

**Conservation Commission  
Minutes September 9, 2010**

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, Brian LeClair, Ken Fisher, Deb Payson and Craig Smith. Also present was Willy Lanphear, Conservation Administrator.

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

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

**Discussion:**

**Authors Grove:** S. Peasle and R. Marcy of the Marblehead Conservancy along with L. Simpson, landscape architect, appeared to explain the proposed plantings at one of the entrances to the conservation land, Forest River. See the plan "Forest River, Authors Grove" by Simpson Garden Design (no date). The proposed plantings are on conservation land and will be maintained by the Conservancy. Work will begin in the spring of 2011. A requested sign was discussed. The commission read from the existing guidelines for remembrances on conservation lands. The proposed sign will be a metal plaque approximately 12" by 15" attached to a boulder and situated to blend in with the natural vegetation. The commission approved the plan and thanked the attendees for the support and efforts of the Conservancy.

**Olivers Pond:** G. Loop, S. Solomon, S. Katz, D. Humphreys and K. Byron, abutters to Olivers Pond expressed their common concern about the eutrophication of the pond. They have observed odors, an explosion of water lilies and scum. They questioned whether the new drainage system (BMP - Stormceptor) installed with the construction of The Reserve at Oliver's Pond might be contributing to these problems. The commission explained the function and purpose of the BMP but did allow as to how cleaner drain water might encourage more growth. The commission also reminded the attendees about fertilizers from their lawns increasing vegetation growth. The commission recommended that the attendees contact Aquatic Control Technology (among any other consultants they choose for advice) to analyze the pond and suggest possible solutions. They should contact the commission with their findings.

**RDA DAVIS ROAD - RECORD**

Resource Area: Coastal Bank and Beach

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

Appeared: Eugene Record

Control Drawing: Sketch by Mr. Record

This was a continuance from 08/12/10. Per DEP DWW Policy 92-1, figure 4, the top of the seawall is the Top of Coastal Bank and the land landward of the seawall is Land Subject to Coastal Storm Flowage. There are no performance standards for LSCSF or buffer zone. All members voted to close this hearing. All members voted to issue a negative determination with the following special conditions.

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.).

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).

#### **40-1006 239 OCEAN AVENUE - HAMILTON**

Resource Area: Coastal Bank, Coastal Beach and Rocky Intertidal Shore

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Site Plan for Existing Rip Rap Boulder Maintenance, dated July 26, 2010 and prepared by Patrowicz Land Development Engineering and North Shore Survey Corporation  
This was a continuance from 08/12/10. It is the opinion of the commission that the addition of 25 boulders of similar size and material to those already present in the rip rap will not negatively affect the coastal bank. The additional boulders will conform to the requirements of 310 CMR 10.30 (6) and (7). All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

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

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

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:**

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

**Post-construction/in perpetuity:**

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.

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 OOC, whichever 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".

**40-1008 289 OCEAN AVENUE - RICH**

Resource Area: Coastal Bank, Coastal Beach and Rocky Intertidal Shore

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

Appeared: Attorney Robert McCann and Paul Muldoon of Siemasko & Verbridge

Control Drawing: Site Plan, 289 Ocean Avenue, dated July 22, 2010, prepared by North Shore Survey Corporation

This was a continuance from 08/12/10. The coastal bank on this property is defined in DEP DWW Policy 92-1 as figure 6. The small addition is outside the No Disturb Zone and will not impact the interests of the WPA or Bylaw. The area for the proposed addition is lawn. After a brief review of the project, all members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

**Pre-construction:**

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.

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

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.

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:**

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.).

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.

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:**

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.

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.

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.

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 OOC, whichever 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 8 FORT SEWALL LANE - HOURIHAN**

Resource Area: Coastal Bank

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

Appeared: James Hourihan

Control Drawing: Plot Plan, 8 Ft. Sewall Lane, prepared by Kane Land Surveyors dated July 14, 2010, revised August 3, 2010.

The project site is across a paved public way from the coastal bank and is already a disturbed area with a driveway. The proposed work will not impact the interests of the WPA or Bylaw. All members voted to close this hearing. All members voted to issue a negative determination with no special conditions.

### **RDA 26 NONANTUM ROAD - MACARO**

Resource Area: Coastal Bank and Beach

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

Appeared: Bonita (Bonnie) Macaro

Control Drawing: Exhibit "C", 26 Nonantum Road, dated August 2006

The foundation wall on the seaward side of the house forms a part of the coastal bank. The work is on the seaward side of the first floor above an existing deck. Any construction debris or

materials will be contained by the deck and removed daily. All members voted to close this hearing. All members voted to issue a negative determination with no special conditions.

#### **40-1009 26 COOLIDGE ROAD - BARATZ**

Resource Area: Coastal Bank and Beach

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

Appeared: Attorney William Quigley

Control Drawing: Plot of Land, 26 Coolidge Road, prepared by North Shore Survey Corp., dated January 26, 2010, revised July 13, 2010.

Quigley said there will be no construction outside the current footprint of the building (see Scope of Project submitted with the NOI) and no excavation will be done. No new landscaping will be done. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

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

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.

