

**COMMONWEALTH OF MASSACHUSETTS
BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES
MINUTES OF PUBLIC MEETING – 26 September 2013**

MEMBERS PRESENT: Gary Duncan (Designee of Aaron Gross, Director of Environmental Law Enforcement)
Terry French (Designee of John Warner, State Archivist)
Lenny Loparto (Designee of Brona Simon, State Archaeologist)
Graham McKay (Marine Archaeologist)
Jonathan Patton (Designee of Brona Simon, Executive Director of the Massachusetts Historical Commission)
Dan Sampson (Designee of Bruce Carlisle, Director of Coastal Zone Management)
Victor Mastone, Director (Staff for the Board)

MEMBERS ABSENT: Marcie Bilinski (Dive Community Representative)
Kevin Mooney (Designee of Director of DCR Division of Waterways)
Gary Murad (Dive Community Representative)

PROCEEDINGS:

The public meeting of the Massachusetts Board of Underwater Archaeological Resources was convened by the Director, Victor Mastone, at 1:35 PM on 26 September 2013 in the CZM Conference Room at 251 Causeway Street, Boston.

1. MINUTES

A. Minutes of 25 July 2013

Victor asked the Board if there were any comments or corrections to the minutes of the public meeting held on 25 July 2012. He noted that he had previously received comments and made those corrections to the draft minutes. There were no other comments or corrections.

Terry French moved to accept the minutes of the public meeting held on 25 July 2013. Gary Duncan seconded. Four votes in favor (Duncan, French, Patton, and Sampson). No votes opposed. Two abstentions (Loparto and McKay). The motion is approved. So voted.

2. DIRECTOR'S REPORT

A. New Interns

Victor stated that the Board would have two new unpaid part-time interns starting in October. They are Mark Agostini and Chelsea Bothen. Both are 2012 graduates of the University of Vermont in Anthropology. Both are currently serving as interns at the Abbe Museum on Mount Desert Island, Maine. They were referred to the Board by a colleague, Donny Slater at the R.S. Peabody Museum. Chelsea and Mark have agreed to help out at the upcoming Archaeology Fair.

B. National System of Marine Protected Areas Partnership Meeting

Victor reported that he will be participating in the National System of Marine Protected Areas Partners teleconference meeting of program partners in Silver Spring, Maryland, on October 1. The program partners include member sites managed by federal, tribal, state or local entities. The Board's Exempted Sites are member sites of the National System. The discussion will focus on ways partners might be able to collaborate on program delivery.

3. BOARD MEMBER REPORTS

Lenny Loparto noted that October is Massachusetts Archaeology Month. He distributed posters and program of sponsored events.

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4. SUBCOMMITTEE REPORTS: OUTREACH

A. Bay State Council of Divers Meeting

Victor reported that he attended the June 12th and the September 9th meetings of the Bay State Council of Divers. These meeting focused on the Bay State Council's Club Picnic/Treasure Hunt. The event was held on Sunday, September 22, 2013 at Stage Fort Park in Gloucester. Victor he distributed information on the Board and assisted at the registration table. There were approximately 100 people from a number of clubs in attendance, with nearly 50 divers in the diving and snorkeling competitions.

The next Council meeting is scheduled for December 11, 2013.

B. Boston Public Library's Local History Lecture Series

Victor reported that he gave a presentation as part of the Boston Public Library's Local History Lecture Series on Wednesday, September 11 at 6 PM at the main library. The topic was the Board's study of the Revolutionary War Battle of Chelsea Creek. It was the first lecture in this year's series.

C. Archaeology Month 2010/Archaeology Fair

Victor reported that October will be a busy month for the Board as it will be participating in several Archaeology Month programs including the Museum of Science/Archaeological Institute of America Archaeology Fair on October 18th and 19th. Victor said the interns, Chelsea and Mark, would be helping both days, but was looking for assistance if anyone was interested. He noted that Board member Marcie Bilinski had assisted in the past.

D. Massachusetts Archaeological Society Fall Membership Meeting

Victor reported that he would one of the speakers at the Fall Meeting of the Massachusetts Archaeological Society on October 26th. The meeting will be held at the Robbins Museum in Middleborough. The title will be: "Drift Wood, Stone Circles, Three Canoes, and a Piano: Stories of Collaboration and Public Engagement".

E. Central Mass Chapter of the Massachusetts Archaeological Society

Victor reported that he will be giving a presentation to the Central Chapter of the Massachusetts Archaeological Society on Saturday, November 9. They meet at the Zion Lutheran Church, 43 Whitmarsh Avenue, Worcester. The meeting starts at 7 PM with the talk commencing by 8 PM. The topic will be the on-going research on the dugout canoes in Lake Quinsigamond.

