

**CONSERVATION COMMISSION
MINUTES OF JANUARY 24, 2008**

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, Craig Smith, Betsy Rickards and Fred Sullivan. Also present were Jan Smith, Associate Member, and Doug Saal, Conservation Administrator.

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

Note: The commission currently has only four 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 three members.

Approve Minutes: The minutes of November 8, 2007 as amended, were approved by all members.

Article for 2008 Town Warrant: All members accepted the single article prepared for Town Meeting 2008.

NOI 40-930 CHADWICK LEAD MILLS NL INDUSTRIES

Resource Area: Coastal Bank, Coastal Beach, Salt Marsh, LSCSF

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

Appeared: Dan Garson, Mile Batestelli and Ken Thomson of Woodard & Curran (W&C)

Control Documents and Drawings: As supplied with the NOI. Additional documents and drawings submitted subsequent to the initial filing include: W&C letter dated December 7, 2007; W&C letter dated January 22, 2008 and W&C letter dated January 23, 2008

This was a continuance from 10/25/07. The issue of the status of Wyman Woods was discussed. It was recognized this area is not included under this NOI although it could be addressed if the entire site is eventually cleaned. The Town will research the status of this conservation land regarding state Article 97. W&C stated this land, as conservation land, has been determined to represent "No significant Risk" per the state definition (see the W&C letter dated December 7, 2007) and, therefore, requires no AUL as conservation land.

The discussions then proceeded to the minutes of October 25, 2007 and the additional documents and drawings listed above under "Control Documents and Drawings" as well as the letter from Vine Associates, Inc. dated December 14, 2007. Using the Vine letter as a guide, the following comments apply. See also the W&C letter dated January 22, 2008 for responses.

Para. 1: This issue has been previously discussed and resolved and no further action is necessary.

Para. 2: This issue has been previously discussed and resolved and no further action is necessary.

Para 3: This issue has been previously reviewed in the W&C letter dated October 24, 2007 (submitted for the October 25, 2007 hearing) and again in the W&C letter dated December 22, 2008. The safe guards to be implemented are sufficient and no further action is necessary. This issue will be addressed in the special conditions of the OOC.

Para. 4: It was determined that the drawings (figures) submitted with the NOI supply the Information requested. Refer to NOI Section "Figures", Fig. 2; Section E, Fig. 3-3 and Fig. 3-2a, b, c; and Section F, Fig. 2.

Para.5: The question regarding the volume of beach nourishment was discussed at length. The W&C letter dated January 22, 2008 included a drawing, Fig. 1, "Beach Nourishment Coastal Resource Area", dated January 2008, which elaborated on this issue. W&C acknowledged that the coastal profiles at the transects shown in Figures 3-2 a, b and c (see the NOI) do not reflect the total quantity of the entire beach nourishment although each individual profile is correct in so far as each of the profiles is concerned. The red line showing the final beach elevation includes back filling as well as beach nourishment. Using the aforementioned Fig. 1, W&C assured the commission that the quantity of beach nourishment is correct and the commission accepted this final determination. This issue will be addressed in the special conditions of the OOC.

Para. 6: The erosion rates used were discussed in detail and the commission elected to remain with the rates used in the NOI. This issue will be addressed in the special conditions of the OOC.

Para. 7: This issue will be addressed in the special conditions of the OOC

Para. 8: Vine Associates supplied two photos (taken 17 January 2008) showing the results of using coir fascines in an ocean tidal area, specifically, at the Crane River Pier. These photos are made a part of this file. W&C has claimed a life expectancy of 9-10 years for the coir fascines. The photos do not indicate this is the case, but that their life is shorter in this type of environment. This issue will be addressed in the special conditions of the OOC.

With regard to the bank stability as raised by the commission during the October 25, 2007 hearing (see these minutes), the W&C letter dated January 23, 2008 from Mr. Porada addressed this issue. This issue will be addressed in the special conditions of the OOC.

The commission then raised the matter of drawings, their scale and revision status. The commission listed the drawings as supplied with the NOI and pointed out an inconsistency regarding dates as well as the inability of reading the drawings. The commission stated it needed this correct information in order to incorporate it in the OOC. W&C said they would supply enlarged, readable, correct revision drawings within 4-5 days after this hearing.

The commission said it did not think bristly locus should be used as one of the plantings and requested a replacement which is compatible with the ocean environment. This issue will be addressed in the special conditions of the OOC.

