

**CONSERVATION COMMISSION
MINUTES OF SEPTEMBER 13, 2007**

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

Meeting was called to order at 7:10 PM

Present were: Commission Members Walt Haug, 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 five 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 08/23/07 were approved.

Sign Documents: All documents per the agenda were signed.
COC 40-682 was approved by all members.

NOI 40-930 CHADWICK LEAD MILLS NL INDUSTRIES

Resource Area: Coastal Bank, Coastal Beach

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

Appeared: Michael Battistelli and Dan Garson of Woodard & Curran (W&C).

Control Documents: As supplied with the NOI.

Prior to starting the hearing, the commission pointed out that the signature of the property owner does not appear on page 8 of the WPA Form 3, NOI, with the signatures of the applicant and of the representative. A separate page 8 was supplied with the signature of the owner appearing on this page as applicant.

The commission then addressed two procedural issues.

1. Since the applicant has requested a Superceding Order of Conditions from DEP prior to this hearing on 09/13/07, the commission asked the applicant if this hearing should be opened under the WPA as well as the Local Bylaw. The

applicant requested that the hearing be opened under the WPA as well as under the Local Bylaw. The hearing was opened under both the WPA and Local Bylaw.

2. Since only three members of the commission were present at this hearing on 09/13/07, only these three members can vote on any decision of the commission relative to this hearing under 40-930 and must be present at any and all continuations of this hearing. The applicant agreed to proceed with the hearing under these circumstances with only three members present.

Prior to starting the discussions, the commission asked the applicant to verify that the resource delineation as defined in this NOI is the same as that approved by the commission under 40-831.

Mr. Garson then proceeded to explain the content of the NOI and that the clean-up under this NOI covers only the property of Glover Estates and does not cover any town-owned land. Specifically, he mentioned the ROW walking trail and the small parcel of Wyman Woods conservation land. The commission asked about the contamination status of this parcel. The commission introduced two letters (dated 26 July 2006 and 15 January 2007) to the Marblehead Board of Selectmen stating that the status of this parcel remained unclear. The applicant will provide the commission with written confirmation of the status of this parcel of Wyman Woods.

Mr. Garson continued by detailing the method to be employed to restore the coastal bank and perform its clean-up. This NOI includes only the "soft" approach for restoring the bank. The commission focused on the maintenance of the bank. The NOI says the bank will be supplied with a deposit of materials to act as beach nourishment, which should last 20 years according to the projected erosion rate of 0.35 ft/yr. However, it also mentions "trigger events" which might reduce this time span, requiring more frequent replenishment. The NOI states the project will be monitored over a 5 year period and also describes various repair actions, if required. The NOI implies that the monitoring and repairing during the 5 year period will be conducted by NL Industries. Mr. Garson stated it is the responsibility of the land owners to conduct any further monitoring/repairing after the 5 year period. He said this was determined by the Army Corp.of Engineers. Mr. Garson said NL Industries is responsible only for the clean-up. The commission requested further definition concerning long-term maintenance in the form of a maintenance plan covering both the 5 year period and beyond.. It compared this to the requirement imposed on applicants regarding maintenance of BMPs for storm water management. It is the position of the commission that the party responsible for the clean up should also be responsible for the maintenance of the coastal bank during and after the proposed 5-year period.

The commission referred to two different versions of the report, Wetland Mitigation and Monitoring Plan for Proposed Site Remediation, Former Chadwick Lead Mills, MassDEP RTN 3-12695. One report was dated March 2007 and the other June 2007. The June version was submitted with the NOI. The June version included a 20 year sediment supply for the "soft" solution. In the March version, this 20 year sediment supply was

included for the hybrid solution only. Due to the critical nature of coastal bank restoration and of long-term maintenance, the commission said it shall require a peer review of the above mentioned Wetland Mitigation and Monitoring plans and their recommendations especially relative to the proposed bank restoration and its anticipated long-term maintenance. Copies of the commission's RFQ and the responses will be sent to Mr. Garson.

