

**Marblehead Conservation Commission**  
**Minutes June 10, 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, Craig Smith and Don Tritschler. Also present were Willy Lanphear, Conservation Administrator and Jan Smith, Associate Member.

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.

**Approve Minutes:** The minutes of 05/13/2010 were approved by all present members.

**Request for COC:**

**40-915 90 Naugus Av:** All members voted to approve/sign this COC.

**40-498 16 West Orchard St:** All members voted to approve/sign this COC.

**RDA 150 FRONT STREET - Scott Howard**

The applicant requested via e-mail to continue this hearing to the July 8, 2010 meeting. All members voted to continue this hearing to July 8, 2010.

**9 Sparhawk Terrace (Rob Borden) and 50 Naugus Avenue (Denis Boucher):**

Laura Lautner, Landscape Architect, in a letter, asked that this matter be postponed to the July or August meeting. All members agreed to this postponement.

**40-930 485 LAFAYETTE STREET (LEAD MILLS) - NL Industries**

Resource Area: Coastal Beach and Coastal Bank

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

Appeared: Daniel Garson of Woodard & Curran

Control Drawing: Proposed Remediation Project, Former Chadwick Lead Mill Site, dated June 2010, latest revision June 9, 2010, prepared by Woodard & Curran.

Reference: Woodard & Curran letter dated June 10, 2010

Mr. Garson requested to amend the original OOC issued February 2008 to include two (2)

additional areas for remediation. These two areas were excluded in the original OOC pending an agreement between NL Industries and the Town of Marblehead. The referenced letter explains in detail the scope of the remediation for these two areas. Garson said it is anticipated an agreement between the aforementioned parties will be signed. All members voted to review this increased remediation as an amendment at its next meeting on July 8, 2010 with the provisos that all special conditions per the original OOC will apply to the amended OOC and that the amended OOC will be valid only when an agreement is signed.

#### **RDA 90 NAUGUS AVENUE - Lawrence Lessard**

Resource Area: Coastal Beach and Coastal Bank

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

Appeared: Lawrence Lessard and Jennifer Meshna (applicants)

Control Drawing: Single Family House, Driveway and Walkway Improvement, 90 Naugus Avenue, dated January 14, 2007, revised May 25, 2010, prepared by Paul Lindholm.

No work will be in the No Disturb Zone; the work in the No Build Zone does not require a building permit (see Wetlands Protection Bylaw Regulations, section 5.4.1). The proposed work will not impact the resource area. All members voted to issue a permit based on a negative decision.

#### **40-1000 9 FORT BEACH WAY - Ara Sakayan**

Resource Area: Coastal Beach and Coastal Bank

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

Appeared: Ara Sakayan (applicant) and Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Topographic Plan in Marblehead, MA, dated April 27, 2010, prepared by Hayes Engineering, Inc. Note that no reference to the actual site is listed.

Due to the "V" zone being at elevation 14, the entire area for the proposed work is by definition from Policy 92-1 a coastal bank. However, this area is already "armored" by virtue of a concrete patio with walls. The intent of this application is to repair the concrete patio per the control drawing. A chapter 91 license (#3616) exists. Since the DEP indicated this application is under review all members voted to continue this hearing to July 8, 2010. In the event an OOC is issued, the following special conditions will apply.

#### **Special Conditions:**

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording

information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

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 40-1000"

22. Prior to any work authorized by this Order, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the relevant conditions of 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.

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.

28. 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.

**Pre-construction:**

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

30. 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:**

31. All demolition debris will be removed from the site ASAP. 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.

32. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

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.

**Post-construction/in perpetuity:**

34. 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.

35. 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.

36. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit 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 said application within 30 days may result in a fine up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

**40-1001 24 NORMAN STREET - Derek Bloom**

Resource Area: BVW

Interests of the WPA and Bylaw: Protection of Wildlife Habitat and Prevention of Pollution

Appeared: Derek Bloom and Eliza Mellen-Smith (Applicants), William Manuell of Wetlands & Land Management, Inc.

