

PROVINCETOWN CONSERVATION COMMISSION

March 7, 2023

6:00 P.M

Members Present: Oriana Conklin, Joseph Cooper, and Mark Adams.

Members Absent: Alfred Famiglietti (excused), Nathaniel Mayo (excused), and Emma Fillion (excused).

Others Present: Tim Famulare (Conservation Agent).

Mr. Famulare introduced the meeting at 6:00 P.M. and called the roll.

Mark Adams moved to nominate and elect Oriana Conklin as Acting Chair for tonight's meeting, Joseph Cooper seconded and it was so voted, 3-0.

Acting Chair Oriana Conklin called the meeting to order. Mr. Famulare explained how the public could participate in the hearing by phone or by using the Microsoft Teams app.

1) **Public Comments:** on any item not on the agenda below. None.

2) **Public Hearings:**

a) **CON-23-17 629 Commercial Street** (*continued from the meeting of February 21, 2023*) **Notice of Intent** filed by **Jo Ann Hirshhorn** 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 repair a seawall deck and a rear foundation. Mr. Cooper, pursuant to the Mullin Rule, attested that he had watched the recording of the previous meeting where this project was presented and discussed.

Presentation: Gordon Peabody, of Safe Harbor Environmental, was in the room, and Eric Larsen, of Aline Architecture, was online to discuss the application. Mr. Peabody said that the property owner had gotten an Emergency Certification to shore up the structure and to temporarily secure the seawall. The project has received a Dept. of Environmental Protection File Number, which was missing at the last hearing of the application. However, he said the elevation drawings for the seawall from the engineer will not be delivered until tomorrow. He requested that the Commission approve the work that is not related to the elevation, including where the structure is falling down and the repair of the foundation. He asked what the options were for the applicants to protect their house at this point and then take care of the seawall later. He added that the sections related to the foundation that were requested by the Commission were sent late. Mr. Larsen spoke about the elevations.

Public Comment: None.

Commission Discussion: Mr. Famulare questioned Mr. Peabody and Mr. Larsen. He clarified what work was being requested. He said he thought it was alright for the Commission to approve the scope of work requested this evening. He suggested that Mr. Larsen and Mr. Peabody submit a new NOI tomorrow for the remainder of the work, as the Commission will not be meeting until April 18th. He also recommended that they try to accelerate the DEP's issuance of a File Number for that work. Mr. Larsen said he did not want to prolong the permitting process any further, however he felt he didn't have a choice. Mr. Peabody said that it was better to do something

instead of nothing and he wanted to help the property owner to achieve some of her goals, such as protecting the structure. Mr. Famulare said he would need a project description submitted by tomorrow and recommended that the abutters' notices go out forthwith. Mr. Larsen will speak with Mr. Peabody to come up with a project description. Mr. Famulare reviewed the conditions for the attenuated project. He revised the project description to include only a repair to the rear foundation. He will strike #14 related to fill, #15 because this project does not include the deck, and #22, which will be saved for the project to repair the seawall.

Joseph Cooper moved to approve an Order of Conditions for CON-23-17, 629 Commercial Street, with the revised scope and the Special Conditions as revised during the meeting, mark Adams seconded, and it was so voted, 3-0.

b) CON-23-22 Cape Cod National Seashore

Notice of Intent, filed by **Henry General Contractors, Inc.**, 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 widen and restore a Beech Forest Trail spur and to construct Old Route 6/Province Lands Road Bike Trail. Work to take place within NHESP Estimated and Priority Habitat Areas and a Buffer Zone to Bordering Vegetated Wetlands.