F. South Boston Historical Society

Victor reported he will be giving a presentation to the South Boston Historical Society on November 25. The Society meets at the South Boston Branch of the Boston Public Library with their meeting starting at 6:30 P.M. The topic will be the Revolutionary War Battle of Chelsea Creek.

4. OLD BUSINESS

Victor said he was going to change the order of items under Old Business. He anticipated a detailed lengthy discussion on several action items and wanted to act on the more straightforward action items first. He noted, in particular, the Board will not meet again until December 5, but there are five permits which will expire on November 29. This requires the Board extend to those permits. He said he would like the Board to act these permits before beginning discussion of other permit issues on the agenda.

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A. William Bradbury

Gary Duncan moved to the expiration date of Reconnaissance Permit No. 87-002 held by William Bradbury for his Gloucester site with all existing standard and special conditions remaining in effect until the next meeting of the Board scheduled for December 5, 2013. Dan Sampson seconded. Unanimous vote in favor. So voted.

B. Joseph K. Dietlin

Dan Sampson moved to the expiration date of Excavation Permit No. 00-003 held by Joseph K. Dietlin for his Salem site with all existing standard and special conditions remaining in effect until the next meeting of the Board scheduled for December 5, 2013. Terry French seconded. Unanimous vote in favor. So voted.

C. Kenneth J. Medeiros

Graham McKay moved to the expiration date of Reconnaissance Permit No. 07-003 held by Kenneth Medeiros for his Duxbury site with all existing standard and special conditions remaining in effect until the next meeting of the Board scheduled for December 5, 2013. Gary Duncan seconded. Unanimous vote in favor. So voted.

D. Underwater Discoveries Unlimited

Graham McKay moved to the expiration date of Excavation Permit No. 06-003 held by Underwater Discoveries Unlimited for its Wellfleet site with all existing standard and special conditions remaining in effect until the next meeting of the Board scheduled for December 5, 2013. Terry French seconded. Unanimous vote in favor. So voted.

E. David S. Robinson & Associates

Victor stated there are two action items for the Special Use permit held by David S. Robinson & Associates. The first was a simple permit extension as with the previous four items. The second was a revision to the scope of work/research design.

a. Permit Extension

Gary Duncan moved to the expiration date of Special Use Permit No. 12-007 held by David S. Robinson & Associates for its Gloucester site with all existing standard and special conditions remaining in effect until the next meeting of the Board scheduled for December 5, 2013. Dan Sampson seconded. Unanimous vote in favor. So voted.

b. Revised Scope of Work

Victor stated the permittee had completed the initial survey of the project area and determined additional site documentation and archaeological probing would be necessary. David Robinson has submitted a revised scope of work to the Board and the Massachusetts Historical Commission for review and approval. Jonathan Patton confirmed MHC has approved these changes. Victor said he concurred with the MHC's determination and was asking the Board to formally approve the revisions.

Jonathan Patton moved to approve the revisions to the scope of work for Special Use Permit No. 12-007 held by David S. Robinson & Associates for the Former Gloucester MGP Phase II Site Assessment in Gloucester. Gary Duncan seconded. Unanimous vote in favor. So voted.

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F. Restoration Project

Victor stated that Restoration Project, Inc. had previously submitted its complete reconnaissance permit renewal application and Annual Report in accordance the Board's Regulations. He noted the Board had previously granted an extension of the permit until today's meeting. Victor said he has understands the Restoration Project team is planning a dive in October. No one was in attendance to represent the Restoration Project.

There was no further discussion.

Graham McKay moved to renew, retroactive to 30 May 2013, the Reconnaissance Permit No. 10-001 held by the Restoration Project, Inc. for its Willis Pond site in Sudbury with all standard conditions in effect. Terry French seconded. Unanimous vote in favor. So voted.

G. Michael Jr. and Joseph Zdanowicz

Victor reported that the permit held by the Zdanowicz brothers was up for renewal at today's meeting. He spoken with Michael, Jr., who reported their application was returned to them due to damage in postal processing and asked for a new blank form. Victor told him he could download the form, resubmit the package, and the Board would act to extend his permit as it was now past the submission deadline. He subsequently resubmitted an incomplete renewal application and did not include their annual report. Victor notified the Zdanowicz brothers of their permits incomplete status. He has not otherwise heard from them or received any additional submissions

There was no further discussion.

