

CITY COUNCIL STANDING COMMITTEE  
**Special Planning & Development Committee Meeting**  
Thursday, March 7, 2013 – 7:00 p.m.  
Rose Baker Senior Center - 6 Manuel F. Lewis Street  
**-MINUTES-**

**Present: Chair, Councilor Bruce Tobey; Vice Chair, Councilor Greg Verga; Councilor Jacqueline Hardy**  
**Absent: None.**

**Also Present: Councilor LeBlanc; Councilor Ciolino; Councilor Cox; Councilor McGeary; Councilor Ciolino; Councilor Theken; Jim Duggan; Gregg Cademartori; Bill Sanborn; Suzanne Egan**

**The meeting convened at 7:00 p.m. There was a quorum of the City Council.**

**1. SCP2012-010: Application of Beauport LLC under Sec. 5.25 Hotel Overlay District; GZO Sec. 5.5.4 Lowlands, Sec. 5.7 Major Project**

**Councilor Tobey** stated the Committee would get an update on a procedural “hurdle,” that of the status of the Conservation Commission (ConCom) review of the Lowlands Permit. The second matter would be to discuss the concerns raised by materials submitted in a report by Professor Godfrey. Then there would be an update on whether and how the property will be marked for purposes of showing the height contemplated for the proposed structure. The Committee would revisit the emergency generator noise issue, noting someone was present with expertise in the field with the proponent’s team and he noted Bill Sanborn, Inspector of Buildings was present also who has jurisdiction over the City’s noise ordinance. Lastly, the proponent has submitted amended plans on March 7, 2013 at the City Clerk’s office. He asked that the Committee be given a presentation of the changes made to the architectural and engineering plans subject to verification by the Planning Director.

**Councilor Hardy** stated with regards to procedure for the public hearing (scheduled for Tuesday, March 12, 2013 at 7 p.m. in Kyrouz Auditorium) that she has been in touch with Attorney J. Michael Faherty to make sure everyone has equal representation in consideration of speaking. She said they would get back to her later on so the time can be divided up appropriately. She noted at the hearing their will be dual podiums, one designated for those in favor, another for those opposed to the hotel project. Councilor Hardy said that was the fairest way she knew to allow people to have equal time on both sides. She pointed out that should anyone from either the proponent or opposing side have questions on procedure they should contact her directly before the public hearing.

**Councilor Verga** asked the Chair to touch on the plan for the shadow studies. **Councilor Tobey** noted at the last meeting of P&D, the Committee asked that counsel for an abutter who had concerns about shadow study adequacy and who is going to be bringing forward his own expert’s report ahead of the public hearing. He said it had been done and noted today the Committee had received further comment from the proponent on the shadow study with some elements of response and further elaboration. He said his understanding was that Attorney Cunningham, representing Beauport Gloucester LLC would not be bringing forward that information at this meeting but would reserve that for full development at the public hearing which **Mr. Cunningham** confirmed.

**Gregg Cademartori**, Planning Director said the Conservation Commission (ConCom) reviewed the application under the Notice of Intent. A meeting of February 26<sup>th</sup> closed public testimony and made a motion to consideration of drafting of Order of Conditions. A meeting was held on February 26<sup>th</sup> at which ConCom closed all public testimony and receipt of any new information at that point. The Commission then moved to continue it for a drafting of an Order of Conditions by the City’s Conservation Agent, Lisa Press who provided a draft Order of Conditions earlier this week for the Commission’s consideration. He said after speaking with ConCom Chair, Rob Gulla this afternoon as he was not at the meeting the previous evening, he was told by Mr. Gulla ConCom was satisfied with the drafting of the proposed conditions for an Order and approved it last evening. Administratively, he said, since the close of the hearing, ConCom has 21 days to issue its decision and file it which, he added, will likely occur on Monday (March 11<sup>th</sup>). **Mr. Cademartori** said at this point the Commission process is complete.

**Councilor Theken entered the meeting at 7:05 p.m.**

**Councilor Hardy** noted the conditions approved last evening are in the presentation she said she handed out to both the proponent and opposing sides of the hotel project this evening and are found as Appendix C (on file). The Order of Conditions has yet to be written, and as she noted that Chairman, Councilor Tobey had stated, it will be written early next week.

**Councilor Tobey** said he assumed that to the extent the committee will be putting forward a positive motion is there anything in the Order of Conditions that would need to be included in it or does this have legal standing in own

right. **Mr. Cademartori** said it does have legal standing in its own right consistent with past practice. He noted oftentimes the Council may wish to incorporate other conditions for permits by reference. Additionally, he said, in the Planning Board report submitted to the Committee on February 7<sup>th</sup> (on file), there was a discussion of that. There is the possibility the action of ConCom is not the final action under administering the State permit. He said that in the event that may occur, there has been language drafted suggesting that any final order “be incorporated by reference,” as there may be other processes that ensue after the issuance of the ConCom Order of Conditions.

**Attorney John Cunningham**, representing the applicant, Beauport Gloucester LLC explained that the first item to be reviewed is the Godfrey Report. He said Lester B. Smith, Jr. of Epsilon Associates, the is the applicant’s coastal geologist is present who has been involved in the process since the beginning; involved in the ConCom review and participated in the third party review conducted by ConCom.

**Councilor Tobey** asked if Professor Godfrey was present at the meeting, and was told by members of the audience that he was unable to be at the meeting.

**Les Smith**, Epsilon Associates reviewed his C.V. informing the Committee that he is a Coastal Geologist, with an undergraduate degree in Geology from Syracuse University, a Master’s Degree in Marine Geology, and with Ph.D. coursework in Geology at Rutgers. He served four years as an officer with the National Oceanographic and Atmospheric Administration (NOAA) from 1970-1974. Of note he said he was involved in marine and coastal survey work for a branch of NOAA that does surveys along the coast; nautical charting and established the network of survey elevation and benchmarks that surveyors use around the country. He also served with Coastal Zone Management in the late 1970’s and early 1980’s where he helped co-author coastal wetland regulations a governmental group which is now known as the Department of Environmental Protection (DEP). He noted those are the regulations that are being implemented by Conservation Commissions today. He also noted his work at the Center for Coastal Studies, heading the Coastal Geology Department doing mapping under contract with Coastal Zone Management (CZM) and DEP to map all the barrier beaches. The resultive maps are the maps used by the State’s DEP in order to determine whether a landform is a coastal barrier. He conducted a number of studies for the National Parks Service. Since then he said he was been in private practice. He has authored several beach management plans including Smith Point in Nantucket, Duxbury Beach and most recently all five of the Swampscott town beaches for the Town of Swampscott. Since 1997 to present he is a founder and principal in Epsilon Associates, one of the largest solely environmental consulting firms in the region, he said.

