

Marblehead Conservation Commission
Minutes May 9, 2013

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

Meeting was called to order at 7:15 PM

Present were: Commission Members Fred Sullivan, Don Tritschler, Brian Leclair, Ken Fisher David Vanhoven, Walter Haug and David Depew. Also present was Willy Lanphear, Conservation Administrator.

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

Note: The commission currently has seven 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 four members.

Approve Minutes: All members voted to approve the minutes of 11 April 2013.

Enforcement Order: All members voted to approve the Enforcement Order issued against Mr. D. Percy at 20 Whittier Road.

Certificate of Compliance: All members voted to approve the Certificate of Compliance issued for 40-1118.

40-1113 CROWNINSHIELD ROAD REDMOND

Resource Area: Coastal Bank, Coastal Beach and Land Subject to Coastal Storm Flowage

Interests of the WPA and Bylaw: Flood Control, Prevention of Stormwater Damage and Prevention of Pollution

Control Drawing: Sketches: Seawall Site Plan, Seawall Elevation Plan – both dated 3/13

Reference: Exhibit A, no date and letter from G.F. Peach, no date, with sketch "Doliber Cove, Seawall Site Plan" dated 3/13

Appeared: D. Peach

This was a continuance from 04/11/2013. The "Doliber Cove Site Plan" satisfied the request of the commission for a mortar and silt containment plan. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

During construction:

XX. 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.

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.).

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.

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. 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.**

49. 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 or www.newfs.org. **This condition shall survive this order.**

54. 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"**.

NOI 40-1114 CROWNINSHIELD ROAD PEACHES POINT ROADWAY ASSOC.

Resource Area: Coastal Bank, Coastal Beach and Land Subject to Coastal Storm Flowage

Interests of the WPA and Bylaw: Flood Control, Prevention of Stormwater Damage and Prevention of Pollution

Control Drawing: Sketch "Plan to Accompany Petition of Peach's Point Roadway Assoc." dated 02/27/2013

Reference: Emergency Certificated issued 2/12/2013

Appeared: D. Peach

This was a continuance from 04/11/2013. Peach said the request for rip-rap is withdrawn from this application but it might be introduced in a new NOI. The commission pointed out that the amount of rip-rap would have to be considerable in terms of stone size and quantity in order to provide any amount of protection to the toe/base of the seawall. The problem is the eroding of soil fines behind the seawall base by wave action. The seawall base is constructed of dry-laid stones. This base was originally under the level of the beach and used to be sufficient as a foundation for the upper portion of the seawall. Since the beach level has lowered and the base now is more exposed to wave action, the undermining of the seawall has been seriously increased.

The commission read into the file the following statements (which refer to the minutes of 11 April 2013):

Dave Peach then raised issues from the 13 March meeting – a determination of what activities are allowed under the existing maintenance Surviving Condition, what activities given defined conditions can be done pursuant to an Emergency Certificate. Dave Peach stated that it would be beneficial if the Commission would clearly decide and communicate under what conditions what activities (subject to defined conditions) would be permitted as “maintenance;” or which ones would require an Emergency Certificate or an NOI.

HAUG response: The latest list of Special Conditions (April 2013) defines “what activities (...) would be permitted as “maintenance”...” The DEP Emergency Certificate applies only to those situations wherein public safety or health is immediately threatened. Since each situation is unique, the DEP has chosen to not be more specific, thereby placing the on-site decision with the local conservation commission. The local conservation commission is likewise restricted to judging each situation on a case by case basis in terms of how immediate the emergency appears.

Craig Campbell asked if given the large number of seawalls in Marblehead, should not the Commission hold special meetings devoted to creating rules for the maintenance, repair and rebuilding of seawalls.

HAUG response: The Conservation Commission has developed special conditions to allow for some maintenance and repair of seawalls. These are called “surviving conditions”. Note that a surviving condition can only be granted under an Order of Conditions.

A seawall is defined as a resource area (Coastal Bank) under the state Wetlands Protection Act (WPA). Since the alteration (read: rebuilding of a seawall) of a resource area is not allowed under the WPA, any activity within this area must be reviewed. The local conservation commission is restricted to judging each situation on a case by case basis.

