

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

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In the Matter of the Application of  
LEWIS SAUL,

Petitioner,

Index No. \_\_\_\_\_/2026

For a Judgment pursuant to Article 78 of the  
Civil Practice Law and Rules,

**VERIFIED PETITION**

-against-

THE ZONING BOARD OF APPEALS FOR THE  
TOWN OF EAST HAMPTON, NIGEL CURTISS  
and MONICA MITRO,

Respondents.

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Petitioner LEWIS SAUL, by his attorneys, Twomey, Latham, Shea, Kelley, Dubin &  
Quartararo LLP, respectfully alleges upon information and belief:

**PRELIMINARY STATEMENT**

1. This is a special proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules, including CPLR §§ 7803 and 7806, seeking review of the determination of the ZBA of Appeals (the “ZBA” or the “Board”) of the Town of East Hampton (the “Town”), dated June 2, 2026 (the “Determination”). A copy of the Determination is annexed hereto as **Exhibit “1”**.

2. The Determination granted Respondent Nigel Curtiss a Natural Resources Special Permit (“NRSP”), pursuant to the Town’s Code § 255-4-20, authorizing the relocation of an existing residence and removal of approximately 185 linear feet of a Geocube (i.e., sandbags) revetment located at 393 Cranberry Hole Road, Amagansett, Suffolk County, New York.

3. Prior to issuance of its Determination, the ZBA classified the application as an Unlisted Action under the State Environmental Quality Review Act (“SEQRA”) and issued a Negative Declaration for it on May 19, 2026.

4. Petitioner Lewis Saul brings this proceeding to challenge and annul the Determination of Respondent ZBA.

5. The Determination was arbitrary and capricious, an abuse of discretion, affected by errors of law, and in violation of lawful procedure in that it failed to require adequate, enforceable restoration measures addressing the documented flank erosion and shoreline scouring damage to Petitioner's adjacent property at 383 Cranberry Hole Road caused by the Geocube revetment installed and maintained by Respondent Curtiss for nearly nine years now, having been installed on a permitted “emergency basis” in 2018 as well as wrongly issuing a Negative Declaration under New York’s State Environmental Quality Review Act (“SEQRA”). The Determination also failed to make its approval conditioned on implementation of the approved work as soon as practicable, or “as soon as possible” as the Planning Department had recommended and Petitioner had requested. Instead, Respondent Curtiss has three years in which to act, and the option of seeking one-year renewals.

6. Petitioner further seeks remand directing the ZBA to require a restoration plan to be implemented as soon as practicable, addressing and remediating the severe flank erosion and shoreline scouring damage to Petitioner’s property caused by the Geocube revetment and ensuring as well that any further damage will be prevented by its subsequent removal.

#### **PARTIES & STANDING**

7. Petitioner is an individual who owns and resides at the real property located at 383 Cranberry Hole Road, in the Hamlet of Amagansett in the Town of East Hampton, Suffolk County

New York 11937, identified by Suffolk County Tax Map Number 300-128-01-28.3 (“Petitioner’s property”).

8. Respondent ZBA of Appeals (“ZBA” or the “Board”) for the Town of East Hampton is a municipal board of the Town of East Hampton, New York, authorized by the Code of the Town of East Hampton (the “Code”) to issue variances from the zoning requirements of the Code and Natural Resources Special Permits, subject to terms and conditions.

9. Respondent Nigel Curtiss (“Curtiss”) was the applicant before the ZBA in respect of its Determination.

10. Respondent Curtiss, together with his wife, Monica Mitro, are individuals who own and reside at real property located at 393 Cranberry Hole Road, Hamlet of Amagansett in the Town of East Hampton, Suffolk County, New York 11937, identified by Suffolk County Tax Map Number 300-128-01-28.2 (“Respondent Curtiss’ property”).

11. Petitioner’s property and Respondent Curtiss’ property are adjacent parcels, sharing a boundary line, with Respondent Curtiss’ property located on the east side of Petitioner’s property; both parcels front onto Napeague Bay, encompassed by the greater Gardiner’s Bay in the Town of East Hampton.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction over this proceeding pursuant to CPLR Article 78, CPLR § 7803 and Article VI, § 7 of the New York State Constitution.

13. Venue is proper in Suffolk County pursuant to CPLR § 506(b) because the Determination to be reviewed was made in Suffolk County by the ZBA for the Town of East Hampton, and the real property that is the subject of the Determination is located in Suffolk County.