He said one of the issues that came up in Dr. Godfrey’s remarks and concerns in his report, he noted he knew Dr. Godfrey from the 1970’s when they interfaced when Mr. Smith was at the Center for Coastal Studies, and also noted his familiarity with Dr. Godfrey’s work.

**Mr. Smith** said issues that Dr. Godfrey had were:

- Had the Beauport building wall which acts as a seawall caused erosion of the beach which Mr. Smith said he would speak to by looking at a number of historical charts and maps that were referenced to show the Committee how the beach has been stable over time.
- What are the potential impacts on eel grass beds by reviewing data that Massachusetts DEP and CZM have for this parcel which shows the beds are 200 feet seaward of the proposed project.
- Should the Beauport building and walls be removed to let a Coastal Dune form?
- Are the tidal elevations incorrectly shown on Beauport plans?
- Does the project comply with the Wetlands Protection Act regulations and the Gloucester Wetlands Ordinance?

Pavilion Beach, **Mr. Smith** said, is a pocket beach with a bedrock headland on the east side of Fort Point, and a bedrock headland at the Tavern and a seawall pinches off the pocket beach on the west (Stacy Boulevard). He said the Birdseye building does act as a seawall during storm elevated seas which he said was “no surprise,” with waves breaking up against it much as the public sees waves breaking against Stacy Boulevard under the same conditions. He had observed earlier in the day (with current weather conditions of a nor’easter storm) with waves breaking all along Stacy Boulevard but not on the seawall of Pavilion Beach.

As to sediment transport in this area is, he said, minimal. If there was large sediment transport, large piles of sand would be seen building up along the seawall that exists along Fort Point Park or over at the rocky headland, and that just isn’t seen there, he said.

**Mr. Smith** reiterated that Pavilion Beach is a stable pocket beach with headlands with little sediment import or export. He noted the coastal processes have changed by filling north of Commercial Street. He said as the harbor was developed people built out and filled which was typical of building of ports. He noted of importance is that the proponent’s proposed building site has been entirely paved and buildings so that the natural barrier beach processes including coastal dune migration are no longer operative.

**Councilor Tobey** asked if a pocket beach different from a barrier beach and can a barrier beach be a pocket beach. **Mr. Smith** said, "Yes;" a pocket beach could be a barrier beach. He said typically the beaches along the shoreline here are along narrow barrier beaches that aren't pocket beaches. On the North Shore where there is a lot of bedrock headlands there can be some pocket beaches which can be barrier beaches if there is a landward salt marsh wetland or water body. Pavilion Beach was a barrier beach at one point in time but over half the landform has been filled by development into Gloucester harbor.

**Mr. Smith** referenced plans that are geo-referenced, that is, fixed to a common base and any distortions have been taken up. He showed the Committee a property survey 11-10-2011. He pointed out the mean high water mark (MHW) which is an elevation of approximately 4 feet, he said, and that below it is flow tidelands. The plan also shows the approximate boundary of the uplands.

A 2011 Orthophoto show the MHW mark occurs at the total change between the lighter colored beach and the darker colored beach. He said they look at maps that define the high water mark historically and use the total change on the beach, as used by CZM. In 2011 the high water mark is coincident with the mark they surveyed.

In 2008, he pointed out on an Orthophoto that the total changes to the beach are similar. He noted the high water mark extends to the bedrock in the Tavern area.

**Mr. Smith** showed a 1966 Survey Plan of the property with the harbor shown to the left of the plan outfacing. On it he pointed out the high water mark is "approx. 20.00." The dimension is shown as 20 feet off of "Commercial Court" and is similar to the distance, he said to the high water mark shown and the edge of the upland property. The 20 to 30 foot distance at the middle of the property, he said, is fairly consistent with time.

He showed a 1955 aerial photo, and said that the total change again shows approximately the same detail. He showed a 1945 photograph which he said illustrates the total change is again similar. The high water mark is consistent with time. CZM does their shoreline geo-maps, CZM looks at this line to see how it changes with time. Typically, **Mr. Smith** said, they see retreat with areas migrating landward. This, he said, is unique in that Pavilion Beach has remained stable through time.

A 1929 Plan, **Mr. Smith**, said, shows a survey; the high water mark is similar and a 1926 Survey Plan, he said, shows the beach's high water mark is fairly consistent through time as it much the same. **Mr. Smith** pointed out the Birdseye building was constructed in the early 1900's. He said since 1926 there hasn't been much change in the shoreline, and that the contention that the seawall causing erosion, "doesn't make any sense;" as they are not seeing those types of changes to the Pavilion beach area, he said. Before seawalls were constructed (1870 photo shown) and pointing to the high water mark he noted the same high water mark extending to the bedrock area. He asked the Committee to bear in mind they will see a lot of other photographs of Pavilion Beach and the Committee should make sure that geo-reference photographs are used so that the Committee will be able to know the comparisons are of a common scale and measured dimensions are accurate over time.

**Tidal Elevations on Beauport Plans:** **Mr. Smith** pointed out that there is a lot of confusion about tidal elevations. He said he was showing two types of datum: NAVD88 (North American Vertical Datum 1988) which is the data most surveyors are using now and the most modern datum. On the left is the Mean Low Water Datum (MLLW) which is a relative table. The NAVD88 data when you go to zero is a fixed datum with respect to benchmark elevations that have been established around this area of the United States Coastal Survey and now the National Ocean Survey. He said the State has its own network of survey of both elevation and horizontal datum and local surveyors pick that up in terms of elevations and determine that elevation is with respect to those benchmarks. He also pointed out the tidal datum on the chart. Gloucester, **Mr. Smith** said, typically has about a 9 foot tide. He pointed out the statistics on the tidal elevation change of MLLW of 0 and MHW of 9.12. That is, he said, about 9 feet. He said it was important to note that the datum they're using, NAVD88, that elevation is about 4. There is a difference of about 5 feet between the NAVD88 datum and the MLLW datum. Five feet has to be subtracted from the tide elevations to get to the elevation datum they are working with. The Gloucester tides are not a primary station. Now Gloucester is a subordinate station, and the data is derived from a gauge in Gloucester Harbor, based on some correction factors so sometimes the MHW elevation can vary a bit depending on the correction factors are calculated which is around 4.19. A cross-section of the property shows that at the parking lot the elevation at the seaward-most edge of the parking lot is just over 11 feet on the NAVD88 datum. He reiterated they were speaking with a 5 foot difference. He pointed out the high tide level (high springs of the year) is 6.57 which is a high tide elevation at MLLW is 11.5. He said the Committee may hear someone say, "the highest springs will be over 11 feet." But, he said, one has to subtract 5 feet to look at the elevations talked about with relation to the Beauport property. He said at the 100 year flood level (A2), the proposed parking lot is at elevation 11.

