

PROVINCETOWN CONSERVATION COMMISSION
VIRTUAL MEETING
March 16, 2021
5:00 P.M

Members Present Virtually: Alfred Famiglietti, Oriana Conklin, Joseph Cooper, Brett McNeilly, Thomas Skinner, and Loretta Butehorn.

Members Absent: Nathaniel Mayo (excused).

Others Present: Tim Famulare (Conservation Agent).

Conservation Agent Tim Famulare, as the moderator, introduced the remote participation meeting and called the roll, determining that a quorum was present.

Chair Alfred Famiglietti called the Work Session to order at 5:03 P.M.

Mr. Famulare explained why a virtual hearing was being conducted and how applicants and the public can view the meeting on PTV and participate by calling a number that is shown on the screen and then entering a conference ID number. He asked that all participants keep their phones on mute when not speaking.

1) **Work Session:**

a) Discussion regarding the loss of salt marsh in the West End Moors and the U.S. Army Corps of Engineers' 2015 feasibility study of the Long Point Dike Modification project. Mr. Famulare said that Larry Oliver, from the Army Corps, and Steve Smith, a plant ecologist from the National Seashore, were in the meeting to discuss the topic. Mr. Famulare gave a brief review of the discussion from a previous meeting regarding the issue. Mr. Oliver said that the Army Corps got involved in the project as a result of a letter from the Town concerning the condition of the marsh. He said the condition of the marsh was deteriorating. The Army Corps has a program for modifications to improve the environment where it can cost-share with a non-federal sponsor to modify projects and restore ecosystems. The Army Corps did a feasibility study to consider options to restore connectivity to the marsh. He said the marsh is flooding and is being maintained as a salt marsh, however the problem is that there is no access for larger fish predators who would feed on the purple marsh crabs that are so destructive to the vegetation and on other organisms that feed on the marsh, keeping those populations in check. The approach taken in the study was to design the smallest opening that would be a reasonable, stable opening in the dike. The proposal would create an opening measuring 10' at the bottom and 40' at the top in order to maintain a connectivity. A bridge would then be placed on the dike. In addition to allowing fish predator species to access the salt marsh, it would also have recreational and safety value, as there would be a connection along the whole length of the dike. He said that the first \$100,000 would be paid by the federal government and the Army Corps wanted to get as much of the feasibility study done as possible with that amount of money, given the large expense of the project and the size of the Town in terms of how much money would be available from the latter. The Army Corps got to the point of having a draft feasibility study with the recommendation of creating an opening to restore connectivity for the marsh. The draft study was issued and during the public comment phase, after a public notice was given, important questions were raised about velocity

and what consequences would result from that. The Army Corps was in supplementary talks with the Town about further funding and an estimate of \$75,000 was discussed in order to do additional modeling work to find out what size opening could be created in the dike without having an unsafe increase in the velocity of the water through it. Mr. Oliver indicated that at that time, the Town was unable to move forward and as of May of 2020, a letter was sent to the Town by the Army Corps stating that if the Town was unable to move forward with the project, it would have to be terminated. However, he said, the National Seashore was still interested in the project and he had a meeting with them to that effect. He then asked the Army Corps for time to contact the National Seashore and the Town in order to gauge interest in moving forward before the project was officially terminated. He said he was given permission to do so and that is why he is speaking to the Commission about the project. He said that the National Seashore said that the condition of the marsh was worsening. He said that if the Town is now interested in the project, the Army Corps can look at making changes to the initial recommendations to make sure the area would also be safe for swimmers and kayakers and to restore connectivity, thereby controlling the population of snails and crabs. This will allow the marsh to build itself back up and maintain itself with sea level rise. This may also include an increase in sediment delivery to the marsh, according to the National Seashore. In addition, as part of the process of moving forward, the Army Corps would have to sign a cost-sharing agreement and receive funding from the Town. He estimated a cost of \$100,000 to complete the feasibility study, allow additional modeling and generate the cost estimate, in addition to determining the size the opening and what the water velocity through the opening would be. He said a letter from the Town to that effect would be needed. He said after a letter was received, the Army Corps would work on a cost-sharing agreement after the completion of the study. If everyone agreed to move forward with the project after the additional modeling and the completion of the feasibility study, the next phase of developing plans and specifications would begin. He said the estimate for building the opening measuring 10' at the bottom and 40' at the top was about \$1.2 million. Any larger opening would cost more money. He recommended that the Town consider that the total cost would be around \$5 million. He added that the cost-sharing ratio for this program is better than for most of the Army Corps' programs; 75% federal and 25% non-federal costs. The cost-sharing for finishing the feasibility study and coming up with a construction estimate is 50% federal and 50% non-federal, so the \$50,000 would be needed to get the study going again. The Commission questioned Mr. Oliver.