14. This proceeding is timely commenced within thirty days after the filing of the Determination in the office of the Town Clerk on June 4, 2026 as required by New York Town Law § 282.

### **FACTUAL ALLEGATIONS**

#### **Background: The Curtiss Property and Geocube Retement**

15. Respondent Curtiss's property is a 23,848 square foot parcel in an A Residence zoning district, within a Harbor Protection Overlay District, containing barrier dunes, beaches, duneland, and beach vegetation, and is located on the shoreline of Napeague Bay, which is part of Gardiner's Bay.

16. The Curtiss's property is improved with a residence, originally constructed pursuant to a 1979 building permit issued by the Town. A Certificate of Occupancy was thereafter issued in 1981.

17. In May 2016, a new building permit was issued to a prior owner by the Town for certain alterations.

18. In 2016, Respondent Curtiss together with his wife, Respondent Monica Mitro, purchased the subject property.

19. In February 2017, Respondent Curtiss submitted an application to the ZBA for a Natural Resources Special Permit to install a Geocube revetment on the subject property due to the property's eroding beach's shoreline causing the dwelling thereon to become precariously seaward.

20. While the Natural Resources Special Permit application was pending before the ZBA, a building permit was issued on an emergency basis for the Geocube revetment pursuant to the Town Code § 255-4-29(E) and (F) (Emergency activities) in September 2017.

21. The Geocube revetment was installed in January 2018. See Exhibit “2” showing pictures of the Geocubes as they were being installed, attached as an exhibit to the letter of Andrew M. Millspaugh, P.E., Sterling Environmental Engineering, P. C. to the ZBA, dated April 28, 2026. In that letter, it was noted that “additional rows of bags [i.e., Geocubes] were installed both in front of, and behind, the revetment that were not included in the approved plans” of the New York Department of Environmental Conservation (“NYSDEC”). Id. at page 2. In other words, the original installation “did not conform with the NYSDEC-permitted plans” id.; nor did the installation conform to the Town’s approved plans.

22. Despite being non-conforming to the NYSDEC and Town approved plans from the outset, Respondent Curtiss failed to abide by the terms of the Geocubes being permitted on an “emergency basis.” Instead, Respondent Curtiss filed an application to allow the Geocube revetment to remain indefinitely, and has somehow managed to extend having these Geocubes in place now for nearly nine years. The application to retain the Geocubes indefinitely was the subject of an initial public hearing in 2018.

23. A Positive Declaration pursuant to SEQRA was issued by the ZBA, and an Environmental Impact Statement (“EIS”) was prepared.

24. The application to allow the Geocube revetment to remain indefinitely was ultimately denied by the ZBA of Appeals in a Determination filed November 17, 2021.

25. Respondent Curtiss commenced an Article 78 proceeding against the ZBA with Index Number 623213/2021, in New York Supreme Court, Suffolk County, challenging the denial of the permit to allow the Geocube revetment to remain.

26. On July 15, 2025, the ZBA voted to enter into a So-Ordered Stipulation of Settlement for the Article 78 proceeding under which Respondent Curtiss would submit a new

application for the relocation of the residence and removal of the Geocube revetment. It further provided that if the ZBA approved the new application, the action would be dismissed; however, if the ZBA denied the application, the action would continue. A copy of the ZBA's Resolution and the So-Ordered Stipulation, dated July 29, 2025, is attached as **Exhibit "3"**.

### **Environmental Impacts of the Geocube Revetment**

27. At the time the Geocubes were installed on the Curtiss' property in January 2018, Petitioner's property had a substantial dune that was more than sufficient to allow for the landward location of the dwelling on Petitioner's property, a safe distance away from the shoreline.

28. The early history of the Geocube revetment, the environmental conditions of the area including the Curtiss property, and the impacts of the Geocube revetment, are documented in the ZBA's Revised Draft Environmental Impact Statement dated September 28, 2021; the subsequent history is discussed below.

29. Despite having been installed on an emergency basis, the Geocube revetment has now been in place almost 9 years and has had, and continues to have, adverse environmental impacts along the Petitioner's shoreline and western flank facing the Curtiss property.

30. The longshore current, or littoral drift, generally moves from east to west in the area of the Curtiss' and Petitioner's properties. See Determination at page 3, ¶ 10, **Exhibit "1"**.