All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

XX 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.

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. 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.**

49. 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 or www.newfs.org. **This condition shall survive this order.**

54. 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"**.

NOI 40-1117 40 BARTLETT STREET ROSENTHAL

Resource Area: Coastal Bank and Land Subject to Coastal Storm Flowage

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

Control Drawing: Overall Site Plan, dated March 24, 2013, latest revision 05/09/2013, prepared by Patrowicz Land Development Engineering

Reference: Drawing, "Wall Section", no date, prepared by Engineering Alliance

Appeared: S. Patrowicz of Patrowicz Land Development Engineering and S. Hynes

This was a continuance from 04/11/2013. The initial discussion focused on the following: The fire pit will be designed/constructed in such a manner so it is more protected from wave action. The propane gas tank will be located/stored in such a manner that it is also protected from wave action. The proposed retaining/seawall for the expanded terrace will be pinned to ledge. A railing will be erected along the edge of the terrace.

At this time, a neighbor at 11-13 Bartlett (represented by R. McCann) raised the matter of potential storm damage resulting to his property as a result of the new terrace wall. This neighbor indicated he has seen increased storm water reflection onto his property as a result of the previously approved/constructed terrace/seawall. The commission recognized the importance of addressing this issue. Therefore, it instructed the applicant to engage a coastal expert to review this project and/or to reduce the size/outline of the proposed terrace or eliminate the proposed terrace and place the fire pit within the existing terrace. All members voted to continue this hearing to 13 June 2013.

NOI 40-1118 17 CROWNSHIELD MCCARTHY

Resource Area: Coastal Bank, Coastal Beach and Land Subject to Coastal Storm Flowage

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

Control Drawing: Overall Site Plan, dated March 24, 2013, latest revision 05/09/2013, prepared by Patrowicz Land Development Engineering

Reference: Letter from Division of Marine Fisheries, dated May 9, 2013

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

This was a continuance from 04/11/2013. There will be no machinery or heavy equipment on the beach. All work will be done by hand. There will be no increase in seawall height. Any new stone required to fill voids in the seawall will be obtained off-site and not taken from the beach. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

XX. There will be no machinery or heavy equipment on the beach. All work will be done by hand. There will be no increase in seawall height. Any new stone required to fill voids in the seawall will be obtained off-site and not taken from the beach.

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

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.

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.

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.).

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.**

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NOI 40-1120 21 GOODWIN'S COURT GALLAGHER

Resource Area: Coastal Bank and Land Subject to Coastal Storm Flowage

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

Control Drawing: Overall SitePlan, NOI, 21 Goodwinds Court, dated March 18, 2013, signed by Patrowicz

Reference: Sketch "Water Depths", dated 12/05/2012, prepared by S. Gallagher.
Two drawings by Ravens Marine showing proposed seasonal gangway (no date)
FIRM Map

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

This was a continuance from 04/11/2013. At the request of Patrowicz all members voted to continue this hearing to 13 June 2013.

NOI 40-1123 15 SPRAY AVENUE GROOM

Resource Area: Coastal Bank, Coastal Beach and Land Subject to Coastal Storm Flowage

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

Control Drawing: Plan to Accompany NOI, Showing Emergency Wall Repairs, 15 Spray Avenue, dated April 8, 2013, prepared by Hayes Engineering, Inc.

Reference: Project Narrative, 15 Spray Avenue, dated March 25, 2013; Description of Work, 15 Spray Avenue, dated March 28, 2013; letter dated April 30, 2013, (accompanied by Detail Plan Showing Subsurface Toe Protection Detail, 15 Spray Avenue and Detail Plan Showing Landscaped Area Runoff Barrier, North and South of House, 15 Spray Avenue) all generated by Hayes Engineering.

