

**Marblehead Conservation Commission**  
**Minutes June 14, 2012**

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

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, David VanHoven, Ken Fisher and Brian LeClair. Also present were Jan Smith and 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 six 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.

**40-1053 151 GREEN STREET MULDOON**

Resource Area: BVW

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

Control Drawing: Green Street Condominiums, sheets 1 through 4, dated April 12, 2012, prepared by RIM Engineering Co., Inc. Note: Sheet 2 of 4 has a latest revision date of May 29, 2012.

Also submitted is the Application for a Land Disturbance Permit, signed by owner, Susan Muldoon, dated 06/01/2012 and the following supporting documents.

Notice of Intent for Stormwater Discharges ... under an NPDES General Permit, Form 3510-9, no date and no signature.

Erosion & Sediment Control Plan per Chapter 195, section 8, no date

Construction Period Controls per Chapter 195, section 12, no date.

Stormwater Management Plan per Chapter 195, section 9, dated August 16, 2011, latest revision April 7, 2012

Stormwater Operations & Maintenance Plan per Chapter 195, section 10, dated April 9, 2012, latest revision May 30, 2012

Inspection & Site Supervision per Chapter 195, section 11, no date

Final Reports per Chapter 195, section 13, no date

Remediation Contingency Plan, dated May 30, 2012, prepared by SP Engineering, Inc.

Wetland Construction Sequence including Wetland Replication Area Grading Schematic per ECR letter dated May 29, 2012

Wetland Replication per ECR letter dated March 5, 2012

The above documents were received from the applicant on 5 June and, after a review by the chair, they were sent to Eggleston Environmental for peer review on 8 June. No response was available for this hearing.

Appeared: P. Lynch

This was a continuance from 09/08/2011, 10/13/2011, 11/10/2011, 12/08/2011, 01/12/2012, 02/09/2012, 03/08/2012, 04/12/2012 and 05/10/2012.

Reference: RIM letter dated June 1, 2012. This letter referenced the ConCom memo of May 22, 2012 on which date the documents supplied by the applicant prior to May 22 were reviewed for completeness and accuracy with the applicant.

The RIM responses in this letter were reviewed at this hearing. The commission made the following comments.

No SWPPP form was included with the NPDES NOI.

Construction Period Controls per Chapter 195, section 12, no date. This document should be with the Erosion & Control Plan as part of section 8, not section 12.

The Stormwater Operations & Maintenance Plan Master Map must easily and clearly identify the various elements of the drainage system. The current Map is very difficult to read.

The Condo/Homeowner's Association Agreement has not been submitted.

Lawn fertilizer: Include: 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).

Referring now to the Stormwater Operations & Maintenance (O&M) Plan, the commission requires the following changes.

Page 1 of 2, third paragraph, third line, add: The owner and/or the Condo/Homeowner's Association is also ...

Page 2 of 2, Lawn fertilizer, add: the above fertilizer clause.

Page 2 of 2, Ten foot wide: Sheet 4 of 4 must be included with the O&M Plan.

Master Map: The Stormwater Operations & Maintenance Plan Master Map must easily and clearly identify the various elements of the drainage system and only these elements should be shown on the Map. Each element must be identified by itself so it is easy to locate on the Map and on site and can be noted on the Inspection and Maintenance Log sheet.

The discussion then turned to the letter from P.F. Gallo, no date, with a cost estimate for installing the drainage system. The commission will investigate how best to review this cost for verification. Finally, the commission had earlier supplied P. Lynch with a suggested list of conditions for the LDP. He was reminded certain documents as identified in this list need to be generated and/or recorded by the applicant.

The commission voted, with the approval of the applicant, to continue this hearing to 12 July 2012.

#### **40-1076 191A GREEN STREET PIG ROCK LLC**

Resource Area: BVW

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

Control Drawing: Pig Rock, LLC, 191A Green Street, dated 04/25/2012, prepared by Griffin Engineering Group

Appeared: R. Griffin

This was a continuance from 05/10/2012. A site visit was held on May 2012 and it was determined that no grade elevations have been changed or other changes made to the site since the last OOC for this site. The ensuing discussion focused on the agreement committing the owners of the properties to the common maintenance of the common driveway and the site drainage system. A series of changes were requested by the commission and these will be relayed to the applicant's attorney. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

#### **Pre-construction:**

Before any work is started, a final "Shared Driveway and Drainage Structure Maintenance Agreement", dated \_\_\_\_\_, must be submitted to and approved by the commission.

