

E.C.S. [Signature]

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Orleans Conservation Commission
Hybrid, Nauset Room/Via Zoom
Hearing, Tuesday, March 15, 2022

PRESENT: Chair Ginny Farber, Vice Chair Mike Brink, Clerk Drusilla Henson, Member Walter North, Member Bob Rothberg, Member Ron Mgrdichian, Member Jerry Wander, Associate Member Judith Bruce, Associate Member Alan Carrier, Associate Member Maia Ward & Conservation Agent John Jannell

8:30 a.m. Call to Order

Notices of Intent

Craig Muzilla & Sharon Berka 49 Chestnut Dr
By Ryder & Wilcox, Inc. Map 64, Parcel 9. The proposed construction of timber stairs, installation of a kayak rack, invasive plant species removal and site management and restoration. Work will occur within the 100' buffer zone to the Top of a Coastal Bank, on a Coastal Beach, on a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

Ms. Ward joined the meeting.

David Lyttle, Ryder & Wilcox, was present. Caitrin Higgins, Wilkinson Ecological Design, was present and reviewed the restoration. Ms. Higgins reviewed the existing site conditions and the proposed restoration plan and land management plan. Mr. Lyttle discussed the proposed 4x4 timber platform and stairway to gain access over the beach. He described how the neighborhood has historically accessed the beach in this area. The applicant wants to redirect their neighbors off of their private property and give them a way to safely and legally access the water. Mr. Lyttle reviewed the proposed kayak rack and provided an image. The stairway and pathway have been sighted in an area that's relatively open where the vegetation can be flush cut, the only disturbance to the ground would be to install the posts and the installation of a kayak rack. Ms. Farber stated the project has not been issued a DEP number or received a MESA letter so the Commission cannot vote on the project today. The Commission would like to know how far away an existing stairway is east of the property from the proposed stairway. Ms. Farber pointed out the regulations require stairways to be at least 500' apart.

Mr. North asked about the appropriateness of having kayak racks in an area subject to coastal storm flowage. He was concerned about the kayak rack coming lose. Mr. Jannell said there are not performance standards for land subject to coastal storm flowage but if this area is subject to regular inundation this may be a poor design. He suggested anchoring it in. Mr. North asked if there was a plan for the other kayak rack. Mr. Lyttle said that kayak rack did not belong to the applicants, the kayak rack is located on the abutting property. Mr. Lyttle agreed that a kayak rack that would not be subject to movement by tidal action would be appropriate. Mr. Mgrdichian had no problem with the plan in its entirety, he didn't agree that the Commission should be getting hung up on the kayak rack. Mr. Wander asked if whether the bench was going to be dug in. The representatives said they would find out. Ms. Henson requested making sure the homeowners know which kayak rack belongs to them and they do not want to approve the ownership of two kayak racks for one property. Mr. Brink thought they could keep the stairway

where it is proposed even if it is too close to the other because it has the least amount of impact where it is currently proposed.

No public comment was heard.

Mr. Lyttle requested a continuance to 4/5/22

MOTION: A motion to continue the public hearing to 4/5/22 was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Orleans Conservation Trust
By Coastal Engineering Co., Inc. Map 49, Parcel 50. The proposed vegetation management. Work will occur within the 100' buffer zone to the Edge of Wetland and a Coastal Bank, on a Coastal Bank, within Land Subject to Coastal Storm Flowage, and within the Pleasant Bay ACEC.

4 Braddocks Wy

Caitrin Higgins, Wilkinson Ecological Design (WED), was present. Dave Michniewicz, Coastal Engineering, was present. Ms. Higgins reviewed the Restoration Plan and Land Management Plan. The goal of the project is to enhance habitat for terrapins, but they are looking at providing habitat for other species as well by encouraging den and snag tree habitat. This is an ideal opportunity to add an additional nesting site adjacent to existing White's Lane habitat.

Ms. Farber asked about the area to be restored as grassland; in the land management plan (LMP) it says the trees proposed for removal will be treated cut and wipe and at the onsite it was stated that they will be stumped. Ms. Farber questioned which one they are proposing. Ms. Higgins responded that the benefits of removing the stumps would be it allows seed to come in better and that perhaps a combination of both would be proposed. Ms. Farber said they need some clarity on that. She requested more detail on erosion control depending on which method they choose.

