



Meeting Minutes - Edgartown
Conservation Commission
December 6, 2023 (4 pm)

Commissioners present (6): Peter Vincent (Chair), Lil Province, Max Gibbs, Geoff Kontje, Jeff Carlson, Robert Avakian

Commissioners Absent (1): Christina Brown

Staff (4): Jane Varkonda (Agent), Kara Shemeth (Assistant), Reade Milne (Building Inspector), James Hagerty (Town Administrator)

Public in attendance (73): Abigail Rosen, Alexis Colantonio, Ann Floyd, Barbara Rogers, Becky Ross, Bill Brine, Bo Reily, Bob Fox, Bob Hayman, Brad, Brooke Kushwaha, Bruce, Charles Hoopes, Chris Kennedy (MVBAG), Cynthia, Darci Schofield (TTOR), David Faber, David Tyler, Dbalon, DCron, Donald Scarpone (MV Surfcasters), Dylan Sanders (TTOR), Edward B Self, Edwina, Elizabeth McDonough (TTOR), Emily, Emmett, Erin Michaud, George Mellendick, Gustavo Moreno, J W, Jack Livingston, Jay Hunter, Joel Graves, John Piekos (MV Derby), JoJo Brennan, Jonathan Herman (MVBAG), Joseph Russo, Joseph Schott, Joseph Susienka, Judy Murphy, Karen Osler, Kirk Oswald, Leslie Self, Mark, Mark Carlson, Mary Dettloff, Maryanne Jerome, Megan, Melissa (Lisa) Thompson, Morgan Herman, Patricia Hyde, Peter Sliwkowski (MVBAG), Phil Horton (MV Derby), Rachel Self, Reed Nolte, Richard Thompson, Rick Schiffer, Rob Ianelli, Robert, Roger Becker, Ron Domurat, Russ Hopping (TTOR), Seena Pidani, Serene Forte, Solomon Watson, Teri Carilli, TG, Timothy Moriarty (Brush, Flanders & Moriarty, llc), Todd, Tom Ross, Victor Colantonio, William Gazaille

Continued Public Hearing –Notice of Intent **SE20-1703**

Applicant: Trustee of Reservations

Address: Cape Poge Wildlife Refuge

Representative: Darci Schofield, TTOR

Project: Seeking authorization for the operation of Over-Sand Vehicles (OSVs) on land The Trustees owns on Cape Poge Wildlife Refuge. Cape Poge Wildlife Refuge is approximately 357 acres with five miles of barrier beaches and approximately 10 miles of OSV trails beginning north of the Dike Bridge to the Gut.

The application applies to the following Trustees owned properties: Road to the Gut (AP 15-2, 15-3, 15-4, 3-1, 3-2.1, 4-1, 4-2), 20 Lighthouse Road (AP 17-1), 43 Lighthouse Road (AP 3-12), Shear Pin Lane (AP

3-13.112), 35 Lighthouse Road (AP 3-13.17), Lighthouse Road (AP 3-13.18 & 48-45), 30 Lighthouse Road (AP 3-13.2), 23 Lighthouse Road (AP 3-14), 29 Lighthouse Road (AP 3-15), 10 Lighthouse Road (AP 32-2), 71 Lighthouse Road (3-5.1), 16 Road to the Gut (AP 3-7.1), 23 Pocha Road Extension (AP 49-1) AND on non-Trustees parcels with right to pass: 5 Shear Pin Lane (3-13.111), 20 Road to the Gut (3-5.3), 29 Road to the Gut (AP 3-2.3), Road to the Gut (AP 3-2.2), 40 Road to the Gut (AP 15-1)

Continued Public Hearing –Notice of Intent **SE20-1702**

Applicant: Trustee of Reservations

Address: Leland/ Wasque

Representative: Darci Schofield, TTOR

Project: Seeking authorization the operation of Over-Sand Vehicles (OSVs) on land The Trustees own and manages under contract at Wasque Reservation and Leland Beach. The Notice of Intent pertains to approximately 3.6 miles of OSV trails within the 298-acre combined properties.

