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Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, January 21, 2014

PRESENT: Judith Bruce, Chair; Steve Phillips; Vice Chair; Bob Royce; Judy Brainerd; Rich Nadler, Associate; Jane Hussey, Associate; Kevin Galligan (Associate); John Jannell, Conservation Administrator.

ABSENT: James Trainor; Jim O'Brien.

8:30 a.m. Call to Order

Continuations

Last Heard 1/7/14 (SP1)

Daniel & Andrea Schmieg, 13 Kingsbury Lane. by Ryder & Wilcox, Inc. Assessor's Map 71, Parcel 1. The proposed reconstruction of an existing boathouse; stabilization of an eroding bank; replacement of failing fiber rolls with gabion/fiber roll toe protection; removal of invasive plant species, & plant with native species. Work will occur on a Coastal Bank, on a Coastal Beach, on Land Subject to Coastal Storm Flowage, & within the Pleasant Bay A.C.E.C. David Lyttle of Ryder & Wilcox, Inc., Seth Wilkinson of Wilkinson Ecological Design, Sarah Turano-Flores of Nutter, McClennen, & Fish LLP, and Jim O'Connell, Independent Coastal Geologist/Coastal Land Use Specialist, were present. David Lyttle explained that as a result of the previous meeting, the applicants revised the hybrid design to reduce the size of the gabion anchor. David Lyttle went over the details of the plan revisions, noting the addition of sand, and Jim O'Connell summarized his report, commenting that the existing groins were exacerbation the erosion. Judith Bruce asked for clarification on the plan that in this redesign the fiber rolls in front of the gabions had been removed, and David Lyttle said yes. Judith Bruce inquired what the fiber rolls were attached to, since no anchors had been removed, and the gabions were serving as toe protection. Seth Wilkinson explained the mechanical connection, noting that cables would be woven through the fiber roll array. Seth Wilkinson stated that this would prevent repeating the problems which had occurred with the existing fiber rolls. Jim O'Connell pointed out that 1' of the gabions would be seen at the toe, and they anticipated this structure to be overtopped during storm events. Judith Bruce stated that while she wanted to make sure that everyone got a chance to ask their questions, she felt that if the gabions were to be toe protection that this was a CES, and this property was not eligible at this time since it was greater than 40' from the Top of the Coastal Bank. Kevin Galligan inquired why this work was proposed at this time. Kevin Galligan pointed out that in the first paragraph of Jim O'Connell's report that the erosion had been difficult to estimate, and that the dynamic forces of Pleasant Bay have died down since the break in 2007. Kevin Galligan was concerned that they were not looking at all of the possible alternatives, and Seth Wilkinson explained that the discussion to do additional work had begun after the previous winter storms, where a number of alternatives were discussed. Seth Wilkinson discussed that once the coconut fiber rolls were immersed in water, their degradation was increased significantly. These fiber rolls, which saw a lifetime of 2-3 years at a cost of \$1,000.00 per roll, were unable to aid in the plant establishment of the bank. Kevin Galligan asked what had changed since the Amended Order of Conditions from 2010 to cover the bottom fiber roll, and Seth Wilkinson noted that the area had been steepened,

