

BOARD OF SELECTMEN
MEETING MINUTES

September 3, 2008

Approved on September 17, 2008

A meeting of the Town of Orleans Board of Selectmen was held in the Nauset Meeting Room of the Orleans Town Hall on September 3, 2008. Present were Chairman David Dunford, Vice Chairman Mark Carron, Clerk Jon Fuller, Selectman John Hinkley Jr., Selectwoman Margie Fulcher, Town Administrator John Kelly, and Recording Secretary Kristen Holbrook.

Chairman Dunford called the meeting to order at 6:30 pm.

On a motion by Mr. Fuller and seconded by Mr. Dunford the Board moved to meet as the Park Commission with Parks Superintendent Paul Fulcher. (02:01:39)

Section 10 (02:02:14)

Town Administrator John Kelly discussed the pros and cons of continuing to pursue Federal Section 10 and State Conservation Permits in regard to the Nauset Beach access. (02:07:51)

On a motion by Mrs. Fulcher and seconded by Mr. Carron, the Board voted to discontinue the Town's pursuit of a Federal Section 10 and State Conservation Permit for Nauset Beach and in its place pursue other efforts that could result in promoting the successful nesting of birds earlier in the season without the need for additional permits and consider application for approvals for dune grass restoration in areas subject to continued wash over. Vote 5-0-0. (02:14:22)

Memo

Date: September 2, 2008
To: Board of Selectmen
From: John F. Kelly, Town Administrator
Re: Park Commission Agenda Items

Section 10/Conservation Permit Decision

The Board is scheduled to consider taking action to either formally apply for a Federal Section 10 and State Conservation Permit, or abandon any further efforts to allow passage of Non-Essential vehicles past unfledged piping plover broods and a Least Tern Colony which in the past have been located in the so-called Pochet Washover Area. Assuming that Orleans received approval to pass up to 3 broods of piping plover chicks and be re-open with the use of vehicle escorts by July 15th, then the following reasons might apply:

1. Reasons to consider submitting a formal application
 - a. All options that will potentially keep the beach open to ORV users should be pursued
 - b. Potential to provide greater certainty to ORV users and enhance sticker sales
 - c. Potential benefit to the business community if ORV users are able to access the beach by reducing the closure time
 - d. Potential of gaining from 2 to 5 weeks of ORV trails remaining open with escorts when they would otherwise be closed

2. Reasons not to pursue a formal application
 - a. Added costs to continue to pursue and obtain necessary permits
 - b. Added cost and requirement to implement a predator mitigation program on Nauset Spit and south of the parking lot in the area of Pochet Washover
 - c. Added cost for administration of permits – record keeping, monitoring, and reporting requirements
 - d. Added cost and requirement to obtain an Order of Conditions that might result in additional restrictions and further loss of local control
 - e. No guarantee that sticker sales will increase as a result of permit and may not cover added costs to the town
 - f. Potential short term solution, given that goal of the program is to increase bird population that in turn will increase closures in future years
 - g. Potential closure of area to pedestrian traffic as well as ORV users as part of permit conditions
 - h. Potential of Least Tern colony growth that would require closures regardless of the permits

Recommendation: Vote to discontinue at this time the Town's pursuit of a Federal Section 10 and State Conservation Permit for Nauset Beach and in its place pursue other efforts that could result in promoting the successful nesting of birds earlier in the season without the need for additional permits and consider application for approvals for dune grass restoration in areas subject to continued wash overs.

Board of Selectmen Meeting Minutes
February 13, 2008

Approved on February 27, 2008

Present: Chairman John P. Hinckley, Jr., Vice Chairman David Dunford, Clerk Margie Fulcher, Selectman Mark Carron, Selectman Jon Fuller, Town Administrator John Kelly and Recording Secretary Marge Astles.

Chairman Hinckley called the meeting to order at 6:30 p.m.

Meet as Park Commissioners

Section 10 Update:

Paul Fulcher noted that he has met with both the State and Federal Fish and Game Wildlife Service to discuss gaining approval to bypass Piping Plover unfledged chicks and Lease Tern chicks in the Pochet area. The Conservation Plan is currently being drafted by Town Counsel and Mr. Fulcher stated that it would consist of the following:

1. Unlimited vehicle day access starting 7/15.
2. Requesting a three year permit, allowing self-contained vehicles and allowing them to go out Friday evening and return on Sunday evening.
3. This permit would allow us to bypass up to three broods of Piping Plovers and in turn, the Town would have to provide monitors to escort the vehicles pass the dunes and we would need to have monitors watch each brood. If a monitor lost sight of a chick, the vehicles would have to stop until the chick is found.
4. We would have to do mitigation to prove a net gain from the species which would include nest protection, additional predator fencing, battery charged fencing, more public education, more signage, more enforcement of dog problems, removing garbage from the beach and hiring USDA to determine what predators we have in that area, including predator mitigation.

