

Eastham Conservation Commission

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**Eastham Conservation Commission
2500 State Highway
Earle Mountain Room
September 23, 2014
Public Hearing
MINUTES**

Commissioners Present: Chair Stephen Smith, Linda Haspel, Steven Kleinberg, Michael Harnett, Steven LaBranche, Mary Zdanowicz and James Baughman.

Commissioners Not Present: All commissioners present.

Staff Present: Shana Brogan.

Also Present: Town Counsel Michael Ford, Natural Resource Manager Nate Sears, Conservation Agent John Jannell, and Shorebird Monitor Paul Wightman of the Town of Orleans, Jason Ellis of J.C. Ellis Design, Tim Klink of Coastal Land Design, Paul Dunne, Amiee Eckman, Jayne Greico, Galileo and Wendy Bonfini.

6:00 PM

Chair Smith opened the hearing.

Notice of Intent filed by the Town of Orleans. Applicant proposes operation and management of an off-road vehicle (ORV) program for up to two hundred vehicles to drive and park on Nauset beach barrier beach, Eastham, Map 26A and 27A.

Town Counsel Michael Ford, Natural Resource Manager Nate Sears, Conservation Agent John Jannell, and Shorebird Monitor Paul Wightman were present to speak to the project. Attorney Ford noted that they were lacking a Department Environmental Protection (DEP) file number and have not received a response from Natural Heritage Endangered Species Program (NHESP). Attorney Ford provided a new letter prepared in response to a National Park Service letter. Attorney Ford assumes the commission has had a chance to review the letter.

Attorney Ford said he believes the program that is proposed complies with the performance standards and bylaws. The first part of the plan includes Orleans placing symbolic fencing for shorebird monitoring. The plan does not increase the numbers of vehicles, two hundred vehicles are proposed for both Eastham and Orleans, and they will hire specially qualified personnel. They would also impose the rules and regulations for the beach and referred to page 5C. He suggested special conditions for rare species management and a shorebird monitor would be employed from April 1, to the end of summer. He noted a protocol for least terns and noted the beaches are often closed due to shorebirds. Attorney Ford said they have strictly enforced the rules and regulations. He also noted the diamond backed terrapins in the special condition as well. Red knots and

roseate terns may also need to be part of the plan. Attorney Ford noted this was not an activity that lends itself to an alternatives analysis. He noted they understand they need an Order of Conditions and they need approval of the Eastham bylaw.

Chairman Smith noted that the application is vague and the commission needs more information and details. Nate Sears noted he has managed the beach. Mr. Baughman said there were vehicles on the west side of the spit. Mr. Sears noted the west ORV use was actually use on the inward hook of the spit. Mr. Baughman noted there were a lot of vehicles on the west side. Chairman Smith noted he has seen cars on the west side of the spit and that brings up an enforcement question. He noted Mr. Sears and Attorney Ford will want to look at the terminus of the spit. Mary Zdanowicz asked what would be the protocol for the evaluations of the shorebird habitat. It was explained that every year they ride down the beach with state and federal officials and look at the resource area, a report is not developed, they just look at changes from previous storms.

Ms. Zdanowicz asked in terms of delineation for symbolic fencing and looking at the fifteen foot mark how they decide where the toe of the dune is located. Mr. Sears said every April they set the symbolic fencing fifteen foot in the fore front of the dune. He said he actually measures it, but as sand washes in it can change and the dune can build back up. Ms. Zdanowicz asked if the National Seashore has a more comprehensive protocol for evaluating the resource. Mr. Sears noted the Fish and Wildlife Service (FWS) and NHESP come to town each year. Mr. Jannel noted the resource area changes so much.

Ms. Zdanowicz asked why the applicant wants the Order of Conditions to continue the project over time. Attorney Ford gave the history of the 1991 Order of Conditions for the spit. He noted it was the first management plan in the Commonwealth and it has never been challenged. Ms. Zdanowicz noted she would need to see better justification to allow an Order of Conditions to be on going.