31. Upon information and belief, as a consequence of the Geocubes' installation, erosion significantly increased at the western flank of the Curtiss property, causing severe scouring and erosion of Petitioner's neighboring shoreline. See **Exhibit "4"**, showing a shoreline erosion assessment using aerial imagery from 1954 to 2024, attached to Letter from Andrew M. Millspaugh, P.E., Sterling Environmental Engineering, P. C. to the ZBA, dated January 26, 2026.

As observed in that letter: “The flank erosion has exacerbated shoreline erosion into the property at 383 Cranberry Hole Road [i.e., Petitioner’s property].” Id. at page 1, ¶ 4.

32. Since the Geocubes were installed on the Curtiss’ property and not removed as required by the approved plans, upon further information and belief, the Petitioner’s property has lost approximately 40 feet of dune in the worst affected areas and approximately 30 feet of dune in other areas. See Exhibit “5” showing pictures taken by Petitioner in early October 2024 of the effects of the scouring and erosion; see also Exhibit “6”, showing an aerial view of the shorelines of the properties of Respondent Curtiss at 393 Cranberry Hole Road and Petitioner at 383 Cranberry Hole Road as of March 2026.

33. Prior to this significant loss of dune due to this erosion, Petitioner had his property surveyed to determine if a pool could be constructed. That survey indicated that there was sufficient room to place a pool at that time. Now, due to the erosion that has occurred, there is no longer room for a pool on Petitioner’s property.

34. Indeed, due to the significant erosion the dune and dissipation of its related vegetation and trees, Petitioner’s dwelling is now significantly more vulnerable having become so much more seaward than it was and Petitioner is now faced with having to either raise his dwelling or move it farther landward; either choice will involve great cost. Moreover, due to the ZBA’s refusal to account for the damaging erosion to Petitioner’s property caused by the Geocubes, Petitioner faces attempting to restore the dune on his western flank and in front of his property on his own, also at a considerable cost.

35. The Geocubes cause continuous erosion and adverse impact to Petitioner's property in the form of further flank erosion, resulting in further shoreline erosion.

### The 2026 Application and Review Process

36. Pursuant to the So-Order Stipulation (**Exhibit “3”**), Respondent Curtiss submitted a new application to the ZBA of Appeals seeking a Natural Resources Special Permit to relocate the existing residence to a more landward location and remove the 185 linear foot Geocube revetment.

37. The details of the application are depicted on a Saskas Surveying Company, P.C. survey dated revised February 12, 2026 (the “Curtiss Survey”), and corresponding floor and elevation plans prepared by Bellwether Architects PLLC revised February 2, 2026. A copy of the Curtiss Survey is attached as **Exhibit “7”**. What should be noted about the Curtiss Survey is that it was only revised for the site plan as of February 12, 2026; the last time it was revised for the toe of the bluff line was March 11, 2020, and for the low mean water line, March 23, 2021.

38. The Planning Department reviewed the application in a Technical Analysis Memorandum (“TAM”) dated December 23, 2025, addressed to the ZBA; and supplemented its review with an additional memorandum dated January 2, 2026, also to the ZBA. Copies of these documents are attached respectively as **Exhibits “8”** and **“9”**. Notably, in its TAM, the Planning Department recognized that: “The revetment has and continues to have adverse environmental impacts along the shoreline” which included the impact the Geocube revetment was having on Petitioner’s property. **Exhibit “8”** at 2. While the Planning Department expressed support for the application’s proposed landward relocation of the residence, it emphasized that **“restoration of the shoreline [should occur] as soon as possible”** and went on to state that it **“recommends identifying a definitive time frame after the residence is removed from its existing foundation to remove the [Geocube] revetment in its entirety.”** See **Exhibit “8”** at 2 and 4 (emphasis added).

39. The Planning Department further noted that the application “should be updated to reflect the current conditions of the shoreline and the as built conditions of the revetment.” *Id.* at 4. **Exhibit “9”** shows aerial photos of the scouring impact on the shoreline of the Geocubes before and after installation on Petitioner’s property to the left of the Curtiss Property as one looks at the photos.

40. An initial public hearing was held by the ZBA on January 27, 2026. See [https://www.youtube.com/watch?v=i1toLjU0h0c&list=PLQK4NsMm2sb6G4FROh6m\\_UpwHs778pBwX&index=16&t=7571s](https://www.youtube.com/watch?v=i1toLjU0h0c&list=PLQK4NsMm2sb6G4FROh6m_UpwHs778pBwX&index=16&t=7571s), commencing at 58:24 on the video of the hearing.