The application applies to the following properties: 23 Pocha Road Extension (AP 49-1)
Lighthouse Road (AP 48-45)

Documents shared: None

Commissioner Comment: Commissioners deferred for Public Comment and asked that several attendees read their letters to the Commission into the record.

Chair Peter Vincent read into the record a letter from Town Counsel regarding the ownership of the Dike Bridge and causeway/ bulkhead dated December 4, 2023 (attached).

Rachel Self read into the record her letter dated December 1, 2023 (attached)

Chris Kennedy read into the record his letter (attached)

Timothy Moriarty read into the record his letter dated December 1, 2023 on behalf of the Reily family(attached)

Richard Thompson spoke of his support for responsible, supervised OSV access and expressed 3 points:

- OSV access is not a matter of convenience, it's a simple practical issue due to lack of parking, there are 20 public parking spaces for 9 miles of shoreline.
- He compared abutters of TTOR property to airport abutters in their efforts to change activities that have been happening for years.
- Noted that without access, the Con Com would be responsible for an enormous transfer of wealth to Cape Pogue landowners by creating a private sanctuary.

Bill Brine spoke of his support for responsible OSV access and shared some of his photos taken from the air of conditions at the Gut and Pogue. He reviewed the reality of the state of the beach and spoke to there not being enough beach to allow OSV access to meet the guidelines (on file with the Con Com)

Kara Shemeth (Conservation Assistant) read into the record an email from Alexis Colantonio dated November 30, 2023 requesting the immediate shutdown of OSV access until TTOR can provide adequate staffing (email attached)

Chair Peter Vincent posed the following questions to the applicant:

A. Why is the definition of tidal flats different than the definition in the Wetlands Act definitions?pg 42 2.5.1

- Applicant will respond in writing

B. Why does TTOR suggest that all tidal flats are land containing shellfish

- Applicant will respond in writing

C. What is the plan for removing the stairs from the fisherman's access location, we have been advised that TTOR's plans for removal have been foiled due to the condition of the stairs. Why did TTOR wait so long to extricate the stairs from the feet of sand that has built up around the stairs?

- Darci Schofield reported that the stairs in question had been removed last week and the remaining portions that are buried will be monitored for safe removal. In regards to why they waited to remove them, Darci noted how busy Wasque is and how heavily used the stairs were.

D. Has the lack of trail signs been remediated since the notice of violation from August was issued?

- Darci Schofield stated that they did not receive a notice of violation and asserted that they are maintaining the signage as they said they would in the previous application. She noted that they increased wayfinding signage after meeting with Jane in August and getting clarification on what was expected.

E. Clarification of when OSV trails must be delineated with symbolic fencing vs. what TTOR thought they could keep doing vs. what the last Order stated. The Barrier beach guidelines allow for some minor modifications to be made when topography and vegetation provide an

adequate physical barrier to OSV incursions.

- Darci Schofield emphasized that all their symbolic shorebird fencing was installed prior to April 1st. She stated that “all their fencing was delineated on the landward side of our OSV corridors” because they were delineating the suitable habitat as well as the OSV corridor. She noted the misunderstanding regarding the interior OSV trails and once this was brought to their attention they remedied the issue and noted that while it was not how they stated they would fence in their application but are happy to do so.

F. What are TTOR's plans for access for fishing when listed shorebirds are Present.

- They will follow the 1993 Guidelines (FOR MANAGING RECREATIONAL USE OF BEACHES TO PROTECT PIPING PLOVERS, TERNS, AND THEIR HABITATS IN MASSACHUSETTS)

G. Has TTOR incorporated the recent decision by NHESP regarding access around a plover nest which resulted from support from BAGA and letters from the Selectboard and County Commissioners and Representative Fernandez?

- Darci referenced her first presentation in which she established that this has been a practice TTOR has been utilizing in their OSV and bird management practices. She noted that TTOR intends to supply additional information regarding minor changes to their beach management plan.

