

Marblehead Conservation Commission  
September 13, 2018

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

Meeting was called to order at 7:07 PM

Present were Commission Members Chair Brian LeClair; David DePew, Michael Smith, Jesse Alderman, Lindsey Serafin, and William Colehower. Also present was Conservation Administrator and Town Engineer, Charlie Quigley.

The Commission recognized a moment of silence for the disasters in the Merrimack Valley and the Carolinas.

**MINUTES**

The minutes of August 9, 2018 were voted upon and approved.

**DISCUSSION**

1. Wilson Road land donation and acceptance by the Con Com and Town

The Commission were unanimously in favor.

2. Eagle Scout project at Stramski Way ramp

Peter James, Superintendent of the Department of Parks and Recreation, discusses an Eagle Scout to add rocks, gravel, and stone above the high water mark to reinforce the ramp, which got washed away in this winter's storms.

The Commission needs to understand if this requires a minor activity permit, so it can include proper conditions. No action taken.

3. Enforcement Order – 15 Spray Ave. – Alteration to a resource area/buffer zone w/o a permit

William Bergeron of Hayes Engineering appeared on behalf of Mr. Cahill, the property owner. The property owner professed to be unaware of the requirement to file an NOI. Hired a landscaping company after the March storms. An NOI was filed after the Enforcement Order was received. The Chair stated a fine would be discussed during the discussion on the NOI.

4. Enforcement Order – 19 Neptune Ave. – Alteration to a resource area/buffer

Mr. Quigley reported that incredibly extensive stone site work occurred. A Commissioner observed the work appeared to be in the range of \$300,000-\$400,000. The owner did not appear. Another letter will be issued, and then the Commission will discuss a fine.

#### 5. Moorings in Salem Harbor

Mr. DePew noted that the Harbormaster has installed new moorings in shellfish habitat in Salem Harbor. Boats with painted bottoms are grounding out in the shellfish suitability areas. Mr. DePew reports that the Division of Marine Fisheries recommends that the Commission issue an Enforcement Order. The Chair and the Town Engineer will speak to the Harbormaster and report back to the Commission.

#### 6. Nashua Avenue Seawall

A portion of an NOI requesting raising the seawall near the Town pumping station was denied pending input from the Town. The Town Engineer reported that his understanding is that the Town would like the wall raised. Mr. Colehower had a question about whether the wall was public access and how raising the wall would impact that. The Chair noted that the public ramp is the access. The Commission will need assent from the Town in writing and the project may proceed with the proper filings.

#### 7. Enforcement Order to Earl H. Dumas, et. al. – Wetland Protection Act violations

Abutters were heard: Susan Arcuni, 44 Gallison, and John Fitzgerald. The matter has been pending for some time. Commissioners have made site visit. All in agreement that property owner has deposited material, including soil onto a berm on the dune. The berm is elevated above the grade in front of other properties and knotweed is visible.

The property owner did not appear and is facing a fine.

Motion was made for an Enforcement Order that includes the following:

1. Material deposited on the property other must be removed contingent on receiving permission to access such properties;
2. The work must be done in a manner that soil and plant material are cleaned out and removed from resource area;
3. The work must be completed by October 31, 2018;
4. The height of the material should be distributed such that there is an even surface with the rest of the grade;
5. Material may be moved seaward if the soils and plants are removed first;
6. The issue of fines will be deferred until a hearing after the work is completed. Failure to complete the work by the required deadline could result in a daily fine.

Motion seconded; Commission voted unanimously to issue Enforcement Order.

#### Minor Modification Requests

NOI – 40-1264 – 42 Ticehurst Ln – William Paly – Replace wall, sitework

Jeff Tucker appeared on behalf of the petitioner. The proposal is to add 21 sf to the patio. Motion to approve; motion seconded; all members voted to approve the Minor Modification.

Requests for Certificate of Compliance

OOO 40-1336 – Stramski Way – Town of Marblehead – Paving

OOO 40-1332 – 1 Crown Way – Peter Donovan et. al. – Storm Clean-up

OOO 40-1121 – 2 Gashouse Ln – Vicci Kass – Storm Cleanup [Reissuance from 1/9/14]

OOO 40-956 – 2 Gashouse Ln – Vicci Kass et. ux. – replace deck, landscaping

OOO 40-942 – 81 Naugus Ave – Peter Carlton et. ux. – Pier, Ramp Floats

OOO 40-1312 – 27 Ballast Ln – Mike Tyrrell – pool wall

OOO 40-1265 – 6 Harbor View – Holly Crosby – Pool

OOO 40-1283 – 6 Harbor View – Holly Crosby – Invasive species management

OOO 40-1265 – 6 Harbor View – Holly Crosby – New house and sitework

OOO 40-1242 – 14 Foster St – David Ring – New House and Sitework

OOO 40-1286 – 14 Foster St – David Ring – Invasive species management

No issues reported by Mr. Quigley.