41. The Town Assistant Planning Director, Brian Frank, commented to the ZBA that we should assume twice the quantity of Geocubes and volume of sand then shown on the approved plans. Photographic evidence was submitted by the Town ZBA at the Hearing showing additional Geocubes in the front of the seaward most row. *Id.* at 1.29:11.

42. At the January 27, 2026 hearing, the ZBA determined to consider the application as an Unlisted Action pursuant to SEQRA and left the record open for revisions to the application, with the intent of a continued public hearing with new notice at a later date.

43. A continued public hearing was held on April 28, 2026. See [https://www.youtube.com/watch?v=h\\_NJKlcg3Qc&list=PLQK4NsMm2sb6G4FROh6m\\_UpwHs778pBwX&index=7&t=4311s](https://www.youtube.com/watch?v=h_NJKlcg3Qc&list=PLQK4NsMm2sb6G4FROh6m_UpwHs778pBwX&index=7&t=4311s), commencing at 1.11:46 on the video of the hearing.

#### **Public Comments Identifying Impact to Petitioner's Property**

44. Petitioner, through his engineer Andrew M. Millspaugh, P.E., of Sterling Environmental Engineering, P.C., submitted written comments to the ZBA dated January 26, 2026. See Exhibit “4”.

45. The January 26, 2026 comment letter pointed out that Sterling Environmental Engineering prepared a shoreline erosion assessment using aerial imagery from 1954 to 2024, and that the assessment map showed that erosion significantly increased at the western flank of Petitioner's property following the Geocube installation. Id. That letter also observed that the flank erosion has exacerbated shoreline erosion into the Petitioner's property at 383 Cranberry Hole Road. Id.

46. The January 26, 2026 comment letter noted its concurrence with the Technical Analysis Memorandum of December 23, 2025 and strongly encouraged a more detailed assessment of the Geocube removal, and the need for the application to be updated to reflect current conditions of the shoreline. This was a reference to the fact that Respondent Curtiss was relying on the Curtiss Survey, a survey that was last revised for a low water mark line on March 23, 2021 and for a toe of bluff line on March 11, 2020. See Curtiss Survey, **Exhibit "7"**.

47. Finally, the January 26, 2026 comment letter stated that the Respondent Curtiss' Beach/Bluff Restoration Plan should but did not, include restoration of flank erosion caused by the Geocubes to Petitioner's property.

48. The Town Planning Department's Environmental Assessment Form Part 2 and Part 3 with Addendum dated March 24, 2026 observed that the revetment has and continues to have adverse environmental impacts along the shoreline, and that the Planning Department supports the landward relocation of the residence, the removal of the entire Geocube revetment, and restoration of the shoreline as soon as possible. See **Exhibit "10"**.

49. The Town Planning Department prepared an additional memorandum to the ZBA dated March 25, 2026, further addressing the need for more information regarding the Geocube removal and dune restoration; for example, it noted the need for "[a] plan and profile view of the

proposed dune restoration relative to the current mean high water boundary (MHW) and the dune crest/escarpment that will remain after the geocubes are removed.” See Exhibit “11”. However, as noted previously the last reading of the tidal and dune crest boundaries was as reflected in the Curtiss Survey dated back to March 23, 2021 and March 11, 2020, respectively.

50. Counsel for Petitioner submitted a letter to the ZBA from Andrew M. Millspaugh, P.E., dated April 28, 2026, outlining his additional concerns and the lack of information provided by Respondent Curtiss. See Exhibit “2”.

51. The April 28, 2026 letter commented that the underlying site survey, the Curtiss Survey (**Exhibit “7”**) remained severely out of date, with critical information for the Geocube revetment last located in March 2020 and March 2021, and that site conditions had changed dramatically since then. As a consequence, it was not possible to fully assess the current impacts and design an adequate restoration plan without a current survey showing existing conditions. See Exhibit “2”.

52. Petitioner’s Engineer further stated in his April 28, 2026 letter that the Geocubes cause continuous impact to adjoining properties in the form of flank erosion, noting that every storm exacerbates the erosion on Petitioner's property and the restoration plan should include repair of the flank erosion that the Geocubes caused on Petitioner's property. Id.

