

Marblehead Conservation Commission
Minutes August 9, 2018

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

Meeting was called to order at 7:15 PM

Present were: Commission Members David Depew, Michael Smith, William Colehower and Lindsey Serafin. Also present was Conservation Administrator and Town Engineer, Charles Quigley.

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.

Approval of Minutes:

A motion to approve minutes of the Hearing held on July 12, 2018 was made, seconded and minutes were approved.

DISCUSSIONS:

- Enforcement order to Earl H. Dumas et al – Wetland Protection Act violations. Topic will be moved to the September meeting, more members would like to view the property.
- Enforcement order – 15 Spray Ave – Alteration to a resource area/ buffer zone without a permit. Damage to lawn during March storms, property owner was unaware of permitting process and will file for the next meeting. The work has stopped until further notice.
- Enforcement order – 19 Neptune Ave – Alteration to a resource area/ buffer zone without a permit. Raised the height of an existing wall with out a permit, the property owner was unaware of requirement, work has stopped and the owner will file for the next meeting.

Requests for Certificate of Compliance:

- 40-1316 429 Ocean Ave – Peter S. Lynch – Seawall repair
- 40-1306 7 Sunset Rd – Doris M. Egan et al – Seawall repair, pier repair.

All were approved by unanimous vote of the commission.

Order of Conditions Extension Request:

40-1007 12 Liberty Rd – Jo-Ann Andaloro et al – Seawall repair and fence. Property owner is requesting a 1 year extension as the fence companies have caused a delay in the schedule of the work. The Commission voted to approve the request for a 1 year extension.

HEARINGS:

NOI 40-1351 Gerry's Island – Trustees of Reservations – John Dick
Trail Building and vegetation management

John Dick, wetland scientist, James Emmanuel, landscape architect and Dan Gove, contractor present. Explained that there is excessive poison ivy and they plan to use a herbicide to remove it. There are also posts being installed as well as benches. There will be a lock box staying on the island for tool storage. Everything will be cleaned up and removed from the island upon completion. All members voted to close the hearing. The Commission voted to approve the request and issue an OOC with the following special conditions. 38, 50, 105 (See the attached list of Special Conditions) as well as add the following condition:

- Remove the lock box from the island at the end of the season

NOI 40-1353 67 Nanapashamet Rd – Francis J. McNamara et al – Patrowics
Regrading, landscaping

Property owner elected to withdraw this hearing from the August meeting.

NOI 40-1352 165 Green St – Stephen W. Chaisson – Patrowics
New Home, sitework

Steve Chaisson, property owner, Scott Patrowics, landscape architect and Kelly Brown (Patrowics) present. John Muldoone of 2 Walnut St stated he is concerned about the project but is not interested in discussing his concerns at the meeting. All members voted to close the hearing. The Commission voted to approve the request and issue an OOC with the following special conditions. 33, 34, 36, 40, 50, 55 (See the attached list of Special Conditions)

NOI 40-1354 4 Hunsley Rd – Eliza Cushman – Patrowics
Sea wall, sitework, landscaping, wave energy dissipation

Scott Patrowics, landscape architect and Kelly Brown (Patrowics) present. The Commission voted to approve the request and issue an OOC with the following special conditions. 33, 35, 36, 40, 41, 42, 43, 44, 50, 55, 102, 105 (See the attached list of Special Conditions)

NOI 40-1355 285 Ocean Ave – Kenneth R. Bowden et al – Patrowics
Replace seawall, steps, landing

Scott Patrowics, landscape architect and Kelly Brown (Patrowics) present. The Commission voted to approve the request and issue an OOC with the following special conditions. 33, 35, 36, 40, 41, 42, 43, 44, 50, 55, 102, 105 (See the attached list of Special Conditions)

NOI 40-13XX Front St – Town of Marblehead – Charles Quigley P.E.
Seawall repair at Beacon St

This hearing was not opened and will be heard in September.

NOI 40-13XX Beacon St – Town of Marblehead – Charles Quigley P.E.
Seawall repair at Grace Oliver Beach

This hearing was not opened and will be heard in September.

Discussion held for Emergency Certificate for Front and Beacon St repairs. Both walls are in need for immediate repair. Charles Quigley is working with John Dick on the design. Meeting was adjourned at 8:26 PM.

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'x 2') shall be displayed in a conspicuous place at the site with the words “**DEP File 40-XXXX**”

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 195-11C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

Use 28A IF DISTURBED AREA IS OVER 40,000 SF

28A. This project involves the disturbance of 40,000 square feet or more of land and as such requires a Land Disturbance Permit under the Town of Marblehead Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code. This OOC, therefore, constitutes said Land Disturbance Permit as well as the necessary permit under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

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. **The erosion control must be in place, erected per the drawing, before any work is started on the site.**

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.

