

**Marblehead Conservation Commission**  
**Minutes July 8, 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, Ken Fisher, Deb Payson and Don Tritschler. Also present was Willy Lanphear, Conservation Administrator.

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 06/10/2010 were approved by all present members.

At this time, the members discussed the assignment of NOI applications for individual members to "Chair" the hearing. It was agreed on the following:

August: D. Tritschler and D. Payson

September: K. Fisher and C. Smith

October: B. LeClair and F. Sullivan

The applications will be assigned by W. Lanphear.

**RDA 77 BEACON STREET - DIANE ST. LAURENT**

Resource Area: Perennial Stream

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

Appeared: D. St. Laurent

Control Drawing: Plan entitled "77 Beacon St" dated June 4, 2010

This application is to replace an existing stone wall which lies just within the 100 foot inner riparian area. The existing wall is across a street from the stream and the work will not impact the stream. All members voted to close this hearing. All members voted to issue a negative determination without conditions.

## **40-1002 21 NEPTUNE ROAD - PETTER ETHOLM**

Resource Area: Coastal Beach

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

Appeared: Mr. Petter Etholm and David Smith of Vine Associates.

Control Drawing: Proposed Pier, Gangway and Float, 21 Neptune Road, dated June 2010, prepared by Vine Associates

A letter from the MA Division of Marine Fisheries dated July 7, 2010 was read into the file. This letter suggested the use of plastic piles in lieu of treated wood piles. Smith pointed out that he has seen such plastic piles used in sandy soils but not in the type of soil found around the waters of Marblehead. It was his opinion that such piles would not be suitable for this application.

The commission instructed Smith to investigate the use of helical anchors and flexible rods as suggested in the above referenced letter for anchoring the floats and to submit his findings at the next hearing.

Greg Thibodeau submitted three photos showing the coastal area where the pier is proposed to be constructed. He spoke against the pier because he felt it would disturb the marine life in the area, would cause unfavorable wave action, and would cause the floats to bottom out on the ocean bottom. He also asserted the storing of the floats on the property of the applicant would introduce contaminants due to washing and painting of the float bottoms. Smith countered each of these arguments to the satisfaction of the commission. For example, in the narrative accompanying the NOI, it specifically states the float will maintain a minimum distance of two (2) feet above ocean bottom at all tides. Further, Smith pointed out the floats will not be bottom painted.

The commission voted to continue this hearing to 08/12/2010. In the event an OOC is issued, it will contain the following special conditions.

### **Pre-construction:**

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

28. 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:**

A letter from the Marblehead Harbormaster approving the application must be submitted to the commission before any work is started.

A confirmation of a Chapter 91 license must be submitted to the commission before any work is started.

29. 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.).

31. 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.

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. 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.

34. 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.

35. 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.

**Post-construction/in perpetuity:**

At the completion of the work, the buffer zone area will be restored to pre-construction condition and all soils will be stabilized.

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.

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 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.

44. 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.

46. 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 Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E

#### **RDA 11 WARREN ROAD DOLORES SLAVIN**

Resource Area: BVW

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Site Plan, Demolition of an Existing Pool, 11 Warren Road, dated June 22, 2010, prepared by Patrowicz Land Development Engineering.

This work is in the buffer zone to the BVW and will not impact the resource area. All members voted to close this hearing. All members voted to issue a negative determination with no special conditions.

#### **40-1003 16 NONANTUM ROAD - ALICE AUDET**

Resource Area: Coastal Bank

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

Appeared: David Smith of Vine Associates, Inc.

Control Drawing: Plan titled “Audet Seawall Repair, 16 Nonantum Road, Marblehead, Massachusetts” dated June 2010, prepared by Vine Associates, Inc.

Reference: Letter from Bessom Associates, Inc. dated June 22, 2009 approving this NOI.

Authorized emergency repair work was performed at this site this past spring. This NOI is to cover the repair work and complete non-emergency work. The non-emergency work is to restore the stone seawall façade, re-point some of the seawall and re-build stairs. The original footprint of all the work will not be expanded. 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 40-1003"

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. Confirmation of a Chapter 91 license will be submitted to the commission before any 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.).

35. 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.

36. 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:**

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 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.

50. 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.

**40-930 485 LAFAYETTE ST (Former Chadwick Lead Mill) - NL INDUSTRIES, INC**

Resource Area: Coastal Bank and Beach

Interests of the WPA and Bylaw: Storm Damage Prevention, Prevention of Pollution, Flood Control, Protection of Ground Water Supply

Appeared: Daniel Garson and Michael Battistelli of Woodard & Curran

Control Drawing: Proposed Remediation Project, dated June 2010, revised June 9, 2010, prepared by Woodard & Curran.