53. In addition, his April 28, 2026 letter stated that the construction protocol lacked detail on how Petitioner’s neighboring property would be protected from the removal and restoration of the dune. In particular, he observed in the letter that the schematic provided stopped short of Petitioner's property line and provided **no** information for how the dune would transition to the surrounding grade on the westerly side near Petitioner's property. Id.

54. Petitioner, through counsel Karen A. Hoeg, Esq., of Twomey Latham, submitted further comments orally at the April 28, 2026 public hearing.

55. Counsel for Petitioner underscored that what had been provided to the Town raised questions and was still lacking in sufficient detail to make a proper assessment of environmental impacts to neighbors, especially to Petitioner's property.

56. Counsel for Petitioner noted that the Board's obligation in granting NRSP's under Town Code § 255-4-40 concerning general standards for issuance of NRSPs that with respect to "Adjacent properties. The proposed use will not prevent the orderly and reasonable use of adjacent properties." Here, there is no record evidence that the impact of the proposed NRSP use on Petitioner's property was even considered, and to the extent it was, it was deemed outside their jurisdiction, despite statutory authority to the contrary allowing the imposition of conditions, requiring mitigative remediation and restoration.

57. Counsel for Petitioner stated that under Town Code § 255-5-51(F)(3), Geocubes which were put in place as emergency erosion control structures, "shall not . . . interfere with the littoral transport of sand or other sediment, so as to cause substantial damage to or a measurable increase in erosion of the project site or downdrift beaches, dunes, bluffs or shoreline." However, that is exactly what has happened in terms of damage to Petitioner's property.

58. Counsel for Petitioner stated that the concern for Petitioner was that the restoration of Petitioner's property, which had suffered severe flank erosion, should be ordered by the ZBA to be restored immediately. She noted that under New York Town Law § 274-b(4) concerning "Conditions attached to the issuance of special permits" that the ZBA as "**[t]he authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit.**" (emphasis added). Notably, that

Section goes on to provide the ZBA with enforcement authority for any such conditions imposed, providing that: “Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.”

Id.

59. Counsel for Petitioner also noted that SEQRA provides broad authority to the Town, where, as here, the ZBA was acting as the lead agency. Under Town Code § 128-2-30, the ZBA must be satisfied with the environmental impact statement and under SEQRA, 6 NYCRR § 617.11, concerning “Decision-making and findings requirements,” the ZBA must make findings and “**certify that** consistent with social, economic and other essential considerations from among the reasonable alternatives available, **the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.**”

See 6 NYCRR § 617.11(d)(5) (emphasis added).

60. Counsel for Petitioner concluded by requesting that the Board ask that Respondent Curtiss provide more detailed information on the methodology for the dune restoration as it pertains to the Petitioner’s property and also impose conditions to minimize adverse environmental impacts, underscoring that the ZBA’s statutory obligations required taking impacts on Petitioner’s property into account as part of Respondent Curtiss’ proposed shoreline restoration project.

### **The June 2, 2026 Determination**

61. On June 2, 2026, the ZBA of Appeals issued its Determination granting the Natural Resources Special Permit to Respondent Curtiss. See Exhibit “1”.

62. The Determination authorized Respondent Curtiss to relocate the existing residence to a more landward location and remove the 185 linear foot Geocube revetment from the parcel.

63. The Determination noted that the ZBA had previously classified the proposed action as an Unlisted Action and subsequently had issued a Negative Declaration under SEQRA on May 19, 2026.

64. The Determination found that the nature of the proposed house relocation, removal of Geocube revetment, and beach restoration would be in harmony with and promote the general purposes of the Town of East Hampton Zoning Law.

65. The Determination found that the removal of the Geocube revetment and restoration of the coastline would be a benefit to the environmental conditions on the site and on adjacent properties.

66. The Determination found that the removal of the Geocube revetment and restoration of the shoreline would be a benefit to the natural features and would help prevent further damage to the shoreline on the site and on adjacent sites.

67. The Determination imposed conditions of approval including project limiting fencing, sediment control fencing, revegetation requirements, and other construction-related conditions.

68. The Determination approved a Construction Protocol prepared by TF Engineering, PLLC, dated revised April 7, 2026. See Exhibit “12”, *infra*.

69. The Determination approved a Geocube Removal Plan prepared by First Coastal, dated April 13, 2026. See Exhibit “12”, *infra*.