As the commission had no further comments, the discussion was opened to the public. J. Roelofs, representing the Marblehead Light Department offered four observations. (1) Any new landscape plan should be submitted to the commission for approval before work is started. (2) If the entire site is not to be cleaned under NOI 40-930, another new NOI should be filed for the clean up of that portion of the site not now included. (3) There should be an appropriate monitoring period to insure the design of the bank can be verified as correct and/or to allow for corrective action, if necessary. (4) An outside consultant for the commission should be engaged to assist the commission in reviewing the interim monitoring reports and the final report. Said consultant to be paid for by the applicant.

L. Mead, representing the Town of Marblehead, suggested the required drawings with latest revisions and of sufficient scale to allow for easy reading should be provided to the commission before an OOC is issued.

Ted Corbin of KSS Realty submitted a marked up W&C drawing showing a handicap access walkway to the beach and a set of stairs leading from the town walking path down to the beach. He asked that the commission consider these elements in its deliberations.

R. Kalis stated this whole matter regarding building on this site will be challenged in land court and could be held up for a number of years.

The three members, B. Rickards, F. Sullivan and W. Haug voted to close this hearing. These same three members voted to issue an OOC with the following special conditions.

Pre-construction:

1. 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.
2. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.
3. 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.
4. 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.
5. The Order of Conditions and all special conditions are to be included in the construction contracts between the applicant and his/her contractor.
6. 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.
7. 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.
8. Remedial work on the coastal bank shall be done so as not to weaken/compromise any part of the bank as it supports the elevated ROW and the public utilities encased therein. The remedial work should be monitored by an experienced engineer with a background and/or knowledge in/of geotechnical/soils engineering supplied by the applicant. Any problems with the coastal bank stability will be reported immediately to the Marblehead Municipal Electric Light Department and the Marblehead Conservation Commission.
9. *This condition has been eliminated since all drawings, appropriately scaled for easy reading, and with latest revisions will be submitted before the OOC is issues.*
10. At least forty eight (48) hours prior to the start of any dredging or excavation work but after the erosion control devices are in place, the site supervisor will contact the Conservation Commission to inspect the erosion control devices.

11. Before any work is started, the applicant must submit to the Conservation Commission written confirmation of the agreement with the Marblehead Water & Sewer Commission allowing the applicant to use town water for irrigating the wetland vegetation.

12. Before any work is started, the applicant must submit to the Conservation Commission written confirmation of all agreements with other parties to access or use any parcels owned by these other parties. These agreements must refer not only to the initial permission of access but also to permission to access the beach area for future maintenance of the coastal wetland areas. The route of access must also be defined. If DEP is engaged in the matter of granting access, the applicant will submit to the Conservation Commission copies of DEP documents allowing access.

13. The ramps to be built over the bike path should be constructed using large enough stones so none of the material used in the ramps will wash into the resource water. The final ramp design must be approved by the Marblehead Electric Light Department and the Conservation Commission before it is constructed.

14. Any damage to the underground Marblehead utilities caused by the applicant shall be the responsibility of the applicant, with all damages and any legal costs, if applicable, incurred by the Town to ensure the repairs are performed, to be paid for by the applicant.

15. A final revegetation and planting plan for the entire site to be remediated that is jurisdictional to the Conservation Commission shall be submitted to the Commission for approval prior to the start of any revegetation or planting effort.

Invasive plants shall not be used nor maintained in the landscape of the project site. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit www.mnla.com or www.newfs.org.

16. Prior to any work starting under OOC 40-930, a final OOC for the entire site to be remediated that is jurisdictional to the Commission shall be obtained

17. All wetland restoration activities (including near shore wetland areas) must be monitored and supervised by a wetland scientist with expertise in coastal restoration projects. The name, address and resume of the wetland scientist will be provided to and approved by the conservation commission prior to any wetland restoration work being commenced. In addition, an independent wetland scientist chosen by the Conservation Commission but paid for by the applicant will be engaged to monitor the on-going work on behalf of the commission. Details of the scope and frequency of the involvement of this wetland scientist will be determined jointly with the applicant. However, final approval of the scope and frequency rests solely with the commission.

During Construction:

18. After each major storm event, all erosion control devices will be inspected by the site supervisor and replaced/repared as necessary. The supervisor will advise the Conservation Commission in writing of such repairs.

19. In the event of a major storm forecast and or extreme tides the area and all equipment will be secured to protect the wetland resource areas.

20. Dredging or excavation of the beach wetland resource area will be done at low tide to prevent creating turbidity in the water column.