Reference: Woodard & Curran letter dated July 7, 2010 and letter from the Marblehead Board of Selectmen dated July 7, 2010

The commission had previously agreed to review this request as an amendment to the original OOC with the stipulation that all conditions in the original OOC shall remain applicable and that an agreement between the Town of Marblehead and NL Industries must be signed before any work is started. Per the afore referenced letters no agreement has yet been signed. However, the letter from the Board of Selectmen can be interpreted that the Board will sign an agreement with NL Industries and, in fact, the Board recommends the issuance of an amended OOC. Therefore, all members of the conservation commission voted to close this hearing. All members voted to issue an amended OOC to include the following additional special condition along with all original special conditions. Per the description contained within the referenced letter from the Board of Selectmen, said letter being a part of this hearing:

That portion of Wyman Woods which will be remediated by NL Industries under this amended OOC will be replanted and re-vegetated as follows. The area will be graded and vegetated by replacing all trees over 6 inch diameter at breast height (4.5 feet above ground surface) that are removed with comparable nursery stock of 2.0 – 2.5 inch caliper (balled and burlapped), using comparable shrubs in 5 gallon containers and ground cover of native seed and wildflower mix, pursuant to a Planting Plan prepared by NL Industries and to be approved by the commission.

## **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 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.

Reference: DEP letter dated June 23, 2010  
Hayes Engineering letter dated July 6, 2010

This was a continuance from 06/10/2010. The referenced DEP letter raised certain issues which were responded to in the referenced Hayes letter. The commission therefore regarded the issues clarified. 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 40-1000"

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.

#### **RDA 150 FRONT STREET HOWARD**

This was a continuance from June 10, 2010. No one appeared at the July 8, 2010 hearing and no correspondence was received from the applicant. No action was taken by the commission.

#### **40-991 27 NAUGUS AVENUE - SYMES ASSOCIATES, INC. NAUGUS-INTERVALE TRUST**

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. and Landers Symes 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 June 27, 2010 with report  
Letter from Wetlands & Land Management, Inc. dated June 1, 2010  
Letter from Hayes Engineering, Inc. dated July 8, 2010  
Letter from Latham Law Offices, dated July 8, 2010 with documents

The Commission stated that this hearing covered both the WPA and local Wetlands Bylaw as well as the Land Disturbance Permit (LDP). This was a continuance from 04/15/2010, 05/13/2010 and 06/10/2010. Regarding the LDP, the letter report from Mannetta was reviewed. Certain issues were raised by this letter as to the absence of some data required by the Stormwater Management and Erosion Control Bylaw. The letter from Hayes Engineering addressed these issues to the satisfaction of the Commission. Reading from the Summary in the Mannetta letter, "...the cumulative results of the analysis reviewed does not indicate an increase in peak rate or volume at the design points of the site analysis and that these phases (*ed. read: Naugus Avenue-Intervale Road and Mound Road*) conform to Stormwater Management and Erosion Control Regulations for the Town of Marblehead ...". Based on this report and its summary statement and the letter from Hayes Engineering, the Commission concluded the requirements of the LDP Bylaw have been satisfied.

The LDP for Naugus-Intervale Trust was then reviewed in detail.

The following changes were made:

Paragraph 2: Insert the date July 8, 2010 for the Home Owners Association Operation Maintenance Plan.

Paragraph 3: Delete "Marblehead Conservation".

Paragraph 4: Insert the date July 8, 2010 for the Home Owners Association Operation & Maintenance Plan.

Paragraph 9: Delete "dated" and insert "as filed with the Commission on July 8, 2010 via the letter from Latham Law Offices. Proof of recording of the Declaration of Covenants and Easements must be submitted to the Commission before any construction work is started".

Paragraph 16: Delete the number "19" and replace with "18".

Paragraph 18 (2): Delete the word "Bury" and start the sentence with "Inspection".

The Operation and Maintenance Plan, Naugus-Intervale Trust Home Owner's Association, dated July 8, 2010 was then discussed in detail and accepted.

A motion was made and seconded to close the discussion for the LDP of the hearing. All voted in the affirmative. A motion was made and seconded to issue the LDP as described above with changes. All voted in the affirmative.

The discussion then addressed the WPA and local Wetlands Bylaw. A set of special conditions was distributed for review. After discussion, a motion was made and seconded to close this discussion of the hearing. A motion was made and seconded to issue an OOC with the following special conditions. All voted in the affirmative.

### **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 40-991"
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.

**Pre-construction:**

28. 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.

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. Workers will avoid foot and vehicular traffic in the No Disturb Zone and no vegetation will be disturbed in this zone.

33. On sediment producing areas in the buffer zone, where the expected period of exposure will be more than 30 days, these areas will immediately be covered with annual rye after initial exposure.