**Mr. Smith** showed a graphic from Dr. Godfrey's report entitled "Pavilion Beach Profile 1C from Edge of Parking Lot" in which **Mr. Smith** said Dr. Godfrey was criticizing the proponent's elevations. **Mr. Smith** pointed out the NAVD88 elevations. **Mr. Smith** said Dr. Godfrey was saying that MHW was at elevation 9.7, about 5 feet

higher than what the proponent is saying. **Mr. Smith** said he believed Dr. Godfrey was probably looking at the relative tidal elevation datum rather than the NAVD88 datum, again, he said, which is a 5 foot difference and incorrectly showing MHW.

**Mr. Smith** then reviewed a slide "Proposed Seawall Location" and pointed out section C in the middle. He said reviewed the various points on this plan: the Mean Low Water (MLW) elevation of -4.60, the MHW elevation (+4.19), the 100 year Stillwater line (+8.2 elevation), and the 100 year VE wave line (+12.0 elevation). Section E is on the far east side, MHW from the base of the wall is 50 feet. The westerly edge, Section A, MHW is 62 feet from the proposed seawall which he noted was a good setback to MHW. **Mr. Smith** pointed out the existing lot line. The wall will be set back about 10 feet from the existing wall of the building, he said.

Impact on Eel Grass Beds: **Mr. Smith** said he looked at the eel grass beds as mapped by CZM in their Morris database (online mapping tool). Pointing out a green area on the slide, he noted the project area and said that the existing building is 200 feet from the nearest eel grass bed. The beds, he said, will be in that general location. **Mr. Smith** explained that eel grass is a subtidal species which exists below mean low water and can be negatively impacted by factors such as increased turbidity or sedimentation, coastal eutrophication (nitrogen loading and algal blooms) or poor water quality. The project does not involve any impacts to the subtidal area. The project will not cause any of the factors that could negatively impact eel grass beds over 200 feet from the Beauport project nor will there be any work by the project on the coastal beach, he said.

**Mr. Smith** said Dr. Godfrey raised the issue that he was of the opinion that the project site should become a coastal dune, which **Mr. Smith** explained would mean the removal the pavement, the Birdseye building, the parking lot and seawalls that have existed on the site since the early 1900's and make it into a barrier environment. He said here there is a stable high water mark with no migration at all. In creating a coastal dune, he said, during a storm there would be over wash and the coastal dune's windblown sand would migrate inland over the landform. **Mr. Smith** contended at this particular location, making the property into a coastal dune "would raise havoc" in maintaining Commercial Street which would have sand over the road transported by wind and storm over wash there as well. He added it would be difficult to manage in an urbanized coastal environment. Seawalls, he said, are defense for landward properties; and it needs to be reasonable about what is being done in terms of making recommendations.

Compliance with the Wetlands Protection Act and Gloucester Wetlands Ordinance: **Mr. Smith** told the Committee that he and the applicant's team went into great depth with ConCom in terms of the various activities for the hotel project and ConCom approved the previous evening an Order of Conditions with over 80 conditions to protect the project. There was a third-party consultant involved in the review, and **Mr. Smith** noted that the Peer Review consultant's specialist, Peter Williams, a Coastal Engineer reviewed and agreed with what was proposed by the applicant.

Summary: **Mr. Smith** reviewed for the Committee that the Birdseye building has acting as a seawall since the early 1900's, and the beach has maintained its stability; and he said that the proposed wall will continue to act in a similar way and will actually be further landward. It will provide storm damage prevention to landward areas without causing any harm to adjacent areas, he said. The project is located 200 feet from eel grass beds and will not impact them, **Mr. Smith** added. Removal of the Birdseye building to create a dune would result in sand transport onto Commercial Street and Gloucester's inner harbor; which he said was not an alternative. He said further that the project has provided correct tidal data based on the NAVD88 datum. The project complies with the Wetlands Protection Act and the City's Wetland Ordinance, he said in concluding his remarks.

**Councilor Verga** asked about how the Beauport project would not affect the adjacent properties. He noted that a concern on this project is that once Beauport constructs the hotel it will create "havoc" all around it. **Mr. Smith** responded that a coastal situation it is not like a riverine situation; the ocean is not being displaced. He said flooding will not occur to the sides of the wall and will not worsen the situation.

**Councilor Hardy** requested that a copy of the presentation be submitted for the Committee and Council file.

**Lee Dellicker**, Windover Construction said staging was set up on the existing Birdseye building based on elevations from the project's architects. Due to safety concerns, only the main peak is shown and has been there since the day before the meeting, and said the applicant can show a couple other peaks once the wind dies down. However, he pointed out the erected staging towers do show the height of the building at two peaks. The staging is secured with cables and can be left up. **Councilor Tobey** suggested the towers stay up through the public hearing.

**Bill Sanborn**, Inspector of Buildings stated the noise ordinance is found in the Gloucester Code of Ordinances, Chapter 13. Found there is a scale of decibels allowed from district to district. The Fort, being zoned Marine/Industrial (M/I) is designated Industrial II; and for that it would be industrial to industrial, he said. Based on that designation, **Mr. Sanborn** said that anyone who complains about noise, that noise would be measured from industrial to industrial zone. **Councilor Tobey** asked how is noise measured and what is considered a violating

standard on the industrial to industrial basis. **Mr. Sanborn** said if a noise complaint was filed with his office staff would go out during the time the noise was occurring and measures the noise with a sound meter and use that to measure if there is a violation. The unit of measurement is decibels, and 70 decibels is the maximum allowed for noise in that area.

**Councilor Hardy** said the party creating the sound and the party hearing the sound are held to the same standard because it is in the M/I district. **Mr. Sanborn** confirmed that was the case. **Councilor Verga** asked if the Council could impose a stricter residential standard as opposed to the industrial level as a condition. **Councilor Hardy** stated in the Fort residential is non-conforming in the area. **Councilor Verga** asked what the difference is in levels of a residential district versus an industrial district. **Mr. Sanborn** responded that in a residential district to residential district the maximum allowable level would be 55 decibels. He said the higher the decibel the louder it gets as it goes up, he said. **Councilor Tobey** asked if the Council can do that by amendment to a Special Council Permit or does the Council have to amend the underlying noise ordinance and /or the zoning ordinance and make the abutting district residential.

