

**PROVINCETOWN CONSERVATION COMMISSION**  
**September 7, 2021**  
**6:00 P.M**

**Members Present:** Nathaniel Mayo, Oriana Conklin, Brett McNeill, and Loretta Butehorn.

**Members Absent:** Alfred Famiglietti (excused) and Joseph Cooper (excused).

**Others Present:** Tim Famulare (Conservation Agent).

Vice Chair Nathaniel Mayo called the meeting to order at 6:00 P.M. He said the Conservation Commission was tasked with environmental resource protection pursuant to the Massachusetts Wetlands Protection Act, G.L. c. 131, s. 40 and the local Wetlands Protection By-Law, Chapter 12. He said that the scope of the Commission's authority included protection of public and private water supplies, pollution prevention, ground water protection, storm damage prevention, flood control, protection of fisheries, and protection of land containing shellfish.

Mr. Famulare explained that even though the public hearing was being conducted in person, there were procedures for public participation in this hybrid-style public meeting. The meeting will not be suspended or terminated if there are technical difficulties interrupt the virtual broadcast, unless otherwise required by law. He reviewed how to use the Microsoft Teams app for public participation or how to participate if using the phone number provided on the agenda. He asked that all members of the public wanting to comment on a particular application state their names. Cell phones should always be muted, other than when speaking, and \*6 will mute or unmute your phone.

1) **Public Comments:** None.

2) **Public Hearings:**

a) **CON-21-50 421 Commercial Street**

**Notice of Intent** filed by **The Bayview Wharf Condominium** 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 install supplemental piles and beams to support the timber pile foundation of an existing building and decks. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Dune, and a Coastal Beach.

**Presentation:** Charlie Agro, of Coastal Engineering Co., the project manager, and Marshall Puffer, also of Coastal Engineering Co., the lead structural engineer and designer, appeared virtually to present the application. Mr. Agro reviewed the proposal, which is a maintenance construction project to install supplemental helical piles for an existing building and deck. Currently the building is supported with an array of piles that have degraded over time and the proposed project is to supplement them with new helical-driven stub piles with a grouted jacket structure around them. He reviewed the site plan shown on the screen. He said that the area where the new piles will be installed is located within a coastal beach resource area, a coastal dune, a coastal bank, land subject to coastal storm flowage, and land containing shellfish. The work will be limited to an area considerably landward from the mean highwater line and all work will be done above the intertidal zone, so there should be no negative impact on shellfish. The project was designed so that the building will be temporarily lifted to allow new helical anchors and

support beams to be installed. Once the construction is completed, the building will be lowered back into its original location, with the same footprint and at the same elevation. The proposal includes a total of 37 piles, with 26 installed under the building and 11 piles under the deck, and the total new square footage of material is 13, which is relatively minimal compared to the other piles and beams supporting the building and deck. The new piles will not have an effect on the form or profile of the coastal beach. After the construction is completed, the contractor will regrade any disturbed areas. Access to the site is adjacent to a coastal dune resource area, but outside of it. Any disturbance to the coastal dune will be regraded and replanted as specified in the performance standards. The project is above the mean highwater line, but within the historic mean highwater line, so some coordination the Dept. of Environmental Protection, Waterways Division, regarding Chapter 91 was required. The DEP's response to the project was to consider it a construction maintenance project, so no new licensing, permitting, or any minor modification to the permit would be required. The only outstanding requirement for the project would be the Commission's issuance of an Order of Conditions.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Mr. Agro. He reiterated that there will be no expansion of the footprint of the deck and building. The area of alteration is limited to the area of the existing footprint. Mr. Agro said that the contractor has already gotten permission from the owners of 423 Commercial Street, an abutting property, for access. Mr. Famulare said that the abutting properties on the site plan had been erroneously labeled and he would need a revised plan and narrative to be submitted before the permit was issued. He showed photographs of the foundation and the degraded piles that he had taken this morning and asked Mr. Agro how high the building would have to be elevated and the process involved. Mr. Agro replied that it would be up to the contractor to determine that process and would be considered part of the means and methods of the project. It would be discussed at the pre-construction meeting. Mr. Puffer said that the intent would be not to have to lift the building at all, so no cribbing would be required, as the existing piles would provide temporary shoring. There won't be any temporary conditions such as cribbing or anything that would be unstable. Mr. Famulare asked about how the helical piles would be installed. Mr. Puffer said that there would be a small amount of sand removal required on the west side to get the piles in and they would then be installed at a slight angle into the ground and tilted upward. On the deck side, the deck boards would be removed, and a hand drill would be used to drill the piles straight down. Mr. Famulare asked about the limit of work on the site plan and whether a mini-excavator would be needed. Mr. Puffer said it would not be needed. Mr. Famulare reviewed the draft conditions. He added a condition under the pre-construction conditions regarding beach access stating if it becomes necessary for vehicle access to and upon the adjacent beach, a plan depicting the limit of work and path of travel along the beach should be submitted to him prior to the start of work. In addition, a beach access permit would need to be obtained. He also noted the standard condition regarding structural support within a flood plain that if the Building Commissioner required any changes to the foundation, those would have to be submitted as part of the record. Under the construction conditions, he noted that the contractor would have to develop containment measures for any cutting of wooden members to minimize sawdust and debris from falling on the beach. He added that if it became necessary for vehicles to traverse the beach, no work shall be conducted when the level of the tide is within 10' of the limit of work. And, before and after colored photographs of the beach would have to be taken to make

