

WEST TISBURY
CONSERVATION COMMISSION
MINUTES OF MEETING
February 23, 2016

Present: Prudy Burt, Whit Griswold, Binnie Ravitch, Peter Rodegast (via conference call) and Tara Whiting

Absent: Michael Turnell

Staff Present: Maria McFarland

Also present for all or part of the meeting: Brad Chase, Tom Chase, Johnny Hoy, and Alex Elvin

The meeting was called to order at 5:10 P.M. Tara Whiting, Chairman presiding.

Public Hearings/Meetings:

James Pond/ and Map 6 Lots 13 and 20: a public hearing under the requirements of G.L. Ch.131 § 40, as amended, and the West Tisbury Wetlands Protection Bylaw and regulations to consider a **Notice of Intent** filed by the West Tisbury Board of Selectmen and Herring Warden for a project proposed at James Pond. The project consists of work associated with breaching the barrier beach at James Pond including dredging the associated meander for the purpose of restoring a fish passageway, placement of fiber rolls and salt marsh plantings.

Brad Chase of Division of Marine Fisheries (DMF) and Johnny Hoy, West Tisbury Herring Warden presented the project. It was noted that Greg Berman of the Woods Hole Sea Grant Program attended the February 18 site visit and is in the process of reviewing the Notice of Intent. Greg will issue a report with comments and recommendations before the next hearing date.

Brad said that from a regulatory standpoint it is necessary to open the channel in accordance with an approved maintenance and operating plan as necessary to maintain Alewife, White Perch and American Eel. He added that maintaining the channel could also benefit shellfish habitat and resources by improving water quality in the pond.

Brad told the members that he considers the NOI narrative and operation and maintenance plan to be a working draft that will be refined once comments are received by the various agencies reviewing the NOI and discussion with this board.

The project would start in 2017 with mechanical maintenance using a low pressure tread excavator with follow up being done by hand shoveling.

Brad referenced the site map to explain the activities that are being proposed. In the yellow highlighted areas sediment will be removed and placed on the bank. The spoils could be planted with salt marsh to stabilize the bank. The proposal calls for fiber rolls to be used, but based on the conversation with Greg Berman at the site visit, this might not be necessary. Greg suggested building a berm with the sand to create a dune. Planting and grooming will serve to stabilize the bank for periods of time. Brad said Greg's idea is to extend the dune before trying the fiber rolls and plant the back side of the dune with beach grass to create a sort of a sacrificial dune. This would replace the fiber rolls shown in red. The salt marsh plantings shown in green would be planted on the dune and monitored over time.

Brad gave alternatives to mechanical excavation that include doing nothing, hand shoveling, or installing a hardscape structure that would be costly and possibly not permissible.

Discussion:

Access and Equipment: It was suggested at the site visit that the most efficient way to get equipment to the site would either be over an adjacent property or by barge. Johnny said that Bill Graham may be willing to allow access over his property, but he would want the Town to allow any restoration to the bank that would be required.

Maria said she has spoken to Adam Moore at Sheriff's Meadow Foundation about permission for access over the path to Lambert's Cove Beach for getting the equipment to the site. Adam said he would need more information on the size of the equipment before his group could make a decision.

A question that will need answering is can the Town use private property for this and can the Town pay to restore Bill Graham's property if he allows the town to access the beach with the machinery. Whit said it might be able to come in through the Mullins property if it is a smaller machine.

Brad and Johnny had different thoughts on the size of the equipment needed. Brad said the amount of sand that needs to be moved along the inside berm would not be a two day job for a small piece of equipment if it did not have a low ground pressure tread. Otherwise mats would be necessary. Brad said their 6 ft. Kubota would not work for this project. More information will be needed in order to determine the correct equipment to be used.

Johnny said that David Merry thought a small machine with mats would be best.

Monitoring: Brad recommends that the monitoring protocol proposed in the NOI be a condition of the Order of Conditions. If there is no funding for the proposed monitoring, the DMF may be able to provide a staff gauge and a refractometer to measure salinity. It will be important to monitor changes in pond elevation after the work is done.

Regulatory Review: The DEP file number has not been issued. The comment letter from the Natural Heritage and Endangered Species Program has not been submitted.

The Division of Marine Fisheries comment letter dated February 23 was noted for the record. DMF recommends a time-of-year (TOY) restrictions on all work from March 15– June 30 (upstream migration) and September 1 – November 15 (out stream migration) to ensure safe passage for adult and juvenile diadromous species and that monitoring be done before and after the proposed work to ascertain the pond's response to the openings on diadromous fish habitat and give guidance on future maintenance.

The letter states that , “as the James Pond Channel Opening and Maintenance Plan indicates, at the very least, “the upper pond monitoring station should be outfitted with a relative staff gauge to record weekly low tide water surface elevation and salinity during March –October.” DMF would like the opportunity to comment on the management plan as it is being finalized.

Commissioners' Comments/Questions:

Whit asked about monitoring for nitrogen. Brad said he mentions monitoring total nitrogen in the narrative. He explained that from a shellfish monitoring standpoint, monitoring is done for total fecal coliform bacteria. Because this area is closed to shell fishing, DMF doesn't monitor the water quality at this time. He suggested that DMF might commit to monitoring if the water quality improves. He added that his job is to work to improve fish passage that is necessary for sea run fish.

