

Town of Edgartown
Cape Pogue DCPC

Minutes of Meeting
May 26, 2022 5:00 P.M.

In Attendance (virtual):

Town Administrator (James Hagerty)
Edgartown Conservation Commission (Jane Varkonda)
Edgartown Board of Health (Chris Edwards)
The Trustees of Reservations Membership (Bob Hayman)
The Trustees of Reservations Staff (Darci Schofield)
Cape Pogue Property Owner appointed by the Edgartown Board of Selectmen (Rachel Self)
Conservation/Wildlife Specialist (appointed jointly by Sheriffs' Meadow Foundation, Vineyard Conservation Society, and Vineyard Open Land Foundation) (Matt Pelikan)
Edgartown Police Department (Sgt Ryan Ruley)
Edgartown Harbormaster (Charlie Blair)
Edgartown Marine Advisory Committee (Ed Handy)
Edgartown Shellfish Constable (Rob Morrison)

Meeting called to order.

Minutes from prior meeting approved and recorded.

Openings Remarks

Chairperson Rachel Self indicated that the Committee's recommendations regarding extending the anchoring moratorium were submitted to the Selectmen on May 9 pursuant to the vote at the prior meeting. Chairperson had also made contact with Sgt. Opie of the Environmental Police, who was currently seeking approval to be able to participate in Committee meetings, and remained available to be called via the Comms Center at 508-693-1212 regarding enforcement issues at the Gut. Representatives Fernandez and Cyr have also been contacted regarding the need for a full time EPO on the island, and were looking into the possibility. The Bill submitted in 2020 for housing for an EPO is in the supplemental 5/26/22 agenda materials.

Discussion was opened to Committee members on the subject of water issues.

Water issues

Charlie Blair indicated that new signs, buoys, etc. had not yet been installed, but estimated they would be by early June. Last year's signs are up but new ones are not up yet. He had plans to look in on Cape Pogue during expected peak hours, but cautioned that for Memorial Day weekend he had only four employees, and monitoring would necessarily be limited. Headway speed markers will be put out by Aquamarine.

Sgt. Ruley confirmed that the EPD boat would hopefully be in the water in the next few weeks. Construction on Memorial Wharf was creating some delay.

Discussion was opened to Committee members on the subject of land issues.

Land Issues

Over Sand Vehicles

Jane Varkonda recounted that the Trustees filed in May of 2016 to reauthorize the use of OSV trails, but the authorization had expired before it could be renewed. DEP advised that they could not extend something that had expired. The Trustees were advised that they would need to file a new beach management plan by the fall of 2016. That was never done. The Trustees need to come up a new beach management plan and notice of intent shortly. The last beach management plan the Trustees filed was in 1990. This is the last plan on file and provided in the supplemental materials. There is no valid plan in place at this time. Jane asked when Darci planned to file a Notice of Intent. Darci indicated that her sense is would that this would happen sometime in the fall.

Darci Schofield stated that a beach management plan was in draft form, and could be ready to present as an agenda item at the Committee's next meeting. The Trustees intended to spend several months collecting and analyzing public comment on the plan during the summer season. She reported that the Trustees had recently placed vehicle counters on all beach properties in the last couple of weeks, but on advice of counsel in ongoing litigation, did not provide numbers from counters. Darci confirmed they are gathering and collecting the data from the counters. In response to questions about whether the mission of the Trustees had changed since the publication of the 1990 beach management plan, she stated that the mission had not changed, and that conversations regarding changes to the plan could occur when the plan was published.

Issues of how to access the refuge came up and how that access by OSVs would be addressed as the access has changed significantly from the access available in the 1990 plan. From 1981-1994 the only way to access the refuge via OSV was via Wasque and then when the bridge was rebuilt and opened again in 1994 it was limited to only pedestrian access and emergency vehicles and homeowner vehicles who had keys to the gate at the bridge. The travel around Wasque was a natural buffer to too many OSVs accessing the beach. That is now no longer the case. The Trustees indicated in 1990 if by act of God or some other reason the natural buffer of Wasque was no longer available they would limit the number of vehicles they allowed on the beach so as to balance conservation and public access. Darci indicated that these are the types of issues she looks forward to speaking about once they release their beach management plan. They plan to collect data from the committee, stakeholders, members, visitors, and donors, and get feedback over the summer to move forward with management decisions.