To date, Chatham has not made a decision on a joint Section 10 permit that would take into account the breach and the new geography created as an area for predator mitigation. The permitting could cost in the \$40,000 range.

Also if Chatham does not participate in sharing the program, the only area that would be relevant for predator mitigation would be the Nauset Spit.

Paul noted that he also met with Mass Audubon, CC National Seashore, and the Beach Buggy Association to discuss Section 10 permitting and all seemed to show support.

Paul explained to the Board that he cannot tell the Board what the anticipated revenue will be if we are successful with the permitting. He cannot tell the Board that it won't cost more than \$40,000 and the chances of success are about 40-60% because getting

the process through the Federal level is difficult in that you don't know how quickly the turn around will be. He noted that time is of the essence regarding this project.

John Kelly noted that we will be discussing the 85/15 split with Chatham with Town Counsel which requires that Chatham would have to agree in advance to participate and pay 50% of the cost of the permit. Chatham has indicated in a letter to Orleans, that they want to cap their cost at 15% of the application. We can negotiate further with Chatham but we do not have a commitment at this point.

The Board recognized Paul's work to date on this project as it has been very good and encouraged him to continue toward fruition.

On a motion by Margie Fulcher and seconded by David Dunford, the Board voted to continue pursuing the Section 10 Permit. The vote was 3-2-0.

BOARD OF SELECTMEN
MEETING MINUTES

October 24, 2007

Approved on November 14, 2007

A meeting of the Board of Selectmen was held in the Nauset Meeting Room of the Orleans Town Hall. Present were Board of Selectmen Chairman John P. Hinckley, Jr., Vice Chairman David Dunford, Selectwoman Margie Fulcher, Selectman Mark Carron, Selectman Jon Fuller, Town Administrator John Kelly, and Assistant Town Administrator Myra Suchenicz.

Chairman Hinckley called the meeting to order at 6:30 p.m.

Meet as Park Commissioners

On a motion by Mr. Carron, seconded by Mr. Dunford, the Board voted to meet as Park Commissioners. The vote was 5-0-0.

- The accounting of Beach and ORV receipts and further discuss changes to the revenue percentage split with Chatham.

Chairman Fuller asked Paul Fulcher, Parks & Beaches Superintendent, to report on revenues during the past summer. Mr. Fulcher referred to his memo dated Oct. 9, as provided in the packets, and noted that actual revenue was quite close to the forecast provided to Chatham last winter.

The Commissioners discussed the portion of the revenue to be split with Chatham. Mr. Kelly noted that the timeframe for changing the ratio was following the 2007 summer season, and mentioned other issues to be discussed with the Chatham Selectmen. The Commissioners decided to exchange discussion items with Chatham prior to the meeting of the two Boards of Selectmen on Nov. 14.

- The re-discussion about "Section 10" possibilities for the South Beach

Mr. Fulcher suggested that the Town go forward with the filing process to better understand the state and federal requirements before making a decision. He also suggested a meeting with the Cape Cod Commission relative to MEPA review and a possible DRI. The Commissioners discussed available and potential funding sources and the need to identify options.

On a motion by Mrs. Fulcher, seconded by Mr. Dunford, the Commissioners voted to proceed with the Section 10 filing process. The vote was 4-1-0. Mr. Carron voted nay.

- Possibility of restructuring the Order of Conditions for the South Beach

Mr. Fulcher noted that we have an Order of Conditions for the North end and we use that Order of Conditions for the South end. If the Town was to file an Order of Conditions for the South end it would need to be filed every three years.

Regulatory requirements for dune rebuilding and maintenance were also discussed. Mr. Fulcher recommended that these issues be kept separate from the Section 10 filing. He noted that public beach parking lots were being closed due to bird habitat and that he wanted to review the impact of the regulations on the bathing beach with Town Counsel.

On a motion by Mrs. Fulcher, seconded by Mr. Dunford, the Commissioners voted to ask the Parks & Beaches Superintendent to discuss these issues with Town Counsel. The vote was 5-0-0.

The Park Commissioners also discussed the agenda of the Citizens Forum meeting on Oct. 30 and possible changes to regulations relating to dogs on the beaches. Mr. Fulcher noted that the Chatham Selectmen would need to agree to Orleans filing for the Section 10 permit if we want to receive 50% of the cost for the filing from the Town of Chatham.

On a motion by Mrs. Fulcher, seconded by Mr. Dunford, the Commissioners voted to adjourn the meeting of the Orleans Park Commissioners. The vote was 5-0-0.