Mr. Mgrdichian asked what's going to be provided to prevent killing turtles during the construction phase. Mr. Jannell said the applicant was required to notice MESA of their filing and that is what we expect to hear from them. In the past they have provided turtle protection plan requirement for applicants. We will likely get some comments to that effect, and we can debate those. Ms. Bruce said of course they want to prevent erosion, but she pointed out that netting this entire area would prevent nesting. Mr. Jannell said stumping may dictate more erosion controls in your area of work, not necessarily where the terrapins are but they will need to hear more on that. Mr. Carrier said that stump grubbing requires heavy equipment, he expressed his concerns about all the proposed disturbance. Ms. Henson asked about removing the existing building, perhaps it requires a TOY restriction. Ms. Henson echoed concerns about erosion control and preventing silt migration into the cove. Ms. Farber would like a detailed procedure for deconstruction of the existing building. Ms. Farber asked for a review of the performance standards and how the applicant has met them for the coastal bank. Ms. Farber asked about monitoring of the habitat. Ms. Higgins described who would be monitoring the site. Ms. Farber requested they tighten that up a little bit. Mr. Wander asked about site access and requested detail on how that's going to occur, there are a lot of trees in the way. Ms.

Higgins responded that there is one locust and one cherry, the cherry would likely be flush cut and allowed to regrow. Ms. Higgins said they would add that detail to their plan. Mr. Jannell said there was an opportunity for staging area outside of the buffer zone but then you go through jurisdiction to access the project. If that is disturbed during the project that needs to be restored. Perhaps you can propose a protective treatment for that, or the Commission can condition that if the project moves forward. Ms. Ward reiterated Ms. Henson's concerns about erosion control. Mr. North asked if there are any view shed concerns.

Bob Prescott, was present and reviewed turtle habitat and why it is important.

Ms. Farber opened the meeting for public comment.

Sarah Turano-Flores, Nutter, McClennan, & Fish LLP, was present on behalf of Charles & Faye Ruopp who own 27 Henson's Way, the property south of the roadway as you come in. She pointed out that this project is the creation, not the restoration, of habitat. She wanted the project to undergo critical review. In previous hearings about the White's Lane project there was extensive discussion of performance standards within LSCSF, ACEC, and Coastal Banks. The White's Lane project needed variances for each one of these regulations. She continued that the species that dwell in the existing habitat, should not be disregarded. Your own regulations speak to the fact that nonnative species provide significant habitat. She asked, will the loss of that outweigh the benefit the creation of the turtle habitat. She requested credible evidence be provided that this project will have no adverse effects on the wetland's functions and values. Her clients have retained Paul Shea to review the project and speak to some of their concerns. She requested a continuance to the 2nd meeting in April to give people time to digest this material. She said the White's Lane project did not propose the trail network, at some point prior to the OOC being issued a trail network appeared. It is not clear from this application whether trails are going to be proposed here, if so, we need more detail. If this property is being utilized by members of the public, will it have a negative impact on the resource area? She pointed to a letter in the public record from OCT to an abutter that stated the area is for wildlife and not for members of the public.

Seth Wilkinson, WED, was present via Zoom. He said he was the primary point person for the White's Lane project. He clarified that the path and parking were there before the project. He doesn't see this area as a destination for others. He stated the prior project speaks for itself and can be used as a data point.

Tina and Steve Macavoy, abutters at 20 Henson's Way, reported they were to support the Ruopp's and represent the rest of the neighborhood with their concerns. It's a wonderful concept but they have concerns about the proximity of members of the public to the turtles. They are going to put more paths in, OCT has told them that. The turtle habitat is 1' from the path. We are concerned that its more about recreation than taking care of the turtles.

Steve O'grady, OCT executive director, feels excited about this project, it will establish early successional habitat, something we don't have a lot of in Orleans. This is a restoration; you can look at old aerials and it was all grassland; OCT is not trying to hide anything. The walking path is noted, and it is necessary for monitoring, just as it is at the existing area. This project extends far beyond the value of habitat for turtle nesting.

The applicant's representative requested a continuance to 4/5/22.

MOTION: A motion to continue the public hearing to 4/5/22 was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous
GF, MB, DH, RM, WN, BR, JW

Towns of Orleans & Eastham
By Foth Infrastructure & Environment, LLC. The after-the-fact filing for emergency maintenance dredging to be conducted within the Rock Harbor Entrance Channel to remove a shoal that is presently posing a serious and imminent threat to public health, safety, and the environment.

Rock Harbor Entrance Channel
Christine Player, Foth Infrastructure, was present and reviewed the after-the-fact filing. Mr. Jannell described that this was a filing required under the local by law only. Ms. Player reviewed the process at which they came before the Commission and the certification. They had 30 days to complete the process from issuance of the emergency order. She reviewed the dredge protocols; everything was completed as planned. Since this after-the-fact NOI filing is required by a local bylaw only, a Certificate of Compliance is not required as the project was already completed.

No public comment was heard.

MOTION: A motion to close the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MOTION: A motion to approve the project at Rock Harbor Entrance Channel with the Conservation Commission findings that the work was complete and with the special condition that a Certificate of Compliance is not required was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Continuations

Hugo & Kara Brown
By Ryder & Wilcox, Inc. Map 5, Parcel 30. DEP #SE 54-2529. The proposed construction of a screen porch within a portion of the footprint of the previously approved deck. Work will occur within the 100' buffer zone to the top of a Coastal Bank.

