

**Orleans Conservation Commission**  
**Town Hall, Nauset Room**  
**Hearing Meeting, Tuesday, April 2, 2013**

'13 MAY 28 10:31AM  
K. D. Dery, Asst.  
ORLEANS TOWN CLERK

**PRESENT:** Judith Bruce, Chairwoman; Bob Royce; James Trainor; Jamie Balliett; Jim O'Brien; Judy Brainerd; Nancy O'Mara, Associate; Philips Marshall, Associate; John Jannell, Conservation Administrator.

**ABSENT:** Steve Phillips, Vice-Chairman.

8:30 a.m. Call to Order

*Nancy O'Mara is a voting member for the purpose of this hearing meeting.*

**Continuations**

Last Heard 3/19/13

**Donald & Karen Bachman, 2 Mayona Circle.** by Ryder & Wilcox, Inc. Assessor's Map 50, Parcel 105. The proposed removal of an existing dwelling & construction of a single family dwelling; the pumping & abandonment of existing cesspools; the installation of a new septic system, & grading & landscaping. Work will occur within 100' of the Top of a Coastal Bank & within the Pleasant Bay A.C.E.C. David Lyttle passed to the Commission revised plans, stating that the first page showed the deck being pulled back and the stairway back from the southwest corner making it almost entirely outside of the A.C.E.C. David Lyttle pointed out that the proposed plan was not entirely out of the 75' buffer or A.C.E.C., but that the current dwelling also encroached upon these areas. The second page of the revised plan showed the area down to the salt marsh co-owned by the applicant and the owners of 4 Mayona Circle showing a proposed 25' no-mow zone. David Lyttle pointed out that at this time they had not spoken with the neighbor about whether or not they could agree upon this proposed area. David Lyttle asked that the meeting be continued so that a letter could be provided to the Commission, and asked if the changes to the site plan were acceptable to the Commission. Judith Bruce felt the proposed changes were in line with what the Commission had requested, and felt the no-mow zone was an important thing which the neighbors should also be on board. David Lyttle asked if he could tell his clients that the proposed work would be acceptable pending receipt of the letter, and Jamie Balliett asked how the delineation of the 25' no mow zone would be proposed. David Lyttle said he was unsure at this time, and Jamie Balliett asked if the Notice of Intent should be revised to include both properties. David Lyttle said he would prefer to submit a letter of support as opposed to re-filing the Notice of Intent which would cause time and financial constraints for his clients. Judith Bruce thought that the no-mow zone could be delineated with stakes and filed for under an Administrative Review to provide a record of this, and Jamie Balliett felt that would be suitable. John Jannell recommended that the Commission receive a letter from the other owner stating that they were amenable to the no mow zone. David Lyttle said he could stake out the 25' no mow zone line and include that on a revised plan. Judith Bruce asked that a letter of support also be received, and David Lyttle asked to continue the hearing for one week to April 9, 2013.

**MOTION:** A motion to continue the hearing to April 9, 2013, was made by Jamie Balliett and seconded by Judy Brainerd.

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**VOTE:** Unanimous

Last Heard 3/26/13

**Timothy & Andrea Howell, 25 Cheney Road.** by Ryder Wilcox, Inc. Assessor's Map 42, Parcel 1. The proposed reconstruction of an existing 4' by 20' licensed pier, & the reconfiguration & replacement of a float. Work will occur on Land Under the Ocean, on Land Subject to Coastal Storm Flowage, on a Coastal Beach, & within the Pleasant Bay A.C.E.C. Judith Bruce asked if a DEP number had been issued and a letter from NHESP had been received. David Lyttle said that while a DEP number had been issued, he had not received a letter from NHESP. David Lyttle explained that he had contacted NHESP, and they had said it had been received and would be reviewed. Judith Bruce said that the Commission had conditioned approvals pending receipt of approval from NHESP, and John Jannell said a condition could be included that the applicant would be subject to any comments or requirements set forth by NHESP. David Lyttle noted that a previous NHESP ruling had given a specific timeline in which work would be permitted, and John Jannell said that there were date restrictions under the Orleans Standard Conditions limiting the time in which work can be performed due to shellfish protection. John Jannell said that NHESP may limit the time which work could be performed. Judith Bruce asked if David Lyttle was comfortable with an Order which would include any special conditions sought by NHESP, and David Lyttle said yes.

**MOTION:** A motion to close the hearing was made by Jim O'Brien and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**MOTION:** A motion to approve the site plan dated February 28, 2013, with the condition that the project was subject to approval and all special conditions sought by NHESP was made by James Trainor and seconded by Jim O'Brien.