**Suzanne Egan**, General Counsel said the Council would have to amend underlying ordinance. Initially the noise ordinance would be amended because the Council would be creating a new standard and ordinances have to be enacted so that people who are affected by it have adequate notice and there has to be a reasonable basis, she said. In terms of the zoning the Council would have to amend that because the Council would be saying with regard to a special permit issued there would be a new standard in the noise ordinance; and so the Council would have to do both. It would mean changing the standards in the Code of Ordinances through a Special Permit. **Ms. Egan** said it would be a difficult thing to do. **Councilor Hardy** said that would be a conversation the Council would have when and if it was taken up. But she said she saw problems with making it residential also because it is an M/I district. There are other businesses in that area. Those, she said, that are using the non-conforming residential units would have the opportunity to complain about others in the M/I district which **Councilor Hardy** said she did not think it was fair to anybody who has a business in that area who makes more noise than she said she could “possibly conceive” a hotel would make. **Ms. Egan** said that goes to the problem of using a different standard that is set forth in an ordinance to a particular project. The Council is establishing a reasonable standard that everybody is aware of and if it is changed with regard to one particular project, the Council is not giving people notice.

**Randall Duke** of Casentini Associates, Licensed Electrical Engineer said he had over 35 years experience designing buildings. He said most of the buildings his firm designs have an emergency generator no different than the one proposed for the hotel project. The generator, he said, is a diesel based machine. However, it is different from a diesel truck engine, he said. He described the generator as being enclosed in an acoustical housing with acoustical material lining the inside of the housing. The air intakes and exhaust for ventilation for air for the radiator also have acoustical baffles to reduce the noise levels. The generator’s muffler is typically a critical grade muffler to reduce the sound level also, he said. **Mr. Duke** added that the sound level measured at 50 feet from the emergency generator would be less than the 70 decibel sound level of the ordinance. Testing of the machine is accordance with NFPA (National Fire Protection Agency) 110 which is the standard for emergency generators. Testing done monthly for a minimum of 30 minutes and is not done at about “full load,” but at roughly a one-third load. The way emergency generators are sized to enable the machine to start a large motor which is a fire pump so with normal operation the emergency generator is not running at full load and should not, **Mr. Duke** said and added if the emergency generator is running “full throttle” then something is amiss – either the fire pump is running or something else is wrong. He said it is not as large a problem as one might think. **Councilor Verga** asked for confirmation the emergency generator does not exceed the 70 decibel level even at full load, which **Mr. Duke** confirmed and added at full load the emergency generator is less than 70 decibels. **Councilor Hardy** said the equipment comes housed in an acoustical box which **Mr. Duke** also confirmed. **Councilor Tobey** said the emergency generator runs below the level of 70 decibels without the baffling. **Mr. Duke** confirmed that to be the case. **Councilor Tobey** added that the baffling will knock the decibel level down and asked if a sound wall knocks the sound level down further. **Mr. Duke** responded the baffling is internal to the emergency generator’s housing and is part of the internal muffling. He said the sound wall should reduce the decibel level further. **Councilor Tobey** inquired for purposes of context what 70 decibels sounds like. **Mr. Duke** said 70 decibels is roughly heavy street noise which is what likely exists in the area during the day, he said.

**Todd Morey**, Senior Professional Engineer, Beals Associates said as indicated at the site walk, and on the plans, there will be a sound wall approximately 6 feet away from the outer edge of the enclosure for the emergency generator. The approximate height of it is 12-½ feet based on what they know the biggest possible generator that could go there which is the box shown on the plan for now, he said. Once the final electrical loads are done and the final emergency generator size is known and what exact model it will be, they can appropriately size the sound wall. He reminded the Committee as previously discussed, the calculation for sizing the sound wall is to take the top noise

source of the generator (the highest elevation of the generator), draw a straight line to whatever is needing to be shielded which is at this point the house directly across the street, put the wall up to intercept that to block the sound and line of sight. **Councilor Tobey** asked if Mr. Duke had any sense of what the noise level would be given that information. **Mr. Duke** said it was difficult to evaluate without seeing a design but said the sound wall would “certainly reduce the sound level.” **Councilor Tobey** suggested that may be a useful evaluation to have between now and Tuesday’s public hearing.

**Councilor Hardy** asked if the generator would be used only in an emergency situation and be tested once a week at a certain time so as not to inconvenience the neighbors especially since there is ambient noise there. **Attorney Cunningham** said it was originally assumed the testing of the emergency generator would be weekly, but now have learned that the emergency generator would only need to be tested 30 minutes during a month. The testing period, he said, could be during the business day or any time that made sense for the neighborhood. **Councilor Hardy** said this was something that was discussed on the site walk and said she felt sure this was something that could be arranged which **Mr. Cunningham** responded by saying, “Yes.”

**Councilor Tobey** asked for the sake of the Council’s knowledge Tuesday evening and for future reference thereafter if this (application) were to move forward, did the Building Inspector have or could he compile readings of the sound levels through the course of the day, weekday and weekend in the Fort neighborhood. **Mr. Sanborn** said he could do so but said he didn’t know how much he could do between today and Tuesday. **Councilor Tobey** said the City and the neighborhood would need to have that to provide benchmarks. **Mr. Sanborn** said the ordinance does refer to measuring the sound level before and after the noise is generated. He added that he was not a sound engineer, but to get an idea, he would take readings on go Monday and Tuesday twice to take readings but it depends on what is going on in the area to ascertain true noise for that area. He said he would take the readings but didn’t know if in such a short period of time it would give a real sense of what the real noise in the area. **Councilor Tobey** said he would leave it with Mr. Sanborn and his professional opinion in working with the Administration. He said he thought this was an important database to have. He added he did not think Mr. Sanborn would be able to gather it between now and Tuesday to make it fully representative and capture it all but should be at least be considered.

**Councilor Tobey** asked about the timeframes for the period testing required to be done. **Attorney Cunningham** said the applicant was thinking on a Tuesday or Wednesday between 10 am. and 2 p.m. which is a time when there is noise from industrial concerns already and that would be an appropriate time to run the emergency generator. If it didn’t work out they are amenable to adjusting that and are open to it.

Review of Amended Project Plans: Architectural and Engineering:

**Attorney Cunningham** noted the set of record plans that bear a date showing the revisions. The revisions have come out of the process of review, including the 3<sup>rd</sup> party review comments from the Fire Chief and others on the City staff, he said. He noted there are two sets of plans, an architectural set and an engineering set. The engineer and architect were present and would discuss the revisions.