34. In the No Disturb Zone, no permanent type cover will be applied since this area will not be disturbed.

35. 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.).

36. 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

37. 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.

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

39. Any pressure-treated wood proposed to be used in the construction of a structure for land - based use shall be arsenic-free.

40. Landscape plans for lots 1, 2 and 3 are required for approval by the commission before any landscaping work is started.

**Post-construction/in perpetuity:**

41. The No Disturb Zone on lots 1 and 2 per the site plan will be permanently protected with a post and rail or similar fence with appropriate signage to insure there is no encroachment into this zone. The current and future owner(s) of the property is/are required to maintain the fence and signage in good repair. This condition shall survive this order.

42. 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.

43. 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).

44. 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 shall 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.

**40-993 27 NAUGUS AVENUE - SYMES ASSOCIATES, INC.  
MOUND ROAD TRUST**

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. and Landers Symes 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.

Reference: Letter from Thomas Mannelta, Inc. dated June 27, 2010 with report  
Letter from Wetlands & Land Management, Inc. dated June 1, 2010  
Letter from Hayes Engineering, Inc. dated July 8, 2010  
Letter from Latham Law Offices, dated July 8, 2010 with documents

The Commission stated that this hearing covered both the WPA and local Wetlands Bylaw as well as the Land Disturbance Permit (LDP). This was a continuance from 06/10/2010. Regarding the LDP, the letter report from Mannelta was reviewed. Certain issues were raised by this letter as to the absence of some data required by the Stormwater Management and Erosion Control Bylaw. The letter from Hayes Engineering addressed these issues to the satisfaction of the Commission. Reading from the Summary in the Mannelta letter, "...the cumulative results of the analysis reviewed does not indicate an increase in peak rate or volume at the design points of the site analysis and that these phases (*ed. read: Naugus Avenue-Intervale Road and Mound*

Road) conform to Stormwater Management and Erosion Control Regulations for the Town of Marblehead ...” Based on this report and the summary statement and the letter from Hayes Engineering, the Commission concluded the requirements of the LDP Bylaw have been satisfied.

The LDP for Mound Road Trust was then reviewed in detail. The following changes were made:

Paragraph 2: Insert the date July 8, 2010 for the Home Owners Association Operation & Maintenance Plan.

Paragraph 3: Delete “Marblehead Conservation”.

Paragraph 4: Insert the date July 8, 2010 for the Home Owners Association Operation & Maintenance Plan.

Paragraph 9: Delete “dated” and insert “as filed with the Commission on July 8, 2010 via the letter from Latham Law Offices. Proof of recording of the Declaration of Covenants and Easements must be submitted to the Commission before any construction work is started”.

Paragraph 17 (2): Delete the word “Bury” and start the sentence with “Inspection”.

The Operation and Maintenance Plan, Mound Road Trust Home Owner’s Association, dated July 8, 2010 was then discussed in detail and accepted.

A motion was made and seconded to close the discussion for the LDP of the hearing. All voted in the affirmative. A motion was made and seconded to issue the LDP as described above with changes. All voted in the affirmative.

The discussion then addressed the WPA and local Wetlands Bylaw. A set of special conditions was distributed for review. After discussion, a motion was made and seconded to close this discussion of the hearing. A motion was made and seconded to issue an OOC with the following special conditions. All voted in the affirmative.

### **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 40-993”

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.

**Pre-construction:**

28. 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.

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. Workers will avoid foot and vehicular traffic in the No Disturb Zone and no vegetation will be disturbed in this zone.



33. On sediment producing areas in the buffer zone, where the expected period of exposure will be more than 30 days, these areas will immediately be covered with annual rye after initial exposure.
34. In the No Disturb Zone, no permanent type cover will be applied since this area will not be disturbed.
35. 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.).
36. 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
37. 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.
38. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.
39. Any pressure-treated wood proposed to be used in the construction of a structure for land-based use shall be arsenic-free.
40. Landscape plans for lot 3 are required for approval by the commission before any landscaping work is started on lot 3.

**Post-construction/in perpetuity:**

41. There will be a permanent demarcation [(post and rail or similar fence with appropriate signage to protect the No Disturb Zone (NDZ)] of the boundary of the NDZ for lot 3 on Mound Road. The fence will be located along the entire boundary of the NDZ abutting lot 3. The current and future owner(s) of the property is/are required to maintain the fence and signage in good repair. This condition shall survive this order.
42. 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.
43. 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).

44. 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 shall 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 DRIVE - TOWER SCHOOL/M’HD W&S 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, 05/13/2010 and 06/10/2010. Ogren requested another continuance. All members voted to continue this hearing to August 12, 2010 but noted this will be the last continuance.

**Old/New Business:**

**Approve Minutes:** see above

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

The meeting was adjourned at 10:15 PM.