**Omissions in the June 2, 2026 Determination**

70. Despite the extensive public comments submitted by Petitioner and his representatives documenting the flank erosion and damage to Petitioner's shoreline and dune on his property at 383 Cranberry Hole Road caused by the Geocube revetment, the Determination fails to address or require any conditions for restoration or remediation of the flank erosion affecting Petitioner's property as well as the shoreline damage affecting that property.

71. In particular, the Determination contained no conditions or requirements that applicant, Respondent Curtiss, undertake to remove the Geocubes as soon as practicable following relocation of the dwelling, an otherwise reasonable condition, which could have been imposed under New York Town Law 274-b or imposed under SEQRA, 6 NYCRR § 617.11 in order to minimize the continuing adverse impacts of the Geocubes to the maximum extent possible. The absence of any time frame or urgency in the Determination is particularly striking insofar as there was abundant record evidence that the Geocube, in place nearly nine years now, was and is causing continuous damage to the shoreline and Petitioner's property in particular.

72. The Determination does not contain any findings addressing the impact of the Geocube revetment's removal on Petitioner's adjacent property.

73. The Determination is also silent as to how the dune restoration will transition to the surrounding grade on the side of the Curtiss property near Petitioner's property line. In fact, the schematic plan approved by the Determination stops short of the adjoining property line and provides no information for how the dune will transition to the surrounding grade near Petitioner's property. See, e.g., Letter from Respondent Curtiss' agent, Tara Burke, Lighthouse Land Planning to the ZBA, dated April 13, 2026, schematic showing only Respondent Curtiss' property, attached as **Exhibit "12"**.

74. In sum, the Determination approves plans and protocols that lack any detail whatsoever as to how Petitioner's neighboring property will be protected during and after removal and restoration of the dune on the Curtiss property and any detail as to how the damage to Petitioner's property from the Geocubes will be remediated as well as imposing no time frame for implementation of the Geocubes' removal as soon as practicable.

**AS AND FOR A FIRST CLAIM FOR RELIEF:**

**THE DETERMINATION WAS ARBITRARY AND CAPRICIOUS**

75. Petitioner realleges and incorporates by reference paragraphs 1 through 74.

76. Pursuant to CPLR § 7803(3), a determination may be annulled if it was arbitrary and capricious.

77. A determination is arbitrary and capricious when it is made without a rational basis or in willful disregard of the facts or applicable law.

78. The substantial evidence in the record reflects repeatedly expressed concerns that the underlying Curtiss Survey's data was out of date by five or more years and that the current conditions needed to be identified to assess the adequacy of the restoration plan, including with respect to restoration of the flank erosion affecting Petitioner's property.

79. The record before the Board included substantial evidence and expert testimony that the Geocube revetment has caused and continues to cause severe flank erosion and damage to Petitioner's property at 383 Cranberry Hole Road.

80. The record before the Board included a shoreline erosion assessment prepared by Sterling Environmental Engineering demonstrating that erosion significantly increased at the western flank following the Geocube installation and that the flank erosion exacerbated shoreline erosion into Petitioner's property.

81. The record before the Board included recently taken photographs, including from on the ground and aerials, showing severe flank and shoreline erosion on Petitioner's property.

82. The record before the Board included expert opinion that it was not possible to fully assess the current impacts and design of an adequate restoration plan without a current survey showing existing conditions, and that the underlying Curtiss Survey of the site was severely out of date with critical data over five years old.

83. The record before the Board included expert opinion that the construction protocol remained lacking in detail and did little to indicate how Petitioner's adjacent property would be protected during Geocube removal and restoration.

84. The record before the Board included expert opinion that the schematic stopped short of the adjoining property lines and provided no information for how the dune would transition to the surrounding grade.

85. The record before the Board included specific requests that the restoration plan include repair of the flank erosion that the Geocubes caused on Petitioner's property.

86. Despite this record evidence, the ZBA's Determination was arbitrary and capricious in that it granted a Natural Resources Special Permit authorizing removal of the Geocube revetment and restoration of the shoreline without providing a rational basis for failing to address or require restoration or provide for other protective measures regarding the documented flank erosion and damage to Petitioner's adjacent property caused by the Geocube revetment.

87. The ZBA's Determination was arbitrary and capricious in that it approved a restoration plan that stops short of Petitioner's property line and provides no information for how the dune will transition to the surrounding grade near Petitioner's property, despite extensive public comment identifying this deficiency.