allowing for more area for the sediment to stay in place. Kevin Galligan kept looking at the overall system since 2006, and thought that this proposed work would result in scour, with further degradation, and wanted to see something less. David Lyttle pointed out that the beach elevation at that portion of the fiber array was higher, and why it was doing better. David Lyttle did not feel that the proposed location of the anchor would see increased wave energy, and Kevin Galligan noted that they had documented wave and wind energy, showing intense wind energy. Seth Wilkinson said this was in relation to the groins in the area, and Jim O'Connell pointed out that the scour from the groins could be observed. Jim O'Connell was confident that they could break up the wave action, and explained that the fiber rolls were set back to create a shelf to hold more sand. Jim O'Connell noted that prior to the fiber roll installation in 2006, there was between 7-9' of bank movement, and the erosion rate which he measured was 1.8' per year. Jim O'Connell was not sure whether or not the property would be threatened within the next several years, and Rich Nadler inquired what the point of reinforcing the bank would be if the house was not being threatened at this time. Jim O'Connell was concerned that the applicant was not being permitted to reinforce their bank due to the new location of the house, and commented that the regulations stated that the house needed to be within 40' if it was a post 1978 structure whose bank was to be stabilized. Rich Nadler asked if this was being interpreted as reconstruction, and Jim O'Connell commented that they were not proposed hard structure. Judith Bruce was concerned about the use of the word penalized, as this was not a matter of the Conservation Commission penalizing an applicant for building in a particular location. David Lyttle agreed that this was not something which they wanted to discuss, and asked to debate whether this was a CES, an anchor, or something other than a CES. Sarah Turano Flores concurred, and Rich Nadler asked if the gabions would serve to protect the toe. Seth Wilkinson explained that of the 6 gabion baskets to be installed, 4 would remain below beach elevation, and he felt would not have any effect on toe protections. Seth Wilkinson did not think that by adding something which was not soft did not make it hard toe protection, but that the sand would come and go, with the gabion baskets being buried. Rich Nadler was confused by the applicants response, and reiterated his question of whether or not this would serve as some toe protection. Seth Wilkinson clarified that it would serve as some part of the toe protection, and Rich Nadler inquired if it was their sole purpose. David Lyttle explained that there would also be fiber rolls used, and Rich Nadler asked why gabion baskets were the preferred alternative. Seth Wilkinson went over the different soft solutions which had been used on other projects such as sand envelopes, which proved to be inefficient. Seth Wilkinson also discussed the faults of geotubes, and that the applicant did not want to try to create an elevated fringe marsh given its lack of success during previous attempts, and this solution would save the applicant money. Rich Nadler pointed out that, according to the regulations, a CES was something that created greater toe protection, and felt that this qualified as such. David Lyttle felt that the proposed plan in fact provided an opportunity to do something more beneficial than fiber rolls, and Rich Nadler suggested that if the gabions were removed, it would no longer be a CES. Rich Nadler felt that the regulations were clear and that this proposed work was a CES, commenting that the Commission could not use cost analysis as part of their approval process. David Lyttle disagreed, and Seth Wilkinson felt that the proposed work was an intermediate project. John Jannell went over other projects which included a progression from soft, to hard structures and commented how Gabions are preferred over rock revetments when a

CES is proposed. Sarah Turano Flores pointed out that the applicants found it difficult to sustain the \$1,000.00 per fiber roll per year cost, and reiterated that the applicant wanted to keep the fiber rolls in place, and the use of this proposed work was a soft structure not a hard structure. Jim O'Connell felt that if the fiber rolls were removed, the gabions would be overtopped, and would not provide protection. Rich Nadler felt that the gabions themselves created an adverse impact, and Jim O'Connell felt the fundamental idea was to protect the resource area and provide sediment to nourish the beach. Rich Nadler pointed out that the Commission also had to take in the aesthetics of this proposal, and Kevin Galligan noted that he did not feel that there was a significant threat to this area that warranted the work's need to be done at this time. Kevin Galligan felt that if this was approved, the applicant would return in 3 years for additional work on this bank. Jim O'Connell agreed that CES's did cause wave action, but was not convinced that the addition of gabions would add any more of an impact, in terms of wave energy, than the existing fiber rolls. Judy Brainerd was concerned about the sand proposed to cover the gabions and its impact to the salt marsh, noting that shoaling was already happening. Bob Royce agreed, stating that the sand had to go somewhere, and did not agree with the project. Sarah Turano-Flores felt that by doing nothing the bank would collapse and destroy the habitat which had been created over the past 7 years, and Bob Royce pointed out that there was a natural progression of things to occur. Seth Wilkinson commented that the applicant may stop contributing to maintaining the existing fiber rolls, and Sarah Turano-Flores pointed out that only 1 ½ of the gabions were to be exposed. Judith Bruce asked if the proposed shelf to provide sand was supposed to keep the gabions covered, and Seth Wilkinson said yes. Steve Phillips did not think that the proposed work rose to the definition of a CES, and Jane Hussey inquired if the marsh had grown since the fiber rolls had been installed in 2006. David Lyttle replied that their attempts were unsuccessful, and Jane Hussey inquired about the addition of sand and new fiber rolls would impact the salt marsh. David Lyttle felt the proposed work would promote marsh growth, and Seth Wilkinson pointed out that it would be difficult to determine if what they were proposing was enough to promote the marsh growth, but that he did not feel that the additional sand would harm the marsh. Jane Hussey inquired about the annual maintenance of this proposed work, and whether or not the new fiber rolls would be vegetated. Judith Bruce noted the nourishment to be 40 cubic yards, and David Lyttle said while two of the rows were to be vegetated, the 3rd row was to be determined. Seth Wilkinson explained that when the fiber rolls were used together they colonized quickly. David Lyttle pointed out the absence of James Trainor and Jim O'Brien, and felt that their input would be important before the Commission made a final ruling. David Lyttle explained that for the benefit of his client he would like all of the regular members present, and Judith Bruce explained the Commissioners would be required to review the tape and sign an affidavit stating they had reviewed all of the necessary materials. Kevin Galligan asked that David Lyttle ask his client whether or not they would choose to maintain the fiber rolls, and Seth Wilkinson stated that the applicants said it was no longer financially sustainable for them, and would ask to remove the fiber rolls. Sarah Turano Flores pointed out that this solution would have not been proposed in this location if the tidal exchange was not where it is today, and Kevin Galligan asked that Greg Berman take another look at the revised plan. John Jannell pointed out that there was not a supplemental report available at this time, and Judith Bruce suggested that this be brought in front of the Pleasant Bay Alliance to get their opinion on the proposed work. Jane Hussey asked