Presentation: Lauren McKean, Park Planner at the National Seashore, and Jason Lee, of Henry General Contractors, Inc. were online to present the application. Ms. McKean said that the .3-mile spur has long needed replacing and has been closed for years due to adjacent tree roots pushing up through the ground and pavement decay, resulting in safety hazards for users. The trail, running almost parallel with Race Point Road, extends from the transfer station entrance to the Beech Forest Parking lot. She said the Route 6/Province Lands Road Trail spur does not currently exist but is planned on being installed over a section of asphalt remaining from the old Route 6 roadway. The trail segment will then turn onto Province Lands Road and connect up to the Herring Cove Beach north parking area. She said that Natural Heritage comments were received, and the MA Division of Fisheries & Wildlife has been consulted about the project. The Division of Fisheries & Wildlife has determined that this project, as currently proposed, will occur within the actual habitat of the Eastern Box Turtle, (*Terrapene carolina*), a species state-listed as Special Concern, and the Eastern Spadefoot (*Scaphiopus holbrookii*), a species state-listed as Threatened. These species and their habitats are protected in accordance with the rare species provisions of the WPA and the MESA.

Mr. Lee reviewed the Route 6 portion of the trail. He said the work is scheduled for the fall. This .4- mile trail will connect to downtown Provincetown via Moors Road, aka Province Lands Road. Portions of this trail section will utilize the old roadbed next to Highway 6 from the park boundary west of Shank Painter Road to the intersection with Province Lands Road, and north to the Herring Cove Beach parking lot. Approximately 800' of the new trail will be built on the old roadbed using the old asphalt and base, if possible, for base of the new trail. Full depth reconstruction may be warranted where the roadbed exists due to pavement decay. The existing old roadbed is wider than the final trail width will be. Removal of excess material beyond the new trail location, and regrading/revegetation will be necessary. This section of trail will result in a standard 10-foot width with widened 1' compacted gravel shoulders for a multi-use trail, removal of existing trees and shrubs adjacent to the trail/ paving/overlaying the entire surface, centerline striping, improving drainage in low areas to eliminate pooling of water after rainfall, and placing

directional and safety signage as needed. The start of this trail section will tie into Route 6 and will end at the edge of pavement. Approximately 1100' of the new trail will be parallel to Province Lands Road and will be new trail through forest and sand dune type landscape. The end will tie into the existing roadway and include one motion-activated flashing beacons and crosswalk striping. This section has been located and staked prior to completion of the design. It will result in a new 10' wide section of trail and will also include removal of adjacent trees and landscape as necessary for a proper clear and safety zone. Erosion and sedimentation control measures will be implemented along the lower elevations of the trail. Mr. Famulare reviewed the trees that need to be removed. This has to be done to flatten the trail in order to accommodate bicycles.

Public Comment: None.

Commission Discussion: The Commission questioned Ms. McKean and Mr. Lee. Mr. Lee said that the fill will be native. Ms. McKean said that when widening a bike trail, the expansion is on the opposite side of the resource area, and if there are resource areas on both sides, the trail will not be widened. Re-vegetation efforts will be taking place. She explained how any exotics would be handled if any are found during site work. Mr. Famulare reviewed the draft conditions, in post-construction, a reference is made to the stormwater management report, there are findings to be made in Condition #18, Condition #19 incorporates the long-term operation and maintenance plan for the drainage swales along the length of the trail, and Condition #22 incorporates the conditions that are included in the letter from the MA Division of Fisheries & Wildlife regarding endangered species, which found that the proposed project would not adversely affect actual resource area habitat of state-protected rare wildlife species, so it meets the performance standards for the issuance of an Order of Conditions. It also requires that the project be conditioned to avoid a prohibited 'take' of state-listed species with a turtle protection plan, conditions regarding future trail maintenance, setting parameters on the use of temporary erosion control barriers, and any renewal, extension, amendment, or certification of compliance shall be filed with the MA Division of Fisheries & Wildlife.

Mark Adams moved to issue an Order of Conditions for CON-23-22, Cape Cod National Seashore, Joseph Cooper seconded, and it was so voted, 3-0.

c) CON-23-23 259-263 Commercial Street

Request for a Determination of Applicability, filed by **Olivier Jamin Changeart**, 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 remove invasive vegetation and to replace with American beach grass. Work to take place within a Coastal Dune.