Appeared: P. Ogren of Hayes Engineering and K. Pessolano of Groom Construction

The Hayes letter dated April 30, 2013 requested permission to continue to fill voids behind the wall, to re-construct the landscaped area seaward of the house and to construct subsurface toe protection for the wall. The commission agreed the voids can continue to be filled under NOI 40-1123 but an amendment or a minor design change to 40-1025, to be decided by the commission if applied for by the applicant, could suffice for the re-construction of the landscaped area. A new, separate NOI will be required for the toe protection. Ogren said these two items (re-construct of the landscape area and toe protection) are considered as final "fixes". (Note: The commission said that laying down new sod seaward of the house can be performed under either 40-1025 (without amendment or minor design change) or under 40-1123.

With regard to the proposed subsurface toe protection, any new application must conform with the following. Per P. Ogren, Childs Engineering has cooperated with Hayes Engineering in reviewing the seawall and proposed solutions to stabilize the wall. The commission requires a

letter from Childs Engineering documenting their opinions of the wall and, if they concur with the proposed solutions as presented by Hayes Engineering, to affirm their concurrence with the proposed solutions.

Various neighbors (Walsh-Rogalski, Danforth, +) spoke and, as a result of their comments, the commission agreed to incorporate these comments into the special conditions for 40-1123. Walsh-Rogalski said any work regarding the toe of the wall must conform to Section 404 of the Clean Water Act. All members voted to close the hearing. All members voted to issue an OOC with the following special conditions.

1. Voids behind the wall can continue to be filled/grouted.
2. Re-pointing of the wall can continue.
3. New lawn/sod can be placed in the landscaped areas
4. The "right of way" leading down to the beach must be restored to its original condition prior to the in-filling with stone. The timing of this restoration will depend on a final decision regarding the toe of the wall and may be decided under a future NOI.
5. A temporary means of access to the beach will be constructed in the "right of way" to allow people to access the beach in the summer of 2013.
6. The beach will be restored to its original condition prior to the emergency repairs made to the wall but only in so far as the impacts anticipated during a restoration are temporary and negligible. The timing of this restoration will depend on a final decision regarding the toe of the wall and may be decided under a future NOI.
7. Logs of the borings made on the beach and around the house will be supplied to the Conservation Commission as soon as possible.
8. The drain pipe to the beach emanating from the street catch basin at the head of the "right of way" will be restored and made visible.

RDA MASS AUDUBON WILDLIFE SANCTUARY DECKER

Resource Area: BVW

Interests of the WPA and Bylaw: Protection of Wildlife Habitat

Control Drawing: Various pictures showing impacted area

Appeared: C. Decker of Mass. Audubon Society

After review, all members voted to close this hearing. All members voted to issue a negative determination without conditions.

40-????? 91 NAUGUS AVENUE NAUGUS HEAD ASSOCIATION

Resource Area: Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage

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

Control Drawing: Attachments "A" (Proposed Activities on Beach at 91 Naugus Avenue) and "B" (Beach Use Management Plan at 91 Naugus Avenue) and drawing "Beach Area at 91 Naugus Avenue", no date, prepared by Naugus Head Association.

Reference: Letter from Lawrence Lessard dated 6 May 2013

Appeared: G. Riskin, president of Naugus Head Association

No DEP File No. had been received as of this hearing. The application will be discussed and continued. Mr. Riskin explained the purpose of this application. Haug said he has worked with Riskin over the past few months in fine tuning attachments "A" and "B" and these will be part of the OOC. Haug then addressed the letter of Mr. Lessard. A marked-up copy of this letter with the responses of Haug is on file but is not included in these minutes. Likewise, Attachments "A" and "B" are on file but are not included in these minutes. Haug has also composed a set of Beach Regulations as follows to be included with the OOC for this application. It remains the responsibility of the Naugus Head Association (NHA) to distribute any and all pertinent information to all members and to police and enforce the activities on the beach. The Conservation Commission will support the NHA in enforcement. If any person who is not a member of the NHA violates any of the regulations pertaining to the beach and, if the person is identified and witnessed by a member of the NHA, the Conservation Commission will take appropriate action against this person.

BEACH REGULATIONS

Except for launching/hauling, no driving on the beach.

Launching/hauling of boats and floats is allowed only in strict accordance with the Beach Use Management Plan. Violations are subject to fines.

Storage of boats, boat trailers or floats is allowed only in strict accordance with the Beach Use Management Plan. Violations are subject to fines.