64 Freeman Ln
Stephanie Sequin, Ryder & Wilcox, was present and reviewed the application. She went over the revised site plan dated 3/9. She noted that the existing mulch planting bed will be restored with pasture rose, the existing downspouts will be connected to drywells if they aren't already, and also that there are no trees to be removed in the 100' buffer.

No public comment was heard

MOTION: A motion to close the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MOTION: A motion to approve the Amended Order of Conditions for 64 Freeman Ln attaching the Conservation Commission findings and standard conditions and with the special condition that the mulch be placed underneath the plantings to ensure no water runoff was made by Mike Brink and seconded by Drusy Henson.

References: Ryder & Wilcox plan dated 3/9/22

VOTE: 7-0-0 Unanimous

Pleasant Bay Ranch, LLC 71 Towhee Ln
By Attorney Sarah A. Turano-Flores of Nutter, McClennen & Fish, LLP. Map 92, Parcel 60.
Pursuant to an Order of Remand issued by the Orleans District Court in Docket No. 2126CV0095, the Commission will reopen the public hearing regarding this matter for the purpose of review of a Reconfigured Design. The raze and replacement of the existing single-family dwelling, landscaping, and site restoration. Work will occur on a Coastal Bank, within the Pleasant Bay ACEC, and within the 100' buffer zone to the top of a Coastal Bank.

Ms. Farber said that at the previous hearing the Commission closed the public hearing, and today they are going to go through the draft Order of Conditions. Mr. Jannell said he would like to review it in its entirety looking specifically at the facts, findings, and special conditions. Mr. Jannell said the applicant will take the detailed steps to withdraw the Superseding Order and utilize the local Order instead. Mr. Jannell reviewed the draft document including the WPA Form 5, relevant plans, special conditions, etc.

Mr. Brink said regarding special condition #1, what is the accurate date for the architectural design plan? Mr. Jannell says the condition requires them to submit a proper plan before work starts.

Mr. Rothberg wants the title changed for the patio spec to reflect the title block: Planting Plan dated 12/22/21. He also suggested changing the Sudbury Design Group concept plan to reflect the title block: Planting Plan. Mr. Rothberg suggested additional wording in the temporary irrigation, it should read "and/or earlier when the plants are established". Mr. North had questions and comments about the findings. Finding C says it will provide a benefit to the habitat and wetland interests, he isn't sure he agrees with that in terms of the totality of the site, the overall site is not going to be a benefit. He does agree that there will be a benefit in the areas being mitigated. Perhaps change the wording to within jurisdiction or within the area restored by BFD. For Finding C, Ms. Henson suggested it read: "At the completion increased naturalized areas and invasive plant management as shown on the BFD plan will provide benefit"

Mr. North said Finding D about hardscape and drywell could be changed to "minimized impacts" instead of benefit. Perhaps, change the wording to "these actions shall mitigate for negative impact".

Mr. North suggested Finding H that reads "site restoration will not adversely affect..." should be changed to "sufficiently addresses the interests of the wetlands protection act".

Ms. Henson said, regarding special condition 1, she wanted to be sure that the elevation not change. Ms. Henson suggested, "in keeping with original design and maintaining equal or lower elevations and maintain top of ridge". She continued, there should be a special condition

for windthrown trees. Mr. Jannell suggested a special condition #11, it could read "After the initial invasive tree removal, if any windthrow or tree damage occurs, they shall be replaced with native trees at a 1:1 ratio".

Ms. Farber pointed out that we discussed a tree protection plan for 3 English oaks, and we got a tree protection plan for 1 English oak. Mr. Jannell suggested in special condition #3 could read, "the significant trees to remain, including but not limited to the 3 large English oaks seaward of the proposed dwelling...".

Mr. Jannell reviewed the edits.

MOTION: A motion to close the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MOTION: A motion to approve the project at 71 Towhee Ln attaching the Conservation Commission findings and standard conditions and with the facts, findings, and special conditions as edited today was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB, GF, DH, RM, WN, JW, BR

Certificate of Compliance

Dwight & Alice Wilson

14 Tides End Ln

DEP # SE 054-1528: The construction of a shed dormer to replace existing doghouse dormers on an existing single-family dwelling on a coastal bank, within the 100-Year Flood Zone and within the buffer zone of a salt marsh.

Mr. Jannell reported that the project is in compliance.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 14 Tides End Lane was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB, GF, DH, RM, WN, BR, JW

Howard Kucks, Seacrest Homeowner's Association

20 & 27 Seacrest Dr

DEP #SE 054-2466: The stormwater improvements and restoration to an eroding Coastal Bank. Work occurred within 100' to the Top of a Coastal Bank and on a Coastal Bank.