sure that the grade has been returned to its original condition after any disturbance. Mr. Agro will forward the email from the DEP regarding the Chapter 91 license to Mr. Famulare.

***Loretta Butehorn moved to approve the Notice of Intent, CON 21-50 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 install supplemental piles and beams to support the timber pile foundation of an existing building and decks on the property located at 421 Commercial Street subject to the Order of Conditions as drafted and revised, Oriana Conklin seconded and it was so voted, 4-0.***

b) CON-21-49 176 Race Point Road

**Notice of Intent** filed by the **Provincetown Airport Commission** 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 install a back-up generator with a concrete base pad. Work to take place within Land Subject to Coastal Storm Flowage, NHESP Priority and Estimated habitat, and a Buffer Zone to an Isolated Vegetated Wetland.

**Presentation:** Amy Ball, from Horsley Witten Group, Stu Moncrieff, P.E., from Jacobs Engineering, Inc., the design engineer, and Peter Kacergis, the Provincetown Airport manager, presented the application virtually. Ms. Ball said that the project involved installing a back-up generator to support the capital improvement projects that had already been permitted by the Commission in 2015 and 2016 and that this is the last phase of the construction. She reviewed the site plan and the proposed location of the generator. The site-seeing shack with a porch that is located on the site contains electrical equipment designed to support the Airport and the runway lights. The proposal that was previously approved included adding airfield-wide taxiway edge lights for safety purposes. An electrical vault will be constructed to house the electrical equipment currently existing in the shack and associated repairs to the shack will also take place. The existing electrical equipment in the shack will be decommissioned. The need for a back-up generator was not anticipated at that time of the original capital improvements proposal. The footprint will be 120 sq. ft. and located in a grassy area adjacent to the vault. Mr. Famulare noted the expanded limit of work to accommodate the generator and the concrete pad and the location of the generator and the concrete pad, the vault, and the shack. Ms. Ball noted the resource areas involved, including land subject to coastal storm flowage, a buffer zone, and the fact that the entire Airport is mapped as an NHESP resource area. She explained that the work includes activity within the 100' buffer zone to a locally regulated isolated vegetated wetland and within land subject to coastal storm flowage and said that they were seeking relief under the local wetlands by-law for a disturbance closer than 50' from the edge of an existing resource area and adding a new structure closer than 80' from the edge of an existing resource area. Mr. Famulare reviewed the location of the work activity on an aerial photograph and reviewed other ground-level photographs of the property.

**Public Comment:** None.

**Commission Discussion:** The Commission questioned Ms. Ball, Mr. Moncrieff, and Mr. Kacergis about the installation of the diesel-powered generator and its fuel tank. Mr. Famulare said that a detail showing that the tank will be anchored in accordance with the flood plain and building codes will need to be submitted to him, as tanks can become buoyant and subject to hydrostatic pressure if flooding should occur. Mr. Moncrieff indicated that the fuel tank would be aboveground. He said that the tank is part of the generator unit itself. Mr. Famulare revised his