**VOTE:** Unanimous.

### **Notice on Intent**

**Eric & Helen Dicke, 66 Davis Road.** by Land Design Associates. Assessor's Map 89, Parcel 18. The proposed construction of a single family dwelling & the removal of invasive species. Work will occur within 100' of the Edge of an Unnamed Pond & the Edge of a Wetland. George Reilly of Land Design Associates, Mon Cochran, Trustee for Pleasant Bay Narrows Trust, and Eric Dicke, applicant, were present. George Reilly went over the proposed site plan, noting that the property was divided into 3 sections, 2 of which the Orleans Conservation Trust(OCT) held restrictions and the third which was encumbered by the buffer zone to the pond. The proposed work included the clearing of invasive species within the pond and surrounding buffer, and the construction of the house afterwards. George Reilly pointed out that after the construction of the house the applicant may return with a formalized view easement filing. Judith Bruce commented that she had monitored the pond and recalled that it was inundated with invasives, and asked whether or not there were any native species present. George Reilly explained that despite the area being taken over by bittersweet, there was blueberry and winterberry on site. Judith Bruce confirmed that the invasives would be removed and the natives would remain, and George Reilly said yes. Judith Bruce noted that the house was barely located within the 100' buffer, and the septic system was outside of the buffer zone. Judith Bruce asked for the OCT's opinion, and John Jannell reported they had been working alongside the applicants

during the design of this property. James Trainor felt the house location was the best place given the property, and Jamie Balliett asked if the area of revegetation would be mowed. George Reilly said the area to be cleared would be re vegetative with native seed, and would more than likely need to be maintained. Jamie Balliett asked if this would be in the form of an annual mow, and George Reilly said yes. Jamie Balliett said the Commission would like to know when this annual mow would occur, and Judith Bruce was concerned about naming a specific timeline given the property may require additional plantings. George Reilly felt the additional plantings would be needed along the limit of work line, and Jamie Balliett pointed out that the Commission did not permit mowing up to the Edge of Wetlands. George Reilly was confident the shrubs would recover nicely, and suggested a fall mow after the seed pods have spread out. Judith Bruce noted that a DEP number had not been issued, and asked that some type of documentation stating that OCT would be included in the monitoring of the proposed work should be provided. John Jannell was aware that the OCT had been working with the applicants, and would ask for an e-mail or letter of support for the file record. George Reilly said he would contact DEP about the issuance of a number, and asked that the hearing be continued for one week.

**MOTION:** A motion to continue the hearing to April 9, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

**VOTE:** Unanimous.

**Steven Vorel, 5 Little Marsh Lane.** by Ryder & Wilcox, Inc. Assessor's Map 69, Parcel 43. The proposed installation of a Title 5 septic system to replace an existing failed system & the pumping & filling of the existing leaching pit. Work will occur within 100' of the Edge of an Inland Wetland. Stephanie Sequin of Ryder & Wilcox, Inc. went over the existing conditions for the site, explaining that the majority of the property was encumbered by the 100' buffer zone to the Edge of the Inland Wetland. Stephanie Sequin said this property also required Board of Health approval, and would be going in front of them on Thursday, April 4, 2013. Peggy Harris, abutter at 8 Riverview Way, asked where the property line was located to ensure work was conducted only on the subject property. Stephanie Sequin said that would be find, and John Jannell asked if there was a concrete bound at that corner, and Stephanie Sequin said there were some stakes along that property line which could be added to as necessary. Stephanie Sequin said the excavator was aware of the proximity of the work to the property line, and would be removing between 18" to 3' of material. John Jannell noted that the on-site for the proposed work demonstrated that the proposed location was the best place given its proximity to the resource area, but that at this time a DEP number had not been issued. Stephanie Sequin asked that the hearing be continued for one week in hopes of receiving the file number.

**MOTION:** A motion to continue the hearing to April 9, 2013, was made by Jamie Balliett and seconded by Jim O'Brien.

**VOTE:** Unanimous.

### **Amended Order of Conditions**

**Philip & Janine Howarth, 20 Snow Way.** by Ryder & Wilcox, Inc. Assessor's Map 5 Parcel 22. The proposed construction of a guesthouse/boat barn, pool house, tennis court, driveway, & installation of underground utilities; & the proposed management of invasive species has been amended to expand the scope of the Land Management Plan to include southern portions of the property. Work will occur in the buffer zone to an inland pond,