No debris/flotsam/junk to be left on the beach or in the area landward of the beach and no storing of any material deemed unusable or irreparable.

Cleaning, scraping, painting, repair or maintenance of boats, boat bottoms and floats is allowed only in strict accordance with the Beach Use Management Plan. Violations are subject to fines.

Oil or other liquid or chemical leaks are to be immediately reported to the Marblehead Conservation Commission. Such leaks are a violation subject to fines. No gasoline, diesel fuel, kerosene or any chemicals are to be used on the property.

2013

All members voted to continue this hearing to 13 June 2013. In the event an OOC is issued, it will have the following special conditions.

- 1: The regulations and conditions for using this beach are delineated in Attachment “ A “ (Proposed Activities on Beach at 91 Naugus Avenue) and Attachment “ B “ (Beach Use Management Plan at 91 Naugus Avenue). This is a surviving condition.
- 2: The Beach Regulations dated 2013 (attached) will be permanently posted at the beach at 91 Naugus Avenue. This is a surviving condition.
- 3: All areas designated for specific purposes will be clearly and permanently marked. This is a surviving condition.

40-1124 425 OCEAN AVENUE 425 OCEAN AVENUE REALTY TRUST

Resource Area: Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage

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

Control Drawing: Site Plan, 425 Ocean Avenue, dated April 22, 2013, latest revision 05/09/2013, prepared by Patrowicz Land Development Engineering

Appeared: S. Patrowicz and R. McCann

The commission expressed concern about the fence. It had been blown away by the March 2013 storm although a previous conditions for this property was that it was to be removed (it was designed to be removed) in the event of an impending storm. The commission required that a fence design be approved for this current application. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

XX. A fence design will be submitted to the commission for approval before any work is started.

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

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.

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.

During construction:

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.).

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.

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.**

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43. 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.**

49. 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 or www.newfs.org. **This condition shall survive this order.**

52. This OOC specifies a rain garden be planted along and abutting the coastal bank and/or the BVW. After the rain garden 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. 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".**

40-1125 291B OCEAN AVENUE REAR 291 OCEAN AVENUE REALTY TRUST

Resource Area: Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage

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

Control Drawing: Site Plan for Notice of Intent 291B Ocean Avenue, dated April 9, 2013, by Patrowicz Land Development Engineering

Appeared: S. Patrowicz and R. McCann

After discussion, all members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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

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.

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.

During construction:

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.).

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.

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. 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.**

49. 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 or www.newfs.org. **This condition shall survive this order.**

54. 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".**

40-1126 263 OCEAN AVENUE OCEAN REALTY TRUST

Resource Area: Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage

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

Control Drawing: Site Plan, 263 Ocean Avenue, dated April 22, 2013, prepared by Patrowicz Land Development Engineering

Appeared: S. Patrowicz, R. McCann, Mr. Callahan and T. Siemasko

After discussion, all members voted to close the hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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

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.

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.

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.).

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.

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. 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.**

49. 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 or www.newfs.org. **This condition shall survive this order.**

53. The control drawing/s for this project were prepared by a licensed Professional Engineer. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. 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.

54. 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"**.

40-1127 25 NEPTUNE ROAD COSTA

Resource Area: Coastal Beach, Coastal Bank, Land Subject to Coastal Storm Flowage

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

Control Drawing: Site Plan, 25 Neptune Road, dated April 22, 2013, prepared by Patrowicz Land Development Engineering

Reference: Proposed Vista Pruning at 25 Neptune Road, dated April 20, 2013, prepared by W. Mannuel

Appeared: S. Patrowicz, W. Mannuel and M/M Costa

After discussions, all members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

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

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.

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.

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.

Post-construction/in perpetuity:

XX. A report form for describing the status of the various vegetation will be submitted to the commission before any work is started. This report form will be based on the work as described in the Proposed Vista Pruning at 25 Neptune Road, dated April 20, 2013, prepared by W. Manuel. Using this report form, a report will be submitted each Fall for three years. The first report will be submitted after the completion of the initial cleaning/restoring work.

