

Cape Pogue DCPC Advisory Committee

February 11, 2023

Edgartown Conservation Commission
70 Main Street
Edgartown, MA 02539

RE: Cape Pogue DCPC Advisory Committee Recommendations
NOI SE20-1672

Honorable Commissioners:

On February 9, 2023 the Cape Pogue DCPC Advisory Committee held a special meeting to discuss NOI SE20-1672 and provide recommendations to the Conservation Commission regarding same.

Discussion was had and a motion was made. The motion passed with eight (8) aye votes and two (2) abstentions.

It was discussed that the applicant has the burden of proof to show that any application is in compliance with the law. It is the recommendation of the Cape Pogue DCPC Advisory Committee (The Committee) that the Edgartown Conservation Commission ensure that NOI SE20-1672 be subject to all applicable rules and regulations presently in place including the Wetlands Protection Act, The Guidelines for Barrier Beach Management in Massachusetts, Edgartown Zoning Bylaws, 310 Mass. Reg. 10.00, Executive Order No. 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, The Committee recommends that the applicant must address in its NOI all recommendations for “Management of Recreational Users” from Section III of the 1988 DCPC decision of the MVC, including:

1. Management of Recreational Users To reduce impacts of recreational uses and, to encourage the Trustees of Reservations, and the County of Dukes County, to direct a greater percentage of funds generated by off road vehicle permits issued for areas of Cape Pogue to maintenance of this area, the following practices are recommended:
 - a. Examine adequacy of signage for off road vehicle tracks.
 - b. Increase education of off-road vehicle users. Consider requiring a special license.
 - b 1. The development of a required viewing film of less than 5 minutes would decrease need for oral education by permit granting authority which may be impossible during busy times and pamphlets which are expensive and may be

ignored. This film could be developed in conjunction with local conservation groups and shown at kiosks or on local television.

b 2. Increase opportunities for personal contact by adding on-site and off road vehicle permit personnel.

b 3. Establish display kiosk at site entrance.

b 4. Improve pamphlets.

- c. Prohibit use of vehicles on beaches adjacent to Cape Pogue Bay and Poucha Pond.
- d. Limit number of parallel tracks.
- e. Consider a limit on the number of vehicles per day.
- f. Contribute to maintenance budget of public and private roads running from the Chappaquiddick Ferry to Wasque and the Dike Bridge.
- g. Consider construction of a bike/walking path as a recreational alternative to the use of four wheel drive vehicles.
- h. Hire a ranger to protect nesting areas during nesting season.
- i. Increased policing of off road vehicle users.

Respectfully Submitted,



Rachel M. Self, Chair
Cape Pogue DCPC Advisory Committee

Town of Edgartown
Cape Pogue DCPC

Minutes of Meeting
February 9, 2023 5:30 P.M.

In Attendance (virtual):

Town Administrator (James Hagerty)
Edgartown Conservation Commission (Jane Varkonda)
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 Harbormaster (Charlie Blair)
Edgartown Shellfish Constable (Rob Morrison)
Massachusetts Environmental Police (Matthew Bass)
Edgartown Police Department (Sgt. Ryan Ruley)
Edgartown Board of Health (Chris Edwards)
Edgartown Marine Advisory Committee (Ed Handy)

Meeting called to order.

Land Issues

Revised NOI filed by TTOR for OSV Access

Supplemental materials were provided in advance of the meeting; Rachel Self opened the floor to discussion by the Committee regarding what recommendations the Committee should make to the Conservation Commission on this issue.

Ed Handy pointed out that rules and regulations for the area of concern already existed, and felt that all the Committee could recommend (without going through extensive public process) going forward was adherence to those guidelines. He hoped to see the recommendations made in the Committee's enabling document in 1988 addressed, and asked whether TTOR had plans for addressing those. Darci Schofield indicated TTOR was planning for many eventualities depending on what would occur at the upcoming Conservation Commission meeting; she was adamant that TTOR would get people to the beaches this summer, but that appeals in the process could add weeks of delay. Jane Varkonda indicated that appeals might take closer to a year to resolve, not weeks.

Matt Pelikan believed TTOR has been good at following federal guidelines with regard to wildlife protection, and that the NOI showed no reason to think this would be a problem in the future. He expressed that while he is on the Committee to represent wildlife, he believes the Committee has to strike a balance between that and traditional use of beach, tourism and its

economic importance, etc., and the goals of the DCPC include all of these things. He believed denying the NOI and therefore beach access in the upcoming year would create public discontent, and recommended approval with a strong commitment from TTOR to get their house in order.