Intermittent stream, Bordering Vegetative Wetland, Top of a Coastal Bank, on a Coastal Bank, on Land Subject to Coastal Storm Flowage, in a Salt Marsh & in a Bordering Vegetated Wetland. Seth Wilkinson of Wilkinson Ecological Design explained that this second phase of work was initially proposed to be done at a later time, but given the existing site access conditions, it would be best to address the work now before the tennis court was installed and machine access was eliminated. Seth Wilkinson said that there were 3 main areas where work was proposed, and went over the process on how each would be addressed under an Amended Order of Conditions. Seth Wilkinson also explained that it would be handwork on the maritime forest area, and mechanical work on the upland areas. Judith Bruce said that while it was a rare opportunity to see 10 acres being restored, the current 5.6 acres which is being aggressively managed currently looked stripped and almost devoid of vegetation. Judith Bruce understood that while the area itself was seeded and would come in, she was concerned that the maritime forest did not have a planting plan for vegetation to be installed, and there was no understory on the property. Judith Bruce was concerned that the additional work may have a negative impact to the area, and felt that given the current timeline, this work would be best to happen in December. Judy Brainerd had the same concerns, and was worried about the lack of cover for wildlife and agreed that waiting until November-December would be best. Judith Bruce inquired about the access area, asking wouldn't there be access still over the tennis court. Seth Wilkinson said the tennis court would have a permanent fence surrounding it, and they did not want to drive over its surface. Seth Wilkinson was concerned with driving over the recently seeded meadow, and noted that the maritime shrub proposed to have invasives selectively removed. The maritime coastal forest had a lot of shrub honeysuckle present, but had some native species left underneath. The remaining understory was tall, and what was left were plantings which they did not think would become wind thrown and some shrubs, while appearing leggy, were left to recover on their own. Seth Wilkinson was confident that there would be a surge of growth during the spring/summer growing season. Seth Wilkinson stated that they had documented what was found on site and that while looking at the site before the growing season, the Commission saw a lot of disturbed area. Seth Wilkinson said they considered the nesting season to begin around May 1<sup>st</sup>, and that Erin Hilley of Wilkinson Ecological Design and Don Shall on ENSR were working on this as well. Seth Wilkinson was very confident that they would see 2-3 of growth for the area. Judith Bruce said while she had a great deal of faith in their work, there was still concern about the area, and in particular the northeast area. This maritime coastal forest currently had no understory, the stream bank was devoid of vegetation, and she was concerned about the amount of erosion given the multiple silt fences already needed to thwart sediment concerns and reduce the impact of the steep grade. Jamie Balliett asked if Wilkinson Ecological Design was being moved into fast-forward because of the tennis court, and Seth Wilkinson explained the applicants fast-tracked the tennis court. Seth Wilkinson stated that once the tennis court was constructed there would have to be a different entry point, and Jamie Balliett inquired about a possible alternative's analysis and changing the access point. James Trainor noted that the other side was very much open right now, and that the Commission had the chance to allow the applicant to get all of the work done now or drag out the process for several more years. Judith Bruce felt the worst case scenario would be if the applicant abandoned the proposed work, and that a bond may be necessary to reassure the Commission that this area would continue to be restored. John Jannell noted that this was the first year of a 3

year plan, and that during the hearing process when the Order of Conditions was issued, a performance bond was not discussed because the proposed work did not require a lot of plantings. John Jannell explained that the Commission could either accept the proposed Amendment to the Order or require the applicant to file under a new Notice of Intent for the work. John Jannell explained that a shrub community had been cut and left to rejuvenate. The Commission could at this time request a bond with an Amendment should they wish to proceed in that direction. John Jannell felt that during the on-site with the Commission the applicant was concerned about timing for the proposed additional work, and the builder and Wilkinson Ecological Design had put forth a great deal of effort into controlling the erosion concerns throughout the winter. John Jannell noted that bonds were typically taken in to ensure plant survivability, and Judith Bruce suggested one which was for the commitment to on-going survivability. Seth Wilkinson felt that while the applicant may not be against a reasonable bond, their current 6-figure investment into the project made him think that the applicants would be unwilling to walk away from the proposed work. Judith Bruce asked if the Isolated Wetland was in fact a Vernal Pool, and whether or not this work could impact species in a Vernal Pool. Seth Wilkinson noted that throughout the winter months there was standing water on and off all year, and the proposed work would be to remove the greenbrier by hand. Judith Bruce asked if the root was to be removed, and Seth Wilkinson said it would be cut and wiped, the same process used to treat Asiatic Bittersweet. Judith Bruce said while she did not want to misjudge the site given the time of year and its current condition with 5.6 acres already disturbed, she preferred that the applicant hold off on the work until November or December. Bob Royce agreed, and Jamie Balliett felt that if the tennis court needed to move forward at this time, alternative analysis for the site access be explored. Jim O'Brien noted that there was a history of staging vegetation projects, and John Jannell asked the Commission if in general they supported the effort to restore the area. Judith Bruce felt the work was a good thing, and John Jannell asked if Seth Wilkinson would have alternative means of access for the site in the fall. Seth Wilkinson said some trees may have to be moved for this to occur, and asked if the Commission would allow for the handwork only to occur at this time, and have the Commission return to the site in the fall to determine when the additional work could move forward. Judith Bruce felt handwork was something which was not deterred by the construction of a tennis court, and Seth Wilkinson said machinery would be used with this hand work to pull the material out. Seth Wilkinson preferred to run over the meadow prior to the seed germination, and Judith Bruce felt the area needed to be left until things were dormant. Jim O'Brien brought up the staging process, noting that while the Commission would more than likely be pleased with the work in the fall, they needed to hold off on additional new work on the site. Seth Wilkinson asked if there would be the chance to allow for handwork on the Coastal Bank or the Isolated Vegetated Wetland. Judith Bruce felt it was not an issue of handwork or machine work but rather the idea of additional clearing. Seth Wilkinson noted the proposed work was for 10% of the plant communities, and Judy Brainerd inquired what the site would look like after all of the handwork. Seth Wilkinson felt the visual impact would be minimal and all of the shrubs were to remain. Jamie Balliett asked to clarify the 10% figure, and Seth Wilkinson said it would be 10% of the biomass removed, with the trees and shrubs to remain. Judith Bruce noted that greenbrier is a native species which is good habitat for critters, and that it would be best to manage what was already approved under the current Order of Conditions. Jim O'Brien felt hand wiping and hand removal would be approvable, and Jamie Balliett asked if this