Mr. Jannell reported that the project is in compliance.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 20 & 27 Seacrest Drive was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB, GF, DH, RM, WN, BR, JW

Kevin J. Wise

50 Gibson Rd

DEP # SE 054-2453: The removal of an existing dwelling and construction of a new dwelling, replacement of existing stairway, and removal and replacement of existing retaining walls.

Mr. Jannell reported that all the building work is done but the restoration work has occurred but has not met the survivability requirements for the 3 replacement trees. The survivability can be guaranteed with a surety. The applicant is willing to execute a surety for \$7,500 to make sure they survive two more seasons. If the trees don't survive, the \$7,500 is used for new trees.

MOTION: A motion to approve the issuance of a Certificate of Compliance at 50 Gibson subject to the execution of the performance agreement was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Administrative Review

Robert Palumbo

8 Alewife Wy

The proposed removal of an existing brick walkway and brick steps and replacement with a bluestone patio (24'x24') and natural bluestone treads, and the extension of an existing deck.

Mr. Jannell reviewed the request. This had previously come in as an AR with a proposed addition, but the homeowner is not proposing an addition at this point. The proposed work is about 70' away from the herring run on the property. It's also, within the ACEC created by the presence of the run. Part of the proposal is in the ACEC. There are no grade changes, all over the turf lawn in front of the applicant's house.

Mr. Brink said this is less invasive proposal than regrading, so a deck with some sonotubes seems like minimal disturbance and he would approve that. Ms. Henson was concerned about runoff from the deck.

Mr. Jannell said he'd reach out to Mr. Palumbo about specs of the deck. We can ask him to commit to a design and perhaps a silt barrier while the work is being done. Ms. Jannell said he would make a phone call to the homeowner on the Commission's behalf.

The Commission took no action, they will review this at a future hearing.

Contractor Change Request

Request by Harrow & Seed to qualify to complete the work at 25 High Tide Ln under DEP # SE054-2498

Mr. Jannell reported that this original Order was issued on 8/18/20. It had a restoration plan by WED that included the removal of the spoil pile. It involved a special condition requiring a contractor change clause.

Adrian Punch, Harrow & Seed, was present. He said he was seeking qualification and approval to do the restoration work at 25 High Tide Lane. He has visited the site and reviewed the OOC including the special condition and he fully understands the scope of work.

Ms. Bruce asked if any work has been started. Mr. Jannell said just the building work and the restoration is due to start.

Mr. North asked if steps have been taken to save the tree? Mr. North asked for Mr. Punch's perspective on the berm and the challenges of managing it and how they intend to work up against the time restriction of 4/1.

Mr. Punch responded that their mobilization plan is to focus on the vegetation removal and leave the berm until after 11/1/22. They proposed 4 trees for removal. Those would come down as soon as we start the vegetation removal.

MOTION: A motion to approve the contractor change for Harrow & Seed to proceed at 25 High Tide Lane was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

Other Business

Annual Report – Lonnie's Pond Oyster Project

Mr. Jannell said he was reviewing this document from a wetland's perspective; did it increase water quality or water clarity? There were those two areas of beneficial impact, it did not alter except to benefit.

Ms. Bruce said the only potential negative impact was that the biota can change. At a certain number and mass, the oysters may add nitrogen instead of remove; that's part of the reason why expansion of oysters at a particular location isn't possible. When will or will DEP approve this as a wastewater measure?

MOTION: A motion to communicate with the Select Board that we have reviewed the report for Lonnie's Pond, and we are extraordinarily pleased with the positive results but concerned they aren't sufficient to meet the targets of a comprehensive water quality plan and we are wondering how the Town intends to deal with that since we're in the 3rd or 4th year of a 5 year permit was made by Walter North and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MB, GF, DH, RM, WN, BR, JW

Administrator's Business

Discussion

Mr. North reviewed the MACC keynote speaker talk. Mr. North was concerned that regulations are not protective enough. There is a Draft bylaw prepared by the Cape Cod Commission that attempts to address the implications of rising sea levels and other climate changes and suggests revising some of the bylaws. He wants to get this on a future agenda. We do a great job saving the Coastal Bank but there is a loss in the upland.

Ms. Farber suggested making this an agenda item for 4/5.

Mr. Jannell reviewed a couple of the MACC classes he took about resiliency including adopting performance standards for Land Subject to Coastal Storm Flowage.

Mr. Brink said maybe it's time to review the entirety of our regulations.

Chairman's Business

Meeting minutes of 3/1/22

MOTION: A motion to approve the minutes was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

MOTION: A motion to adjourn the public hearing was made by Mike Brink and seconded by Drusy Henson.

VOTE: 7-0-0 Unanimous

The meeting adjourned at 11:21 a.m.

Submitted by:

Kristyna Smith, Principal Clerk, Orleans Conservation