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

A construction fence will be erected landward of the Top of Coastal Bank to prevent any incursion into the resource area during construction.

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:**

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.

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.

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:**

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.

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 OOC, whichever 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".

**40-1011 137R FRONT STREET - MOORE**

Resource Area: Coastal Bank

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering and Barbara Moore

Control Drawing: SITE PLAN TO ACCOMPANY A NOTICE OF INTENT APPLICATION, for the Repair of an Existing Concrete Deck & Scupper at 137r Front Street, prepared by Patrowicz Land Development Engineering, dated August 23, 2010.

A chapter 91 license (4926) already exists for this site. The photos submitted with the NOI show only the exterior damage. The actual condition of the deck/seawall cannot be fully determined until the contractor has removed deteriorated areas. For this reason, the commission required that a report be submitted to the commission from the contractor within five (5) days after the deteriorated areas have been removed, said report to define the total scope of the required repairs. If the damage is more widespread or serious than initially determined, the applicant was informed an amendment to this NOI might be required. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

**Pre-construction:**

Prior to the start of any work, the methods which will be used to secure the scaffolding on the coastal bank will be submitted to the commission.

A report shall be submitted to the commission from the contractor within five (5) days after the deteriorated areas have been removed, said report to define the total scope of the required repairs. If the damage is more widespread or serious than initially determined, the commission might require an amendment to the OOC be filed.

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

A drawing or description of the debris/material containment techniques to be used on site shall be submitted to the commission for approval prior to the start of any work and shall be included in the construction contracts between the applicant and his/her contractor.

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:**

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.).

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.

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:**

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 OOC, whichever 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"**.

### **40-1010 100 HARBOR AVENUE - DOHERTY (for Pessolano)**

Resource Area: Coastal Bank and Beach

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



Appeared: Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Site Plan, Repair and Maintenance of an Existing Seawall, 100 Harbor Avenue, prepared by Patrowicz Land Development Engineering, dated August 24, 2010. See also a hand-drawn sketch of the proposed capping of the seawall and a hand-written note by Groom Construction, Inc., both dated 08/23/10, entitled: Doherty Seawall Repairs.

No comment was received from DEP. Therefore, this application was discussed but could not be closed. Comments in a letter from Geraldine Corbino of 6 Harvard Street explained certain complaints she had regarding work conditions from previous projects at 100 Harbor Avenue. While the commission cannot address these complaints, it did urge Patrowicz to be aware of these, inform the applicant and take actions to prevent them for this project. All members voted to continue this hearing to October 14, 2010. In the event an OOC is issued, it will contain the following special conditions.

**Pre-construction:**

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

Before any work is started, the applicant will submit further information as to how the capping of the seawall will be implemented to prevent moisture from penetrating the seawall after the capping.

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

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:**

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.).

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.

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:**

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.

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.

The control drawing for this project was prepared and stamped 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. 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.

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 OOC, whichever 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:**

**Approve Minutes:** A motion was made and seconded to approve the minutes of August 12, 2010. All voted in the affirmative.

#### **Requests for Extension:**

**40-897 26 Nonantum Road:** All members voted to extend this OOC to October 12, 2011.

**40-938 3 Kenneth Road:** All members voted to extend this OOC to January 24, 2012.

#### **Requests for COC:**

**40-816 19 Crowninshield Road:** All members voted to levy a fine of \$300 as an administrative fine. All members voted to issue the COC.

**40-482 14 Nonantum Road:** All members voted to levy a fine of \$300 as an administrative fine. All members voted to issue the COC.

**40-508 28 Nonantum Road:** All members voted to levy a fine of \$300 as an administrative fine. All members voted to issue the COC.

**40-804 100 Harbor Avenue:** All members voted to levy a fine of \$300 as an administrative fine. All members voted to issue the COC.

**40-511 147 Front Street:** All members voted to levy a fine of \$300 as an administrative fine. All members voted to issue the COC.

**40-734 147 Front Street:** All members voted to levy a fine of \$600 as an administrative fine (second violation). All members voted to issue the COC.

**40-922 147 Front Street:** All members voted to levy a fine of \$600 as an administrative fine (second violation). All members voted to issue the COC.

**40-535 137r Front Street:** All members voted to levy a fine of \$300 as an administrative fine. All members voted to issue the COC.

#### **Enforcement Orders:**

**40-714 3 Brown Street:** All members voted to levy a fine of \$300 as an administrative fine. Mr. Noyes will henceforth fulfill the conditions as stipulated in the DEP Superseding Order.

**40-991 Intervale Road & Naugus Avenue:** All members voted to levy a fine of \$300 as an administrative fine.

**40-993 Mound Road:** All members voted to levy a fine of \$300 as an administrative fine.

**No OOC 18 Gregory Street:** The owner, Mr. Moreland, explained that he and his family have just taken possession of the property in June, 2010. Much of the bank disturbance that was reported to the commission had already been done by the previous owners. No damage regarding the interests of the WPA and the Bylaw were inflicted on the bank. Mr. Moreland was reminded to apply to the commission for any further work in this resource area. He was informed that "minor activities" apply only for work in a buffer zone. No fine was levied.

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

The meeting was adjourned at 10:35 PM