H. What is the timeline for response to NHESP re: determination that the application is incomplete. NHESP asked for clarification on permission to file for the lighthouse and the jetties. NHESP also asked for rare species information including number and distribution over the past 5 years. NHESP also asked for specifics on staffing.

- All the information is ready to go except for information on the right to pass on the US government parcel. TTOR is looking into that prior to submitting the answers to the NHESP questions and changes to the BMP and addressing the ponds in question on Pogue.

I. Why is TTOR only using ½ of the sand the town is dredging out of the narrows. The town estimates 4000 yards coming out of the channel and TTOR is only proposing to use 2400 yards. Why are they leaving \$52,000 worth of sand out on east beach where it will be gone in a heartbeat? We were told at the Cape Pogue meeting on 11/30 that it is due to lack of funding. If the bayside trails are so deteriorated that access is dicey at

best isn't in the best interest of the beach to use all the sand to nourish these trails?

- Applicant will respond in writing

J. What are TTOR's short and long term plan for maintenance of the OSV trails and pedestrian trails, and stairs. Beach management needs to be proactive and have the ability to access funds, manpower, expertise when resources, including access, are threatened.

- Noted that the maintenance of the OSV trails is included in the BMP. The inner trails are graded every two weeks or after a heavy rain.
- There will be an additional response submitted in writing.

K. Regarding the recent violation from last week when an OSV tore up a portion of the osv trails and vegetation, what is the plan for staffing in the spring, summer and off season. TTOR's lack of staff seems to be a substantial part of the problem with their ability to manage the properties. What is the budget for boots on the ground to protect the resources and adequately managing the visiting public? The staffing info should be broken down into shorebird vs. ranger staff, hours, shifts and plans for what will happen if they find themselves short staffed. This kind of information is routinely asked for in many beach management plans. We plan on notifying ttor of this violation officially and most likely will issue a fine.

- Darci noted that the staffing is outlined in the BMP and there is currently a Winter Ranger who checks the beach daily. She noted that this is consistent with TTOR's historic off-season staffing.
- The damaged area was remediated immediately and it was noted that the majority of TTORs visitors are really good people and the ones who cause damage are outliers.
- Visitors who travel past the jetties have their OSV passes revoked for the remainder of the year. Regarding winter staffing, Darci drew similarities to how Norton Point is managed in the off season and asked that TTOR be viewed in the same light.

L. Why is the beach accessible at all times during the off season when the beach is not staffed, no one is at the gatehouse or mytoi. The beach technically closes at 10 pm unless the person is actively engaged in Fishing.

- It was clarified that due to fishing being allowed 24/7, the property is left open.

M. What steps have ttor taken or will they take in the near future to remotely monitor and or secure critical locations on the beaches? For instance, the town has installed multiple cameras on south and Norton wo that staff can monitor activity. Most recently folks were caught on Norton accessing areas that were shut off due to safety concerns.

N. Who is the beach manager? Who ultimately makes the final decisions regarding beach operations?

- TTOR has discussed installing cameras at the entrance to Cape Pogue and Darci is researching her options.

The Chair asked who the Beach Manager is that would be making final decisions and Darci Schofield explained that they make decisions as a team. The team includes herself, the stewardship manager, the coastal ecologist, the director of ecology and the vice president of nature and properties depending on the decision at hand.

The Chair asked if the applicant would like to add anything. Darci Schofield noted that they are working to address the ponds (AP 3-2.3) that were left out of the original filing and that they are making slight modifications to the BMP and will be submitting everything all at once.

She reiterated that TTOR is here for the public and the public's interest in experiencing this extraordinary place and are truly committed to providing beach access and protecting the property for generations to come.

She asked if the Commission would be extending the existing Order of Conditions, which expires today. The Assistant explained that due to a clerical error, the item did not make it onto today's agenda and staff have scheduled a meeting for Friday afternoon at 2 PM to address the continuation.