Presentation: Gordon Peabody appeared to present the application. He reviewed the plan for bamboo removal, which he said was a pervasive problem in this area of the beach. He hopes to use this plan as a model for bamboo removal elsewhere. He said the plan involves the removal of the stems down to the rhizome, properly disposing of everything, and then putting a dark-colored geo-textile filter fabric over it to allow water to get through but not allowing the bamboo to push up through. The filter fabric will be fastened to the ground with clam-form staples and leaving it over the summer. This will have the effect of 'cooking' the rhizomes. Beach grass will be planted after the bamboo is removed.

Public Comment: None.

Commission Discussion: The Commission requested a copy of Safe Harbor Environmental's handbook on getting rid of invasives be sent to them. The Commission and Mr. Famulare questioned Mr. Peabody about invasives. Mr. Famulare reviewed some of the draft conditions. *Joseph Cooper moved to issue a Negative #2 Determination of Applicability for CON-23-23, 259-263 Commercial Street, with the Special Conditions as drafted and revised, Mark Adams seconded and it was so voted, 3-0.*

d) CON-23-26 645 Commercial Street

Request for a Determination of Applicability, filed by **William H. Heron**, 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 repair egress and other walkways. Work to take place within Land Subject to Coastal Storm Flowage, a Coastal Beach, and a Buffer Zone to a Coastal Beach.

Presentation: Gordon Peabody was in the room, and Eric Larsen was online to present the project. Mr. Famulare reviewed the project, which was bifurcated at a previous meeting and involves repair of a deck and a foundation system. The intermediate walkways and egress decks needed footings. Mr. Peabody said that all material that the Commission requested has been submitted. Mr. Famulare clarified what part of the project had been approved at the previous meeting. He reviewed the plans.

Public Comment: None.

Commission Discussion: Mr. Famulare questioned Mr. Larsen about his intent behind the plan's options. Mr. Famulare reviewed the Special Conditions. He had added one about the written acknowledgement of the conditions by the property owner. The site-specific ones are Conditions #8 and #9, related to making sure there are gaps in the joints of the deck boards to allow for infiltration and that the deck be constructed with flood resistant materials, including corrosion-resistant fasteners.

Mark Adams moved to issue a Negative Applicability #2 and #3 for CON-23-26, 645 Commercial Street, with the conditions as drafted and revised during the meeting, Joseph Cooper seconded, and it was so voted, 3-0.

3) **Requests for Certificates of Compliance:** Mr. Famulare said he was unable to close out the files on these two matters or do the site visits necessary. He recommended tabling these until the next meeting.

a) CON-22-14 315A-319 Commercial Street (DEP File No. SE 58-0587): Tabled.

b) CON-23-24 795 Commercial Street, Unit 2 (DEP File No. SE 58-0590): Tabled

4) **Approval of Minutes of February 7 and 21, 2023:**

Approval of Minutes of February 7, 2023: *Joseph Cooper moved to approve the minutes of February 7, 2023, seconded, and it was so voted, 3-0.*

Approval of Minutes of February 21, 2023: *Joseph Cooper moved to approve the minutes of February 21, 2023, seconded, and it was so voted, 3-0.*

5) **Conservation Agent Update:** Mr. Famulare said that the work on the grease trap at the Governor Bradford has begun.

He added that at the next meeting, the Commission will be considering the April 3rd Spring Town Meeting articles on the warrant. He will forward the warrant to Commissioners.

He said the Commission may be getting an informal presentation from the developer, Christine Barker, of 227R Commercial Street to get feedback and answer questions from the Commission.

6) **Information:**

a) CON-23-25 **641 Commercial Street** (deck demolition): Mr. Famulare said that this project was withdrawn at the last meeting. The applicant will have to come back with an NOI for a new after the old deck is demolished.

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

Oriana Conklin moved to adjourn the meeting at 7:10 P.M., Joseph Cooper seconded, and it was so voted, 3-0.

Respectfully submitted,
Ellen C. Battaglini

Approved on May 16, 2023

Alfred Famiglietti, Chair