Gary Duncan moved to the expiration date of Reconnaissance Permit No. 11-006 held by held by Michael, Jr., and Joseph Zdanowicz for their Beverly/Manchester-by-the-Sea site with all existing standard and special conditions remaining in effect until the next meeting of the Board scheduled for December 5, 2013. Terry French seconded. Unanimous vote in favor. So voted.

H. Alexander Bezkorovainy

Victor reported that the permit held by Alexander Bezkorovainy was up for renewal today. He had submitted his renewal application and annual report in conformance with the Board's regulations. Victor noted he had been in communication and met with Alex Bezkorovainy regarding re-assembly of his project records and artifact catalog. Alex Bezkorovainy was in attendance to represent his permit application.

Alex reported that he had not been out on site much this past year. Since the partnership with Gary Esper was dissolved, he has spent much of his time over the past year reconstructing data records. He said that all of their data was stored on Gary Esper's computer and those records were lost when Esper's computer crashed. He has also been pulling together information from various pieces of paper, printouts, email, etc. Alex reported that soon after becoming sole permittee, he had contacted both the project archaeologist, Bob Cembrola, and the project conservator, Scott Herber, to get an inventory of any project artifacts they might have. They had none. He then contacted Gary Esper to make sure he had all available information. He received some photographs. He said that Gary had indicated that he gave all the artifacts to the investor. He contacted the investor who told him he knew nothing about the artifacts... He was told if he contacted the original investor, he would be sued. So, he does not know where the artifacts are at this time.

Victor noted that Gary Esper wanted to make a statement. Gary Esper stated that the artifacts in question that Alex was talking about were essentially a few spikes collected before they had been granted their permit. These did not include any large objects. He went on to state that all their data was stored in his basement, that basement got flooded destroying their records, and he was only able

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to recover a log book. He offered to give that logbook to Alex. Gary Duncan said he would investigate and sort this out with them outside the meeting.

Victor reviewed some points from the Board's regulations for the benefit of the Board and the permittees. He noted that under the Board's regulations, Section 2.13(1)(a) it clearly states "...resources shall not be disposed of until after the project completion date." and Section 2.09(1) states "Permittees shall also be expected at all times to protect the resources from destruction and loss." Similarly, under the statute the Commonwealth claims title to all the resources whether collected under a permit or not. Thus, if any artifacts were recovered and not returned to their previous in situ location on the site, these should remain in the custody of the permittee or the Board and no other parties unless explicitly approved by the Board. If any artifacts have been disbursed to others, the current and former co-permittee, Mr. Bezkorovainy and Mr. Esper respectively, need to take the appropriate steps to recover such objects and return them to either Mr. Bezkorovainy's or to the Board's control. Victor said he did not believe the Board needed to make a formal motion to that effect at this time since the regulations are fairly explicit in this matter.

Victor stated that since the Board was currently conducting its review and had not reached a finding, he was recommending the Board renew the permit with all previous conditions and add a new special condition to preclude any excavation activities or artifact recovery until the Board has completed its review of artifact records and its investigation. Gary Duncan asked if the Board would give an extension. Victor said it would be less complicated to approach the situation through a renewal. He believed that if they acted through an extension and did not complete the investigation by the next Board meeting then they would have to grant another extension. From the administrative point of view, he wanted to avoid multiple extensions. He preferred to look for a renewal motion as this would not assess any blame, it would protect their rights, and provide time to make things right.

Graham asked Alex what he undertaken on site this summer. Alex responded he had not been out to dive because he believed that he had either a rupture eardrum or ear infection. Two days ago he visited the doctor and they removed a piece of barnacle from his ear canal. He has continued to undertake simple archival research and is basically trying to reconstruction and compile what that they have done. He wanted to create a site map of where they have worked and what they found in order to not duplicate previous efforts. He wanted to get a fresh start.

Gary Duncan moved to renew the Excavation Permit (06-002) held by Alexander Bezkorovainy for his Salem Sound site with all standard conditions in effect, and the further condition that the permittee submit, for approval by Board staff, a detailed plan for the selection, transportation, and conservation of any objects intended to leave the Commonwealth of Massachusetts, prior to undertaking such action, and further, that no excavation or additional artifact recovery take place until the Board has completed its review of the artifact collection and investigation and review of artifact records. Terry French seconded. Unanimous vote in favor. So voted.

I. Gary Esper

Victor reported that the two permits held by Gary Esper were up for renewal today. He had submitted his renewal applications and annual reports in conformance with the Board's regulations. Gary Esper was in attendance to represent his permit application.