Control Drawings: Site Plan, 24 Norman Street for Derek Bloom, dated May 20, 2010, prepared by North Shore Survey Corporation and Planting Plan, 24 Norman Street, dated May 20, 2010, and revised June 11, 2010, prepared by Wetlands & Land Management, Inc.

A small corner of the proposed house is in the No Build Zone. To compensate for this, the applicant will plant a bed of shrubbery in an area ten feet wide along the northeast boundary of the property, said area extending from the street up to the junction of the 100 foot Buffer Zone and the northeast boundary. A revised site plan will be submitted for approval by the commission to show this planting area and its plants. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

**Special Conditions:**

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

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 40-1001"

22. Prior to any work authorized by this Order, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the relevant conditions of 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.

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.

28. 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.

**Pre-construction:**

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.

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.

**During construction:**

32. 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.).

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

34. 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.

35. 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:**

36. 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.

37. 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).

38. 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.

39. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit 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 said application within 30 days may result in a fine up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

#### **40-998 15 Kimball Street Gault**

Resource Area: Coastal Banks

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

Appeared: Peter Ogren of Hayes Engineering and Robert Zarelli (Architect)

Control Drawing: Plan to Accompany Notice of Intent, 15 Kimball Street, dated March 30, 2010, prepared by Hayes Engineering, Inc.

This is a continuance from May 13, 2010 due to comments from Nancy White of DEP. Haug responded to these comments via email to Ms. White as follows. "40-998 15 Kimball Street, Marblehead: Re 310 CMR 10.30 (2) The coastal bank does not supply sediment to the coastal beach. (4) The proposed structure will not have an adverse effect due to wave action on the

movement of sediment. (The coastal bank in this area is ledge/outcropping.) The ConCom also required that the dynamics of wave action from the proposed structure not effect any neighboring properties. (6) The project will have no adverse effects on the stability of the coastal bank. (7) The coastal bank does not supply sediment to coastal beaches, coastal dunes or barrier beaches. (8) The proposed structure will not have any adverse effect on specified habitat sites etc.”

All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

### **Special Conditions:**

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

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 40-998”

22. Prior to any work authorized by this Order, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the relevant conditions of 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.

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.

28. 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.

**Pre-construction:**

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

30. A containment system to prevent any materials/debris from entering the resource waters shall be erected after approval by the Commission. A drawing of the containment system to be used shall be included in the construction contracts between the applicant and his/her contractor.

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.

**During construction:**

32. 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.).

33. 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.

34. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

35. 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 will conform to the requirements of Chapter 91.

36. 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.

37. 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:**

38. 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.

39. 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.

40. 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.

41. 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 issued by DEP. Float stops are permitted provided they meet the aforementioned guidelines. 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.

42. 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.

43. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit 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 said application within 30 days may result in a fine up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

**40-923 12 CROWNINSHIELD ROAD - Katharine & Paul Redmond**

Resource Area: Coastal Bank, Rocky Intertidal Shores, Land Subject to Coastal Storm Flowage

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

Appeared: Katharine & Paul Redmond (Applicants) and Katherine Bradford of Bradford Design Associates

Control Drawings: Site Plan to Accompany NOI, Katherine Redmond, 12 Crowninshield Road, dated 05/10/07, latest revision 05/26/2010, prepared by Griffin Engineering Group, LLC and Notice of Intent Redmond Residence, dated 03/27/07, latest revision 05/28/2010, Prepared by Bradford Design Associates.

This was a continuance from May 13, 2010. The revised control drawings define the final landscape plan which was accepted by the commission. It was pointed out to the applicant that the proposed stairs must be able to withstand a 100 year storm.

All members voted to close this hearing. All members voted to issue an Amended OOC with the following special conditions.

**Special Conditions:**

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

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 40-923"

22. Prior to any work authorized by this Order, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the relevant conditions of 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.

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.

28. 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.