work was on the Coastal Bank, would there be an erosion concern. Seth Wilkinson explained that due to the steepness of the Coastal Bank the work would have to be done by hand, and the roots would remain. Jamie Balliett felt that this work would be approvable at this time. John Jannell pointed out that he and Judy Brainerd conducted a second site visit where they saw a lot of material on the Coastal Bank along the Rachel's cove side. Judy Brainerd agreed that the vegetated bank was impressive, and Judith Bruce asked that the Isolated Wetland remain untreated. Judy Brainerd pointed out that groundcover was the concerns, and James Trainor and Jamie Balliett agreed with the invasive removal. John Jannell asked for clarification that the work would be machine assisted handwork, and Seth Wilkinson explained the machines were there mainly for disposal. John Jannell asked for chopped straw on the ground. John Jannell explained to the Commission that they had in front of them a request to Amend an Order of Conditions which they needed to vote if it was acceptable to Amend the Current Order.

**MOTION:** A motion to accept the request to Amend the Order of Conditions and close the hearing was made by James Trainor and seconded by Jamie Balliett.

**VOTE:** Unanimous.

John Jannell said the Commission could ask for a specific time period for certain portions of the work to take place, and Bob Royce asked for clarification of the different stages of the work. Seth Wilkinson said the proposed hand removal of invasives could be the Maritime Shrub area, with the Early Successional and Shrub Swamp areas to be held off on this growing season. John Jannell said the Commission could vote to endorse this said work with the additional work to be approved subject to a site visit. Seth Wilkinson felt this sounded reasonable, and Jamie Balliett asked what date he would suggest. Seth Wilkinson suggested November 1, and Jamie Balliett suggested that no work start on the designated areas until November 1. Seth Wilkinson suggested a site visit from the Commission in either September or October. Judith Bruce clarified that this work would be for the removal of the invasives only, and the Early Successional and Isolated Wetland work would not begin until November 1<sup>st</sup>, with the Conservation Commission to conduct a site visit in the fall.

**MOTION:** A motion to issue an Amended Order of Conditions and that work would be for the removal of the invasives only, and the Early Successional and Isolated Wetland work would not begin until November 1<sup>st</sup>, with the Conservation Commission to conduct a site visit in the fall was made by Jamie Balliett and seconded by Bob Royce.

**VOTE:** Unanimous.

Judith Bruce said this was a good project, and James Trainor asked for a photo record of the progress of the work be conducted so that it could be demonstrated how vegetation was able to rebound under this process. Seth Wilkinson agreed, noting that video footage had taken place during the winter months of the site.

#### **Request for Determination of Applicability**

**NSTAR Electric, 15 Bog Hollow Road.** by Environmental Consulting & Restoration LLC, Assessor's Map 39, Parcel 21. The proposed after the fact installation of a chain link fence & continued maintenance of the facility. Work has occurred within 100' of the Edge of Wetland & the Edge of Hurley's Bog. Kevin McCune of NSTAR and Brad Holmes of Environmental Consulting & Restoration were present. Brad Holmes explained that NSTAR coordinated with the Conservation Administrator in office during the planning stages of the property back in 2007 where at that time it was thought that the proposed work was outside of Conservation Commission jurisdiction. Brad Holmes stated that

