

**CONSERVATION COMMISSION
MINUTES OF OCTOBER 25, 2007**

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

Meeting was called to order at 7:00 PM

Present were: Commission Members Walt Haug, Craig Smith, Betsy Rickards, Fred Sullivan and Mark Klopfer. 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 10/25/07 were approved.

NOI 40-930 CHADWICK LEAD MILLS NL INDUSTRIES

Resource Area: Coastal Bank, Coastal Beach, Salt Marsh, LSCSF, Rocky Intertidal Shore, Tidal Flats

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

Appeared: Dan Garson and John Thompson of Woodard & Curran (W&C)

Control Documents: As supplied with the NOI.

This was a continuance from 09/13/07. Peter Williams of Vine Associates, Inc., consultant to the Commission, participated in this current hearing. Before discussions began, the Commission asked D. Garson about the results of the September 18, 2007 meeting among NL Industries, the Town and W&C. He said some minimal progress had been made but no agreements had yet been reached on access or whether all properties on the site can be cleaned as one project. Upon further questioning, he said there is reasonable hope all parties might eventually be able to agree but it is his understanding that, per 310 CMR 40.0173, access can be granted by the DEP if necessary. J. Thompson added that there is a procedure, whereby a Class C RAO can be applied by the LSP to any portion of the site for which a permanent solution cannot be achieved, thereby allowing the full clean up to take place on other portions of the site. He said this is a difficult approach and is not desired, but is an option in the event that reasonable measures cannot be agreed upon.

Referring to the minutes of 09/13/07, the Commission repeated its request that the status of the parcel in Wyman Woods be clarified in writing by W&C. D. Garson promised to produce this document. Further, with regard to the minutes, he confirmed that the resource delineation as defined in NOI 40-930 is consistent with the delineation from 40-831. The Commission also asked how the five year time period was determined, referring to the period during which NL Industries will monitor and maintain the vegetation and coastal bank. Garson said this was determined as a standard time period by a joint committee comprised of the Army Corps. of Engineers, MA DEP and CZM. This was not determined solely for this project but applies for all similar projects.

The discussion then turned to the letter of October 24, 2007 from W&C as a response to the questions posed by P. Williams of Vine Associates in his letter of October 23, 2007.

#1: This matter had been discussed in the hearing of 09/13/07. Garson confirmed all necessary legal signatures are on the NOI.

#2: The site itself presents some inconsistencies with regard to LSCSF and beach, as they are defined in 310 CMR 10. However, it was agreed among W&C, MA DEP and CZM that the delineation as shown for this NOI is acceptable. The Commission accepted this decision.

#3: At this time and during subsequent discussions during this hearing regarding the final size of the resource areas after clean up, it was agreed that the total size of the final resource areas and the volume of beach nourishment were not correctly presented and plans should show the larger, final resource areas as well as increased volume of beach nourishment materials. In addition, it was suggested additional transects should be established to more accurately represent the various profiles of the cleaned resource areas. Revised drawings, 3-1 and 3-3 will be submitted.

#4: Garson said, that while it is the contractor's responsibility to determine the means and methods to be used in construction, he agrees proper oversight must be maintained and means and methods must be approved by responsible parties. With regard to the bike path and the utilities buried within it, all work to be performed on and in it will be approved by the Marblehead Electric Light Department and the Marblehead Conservation Commission prior to any work being done. This includes the temporary ramps over the path. In this regard, it was commented that the ramps should be constructed using large enough stones so none of the material used in the ramps will wash into the resource waters. (Note: No "As Built" drawings of the electric utility work previously done on the path exist.) At this time, the Commission reiterated its desire to have the entire site cleaned up at one time and again expressed its concern about the feasibility of subsequent clean up if only a partial clean up is done.

#5: Garson agreed that there is a discrepancy between Figure 2 of Section "Figures" and Figure 1-1 of Section E. The drawing, "Existing Conditions Site Plan and Resource Area Delineation", Figure 2 of Section "Figures" is correct for this NOI.

#6: W&C and Vine agree on the design data and assumptions used in the NOI.

#7: Garson said no excavator will be located on the bike path, nor will any heavy equipment be used on the path. Revised drawings, Fig. 2 and Fig. 3, (without a new revision date) showing the underground utility line were submitted.

