

**Marblehead Conservation Commission  
Minutes June 9, 2011**

Meeting was held in the auditorium at the Marblehead Town Hall

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Fred Sullivan, Brian LeClair, Don Tritschler, Ken Fisher, Craig Smith and Deb Payson. Also present were Willy Lanphear, Conservation Administrator and Jan Smith, associate member.

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.

**Discussion Items:**

**Proposed changes to the regulations of the M'hd Wetlands Protection Bylaw:** See memo from Lisa Mead of Blatman, Bobrowski & Mead, dated January 17, 2011. The commission voted all in favor of incorporating the changes suggested in this memo.

**40-1010 100 Harbor Avenue:** See the end of these minutes.

**40-1015 25 Pinecliff Drive:** This item was tabled. No future action was determined.

**Approve Minutes:** The minutes of May 12, 2011 were approved by all members.

**Sign Documents:** The "Schedule of Bill Payable" was signed.

**40-1029 15 SPRAY AVENUE GROOM**

Resource Area: Coastal Bank

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

Appeared: P. Lynch

Control Drawing: No final drawing is yet available

This was a continuance from 03/10/2011, 04/14/2011 and 05/12/2011. Per agreement (via email) with Messrs. Paul Lynch and Carl King, lawyers representing respectively, the applicant and the neighbors, the commission voted all in favor of continuing this application to July 14, 2011.

**40-1033 LITTLE HARBOR ISLAND (AKA: GERRY ISLAND) - NOYES**

Resource Area: Coastal Bank, Land Subject to Coastal Storm Flowage, Land Under the Ocean, Land subject to Tidal Action

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

Appeared: Peter Noyes and Peter Ogren of Hayes Engineering.

Control Drawing: Little Harbor Island (Gerry's Island), dated March 30, 2011, latest revision dated May 12, 2011, prepared by Hayes Engineering.

This was a continuance from 04/14/2011 and 05/12/2011. The commission asked Noyes if he had any further information to present, especially with regard to the questions dealing with the site plan (Control Drawing) posed by the commission and documented in the minutes of May 12, 2011. Noyes said he had no further information. Ogren, who appeared right after the beginning of this hearing, confirmed that Noyes had not authorized him to pursue these questions.

Noyes raised the issue of causeway access to the island in so far as Priority Habitat and Estimated Habitat is concerned. The commission read an email dated June 7, 2011 to Nancy Noyes from Amanda Veinotte of the Natural Heritage and Endangered Species Program. Ms. Veinotte stated in her email that "... the NHESP has no concerns with your current use of the causeway."

The comments from DEP are as follows: "Submit Coastal bank profiles. LSCSF is a velocity zone. Also, Coastal Beach (gravel pad site). NOI states that applicant needs to stabilize the site and will backfill eroding spots, however, NOI also states site is not a sediment source. Does not appear to meet performance standards for 10.30 (4) or 10.30 (7). Insufficient information to condition."

Comments were then taken from the audience.

C.Young of Wetlands Preservation Inc.: There remains a substantial amount of information that is lacking to properly assess this application. Young referred to his letter dated May 1, 2011 presented at the hearing on May 12, 2011.

J. Sahagian, lobsterman: Anything that impacts lobster habitat and productivity hurts his livelihood.

M. Wondolowski and D. Fiore of the Lobster Conservancy: They presented a booklet, "The Lobster Nursery at Gerry Island", documenting the existence and range of this nursery lying in the Rocky Intertidal Shore off Gerry Island.

S. Willard, lobsterman: Said he will soon retire as a lobsterman but is very alarmed that any work that might harm the lobster nursery will also harm future lobstermen and their existence.

B. Rickards: Said the rebuilding of the seawall is not consistent with the WPA regulations since there are many areas showing erosion and, therefore, supplying sediment.

S. Sullivan: Said lobsters are very vulnerable to toxins.

?Lloyd: Said she fears the proposed operations on the island could introduce toxins, chemicals, human waste and pollution.

The commission then voted all in favor of closing this hearing. The chair then read the following memo from the chair.

(start of memo)

This is the 3<sup>rd</sup> hearing for Gerry Island, NOI 40-1033

Two site visits with the applicant.

One site visit with DEP.

Two E.O.s against Noyes

One E.O. against Moore

Appeal period is 10 work days after issuance of OOC. Applicant, public, DEP can appeal.

All documents (letters, memos, emails, photos) received for this application are herewith made a part of this hearing.

I recommend to the commission a denial of the NOI due to the following issues.