88. The ZBA's conclusion was arbitrary and capricious in that the proposed plan in that it found that the removal of the Geocube revetment and restoration of the shoreline would be a benefit to adjacent properties and would help prevent further damage to the shoreline on adjacent sites, while simultaneously failing to require conditions to restore the documented damage to Petitioner's adjacent site, or at least protect Petitioner's property during the removal process.

89. The ZBA's Determination was arbitrary and capricious in that it was made in willful disregard of the extensive evidence and public comments documenting the flank erosion and adverse environmental impacts to Petitioner's property.

90. The ZBA's Determination was arbitrary and capricious in that it approved plans and protocols that the Town's own Planning Department and Petitioner's engineering expert identified as lacking sufficient detail and information to assess impacts to Petitioner's adjacent property and to design an adequate restoration plan.

91. The ZBA's Determination was arbitrary and capricious in that it failed to include any time frame for the removal of the Geocubes as soon as practicable in the face of substantial evidence that the Geocubes were a source of continuing harm to Petitioner's property.

92. Nonetheless despite the substantial record evidence, the ZBA issued its Determination granting Respondent Curtiss a Natural Resources Special Permit.

**AS AND FOR A SECOND CLAIM FOR RELIEF:**

**THE DETERMINATION REPRESENTS AN ABUSE OF DISCRETION**

93. Petitioner realleges and incorporates by reference paragraphs 1 through 92.

94. Pursuant to CPLR § 7803(3), a determination may be annulled if it constitutes an abuse of discretion.

95. The ZBA abused its discretion by granting a Natural Resources Special Permit without requiring restoration or remediation of the documented flank erosion and damage to Petitioner's adjacent property caused by the Geocube revetment that is the subject of the permit.

96. The ZBA abused its discretion by failing to impose conditions necessary to mitigate the adverse impacts of the Geocube removal and restoration project on Petitioner's neighboring property, despite statutory authority and public comment requesting such conditions.

97. The ZBA abused its discretion by approving a restoration plan that lacks sufficient detail regarding protection of Petitioner's neighboring property and provides no information for how the dune restoration will transition to the surrounding grade affecting Petitioner's property.

98. The ZBA abused its discretion by making findings that the project would benefit Petitioner's adjacent property while simultaneously failing to address or require remediation of documented harm to Petitioner's property.

99. The ZBA abused its discretion by failing to consider the impact of its determination on Petitioner's neighboring property despite extensive evidence and public comment documenting such impact.

**AS AND FOR A THIRD CLAIM FOR RELIEF:**

**THE DETERMINATION IS AFFECTED BY AN ERROR OF LAW**

100. Petitioner realleges and incorporates by reference paragraphs 1 through 99.

101. Pursuant to CPLR § 7803(3), a determination may be annulled if it was affected by an error of law.

102. Town Code § 255-4-40 provides that no special permit shall be granted unless the ZBA finds that the proposed use does not prevent the orderly and reasonable use of adjacent properties.

103. Town Code § 255-5-51(F)(3) provides standards for Natural Resources Special Permits, including that erosion control structures shall not interfere with the littoral transport of sand so as to cause substantial damage to or a measurable increase in erosion of the project site or downdrift beaches or shoreline.

104. New York Town Law § 274-b(4) provides the ZBA with authority “to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit” and well provides that applicable agents and officers are authorized to enforce such conditions.

105. Under SEQRA, 6 NYCRR § 617.11(d)(5), the ZBA as lead agency was required to: “certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.”

106. The ZBA committed an error of law by granting the Natural Resources Special Permit without making findings regarding the impact of the Geocube removal and restoration on Petitioner's adjacent property and whether the project as approved prevents the orderly and reasonable use of Petitioner's adjacent property.

107. The ZBA committed an error of law by failing to consider whether the approved restoration plan, which lacks detail regarding transition to Petitioner's property and protection of Petitioner's property, complies with the requirement that erosion control structures and their removal shall not cause substantial damage to or measurable increase in erosion of downdrift beaches or adjacent shoreline.

108. The ZBA committed an error of law by failing to impose reasonable conditions necessary to ensure compliance with Town Code § 255-4-40 and § 255-5-51 and NY Town Law § 274-b regarding impacts to adjacent properties, and in particular Petitioner's adjacent property.

109. The ZBA committed an error of law under SEQRA by issuing a Negative Declaration and approving the project without requiring mitigation measures to address documented adverse environmental impacts to Petitioner's adjacent property.