#8: After much discussion, all parties agreed Figures 3-2 a, b and c do not show correct profiles of the cleaned, restored resource areas. Garson said W&C will submit revised drawings and will cross hatch the profiles to show the correct quantity of beach nourishment. The quantity of beach nourishment will be confirmed.

#9: Garson reviewed his letter response regarding future beach nourishment work after the five year period during which NL Industries is responsible. He talked about possible access routes and the equipment that will be needed. The design for initial beach nourishment calls for a 20 year supply. The data supplied to W&C indicates about 700 cubic yards will need to be replenished every 14 years. This is referred to as a "trigger event". Note that only one trigger event was listed in the NOI.

#10: The matter of slope stability should be analyzed and monitored by a geotechnical engineer, not a structural engineer as stated in the Oct. 24 response letter.

#11 and #12: Garson said the beach nourishment design is based on average erosion rates in order to replicate, as much as possible, the anticipated long term conditions which will be present at this site. He said that using peak erosion rates might cause the high and low marsh areas to be buried in sand/sediment and thereby negatively impact the vegetation in these areas. He said the key to a successful nourishment program is proper monitoring and timely replenishment.

#13: Garson agreed that the placement of trees at the top of the coastal bank is critical and could represent a problem regarding bank stability. He offered to eliminate the proposed trees at the top of the coastal bank and replace them with Bristly Locust. The Commission agreed. A revised planting plan will be submitted.

#14: For future beach nourishment Garson referred to his comment #9 in his October 24 letter. NL Industries is responsible for monitoring and maintaining the coastal bank for five years after completion of the project. The monitoring will be done by studying profiles and observing vegetation. Per the NOI they will also be responsible for a survival rate of 75% of vegetation over a two year period. Monitoring will be done via observation.

#15: The life expectancy of the coir fascines was questioned and it was suggested they might not have a life of 9-10 years. W&C will investigate with various suppliers and confirm the range of expected life. While it is recognized they will eventually decompose, it is necessary their life is sufficient to allow the planted vegetation to take hold.

Garson said W&C has scheduled October 2008 to start work.

The public was invited to comment. Lisa Mead, representing the Town, made the following observations.

NL Industries is delaying the progress toward reaching an agreement for access and clean up. They have reneged on various time schedules and the Town is currently waiting of their responses.

No clean up can be started until Phase IV permitting is completed, thereby removing any urgency for the Conservation Commission. The Commission should take all necessary time to insure proper review.

The status of Wyman Woods needs to be clarified regarding risk assessment.

The life expectancy of the coir fascines needs to be verified.

The öring roadö on the Glover Estates property mentioned as a possibility if the property is developed would be located partially on Town-owned land.

She cautioned the Commission to insure they have final plans before making any decisions.

Marc Roberts, representing Glover Estates, made the following observations.

Glover Estates has not been kept informed from NL Industries or W&C and is currently outside the information loop.

No access agreements have been arranged with Glover Estates.

NL Industries should post a performance bond to insure that no contamination from the bank migrates onto the beach in the future. Roberts said the core of the path is contaminated and this is why the bank is being protected. Thompson countered that the core of the path was laid down in 1838 by the railroad and does not contain any lead. He said the exterior bank layer contained some lead and it is supposed this occurred when material from the beach was dredged up to replace eroded soil on the bank. This is the soil which is being removed.

Jeffrey Roelofs, representing the Marblehead Electric Light Department, made the following observations.

Beach nourishment is necessary to prevent storm damage. One condition should be that beach nourishment should be done in perpetuity.

A new or an amended NOI to cover the entire clean up should be filed and approved before the start of any work at the site. This will insure the complete clean up of the entire site.

Make sure that the Commission approves all plans for the temporary ramps and vegetation.

The Commission should hire an outside consultant to assist it in reviewing and approving key elements of work.

There should be a surviving condition allowing for future beach replenishment.

Make sure the Commission has written confirmation of any access agreements between various parties.

Obtain legal agreements for future access to the beach.

Make sure the Commission has a final set of documents/drawings.

With the concurrence of the applicant, the hearing was continued to December 13, 2007.

Old/New Business:

Approve Minutes: See above.

Sign Documents: No documents were to be signed.

The meeting adjourned at 11:00 PM.