31a The lot corners and lines shall be established by a registered professional land surveyor. Swing ties and ranges to fixed monuments, house corners, walls etc. shall be documented so the corners and lot lines can easily be retraced and laid out in the field using a tape measure. The swing ties and ranges shall be documented with the Conservation Commission. Prior to the movement of any material, the corners and lines shall be staked out.

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, streets and Resource Areas.

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. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces shall be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

35. 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.

36. All construction material shall be stored outside the resource area and its buffer zone or as

far back from the resource areas as possible.

37. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks shall conform to the requirements of Chapter 91.

38. Any pressure-treated wood proposed to be used in the construction of a structure for land - based use 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 the MADEP which is less polluting and harmful to the salt water and its environment.

39. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.

Post-construction/in perpetuity:

40. 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.**

41. Maintenance pointing and repairs of existing stone masonry walls and concrete walls including the replacement of an occasional missing stone or patching cracks and minor defects in a concrete wall are allowed as a surviving condition to this Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repointing or repair work on existing walls.** 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. Any future razing, rebuilding or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

42. The repair/replacement of small sections of damaged caps on seawalls is allowed as a surviving condition. All dislodged and removed caps will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Prior to any work, the scope of the proposed repair/replacement must be approved by the Conservation Commission. If the cap on a major length or on an entire wall needs to be repaired/replaced, this requires an NOI. **This condition shall survive this order.**

43. When the repair of a seawall entails the use of existing rip-rap which was previously located at the toe of the seawall but has been distributed onto the beach seaward of the seawall by wave action, the following applies. The rip-rap lying above the mean high tide line can be re-located to the toe of the seawall. The rip-rap lying at or below the mean high tide line cannot be

disturbed. This special condition is not a surviving condition and is valid only for that work specified for this particular application. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repair work on an existing existing riprap revetment.**

44. The back-filling of small areas of erosion landward of a seawall is allowed as a surviving condition provided the erosion is not on a coastal bank. This back-filling applies to areas defined primarily as Land Subject to Coastal Storm Flowage. Any work on a coastal bank requires an NOI. The back-fill material must be clean and compatible with the eroded material. Prior to any back-filling, the scope of the proposed back-filling must be approved by the Conservation Commission. **This condition shall survive this order.**

45. When a pool/spa/hot tub is to be drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining to allow for the chlorine and other chemicals to dissipate; and there shall be an appropriate sign placed permanently at or immediately adjacent to the pool/spa/hot tub drainage valve or mechanism indicating this requirement. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. **This condition shall survive this order.**

46. All gangways, docks or other items not permanently secured to the earth shall be stored during the “off season” (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. **This condition shall survive this order.**

47. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. **This condition shall survive this order.**

48. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. **This condition shall survive this order.**

49. The 25’ No Disturb Zone boundary shall be permanently marked on the site in an appropriate manner via a post & rail fence, a field stone wall, or an approved equal to insure against inadvertent encroachment into this zone. The current and future owners of this property are required to maintain this permanent marking. **This condition shall survive this order.**

50. 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. **This condition shall survive this order.**

51. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do not apply to the main support

structure (stringers, bents, etc.) and do require an NOI. **This condition shall survive this order.**

52. If the pilings supporting a pier have not been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. The scraped material may remain on the beach/tidal flat. However, if the state declares a state of contamination (such as Red Tide) in an area wherein the pilings have been resident, tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for such contaminated materials.

If the pilings supporting a pier have been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. Tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for materials which include paint or treatment.

For all types of pilings (painted or unpainted/treated or untreated), a protocol must be submitted to the Conservation Commission for approval in advance of the scraping. The protocol must contain: whether the pilings are painted or unpainted/treated or untreated; whether the pilings have been contaminated; if painted or treated, the exact type of paint being scraped/if treated, the exact type of treatment; the dates and times of intended scraping (start and finish); the exact location of the intended scraping; a description of the containment method; a description of the scraping method; the final location for disposal of the paint scrapings or, if applicable, contaminated scrapings. If the pilings are to be repainted/re-treated, the exact type of paint/treatment must be identified and must be approved per the latest state and federal guidelines for such applications. The person ordering the scraping/painting/treatment must sign and date the protocol and submit it to the Marblehead Conservation Commission before any work is started. **This condition shall survive this order.**

53. This OOC specifies a vegetated buffer strip be planted along and abutting the coastal bank and/or the BVW. After the vegetated buffer strip has been planted, at the end of the second growing season, the applicant must submit a report to the commission evidencing that the plantings have reached a minimum 75% survival rate. If the 75% rate has not been achieved, the applicant will re-plant/replace all non-surviving plants at the start of the third growing season and verify such replanting by appropriate evidence to the commission. These reports are mandatory even after a COC has been issued. After the third growing season, the maintaining of a 75% survival rate, but not the reporting, is a surviving condition. **This condition shall survive this order.**

54. The control drawing/s for this project were prepared by a licensed Professional. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Conservation Administrator based on the scope and anticipated duration of the project. 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.