110. The ZBA committed an error of law by certifying the use notwithstanding the fact that the use did not contain conditions to avoid or minimize adverse environmental impacts to the maximum extent practicable by incorporating as conditions to the decision mitigative measures that were identified as practicable, as required by 6 NYCRR § 617.11(d)(5). Indeed, the ZBA wholly failed to identify any mitigative measures or impose any mitigative conditions for Petitioner's property in connection with the NSRP that was granted.

**AS AND FOR A FOURTH CLAIM FOR RELIEF:**

**THE DETERMINATION IS IN VIOLATION OF LAWFUL PROCEDURE**

111. Petitioner realleges and incorporates by reference paragraphs 1 through 110.

112. Pursuant to CPLR § 7803(3), a determination may be annulled if it was made in violation of lawful procedure.

113. The ZBA violated lawful procedure by approving the Natural Resources Special Permit based on plans and protocols that the Board's own Planning Department and public commenters identified as incomplete and lacking sufficient detail to assess impacts to neighboring properties.

114. The ZBA violated lawful procedure by granting the permit without an adequate and current survey showing existing conditions of the Geocube revetment and adjoining erosion, which multiple parties identified as necessary to design an adequate restoration plan.

115. The ZBA violated lawful procedure under SEQRA by issuing a Negative Declaration without adequately considering the impacts to Petitioner's adjacent property and without requiring mitigation measures to address documented adverse environmental impacts.

116. The ZBA violated lawful procedure by failing to adequately consider and address the extensive public comments submitted by Petitioner documenting the flank erosion and damage to Petitioner's property and requesting conditions to address such impacts.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner Lewis Saul respectfully requests that this Court enter judgment:

1. Annuling and vacating the Determination of the Zoning Board of Appeals for the Town of East Hampton dated June 2, 2026, which granted a Natural Resources Special Permit to Respondent Nigel Curtiss;
2. In the alternative, modifying the Determination dated June 2, 2026 to require restoration and remediation of the flank erosion and damage to Petitioner's property at 383 Cranberry Hole Road caused by the Geocube revetment;
3. Remanding the matter to the Zoning Board of Appeals for the Town of East Hampton with directions to impose conditions requiring restoration of flank erosion affecting Petitioner's property and requiring a detailed restoration plan that addresses transition of the dune restoration to the surrounding grade at Petitioner's property line;
4. Awarding Petitioner costs and disbursements of this proceeding; and

5. Granting such other and further relief as this Court deems just and proper.

Dated: June 24, 2026  
Riverhead, New York

TWOMEY, LATHAM, SHEA, KELLEY  
DUBIN & QUARTARARO, LLP

By: 

Karen A. Hoeg, Esq.

Joan M. McGivern, Esq.

33 West Second Street

P.O. Box 9398

Riverhead, New York 11901

(631) 727-2180

[khoeg@suffolklaw.com](mailto:khoeg@suffolklaw.com)

[jmcgivern@suffolklaw.com](mailto:jmcgivern@suffolklaw.com)

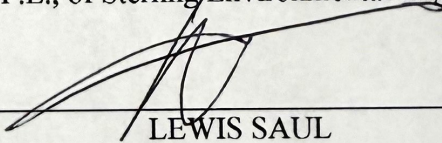
VERIFICATION

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF SUFFOLK )

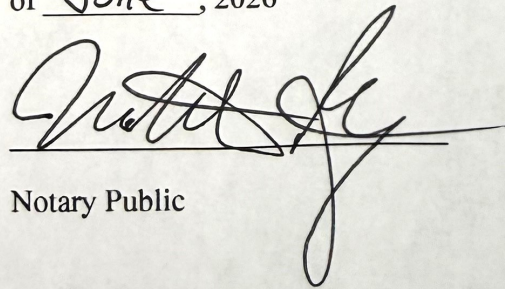
LEWIS SAUL, being duly sworn, deposes and says:

I am the Petitioner in the above-entitled proceeding. I have read the foregoing Verified Petition and know the contents thereof. The contents are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The grounds of my belief as to all matters not stated upon my knowledge are correspondence, documents, and records in my possession and discussions with my attorneys and with my engineering consultant Andrew M. Millspaugh, P.E., of Sterling Environmental Engineering, P.C.

  
LEWIS SAUL

Sworn to before me this 24 day  
of June, 2026

  
Notary Public

MATTHEW POTZ  
Notary Public - State of New York  
No. 01PO0007138  
Qualified in Suffolk County  
My Commission Expires 05/10/2027