Steven Kleinberg asked Mr. Sears and Mr. Jannel if there is any circumstance that an official vehicle would drive between the buffer of the dune and ORV corridor. Mr. Sears noted that rescue would be the only reason they would drive in the buffer. He went over the beach patrol program and the traffic management program. He noted there is an educational video for ORV permit applicants to watch. Mr. Sears did note the need to address the parking area at the end of the spit and manage it a little differently. Michael Harnett requested a record of enforcements that have occurred.

Mr. Sears said they would be responsible for monitoring the shorebirds. Linda Haspel asked if there was any data of shorebirds success rate in the seashore with and without ORV activity. Paul Wightman noted they are supposed to supply a report and keep census records. He noted the main impact to shorebirds is predators. Mr. Wightman noted the plovers tolerate people, but he had not seen any chicks on Nauset spit this year. He did note they see predators and tracks on the spit. Attorney Ford said there maybe some records of South Beach in Chatham that could be looked at for similar data.

Chairman Smith asked where the inlet was located in 1991. Mr. Jannel said it was basically in the same place as it is now. Chairman Smith noted the spit is substantially in the same spot as it is now and a Notice of Intent was not filed at that point for the activity in Eastham. Ms. Zdanowicz noted the Town of Orleans has an Order of Conditions and they have not obtained a Certificate of Compliance. Attorney Ford said that is correct. Ms. Zdanowicz asked how the commission could be less stringent than the regulations allow by allowing a permit longer than three years. Attorney Ford noted he will look into this for the next hearing.

Chairman Smith opened up the meeting to hear comments from the public. Aimee Eckman said that town bylaws trump wetland bylaws. It was noted that Orleans educated their sticker holders not to drive past the town line. In a special act from the State legislature in 2012 there was a perambulation, and she said walking is an alternative. Attorney Ford noted special act to the legislature provision that allowed the activity to occur if it was appealed. Mr. Harnett noted the signs on the beach are advisory.

Steven Kleinberg **MOVED** move to continue until October 28, 2015, Mary Zdanowicz **SECONDED**.

ALL IN FAVOR.

Request for Amended Order of Conditions filed by the Town of Eastham. Applicant proposes expansion of shellfish aquaculture grant site N-66 for Paul Dunne from one quarter acre to two acres in Nauset Marsh, Eastham.

Neil Andres of the Town of Eastham Department of Public Works and Paul Dunne aquaculture grant holder were present to speak to the project. Mr. Andres noted that the area contained no eel grass or spartina alterniflora. Mr. Dunne noted he holds a commercial shellfish license in both towns.

Linda Haspel **MOVED** to approve expansion of shellfish aquaculture grant site, Steven Kleinberg **SECONDED**.

ALL IN FAVOR.

Request for Amended Order of Conditions filed by Adam and Alison Saffer. Applicant proposes amending DEP SE 19-1485 to include driveway expansion at property located at 20 Nickerson Road, Map 14, Parcel 122.

Linda Haspel **MOVED** to approve driveway expansion, Mary Zdanowicz **SECONDED**.

ALL IN FAVOR.

Request for determination of Applicability filed by Jayne and Ralph Grieco. Applicant proposes deck replacement and removal of second deck without replacement at property located at 290 Goody Hallett Drive, Map 20, Parcel 022.

Jayne Grieco was present to speak to the request. She noted they would like to remove the lower deck and replace the siding and roofing on the upper deck. Shana Brogan noted there was potential for construction material to get into the marsh. Mrs. Grieco noted that they need to put in stairs, but have not figured that part out. Mary Zdanowicz asked if the cement pad under the bottom deck would be left in place. Chairman Smith noted there is no limit of work. Mrs. Grieco noted it may be cleaner to do some forward thought and submit a Notice of Intent for the entire project. Chairman Smith said they would need a larger site plan. Mrs. Grieco requested to withdraw the request.

Mary Zdanowicz **MOVED** to approve the withdrawal, Michael Harnett **SECONDED**.

ALL IN FAVOR.

Notice of Intent filed by Donna Veneri. Applicant proposes a septic system upgrade at property located at 160 Windjammer Lane, Map 19, Parcel 071

Jason Ellis of Ellis Design was present to speak to the project. He noted most of the area involved with the new septic was located in the driveway.