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 or streets.

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.

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.

**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.**

46. The No Disturb Zone will be permanently marked in an appropriate manner on site to insure no inadvertent encroachment into this zone. This zone lies entirely within the property of 191A

Green Street and this owner is required to maintain the permanent marking. **This condition shall survive this order.**

47. 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.**

50. 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.

51. 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".**

103. The final "Shared Driveway and Drainage Structure Maintenance Agreement", dated \_\_\_\_\_, 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.

## **RDA 191B GREEN STREET**

Resource Area: BVW

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

Control Drawing: Pig Rock, LLC, 191B Green Street, dated 04/25/2012, prepared by Griffin Engineering Group

Appeared: R. Griffin

The owner of this parcel is Ram Island Realty LLC. Excluding the common driveway, this property is outside the 100 foot Buffer Zone. All members voted to close this hearing. All members voted to issue a negative determination.

#### **40-1082 203 WEST SHORE DRIVE ROSE**

Resource Area: BVW

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

Control Drawing: Proposed Landscape Plan, 201 West Shore Drive, dated 25 April 2012

Reference: Letter from Michael Rose, dated 25 April 2012

Appeared: M. Rose

The DEP file number had been received. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

#### **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.

47. 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).

51. 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".

#### **40-1083 93 PITMAN ROAD HAMILTON**

Resource Area: Coastal Bank

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

Control Drawing: Pictures and Site Plan, 93 Pitman Road, dated May 17, 2012

Appeared: S. Patrowicz of Patrowicz Land Development Engineering, J. Hamilton and M. Liebman, contractor

This work entails repairing and replacing elements of the existing structure. 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. Tarps will be laid directly adjacent to the work area along the seawall to collect construction debris. The tarps, with their debris, will be removed each day.

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 or streets.

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.

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.

**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 of existing (a) stone masonry and (b) concrete walls including the replacement of occasional, missing stones in the stone masonry wall or the patching of cracks and minor defects in a concrete wall is allowed as a surviving condition to the Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any repointing work.** 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. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

47. 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.**

50. 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.

51. 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"**.

#### **40-1086 19 EDMERE ROAD EISENHOWER**

Resource Area: Coastal Bank

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

Control Drawing: Pictures and Site Plan, 19 EdmERE Road, dated May 21, 2012

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

This work entails repairing and replacing elements of the existing structure, including the entire house wall on the seaward side. Due to an outstanding violation, failure to record an earlier OOC 40-619, all members voted to issue a fine of \$300.00. 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. Tarps will be laid directly adjacent to the work area along the seawall to collect construction debris. The tarps, with their debris, will be removed each day.

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 or streets.

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.

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.

**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 of existing (a) stone masonry and (b) concrete walls including the replacement of occasional, missing stones in the stone masonry wall or the patching of cracks and minor defects in a concrete wall is allowed as a surviving condition to the Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any repointing work.** 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. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

47. 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. 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"**.

#### **40-1084 120 JERSEY STREET GRUNWALD**

Resource Area: BVW

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

Control Drawing: Site Plan, 120 Jersey Street, Katherine Grunwald, dated April 12, 2012, prepared by North Shore Survey Corporation

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

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

#### **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 or streets.

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.

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.

#### **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.**

47. 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. 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".**

#### **40-1085 126 BEACON STREET RIVET**

Resource Area: BVW

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

Control Drawing: Site Plan, 126 Beacon Street, Patricia Rivet, dated May 25, 2012 and revised June 14, 2012, prepared by North Shore Survey Corporation.

Appeared: S. Patrowicz of Patrowicz Land Development Engineering

Due to the steepness of the property behind the proposed work, the erosion control will consist of a parallel structure of hay bales, silt fence and snow fence. A pre-construction conference will be held with the Conservation Administrator to verify this erosion control. The proposed increase of the existing retaining wall height at the end of the driveway is deleted. This retaining wall will be repaired where necessary and the missing granite block(s) will be replaced. All members voted to close this hearing. All members voted to issue an OOC with the special conditions.

#### **Pre-construction:**

A revised drawing showing the retaining wall repaired by re-placing the granite block(s) and not increasing the height will be submitted 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:**

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 or streets.