about the maintenance commitment by the applicant should this work be approved, and Rich Nadler was concerned about continuing the hearing based on the current members sitting on the board. John Jannell pointed out that the Commission also wanted to have additional information to determine how their interests were protected, and Jane Hussey asked if this solution failed what the applicants would like to do. Seth Wilkinson stated that they were not proposing any additional solution beyond what was shown on the plan, and that there was a way to install the gabions without taking out the fiber rolls. Judith Bruce felt that the additional information requested would be beneficial to the Commission, and Jim O'Connell concurred. The Commission discussed whether or not this would be considered an intermediate solution, and if it qualified as a CES. Kevin Galligan inquired about the start of the poly filter cloth, and David Lyttle pointed out that it was behind the gabions. Kevin Galligan explained that it was confusing how it was shown on the plan, and David Lyttle said he could provide a revised plan. David Lyttle suggested that either a 2 or 4 week continuance would work, and Rich Nadler suggested February 11th as an option for everyone to attend.

MOTION: A motion to continue the hearing to February 11th was made by Kevin Galligan and seconded by Bob Royce.

VOTE: Unanimous.

Notice of Intent

Kent Zelle, 57 Nauset Heights Road. by J.C Ellis Design Co Inc., Assessor's Map 22, Parcel 54. The proposed pumping and abandoning of an existing septic and cesspools and the installation of a new septic system to serve an existing dwelling and an existing cottage. Work will occur within 100' of an Isolated Vegetated Wetland. Jason Ellis went over the proposed work, passing around a revised plan showing the re-orientation of the leaching area to save a cedar tree. Jason Ellis pointed out that this was outside of the buffer zone, and Judith Bruce inquired if the septic tank was being abandoned, and if both of the septic systems had failed. Jason Ellis explained that the cesspools for the main house have failed, and that although the cottage had Title V components, it had perched water, and would fail if inspected. Steve Phillips inquired if the septic tank could be moved outside of the 50' buffer, and Jason Ellis explained that due to the depth to get pitch, the tank was already 6-7' below grade, and the state would not approve such a request. Kevin Galligan asked about the propane tank on site whose sidewall was rusted, and Jason Ellis said the homeowners indicated the day before that it was to be removed. Kevin Galligan commented that the site was very muddy, and asked that all local laws for cleaning of vehicles were addressed. Jason Ellis agreed, and Steve Phillips asked if the outdoor shower had been approved prior to this submission. Jason Ellis was not sure when it was constructed, and Steve Phillips pointed out that it looked new. Jason Ellis concurred, and Steve Phillips pointed out that by approving this site plan the Commission was approving the location of the outdoor shower. Steve Phillips recalled that it was close to standing water, and Jane Hussey suggested that it could be the rebuilding of an existing outdoor shower. Judith Bruce felt it was important that the applicants be made aware that any work within Conservation Commission jurisdiction be filed for, and Jason Ellis pointed out that the town installed a water line through the wetland. John Jannell asked about the excavation work, with concern about the pumping and filling of the existing septic tank serving the cottage. Jason Ellis explained that they would dig the holes from Nauset Road, set the tanks with a boom truck, and go down the longer driveway. Judith Bruce

suggested that mats be used, and Jason Ellis suggesting hardening which could be removed. John Jannell asked that something temporary be used, and Jason Ellis suggested steel sheeting.

MOTION: A motion to close the hearing was made by Kevin Galligan and seconded by Jane Hussey.

VOTE: Unanimous.

MOTION: A motion to approve the site plan dated 1-20-14 was made by Steve Phillips and seconded by Kevin Galligan.

VOTE: Unanimous.