Brad said his department could give technical assistance to get monitoring started, but there would need to be a local effort. Prudy suggested asking Sheri Caseau of MVC if she could monitor water quality in the pond or Brett Stearns at the tribe. He has a piece of equipment called a YSI Parameter. Kent Healy was also mentioned as someone who might help with monitoring.

Monitoring would be done very two weeks between March and October if it can be funded.

Whit said he has talked to most of the riparian owners and that they are all generally supportive. The land owners are more interested in improved water quality in the pond than fish passage. He has written responses from the riparian owners which he will give to the Board of Selectmen.

A motion was made and seconded to continue the public hearing to March 22 at 5:10 PM. All in favor.

Administrative Review and Approval:

Johnny asked the board to approve the use of hand shovels to open the channel under the provisions of M.G.L. Chapter 130 Sec. 90 that allows the Herring Warden and the Division of Marine Fisheries to declare the need to take emergency steps to improve fish passage.

Members discussed the need to set a time of year restriction such as a March 15 deadline. Brad said that under this emergency provision, a time of restriction was not necessary. For example if there is a storm in April, the Herring Warden needs to be able to open the channel by hand shoveling.

A motion was made and seconded to allow the Herring Warden, acting under MGL Chapter 130 section 90 to open the pond for fish passage by hand shoveling whenever necessary provided that at least 48 hours advance notice is given to the Conservation Commission. This permission does not include the use of mechanical equipment. All in favor.

Old Business:

Map 38 Lot 1/Tom Chase: Tom Chase was present for a follow-up discussion regarding an amendment of a conservation restriction (CR) between Watcha Homer Trust (the property owner) and The Nature Conservancy (TNC).

TNC holds a CR on Map 38 Lot 1 that prohibits horseback riding except on existing roads that run through the property. The property owner and TNC have come to an agreement to amend the CR to allow horseback riding on dedicated paths in exchange for the property owner's interest in a parcel to the north

of lot 1 known as Map 29 Lot 81. Tom said the reason TNC is willing to agree to this amendment is because they own the properties to the east and west of Map 29 Lot 81. Acquiring this parcel will give TNC control of a large tract of potentially undisturbed sandplain grasslands.

By acquiring Map 29 Lot 81, TNC feels that this will give them an overwhelming conservation advantage because they will be able to do significant management and restoration of the sandplain grassland which they feel mitigates the appearance of any conflict with the horse trail.

At the first meeting, members expressed concern over the 10 foot width of the horse trail and possible horse related uses that might include, a jumper course or some type of horse related commercial activity. Members also wanted to know if NHESP had signed off on the proposal.

Tom said that the property owner's consultant, who is working with NHESP for permits and approvals under MESA, told him that NHESP had not expressed any concern with having horse trails on the property.

Tara asked how the 10 foot width for the trail was arrived at. Tom said he didn't know. Tom submitted a document on horse trail design given to him by the Trust attorney.

Tom said there is no plan for jumps and that there is a prohibition on structures or commercial activity in the CR. He added that he does not know if the horse trails will ever be put in, but the owner wants to market the property as having horse trails.

Prudy said that both the Trust and TNC had access to the best possible counsel and advisors in drafting and executing this CR. At that time, everyone involved agreed to the terms and conditions listed in the CR. Prudy went on to say that it is her understanding that CRs are intended to exist in perpetuity and are rarely modified or amended and that approving this amendment would set a precedent of allowing changes to more changes to this CR in the future. Of further concern to Prudy is habitat fragmentation caused by new trails crisscrossing the property.

Tom explained that the property owner proposed this horse trail several times over the years and it was turned down by TNC. This time, TNC is amenable to changing the CR because they feel that there is an overwhelming conservation benefit to receiving the land to the north of this parcel that outweighs the impact of the horse trails.

Tom said he understands the issue of precedent.

Binnie asked if there was a difference because the holder of the CR is asking for the amendment. Tom did not think so.

Tara asked if the trails would be monitored. Tom said TNC does one monitoring site visit per year. Tara followed up by asking if TNC could negotiate the lay out of the trails. Tom said he asked if they would consider reducing the width but that they would like to keep them to 10 feet wide.

Binnie made a motion that the Board sends a letter to the Board of Selectmen stating the Commission looks favorably on the CR amendment with the distinction that the change to the original CR is sought by the conserving organization.

Discussion on the motion: Tom asked Binnie to clarify. Binnie said she wanted to stress that the board was giving permission because the request has come from the beneficiary of the CR, not the property owner.

Whit seconded the motion.

Prudy asked if her concerns would be reflected in the letter if the board voted to recommend the amendment and said that she wants the right to have her dissenting opinion stated in the letter.

The vote on the motion was 2-2. Motion failed.

After more discussion, Tara made a motion to issue a letter of nonsupport for this proposal. The vote was 3-1 to send a letter to the BOS stating the Commission does not support this proposal.

There being no new business to conduct, the meeting adjourned at 7:10 PM.

Respectfully submitted,

Maria McFarland
Board Administrator
APPROVED