request and asked for specifications relating to its conformity with all applicable codes. Mr. Famulare reviewed the draft conditions. He reviewed Article 2 of the local Wetlands Regulations. He had included findings with respect to that waiver stating that the Commission waive the requirements of Article 2 of the local Wetland Regulations, which prohibits locating proposed structures within 80' from a wetlands resource area and any disturbance of the buffer zone within 50' from a wetlands resource area. He said he also added that the Commission permits the applicant to construct a generator on a concrete pad as shown on the final approved plans for the following reasons: the generator provides a critical need for the safe operation of the Airport during power outages, there is no other feasible location to install the generator because of limiting existing environmental constraints, such as the presence and proximity of undisturbed, sensitive wetlands resource areas and habitat areas, and the need to locate the generator in close proximity to the electrical vault, which it will be serving. The footprint of the generator is very minimal. The proposed location is wholly within an area which has been previously disturbed, is maintained as a grass lawn, and is separated from the isolated vegetated wetland by a chain link fence. He noted that the special conditions will adequately protect and preserve the wetland interests, such as appropriate erosion control measures, which will be installed, inspected, and maintained, and that all disturbed areas will be restored after work is completed. These are the reasons why the Commission would waive compliance with Article 2. Most of the other conditions are standard. He said that he had spoken to Ms. Ball about #17 regarding herbicides near freshwater wetlands and why that is not a condition that the Airport can comply with. Ms. Ball explained that under a separate NOI and Order of Conditions, a vegetation management plan was formulated. Part of this plan is to manage the phragmites, purple loosestrife, and other species that are present in lesser amounts, that dominate the inner airfield. With the approval of DEP, The Army Corps, the Park Service, Natural Heritage, the Cape Cod Commission, herbicides can be used to control the invasive species that are in the wetlands. The intent is to restore a native plant environment in the area. The Airport has a permit and a state-licensed pesticide applicator to specifically do work in wetland areas. She said the process has been successful in controlling invasives and has been on-going for a couple of years now. She asked that the Commission waive that condition, as it is part of a bigger picture of the Airport's vegetation management. Mr. Famulare recommended that the ban on the use of herbicides be stricken. He will add the condition previously discussed concerning the double-wall containment of the tank that will service the generator.

***Oriana Conklin moved to approve the Notice of Intent, CON-21-49, 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 install a back-up generator with a concrete base pad at the property located at 176 Race Point Road subject to the Order of Conditions as amended, including verification by the Conservation Agent of the proposed tank containment, Loretta Butehorn seconded and it was so voted, 4-0.***

### **3) Request for a Certificate of Compliance:**

#### **a) CON-21-51 24 Ship's Way (Local By-Law)**

(Single-family home construction – no longer in NHESP jurisdiction): Mr. Famulare reviewed the 2017 project, approved under the local by-law only. It is no longer in a NHESP area, as the

NHESP maps were redrawn after the approval. He said the project was complete, but no longer in the Commission's jurisdiction. He would recommend a final Certificate of Compliance.

***Oriana Conklin moved to issue a final Certificate of Compliance for CON-21-51, 24 Ship's Way, Loretta Butehorn seconded, and it was so voted, 4-0.***

4) **Approval of Minutes:**

***August 3, 2021: Oriana Conklin moved to approve the minutes of August 3, 2021 as written, Loretta Butehorn seconded, and it was so voted, 3-0-1 (Nathaniel Mayo abstaining).***

***August 17, 2021: Oriana Conklin moved to approve the minutes of August 17, 2021, Nathaniel Mayo seconded, and it was so voted, 4-0.***

5) **Conservation Agent Update:** Mr. Famulare informed the Commission that the Select Board approved a code of conduct for Town Boards. It was disseminated to all Board/Commission members. He is looking to get an acknowledgement of receipt of the code from Commissioners.

He said that he will be going for another grant for the B Street Garden to finish rehabilitating the rest of the beds that were not done in the spring. He said that they had received a large supply of cardboard and wood chips that were put down to smother and kill poison ivy on the property, although he acknowledged that the second group of goats had done an admirable job of clearing it.

6) **Information:**

a) **CON-21-46 262B Bradford Street:** (repair and repave driveway): Mr. Famulare reviewed the project, which is located on an isolated wetland on the Dwyer woodlands. A steep section of the driveway was repaired and repaved in the same footprint.

b) **CON-21-48 111 Commercial Street:** DEP File # SE 58-0617 (modification of approved plans): This was an Order of Conditions that has gone through several iterations since it was approved. The layout of the piles was changed and 10 were added, but none outside the footprint of the building. No conditions regarding the work were changed, only the number and orientation of the piles and the supports under them.

7) **Any Other Business that shall properly come before the Commission:** None.

***Oriana Conklin moved to adjourn the Public Hearing at 7:04 P.M., Loretta Butehorn seconded, and it was so voted, 4-0.***

Respectfully submitted,  
Ellen C. Battaglini

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2021  
Nathaniel Mayo, Vice Chair