Motion to approve; motion seconded; all members voted to approve.

Order of Conditions Extension Request

OOO 40-1218 – 18 Gregory St. – Trevor Eddy – House improvements, sitework

Motion to grant a one year extension; motion seconded; all members voted to approve.

**PUBLIC HEARINGS**

**Note: For Orders of Conditions issued with numbered Special Conditions, see the list of Special Conditions attached at the end of the minutes.**

NOI – 40-1358 – 6 Nashua St. – Wilson and David McKane – Sitework

John Dick and James Emanuel appeared on behalf of the petitioner. No DEP comments were received. The proposal is to rebuild a timber retaining wall, in-situ, at the same height. There is

an 80 sf grill/patio area with less than 25-ft in the 100-ft buffer zone. Ms. Serafin suggested that a silt fence and/or other erosion controls be installed on the perimeter of the property.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 34, 35, 40, 44, 50, 55, 107 and the additional condition that erosion controls will be used.

NOI – 40-1356 – Front Street – Town of Marblehead – Seawall repair at Beacon St.

John Dick on behalf of applicant. The work consists of replacing public infrastructure. Utilities are running under Front Street. Emergency conditions do apply here. The Town received bids and all were over budget, but Town is moving forward with the NOI. The wall will not change in height or otherwise.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 35, 41, 42, 43, 44, 54, 55, 102, 105

NOI – 40-1357 – Beacon Street – Town of Marblehead – Sea wall repair at Grace Oliver Beach

John Dick on behalf of applicant. The work consists of replacing public infrastructure. Utilities, including gas, are running under the area. Here, bids came in under budget.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 35, 41, 42, 43, 44, 54, 55, 102, 105

NOI – 40-1364 – 9 Sunset Rd. – Harold Daly et. ux. – Repoint existing seawall and retaining wall.

Harold Daly, the property owner appeared. The seawall was built more than 50 years ago. It needs re-pointing.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 35, 40, 41, 50, 55, 102, 105

NOI – 40-1359 – 75 Naugus Ave – Heidi Herlihy et al – New pier, float and gangway

David Smith of GZA appeared on behalf of the petitioner. The Commission received a comment letter from the Division of Marine Fisheries on September 6. No DEP comments. A response to the DMF comments was sent to the Commission by the petitioner.

The Commissioners examined the DMF Comments; several noted the many ways DMF noted this project would adversely impact critical eel grass habitat.

The Chair noted he was very troubled by the eel grass impacts of the project, as set forth by the DMF. Some locations, no matter how engineered, are not possible locations for a pier. The Chair noted that eel grass is really struggling, particularly in recent years.

David Smith stated that there were 14 piles, 11 sf each and characterized that as “not much.” He said the structure can’t be built landward; it’s too shallow at low tide and the pier has already minimized the number of piles it can use without carrying steel beams.

Commissioner Smith noted that there are a lot of piles being driven in the eel grass. That was a big concern. Mr. Alderman seconded the concerns of the Chair and Commissioner Smith; not inclined to vote in favor given the impacts to eel grass.

The applicant asked if the Commission would consider eel grass remediation elsewhere to mitigate the impacts. The Commission had not heard of the concept and was not inclined to support it given the difficulty observed in re-growing eel grass.

The applicant requested a continuance to consider redesign or the “remediation” concept.

Motion to continue; motion seconded; all in favor.

Meeting was adjourned.

NOI – 40-1360 – 15 Spray Ave – Brian Cahill – Sitework, wall

This NOI has been filed as a result of the Enforcement Order discussed earlier in the meeting, and the discussion on that Enforcement Order continued here.

Mr. Bergeron noted that winter storms “took out” grass and yard on the property. The work being done before the issuance of the Enforcement Order included installation of a 3-ft wall behind the existing seawall, artificial turf grass (which the petitioner said was permeable) and some concrete pavers. There is an addition of 361 sf of new impervious surface. There are plantings and hand grading for an irrigation system.

The chair asked about drainage. Mr. Bergeron stated that all stormwater overtops the wall.

The chair stated that no concrete reinforcement was shown on the plan submitted, and if the wall is reinforced, the petitioner will have to submit a revised plan.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 34, 35, 40, 41, 42, 44, 50, 55, 102, 107

The Commission also entertained a motion to issue a \$300 fine to close out the enforcement order; motion seconded. All members voted to approve.