Rex McKinsey, Marine Coordinator, commented on the study. He said that as with any other tidal restriction, the flow of water will be fastest during mid-tide and slow during the other phases. During those phases, the low-flow situation would prevent kayakers from hitting their heads on a bridge across the dike. The installation of a bridge is not part of the project, in terms of the function of the opening, but is a function of the public safety mitigation measures for recreational activities. In addition, it would be a better place to close off the marsh in the event of a major storm. He commented regarding the issue of predators getting stuck in the salt marsh after swimming through the opening on the dike, that the return of predator species from the marsh to the bay will be driven by their desire to get out of low tide situations and compel their return through the opening in the dike. He said that when the feasibility study was being done there was also work being done on the potential effect of the project on shellfish and finfish aspects in the bay. He is wondering if additional study can be done on sediment transport issues on the east side of the breakwater. He would also like to find out how shellfish grants in the bay could be adapted

and figure out how they can work within a new environment that takes advantage of this new idea. He said that cost is a factor and before going to Town Meeting for a \$5 million ask, he would like to know where the money would come from, what would be gained by the project, and who else the Town could get to be pay for it. The Town still have to come with a non-federal match to participate in the project. He said that the state is now doing a lot of coastal resilience improvement projects, including rebuilding salt marshes, and other mitigation measures to accommodate sea level rise. He suggested that the Town could most likely apply for grants to cover the local share and by doing so reduce the amount of exposure to Town Meeting voters. But time is needed in order to do that. Getting ready for next year's Town Meeting was suggested if the Commission would like to work on that aspect and Mr. Oliver and his team could revisit the feasibility study itself in the next six months to a year to find out if more can be done to fully vet the program, to limit the unintended consequences and to potentially be able to expand on the opportunities presented to not only the salt marsh but to the commercial aquaculture industry. He said that the feasibility study needed to be more robust. He asked Mr. Oliver if he could do that. He said that he would look at the study and examine the effects on the east side of the dike and get a sense, if not a concrete answer, of what effects the project would occur on shellfish habitat. The Commission discussed the topic. Mr. Oliver said that residential properties located on Provincelands Road, facing the marsh, should see no impact from this project. Mr. Oliver said that the dike was originally built to protect the bay. Mr. McKinsey commented that protecting Navy ships that were anchored off Long Point and allowing them to leave all at once as a squadron was a reason that the dike was built.

Mr. Famiglietti opened the meeting to public comment. Jeff Sanders, from the National Seashore, said he would answer any questions and Mr. Smith was not able to attend the meeting. He said he would help the Town work with the state to get funding. Mr. Famulare said that the Town has submitted a draft update of its hazard mitigation plan to FEMA and included was as a mitigation action for the next five years to continue to work with the National Seashore and the Army Corps on this issue. Staff does talk about the issue of prioritizing climate resilience mitigation actions and he would continue to discuss this further and follow up with Mr. Oliver and his team and find out what may be necessary to enter into a cost-sharing agreement if further study is appropriate. He would take this idea to David Gardner and the new Town Manager. There is a new Town-wide goal-setting meeting of the Select Board coming up and Mr. Famulare thinks this would be an appropriate issue to present to find out if there is an appetite to pursue the project further. He will look into that. Mr. Famiglietti asked if Mr. Oliver could keep the project open while the process to bring the funding request to Town Meeting continues and he agreed. Mr. Oliver suggested contacting the Division of Ecological Restoration for help in moving the feasibility study forward.