- Engineering Plan Set:

**Mr. Morey** said the engineering set consists of two sets of major changes. The first set has a revision date throughout of 12-14-2012. Those came as a result of the initial peer review comments made by the BETA Group and GZA Vine as part of their overall review of the project on behalf of the City Council, the Planning Board and ConCom, he said. The changes consisted of some typos on the general notes sheet **C100**; the survey of existing conditions survey was split into two drawings which resulted in a topographic plan **C200A**. Plan of Land that split out noted as **C200B**. There were no changes made to the Record Resource Delineation Plan and was included for reference only. **C300** had some minor changes to the parking internal to the garage, specifically the handicap parking spaces were pushed back and slip aisle was created to allow better circulation through the garage. More details were added about the locations crosswalks crossing the two project drives and the exit of the garage. Sheet **C400- Grading and Drainage Plan** featured some minor changes to the overall drainage layout. The plans went from trench drains at the driveway exits to actual catch basins with sumps and hoods; and also included some drainage inlets along the concrete walkway that fronts the beach and modified the size and location of the infiltration system and provided some additional grading details. **C410** clarified and made more site specific for some of the erosion control measures that were proposed. **C420** is a written document of the erosion control plan. **C500** featured a relocation of a gas line. **C600** was modified to include the updated seawall design that moved from a conceptual to an actual design. **C601, C602 and C603** were added to the plan set showing construction plans for the seawall. **C701, C702, C703** were added to the plan set to clarify demolition and construction practices. The remainder of the plan set, **C801 through C808** are construction details that were either modified or added in response to some of the peer review comments. Subsequent changes to that were based on with the Fire Chief and included a widened entrance to the project from 20 feet to 25 feet; raising the port-cochere (entrance overhang) up to 13 feet, 6 inches

clear; and relocating the fire department connection on the building to over by the loading dock; and adding bollards around the hydrant that will remain in the parking lot. The final plans presented to the Council to ensure there is a consistent date throughout are referred to as a record set included the date of 2-26-13 and is reflected in the date of Mr. Morey's stamp.

Councilor Tobey asked if this captures ConCom requirements and conditions. **Mr. Morey** said the only thing that wasn't included was a ConCom requirement that the final design calculations and back up for the seawall be submitted 7 days prior to the pre-construction meeting. He said that information was not in the plan set yet.

**Councilor Tobey** said it would not have to be as it would occur in the future which **Mr. Morey** confirmed and added that every other condition that ConCom required has been addressed by these changes he enumerated.

Councilor Hardy confirmed with Mr. Morey that the port-cochere was raised to a height of 13 feet, 6 inches which was done at the request of the Fire Chief which will allow for bigger growth of Fire Department vehicles in the future.

- Architectural Plan Set:

**Sandra Smith**, Senior Project Architect, Perkins & Will said the architectural plans title page was revised, removing the civil drawings off it which are in a separate set now. The title page only reflects the landscape and architectural drawings. **L1-00** was changed reflects the island changes and the curb cut entry into the parking lot at Fire Department's request to make sure their vehicles had proper turning radii. A planting strip on the westerly edge had to be eliminated which is reflected on the planting plan **L2-00** planting plan. **L3-00** shows the landscape lighting plan shows the addition of lights along the pathway along the property line of the Mortillaro property which is in the upper northeast quadrant. **A0-00** was changed to reflect some comments that the Fire Chief made to include the Knox box (a small wall-mounted safe to hold building keys for use of emergency services) and a fire command panel in the lower hotel lobby. It also reflects a stairway that now goes to the upper deck level on Level 1 of the hotel at the lower southeast corner. It also shows a fire stair continuing down and exiting out onto Fort Square. On 1<sup>st</sup> level, **A0-01**, a major change was to extend the stair down to the parking level, and also refined the two deck plans to include retractable awnings to be extended in summer and retracted during the winter. **A0-06** reflects raising the canopy height. **Councilor Hardy** asked if there was a plan numbered A0-09. **Ms. Smith** confirmed the last plan is numbered A0-08.

**Councilor Hardy** thanked the applicant for the lighting to be installed between the Mortillaro property as it was something that was requested during the site visit, and that the neighbors also requested.

**Councilor Tobey** noted when this lengthy process began, Councilor Hardy generously volunteered to keep track and compile all the elements to be put into motions to come before the Council on this matter. He then asked Councilor Hardy to report and present the motion for the Committee's presentation to the Council.

**Councilor Hardy** disclosed under MGL c. 268A she has contacted the Ethics Commission and obtained permission to attend the wedding of the applicant. She then requested permission of the Chair to read from a prepared report which **Councilor Tobey** assented.

**Councilor Hardy** then said in the matter of Major Project Application SCP2012-010, Beauport Gloucester, LLC, located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33 which is located in the Hotel Overlay District in the Marine Industrial Zone (MI) – said application is for the construction of a 101 room Hotel under Section 5.25 of the Gloucester Zoning Ordinance (GZO). As the Permit Granting Authority, the Gloucester City Council is considering the following Special Council Permits:

- Section 5.25 Special City Council Permit to allow construction of a 101 room Hotel in the Hotel Overlay District (HOD)
- Section 5.7 – Major Project (construction of a Hotel)
- Section 5.25.3.2(a) and (b) (Hotel use and accessory uses)
- Section 5.25.4.1 footnote (h) and Section 3.1.6 (b) (height)
- Section 5.25.7.2 and 5.5.4 (Lowlands)
- 5.25.5.1 (valet and tandem parking)

Based on presentations by the Applicants, their Attorneys and Consultants as well as reviews by the Planning Board, Conservation Commission and peer reviews by City Consultants I propose that the Planning and Development Committee adopt the following findings as required by Section 1.8.3 of the Gloucester Zoning Ordinance:

**Social, Economic or Community Needs (1.8.3 (a))**

**Councilor Hardy** stated with regard to the social, economic or community needs that:

The multiple studies commissioned through City Offices and by the Applicant have shown that there is a demand for a year round Hotel in Gloucester. This proposal provides a beach front full service business, family and tourist oriented facility with meeting rooms and function facilities. The activities in the Hotel will generate additional business for downtown restaurants, businesses, and cultural activities. Existing businesses in the City's Industrial Parks and new businesses will have a necessary Hotel to facilitate their work. The proposed Hotel will extend our Harbor Walk further, incorporating the Fort and Pavilion Beach.

The Hotel will result in the creation of many jobs at various levels. There will be numerous construction-related jobs and at least 160 professional and service jobs. The applicant has committed to giving a preference for Gloucester residents in employment and to Gloucester companies and Gloucester vendors for services.

Therefore **Councilor Hardy** proposed that Planning and Development Committee find that the hotel serves the social, economic and community needs of the City of Gloucester.