**Pre-construction:**

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.

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.

**During construction:**

32. 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.).

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

34. 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.

35. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

36. The construction of the wooden stairs shall withstand a 100-year storm without damage to

the integrity of the structure. All structures shall conform to the requirements of Chapter 91.

37. 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.

**Post-construction/in perpetuity:**

38. 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.

39. 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.

40. 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).

41. Minor maintenance repairs to the superstructure only of the stairs 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 replacement of the stairs will 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.

42. 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.

43. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit 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 said application within 30 days may result in a fine up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

#### **40-994 2 & 3 EUSTIS ROAD - Cornelia Stutz**

Resource Area: Coastal Banks, Land Subject to Coastal Storm Flowage

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

Appeared: P. Ogren of Hayes Engineering, R. McCann and CJ Stutz

Control Drawing: Plan to Accompany NOI for Eustis Road, prepared by Hayes Engineering, dated March 31, 2010, latest revision June 10, 2010.

This was a continuance from May 13, 2010. A major revision is the layout of the roadway allowing access for fire trucks. The end of the roadway heading toward the coastal bank now stops about 65 feet from the top of coastal bank #2. The control drawing will be revised to show cross sections of both coastal banks 1 and 2. A note will be added to the drawing showing the limit of the roadway in the direction of a proposed garage for the existing house (said garage not existing and not included in this NOI). The “piers” for the porch of the proposed house will not impact coastal bank #1. The separation between banks 1 and 2 measures 40 feet at the minimum and up to 84 feet measured in front of the proposed house. The area between the top of coastal bank #1 and the top of coastal bank #2 will be planted with appropriate plants that require no fertilizers (no chemicals are allowed in this area). All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

#### **Special Conditions:**

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

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 40-994”

22. Prior to any work authorized by this Order, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the relevant conditions of 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.

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.

28. 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.

**Pre-construction:**

29. Before any work is started, a revised drawing will be submitted showing the coastal bank definitions per Policy 92-1 and a note will be added referencing the NOI for work on the coastal bank.

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

31. 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.

32. 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:**

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. 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.

35. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

36. A landscape plan will be submitted for approval by the commission before any landscape work is started. The area between the top of coastal bank no. 1 and the top of coastal bank no. 2 in front of the proposed house will be planted with appropriate plants that require no fertilizers (no chemicals are allowed in this area).

**Post-construction/in perpetuity:**

37. By voluntary agreement with the applicant, no fertilizers, chemicals or other material of this nature will be applied in the area between the top of coastal bank #1 and the top of coastal bank #2 in front of both the existing and the proposed house. This condition shall survive this order for both houses.

38. 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).

39. This OOC specifies a “no fertilizer/chemical” area (see special condition #37). After this area 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.

40. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit 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 said application within 30 days may result in a fine up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.



**40-991 27 NAUGUS AVENUE - Montrose School Park, LLC c/o Symes Associates, Inc.**

Resource Area: BVW

Interests of the WPA and Bylaw: Protection of Wildlife Habitat, Flood Control, Protection of Ground Water, Prevention of Pollution

Appeared: Peter Ogren of Hayes Engineering, Inc., Jeff Rhuda of Symes Associates. Also attending was Thomas Mannelta of Thomas Mannelta, Inc.

Control Drawing: Intervale Road & Naugus Avenue, dated February 17, 2010, prepared by Hayes Engineering, Inc.

Reference: Letter from Thomas Mannelta, Inc. dated May 28, 2010 with report. Letter from Wetlands & Land Management, Inc. dated June 1, 2010.