Gary Esper stated he did not get out that much this year, but did undertake some side scan survey at the beginning of the year. He noted that he had been assisting both Joe Dietlin and Nick Snyder with their permit area. He said he has been working with a company that detects precious metals through satellites and they have some targets in his area. He intends to get out there this fall. Victor asked Gary if he could provide the Board with some information on company and technology.

Victor noted Gary Esper was a former co-permittee with Alexander Bezkorovainy and the possible violation took place while they jointly held the permit. He suggested a special condition,

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similar to Bezkorovainy, be placed on Esper's current permits to explicitly preclude any excavation activities or artifact recovery until the Board has completed its review of artifact records. Gary Esper agreed to that condition.

Gary Duncan moved to grant renewal of Excavation Permit No. 12-005 held by Gary Esper for his Eastham/Wellfleet site with all standard conditions in effect, and the further condition that the permittee coordinate all field activities with the staff of the Cape Cod National Seashore, and further, that no excavation or artifact recovery take place until the Board has completed its investigation and review of artifact records related to Permit No. 06-002. Dan Sampson seconded. Unanimous vote in favor. So voted.

Graham McKay moved to grant renewal of Reconnaissance Permit No. 12-006 held by Gary Esper for his Eastham site with all standard conditions in effect and the further condition that the permittee coordinate all field activities with the staff of the Cape Cod National Seashore, and further, that no artifact recovery take place until the Board has completed its investigation review of artifact records related to Permit No. 06-002. Gary Duncan seconded. Unanimous vote in favor. So voted.

6. NEW BUSINESS

A. Requirement of each Permit to have an Inventory and Catalog of Artifacts

Victor noted that, in light of the issues raised in today's discussion, it would be appropriate for the Director on behalf of the Board to remind all permittees of their responsibilities outlined in the Board's regulations regarding artifacts. He reviewed the relevant sections, 312 CMR 2:

Section 2.07(3)(k) states applications must include "A description of the inventory and catalog which shall be maintained for all recovered artifacts."

Section 2.09(3)(b)8 states Annual Reports include "An inventory and catalog of any recovered artifacts, including a description of the location, and the contextual and structural characteristics of each recovered artifact, and accounting of the present condition of such finds."

Section 2.09(1) states "Permittees shall also be expected at all times to protect the resources from destruction and loss."

Section 2.13(1)(a) states "...resources shall not be disposed of until after the project completion date."

Victor did not believe a formal motion was required as these are stated in regulation. He suggested the Board consider declaring a sense of the Board to reaffirm the importance of these requirements. He would notify all permittees of this reminder. His expectation was that we would need time for the permittees to become fully compliant over the next year. He noted that many of our permits have not recovered any artifacts.

Graham suggested it is difficult to enforce these rules. Gary Duncan observed that if they did not follow the rules, then the Board would not renew the permit. Graham pondered how we would know if they were abiding by the rules. Victor noted the Board always has the right to inspect the site, facility, records, and objects. Of course, this is a staffing issue. Victor observed in terms of the renewal it provides the Board the ability to enforce these rules. He noted that if we do not renew, we have to give cause and non-compliance with the regulations would be cause. That decision would then be subject to an adjudicatory hearing. Graham noted that anyone could go out, collect, and not report. Victor acknowledged that this does happen. He observed you have to catch someone in the act and that is difficult. Graham asked to what extent does the Board have knowledge of permittee activities, do they contact you? Victor replied some permittees inform him of their activities. He said for example Joe Dietlin emailed him the other day to inform him that he intended to be in the field the following week. Or for example in the case of Mr. Snow, he came by before today's Board meeting to

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update me on his activities and what he plans to do. Victor noted that some permittees are more proactive than others, especially on email.

Dan asked Vic if he goes through a verbal review and description of laws and their meaning, sort of an entrance interview, before an applicant goes through the formal application. Vic said Victor noted the applicant is directed to go through the regulations in order to complete that application. He looks closely to their initial applications to insure they address all requirements, but he admitted he is a bit more lax with subsequent renewal applications.

The Board members agreed "It is the sense of the Board to remind each permit holder they are required to submit to the Board, annually with their permit renewal application, an inventory of all cultural material recovered submitted as demonstrable proof as part of the permit application and any subsequently recovered under the permit. At a minimum, this inventory shall include a description of each object, its current location, current treatment, and a photograph. If no cultural materials have been recovered, the permittee shall provide an explicit statement of that fact."

There was no further business.

Terry French moved to adjourn the meeting at 2:12 PM. Dan Sampson seconded. Unanimous vote in favor. So voted.

Respectfully submitted,

Victor T. Mastone
Director