#### **Traffic Flow and Safety, including Parking and Loading (1.8.3 (b))**

With regard to traffic flow and safety, including parking and loading **Councilor Hardy** said that:

The Planning and Development Committee and the Planning Board reviewed the City's Engineer and the City's technical consultant, BETA Group's review of the applicant's traffic study.

The Applicant has conducted all traffic counts and related studies, utilizing appropriate industry standards for the proposed use. The BETA Group concluded that the construction of the Hotel does not, in and of itself, cause any significant deterioration in traffic operation.

The application exceeds the off-street loading requirements (Section 5.25.5.2) for a Hotel within the HOD as it has two full loading bays.

The Applicant submitted a parking management plan (see Appendix 2), which provides 141 on-site parking spaces, no fewer than 50 off-site parking spaces, valet parking, off-site employee parking, shuttle van service when appropriate, and a limitation that there will be no valet parking in the residential Fort neighborhood.

**Councilor Hardy** proposed that the Planning and Development Committee find that the project will not have a negative impact on traffic or parking concerns in the area.

#### **Adequacy of Utilities and other Public Services (1.8.3 (c))**

Regarding the adequacy of utilities and other public services **Councilor Hardy** stated that:

The DPW Director has submitted a memo to the Council explaining the proposed municipal infrastructure plan and stated that it will ensure the adequacy of utilities.

The Applicant has agreed contribute \$2,000,000.00 (Two Million Dollars) toward the cost of the infrastructure improvement project. The Applicant has already contributed \$600,000.00 (Six Hundred Thousand Dollars) of the \$2,000,000.00 (Two Million Dollars) for the design portion of the infrastructure improvements and the balance will be paid according to a proposed Agreement which has been submitted to the Committee.

The Fire Chief has concluded that the safety issues have been reviewed to his satisfaction. This includes the raising of the canopy on the porte-cochere (car port).

The storm water management plan and the operations and management plan has been reviewed and revised such that the, BETA Group, confirmed that storm water standards have been met.

**Councilor Hardy** proposed that the Planning and Development Committee find that there are adequate utilities and other public services available to the project.

#### **Neighborhood Character and Social Structures (1.8.3 (d))**

Regarding neighborhood character and social structures **Councilor Hardy** enumerated that:

The neighborhood includes both Industrial and non-conforming residential uses which have co-existed for a number of years. The inclusion of a hotel use in the neighborhood is consistent with the mixed use nature of the neighborhood.

As the residents in the neighborhood accept the existing industrial sound and odors generated by the industrial uses, the hotel can do the same.



The Applicant is aware of these potential concerns and has agreed to a condition providing a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns – be they from the industrial uses or the residential uses. This condition addresses any lingering concern about the co-existence of the uses.

The neighborhood consists of both flat and peaked roof buildings. The design of the proposed building is compatible with the area and the combination of the amenities of a full service Hotel and the proposed size and shape of the Hotel are appropriate.

The location and sound of the emergency generator will not be substantially detrimental to the neighborhood. Alternative locations are not feasible. The Applicant has agreed to conditions requiring the monthly testing of the emergency generator be done at a regularly scheduled time so as not to inconvenience neighbors; to construct a sound wall around the generator enclosure; to plant evergreen screening around the emergency generator to lessen the sound while at the same time serving to screen the blank sound wall. The sound created by the emergency generator will be the same as or less than the sound created by the other industrial uses in the neighborhood.

**Councilor Hardy** then proposed that the Planning and Development Committee find that the inclusion of a Hotel in the neighborhood is not substantially detrimental or out of character with the neighborhood or its social structure.

#### **Impacts on the Natural Environment (1.8.3 (e))**

Regarding the Natural Environment **Councilor Hardy** stated:

The proposed lighting meets the City of Gloucester Code of Ordinances requirements in that it reduces light spill to abutting properties including Pavilion Beach.

The Applicant has represented that there will be no lighting of Pavilion Beach (by the Hotel) at any time.

The site currently is completely covered by pavement and a building. The Applicant's landscaping plan adds vegetation to the site.

The Applicant has agreed to convey all of its right, title and interest to the Pavilion Beach parcel to the City for the continued use as a public beach. Applicant proposes constructing improvements for public access to the Beach.

**Councilor Hardy** proposed that the Planning and Development Committee find that the proposal will not have a substantial negative impact on the environment.

#### **Potential Fiscal Impact, Including Impact on City Services, Tax Base and Employment (1.8.3 (f))**

**Councilor Hardy** said in regard to the potential fiscal impact, including impact on City services, tax base and employment:

The revenue generated by increased real estate taxes from the project will be significantly higher than the revenues generated by the existing vacant dilapidated building. There will be additional revenue generated from meals and room taxes with minimal impact on City services. The project will increase the commercial tax base.

The Project is projected to generate revenue to the City from the fees for various building permits, connections to municipal services. There will be additional revenue incidental to having an employed citizenry working and spending their disposable income in Gloucester.

The Applicant has agreed to a significant contribution to the Fort infrastructure improvements project

The Applicant has estimated that there will be many construction related jobs over several years and approximately 160 or more permanent professional and service jobs, both full time and part time, will provide a positive fiscal impact. Jobs associated with other services related to the operation of the Project such as maintenance, snowplowing, landscaping, waste removal, and private security will also be provided.

**Councilor Hardy** proposed that the Planning and Development Committee find that the adverse effects of the proposed use will not outweigh its beneficial impact to the City or the neighborhood in view of the particular characteristics of the Site and of the Proposal in relation to this site.

**Councilor Hardy** then proposed the first motion by the Planning and Development Committee to recommend to the full City Council the granting of a Special Council Permit to Beauport Gloucester LLC (applicant and owner) under GZO Sec. 5.7, Major Project Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.3.2 (a) and (b) with conditions which **Councilor Verga** seconded.

**Councilor Tobey** commenting on condition #1 said Mr. Cunningham said the testing protocol of the emergency generator is only once a month for 30 minutes which **Mr. Cunningham** confirmed. **Councilor Tobey** suggested Condition #1 be amended to reflect that fact. **Councilor Hardy** said she would accept a friendly amendment.

**Ms. Egan** said her suggestion is that the Committee heard testimony that the generator had to be tested to specific fire regulations and that the condition should reflect that. The Committee would want a condition regarding testing should be compliant with those regulations as opposed to setting one in the Special Permit so that in the future the City can go back to those regulations to make sure everything is consistent. **Ms. Egan** proposed that Condition #1 be revised to reflect that the emergency generator be tested as required by the State Building Code NFPA 110. With **Ms. Egan's** and **Mr. Sanborn's** input, **Councilor Hardy** accepted a friendly amendment to her motion to adjust Condition #1 to incorporate state regulations.