during his recent delineation of the resource areas it was determined that work had been conducted within 85' of the Edge of Wetland. The maintenance yard was constructed in a previously disturbed area, surrounded by a chain link fence to provide storage for contractor vehicles to be used as NSTAR issues arise. Judith Bruce explained that the Commission was generally concerned about fences thwarting wildlife passage and trail restriction, but given its location within the buffer zone wildlife passage may not be of concern. Judith Bruce asked what additional materials were stored on site to be used on an as-needed basis, and whether or not there would be groundwater pollution concerns. Kevin McCune explained that the materials present were generally those used for construction of the distribution systems, and some transformers which contained less than 25 gallons were only cause for concern after 30-40 years. The transformers on site were new, and the only way that they could leak would be if they were on the ground and hit by something. James Trainor asked if a structure could be built to contain any potential spillage. Kevin McCune asked if this meant a barrier, and said that there were concerns that if such containers filled with water, the transfers would rust out. Kevin McCune suggested an earthen berm along the fence line, and Judith Bruce said that this barrier should be located at a minimum at the 100' buffer line. Jamie Balliett asked if the transfers could be moved out further from the buffer zone at about 130' away, and Kevin McCune said they would look to see where they could be moved without fear of them being hit. Kevin McCune suggested that an area be designated for their storage, and Judith Bruce noted that since this was an RDA, it could not be conditioned like an Order of Conditions. Kevin McCune explained that NSTAR had received RDA's with conditions from other towns. Bob Royce inquired about the empty 55 gallon drums shown in the site photos, and Kevin McCune explained that these were used to hold the ground while they install a pole. Judith Bruce asked if it was a full container, and Kevin McCune said they are only used to aid construction. Robert Cunningham of 85 Nauset Heights Road said that he was led to believe that DCR would be removing some of the flashboards separating Upper Namskaket Creek from Hurley's Bog which would increase the tidal flow and may have an impact on the marsh at 15 Bog Hollow. Brad Holmes explained that the BVW was upgradient of the upper Marsh, and if the water levels were to rise, the BVW line would not change. John Jannell explained that a Negative Determination by the Conservation Commission would mean the Commission agreed that this work, although after the fact, would not alter the resource areas. John Jannell asked if failed transformers were stored on site, and Kevin McCune said no, and that only new materials were stored on site. Judith Bruce noted that the Commission could not condition the relocation of the materials. John Jannell suggested that NSTAR supply information on where the materials would be located for the record, and that the Commission could issue a Negative Determination and ask for the Conservation Administrator to follow up with NSTAR. Kevin McCune suggested that NSTAR could have them moved and would submit pictures for the record.

**MOTION:** A motion to approve was made by Jamie Balliett and seconded by James Trainor.

**VOTE:** Unanimous

Jamie Balliett inquired whether or not he had made the correct motion to issue the Negative Determination for the proposed work, and Erin Shupenis said she would note this in the minutes and make the necessary correction.

**MOTION:** A motion to issue a Negative Determination was made by Jamie Balliett and seconded by James Trainor.

**VOTE:** Unanimous.

**Rita Kneeland, 16 Driftwood Lane.** by Ryder & Wilcox, Inc. Assessor's Map 27, Parcel 26. The proposed pumping & abandonment of existing cesspools & the installation of a new septic system. Work will occur within 100' of the Top of a Coastal Bank. Stephanie Sequin of Ryder & Wilcox, Inc. Stephanie Sequin of Ryder & Wilcox explained this was the request to upgrade a septic system currently served by cesspools. All 3 wastepipes would be tied into a new septic tank, and the new leaching system would be located entirely outside of the 100' buffer. All of the new components would be located in established yard area, and upon completion, the area would be restored to its current condition. Judith Bruce said the removal of cesspools within the buffer zone was a good thing, and John Jannell felt the work was pretty straightforward.

**MOTION:** A motion to close the hearing was made by James Trainor and seconded by Jim O'Brien.

**VOTE:** Unanimous.

**MOTION:** A motion to issue a Negative Determination was made by Bob Royce and seconded by James Trainor.

**VOTE:** Unanimous.

#### **Request to Change Contractor**

**134 Namequoit LLC, 134 Namequoit.** The request to change the contractor on the approved Order of Conditions SE 54-2180 from Wilkinson Ecological Design to Adrian Punch of Harrow & Seed Sustainable Landscape Design & Management and Keith Johnson of Billingsgate Land Management. Adrian Punch of Harrow & Seed Sustainable Landscape Design & Management and Keith Johnson of Billingsgate Land Management were present. John Jannell explained a letter had been received by the applicant stating that they had received the Order of Conditions and were aware the work to be done. Judy Brainerd pointed out that there was concern about the beach plum, and John Jannell noted that it was part of the Order. Keith Johnson said there were 3 oak species to be transplanted which would be done with an air spade, and the recontouring of the bank would be done as approved. Adrian Punch noted that there would not be any deviation from the approved plans, and John Jannell noted that both of the applicants had worked successfully on previously issued Orders of Conditions from the Orleans Conservation Commission.