1. 310 CMR 10.30 Coastal Banks:

(1) *Preamble:*

*Coastal banks composed of unconsolidated sediment and exposed to vigorous wave action serve as a major continuous source of sediment for beaches, dunes, and barrier beaches (as well as other land forms caused by coastal processes). The supply of sediment is removed from banks by wave action, and this removal takes place in response to beach and sea conditions. It is a naturally occurring process necessary to the continued existence of coastal beaches, coastal dunes and barrier beaches which, in turn, dissipate storm wave energy, thus protecting structures of coastal wetlands landward of them from storm damage and flooding.*

*When a proposed project involves dredging, removing, filling, or altering a coastal bank, the issuing authority shall presume that the area is significant to storm damage prevention and flood control.*

*When issuing authority determines that a coastal bank is significant to storm damage prevention or flood control because it supplies sediment to coastal beaches, coastal dunes or barrier beaches, the ability of the coastal bank to erode in response to wave action is critical to the protection of the interest.*

**WHEN A COASTAL BANK IS DETERMINED TO BE SIGNIFICANT TO STORM DAMAGE PREVENTION OR FLOOD CONTROL BECAUSE IT SUPPLIES SEDIMENT TO COASTAL BEACHES, COASTAL DUNES OR BARRIER BEACHES, 310 CMR 10.30(3) THROUGH (5) SHALL APPLY.**

(3) *No new bulkhead, revetment, seawall groin or other coastal engineering structure shall be permitted ... except ... to prevent storm damage to buildings constructed prior to ... August 10, 1978 ...*

Both the seawall and the ramp are coastal engineering structures. The commission regards the proposed seawall and ramp to be in violation of this regulation since they both inhibit beach nourishment via natural wave erosion. See photos A, B and C. There have been no structures on the island since 1974.

2. 310 CMR 10.37, Estimated Habitats of Rare Wildlife:

~~The NOI refers to three resource areas: Coastal Bank, LSCSF and Rocky Intertidal Shore. The NOI checked "no" regarding the question, "Is any portion of the proposed project located in Estimated Habitat of Rare Wildlife ...". Yet, the 2008 Priority Habitat & Estimated Habitat map from the Natural Heritage & Endangered Species Program shows the causeway as containing habitat and the entire island as surrounded by habitat. The commission assumes this mapped information to be correct and it has not been adequately refuted by the applicant.~~

3. 310 CMR 10.31, Rocky Intertidal Shores:

*Rocky shore environments are habitats for macroalgae and marine invertebrates and provide protection to and food for larger marine organisms such as crabs, lobsters ... which are uniquely adapted to survive there and cannot survive elsewhere.* The application states that the applicant will establish a boat yard on the island for winter storage and boat repair. The applicant has subsequently stated he wishes to erect camp sites on the island for summer public recreation. The Lobster Conservancy has documented that a uniquely productive lobster nursery exists in this resource area adjacent to the island. The applicant has not submitted any information as to how his envisioned operations will protect this nursery.

4. 310 CMR 10.25, Land Under the Ocean:

*Land under the ocean provides feeding areas, spawning and nursery grounds and shelter for many coastal organisms related to marine fisheries.* Per 310 CMR10.23, Additional Definitions: *Marine Fisheries means any animal life inhabiting the ocean or its adjacent tidal waters or the land thereunder that is utilized by man in a recreational and/or commercial manner or that is part of the food chain for such animal life.* Initially, this application appeared to deal only with the proposed seawall and ramp. However, the application narration states, "Machinery and personnel will access the worksite along the existing right of way from the mainland ..." The commission initially regarded this statement as referring in the main to the legal right of access. However, during the preceding hearings and, especially from the site visits, the wetland issues associated with access over the right of way need to be considered. No information has been supplied by the applicant stating how he/she will protect this resource area, Land Under the Ocean, as represented by the causeway.

5. 310 CMR 10.02 (2), Land Subject to Coastal Storm Flowage:

While there are no performance standards for this resource area, it is under the jurisdiction of the Wetlands Protection Act and requires the filing of an NOI for any proposed activities. Since the entire island is a resource area, all and any work proposed on it must be permitted by the commission. The applicant has not presented a final plan with details for how the island will be adapted to promote his operations.

(end of memo)

As a result of this meeting wherein no further information, as requested by the commission, was offered by the applicant, said information being necessary for the commission to make a full evaluation of the application, a lack of information is also cause for denial.

All members voted to close this hearing. A motion was subsequently made and seconded to deny the NOI for the causes delineated in the above memo and for a lack of information.

Six (6) members voted in the affirmative, one member recused himself.

**40-???? LITTLE HARBOR ISLAND (AKA: GERRY ISLAND) - NOYES**

Resource Area: Coastal Bank

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

Appeared: Peter Noyes and Peter Ogren of Hayes Engineering.

Control Drawing: Plan to Accompany NOI in Marblehead, Showing Gravel Ramp, Little Harbor Island, dated May 25, 2011, prepared by Hayes Engineering, Inc.