21. No heavy equipment is allowed on the bike path except on the access ramp.

22. The chain link fence along the seaward side of the bike path in the proposed clean up area may be removed to allow coastal bank work to proceed but the fence will be re-erected by the applicant once this work is complete.

Post Construction:

23. Re-planted vegetation in the wetland resource areas and their buffer zones must achieve a 75% survival rate during the first two (2) years and maintain that survival rate for a total time period of five (5) years. If the survival rate is not maintained at 75% at the end of the third (3rd), fourth (4th) and the fifth (5th) year, sufficient new plant material or other materials deemed necessary shall be installed at the end of each of the aforementioned years to reach this percent.

24. In conjunction with the requirement of the 75% survival rate of the vegetation, the coir fascines must have sufficient life to allow and promote this survival rate over the entire five (5) year period without replacement of the original coir fascines.

25. Monitoring reports, as defined in the Wetland Mitigation and Monitoring Plan, dated June 2007, section 5, will be prepared by a wetland scientist with expertise in coastal restoration projects and submitted to the Conservation Commission as follows:

- a. Vegetation: after all wetland vegetation has been planted, every year for five (5) years, no later than October 31st of each year.
- b. Coastal Bank: no later than October 31st of each year after the bank is initially restored. Reports will also be submitted after each coastal storm equal to or greater than a ten (10) year storm event. The reports prepared for the 1st, 3rd and 5th year shall include cross sections of the bank at the locations of the transects to evaluate the stability of the coastal bank. The Conservation Commission reserves the right to require additional transects at any of the aforementioned times to more

accurately and completely measure the rate of erosion if the bank erosion is more severe than anticipated per the design criteria.

26. Excluding storm events greater than or more severe than a twenty five (25) year storm event, if, after four (4) years since the restoration of the coastal bank, but before the end of the five (5) period is reached, the average erosion rate of the bank as determined by the cross sections at the transect locations is greater than the design projections or assumptions, the applicant must re-evaluate the bank design and make appropriate structural or vegetative changes to achieve the initial design objectives.

27. Prior to but no later than the end of the five (5) year period after project completion, the applicant shall submit a beach nourishment maintenance plan to the appropriate parties (including the Marblehead Conservation Commission), said plan including but not limited to time schedules, material quantities and methods for applying the beach nourishment per the final coastal bank design (see Special Condition # 26).

28. Once the coastal bank has been restored and after the five (5) year period during which the applicant is responsible for the maintenance of the bank, additional beach nourishment material shall be added by the responsible party/parties as necessary in order to maintain the bank per its final design under this NOI. A review with the Conservation Commission by the parties to perform the work is required before any nourishment is added. No new NOI will be required. This is a surviving condition.

29. Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC). This application shall be accompanied by a written report from the project wetland scientist and the engineer as defined in Special Condition No. 8 confirming all work has been done in accordance with Wetland Mitigation and Monitoring Plan, dated June 2007. In addition, an independent wetland scientist chosen by the Conservation Commission but paid for by the applicant will be engaged to review the aforementioned written report on behalf of the commission.

NOI 40-938 3 KENNETH ROAD TRAUTMAN

Resource Area: Coastal Bank, Coastal Beach

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

Appeared: No one.

Control Drawing: Plot Plan, 3 Kenneth Road, Land of John & Holly Trautman, dated June 29, 2007, revised 09/24/07, prepared by Kane Land Surveyors. Drawings by Pitman & Wardley, Architects LLC dated 28 September 2007

The DEP File No. was received. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. Prior to the start of any work, a revised site plan showing the proposed drywell in the driveway will be submitted to the commission for approval.

During construction:

3. 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.).
4. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.
5. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
6. Any pressure-treated wood proposed to be used in the construction of a structure for land -based use (contacting with soil) 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 MADEP which is less polluting and harmful to the salt water and its environment.

Post-construction/in perpetuity:

7. 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 Lawncare 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.

8. 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. 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.

9. Invasive plants shall not be used nor maintained in the landscape of the project site. This applies to the existing landscape as well as to any proposed landscape. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit www.mnla.com or www.newfs.org.

10. Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an “as built” drawing with the application for the COC.

Old/New Business:

Approve Minutes: see above.

Sign Documents: All documents per the agenda were signed.

Other: The commission expressed its sincere regrets regarding the impending resignation of Betsy Rickards and thanked her for eight years of faithful and valuable service. She will be missed.

The meeting adjourned at 9:45 PM.