

**CONSERVATION COMMISSION  
MINUTES OF JULY 27, 2006**

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Mark Klopfer and Fred Sullivan (representing a quorum – see below Note). Also present was Doug Saal, Conservation Administrator.

The hearings were conducted under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

Note: The commission currently has only five members. Per the MACC Handbook, section 4.1.2, most lawyers agree that a quorum is "...a majority of commissioners currently serving". The quorum for this meeting is therefore three members.

**Approve Minutes:** The minutes of 07/13/06 were approved.

**RFD 9 ROYDON ROAD GROSSMAN**

Resource Area: Coastal Bank

Interest of the WPA and Bylaw: Storm Damage Prevention, Flood Control and Prevention of Pollution

Appeared: Ira Grossman and Brad Walmsley (contractor via Home Depot)

The commission regards this work, re-roofing, in the buffer zone as a minor activity. It referred to 310 CMR 10.02 (2) (b) 1 which regulates minor activities in buffer zones. Although this section does not specifically address such work as re-roofing, the commission, based on prior information, agreed to use this section as justification to allow the work to proceed under the WPA. Under the local Bylaw, section 5.4.1 (4) was used as the justification to allow the work to proceed. All members voted to issue a negative determination with the following special conditions.

1. An appropriate erosion control/silt barrier must be erected and maintained during the work. No debris or trash shall be allowed to enter resource waters.
2. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations. No debris or trash shall be allowed to enter resource waters.

3. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
4. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). THIS CONDITION SHALL APPLY FOR THE CURRENT AND ALL FUTURE OWNERS.

**40-887 MARBLEHEAD OCEAN WATERS ALGONQUIN GAS (NorthEast Gateway)**

Resource Area: Land Under the Ocean

Interest of the WPA and Bylaw: Prevention of Pollution, Protection of land containing fisheries and shell fish

Appeared: Jon Bonsall of Keegan Werlin LLP, Michael Tyrell and Paul Martin of TRC and others

Control Documentation: As submitted with the NOI

This project is very similar to the Neptune project heard on July 13, 2006 except that the Algonquin project is for the gas pipeline only and does not include the unload ports. The route of the gas pipeline appears substantially identical to that of Neptune. Algonquin anticipates an in-service date of December 2007 for the entire project.

A copy of a letter by Paul Diodati, Director of the MA Division of Marine Fisheries (of DEP), addressed to the Marblehead Conservation Commission, was faxed to the commission by Stephanie Cunningham on 07/27/06 (fax was dated 07/28/06 in error). The letter by Diodati shows a date of February 25, 1996 (error!!). This letter raises various concerns of the Division of Marine Fisheries regarding this project. This letter was discussed with the applicant who said he is in contact with and has spoken to Diodati about these concerns. The applicant said they are working with this division to address all concerns. The Diodati letter contained various recommendations for dealing with the concerns. Rather than attempt to incorporate these recommendations into our OOC, the commission felt it was more appropriate that these recommendations be contained in the permit issued by DEP and to include a condition referring to such permits.

The commission then referred to a previous NOI for a similar project, i.e., the Algonquin Hubline, 40-739, from April 2002. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

1. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.
2. The project shall be performed in accordance with the NOI document, with attachments, referenced in Attachment A to this OOC, except as the project may be altered or amended by the Special Conditions.
3. All required federal and state permits shall be obtained prior to the commencement of construction.

#### **40-000 35 MARION ROAD O'CONNOR**

Resource Area: BVW

Interest of the WPA and Bylaw: Protection of ground water supply, Prevention of pollution, Protection of wildlife habitat and Flood Control

Appeared: Paul Lynch, atty. And Bill Manuell of Wetlands & Land Management, Inc.

Control Drawing: Site Plan, S1, latest revision June 6, 2006, prepared by Treehouse Design, Inc.