The applicant was informed that a DEP File No. had not been received. The project can be discussed but not closed. Referring to the project narrative and site plan, the commission noted that the ramp with rip-rap is larger than the ramp proposed in 40-1033 and that the ramp has not been reduced in width by ten inches. The commission also pointed out that the work described in the project narrative (see Proposed Conditions) is totally within the coastal bank. The commission further noted that the narrative, under "Coastal Bank", says, "These banks function as a vertical barrier ... and do not supply a significant amount of sediments ...". The commission disagrees that these banks, in many locations, serve as vertical barriers. Further, the commission noted that in 310 CMR 10.03, the adjective "significant" refers to the ability of a bank to protect, not to the amount of sediment supplied by a coastal bank. This section of the regulations does not address the quantity or amount of sediment. It says that, if a bank supplies sediment, it shall be considered significant to storm damage prevention and flooding. In addition, the detail section profile on the site plan for the proposed ramp was incomplete as it did not indicate the method and material for the larger sections of required fill.

All members voted to continue this hearing to July 14, 2011.

**RFA LITTLE HARBOR ISLAND (AKA: GERRY ISLAND) – NOYES**

Resource Area: Coastal Bank

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

Appeared: Peter Noyes and Peter Ogren of Hayes Engineering.

Control Drawing: Marked up photo as supplied with the RFA.

After review, the commission voted to close this hearing and all voted in favor "to issue a positive determination" because the work is in a resource area and will impact the resource area. Note that a positive determination means no work can be started under this application.

The matter of Enforcement Orders (E.O.) was then discussed. The E.O. dated May 31, 2011 was withdrawn by the commission. The E.O. issued June 2, 2011 was reviewed with the applicant. Per the commission guidelines for fines, the commission levied a fine of \$300.00 for failure of the applicant to notify the commission when the truck was removed. The commission also

levied a fine of \$600.00 for leaking oil on the coastal bank and for not removing the rotted floats from the island. Lanphear will visit the island to monitor the removal of the floats and additional fines may be levied if the E.O. is not fully obeyed.

#### **40-1037 7 MOORING ROAD - GREENE**

Resource Area: Coastal Bank

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

Appeared: R. McCann, atty., and Mrs. Greene

Control Drawing: Plan of Mr. Nathaniel and Louisa Greene to construct a Dock at 7 Mooring Road, dated May 4, 2011, prepared by McKenzie Engineering Group, Inc.

Reference: Letter from MA Division of Marine Fisheries, dated June 3, 2011.

From the referenced letter, the commission noted the following: "A site survey using a diver or underwater camera is necessary to determine the extent of eelgrass at the site." The commission stated this information is required before any further discussion of the application. The commission also recommended to include a lift for the gangway. The commission voted all in favor of continuing this hearing to July 14, 2011.

#### **RFA Goldthwait Reservation**

Resource Area: Coastal Bank, Land subject to Coastal Storm Flowage

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

Appeared: J. Tucker

Control Drawing: Proposed Landscape Changes for the Goldthwait Reservation, dated 05/25/2011, prepared by Siemasko + Verbridge

This work is entirely in a buffer zone and will not impact any resource area. All members voted to close this hearing. All members voted to issue a negative determination with no conditions.

#### **RFA 8 FERRY LANE TUCKER'S WHARF CONDOMINIUM TRUST**

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

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

Appeared: P. Ogren of Hayes Engineering, Inc.

Control Drawing: None

Photos were supplied to explain the location. The work to be performed will not impact the resource areas if the work debris is properly contained. To this end, the removed roofing material will be vacuumed up as it is removed and the grounds will be cleaned daily. All members voted to close this hearing. All members voted to issue a negative determination with the single condition as follows: The removed roofing material will be vacuumed up as it is removed and the grounds will be cleaned daily.

#### **40-1038 6 FULLER LANE SHORE**

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

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

Appeared: P. Ogren of Hayes Engineering, Inc. and W. Dimento, atty.

Control Drawing: Plan to Accompany NOI for 6 Fuller Lane, dated May 23, 2011, prepared by Hayes Engineering, Inc.

This work had been started before any application for an OOC was made. An Enforcement Order dated 04/21/2011 has been issued and a fine of \$300.00 was levied against the applicant. It was recognized that the control drawing shows the proposed stairs extending further into the coastal bank. However, the commission judged that the stairs will not significantly impact the ability of the rip-rap on the coastal bank to absorb/disburse wave energy and will not affect neighboring properties. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

#### **Special Conditions:**

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

21. Prior to any work authorized by this Order, a sign (1x 2) shall be displayed in a conspicuous place at the site with the words "DEP File 40-1038"

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

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

24. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead

Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

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

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

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

**Pre-construction:**

28. Any land disturbance of an area less than 40,000 square feet requires that Section 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. No erosion control is practical at this site and for this work.