This was a continuance from 04/15/2010 and 05/13/2010. The ConCom chair (the chair) reviewed the possible special conditions as delineated at the 04/15/2010 hearing for 40-991. Mannelta was then requested to present his peer review of the response of the applicant for a Land Disturbance Permit (LDP). He gave a brief overview of his credentials and work experience. He then offered the evaluation of Wetlands & Land Management, Inc. that the BVW boundaries are correct. Finally, he addressed the segment of his report that dealt specifically with the LDP (section F, "Conservation and Drainage"). The chair responded that section F of the report did not address the overall site (Intervale and Naugus Ave. and Mound Road) and stated the RFQ had specifically required an evaluation of the entire site, which the commission referred to as Phase I and II, respectively. Mannelta stated his review did encompass the entire site but his section on the LDP was only for Phase I (Intervale and Naugus Ave.) since he was not aware an LDP application for Phase II (Mound Road) had been filed. He said he will prepare separate LDP reports for each, Intervale & Naugus Ave.(Phase I) and for Mound Road (Phase II). These reports will be ready for the July 8, 2010 meeting. It was agreed last evening that if each area (each Phase) does not exceed the pre- versus post- rate of runoff and volume and since the outflow from both areas (Phases) exits at the same pre- and post- location this should prove acceptable. This will satisfy the requirement that the entire site be evaluated as a single entity.

The issue of Operation and Maintenance for the LDP for Phase I was raised. The chair said the guidelines as submitted by Hayes Engineering were incomplete and too vague. Ogren, Lanphear and Haug will meet to discuss adequate guidelines (date to be determined). Rhuda stated he has submitted a form for establishing Home Owners Associations (HOA). There will be two separate HOA.s; one for Phase I and one for Phase II. Marblehead Town Counsel will be asked to review this form.

With the agreement of the applicant, all members voted to continue this hearing to July 8, 2010.

**40-993 27 NAUGUS AVENUE - Montrose School Park, LLC c/o Symes Associates, Inc.**

Resource Area: BVW

Interests of the WPA and Bylaw: Protection of Wildlife Habitat, Flood Control, Protection of

## Ground Water, Prevention of Pollution

Appeared: Peter Ogren of Hayes Engineering, Inc., Jeff Rhuda of Symes Associates. Also attending was Thomas Mannelta of Thomas Mannelta, Inc.

Control Drawing: Topographic Plan Mound Road, dated March 17, 2010, prepared by Hayes Engineering, Inc.

With agreement of the applicant, all members voted to continue this hearing to July 8, 2010.

### **40-997 33 CLIFTON HEIGHTS LANE - John Payne**

Resource Area: Coastal Bank

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

Appeared: No one

Control Drawing: Site Plan for Demolition and Construction at 33 Clifton Heights Lane, dated June 8, 2010, prepared by Patrowicz Land Development Engineering.

Reference: Letter from Patrowicz Land Development Engineering, dated June 8, 2010.

This was a continuance from 04/15/2010 and 05/13/2010. Scott Patrowicz and Paul Lynch had met earlier with Willy Lanphear and Walt Haug to discuss the comments of DEP. As explained in the referenced letter, the comments of DEP have now been addressed with the new control drawing. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

### **Special Conditions:**

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine of up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

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 work authorized by this Order, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the relevant conditions of 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.

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.

28. 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.

**Pre-construction:**

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.

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.

32. A landscape plan will be submitted for approval by the commission before any landscape work is started.

**During construction:**

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. 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.

35. 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:**

36. 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.

37. 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.

38. 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).

39. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit 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 said application within 30 days may result in a fine up to \$300 per day issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

**40-990 75 WEST SHORE DR – TOWER SCHOOL / MARBLEHEAD WATER & SEWER DEPT**

Resource Area: BVW, Land Under Water, Riverfront

Interests of the WPA and Bylaw: Protection of Wildlife Habitat, Flood Control

Appeared: Peter Ogren of Hayes Engineering, Inc.

Control Drawing: Brook Channel Maintenance, Tower School/Marblehead

This was a continuance from 02/11/2010, 03/11/2010, 04/15/2010 and 05/13/2010. Ogren requested another continuance. All members voted to continue this hearing to July 8, 2010.

**Old/New Business:**

**Approve Minutes:** see above.

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

Meeting was adjourned at 10:45 PM.