**Councilor Hardy** said as the maker of the motion she wished to add that the Special Council Permit for Major Project/Hotel for Beauport Gloucester, LLC may be subject to many conditions. She proposed that the Planning and Development Committee find that:

The proposal meets the criteria under Section 1.8.3, the criteria under Section 5.7.5 (a-d) for Major Project and the guidelines of the Hotel Overlay District (HOD) under Section 5.25.

She also proposed that the Planning and Development Committee recommend to the City Council that they adopt - as its own the Planning Board's recommended conditions which are incorporated herein and attached hereto as Appendix one for general conditions 1-26 and Appendix 2 for conditions 1-7 as it relates to the parking plan.

**Councilor Tobey** inquired if this was an amendment to the motion to which **Councilor Hardy** said the information she had just presented was just for discussion. **Councilor Tobey** said he believed the Committee needed to make a finding, and to do that it would be by some affirmative action.

**Ms. Egan** stated to capture the two requirements just noted by **Councilor Hardy** she would suggest the Committee capture it by incorporating by reference the Planning Board's suggested conditions in their report. **Councilor Tobey** asked what of the lengthy, and subject to findings at public hearing, potentially all inclusive points that **Councilor Hardy** read on each of the six criteria, was there a need to make findings on those six criteria or not. **Ms. Egan** said the criteria under the zoning ordinance are that all of those criteria have to be met. **Councilor Hardy** proposed the Committee make a finding with regard to those criteria. **Councilor Tobey** said the Committee would then share the same model at the Council meeting. He also asked if the Committee needed to amend the motion to capture the two Appendices. **Ms. Egan** said, "Yes." **Councilor Hardy** then proposed an additional condition to capture the two Appendices with the unanimous consent of the Committee.

**Councilor Verga** mentioned several items of concern and asked if the Committee needed to incorporate them as conditions - that of employee parking and their parking on adjacent streets and asked if that could be prohibited or if it could be done by asking the employer to strongly urge their employees to park away from adjacent streets of the hotel. He also asked what if the hotel, later on, starts complaining about the sounds and odor; and could the Committee incorporate something to address that. **Councilor Hardy** said that was addressed previously. She noted everything the Committee says within the context of the text is incorporated into the decision. It was addressed here, and **Councilor Hardy** said that the hotel would have to abide by the orders and the sounds just as those folks who live in the area do. If **Councilor Verga** wished to add it as a stand-alone condition, she said, she would be willing to add it to the motion as a condition. **Councilor Verga** said while he didn't read it that way, he agreed if that was the intent it was "okay" with him. **Ms. Egan**, on inquiry by **Councilor Tobey** stated it would be written into the decision because it is a finding. **Councilor Tobey** added that ultimately the Council would be voting in the future, assuming this motion passed, for a final decision that built that all in; and that if there were violations by the applicant they could be "hailed" back in front of the Council or infractions, up to and including revocation. **Ms. Egan** stated her agreement, that it would be referred to the Building Inspector for enforcement. **Councilor Verga** said in terms of the parking plan that talks about employees as parking off site, the Committee doesn't specifically address someone parking on adjacent streets. He reiterated the Council cannot order employees not to park on the adjacent streets to the hotel, especially if an employee is a resident and has a resident sticker and happens to work at the hotel; but he asked could the Council incorporate that request that employees are urged to not park on adjacent streets and to park off site as a condition. **Ms. Egan** said in Conditions 1-7 with regards to parking plan, those issues are addressed which she enumerated. It did not, she said, say to not park in the local neighborhood. It could be added into the motion's conditions, she said. **Councilor Verga** then proposed this be added to the motion's conditions and by unanimous consent was added that employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.

**MOTION 1. MAJOR PROJECT/HOTEL FOR BEAUPORT GLOUCESTER, LLC**

**MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit for Major Project/Hotel for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner) Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.3.2 (a) and (b) and section 5.7 (Major Project) with the following conditions:**

1. *The emergency generator testing and maintenance, as required by the State Building Code and NFPA 110, shall only occur between the hours of 12:00 noon and 2:00 pm, except in cases of an emergency.*
2. *There shall be evergreen vegetation planted and maintained at the sound board wall on Fort Square. The vegetation shall be of a species that will withstand the salt air and other environmental considerations in the area. A landscaping plan reflecting the required vegetation shall be submitted to the building inspector prior to the issuance of a building permit.*
3. *The applicant shall purchase two (2) identical decibel meters (sound meters) one for the Gloucester Inspector of Buildings and the other for the Hotel Community Liaison.*
4. *As it relates to sound and odors, the Applicant shall provide a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns.*
5. *There shall be no lighting of Pavilion Beach at any time by the Hotel.*
6. *There shall be bollards placed around the project's onsite hydrant, said hydrant shall remain unobstructed at all times.*
7. *There shall be public access from Commercial Street to Pavilion Beach and a walkway across the beach side of the Hotel for public access as shown on the plans as a part of this application.*
8. *The Applicant shall urge National Grid to work with it in order to place the utilities underground.*
9. *The Beach and Development Agreement shall be incorporated herein as Appendix 4 and made a condition of this special permit.*
10. *That the City Council adopt as its own the Planning Board's recommended conditions which are incorporated herein by reference and attached hereto as Appendix 1, General Conditions 1-26 and Appendix 2 for Conditions 1-7 as relates to the parking plan.*
11. *Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.*
12. *The Applicant shall be required pursuant to the Zoning Ordinance, Appendix A, Rule 25, Part II, 5 (i), to provide documentary evidence to the City Council proving that any and all conditions specified by the Council in the Special Council Permit have been met at which time the Council will issue a "Certificate of Conditions Complete". No occupancy permit shall be issued until said Certificate has been provided to the Council.*

**Councilor Hardy** proposed and **Councilor Verga** seconded the second motion to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012 revised February 27, 2013, drawing number A0-06.

#### **DISCUSSION:**

**Councilor Hardy** said that the Committee must find that such increase in the allowable height is consistent with neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of view, overshadowing of other properties, impairment of utilities or other adverse impacts.

The peaked roof design is consistent with other nearby buildings such as the Tavern Restaurant and the Chamber of Commerce building. Peaked roofs are often preferred as they are in keeping with the character of our community. The Hotel peaked roof hides the building mechanicals, and provides more architectural interest than a flat roof. Other downtown buildings have the similar height. (McPherson Park, Sheedy Park and the Armory, the Clark Building each are six stories in height.)