NOI – 40-1363 – 2 Coolidge Road – Brian Wedel et. ux. – Sitework, landscaping

Scott Patrowicz and Soron DeNjord (landscape architect) appeared on behalf of the applicant. 1,723 addition of impervious surface proposed by project. The wall depicted on the plan will be reduced. Also, two trees may be cut. The seawall will be re-pointed.

The Commission urged the petitioner to take all steps to save the trees.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 34, 35, 40, 41, 42, 43, 44, 50, 54, 55, 102, 107

NOI – 40-1362 – 8 Davis Road – Henry Brauer et. ux. – Seawall, sitework

Scott Patrowicz appeared on behalf of the applicant. Mr. Patrowicz states that the Commission has approved a seawall project with a similar construction method (“Cofferdam”) at 45 Beacon, that also included a 2-ft elevation of the all.

The Division of Marine Fisheries submitted comments. The petitioner noted that the seawall already is there, as are the boulders on the beach. The petitioner is planning to use toe stones that will dissipate wave energy, and which are permeable. He concern from DMF was that the toe stones would increase the footprint of the wall. According to the petitioner, DMF’s concerns are misplaced because the toe stones are already at the site, as are boulders on the beach. The footprint will barely increase, and rubble will not be cast into the intertidal zone because there are already boulders all over the beach.

Mr. Colehower asked if the petitioner is adding a wave return, and petitioner answered yes.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 34, 35, 40, 41, 42, 43, 44, 50, 55, 102, 107

NOI – 40-1361 – 7 Fort Sewall Terrace – Glenn KnickKrehm et. al. – Seawall repair

Curt Young on behalf of the petitioner. He reported many stones were washed away from the toe of wall. There is also a sinkhole behind the wall. They will fill voids in the wall with concrete and repair the wall. There is no need to conduct work on the beach; it all can be done from the lawn. Toe protection on the seaward side of the wall will break up the force of wave action. There is already a perpetual condition on a different OOC for re-pointing the wall; the petitioner requests a permanent condition to replace lost stones.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 40, 41, 43, 44, 50, 55, 102, 105

Hearing was adjourned at 9:42 PM.

### **ATTACHMENT Special Conditions**

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this original Order of Conditions and any subsequent amendments thereto at the Registry of Deeds in Salem and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order of Conditions prior to the commencement of any work authorized by this Order of Conditions or any amendments thereto. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment “C” for “Schedule of Fines”.**

21. Prior to any work authorized by this Order, a sign (1' x 2') shall be displayed in a conspicuous place at the site with the words “**DEP File 40-XXXX**”

22. **Prior to any demolition, construction or earth moving activities on the site, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the conditions contained in this Order.**

23. A copy of the Order of Conditions as well as the final approved plan/s shall be available for inspection on site while activities regulated by the Order are underway.

24. 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.

25. The project shall be performed in accordance with the final approved plans and other documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions. Any deviation from this Order of Conditions and the approved construction plan/s and documents requires authorization from the Conservation Commission prior to implementation. Any deviation from the approved construction plans and documents commenced prior to authorization is subject to a fine of up to \$300 per day, issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment “C” for “Schedule of Fines”.**

26. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

27. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

**Pre-construction:**

28. Any land disturbance of an area less than 40,000 square feet requires that Section 195-11C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

**Use 28A IF DISTURBED AREA IS OVER 40,000 SF**

28A. This project involves the disturbance of 40,000 square feet or more of land and as such requires a Land Disturbance Permit under the Town of Marblehead Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code. This OOC, therefore, constitutes said Land Disturbance Permit as well as the necessary permit under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

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

30. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor. **The erosion control must be in place, erected per the drawing, before any work is started on the site.**

31. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

31a The lot corners and lines shall be established by a registered professional land surveyor. Swing ties and ranges to fixed monuments, house corners, walls etc. shall be documented so the corners and lot lines can easily be retraced and laid out in the field using a tape measure. The swing ties and ranges shall be documented with the Conservation Commission. Prior to the movement of any material, the corners and lines shall be staked out.

**During construction:**

32. This project shall not cause an increase in run-off onto adjacent properties or streets, either during construction or after completion. Appropriate measures shall be taken to prevent the movement of silt or debris onto adjacent properties, streets and Resource Areas.

33. 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.).

34. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces shall be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

35. All demolition debris shall be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

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

37. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks shall conform to the requirements of Chapter 91.