BOARD OF SELECTMEN MEETING MINUTES

January 10, 2007

Approved on February 7, 2007

A meeting of the Orleans Board of Selectmen was held in Meeting Room A of the Legion Hall. Present were Board of Selectmen Chairman Jon R. Fuller, Vice Chairman John Hinckley, Jr., Clerk David Dunford, Selectwoman Margie Fulcher, Selectman Mark Carron, Town Administrator John Kelly, Assistant Town Administrator Myra Suchenicz and Administrative Secretary Marge Astles.

Chairman Fuller called the meeting to order at 6:30 p.m.

On a motion by Mr. Dunford and seconded by Mrs. Fulcher, the Board voted to meet as Park Commissioners to discuss the Nauset Beach Camps Agreement and Section 10 Permits. The vote was 5-0-0.

Mr. Kelly noted that we met and reviewed comments from the camp owners and discussed assisting the Board with cleaning up language, issuing beach stickers and applying the eligibility guidelines. On Tuesday, Attorney Michael Ford has been asked to put forward a revision for the final agreement but this is a draft only and will not include policy. Mr. Dunford asked that an updated email be sent out before the meeting with Chatham on January 16, 2007.

Section 10 Permits:

Mr. Kelly explained that he has been in contact with Susi Von Oettingen and Scott Melvin of the Division of Marine Fisheries, questioning what would it take to keep the beach open next summer and looking for a lot more detail from Orleans on how we would address access and address brood levels anywhere on the beach. Also, there is a draft from USDA regarding predator control. Predator Control to preserve nesting pairs is necessary to improve the fledge rate. Mr. Fulcher's idea is to build a barricade possibly from sand to protect nesting pairs but this needs further research and dialog.

Mr. Dunford asked for Attorney Ford and Mr. Fulcher to outline alternatives facing us by giving us the pros and cons and focus on a time line by the next meeting. Mr. Carron noted he read in the newspaper an article regarding predator control and Section 10 and he felt that we may be getting another whole group of individuals in an uproar regarding this subject. He thought that this may be a dead end and we are wasting our time and energy when more important matters need to be discussed.

On a motion by Mrs. Fulcher second by Mr. Carron, the Board voted to adjourn the Park Commissioners meeting. The vote was 5-0-0.

Board of Selectmen's Meeting
Minutes
January 16, 2008
Approved on February 20, 2008

Present: Chairman John P. Hinckley, Jr., Vice Chairman David M. Dunford, Clerk Margie Fulcher, Selectman Mark E. Carron, Selectman Jon R. Fuller and Town Administrator John F. Kelly.

Parks and Beaches Superintendent Paul Fulcher – Section 10 Permitting

Mr. Fulcher explained that he has met with Federal Government regarding Section 10 Permitting and State Conservation Permit. The State or Federal, predator mitigation is still on the table and will remain there if we are to file for any type of relief. Chatham has not voted to come on board yet, so the cost would fall totally on Orleans. Mr. Fulcher asked for guidance if he should continue discussing this with the State and Federal Government.

Mr. Carron asked what the estimated cost would be and Mr. Fulcher replied that there are two proposals:

1. Escorting from the day we close, run escorts out at 9am and back at 4pm, 7 days per week and with predator removal would cost about \$35,000.
2. Look at a drop dead date, where we could have access anytime during daylight hours, 7 days per week, running escorts on or about July 15th but not limited escorts and this would cost about \$10,000 less.

Mr. Carron stated that the IMA states that if Chatham agrees they will have to pay 50% of the cost. Mr. Carron stated that the Beach Buggy Assoc. volunteered to assist in the escorting. The businesses have complained that it has dramatically affected their revenues.

Mr. Dunford suggested that in terms of cost, we could consider other alternatives such as cost sharing from groups that benefit from keeping beaches open such as:

Regarding Chatham, he though further dialogue would be helpful especially since the 7 miles of beach is now less than a mile due to the breach.

Mr. Fulcher noted that he did not think that Chatham would bring this up for discussion until the end of January or February and unfortunately the filing must be done and to the State and Feds by the end of January which includes an environmental notification form.

Mrs. Fulcher asked the Board if they would support asking the businesses to contribute to the Section 10 Permitting costs and noted that we should do the most that we can to keep the beaches open for not only economic reasons but also for those that use the beaches for relaxation and fishing.

The Board will look forward to hearing from Mr. Fulcher after he attends meetings to see if we can get this permitting in place for this summer.

BOARD OF SELECTMEN MEETING MINUTES

January 24, 2007

Approved on March 14, 2007

A meeting of the Orleans Board of Selectmen was held in Meeting Room A of the Legion Hall. Present were Chairman Jon R. Fuller, Vice Chairman John Hinckley, Jr., Clerk David Dunford, Selectwoman Margie Fulcher, Town Administrator John Kelly and Administrative Secretary Marge Astles. Selectman Carron was absent.

Chairman Fuller called the meeting to order at 6:30 p.m.