Rachel Self questioned why the NOI could not be broken into multiple NOI's in order to keep some beach access open, given how long the likely appeal process would take. She believed it would be a tragedy to have everything shut down when the process did not require it. Darci Schofield noted that in all years since 2016 TTOR has submitted one NOI for all these areas because they consider it one management unit. She did not agree that continuing this practice would create a tragedy. She welcomed recommendations from the Committee and the Conservation Commission, and indicated that a meeting between TTOR and Cape Pogue residents had taken place and she was hopeful.

Rachel Self would recommend that TTOR or any potential manager should come to the table with the kind of materials presented in 1990: a detailed plan supported by extensive evidence. That had not been provided here, which made it difficult in her view to make any recommendations.

Rob Morrison felt it was very important to see access preserved all the way to the Gut for the approximately 1000 recreational shellfish permit holders and 100 commercial shellfish holders, who required this access in order to harvest bay scallops.

Rachel Self felt that everyone wanted similar things, and agreed that access needed to be preserved for fishermen. She suggested that perhaps more studies were needed to determine how access and levels of access actually affected the beach, and what remediation efforts might be available, in order to create informed guidelines.

There was discussion as to whether the NOI needed a special permit, and how that affected the Committee's ability to evaluate guidelines in the beach management plan. Rachel Self directed the committee to the Cape Pogue DCPC decision on how any "alteration" required a special permit and believed OSV use was considered an "alteration" and at this point there was no special permit application before the Planning Board. Ed handy pointed out that it was within Committee's purview to change the rules regarding what kinds of plans, permits, etc. the Committee can evaluate – but he believed the intent behind the founding document was the same, to allow the Committee to give the Conservation Commission a well-rounded opinion about any beach management plan.

Darci Schofield gave a brief explanation of the various agencies that would review the beach management plan. Jane Varkonda indicated the plan was not particularly far into that approval process, and pointed out that those agencies did not all contemplate all of the interests the Committee was interested in.

Ed Handy felt the immediate issue for the Committee was whether it would recommend moving forward with TTOR's plan, how to do that, and whether there were any plans to address the 1988 recommendations. Rachel Self expressed that she did not see how the Committee could get

around the fact that the proper permitting was not in place. She would have liked to see more information based in science, not just the good intentions of any potential manager. Charlie Blair felt that while the area north of the jetties was bound up in litigation and other processes, it would not take much to get an approval on a plan for the other areas contemplated under the NOI.

Bob Hayman felt that everyone on the Committee seemed to agree that they had to continue with TTOR because the town could not produce what they were looking for. There was no other option but to support TTOR and hope they came through. He believed denying the NOI would be a very bad look for the town and the community, and that those beaches needed to be open to the public. He understood the balance between the good of the resource and the public need, but it had to get figured out. He would have preferred to look at more data to be able to make a decision, but there was simply not time. It was unfortunate, but the Committee needed to come to an understanding of what it could do today.

Jane Varkonda explained that it was the applicant's burden of proof to show that what they were applying for was in compliance with all regulations, etc. TTOR needed to demonstrate that they were in compliance. Some of that information was still lacking. They had been asked to provide it but had not yet. If the Conservation Commission did not receive the information it needed to make a decision, an incomplete application could be a reason for denial.

Darci Schofield indicated TTOR had completed some work toward addressing the 1988 recommendations, but had some work still to do. She felt some of the information in the TTOR NOI history report provided prior to the meeting was unfortunate, and would be happy to provide more information at a later date.

Ryan Ruley felt the Committee needed to delineate specific goals about what additional information it wanted to see; otherwise, it would simply keep coming back to the conclusion that it wanted more information. Ed Handy believed the Committee needed to endorse or not endorse the continued use of the property as it was currently being used, and in compliance with all applicable laws. He moved the Committee's recommendation be that the Edgartown Conservation Commission ensure that the TTOR NOI be subject to all applicable rules and regulations presently in place and that items in Section 3 of 1988 decision be addressed.

Ryan Ruley seconded. Matt Pelikan felt it was not a particularly helpful recommendation to the Conservation Commission. Rob Morrison reiterated that practically, a lack of OSV access along certain portions of the beach as addressed in the 1988 recommendations would heavily impact anyone's ability to shellfish. Jane Varkonda clarified that working together with shellfish warden, etc., was a required part of any beach management plan and one TTOR would need to account for.

