

Orleans Conservation Commission
Town Hall, Nauset Room
Hearing Meeting, Tuesday, April 29, 2014

PRESENT: Judith Bruce, Chair; Steve Phillips, Vice Chair; Bob Royce; James Trainor; Jim O'Brien; Judy Brainerd; Rich Nadler, Associate; Kevin Galligan, Associate; John Jannell, Conservation Administrator.

For the purpose of today's hearing, Kevin Galligan will be a voting member.

8:30 a.m. Call to Order

Notice of Intent

Town of Orleans-Board of Selectmen (Acting as Park Commissioners), 0 Smith Neck Road-Nauset Beach South. Assessor's Map 38, Parcel 14. The existing Off Road Vehicle (ORV) and Beach Management Plan for Nauset Beach South. Work will take place on a Coastal Beach, Coastal Dune, Coastal Bank, Salt Marsh, Land Subject to Coastal Storm Flowage, & the Pleasant Bay A.C.E.C. Mike Ford, Town Counsel for the Town of Orleans, John Kelly, Town Administrator, Tom Daley, DPW Director for the Town of Orleans, and Nathan Sears, Natural Resources Director for the Town of Orleans, were present. Mike Ford provided the Commission with a historical outline of the ORV program as it pertained to the Town of Orleans, and detailed that the Habitat Conservation Plan (HCP) required that the Town of Orleans have a specific Order of Conditions (OOC) for the South Beach, understanding that the Town of Orleans had historically applied the rules of the OOC from the North Beach to the South Beach. Mike Ford explained that this was only for the Town of Orleans, and understood that the Town of Chatham would be filing its own separate Notice of Intent (NOI) for traversing on the ORV beach. Mike Ford thought that both OOC's should mirror each other, with each town issuing them. Mike Ford noted that they would be asking to continue the hearing pending a letter from the Massachusetts Endangered Species Act (MESA). Mike Ford emphasized that he would not go through each point of the management plan attached to the application, but that it mirrored the management plan applied to the North Side, with the exception of the inclusion of the beach camps. Mike Ford suggested that the camp owner access agreement could be incorporated by reference since any OOC issued was meant to be flexible and reflect the dynamic conditions of the beach. Mike Ford pointed out that there would also be specific rules and regulations to incorporate the camp escort provisions for essential vehicles. Mike Ford asked that the minutes reflect the revision to the maximum number of ORV's permitted, explaining that this number had been made by the past Beach Manager, taking historical data and noting the size of the beach on the South side. Mike Ford explained that the number proposed, 375, included vehicles going into Chatham, and that it had never exceeded this number. Judith Bruce inquired if Nathan Sears had the ability to lower the number, and Mike Ford said yes. Nathan Sears clarified that they looked at it under a theoretical situation, with high numbers being more typically between 150-180 users, and noted that during the peak seasons there had been beach closures due to nesting birds. Mike Ford reiterated that a MESA letter had not been received and therefore wanted to keep the record open, but that they were available for any additional questions or concerns. Judith Bruce asked if the National Seashore had any comments regarding the

application, and Mike Ford noted that if they were not on the list of abutters then they were not notified of the proposed hearing. John Jannell explained that they were not a direct abutter, and Mike Ford clarified that if the Commission wanted, they could notify the National Seashore, although legally they were not required to do so. Judith Bruce noted that there was confusion around town between the NOI hearing versus the HCP application, and Mike Ford stated that the NOI was separate from the HCP, had been filed by the Park's Commission, and, if acted upon favorably, would be the governing document for the Nauset Beach South ORV program. Judith Bruce asked if this put into writing what the Town of Orleans had been doing for protective management, and Mike Ford concurred. Mike Ford emphasized that the program had been running since 1991 with the OOC for the Spit, and those regulations in turn had been applied to Nauset Beach South. Mike Ford said that the HCP was designed to gain greater flexibility for beach closures. Judith Bruce stated that they now needed to move forward, and Mike Ford noted that Orleans had been a leader in terms of beach management, being one of the first to receive an OOC for its ORV program. Judith Bruce inquired if there was an opportunity for an OOC that was in-perpetuity. Mike Ford reminded the Commission that the OOC for Nauset Spit required that it be in effect over time, provided that all of the conditions were met, and that annually the Commission looked at it and adjusted it in terms of the conditions on the Beach. Mike Ford explained that they would ask for the same type of provision: that the OOC not expire, that it require an annual review provision, and thus in turn not requiring the Town to return to the Commission every 3 years to run this same program on the existing trails. The annual review would allow the Commission to adjust the conditions due to geographic changes, or possibly Amend the OOC if necessary. Kevin Galligan commended the applicants on the materials put together, and inquired if the 375 number included self-contained vehicles, and Nathan Sears replied yes. Kevin Galligan inquired if they were comfortable that the overnight number could be managed, and Nathan Sears reiterated that he was very comfortable with the 375 count since it was based on historical practices, the amount of usable beach, and the area between vehicles. Judith Bruce inquired if the overnight number had been developed separately since she assumed that there had never been, at one time, 375 self-contained vehicles overnight, and Nathan Sears confirmed that this number was developed differently. Steve Phillips inquired about the annual review and whether or not it would be more formal. John Jannell explained that it had been both formal and informal over the years, with an open and constant dialogue, especially after a winter storm events. Mike Ford said that however the Commission wanted to review was fine, and Judith Bruce clarified that, in the past, the agent had reported to the Commission the status of the ORV beaches. James Trainor inquired if this had any effect on the parking lot, and Mike Ford explained that it was not intended to have an overlap with the parking lot for Nauset Beach. Rich Nadler thanked the presenters, and inquired about the clarity of the 375 vehicles, and Mike Ford Explained that the first sentence reads as "read into record," with the understanding that in no way would it be greater than 375 vehicles. Rich Nadler inquired if the total for both beaches, which came to 575, needed to be looked at in the event of an emergency. Nathan Sears explained that the total number typically included essential vehicles, but that he would take it under advisement and speak with the police. Rich Nadler was concerned about the ability to get all of the vehicles off of the beach at once, and about provisions on beach fires. John Jannell noted that the rules and regulations were better illustrated on page 4, and showed the Commission the brochure which was handed out to those that