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. All demolition debris will 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.

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

**Post-construction/in perpetuity:**

36. 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.

37. 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).

38. 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".

**40-1039 15 KIMBALL STREET GAULT**

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

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

Appeared: P. Ogren of Hayes Engineering, Inc.

Control Drawing: Plan to Accompany NOI, 15 Kimball Street, dated May 24, 2011, prepared by Hayes Engineering, Inc.

After discussions, it appeared the main question was how best to effect erosion control. It was agreed the contractor will contact W. Lanphear, Conservation Administrator, before any work is started. Together, they will determine the most effective way for erosion control. All members

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

**Special Conditions:**

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

21. Prior to any work authorized by this Order, a sign (1~~0~~ 2~~0~~) shall be displayed in a conspicuous place at the site with the words "DEP File 40-1039"

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

24. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

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

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

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

**Pre-construction:**

28. Any land disturbance of an area less than 40,000 square feet requires that Section 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. The contractor will contact W. Lanphear, Conservation Administrator, before any work is started. Together, they will determine the most effective way for erosion control.

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. 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.).

33. 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.

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

**Post-construction/in perpetuity:**

35. 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.

37. Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. 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.

37. 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).

38. 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".

#### **40-1040 GLOVER LANDING – GLOVER LANDING CONDOMINIUM TRUST**

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

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

Appeared: S. Patrowicz of Patrowicz Land Development Engineering, E. Moll of Structures North Consultation Engineering and "?????" of Glover Landing Trust

Control Drawing: Seawall Repair at Zero Brackett Place & 34 Gregory Street, dated May 15, 2011, prepared by Patrowicz Land Development Engineering

Moll explained that the underlying cause of a portion of the seawall to lean backwards was due to sub surface drainage. This drainage was removing soil from behind the wall. Moll and Patrowicz presented two possible solutions to rectify the drainage problem. The choice between these solutions will be determined after the soil behind the wall has been excavated. The commission raised the issue of surface drainage coming from the parking area and being fed via a scupper directly into the ocean. The commission required a form of BMP to remove as much pollution as possible. The applicant will pursue this. All members voted to continue this hearing to July 14, 2011.

#### **40-1041 36 FOSTER STREET BARRETT**

Resource Area: Coastal Bank

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

Appeared: S. Patrowicz of Patrowicz Land Development Engineering,

Control Drawing: Plan for Expansion of an Existing Stone Patio Terrace & Landscaping, dated May 31, 2011, prepared by Patrowicz Land Development Engineering

A review of the site plan showed that only a few proposed stairs protruded into the No Disturb Zone and the remaining part of the project, in the No Build Zone, did not require a building permit. In addition, there is a large tract of land between the proposed expanded terrace, said land acting as a BMP to mitigate fertilizer/chemical flow into the resource waters. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

### **Special Conditions:**

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

21. Prior to any work authorized by this Order, a sign (1x 2) shall be displayed in a conspicuous place at the site with the words DEP File 40-1041

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

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

24. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

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

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

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

### **Pre-construction:**

28. Any land disturbance of an area less than 40,000 square feet requires that Section 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. All demolition debris will 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.

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

**Post-construction/in perpetuity:**

36. 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.

37. 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).

38. 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:**

**Proposed Amendments:**

**40-1010 100 Harbor Avenue Doherty:** After reviewing the hand sketch from Groom Construction as presented by S. Patrowicz of Patrowicz Land Development Engineering, the commission voted to review this change as an amendment.

**Requests for Extension:**

**40-888 Glover Landing:** Letters from Glover Landing Condominium Trust, dated June 7 and June 9, 2011 requested an extension of their current OOC. The commission is amenable to granting a one year extension but requested more detail on erosion control measures for specific projects. Lanphear will review the OOC, 40-888. All members voted to continue this request to July 14, 2011.

**Requests for COC:**

**40-930 Chadwick Lead Mills:** D. Garson of Woodard & Curren appeared to request a partial COC for the work completed on the Coastal Resource Area (CRA). A letter from Vine Associates (of GZA Environmental, Inc.) dated June 9, 2011 confirmed that the remediation work done in the CRA conforms to the plans governing this area. There exists a small section of coastal bank to the east of the remediated bank that W&C claims is not the responsibility of NL Industries but which must be planted. The commission concurs that this section is not included in the original plan. Therefore, the commission voted all in favor "to issue a partial COC for the CRA."

**Enforcement Orders:**

**40-1033 Gerry Island - Noyes:** see above

**Sign Documents:** see above

**Change in Bylaw Regulations:** In section 5.5 of the Marblehead regulations, the words "or property" are removed and the adjective "existing" is added. The pertinent, altered sentence now reads: "...there is no other method of protecting an existing building other than ...". All members voted to approve this change.

The meeting adjourned at 10:40 PM.