This data was supposed to be provided to the town in 2016. Darci was under the impression they had a valid order of conditions for operating and did not know the Trustees did not have a valid extension but does not believe that it is the Trustees sole responsibility to have a valid order of conditions. Jane reminded Darci that it is the Trustees responsibility to make sure they have

valid permits, and if the Trustees had read the order of conditions it very clearly stated they needed to have a management plan submitted by the fall of 2016. It is the responsibility of the Trustees and no other entity. Darci acknowledged they need a beach management plan and they are long overdue.

Supplemental agenda materials also include Trustees Managers reports that the organization used to provide reporting income from the property and also prior enforcement staff and contacts and the different rules for Nantucket vs. Vineyard as far as OSV use goes.

There was discussion of the fact that certain other Trustees properties do not allow all-wheel-drive vehicles, and whether rules for the Cape Pogue property could be harmonized with these other rules. Darci Schofield declined to discuss the timing of any such harmonization due to ongoing litigation.

Ed Handy asked in light of the fact they have no management plan in place and have different rules for access at other properties whether or not they would harmonize some of their rules so that things are moving forward. Darci Schofield indicated that because of the ongoing litigation she is advised to reserve comment.

Jane Varkonda indicated that the Trustees need to get the OSV rules and beach driving rules consistent before the summer starts. Darci indicated that because the beach management plan is also wrapped up in litigation the timing of how they try to become more consistent is limited by the litigation and she is deferring to counsel.

Chris Edwards indicated that a lot of what it has to do with is cars not lowering their tire pressure to 15 PSI and cars not going over 25 MPH. A lot of the ruts and issues would be avoided from that. But the enforcement of the vehicles is what would help the trails be better maintained. Better management of all vehicles is what is needed.

Chairperson Rachel Self agreed that for many decades there was enforcement and everyone worked together for cohesion and responsible use and open communication. Responsible use is not the issue. The problem is with no enforcement it has become a free for all. Our purview as a committee is to make sure we are doing everything we can to protect the resource. Refer to supplemental agenda materials to see OSV restrictions that used to be in place. The Trustees 1990 plan cited concerns with regard to the Dyke Bridge opening causing too much OSV traffic and not being able to effectively manage the resource, and cite to the DCPC as a way to protect the resource if the influx from the Dyke bridge becomes too much. There is much more use of Cape Pogue now than there was in 1990. If it was a concern back then it is a bigger concern now.

Charlie Blair expressed thoughts that everyone on the committee is very concerned about Cape Pogue and while he normally is more water conscious, the land issues are a concern as well and we all need to keep this place pristine. It is going to take a joint effort by everyone including the Trustees. The harbor plan which prohibits docks was done to protect the area and keep it clean. We have to get a good foundation to move forward into the year. We need to gather data. The Harbormaster has a Cape Pogue log in dispatch so a call the Harbomaster will be logged in a

special Cape Pogue log so we will have the data. There is no one on this committee that doesn't want to keep Cape Pogue pure. Marine advisory and Harbormaster's goal last year with the anchoring moratorium at Cape Pogue was all about this.

Chairperson Rachel Self agreed that we all need to work together and putting one foot in front of the other to work toward the common goal of keeping Cape Pogue pristine.

Bulkhead at the Dyke Bridge

Chairperson Rachel Self inquired as to whether there were any updates from the Trustees regarding repairs to the bulkhead as it has now fallen into serious disrepair.

Darci Schofield indicated that, while she could not comment because this was directly relevant to ongoing litigation, there had been reports and inspections completed by the MA DOT which she could provide. However, before they can apply for permitting until they have a scope of work and design and that is a one-two year process. The supplemental agenda materials contain emails from Chris Kennedy indicating the Trustees were working on this issue and getting quotes as far back as 2012 but this was another issue that also stalled and ceased moving forward.

Use of herbicides, pesticides, and poisons

Chairperson Rachel Self thanked Matt Pelikan for his insight on this issue. She noted that there was no permitted use of herbicides, pesticides, or poisons, under the current regulations, and no mechanism to create or request an exception. The Army Corps of Engineers had been applying herbicides on Little Neck to treat bittersweet in recent years, but after the previous Committee meeting, the Trustees had instructed them to stop. Application of herbicides was currently not occurring.

Jane Varkonda expressed that the lack of a mechanism to create exceptions was an oversight in DCPC drafting. Herbicides are one mechanism to control invasive species. The application conducted by the Army Corps of Engineers had gone through an extensive review process, and a similar process was necessary to ensure the control of invasive species going forward, for instance Japanese knotweed which had been observed. The DCPC needs to create a mechanism for the ability to seek an exception in certain instances as some invasive species cannot be effectively controlled without herbicides.