received ORV permits. John Jannell was not sure when these booklets were printed or if it was necessary to have the Commission look at these. Mike Ford explained that the Board of Selectmen were responsible for setting for the most material restrictions, adopting the rules and regulations, and could require an annual review. Judith Bruce felt that the language was flexible enough to make additional regulations, and Kevin Galligan said that on page 5, section M, that it may be helpful to include the camp owner escort after owners, and that the camp owner escort agreement may be reviewed from time to time. C. Whiting Rice, a Camp owner on Nauset Beach, prepared and submitted a document ahead of time with comments and recommendations regarding the ORV and Beach Management Plan. C. Whiting Rice was concerned about the map and parcel reference used for the NOI, and whether or not all of the owners were in fact notified. Mike Ford clarified that all of the property was owned by the Town of Orleans, but that C. Whiting Rice, along with the other people that had camps on Nauset Beach, had a license agreement to use a camp. Mike Ford said that he would look into the NOI to ensure that all of the necessary parties were properly notified. C. Whiting Rice noted that his proposed modifications dealt with issues arising as a camp owner. C. Whiting Rice said that there was a concern about the non-use of the back trail, referenced on page 2, again on page 5, section C, driving on the bay west side prohibited. C. Whiting Rice understood the intent of the language, but asked that it be modified to say something to the effect that "driving on the bay shoreline west side except the existing main corridor or driveway to beach camps." Under page 4, there was a series of bullet points, and C. Whiting Rice asked that 3 additional bullet points be incorporated: 1. allow, for the historic continued use; 2. allow access to private property on Pochet Island; and 3, allow the use of the Right of Way for the Pochet Property Owners Association (PPOA). C. Whiting Rice noted that there were also inconsistencies between the regulations and the video shown to all ORV drivers, such as kite flying. Kite flying was referenced as being prohibited or giving inconsistent days and times in which it was permitted. C. Whiting Rice suggested that new technology, such as drones, also be incorporated into this language, since drones had the opportunity to disturb plover nests. C. Whiting Rice felt that the 375 vehicle limit had not included first and second village when they had existed, but asked that the number not include the ORV's used for the camps since they had their own parking areas. C. Whiting Rice asked that both the camps and Pochet Island should be exempt from the vehicle total, since they did not violate the camping regulations. Judith Bruce thanked C. Whiting Rice for all of his input, and C. Whiting Rice appreciated the Commission's willingness to work with the camp owners. Scott Morris, past President of the Beach Buggy Association, noted that he was working with the Town on behalf of the HCP, and that one question which came back to the group was that the geographic descriptions listed in the OOC did not match the South Side. This triggered the need for an OOC for the South Side as opposed to applying the OOC from the North Side, and now that MEPA has taken over, the HCP group wanted a letter saying that the Conservation Commission had adopted the OOC from the North Side and applied it to the South Side. John Jannell explained that there was never an official adoption by the Commission, and that Town Counsel had written a letter addressing this issue. Judith Bruce pointed out that NHESP had also brought up some of their concerns about these issues, and they did not think that there was any attempt to extend beyond what had historically been accepted. Kevin Galligan thanked those who commented on the process, and asked that a copy of the camp owners lease be included to ensure that they were not in

conflict with their rights. Mike Ford said he would be able to supply the copies of the leases, and John Kelly noted that they had been included with the HCP. Mike Ford explained that a continuance of the hearing would allow the Parks Commissioners an opportunity to incorporate C. Whiting Rice's comments, as well as determine whether or not drones should be dealt with in the annual review. Tim Payson, trustee of PPOA, explained that they had their own agreement, the camps were privately owned, and that they wanted to be exempt from the total vehicle count of 375. John Kelly noted that there were different stickers which allowed the beach manager to recognize these vehicles and not include them from the overall total. Mike Ford noted that he would get the Commission that information, and John Jannell clarified that there were some editorial changes to be made, and that NHESP's comment period ended towards the end of May. John Jannell recommended that the Commission look to continue to June 3rd to allow for all of the comments to be received, as well as all of the editorial changes to be made. Judith Bruce asked that the National Seashore also be notified, and Mike Ford agreed. Judith Bruce asked that the protection of terrapins and horseshoe crabs be considered, as well as comments from Massachusetts Audubon society, and asked that anyone else wishing to be heard submit their comments in writing.