The matter of access across and on town-owned land has yet to be negotiated between the Town and NL Industries. A meeting between these parties is scheduled for September 18, 2007 for this purpose and to finalize the scope of the clean-up. Mr. Garson presented the commission with a copy of section 40.0173 (Site Access Authorization) from 310 CMR § 1527 addressing this issue.

A further concern of the commission is that the proposed clean-up is not complete since it does not address town-owned land. The commission is concerned that partial clean-up will make it very difficult to subsequently clean up the town-owned land without disturbing that land already cleaned. This appears to be especially true for the coastal bank. Mr. Garson said the work would be done in such a manner as to allow subsequent further clean-up to proceed. The commission requested further details to satisfy its concern.

Referring back to the coastal bank (soft vs. hybrid), Mr. Garson stated DEP will not allow a hybrid restoration. He referred to Mr. Eric Worrell, Deputy Director of the NE office of DEP for this decision. The commission will attempt to verify this with Mr. Worrell.

The commission then questioned the work to be performed in the harbor. Specifically, there is concern that dredging could disturb the clay underlying the sediment and cause a destructive sediment cloud in the water column. Mr. Battistelli stated dredging will be done at low tide while the area is dry between tides to prevent the formation of clay clouds.

At this point, the audience was invited to comment.

Lisa Mead, atty., of Blatman, Bobrowski & Mead, LLC, representing the Town of Marblehead: She submitted a letter (with attachments) to the Conservation Commission dated September 13, 2007 wherein she lists "matters which remain unresolved between the Town and NL."

Jeffrey L. Roelofs, atty., of Jeffrey L. Roelofs, PC (formerly of Anderson & Kreiger LLP), representing the Marblehead Municipal Light Department and the Marblehead Water and Sewer Commission. He submitted letters (with attached documents) to Ms. Jill Provencal at MA DEP dated June 26, 2007 and to the Conservation Commission dated August 31, 2007. These letters present arguments for allowing the hybrid solution for the coastal bank and reasons why the NOI should not go forward due to incomplete information.

Mr. Roelofs also submitted a letter to the Conservation Commission dated September 13, 2007 wherein he lists items which need to be addressed. Mr. Garson, among others, was provided a copy of this letter.

Mark Roberts, atty., of McRoberts, Roberts & Rainer, LLP, representing the current owner of the site, Glover Estates: He submitted a letter (with attachments) to the Conservation Commission dated September 13, 2007 wherein he states the clean-up initially proposed in 2005 has now been superseded by an "Expanded Notice of Project change, which dramatically changed the selected remedial action." In essence, Mr. Roberts asserts that NL Industries has removed certain contaminated areas from the clean-up, reneged on earlier commitments and has not presented a complete, permanent solution in this NOI. He suggested an escrow account/performance bond be required from NL Industries to insure a complete, permanent solution.

John Thompson, LSP, of Woodard & Curran: He said access will be granted either voluntarily by the land owner(s) or via DEP; erosion of a bank is a natural occurrence; the bank has a long history of withstanding storm events and is still standing. He also said no AULs are planned.

D. Saal: He said more detail of the proposed "temporary shore front access road" as shown on Figure 2, Site Management and Erosion Control Plan dated June 2007 is required since this will impact a resource area, i.e., the coastal bank.

Mr. Garson stated that, if the meeting of September 18, 2007 (see above) is satisfactory to both parties, this NOI could be amended to include town-owned land and the request for an SOC will be withdrawn. If the meeting is not concluded satisfactorily, a separate NOI will be filed for the town-owned land.

Mr. Battistelli stated all abutters will be notified before any work is started.

With the concurrence of the applicant, the commission voted to continue the hearing to October 25, 2007.

New/Old Business:

Approve Minutes: see above.

Sign Documents: see above

Other Matters: The commission was requested by the Rec, Park & Forestry Department to attend a meeting on Tuesday, September 18 at the Møhd Community Center at 8:00 PM to discuss repairs to Chandler Hovey Park.

The meeting was adjourned at 10:00 PM.