Mary Zdanowicz **MOVED** to approve the septic upgrade, Michael Harnett **SECONDED**.

ALL IN FAVOR.

Notice of Intent filed by Patricia Peters. Applicant proposes a septic system upgrade and installation of a new well at property located at 190 Eldredge Drive, Map 01, Parcel 066.

Jason Ellis of Ellis Design presented the project. He noted that the applicant currently has a cesspool and it will be abandoned and a new septic system will be installed. It will include a shallow to the surface leach field. Mr. Ellis noted they would drill with a portable rig for the well.

He said they would be pruning and not removing the shrubs. Mr. Ellis agreed to plant beach grass. Chairman Smith noted that the planting area only includes a 1:1 mitigation plan and it needs to be a 2:1 mitigation plan. He said that the corner where the leach field is proposed has a lot of habitat. Chairman Smith noted there needs to be a square footage area planted that is equal to what was taken out for the installation of the leach field. Mr. Ellis noted no shrubbery would be taken out for the cesspool and no dewatering would be required. Chairman Smith asked for the seed mix specifications.

Steven Kleinberg **MOVED** to continue to October 14, 2014, Mary Zdanowicz **SECONDED**.
ALL IN FAVOR.

Continuation of Notice of Intent filed by Reed A. Richard and Annette M. Richard. Applicant proposes after the fact construction of a permanent dock and dug-in stairway, removal of trees and vegetation and stabilization of an inland slope and a stabilization and restoration plan at property located at 35 Duck Marsh Lane, Map 12, Parcel 214.

Mary Zdanowicz noted she requested a site plan and did not receive it. Ms. Zdanowicz asked if the commission could request assistance from the Department of Environmental Protection (DEP) and Shana Brogan said she would contact the DEP. Steven Kleinberg noted that the commission needs to demonstrate that this is an important violation and it does not look like the applicant will be in compliance with the fines.

Steven Kleinberg **MOVED** to continue to October 14, 2014, Mary Zdanowicz **SECONDED**.
MOTION CARRIED.

Linda Haspel **ABSTAINED**.

Other Discussion

Bonfini, DEP SE 19-1431– Request to use pressure treated wood for deck.

Wendy and Galileo Bonfini were present to speak to the project. The applicant received an Order of Conditions and the new products. Mr. Bonfini would like to use pressure-treated wood for the post and frames of his project. Chairman Smith noted there are many questions about the micronized copper found in pressure-treated wood. He noted that the commission has not allowed other applicants to make the change. Chairman Smith said that if they use air dried stock, it does not rot nearly as quickly. He said there are native lumbers that are available and suggested using shellac on the lumber. Steven Kleinberg noted the commission has looked at independent reports on the various pressure-treated woods. Chairman Smith said pressure-treated wood could not be used, but added you can buy non- treated southern yellow pine. He noted that the cost of the wood is not something the commission engages in and does not make decisions based on cost.

Sandy Bayne - Discussion regarding fertilizer use within the buffer zone freshwater ponds.

The commission had a discussion with Sandy Bayne about the use of fertilizer and noted that any plan that comes forward will ask if the town has done any preventative measures. Steven Kleinberg said the towns of Barnstable, Mashpee and Orleans will have a bylaw concerning the use of fertilizers. Mr. Kleinberg supports moving forward and adopting the fertilizer regulation. The commission would like to adopt a written policy for now and noted it could be put on the town website. Steven Kleinberg plans to draft the policy.

25 Bay View Drive

Jason Ellis and Tim Klink were present to speak to the property in question. There was an excavator noticed on the property and the commission questioned if it was in their jurisdiction. Tim Klink said he would stake out the one-hundred foot buffer zone with orange fencing.

Discussion regarding “fat bikes” on tidal flats.

The commission is concerned how they could impact the sand dunes. It was noted it is a vehicle and that the commission can not make rules for everything. Since it is a vehicle the commission suggested posting informational signs to prevent them from going on the beach. They said "NO VEHICLE" signs should be on the beach.

Respectfully Submitted as prepared by,



Teena Tilton



Michael Harnett, Chairman
Conservation Commission