Matt Pelikan agreed, and suggested that while no one wants to use any kind of toxin unnecessarily there are certain kinds of problems such Japanese knotweed that you need herbicide to treat because if you use other means you could possibly make the problem worse with purely mechanical treatments. The DCPC regulations are in conflict in this instance because while our goal is to promote conservation, some of the guidelines don't allow for some of the ways conservation is achieved (eg. Herbicide use on Japanese Knotweed). The use of herbicides specifically for conservation purposes is a useful arrow to have in our quiver so long as there is the proper oversight and it is exercised judiciously.

James Haggerty indicated he could draft a bylaw that created such a mechanism and run it by town counsel. Whether a public meeting would be required, and what the precise process was for implementing the mechanism, would need to be looked into. He indicated he would do so for the next meeting.

Bob Hayman asked whether or not the Trustees are using it now and it was indicated that since the Trustees learned of the DCPC regulations prohibiting it they have stopped using herbicides. In the supplemental agenda materials there are emails regarding this issue. The Trustees had an agreement with the Army Corps of engineers as part of the ordinance removal process, and at this point the Trustees feel very strongly about complying with the DCPC and they have not done any use of herbicides or predator management as a result of DCPC regulations. There are alternatives to using herbicides to get rid of bittersweet but it can cause destruction to make sure you are getting the root systems and is not as successful as getting all of it.

Bob Hayman asked if there are exceptions granted to apply herbicides who would be responsible for doing the application. Darci answered that this needs to be done by licensed individuals with extensive training.

Dune buggies

Chairperson Rachel Self brought up an unanticipated item of business not on the agenda. Six dune buggies had been observed parked by the Dyke in advance of the Memorial Day weekend. Darci Schofield indicated the Trustees were aware of the situation since the early morning of 5/25 and would continue monitoring. They had been in contact with the individuals who owned the dune buggies to remind them of the rules and regulations. They have a license plate number and a permit number but not a name. They are trying internally to identify that. While people do need to give their name when they get a permit, the permit was from 2021 data and the records they have locally here on the island do not include the records they have in their central system. They have been monitoring the situation and none of the vehicles have left town property or violated any of the Trustees rules or regulations. A detective from EPD had gone to investigate, and Sgt. Ruley indicated people associated with the buggies had been identified and the police were waiting to hear back about their removal.

Another item was a Trustees Ranger who drove up on the dunes and got stuck. After digging out the ranger did not fill in the holes they left when they dug out their stuck vehicle. Photos of the stuck ranger truck and damage left are in the supplemental agenda materials. Darci was aware of the issue and indicated that she would commit to the Trustees staff and rangers being trained how to drive properly on the beach with 15 PSI and speed limits but that everyone gets stuck from time to time.

Public Comment

Chairperson Self opened the meeting to comment from members of the public.

Peter Sliwkowski, a full-time resident of Chappaquiddick and business owner, expressed a desire for more publicly available information about the Committee, perhaps on a website, such as its

charter, its membership, and a description of its purpose. He asked whether agendas and minutes were publicly available and believed it was important to better socialize the committee, considering how critical it was. James Haggerty indicated the Committee had only started meeting recently, and was still figuring out its responsibilities and purpose, and was working on website content that would comply with statutory requirements.

Edward Self, Jr. expressed his view that the Trustees held much of the data required for the Committee to be effective, and that they had become increasingly commercial over the years. He hoped the Trustees would formulate an effective management plan.

Thomas Ross inquired how the Trustees were able to continue to sell stickers and operate tours if they did not have appropriate authorizations or a management plan.

Carol Ann Charette, of the Army Corps of Engineers, was the project manager for the work on Cape Pogue as well as other projects on Chappaquiddick and Edgartown. Her project had been treating for bittersweet in the area for two years, and had been planning to return the week of June 6 until the Trustees informed them the work could not go forward. She inquired about a timeline for the creation of a mechanism to request an exception allowing herbicide use. She discussed mechanical methods of controlling invasive species and why they were not always feasible or as effective as herbicides. Chairperson Rachel Self responded that the Committee was going to investigate the necessary process for creating an exception mechanism as quickly as possible.

Edward Self, III was concerned that there was a general lack of training or checks for appropriate equipment and vehicle calibration for vehicles that went on the beach. Vehicle traffic had steadily increased, and oversight had steadily decreased. He was concerned that the Trustees' mission had shifted and the organization had commercialized, and that stakeholder concerns that had been expressed for years have never being addressed.

The meeting was adjourned at 6:11 P.M.