MOTION: A motion to continue the hearing to June 3rd was made by Jim O'Brien and seconded by Bob Royce.

VOTE: Unanimous.

Continuations

Last Heard 4/15/14 (RN1)

Michael & Tracy Roberge, 27 Cheney Road. by Ryder & Wilcox, Inc. Assessor's Map 42, Parcel 2. The proposed renovations to an existing 4 bedroom dwelling, construction of an arbor, & landscaping. Work will occur within 100' of a Salt Marsh, on a Coastal Bank, on Land Subject to Coastal Storm Flowage, & within the Pleasant Bay A.C.E.C. Sarah Turano-Flores of Nutter, McClennen, & Fish LLP, Peter Polhemus of Polhemus, Savery, & DaSilva, and David Lyttle of Ryder & Wilcox, Inc., were present. Sarah Turano-Flores summarized the proposed changes to site plan including how they applied to the Orleans Wetlands by-law. Sarah Turano-Flores pointed out the proposed mitigation including the increased plantings, and Peter Polhemus noted that it would have more of a screening impact from the resource areas as a result. Sarah Turano-Flores noted that while the applicant was unwilling to add additional trees on the waterfront site due to the loss of usable space, they felt that the proposed mitigation outweighed the work on site which did include additional trees on site in other locations. Sarah Turano Flores pointed out the note which was for a 1 to 1 replacement of a tree if it died or needed to be replaced, and Judith Bruce asked if the applicants would be willing to include the existing spruce into the 1 to 1 replacement. John Jannell suggested that this be included as a special note for the Order to create a record for future reference, and Kevin Galligan inquired about the proposed windows in reference to the glazing and silver coating/energy efficiency. Peter Polhemus said that he would specify, and Judith Bruce inquired if the proposed windows were more energy efficient and therefore reflected less. Peter Polhemus confirmed this, and noted that they looked grey from a distance as opposed to reflective. Judith Bruce inquired about bird impacts, and Peter Polhemus was unsure of the overall impact. James Trainor asked about the impact of a rain garden at the end of a road which was privately owned by the abutters, and whether or not this would impact an Emergency vehicles ability to turn around

safely. Sarah Turano-Flores clarified that the abutter owned to the center of the roadway. David Lyttle stated that after a discussion with the owner on the opposite site of the project, the Orleans Conservation Trust, their representative Kris Ramsay felt that it would be an improvement to the property and would not disturb an Emergency vehicles ability to turn around. Kevin Galligan inquired if this was in the file for the Conservation Department, and David Lyttle clarified that he had a note in his file and would submit something accordingly. Jane Hussey and Judith Bruce were pleased with the proposed plantings and habitat improvements, and John Jannell announced that since the last meeting, NHESP had issued their comment letter which said that the proposed work would not result in a take. John Jannell asked if in addition to including the special conditions proposed relating to the tree replacement, whether or not the cedar tree replacement would be included, and Judith Bruce noted that the Commission had asked for the Spruce tree replacement. John Jannell asked that the Order require the execution of the landscape plan, which was a typical on-going requirement for an Order, and Judith Bruce asked that an on-going condition be included that the lawn not be fertilized or treated with pesticides.

MOTION: A motion to close the hearing was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous

MOTION: A motion to approve the site plan dated 4/18/14, including the site plan diagram dated 4/18/14, with the succession note to include the future replacement of the spruce tree, and the site plan dated 4/1/14 by Ryder & Wilcox, Inc, was made by Steve Phillips and seconded by Bob Royce.

VOTE: 6-0-1; James Trainor abstained, motion approved.

Jim O'Brien left at 10:01am.

Last Heard 4/15/14 (RN1)

Minglewood Homes, 27 Franz Road. by Clark Engineering LLC, Assessor's Map 16, Parcel 5. The proposed lifting of an existing single family dwelling; demolition of an existing foundation; construction of a new foundation; expansion of & replacement of decks; & second floor expansion. Work will occur within 100' of a Salt Marsh, Coastal Dune, & Land Subject to Coastal Storm Flowage. John Jannell announced that a request to continue the hearing to May 13, 2014, had been received by the Conservation Department and the Commission could accommodate this with a vote.

MOTION: A motion to continue the hearing to May 13, 2014, was made by Bob Royce and seconded by Judy Brainerd.

VOTE: Unanimous.

Chairman's Business

Approval of the Minutes from the Meeting on November 12th and November 19, 2013. John Jannell had not been able to review these sets of minutes and therefore they would be put on a future meeting agenda.

Other Member's Business

Administrator's Business

The meeting was adjourned at 10:06am

Respectfully submitted,

Erin C. Shupenis, Principal Clerk, Orleans Conservation Department