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.**

49. 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 or www.newfs.org. **This condition shall survive this order.**

53. The control drawing/s for this project were prepared by a licensed Professional Engineer. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. 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.

54. 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"**.

40-1128 25 MARION ROAD SOLOMON

Resource Area: BVW

Interests of the WPA and Bylaw: Flood Control, Protection of Wildlife Habitat, Prevention of Pollution

Control Drawing: Site Plan, 25 Marion Road, dated April 24, 2013, prepared by Patrowicz Land Development Engineering

Reference: Prior NOI 40-976

Appeared: S. Patrowicz and Mr.Solomon

Mr. Solomon agreed to remove the shed and patio area from the NOI. A revised plan without the shed and patio area will be submitted to the commission. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

XX. A revised drawing removing the shed and patio area will be submitted to the commission for approval before any work is started. This drawing will show the construction details of the sports court and the putting green.

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

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.

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.

During construction:

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.).

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.

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.**

49. 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 or www.newfs.org. **This condition shall survive this order.**

54. 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".**

RDA 27 GINGERBREAD HILL BLAISDELL/POWELL

Resource Area: Land Under Water

Interests of the WPA and Bylaw: Flood Control, Protection of Wildlife Habitat, Prevention of Pollution

Control Drawing: 27 Gingerbread Hill, Existing Plan of Area (1) and 27 Gingerbread Hill, Proposed Plan of Area (2)

Appeared: Blaisdell and Powell

A small wall (about ten feet long) serves as part of the bank of a pond and is in danger of falling into the pond. About two feet of the upper portion of this wall (above the water level of the pond) will be removed and replaced with dry lay-up stone. All members voted to close this hearing. All members voted to issue a negative determination with no conditions.

RDA 8 GREGORY STREET ROGERS

Resource Area: Coastal Bank

Interests of the WPA and Bylaw: Flood Control, Protection of Wildlife Habitat, Prevention of Pollution

Control Drawing: 8 Gregory Street (HDC 1 and HDC 2, dates not legible) and Site Plan for 8 Gregory Street, dated April 23, 2013

Reference: Letter from Wetlands Preservation Inc. dated April 25, 2013

Appeared: C. Yound of Wetlands Preservation Inc.

After review, all members voted to close this hearing. All members voted to issue a negative determination with no conditions.

Old/New Business:

Emergency Certificate: 26 Foster Street - Blando: An Emergency Certificate (EC) had been issued by Lanphear on or about 7 May 2013 for the repair of a seawall. The damage has existed since the 8 March 2013 major coastal storm. Due to the lengthy amount of time that has expired since that date and since there has been no further damage to the wall, the commission voted to rescind the EC. An NOI will be filed to repair the damage.

Request for changes in project scope:

40-1076 191A Green Street: Appeared M. Kehn and A. McEachern. After review of the proposed changes, the commission voted to regard the changes as minor design changes, not requiring an amendment. A drawing of the changes is on file.

40-942 81 Naugus Avenue: Appeared P. Carlton. Reference letter dated May 9, 2013 from L. Lautner and Revised Planting Plan - Carlton Residence, dated May 2013. After review, the commission voted to regard the changes as minor design changes, not requiring an amendment.

Sign Documents: The Schedule of Bills Payable were signed.

Enforcement Order: 20 Whittier Road Percy: An Enforcement Order (EO) was issued against Mr. Percy on 8 May 2013 due to unpermitted work in a buffer zone. The commission voted to approve the EO. C. Young (and P. Lynch, atty, who had left the meeting) appeared to represent Percy. Percy was instructed to file a Request for Determination of Applicability (RDA) no later than one (1) week from the date of this hearing. Also, he is to pay a fine of \$525.00, payable to the Town of Marblehead and deliver such to the Town Engineering Office at Widger Road. Per our published fine guidelines, this fine consists of \$300.00 for failure to apply for the RDA and \$225.00 for a buffer zone violation within the No Build Zone. Upon assurance from Young that Percy will fulfill these conditions within the specified time frame, the commission agreed Percy can continue with his work in the buffer zone.

The meeting was adjourned at 12:00 AM