

Town of Edgartown
Cape Pogue DCPC

Minutes of Meeting
September 28, 2023 5:00 P.M.

In Attendance (virtual):

Cape Pogue Property Owner appointed by the Edgartown Board of Selectmen (Rachel Self)

Edgartown Conservation Commission (Jane Varkonda)

The Trustees of Reservations Membership (Bob Hayman)

The Trustees of Reservations Staff (Darci Schofield)

Conservation/Wildlife Specialist (appointed jointly by Sheriffs' Meadow Foundation, Vineyard Conservation Society, and Vineyard Open Land Foundation) (Matt Pelikan)

Edgartown Shellfish Constable (Rob Morrison)

Massachusetts Environmental Police (Matthew Bass)

Edgartown Board of Health (Chris Edwards)

Meeting called to order.

WATER/LAND ISSUES

Proposed amendment to DCPC Regarding Poison Use (Herbicides and Pesticides)

Rachel asked for discussion regarding the draft language (which was pulled directly from the DEP document). Jane asked for clarification on the term pesticides. Jane suggested that a consideration should be organic or inorganic pesticides, which will include herbicide, pesticides, fungicides and chemical fertilizers, similar to what has been done in the past. Jane asked about the language referred to in Paragraph one, regarding a review of chemical applications to “aquatic systems”. Is this specifically referring to intertidal zones and salt marshes and/or does it include dunes and uplands, which do exist in the DCPC. Rachel suggested that Cape Pogue DCPC “aquatic systems” could be replaced with “Cape Pogue Land within the district”. Further discussion included, language related to no more than one dwelling per lot and including non dwelling structures. Rachel suggested to change language from aquatic systems to any area within the district and to change dwellings to any structure. Jane inquired if they could allow pesticides for control of invasive plants and animals. Rachel discussed that as an advisory only committee, they could give their recommendations to the Planning Board and the Conservation Commission, whom are the arbiters of the decision to be made. Darci Schofield commented that the original DCPC language permits the use of Herbicides around dwellings, why would we do this? Because many times, there is applicant error. We should only be using licensed individuals to apply pesticides.

Ed Handy had questions regarding the language on page 2, 1st sentence. He suggests changing the language from chemicals to organic or inorganic pesticides.

Matt Pelican had many comments regarding the language at the very beginning of the current regulations. He pointed out a change from *if prohibited* to *is prohibited*. He agrees that using the pesticides as a catch all term is standard usage. Next he recommended in the proposed language

of the 1st paragraph, beginning with, “the special permit” to the end of the paragraph is not appropriate language for a regulation. This language should be struck from the proposed wording. Matt said we are limiting the Planning Board purview if we keep it included. Matt continued with copy/edit points. 1. In the second paragraph, 3rd sentence, upon receipt of the special permit application, the Planning Board should forward *a copy*, should be changed to *copies*. 2. “failure of the above named entity should be “failure of any of the above named entities”, to respond in 21 days. Finally at the very end of that paragraph, that the permit can be issued if the Planning Board finds that the proposed use *will not have a net negative impact*. He said the use of a pesticide, by default, does have a negative impact. It kills stuff. 3. 2nd page- regarding Notice of Intent. He asked if there portions of the DCPC area that are not subject to the Wetlands Protection Act? Jane said yes. Wasque, for example is well beyond the 200 feet from the top of the bank. Matt suggested if this is the case, are we putting an unreasonable and undue burden on the applicant forcing them to file a Notice of Intent, even if they are in an area that is not covered by the Wetland Protections Act. Jane suggested the language could say that if outside of the Conservation Restriction jurisdiction, then they do not need to apply (This would be 200 feet from a resource area). Jane said she could write up language, not only for the wetlands, but within a buffer zone of a resource area. Matt concurred with that.

Jane said that there will be problems with requiring “all the above entities” to provide a written recommendations. There was more discussion and comments regarding this. Darci commented she would have Russ review to see if he has any concerns and address the committee by email. Personally, Darci feels she will not go along with all of this. She feels that there is too much oversight. It doesn’t make the time invested worth while. She asked, how many of these departments, etc are really educated correctly regarding the invasive species, etc. She asked Matt and Jane for their opinion.

Matt feels this is a cumbersome process, but a lot of the cumbersomeness is with the Planning Board and not the applicant. He described how the process unfolds. Some committees will be completely opposed to using pesticides at all and others will be open to certain exceptions. The Planning Board will take these recommendations and decide. He mentioned impact of climate change. It could be necessary to have some kind of mechanism or pathway to address this. Most entities feeding in are already parts of this DCPC. Darci added that she feels the pesticides term does not include fertilizers, so they must be mentioned separate. Matt agreed. Rachel said, she would take any language that anyone wants to add and make those changes to have a final draft to present and act on at the next meeting.

Water Issues

Harbormaster Update re: Gut
Charlie Blair not present

Update from Edgartown Police and Harbormaster regarding enforcement
Edgartown Police not present

Update from Shellfish Dept.

Rob Morrison updated the committee. Rob thanked Chris Edwards, his staff and everyone else who helped move scallop seed, that washed up on the south end of the pond, back into Cape Pogue. (due to the close rush with the hurricane). They moved nearly 200 fish totes. This will benefit the next scallop season greatly.

Beach updates

Dyke Bridge

Darci commented MESA is aware of the issue and are working on a more substantive approach with the Town on issues related to the bulkhead.