Request for Determination of Applicability

Marshgate Limited, 34 & 40 Carlton Road. by Ryder & Wilcox, Inc. Assessor's Map 82, Parcel 1. The proposed pumping & abandonment of existing cesspools & leaching pits; the installation of a new septic system for main house & cottage; installation of new municipal water lines; & interior renovations to the existing main dwelling. Work will occur within the Buffer Zone to the Top of a Coastal Bank & in the Pleasant Bay A.C.E.C. David Lyttle went over the existing site conditions, explaining that they were proposing interior work as well as the septic upgrade, and that the work would be done with little to no disturbance to the area. Judith Bruce inquired if the internal changes would result in a change in the roofline or make the structure more visible from the resource area, and David Lyttle explained that there were no exterior changes proposed. Kevin Galligan commented that this had received Board of Health approval, and David Lyttle noted that it was just eligible for approval. Kevin Galligan pointed out that there appeared to be clearing on the south side of the bank, and David Lyttle commented that there had been some trimming. Judith Bruce stated that this work needed to stop, and Kevin Galligan agreed that it needed to be addressed. David Lyttle asked if this could be accomplished with a letter to the applicant versus holding up this Request for Determination application. Judith Bruce pointed out that this had been brought up previously and ignored, and John Jannell pointed out that there was an open Order for the toe of the Bank. David Lyttle commented that this involved bank work, and John Jannell stated that this was something which had been observed twice, and would send a letter to the owner to the south. Kevin Galligan did not want to hold up this permitting process, and John Jannell did not think the cutting of the property to the south was part of the Bank work. Judith Bruce noted that they may require additional plantings, screening, or bank restoration for the unpermitted, and David Lyttle suggested this could be tied into the open Order. John Jannell explained that they were talking about an open active OOC for which they did accept a planting plan, not to the property to the south, and the Conservation Department would follow up with a letter about the cutting of the bank vegetation, not the current property for which they were having a hearing. Steve Phillips pointed out on the site plan where the 4" PVC pipe at the edge of the clearing by the deck that should be connected to a drywell. Steve Phillips inquired how the long line to the cottage was going to get by the trees on site. David Lyttle explained that the applicants did not want to disturb the trees, and had hired AMA to complete the installation and make every effort to save all of the trees. The Commission questioned what the 4" PVC pipe was draining, and David Lyttle said he would speak with the property caretaker. Judith Bruce suggested the pipe be redirected to allow the vegetation to absorb the runoff, and inquired if the RDA could be

conditioned regarding the PVC pipe. John Jannell pulled out the OOC for the bank work, and explained that the pipe was covered under this OOC. John Jannell suggested that they could condition the RDA for the elimination of the pipe, and Steve Phillips said that since it was already covered in the OOC, it was not needed.

MOTION: A motion to close the hearing was made by Steve Phillips and seconded by Kevin Galligan.

VOTE: Unanimous.

MOTION: A motion to issue a negative determination was made by Steve Phillips and seconded by Judy Brainerd.

VOTE: Unanimous.

Revised Plan

Robert & Sally Roda, 187 Namequoit Road. The proposed installation of scour protection and beach nourishment on a Coastal Bank. Plans have been revised to include the replacement of fiber roll toe protection over the property line between the applicant and 189 Namequoit Road. Work will occur on a Coastal Bank, Coastal Beach, Land Under the Ocean, and within 100' of the Top of a Coastal Bank. Jay Norton of Coastal Engineering Company, Inc., and Robert and Sally Roda, applicants, were present. Jay Norton went over the Revised Plan, explaining that while the contractors were on site performing the shorefront protection that they were looking to replace the deteriorated fiber rolls, and completing all of the work by hand. Jay Norton pointed out that a letter from the Ferrings had been submitted for the record, and that they were trying to complete this work while the contractors were out on site. Judy Brainerd recalled this property, explaining that she had thought there would be future problems in this area. Kevin Galligan asked for clarification that the proposed work was nothing new, and John Jannell explained that the Order of Conditions was recorded against the Roda property. John Jannell explained that the bank was completely disturbed and that this was an opportune time to complete the proposed work. John Jannell read into record the letter from the abutter where the repair was proposed. Judith Bruce inquired if the Ferrings had an OOC for their property, and Jay Norton explained that it had since expired. John Jannell explained that the expired OOC was for a fiber roll project and had been properly filed for at that time. John Jannell commented that Mr. Ferring understood that the proposed work was a one-time treatment covered under the Roda Order, and that any additional work would require a new Notice of Intent. John Jannell inquired about the proposed grading on site, and Jay Norton explained that it was only being done at the toe. John Jannell commented that they would honor the proposed cut and fill/grade shown, and Jay Norton said this was correct. Kevin Galligan inquired how long the previous fiber rolls on the Ferring property were in place and Jay Norton said since 2004, so about 10 years. John Jannell explained that the Rodas had permission to remove the stones, with the plan revisions just for the 8 fiber rolls and sand cover. Steve Phillips inquired if there would be any replanting of this new area, since he had recalled that there was a significant amount of plantings to be done at the applicant's site. Jay Norton said no given that it was a sacrificial area. Judith Bruce asked about the oak tree located on the property line, and whether it would stay or go. Jay Norton said they wanted to keep it, and would weave the fiber rolls accordingly. Judith Bruce commented that upgradient of the oak tree no work was proposed, and asked about the seeding proposed shown on the Ferring property. Jay