The applicant was informed that no DEP file number had been received so the application would be discussed but would be continued. A previous NOI for this site was 40-748. This site is bordered on two sides by the BVW. The proposed house addition is outside the No Build Zone on one border but lies within the NBZ on the other border. The proposed addition does not protrude further into the NBZ than the existing house. In order to compensate for this intrusion, the applicant's representatives agreed that no fertilizers would be applied to the lawn surrounding the house. The commission explained that Ware Pond is under great stress due, in great part, to the nutrients being fed into it by lawn fertilizers. This site directly abuts the pond and thus is a contributor to this problem. It was further agreed that the stockade fence will serve as the erosion control barrier and the limit of work. All members voted to continue this hearing to August 10, 2006. In the event an OOC is issued, it will contain the following special conditions.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

During construction:

2. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).

3. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

4. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

Post construction:

5. No fertilizers or other nutrient sources will be applied to the entire lawn so as to reduce nutrient flow into the wetland and pond. This is a surviving condition and applies to all future owners.

#### **40-888 ZERO BRACKETT PLACE GLOVER LANDING CONDO. TRUST**

Resource Area: Buffer Zone to Coastal Bank

Interest of the WPA and Bylaw: Storm Damage Prevention, Flood Control and Prevention of Pollution

Appeared: Charlotte Garber, Property Manager and Dan Darisse, Property Supervisor

Control Drawing: None

This NOI concerns a permit to conduct on-going maintenance on the buildings and grounds within the buffer zone. A previous OOC, 40-735, issued in 2002 for this purpose was allowed to expire. The Narrative Description accompanying this new NOI will be edited to remove the following work: "...repair of sea wall and other structures existing below the coastal bank and the line of mean high tide, ..." This NOI is for work in the buffer zone only. The commission reminded the applicant that any work in/on a resource area (seawall, etc.) requires the filing of an NOI including a detailed description of the work to be performed. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

1. For all work to be performed at the perimeter of the resource area, a containment system will be installed to prevent any construction and/or debris material from entering a resource area.

2. All construction material will be stored outside the buffer zone or as far back as

possible from the resource area.

3. All construction debris will be removed daily and/or stored outside the buffer zone.
4. All major repairs require a separate NOI.
5. This OOC does not allow for any new landscaping but does allow for the maintenance of existing landscaping.
6. This OOC allows maintenance/repair only to existing structures.
7. Any modifications to the plans or work description as submitted with this NOI must be reviewed with and approved by the Commission prior to the execution of the modifications.
8. An annual work plan/schedule for all maintenance/repair on the property will be submitted by the applicant to the Marblehead Conservation Administrator prior to the beginning of each fiscal year. This work plan/schedule will cover work to be performed only in the areas under the jurisdiction of the Commission (in a resource area or buffer zone). The Conservation Administrator will review this plan/schedule and advise the applicant of any potential requirement for filing a NOI for any of the projects on the plan/schedule.

#### **40-892 6 PIG ROCK LANE SHULITS**

Resource Area: Coastal Bank

Interest of the WPA and Bylaw: Storm Damage Prevention, Flood Control and Prevention of Pollution

Appeared: Paul Lynch, atty., representing the applicant

Mr. Lynch submitted a check for \$1,500 as payment of the fine levied under the Enforcement Order issued against the applicant for un-permitted work. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

During construction:

2. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation

finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).

3. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.
4. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
5. Any pressure-treated wood used in the construction shall be arsenic-free.

Post-construction/in perpetuity:

6. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.
7. Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order.
8. Invasive plants shall not be used nor maintained in the landscape of the project site. This applies to the existing landscape as well as to any proposed landscape. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit [www.mnla.com](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org). This condition shall survive this order.
9. An "as built" drawing showing the final construction will be submitted to the commission once the work is completed.