b) Discussion of proposed revisions to the Provincetown Wetlands Protection By-Law to be included on the warrant of the May 1, 2021 Annual Town Meeting. Mr. Famulare introduced the subject. He had sent a word draft that tracked changes and a pdf. as well. He has talked about this at previous meetings. He said that under the Massachusetts Wetlands Protection Act, for Notices of Intent, applicants are required to send out written notices, with details about projects, times and places of hearings, etc., to abutters of their projects. The notices have to be sent by certified mail or certificates of mailing. The local by-law echoes that and requires anyone filing for a local

wetlands by-law permit that is the equivalent of a NOI has to go through the same process. The by-laws also require applicants seeking a Request for a Determination of Applicability to do so as well, which the WPA does not. What the Commission uses the RDA for is usually minor projects that will not have significant impacts on resource areas. They are usually small projects, such as a shed or re-surfacing a patio, or landscape changes. These applicants are not usually hiring consultants to help them through the permitting process and the process to send out abutters' notices is costly and time-consuming. It adds a significant cost to a small, inexpensive project. He is proposing to send out postcards, such as other Boards in Town do, such as the Historic District Commission, the Planning Board, and the Zoning Board of Appeals, for RDAs. He showed an example of a postcard. This would create a new section in the by-laws for RDA explaining the new requirement for sending out notices. He said that the Commission could think about the change and discuss it at the special hearing of March 23rd. He would like to get the amendment on the Annual Town Meeting on May 1st. He said that less staff time would be spent on explaining to applicants how to follow the old process and it will streamline it. He said that some of the language may be revised due to comments from staff or Town Counsel. ***Oriana Conklin moved to approve the amendment to the local wetlands by-law, Joseph Cooper seconded and it was so voted, 6-0.***

2) **Public Comments** on any item not on the agenda below:

3) **Public Hearing:**

a) **CON-21-10 419 Commercial Street**

Notice of Intent filed by **Christine Barker** pursuant to the Massachusetts Wetlands Protection Act (M.G.L. c. 131, s. 40) and the Provincetown General By-Laws Chapter 12, Wetlands Protection By-Law to demolish the existing building and construct a new structure compliant with FEMA floodplain regulations. Work to take place within Land Subject to Coastal Storm Flowage and a Buffer Zone to a Coastal Dune. There was a request to postpone this until the meeting of April 6, 2021. ***Oriana Conklin moved to continue CON-21-10 to the Public Hearing of April 6, 2021 at 6:00 P.M., Joseph Cooper seconded and it was so voted, 6-0 by roll call.***

4) **Requests for an Extension of a Certificate of Compliance:**

a) **CON-18-45 828 Commercial Street** – single family home (DEP File No. 058-0592). Mr. Famulare introduced the request to extend the Certificate of Compliance for three years and briefly reviewed the project. Mark Legere was in the meeting and explained the delays in the project. He is now ready to go forward with the project. Mr. Famulare recommended that the Certificate be extended. ***Oriana Conklin moved to extend the Certificate of Compliance, CON-18-45/828 Commercial Street, for a period of three years, Joseph Cooper seconded and it was so voted, 6-0 by roll call.***

5) **Approval of Minutes of March 2, 2021:**

March 2, 2021: ***Oriana Conklin moved to approve the minutes as written, Joseph Cooper seconded and it was so voted, 5-0 by roll call.***