55. 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"**.

100. Prior to any work on this project that might affect the stability of the existing seawalls, the applicant shall retain the services of a licensed Professional Engineer (Structural) to examine the condition of the existing seawalls and issue a report on the structural integrity of those seawalls and their ability to handle the increased loads and stresses anticipated in connection with the proposed work.

101. In accordance with General Condition No. 6, this Amended Order of Conditions will expire three years from the date of the issuance of the original Order of Conditions. Therefore, this Amended Order of Conditions will expire on **??/??/???** unless an extension is requested by the applicant and granted by the Conservation Commission. Requests for extensions must be filed at least 30 days prior to the expiration of the Order of Conditions.

102. 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.

103. The final Maintenance Agreement approved by the Commission shall be recorded with the Essex South Registry of Deeds as a restrictive covenant running with the land to be binding upon the present owner and all subsequent purchasers of the land or any lot or part thereof, and a reference to such restrictive covenant shall be included in the first deed out of the property or in the deed for all lots or subdivided portions thereof.

103A. A maintenance plan/schedule shall be submitted to the Conservation Commission for approval covering the entire subsurface drainage system prior to construction of the system. The maintenance plan/schedule shall be recorded at the Registry of Deeds with the final Certificate of Compliance and shall be binding upon the present owner and all subsequent purchasers of the land serviced by the system.

104. Prior to the commencement of construction activities on the site, the Applicant shall provide written proof of any necessary approval and/or insurance coverage required by the Town Administrator or the Board of Selectmen for the installation of erosion controls and/or a construction security fence within the limits of the way known as Marion Road Extension.

105 Tarps shall be spread and secured over the work area on top of the existing resource area for debris containment and collection during low to medium tides. The tarps and debris will be removed between tides and at the end of workday. At no time are the tarps to be inundated due to rain, tidal or wave action. The tarps are to be removed no less than ½ hour prior to expected inundation. At that time all work is to cease in the area near the resource area.

106 Coatings used shall be approved by the DEP.

The Manufacturer's Written Specification for curing time shall be furnished to the Conservation Agent prior to mobilization.

Coating shall be applied only as specified in the Manufacturer's written specifications.

Coating shall not be applied if the surface is expected to undergo exposure to rain or seawater within the manufacturer's specified curing time plus ½ hour.

107 Before any landscape work begins, the applicant shall submit a landscape plan to the Commission for approval. No landscape work may commence until the Commission has approved the landscape plan.

108 Stones, coarse sand and rock deposited by wave action may be relocated to the beach following review and authorization by the Marblehead Conservation Commission administrator or an authorized member of the Marblehead Conservation Commission.

Relocated material will be clean of soil and other debris such as organic plant material, metal, tires, plastic, trash or other debris that may result in a hazard in the resource area or a navigational hazard if refloated. All unsuitable material shall be removed and properly disposed of off-site. Hand loading of mechanical equipment may be required to avoid the indiscriminate placement of unsuitable material in the resource area.

No soil or plant material will be allowed to be placed on the beach.

Any resulting invasive or other plant material which grows from replaced material is the responsibility of the property owner to control and remove following review and approval of the Marblehead Conservation Commission administrator.

Material must be placed on the lot from which it was removed or in a location approved by the Marblehead Conservation Commission administrator.

Property owners will be required to provide photo documentation of preexisting beach conditions and restore the dune areas to the preexisting conditions which is expected to be a relatively gradual slope to the high water line.

Stones will not be piled in a manner that obstructs access to the beach from properties or easements.

Failure to comply with these guidelines to the satisfaction of the MCC may result in the revocation of the perpetual condition, the issuance of an enforcement order and the need to refile to reinstate the condition.

The post storm topography of the resource area shall match the pre-storm topography. A topographic survey may be required at the discretion of the Marblehead Conservation Commission.

The Conservation Commission may for any reason require the material to be removed and properly disposed of off-site away from the resource area. **This condition shall survive this order.**

