following transfers of real property interests shall be exempt from the fee established by section 10. Except as otherwise provided, the seller shall have the burden of proof that any transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in the event that such transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading the fee imposed by Section 10.

(a) Transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions, including but not limited to transfers to the Town of Nantucket, the County of Nantucket.

(b) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(c) Transfers made as gifts without consideration. In any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interest transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interest transferred and the amount of consideration claimed by the seller to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interest transferred, at the time of transfer.

(d) Transfer to the trustees of a trust in exchange for a beneficial interest received by the purchaser in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(e) Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(f) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(g) Transfers to any charitable organization as defined in clause Third of section five of chapter fifty-nine of the General Laws, or any religious organization, provided that the real property interest so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

(h) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(i) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (1) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (2) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(j) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property (including real property interests and other property received) which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a partnership or limited liability company, the transferee receives property (including real property interests and other property received) which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(k) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

(l) Transfers of property consisting in part of real property interests situated in Nantucket County and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Nantucket county; provided that the purchaser shall furnish the Town with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(m) The first \$2 million of the sale price of any transfer or series of transfers of real property interests in a single transaction. Said exemption may be adjusted as determined by the affirmative vote of two-thirds of voters at an annual or special town meeting.

(n) Transfers of minority interests in corporations, trusts, partnerships or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

**SECTION 5. (a)** The Town treasurer shall keep a full and accurate account stating when, from or to whom, and on what account money has been paid or received relative to the activities of the Trust Fund and the Housing Fund. Said account shall be subject to examination by the director of accounts or his agent pursuant to section forty four of chapter thirty five of the General Laws.

(b) Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of partnerships filed with the Trust Fund for the purpose of determining or fixing the amount of the fee imposed under section ten or for the purpose of determining the existence of any exemption under section twelve shall not be public records for the purposes of section ten of chapter sixty-six of the General Laws.

**SECTION 6.** A seller who fails to pay all or any portion of the fee established by section two on or before the time when the same is due shall be liable for the following additional payments in addition to said fee:

(a) **Interest:** The seller shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to fourteen per cent per annum.

(b) **Penalties:** Any person who, without fraud or willful intent to defeat or evade a fee imposed by this chapter, fails to pay all or a portion of the fee within thirty days after the time of transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the Town for each month or portion thereof thereafter that the fee is not paid in full; provided, however, that in no event shall the amount of any penalty imposed hereunder exceed twenty five per cent of the unpaid fee due at the time of transfer. Whenever the Town determines that all or a portion of a fee due under this chapter was unpaid due to fraud with intent to defeat or evade the fee imposed by this chapter, a penalty equal to the amount of said fee as determined by the Town shall be paid by the seller in addition to said fee.

**SECTION 7. (a) The Town shall notify the purchaser and the seller by registered or certified mail of any failure to discharge in full the amount of the fee due under this Act and any penalty or interest assessed. The Town shall grant a hearing on the matter of the imposition of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received by the Town within thirty days after the mailing of said notice. The Town shall notify the purchaser and the seller in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party aggrieved by a determination of the Town concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within three months after the mailing of notification of the determination of the Town. Upon the failure to timely petition for a hearing, or appeal to said courts, within the time limits hereby established, the purchaser and seller shall be bound by the terms of the notification, assessment or determination, as the case may be, and shall be barred from contesting the fee, and any interest and penalty, as determined by the Town. All decisions of said courts shall be appealable. Every notice to be given under this section by the Town shall be effective if mailed by certified or registered mail to the purchaser or the seller at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any interest in land, the transfer of which gives rise to the fee which is the subject of such notice; and if no such address is stated or if such transfer is not evidenced by an instrument recorded or registered in the public records in Nantucket County, such notice shall be effective when so mailed to the purchaser or seller in care of any person appearing of record to have a fee interest in such land, at the address of such person as set forth in an instrument recorded or registered in Nantucket County.**

**(b) All fees, penalties and interest required to be paid pursuant to this chapter shall constitute a personal debt of the seller and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the Town; said action, suit or proceeding shall be subject to the provisions of chapter two hundred and sixty of the General Laws.**

**(c) If any seller liable to pay the fee established by this act neglects or refuses to pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the Town upon all property and rights to property, whether real or personal, belonging to either such purchaser or such seller. Said lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. Said lien shall in any event terminate not later than six years following the time of transfer. Said lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the Town (i) with respect to real property or fixtures, in the registry of deeds for Nantucket County, or (ii) with respect to personal property, in the office in which a security or financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section fifty of chapter sixty two C of the General Laws.**

(d) Sellers applying for an exemption under subsections (a) through (o) of section four shall be required at the time of application for exemption to execute an agreement legally binding on sellers and separately legally binding upon any Legal Representative of the sellers (1) assuming complete liability for any fee, plus interest and penalties if any, waived on account of an allowed exemption subsequently determined to have been invalid, and (2) submitting to the jurisdiction of the trial court of the commonwealth sitting in Nantucket County. Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property transfer.

Execution of the above-described agreement shall not be required of any mortgagee, pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the Town.

In any case where there has been a refusal or neglect to pay any fee, interest or penalties imposed by this act, whether or not levy has been made, the Town, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the commonwealth to enforce the lien of the Town under this section with respect to such liability or to subject any property of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such liability.

The Town may issue a waiver or release of any lien imposed by this section. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

**SECTION 8.** The fee described by Section 2 shall be of ten-year duration from the date this legislation take effect. This fee may continue for five-year periods by a majority vote at Town Meeting reauthorizing the fee. The fee described by Section 2 may be 1) decreased, or 2) eliminated by a two-thirds vote of Town Meeting. The threshold exemption described in Section 4 (m) may similarly be raised by an affirmative two-thirds vote of Town Meeting. In the event that Town Meeting does not renew the fee at the ten-year anniversary, or any subsequent five year anniversary, or Town Meeting votes to eliminate the fee, the balance of any fees previously collected shall be transferred to the Town of Nantucket and held by the Treasurer in a separate account, and shall first be used to satisfy any outstanding liabilities or obligations incurred by the Town of Nantucket or the Affordable Housing Trust as a result of imposition of the fee, and the remainder may be expended without further appropriation by the Board of Selectmen for affordable housing purposes. In the event that the liabilities and obligations of the Town of Nantucket or the Affordable Housing Trust exceed the amounts transferred to the Town, the fee shall remain in full force and effect until such liabilities and obligations have been satisfied.

**SECTION 9.** The provisions of this act are severable, and if any provision hereof, including without limitation any exemption from the fee imposed hereby, shall be held invalid in any circumstances such invalidity shall not affect any other provisions or circumstances. This act shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this act, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

**SECTION 10.** If the Town has determined that a fee is due by asserting the application of the evasion of fee doctrine described in Section 2, then the seller shall have the burden of demonstrating by clear and convincing evidence as determined by the Town that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance of the fee set forth in Section 2 and (ii) economic substance apart from the asserted fee avoidance benefit. In all such cases, the transferee shall also have the burden of demonstrating by clear and convincing evidence as determined by the Town that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to Section 2 to be thereby avoided.

**SECTION 11.** This act shall take effect ninety (90) days following the date of passage.