On a motion by Mr. Hinckley and seconded by Mrs. Fulcher, the Board moved to meet as Park Commissioners. The vote was 4-0-0.

Mr. Dunford began by stating that the Board would be discussing Section 10 permits and beach management.

Mr. Kelly noted that we had a conference call on January 8th with Town Counsel, Paul Fulcher and with Susi Von Oetingen and Scott Melvin. We wanted to take the next step in understanding a section 10 permit and what would it take to keep beach open if there were nesting plovers. The time line involved with the permitting process is extensive and the state process will require much information and much permitting. With this in mind it would be very difficult to get a permit for this upcoming beach season because of the timeline involved.

Town Counsel, Michael Ford noted that the Board should be aware that in order to get a permit, the performance standards of the State are different than Federal Government. The Federal Government will look at the sole performance standard and if there will be a negative or adverse impact on the population of the local species. The State performance standard is the same but with a second standard is that you must prove a net benefit to the local population. This brings up the issue of predator control. The State permit is more difficult to obtain and suggests that we need to consider predator removal. He continued that Paul Fulcher raised the question, that there may be an alternative to predator removal in achieving that net benefit. Mr. Fulcher suggested that one of the biggest problems that the birds have is that nests are lost to high tides and storms. Perhaps we could plan where the high tides historically occur and erect a protection barrier for the nesting sites. Attorney Ford cautioned the board, that he saw the result as a long and expensive process and will result in heightened scrutiny by Fish and Wildlife of our beach management practices even though we have done a very good job with managing our beaches thus far.

Attorney Ford stated that in the permitting process, it is necessary to file an Environmental Notification Form at the state level and we would anticipate that we would be issued a certificate. The local Cape Cod Commission will review the Environmental Notification Form, and can decide to review the project as development of regional impact and one of the standards is any creation of roadways to the beach. We have established ORV paths and these can be further scrutinized in the future.

Attorney Ford asked Mr. Fulcher to report his findings. Mr. Fulcher spoke with Scott Melvin and Susi Von Oetingen they felt that his alternative idea of a protection barrier merits looking into rather than proceeding with predator removal. Mr. Fulcher explained that he asked Mr. Melvin is there a way to get around predator removal as there are many different species that may be causing the problem and Mr. Melvin replied that in the first year we might be able to use the alternative plan and also hire monitors to identify what type of predators are causing the problem. Mr. Fulcher cautioned that there will be a lot more limitation to beach access.

Attorney Ford noted that we still face regulatory hurdles. A survey of what may be bothering the birds may still be in order. There is still much to do with the permitting process and he noted that the Board needs to focus on keeping the beach open under certain management guidelines at this time. Attorney Ford noted that the nesting terns could be an issue again as well resulting in closure conditions.

Several of the Selectmen were not in favor of getting involved with Section 10 permitting. Attorney Ford noted that if you pass on Section 10 this year, there was an appropriation for permitting and we have started using a consultant. If you decide to develop some sort management plan with the consultant it will give you time over the summer to observe conditions, then you could be in a position next fall to vote on it. He felt that Orleans has done an admirable job with managing the beaches and they have followed the rules and regulations to the letter of the law. Attorney Ford advised continuing to manage the beach for another summer. Chairman Fuller asked if it would be worthwhile to go the Federal Government to change the rules on what can be done with the habitat, possibly altering the rules slightly so all species can co-exist. Attorney Ford noted that there are many agencies to deal with and the species of concern, namely the pairs of plovers, are increasing and may be taken off the endangered species list at some point. Snow fencing to build up sand may be a way to improve the situation for next year.

On a motion by Mrs. Fulcher and seconded by Mr. Hinckley, the Board moved to have Superintendent Fulcher go to the Conservation Commission to discuss the build up of the dune using snow fencing. The vote was 4-0-0.

~~On a motion by Mrs. Fulcher and seconded by Chairman Fuller, the Board moved to not seek Section 10 permitting at this time. The vote was 4-0-0.~~

Board of Selectmen Meeting
Minutes
February 13, 2008

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Present: Chairman John P. Hinckley, Jr., Vice Chairman David Dunford, Clerk Margie Fulcher, Selectman Mark Carron, Selectman Jon Fuller, Town Administrator John Kelly and Recording Secretary Marge Astles.

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1. Section 10 Update:

Paul Fulcher noted that he has met with both the State and Federal Fish and Game Wildlife Service to discuss gaining approval to bypass Piping Plover unfledged chicks and Lease Tern chicks in the Pochet area. The Conservation Plan is currently being drafted by Town Counsel and Mr. Fulcher stated that it would consist of the following:

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The Board recognized Paul's work to date on this project as it has been very good and encouraged him to continue toward fruition.

On a motion by Margie Fulcher and seconded by David Dunford, the Board voted to continue pursuing the Section 10 Permit. The vote was 3-2-0.