Commissioner Questions/ Comments:

Commissioners expressed frustration with TTORs handling of the Dike Bridge Causeway and pointed out that if TTOR has no ownership of the causeway then they are depending on the goodwill of the owners to allow passage across the causeway and any one of those owners could conceivably deny access until the issue is resolved.

Staffing was discussed and it was noted that a lot of the actions proposed in the BMP are dependent on adequate staffing levels. The BMP is based on adaptive management which means that TTOR will be adapting based on tidal cycles. Commissioners need to be satisfied that TTOR has both the ability and the will to supply this kind of staffing.

They noted that leaving a significant amount of “free” sand out on the beach because the finances doesn't reflect well and noted that this speaks to TTORs ability to financially support the BMP. Commissioners requested the applicant provide information proving they have an adequate budget to manage the property and noted that the number of vehicles allowed on the beach needs to be tied to the amount of staff available to manage the property.

Darci Schofield responded that if an Order of Conditions out to the Gut were issued then they would by all means need additional staffing and that she has been discussing this with the organization.

She clarified that the adaptive management would not be as dependent on tidal cycles, it would be more influenced by storm surge and extreme high tides. Regarding the dredge spoils, Darci noted that the areas being worked on are part of a Town held nourishment permit and that they are utilizing the 2,400 cubic yards on the areas that are available within that permit footprint. IT is their position that if the Order were issued they could utilize more of the sand in other areas in need of nourishment per their BMP.

She asked for clarification on what the Commission was looking for in regards to showing financial capability to run the property. Commissioners referred to financial statements similar to ones provided regarding Katama Farm showing that the organization had enough of a budget to cover all expenses. Commissioners asked to see an operating budget for Wasque/ Leland / Pogue.

The Agent asked for clarification regarding the dredge spoils. Is TTOR saying that the 2,400 cubic yards will be all that's needed to restore the approved areas? Russ Hopping clarified that TTOR has the finances to cover a week and a half of an outside contractor moving the dredge spoils and that the money they have will not cover moving all the sand provided nor will it fulfill all the potential allowable nourishment and that sand will be left on East Beach that could be used to nourish OSV trails.

Public Comment:

The Chair opened the floor for the public to ask the applicant questions and suggested that Darci wait until the end to respond to the questions.

Joseph Schott: Asked if the beach could be closed to all cars and trucks from the Dike Bridge north. He spoke to the possibility of beach access without OSVs and expressed his support for less human impact and access under one's own power. He inquired if it

has occurred to the applicant and the commission that conservation and vehicular access are two things that are unable to be reconciled.

Jonathan Herman : Read his letter into the record (attached)

Seena Pidani: If TTOR were doing their job it is conceivable that OSV access would have been severely reduced had TTOR been commissioning the impact studies that they should have been during the past decade. He spoke to the lack of professional consulting in all regards of understanding beach impact and regarding the dredge spoils and how wasteful it is to leave the sand unused when it is needed on the trails and beach. He stated that it was clear that their priority was beach access and getting people on the beach and that's not what TTORs mission is, its mission is conservation. He spoke of the apparent 180 done by the organization in regards to the Dike Bridge ownership where for years they claimed it was their bridge and now that it is in need of repair it's not theirs. He spoke of the difficult position Darci Schofield is in her position. He felt that without the opinion of experts, the status quo will continue.

Karen Osler: Asked about the potential use of the RFID system used in Duxbury Beach's OSV permitting system could be utilized for Cape Pogue.

Joel Graves: Spoke of his support of OSV access and suggested a veteran based program where if you've shown over time that you are a responsible OSV user, you are able to get a permit. This would cut down on the rental vehicles and short term visitors. He expressed that an "all or nothing" approach doesn't seem to be the best course of action.

Action: A motion was made, and seconded, to continue the TTOR hearings to 1/24/23
Passed unanimously via roll call vote

Action: A motion was made, and seconded, to discuss the continuation of the existing local Order on Friday, 12/8/23 at 2 PM
Passed unanimously via roll call vote

A motion was made to adjourn the meeting at approximately 5:55 PM