38. Any pressure-treated wood proposed to be used in the construction of a structure for land - based use shall be arsenic-free. Any pressure-treated wood proposed to be used in the construction of a structure for salt water contact shall be treated with Chromated Copper Arsenate (CCA) or other preservative approved by the EPA and/or the MADEP which is less polluting and harmful to the salt water and its environment.

39. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.

**Post-construction/in perpetuity:**

40. 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 Lawn care 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.**

41. Maintenance pointing and repairs of existing stone masonry walls and concrete walls including the replacement of an occasional missing stone or patching cracks and minor defects in a concrete wall are allowed as a surviving condition to this Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repointing or repair work on existing walls.** All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any

such material from entering the resource waters. Any future razing, rebuilding or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

42. The repair/replacement of small sections of damaged caps on seawalls is allowed as a surviving condition. All dislodged and removed caps will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Prior to any work, the scope of the proposed repair/replacement must be approved by the Conservation Commission. If the cap on a major length or on an entire wall needs to be repaired/replaced, this requires an NOI. **This condition shall survive this order.**

43. When the repair of a seawall entails the use of existing rip-rap which was previously located at the toe of the seawall but has been distributed onto the beach seaward of the seawall by wave action, the following applies. The rip-rap lying above the mean high tide line can be re-located to the toe of the seawall. The rip-rap lying at or below the mean high tide line cannot be disturbed. This special condition is not a surviving condition and is valid only for that work specified for this particular application. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repair work on an existing existing riprap revetment.**

44. The back-filling of small areas of erosion landward of a seawall is allowed as a surviving condition provided the erosion is not on a coastal bank. This back-filling applies to areas defined primarily as Land Subject to Coastal Storm Flowage. Any work on a coastal bank requires an NOI. The back-fill material must be clean and compatible with the eroded material. Prior to any back-filling, the scope of the proposed back-filling must be approved by the Conservation Commission. **This condition shall survive this order.**

45. When a pool/spa/hot tub is to be drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining to allow for the chlorine and other chemicals to dissipate; and there shall be an appropriate sign placed permanently at or immediately adjacent to the pool/spa/hot tub drainage valve or mechanism indicating this requirement. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. **This condition shall survive this order.**

46. All gangways, docks or other items not permanently secured to the earth shall be stored during the "off season" (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. **This condition shall survive this order.**

47. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. **This condition shall survive this order.**

48. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. **This condition shall survive this order.**

49. The 25' No Disturb Zone boundary shall be permanently marked on the site in an appropriate manner via a post & rail fence, a field stone wall, or an approved equal to insure against inadvertent encroachment into this zone. The current and future owners of this property are required to maintain this permanent marking. **This condition shall survive this order.**

50. 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.**

51. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do not apply to the main support structure (stringers, bents, etc.) and do require an NOI. **This condition shall survive this order.**

52. If the pilings supporting a pier have not been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. The scraped material may remain on the beach/tidal flat. However, if the state declares a state of contamination (such as Red Tide) in an area wherein the pilings have been resident, tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for such contaminated materials.

If the pilings supporting a pier have been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. Tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for materials which include paint or treatment.

For all types of pilings (painted or unpainted/treated or untreated), a protocol must be submitted to the Conservation Commission for approval in advance of the scraping. The protocol must contain: whether the pilings are painted or unpainted/treated or untreated; whether the pilings have been contaminated; if painted or treated, the exact type of paint being scraped/if treated, the exact type of treatment; the dates and times of intended scraping (start and finish); the exact location of the intended scraping; a description of the containment method; a description of the scraping method; the final location for disposal of the paint scrapings or, if applicable, contaminated scrapings. If the pilings are to be repainted/re-treated, the exact type of paint/treatment must be identified and must be approved per the latest state and federal guidelines for such applications. The person ordering the scraping/painting/treatment must sign

and date the protocol and submit it to the Marblehead Conservation Commission before any work is started. **This condition shall survive this order.**

53. This OOC specifies a vegetated buffer strip be planted along and abutting the coastal bank and/or the BVW. After the vegetated buffer strip has been planted, at the end of the second growing season, the applicant must submit a report to the commission evidencing that the plantings have reached a minimum 75% survival rate. If the 75% rate has not been achieved, the applicant will re-plant/replace all non-surviving plants at the start of the third growing season and verify such replanting by appropriate evidence to the commission. These reports are mandatory even after a COC has been issued. After the third growing season, the maintaining of a 75% survival rate, but not the reporting, is a surviving condition. **This condition shall survive this order.**

54. The control drawing/s for this project were prepared by a licensed Professional. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Conservation Administrator based on the scope and anticipated duration of the project. Upon completion of the work authorized by this OOC, said licensed professional shall submit a written statement to the Conservation Commission certifying that the completed work is in substantial compliance with the control drawing and setting forth any deviations that may exist between the completed work and the plan approved by the Conservation Commission.

55. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. **See Attachment "C" for "Schedule of Fines".**

100. Prior to any work on this project that might affect the stability of the existing seawalls, the applicant shall retain the services of a licensed Professional Engineer (Structural) to examine the condition of the existing seawalls and issue a report on the structural integrity of those seawalls and their ability to handle the increased loads and stresses anticipated in connection with the proposed work.

101. In accordance with General Condition No. 6, this Amended Order of Conditions will expire three years from the date of the issuance of the original Order of Conditions. Therefore, this Amended Order of Conditions will expire on ????/??/?? unless an extension is requested by the applicant and granted by the Conservation Commission. Requests for extensions must be filed at least 30 days prior to the expiration of the Order of Conditions.

102. A tarp will be laid down at the base of the seawall during all repair work to capture all construction debris. The tarp will be on the seaward side of the seawall. The tarp will be rolled up and dumped into a disposal trailer as required throughout the work day and will be removed at the end of each work day.

103. The final Maintenance Agreement approved by the Commission shall be recorded with the Essex South Registry of Deeds as a restrictive covenant running with the land to be binding upon the present owner and all subsequent purchasers of the land or any lot or part thereof, and a reference to such restrictive covenant shall be included in the first deed out of the property or in the deed for all lots or subdivided portions thereof.

103A. A maintenance plan/schedule shall be submitted to the Conservation Commission for approval covering the entire subsurface drainage system prior to construction of the system. The maintenance plan/schedule shall be recorded at the Registry of Deeds with the final Certificate of Compliance and shall be binding upon the present owner and all subsequent purchasers of the land serviced by the system.

104. Prior to the commencement of construction activities on the site, the Applicant shall provide written proof of any necessary approval and/or insurance coverage required by the Town Administrator or the Board of Selectmen for the installation of erosion controls and/or a construction security fence within the limits of the way known as Marion Road Extension.

105 Tarps shall be spread and secured over the work area on top of the existing resource area for debris containment and collection during low to medium tides. The tarps and debris will be removed between tides and at the end of workday. At no time are the tarps to be inundated due to rain, tidal or wave action. The tarps are to be removed no less than ½ hour prior to expected inundation. At that time all work is to cease in the area near the resource area.

106 Coatings used shall be approved by the DEP.

The Manufacturer's Written Specification for curing time shall be furnished to the Conservation Agent prior to mobilization.

Coating shall be applied only as specified in the Manufacturer's written specifications.

Coating shall not be applied if the surface is expected to undergo exposure to rain or seawater within the manufacturer's specified curing time plus ½ hour.

107 Before any landscape work begins, the applicant shall submit a landscape plan to the Commission for approval. No landscape work may commence until the Commission has approved the landscape plan.

108 Stones, coarse sand and rock deposited by wave action may be relocated to the beach following review and authorization by the Marblehead Conservation Commission administrator or an authorized member of the Marblehead Conservation Commission.

Relocated material will be clean of soil and other debris such as organic plant material, metal, tires, plastic, trash or other debris that may result in a hazard in the resource area or a navigational hazard if refloated. All unsuitable material shall be removed and properly disposed

of off-site. Hand loading of mechanical equipment may be required to avoid the indiscriminant placement of unsuitable material in the resource area.

No soil or plant material will be allowed to be placed on the beach.

Any resulting invasive or other plant material which grows from replaced material is the responsibility of the property owner to control and remove following review and approval of the Marblehead Conservation Commission administrator.

Material must be placed on the lot from which it was removed or in a location approved by the Marblehead Conservation Commission administrator.

Property owners will be required to provide photo documentation of preexisting beach conditions and restore the dune areas to the preexisting conditions which is expected to be a relatively gradual slope to the high water line.

Stones will not be piled in a manner that obstructs access to the beach from properties or easements.

Failure to comply with these guidelines to the satisfaction of the MCC may result in the revocation of the perpetual condition, the issuance of an enforcement order and the need to refile to reinstate the condition.

The post storm topography of the resource area shall match the pre-storm topography. A topographic survey may be required at the discretion of the Marblehead Conservation Commission.

The Conservation Commission may for any reason require the material to be removed and properly disposed of off-site away from the resource area. **This condition shall survive this order.**