6) **Conservation Agent Update:** Mr. Famulare introduced a project at 509 Commercial Street regarding a dune that was being repaired by Gordon Peabody, of Safe Harbor Environmental, and his crew of workers. Mr. Peabody had contacted Mr. Famulare and said that a small dune on the south elevation of the property had been eroded away. The erosion that occurred during a recent storm was not typical. Mr. Peabody suggested that the dune be replaced as it is in a low-lying area and also protects other properties in the neighborhood from flood inundation. Mr. Famulare said that a recent Order of Conditions for the installation of a ground-level deck on the south elevation had not contemplated dune nourishment. He contacted the owner and said the work could continue, but dune nourishment conditions, typical of other projects abutting dunes, should take place. Mr. Peabody did complete those conditions. The Department of Community Development had gotten a lot of calls about the situation from neighbors and beach walkers. Mr. Peabody explained what happened and what goes into selecting sand for this type of nourishment project. He explained that the dune was very small and not attached to a dune field. It can only be nourished not by random wind action, but by direct onshore, southerly winds, because it is located between two bulkheads. It could take years to become fully restored. He said it likely took 15-20 years to get to where it is today. He said his crew did some planting, on the dune, but in early February there was an unusual storm event. A unique storm track created prolonged due-south winds and allowed southerly waves, just passing Long Point and just passing the breakwater, to push a large high tide surge ashore at 509 Commercial St. This is referred to as a “pocket surge” and is caused by south wind-driven waves loading into the Harbor. This imperiled the dune’s ability to perform as such, as a large part of it was lost. He had applied for an emergency decision to nourish the dune with sand. The church parking lot next door to the property would have to be utilized for the project, however the vicar of the church was on sabbatical and the project was delayed somewhat. He said they used a standard sand pit nourishment material that is used in other areas of Cape Cod. It is prone to tinting by iron oxide, making it look darker and reddish, due to acid rain dissolving iron particles in the sand, but that color is eventually washed out by rain and/or bleached by the sun. His crew went out and planted grass subsequent to the nourishment. Mr. Famulare narrated and explained the photographs on the screen. Mr. Peabody will monitor the dune and can request an amendment of the Order of Conditions for the nourishment if needed. The Commission questioned Mr. Peabody.

Mr. Famulare added that the Town is in a second cycle with a grant from Coastal Zone Management Agency for coastal resiliency. He has been working on an inter-municipal shoreline management framework with Truro, Wellfleet, and Eastham. One of the goals is to set up a ‘sand bank’. Provincetown doesn’t have the space to store its own sand, so they are looking to formalize a cooperation with other Outer Cape towns for the storage of sand for nourishment projects. During the Eversource battery storage project, 4500 cu. yds. of clean sand was brought in and was able to be stored at a site in Eastham. Some of that sand will be shared with Eastham, but Provincetown will be using it as well for beach nourishment projects.

Mr. Famulare said that the MACC annual conference will be held April 6-17th. It will be virtual. An email should have been sent to Commissioners about the conference. The Town reimburses Commissioners for the course registrations. He will resend the email to Commissioners and to the new Commissioner, Ms. Butehorn.

Mr. Famulare said that under the new Town Charter, regulatory Boards are required to weigh in and vote on warrant articles that are relevant to its scope. The Charter sets the date between April 8th and 15th. A special Conservation Commission meeting will be scheduled on April 13th for comment on Town Meeting warrant articles.

Mr. Famulare said that alternates on Boards or Commissions, if all regular members are present at the hearing, will not be allowed to vote on applications. Alternates are allowed to ask questions make comments, or propose changes. The Chair will designate an alternate to be seated on a matter if a regular member is absent. If another regular member has a conflict and must recuse, the second alternate will be seated.

Mr. Famulare added that Mr. Peabody does offer a tutorial for Conservation members. It is free and conducted on Zoom.

7) **Any other business that shall properly come before the Commission:** None.

Oriana Conklin moved to adjourn the Public Hearing at 6:40 P.M., Alfred Famiglietti seconded and it was so voted, 5-0 by roll call.

Respectfully submitted,

Ellen C. Battaglini

Approved by _____ on _____, 2021
Alfred Famiglietti, Chair