The motion passed by role call vote, with Jane Varkonda and Darci Schofield abstaining.

TTOR report on Habitat Restoration and Prescribed Burning at Wasque

Russell Hopping from TTOR provided an update regarding the upcoming prescribed fire at Wasque. The unit had last been burned in 2011; it would be beneficial to many species which are adapted to fire, would reduce wildfire risk, and help build the capacity of entities on the island to perform burns. He outlined the various partnerships that had supported the effort, laid out specific time and date parameters for the burn, and explained that neighbors would be notified and local fire agencies would support the effort. Darci Schofield added that she was excited about the work Russ and his team were doing with TTOR's stewards in this matter. She explained TTOR's communication strategies, including media alerts to papers, posts on social media, and reaching out to the CIA and to neighbors directly.

Matt Pelikan thanked Russell Hopping for his presentation and expressed that prescribed fire is an incredibly important management tool.

Water Issues

Harbormaster Update re: Gut Signage

Charlie Blair briefly recounted plans to mark the eel grass to keep vessels off of it, and his hope that boats would be able to put their bows up on the beach. He would keep the data coming, logging all patrols, taking pictures, etc.

Public comment

Chris Kennedy expressed that the Committee had broad discretion to make recommendations. He suggested keeping the enabling regulations in mind, but that the Committee should not feel hemmed in by them when it came to making recommendations. He hoped the Committee would act realistically, keeping in mind that someone was absolutely going to appeal this NOI, which would inevitably throw everything into limbo for a long time. That would mean no OSV access on any of these beaches. He felt the NOI needed to be broken into multiple NOI's, even if that had not happened in the past, because if it did not happen now, the consequences were very clear. Perhaps there could be an NOI for Pogue restricting OSV access to off-season for fishermen, etc.

Meeting adjourned.



REGIONAL PLANNING AGENCY OF DUKES COUNTY
SERVING AQUINNAH, CHILMARK, EDGARTOWN, GOSNOLD, OAK BLUFFS, TISBURY, &
WEST TISBURY

Date: February 12, 2024
To: Edgartown Planning Board
From: Dan Doyle, Special Projects Planner / DCPC Coordinator
Re: Special Use permit request for Edgartown Assessor's Parcel 3-13.2

In reviewing the Special Use Permit request for temporary OSV (Over Sand Vehicles) access for up to 5 vehicles during the 2024 MV Striped Bass & Bluefish Derby a general equity principle seems appropriate to apply. An equitable allocation of permitted OSVs is a sound approach for limited recreational access to the dynamic and fragile resource that is Cape Pogue. A total of up to five permits is consistent with this concept given the relative size and permit issuance of other OSV-accessible sites along the Cape Pogue coastline owned by both TTOR (The Trustees of Reservations) and the County (managed by the Town), which total in the hundreds, annually. In short, fewer vehicles should be authorized on a small swath of beach than the magnitude permitted on a larger stretch.

With that principle in mind, the permit – no matter how temporary – will hopefully only be given strong consideration if there a wide enough corridor for OSV access¹. We urge any approval to include provisions that rescind the permit if the corridor depths become inadequate given dynamic processes along the shoreline in question. As such, erosion and accretion remain everchanging in this area of the island, making a site visit shortly before the Derby event to assess the corridor width, a critical milestone. We also recommend any approval require OSV operators to screen the viewing film that TTOR (The Trustees of Reservations) has produced familiarizing users with practices they should abide by when accessing this resource by vehicle (the video is available on their website), prior to the Derby.

Finally, MVC recommends the use request be permitted only if the Cape Pogue DCPC Advisory Committee has determined the resource – the over sand Lighthouse Road, the beachhead, and the dunes in between - can accommodate additional impact. If there are recent findings suggesting the resource is notably degraded owing to public use, we hope the Planning Board will reconsider before authorizing any additional impacts, however limited they might be.

Thank you for the integral role you are now playing, as the Planning Board, in reviewing such permit requests – a key facet in MVC's 1988 Decision to designate Cape Pogue a District of Critical Planning Concern.

Best,

Dan Doyle, Special Projects Planner / DCPC Coordinator

¹ See National Park Service for guidance on recommended dimensions which are also cited by the Commonwealth of Massachusetts for their Barrier Beach Management Guidelines