Norton said the seeding would be brought all the way to the stairway, and Judith Bruce thought that it would be beneficial to show this. Robert Roda concurred with the proposed seeding, and John Jannell suggested that the Commission allow the applicant time to make the notes suggested so that they could have an accurate record of what was to be approved. John Jannell felt that they could approve the applicant subject to receipt of a revised plan, and reiterated that the plantings needed to extend to the stairway given the way that the bank had collapsed. The applicants agreed, and Steve Phillips asked who had put together the planting details. Jay Norton explained that it had been Wilkinson Ecological Design, and Steve Phillips asked what would be most appropriate to plant. The Rodas stated that they would have the same type of plantings, and John Jannell suggested continuing the strip of proposed plantings. John Jannell asked that the Commission give the applicant guidance on what they wanted to see for the plan revision, and Judith Bruce asked that they show that westward of the stairs was to be planted.

MOTION: A motion to accept this proposed revision pending receipt of a Revised Site Plan and including the letter written by the Ferrings into the record was made by Steve Phillips and seconded by Jane Hussey.

VOTE: Unanimous.

Administrative Review

Ruth Montgomery, 30 Willie Atwood. The proposed removal of 4 pines and 1 oak tree. Work to be done by ABC Trees. John Jannell commented that this was work within the 50-100' buffer adjacent to a cranberry bog, with the trees located near and over the existing house, and recommended approval.

MOTION: A motion to approve this application was made by Bob Royce and seconded by Jane Hussey.

VOTE: Unanimous.

Vote of Support

Orleans Conservation Trust, 18 Lake Farm Lane. Request vote of support and execution of a Municipal Certificate for the gift of a Conservation Restriction at 18 Lake Farm Lane from The Compact of Cape Cod Conservation Trusts, Inc. to the Orleans Conservation Trust. Kris Ramsay of the Orleans Conservation Trust was present. Kris Ramsay explained that the Orleans Conservation Trust was hoping to have a vote of support for this perpetual agreement. Kris Ramsay explained that the applicant had carved 7 of the 8 acres of his property to pursue a state tax credit, as well as donate the land, which required a Conservation Restriction. Kris Ramsay explained that this would next go to the Board of Selectmen, with the land to eventually be owned by the OCT. Kris Ramsay pointed out that a baseline had been submitted for the Commission to review, and Kevin Galligan said it was very helpful as it confirmed the value of the area. Judith Bruce inquired about the total area to be protected, and Kris Ramsay said it was roughly 7.2 acres. John Jannell explained that two votes were required for this approval: one for a vote of support, and the second to sign the municipal agreement.

MOTION: A motion to issue a vote of support was made by Bob Royce and seconded by Jane Hussey.

VOTE: Unanimous.

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MOTION: A motion to sign the municipal agreement was made by Bob Royce and seconded by Kevin Galligan.

VOTE: Unanimous.

Chairman's Business

Approval of the Minutes from the Meeting on August 20, 2013.

MOTION: A motion to approve this set of minutes was made by Steve Phillips and seconded by Jane Hussey.

VOTE: Unanimous.

Approval of the Minutes from the Meeting on January 14, 2014

MOTION: A motion to approve this set of minutes was made by Judy Brainerd and seconded by Kevin Galligan.

VOTE: 6-0-1, motion approved, Steve Phillips abstained.

Other Member's Business

Administrator's Business

John Jannell announced that the MACC Annual Conference information had been sent to the Commission, and asked that anyone interested in attending contact the Conservation Department.

John Jannell wanted to thank the AmeriCorps Wellfleet House for their work on the Coastal Bank at Sea Call Farm. John Jannell explained that they took down two buildings in the high marsh area, and that the Sea Call Supporters stopped by during the course of the day. Judy Brainerd commented that they had done a great deal of work, and Steve Phillips stated that they could not thank them enough. John Jannell pointed out that this was one of their first outdoor projects, and also thanked the Town of Orleans staff present on site as well.

The meeting was adjourned at 10:50am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department