**MOTION:** A motion to approve this change in contractor was made by Jamie Balliett and seconded by Judy Brainerd.

**VOTE:** Unanimous

#### **Administrative Reviews**

**Sandra Macfarlane, 160 Tonset Road.** The proposed repair of existing coastal bank staircase posts. John Jannell explained this was a couple of posts hanging in mid-air due to erosion which would be lengthened and dug back into place.

**MOTION:** A motion to approve this Administrative Review was made by Bob Royce and seconded by Judy Brainerd.

**VOTE:** Unanimous

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**Laura Arnold, 18 Towhee Lane.** The proposed removal of 2 trees and trimming of 4 trees. Work to be done by Bartlett Tree Experts. John Jannell recommended approval of this work.

**MOTION:** A motion to approve this work was made by Bob Royce and seconded by Jim O'Brien.

**VOTE:** Unanimous

**John & Patricia McIntyre, 29 Fox Ridge Drive.** The proposed removal of 3 dead poplar trees. Work to be done by TNT Landscape. John Jannell explained that these were 3 white poplars in the lawn and recommend they can be approved under an Administrative Review.

**MOTION:** A motion to approve this Administrative Review was made by Bob Royce and seconded by James Trainor.

**VOTE:** Unanimous

*Judith Bruce recused herself and left the room. Phillips Marshall became a voting member.*

**Judith Bruce, 26 Towhee Lane.** The proposed installation of an underground propane tank. James Trainor read into record the proposed work, and John Jannell explained that this work would not result in the removal of any trees and was adjacent to an existing group of utilities structures.

**MOTION:** A motion to approve this application was made by Judy Brainerd and seconded by Bob Royce.

**VOTE:** unanimous

*Judith Bruce returned for the remainder of the hearing. Phillips Marshall is no longer a voting member.*

**Town of Orleans Natural Resources, 192 Skaket Beach Road.** The proposed use of compatible beach sand from off-site in Annual Beach Nourishment as permitted by SE 54-1947. David Lyttle was present. John Jannell explained that the Commission has an open Order of Conditions for nourishment work, and this would give an opportunity to alleviate the use of the offshore donor site. Judith Bruce felt it would be beneficial to use the other material, and Jamie Balliett asked about how much sand would be used. John Jannell estimated 800 cubic yards, and David Lyttle explained that Ryder & Wilcox, Inc. was the original applicant for the town, and that he would estimate the nourishment needed between 6 to 800 cubic yards, well below the allowable maximum 2000 cubic yards.

**MOTION:** A motion to approve this work was made by James Trainor and seconded by Judy Brainerd.

**VOTE:** Unanimous.

**Town of Orleans Natural Resources, End of Tonset Road.** The proposed repair of an existing coastal bank staircase lower section and posts. Judith Bruce asked if this was storm damage. John Jannell explained this was filed under Emergency Provisions, and the applicant proposed to build the stairs off site and put them in with new posts. Jamie Balliett said he had been notified that work had just begun on site by abutters who were pleased with the repair work.

**MOTION:** A motion to approve this Administrative Review was made by Jamie Balliett and seconded by Judy Brainerd.

**VOTE:** Unanimous.

### **Other Business**

**Frank D. Csongor, 47 Nauset Road.** Follow up discussion on the Order of Conditions SE 54-2147/Wetland Resource Areas. David Lyttle of Ryder & Wilcox, Inc., and Robert Cunningham of 85 Nauset Heights Road were present to discuss this matter. John Jannell explained that this was on the agenda after a recent RDA was discussed, an existing OOC was also brought up, and there was concern that the Commission had perhaps accepted an incomplete delineation. John Jannell said this was a meeting to determine if there was a willingness to modify the existing OOC to demonstrate a different delineation of the resource area. John Jannell said that in the Standard Conditions on all Orders attached to the OOC, there was an opportunity to edit the existing OOC. The RDA itself was officially withdrawn, and John Jannell asked whether or not the Commission wanted to address the resource areas on the property. John Jannell noted that there was no new information which he could provide at this time, and wanted to speak about the concern for this property. Judith Bruce noted that there was a significant amount of discussion which had taken place regarding this property, and that if an error had been made, it had not been done intentionally, and that all the material presented was accurate to the best of everyone's knowledge. Judith Bruce explained that the Commission needed to decide how to go forward for further filings, and that the Commission would hear from David Lyttle, representative for Frank Csongor of 47 Nauset Road, and Robert Cunningham of 85 Nauset Heights Road, who was concerned that the delineation was inaccurate. David Lyttle of Ryder & Wilcox explained that in May of 2012 an OOC was issued for the removal of invasive plants and replacement with native species for habitat enhancement by Wilkinson Ecological Design. Prior to filing the NOI, David Lyttle said that he met with John Jannell to discuss the delineation, and the meeting for the proposed work met concern from the neighborhood. David Lyttle passed around a packet with his research on the site to demonstrate why, in his opinion, the delineation of the resource areas was correct. David Lyttle read into record the different exhibits, citing both the definition of a Coastal Bank and sections of the Wetlands Protection Act which demonstrated that the Dune was not a resource area. Bob Royce was confused about the landward edge indicated on the handouts. David Lyttle explained that this meant the seaward face, and the landward edge of land subject to tidal action was located 200' seaward of this edge, and Land Subject to Coastal Storm Flowage was at the 20' contour. In both incidents the slope did not lie at the landward edge, and noted that this bank was not a sediment source and did not serve as a vertical bank. David Lyttle pointed out that 3 local professional engineers looked over and agreed with the delineation, and the same delineation was done on a property in Harwich where the definition of a Coastal Bank came into question. David Lyttle felt the information provided along with the work which had been done on site was correct and the delineation was accurate. Judith Bruce felt this was a complicated issue, and brought up a Dune was defined as a wetland. John Jannell pointed out that a Dune was a resource area, and Jamie Balliett asked if the local bylaw contradicted anything defined by the state or if it provided any further protection for this area. John Jannell noted that the Commission adopted basically the state definition of a Coastal Bank. James Trainor asked if David Lyttle was saying that the bank he delineated as the Top of