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.

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.

**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 of existing (a) stone masonry and (b) concrete walls including the replacement of occasional, missing stones in the stone masonry wall or the patching of cracks and minor defects in a concrete wall is allowed as a surviving condition to the Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any repointing work.** 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. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

47. 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.**

50. 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.

51. 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 2 CROWNINSHIELD ROAD STAFFORD**

Resource Area: Stream Bank and Riverfront Area

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

Control Drawing: Proposed Pool Plan, Stafford Residence, dated no date (wetlands flagged May 10, 2012 by Rimmer Environmental Consulting)

Appeared: K. Stafford, M. Rimmer and Lahey of Lahey Landscaping

The resource in this application is a perennial stream which flows through a culvert under Beacon Street. A temporary ramp will be built to access the proposed pool area. Although the work will be in the inner riparian area, the proposed erosion control will protect the stream. All members voted to close this hearing. Four members voted "yes" and one member "no" to issue a negative determination with the following special conditions.

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 or streets.

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).

42. 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.

The discussions now turned to the matter of fines. The Staffords failed to record **OOC** 40-844 which carries a fine of \$300.00, first violation. They also failed to request a COC for **OOC** 40-844 which carries a fine of \$600.00, second violation. Finally, under **OOC** 40-645, they clear cut

the area in the inner riparian area which had been planted as part of the landscape plan under this OOC. For this violation a fine of \$300.00 was levied. All members of the commission voted to levy these fines. In addition, the Staffords were instructed to place a permanent demarcation along the line previously agreed to on the landscape plan under ~~OO~~C40-645. This demarcation is intended to prevent any future incursion into this inner riparian area which will remain undisturbed.

#### **40-1072 40 BARTLETT STREET ROSENTHAL**

Resource Area: Coastal Bank

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

Control Drawing: Site Plan, 40 Bartlett Street, Rosenthal, dated May 29, 2012, prepared by Engineering Alliance, Inc.

Appeared: D. Dwyer of Otte & Dwyer, Inc. and S. Hynes consultant to the Rosenthals

This hearing deals with an amendment (lateral extension) to a terrace on a coastal bank previously approved under 40-1072. The commission determined this lateral extension will not cause any impacts on neighboring properties. All members voted to close this hearing. All members voted to issue an amended OOC with the one additional special condition, i.e., the erosion control must be approved by the commission before any work is started.

Finally, the commission alerted Ms. Hynes to the fact that OOC 40-686 had not been recorded and a fine of \$300.00 is levied. She will tell Mr. Rosenthal to contact the commission re payment.

#### **40-1087 3 SARGENT ROAD ROBBINS**

Resource Area: Coastal Bank

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

Control Drawing: Site Plan, 3 Sargent Road, David Robbins, dated May 30, 2012, prepared by Patrowicz Land Development Engineering

Appeared: S. Patrowicz of Patrowicz Land Development Engineering and M/M Robbins

Patrowicz reviewed the proposed project, the re-grading, etc. This work will be in the No Disturb Zone but there will not be any increase in the house footprint except for a small octagon "bump out" (see the site plan). This will be compensated by the planting of a rain garden along the entire length of top of coastal bank. 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.

XX. Erosion control shall be placed along Sargent Road to protect the LSCSF.

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 or streets.

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:**

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. This OOC specifies a vegetated buffer strip/ rain garden 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.**

50. 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.

51. 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".**

#### **Old/New Business:**

#### **Enforcement Orders:**

**Gerry's Island Redstone Realty, LLC:** Mr. Nylen, attorney representing Mr. E. Moore of Redstone Realty, LLC appeared. Mr. Nylen presented the commission a letter from himself dated June 14, 2012 wherein he referenced certain actions that were delineated in the Enforcement Order (E.O.) and for which he claimed no permit was required. Note that the only type of permit he mentions in his letter is an Order of Conditions (OOC).

The commission then reviewed the history leading up to the E.O. On 4 April 2012, the commission chair sent a letter to Mr. Moore regarding his possible work on Gerry Island. In this letter, Mr. Moore was asked to appear before the commission to explain his intended work and, if necessary, to apply for a permit. The type of permit was not specified.