There was a beach management plan, there was a plan submitted and two NOI's submitted for continued OSV use on beaches. Darci sent the google drive around to everyone including all the materials. The Conservation Committee will meet October 4 to discuss. Darci added the last time with the Beach Management Plan; the Cape Pogue DCPC sent their recommendations to the Conversation Commission. Ed Handy asked Jane if they needed to submit the letter again. The last letter was submitted in February. Jane said that due to this being a different plan, she requested a new letter be sent with more comment from the Committee other than to follow the rules and guidelines. Darci said many items have been addressed and are in place. Rachel read the language from the last letter which said "It was the recommendation that the Edgartown Conservation Commission assure that the NOI is subject to all rules and regulations presently in place including the Wetlands Protection Act, the guide lines for the barrier beach management in the Massachusetts, Edgartown Zoning Bylaws, 310 Mass regs 10.00, Executive Order 190 and the Cape Pogue DCPC decision. In addition to recommending that the applicant sustain its burden of compliance with the laws and regulations currently in place, we recommend that the applicant address in its NOI all recommendations for management of recreational users (from section 3). Rachel commented there have been some things that are not applicable anymore, because TTOR have completed them and that the management of recreational users was pulled directly from the language of the original DCPC, which says "Examine adequacy of signage for off vehicle tracks, increase education of off road vehicle users, consider requiring a special license, development of a film (been done), increase opportunities for personnel contact by adding onsite an off road vehicle personnel, improve pamphlets, establish a display kiosk (now in place in Mytoi), and then it goes on to say, and these were recommendations from 1988 – "prohibit use of vehicles on beaches adjacent to Cape Pogue Bay on Pocha Pond, limit the number of parallel tracks, consider a limit on the number of vehicles per day, contribute to maintenance budget of public and private roads running from the Chappaquiddick ferry to Wasque and the Dyke Bridge, consider construction of bike or walking path as a recreational alternative to the use of vehicles, hire a ranger to protect nesting areas and increase policing of off road vehicles. These were included in the previous (February) letter.

Darci asked the Committee to discuss and reconcile Section 3.1c, which is to prohibit the use of vehicles on beaches adjacent to Cape Pogue Bay and Pocha Pond. TTOR has created some clear definition of how to delineate the OSV corridor (above the average daily high tide). There are places that will be closed off, like the Cedars for example, where the high tide line comes right to the base of the Cedars. So we need to expect more closures on the Bay side. It is hard to imagine that unless something significantly changes, there will be very limited access to OSV vehicles. Jane, Rob and Darci met regarding shell fishing access, with the upcoming scallop season

starting Oct 1. It is really important for the DCPC to reconcile this recommendation to help the Con Comm with their effort. There is a major conflict with what the public, beachgoers, shell fishermen and surf casters want. Rachel asked for comment from the Committee. Rob said he would not want to prohibit use of vehicles on beaches adjacent to Cape Pogue Bay and Pocha Pond. Perhaps change the language to reflect specific uses, instead of a wide spread prohibition of vehicle use and include shell fishing access. Rachel suggested allowing access at dead low tide. Have TTOR carve out those times - One hour before low tide and one hour after. Darci said their mission is for the public, they cannot give privileges for one special interest group. For the purposes of The Wetlands protection act, Jane spoke to DEP regarding special exception for shell fisherman. Jane said according to DEP staff member that access for fishing and shell fishing is allowed in resource areas and intertidal areas. The current NOI in place has been extended to November 30 covering up to the jetties to be sure that the shellfishermen have access through them.

Matt asked Rob, as a compromise, to allow access to a couple discreet parking areas. Rob said this is not an option. The most important species for shell fishing access in Cape Pogue is bay scallops. Their distribution is wide spread and changes year to year. It would be hard to define what that area would be. Transportation to the bay of scalloping equipment is not practical if they had to use parking lots. Matt agrees with Rob.

Darci commented that the October 1 start of scalloping season is a separate discussion. She suggested addressing the upcoming beach management plan and hearing, which will be its own order of conditions. The new beach management plan has a new set of criteria and she wants the committee to evaluate section 3-1c. Darci requested clarification for which issue to discuss. Rachel felt with a NOI in place, the October 1 – November 30 time period and shell fishing is more important. Darci said the challenge is the Order of Conditions and to define how we delineate an OSV corridor. Currently, in the last two storms there have been east winds that have impacted the bay side, astronomically high tides and significant rainfall. These are the reasons for the current restrictions on the bay side. Rachel doesn't see why low tide access cannot be put in place for shell fishing and questioned why so many roads are currently closed. Darci said she will not deviate from the current order of conditions based on the scrutiny they are under. Rachel asked if TTOR have managed to anchor down the port a potties or screened them. Darci said they would be completed by October 14. Rob and Jane will work for bayside access for shell fishing.

Meeting opened to public comment

Chris Kennedy had questions. He liked Rachel's suggestion about possible timed low tide access. He said that having a 2 hour before and 2 after low tide rule makes sense. He said there are 8 beaches in Mass. that issue OSV permits. 6 of them allow travel in the intertidal zones, so it is not illegal to drive below mean high water. He brought up the Trustees concerns about maintaining a rack line. He said it is important during the shore bird nesting season, but not during the fall fishing and shell fishing season. He urges the TTOR to work with Rob and Jane to come up with a solution.

Rachel asked that Jane, Matt, and Russ get her language with regard to pesticide regulation, as well as the Board of Health. They can communicate via email and be prepared for the next

meeting in order to present motions and move forward. The next meeting will be October 26, 2023 at 5:00 p.m

Motion to adjourn by Bob Hayman. Ed Handy seconded it.

Meeting adjourned

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