the Bank is subject to a Coastal Wetland but behind that was not wet. David Lyttle clarified that a Coastal Bank is where the flood zone meets/intersects with the slope at the dune, and though a Dune is a resource area, the Dune at this location ends at the bottom of the slope. Jamie Balliett asked if the 100' measurement shown on the plan was from the Dune, and James Trainor noted that there may be more than one bank on this site. David Lyttle said that under Exhibit 2 that meant a bank bordering on a River, Stream, Pond, or Lake, and did not specify dune. Judith Bruce pointed out that Robert Cunningham also wished to speak on this issue, and Bob Royce noted that the Commission did not have a definition that said if it looks like a bank it must be a Bank. Robert Cunningham said that while he did not have the benefit of the handout David Lyttle just presented to the Commission, it was his opinion that Ryder & Wilcox had defined the Coastal Bank as the landward side of an elevation moving away from the sea, and felt this was incorrect. Robert Cunningham explained that he had seen 3 site plans for 47 Nauset Road over the past 18 months, one of which was submitted to the Planning Department and not the Conservation Department. Robert Cunningham agreed that the bottom of Bank and Edge of Dune see gradients, but stated that Coastal Banks do not move towards the ocean and therefore could not be located where Ryder & Wilcox had plotted it on their plan. Robert Cunningham brought up the state definition of a Coastal Bank which he felt was in conflict with the 3 separate site plans provided for 47 Nauset Road. Robert Cunningham noted that a Dune typically migrates away from the Ocean as opposed to towards it. Robert Cunningham felt the state definition of a Coastal Bank was incorrectly depicted on the Ryder & Wilcox, Inc. plans. Robert Cunningham noted that he had not been notified of the hearing for the invasive species work otherwise he would have attended, and it was not until he was notified for the proposed porch that he was made aware of the town's proceedings. Judith Bruce explained that this was a complicated issue and that when she stood on the top of the slope, it seemed like you were on the Top of a Coastal Bank. Judith Bruce explained that the Commission had to go by the proper definition of a Coastal Bank as provided by the state. The technical definition was used to allow the Commission to come to its previous determination, and Judith Bruce did not think that Ryder & Wilcox, Inc. was indicating that the Coastal Bank was moving out to sea. David Lyttle agreed that this had not been easy, and felt that in 1991 DEP had to create a policy in order to thwart further confusion. David Lyttle said that on behalf of his client he acted in good faith, all of the information was accurate, and he was standing by that. Robert Cunningham felt it was important to discuss this delineation and make it right. Robert Cunningham noted that there are 10-12 properties in Nauset Heights between Priscilla Road and Callanan's Pass which could represent challenges for the definition of a Coastal Bank in future filings. Robert Cunningham pointed out that he has spent a lot of time working with the Planning Department for a by-law on Upland Buildable Area, and believed that if the Coastal Bank was properly defined based on what he felt the Top of the Coastal Bank was located, it would change the buildability of this and future lots. Robert Cunningham explained that if the Commission continued to accept the delineation of record, this proposed by-law, if approved, would not have any impact on this parcel. Robert Cunningham was also concerned with the visual impact from the Resource areas, and explained that his definition of a Coastal Bank was consistent with 310 CMR and the Orleans Wetlands By-Law. Robert Cunningham thanked the Commission for allowing him to be heard. Bob Royce said that the definition questioned here matched he had on the plan, and was not sure how another definition could be created. David Lyttle noted that a Dune was a