On 11 April 2012, Mr. Nylen sent a letter to Ms. L. Mead, Marblehead Town Counsel, wherein he claimed that no permit is necessary. Mr. Nylen stated in his letter that Mr. Moore informed the Town that he was planning to clean up paper and debris. The commission chair said there is nothing in the commission files to support this statement. There is no letter in the files and no record of a phone call. The chair explained further, that his letter of 4 April did not reference any direct contact from Mr. Moore and, had there been contact, the chair would have referenced such contact. The information of possible work came from an unnamed source. The chair further noted that the 11 April letter from Mr. Nylen refers to a Notice of Intent (NOI). It appeared to the commission that Mr. Nylen had not considered a Request for Determination of Applicability (RDA) (see 310 CMR 10.04). Mr. Nylen did not attempt to deny his client was involved with this cleaning.

On 12 April 2012, a photo showing two trucks accessing Gerry Island, was supplied to the commission. Finally, on 6 June 2012, an E.O. was issued against Mr. Moore by the commission.

On 16 April 2012, Ms. L. Thody of Blatman, Bobrowski & Mead, LLC wrote to Mr. Nylen confirming the responsibilities of the Conservation Commission and the need of a permit. Ms. Thody follows the same reasoning as did the commission in that she speaks of a "permit", not defining the type.

As the discussions continued, it became evident Mr. Nylen was focused entirely on the actions that he claimed did not require a permit. The commission, on the other hand, focused on the necessity of obtaining a permit before any work is done in an area under their jurisdiction. An RDA deals with the area and the type of work to be performed. The entire island and the causeway leading to the island are jurisdictional areas under the state Wetlands Protection Act. Since Mr. Moore elected not to appear before the commission as requested in the 4 April letter and to explain what he intended, in its E.O., the commission listed certain actions that he undertook which could result in violations. This was done to emphasize its jurisdiction and to validate the necessity of obtaining the proper permit from the commission. The commission told Mr. Nylen that if Mr. Moore had appeared before the commission, this whole matter could most likely have been resolved without involving attorneys and allowing Mr. Moore to perform his cleaning. The commission also questioned Mr. Nylen as to the necessity of driving two trucks out to the island and what type of cleaning was done. Mr. Nylen replied they wanted to pick up trash papers, cups and similar debris. Mr. Nylen said they did not intend nor did they remove any of the other debris, such as the old winch, old barrels, rails, etc. left from years ago.

Mr. Nylen said the commission was singling out his client and was not being objective in its requirement for permits for similar cases. The commission emphatically denied this and said that Mr. Nylen can file with the Department of Environmental Protection or take whatever other legal action he deems necessary if he believes the commission is being derelict/biased in performing its duties. The commission voted to levy a fine of \$300.00 per the ConCom Fine Guidelines (administrative violation – failure to file an RDA). Mr. Nylen said he will challenge this fine.

**2 Crowninshield Road Stafford:** see above.

**Request for change in project scope:**

**40-1072 40 Bartlett Street Rosenthal:** see above.

**40-1037 7 Mooring Road Greene:** Ms. Greene appeared with hand sketches showing proposed changes to the height of the pier and the re-orientation of the floats. The commission regarded both changes as an improvement regarding less impact on eel grass beds. The commission voted to regard these changes as minor design changes not requiring an amendment. New, engineering drawings with these changes will be submitted to the commission before any work is started.

**40-1052 14 Indianhead Circle Booth:** R. Griffin of Griffin Engineering appeared to review some proposed changes to this application. These changes were documented on the original site plan, latest revision 06/14/2012. After review, the commission voted to regard these changes as minor design changes not requiring an amendment.

**Request for COC:**

**40-706 24 Pequot Road Sledge:** All members voted to issue a COC and to levy a fine of \$300.00 for failure to record the OOC.

**40-792 24 Pequot Road Sledge:** All members voted to issue a COC and not to levy an administration fine for failure to request a COC prior to the expiration of the OOC. Their attorney, Mr. McCann had requested the COC before the commission discovered this violation. See the Fine Guidelines. However, the commission voted to levy a fine of \$300.00 for dumping yard waste on the coastal bank and clear cutting on the coastal bank.

**40-619 19 Edgemere Road Eisenhower:** All members voted to issue a COC. The matter of a fine had already been addressed (see above).

**40-244 6 Manataug Trail Roberts:** All members voted to issue a COC

The meeting was adjourned at 11:30 PM.