**40-890 8 BASS ROCK LANE ROUSSEAU**

Resource Area: Coastal Bank

Interest of the WPA and Bylaw: Storm Damage Prevention, Flood Control and Prevention of Pollution

Appeared: Donald Rousseau, atty., representing the owner, John Gibbons

Control Drawing: # 8 Bass Rock Lane Marblehead dated June 2006 and #8 Bass Rock Lane Marblehead dated July 25, 2006

This request is to include the installation of a gas pipeline into the house with the NOI. The route of the pipeline is shown on the control drawing dated July 25, 2006. A special condition for this pipeline will be included with the OOC. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

During construction:

2. All excavate will be contained and protected against the weather to prevent erosion into the resource waters until it is removed from the site or back filled.
3. If the excavate is contaminated and/or if there has been seepage from the tank, thus requiring further work, a new NOI must be filed.
4. The installation of a gas service to 8 Bass Rock Lane from the existing gas main in Bass Rock Lane is allowed under this Order of Conditions. Said gas service line to enter the house at the same location as the oil service line being removed.
5. The site will be returned to its original condition after tank removal and installation of gas service.

Post construction:

6. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

**40-891 NEPTUNE LNG JONES**

Resource Area: Land Under the Ocean

Interest of the WPA and Bylaw: Prevention of Pollution, Protection of land containing fisheries and shell fish

Appeared: No one

Control Documentation: As submitted with the NOI

The DEP File Number was received. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

1. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.
2. The project shall be performed in accordance with the NOI document, with attachments, referenced in Attachment A to this OOC, except as the project may be altered or amended by the Special Conditions.
3. All required federal and state permits shall be obtained prior to the commencement of construction.

**Old/New Business:**

**Approve minutes:** See above.

**Sign documents:** All documents per the agenda were signed.

**Other matters:**

**Section 5.4.1 of Bylaw regulations:** All members voted to add the following sentence to section 5.4.1 (4): A vegetated buffer strip directly abutting and along the resource area may be required if deemed feasible by the commission.

**Minor Activities:** All members voted to add the following Section 5.4.4 to the Bylaw regulations and to henceforth require a Minor Activity permit.

#### **MINOR ACTIVITIES IN BUFFER ZONES**

##### **Section 5.4.4**

In addition to the Minor Activities specified in 310 CMR 10.02 (2)(b)1, additional minor activities for an existing dwelling within 100 feet from a resource area are allowed under



these Marblehead regulations. These additional minor activities are: new siding, replacing windows/doors, new roof shingles, re-painting and repair of existing decks (but not expansion). The following conditions apply for the foregoing minor activities to proceed without filing a Request for Determination or a Notice of Intent.

1. The dwelling can be either single or double family.
2. The work to be performed must be described in writing in sufficient detail to facilitate an accurate evaluation by the Conservation Commission.
3. The location of the dwelling with respect to the resource area must be accurately described in a sketch.
4. If required by the Conservation Commission, an appropriate erosion control/silt barrier must be erected and maintained during the work. This must be shown on the foregoing sketch.
5. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations. No debris or trash shall be allowed to enter resource waters.
6. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
7. Any pressure-treated wood used in the construction shall be arsenic-free.
8. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). THIS CONDITION SHALL APPLY FOR THE CURRENT AND ALL FUTURE OWNERS.
9. Failure to comply with the above conditions may result in an Enforcement Order being issued whereby all work must cease and a Notice of Intent must be filed.
10. The Conservation Commission reserves the right to enter the property at its discretion to verify the work, resource location, erosion control and handling of materials.
11. A Minor Activity Permit is required before any work is started.

Both additions to the Bylaw regulations will be advertised for public review before becoming effective.

**Chadwick Lead Mills/Wyman Woods:** With reference to Woodard & Curran letter dated 7/6/2006, a letter from the commission dated 26 July 2006 was sent to the Board

of Selectmen advising them of the opinion of the commission in this matter but soliciting their opinion also before a response is given by the commission to Woodard & Curran.

**Candidates for the commission:** All members agreed it would not be advisable to support the candidacy of John VanDusen. All members agreed to the candidacy of Craig Smith.

The meeting was adjourned at 9:20 PM.