Resource Area not a wetland, and Bob Royce explained that his concern was the Coastal Bank. David Lyttle said that at 47 Nauset Road, Land Subject to Tidal Action lies 200' away, and Land Subject to Coastal Storm Flowage was at the 20' contour. The Dune is specifically omitted because neither one of these resource areas is located at the bottom. Judith Bruce asked if that meant that a Coastal Bank could not be a Coastal Dune, and Bob Royce noted that in the beginning of the regulations it was stated that the language of the more protective shall prevail. Jamie Balliett asked if it would be possible to get another part involved, as DEP did not contest the application. Jamie Balliett was fine with everything which had been stated, and David Lyttle said he had done everything he could to be up-front with the Commission. Judith Bruce reiterated that no one was suggesting that anything devious had occurred. John Jannell explained that this was not a hearing, and felt this discussion had been very constructive. John Jannell explained that the Commission could vote whether they agreed with the delineation for the Order of Conditions which was already issued, the Commission could require an outside opinion such as Greg Berman, Coastal Processes Specialist from Woods Hole Sea Grant and Cape Cod Cooperative Extension, or MACC to provide David Lyttle and Robert Cunningham an answer. John Jannell explained that the topic of discussion was the Resource areas and an additional jurisdictional limit, not the construction of the house. Jim O'Brien felt it would be important to have an outside opinion if one would be available. James Trainor felt that what was confusing was that on one hand there could be 3 banks in front, and that the Lower Bank was the Top of Bank. James Trainor was not sure what an outside opinion would be able to provide, and Bob Royce was concerned about the changes after the next storm event. Jamie Balliett pointed out that an outside opinion would reinstate what the Commission had already been shown on the approved plan. Judith Bruce said that she read this to say "except a Dune," and asked if it could still be the 12' contour in the absence of a bank. Judith Bruce said that she would like clarification from an outside opinion, and David Lyttle said that it was noted that the Resource area was from the Dune. Judith Bruce said that while there was nothing wrong with the plan, the Commission was hearing different interpretations which put the lines for delineation in a different location. David Lyttle was concerned that this clients were being attacked because they built a large house in Nauset Heights, and that if the abutters were so concerned with the potential for development that they could have pooled their resources and purchased the lot themselves. Judith Bruce felt this issue needed to be resolved once and for all, and James Trainor said the applicant built the house where he built the house, and that he could move the proposed pool to a different location on the property. David Lyttle agreed that clarification was needed so that the applicant could move forward with work on the site. Judith Bruce said that they were not suggesting tearing out decks or moving the house, but rather what the proper delineation was and the effect on this property for future filings. Phillips Marshall asked if the pool was part of the originally approved OOC, and Judith Bruce explained that the only thing which was approved under the OOC was for work on the bank, with the house outside of jurisdiction. John Jannell noted that the question which would be addressed by an outside opinion was whether or not the slope was a Coastal Bank by definition. David Lyttle felt that it went farther, and asked about the Dune bordering the Slope. John Jannell noted this was already resource area, and Jamie Balliett asked if David Lyttle objected to having a meeting with Greg Berman and John Jannell in order to put this issue to rest. David Lyttle did not object but felt it was an awkward situation, and Jamie Balliett felt this was more of an educational

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venture. David Lyttle appreciated the respect which the Commission conveyed but felt that Robert Cunningham alluded to David Lyttle being sneaky. Robert Cunningham felt there was a different interpretation which was friendly to the owner, and that the definition which he had provided was more consistent and would be accepted by the 3<sup>rd</sup> party to review the delineation. David Lyttle noted that Land Subject to Coastal Storm Flowage did not run into this, and Bob Royce asked if there was water at the bottom of this Slope. David Lyttle said that he had been part of the Nauset Heights community since 1966, and noted that there used to be a high jeep road in that area. Although water may have gotten there, David Lyttle felt this Bank was not acting as a buffer to storm water. Judith Bruce explained that the Commission had agreed with the previous interpretation, and that they did not make their decisions lightly. Judith Bruce reiterated that the Commission did not feel that there was anything unethical about the interpretation, nothing underhanded was done, and if there was an error then everyone was in error.

**MOTION:** A motion to contact Greg Berman to consult on this matter and provided his opinion was made by Jamie Balliett and seconded by Judy Brainerd.

**VOTE:** Unanimous.

### **Chairman's Business**

Approval of the Minutes from the Meeting on February 26, 2013 and March 26, 2013.

**MOTION:** A motion to approve the minutes of February 26, 2013, was made by James Trainor and seconded by Judy Brainerd.

**VOTE:** 5-0-2; Motion approved, Judith Bruce & Jamie Balliett abstained.

Erin Shupenis announced that the minutes from the March 26, 2013 meeting were not available at this time.

The meeting was adjourned at 11:13am.

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department.