Due to the combination of the amenities of a full service Hotel, including the proposed 101 rooms, meeting and function rooms, restaurant, and underground parking, the proposed height is appropriate for the proposed use.

Public safety and flood protection mandate the elevation of the building as the public areas are not on the ground floor which justifies an increase over the zoning height maximum.

The Committee reviewed the matter of overshadowing, focusing on the shadowing studies which showed that the increased height of the building will not create further substantially detrimental overshadowing of the existing 40', by right, height allowance in the MI district.

Utilities will not be impaired by the height. Although not within this discussion, but as mentioned at the P&D site walk, the Committee would urge the Applicant to work with National Grid to see if the utility poles would be able to be underground.

**Councilor Hardy** then proposed that the Committee find that the proposed increase of 21 feet in height is consistent with neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of view, overshadowing of other properties, impairment of utilities or other adverse impacts.

**Councilor Verga** said he would support this motion to move it forward to the Council and would like to hear both sides on this issue. **Councilor Hardy** noted these motions are based on what the Committee has already heard and reviewed. **Councilor Tobey** noted also one of the discussion points, again built into the final decision, is the reference to National Grid being the entity from whom the applicant would seek to move the utilities underground. He said National Grid is not the only entities hanging wires. This would be for purposes of the final decision. **Councilor Tobey** said this is a legal obligation to put forward comprehensive findings and facts. Councilor Hardy, he said, has dutifully put this into a grouping for a potential decision adoption by the Council. He added he would support the motion to move the conversation forward to the Council

#### **MOTION 2. HEIGHT EXCEPTION**

**MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012 revised February 27, 2013, drawing number A0-06.**

#### **DISCUSSION:**

**Councilor Hardy** said The Hotel Overlay District, Section 5.25.5.1 authorizes the City Council to grant a special permit to allow the use of off-site parking for a Hotel located within the HOD with certain conditions. The applicant has agreed as part of the Special Council Permit for the Hotel to a condition by which prior to the issuance of a building permit to construct the Hotel, the applicant will submit documentation of no fewer than fifty (50) off-site parking spaces.

The additional parking, off-site and served by valet service and/or shuttle van service and tandem parking will alleviate potential overflow parking congestion in the area of the Hotel. Utilizing off-site parking, valet parking, shuttle van service and tandem parking in the Hotel parking lots, both on and off site, will facilitate traffic flow and will minimize impacts to traffic flow in the neighborhood. Employee parking off-site during periods of heavy Hotel and function use will allow for more guest parking and will minimize parking turnover associated with frequent moving of guest vehicles and will eliminate the potential for Hotel staff working at 47-61 Commercial Street to park in the residential neighborhood.

**Councilor Hardy** proposed that the Committee find that the proposed Hotel meets the minimum parking requirements for a Hotel under Section 5.25.5. of the Gloucester Zoning Ordinance.

#### **MOTION 3. OFF SITE, VALET AND TANDEM PARKING FOR THE PROPOSED HOTEL.**

**MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.5.1 for off site, valet and tandem parking for the proposed Hotel with the following conditions:**

1. *The off-site parking lot shall comply with the requirements of the Gloucester Zoning Ordinance.*
2. *The parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer review proposed seven conditions which shall be incorporated herein and will be attached to the final decision as Appendix #2.*

**Councilor Hardy** proposed and Councilor Verga seconded a motion to recommend to the full City Council the granting of a Special City Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4 at 47-61 Commercial Street.

**Councilor Hardy** said the HOD, 5.25.4.1 allows for or a Special Council Lowlands Permit, the City Council must find that the application for a Lowlands Permit meets the requirements of the Wetlands Protection Act. The City Council relies on the Gloucester Conservation Commission to advise us of that determination. The Shellfish Constable submitted a letter stating that the project will have no adverse impact on the shellfish resources of the City.

The Conservation Commission has issued an Order of Conditions.

**Councilor Hardy** proposed that the Planning and Development Committee finds that the Order of Conditions satisfies the Committee that the project meets the requirements of the Wetlands Protection Act and will not pose a hazard to health or safety and will be executed as to conserve the shellfish and other wildlife resources of the City. The Order of Conditions shall be incorporated herein and attached hereto as Appendix 3.

**Councilor Verga** added that there are competing expert opinions and that he would look to hear more at the public hearing and would move this motion forward for the purposes of Council discussion.

#### **MOTION #4 LOWLANDS PERMIT**

**MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a Special City Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4 at 47-61 Commercial Street.**

**The following are the Appendices as referenced to in Councilor Hardy's P&D Committee Report:**

#### **Appendix 1 Planning Board General Conditions**

The following conditions, as modified have been recommended by the Planning Board and are conditions to the special permit: These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision.

The Project shall be constructed in accordance with the following Record Plans, which are on file with the Planning Board and City Clerk's Office:

Plans to Accompany Permit Applications for Beauport Gloucester Hotel prepared by Beal's Associates Inc. bearing most current revision date.

1. All operations and maintenance system reports of the stormwater and wastewater shall be forwarded to the Community Development and Engineering Departments.
2. All site lighting shall be in compliance with the lighting provision of the Code of Ordinances.
3. That any action by the City Council includes specification of elements of the Project and responsibilities that will remain private. The City shall not have any legal responsibility for the operation, maintenance, repair or replacement of the same to the extent such features are located on the Site:

- All driveways and parking areas within the Project
  - Stormwater management facilities within the Project
  - Snow plowing of driveways and parking areas and snow removal
  - Landscaping within the Project
  - Trash removal from the Project
  - Lighting within the Project
  - Water and sewer services within the Project.
5. In the event of any emergency, the Applicant shall allow the City of Gloucester DPW access to the sewer and water lines on the Site for repair purposes.
6. The Conservation Commission's Order of Conditions pursuant to 310 CMR 10.00, or any superseding order of the Department of Environmental Protection (DEP), if applicable, and an Order of Conditions issued under the Gloucester Wetland Ordinance regarding this property shall be made a part of the special permit. If there is any inconsistency between the Record Plans and the plans as may be approved by the Conservation Commission or by DEP, the Applicant shall submit an amended plan to City Council and the Planning Board for review and to the Conservation Commission and to DEP (if applicable) for approval before the City Council Decision to ensure all approvals are consistent with one another.
7. A preconstruction conference with City departments shall be held prior to the commencement of construction of the Project. The contractor shall request such conference at least fourteen business days prior to commencing construction by contacting the Planning Director and Engineering Department in writing. At the conference, the applicant and municipal officials shall agree upon a schedule of inspections. The applicant shall provide the City (including the following departments: Inspector of Buildings, Fire, Police, Engineering, DPW, Community Development and the Board of Health) with 24 hour emergency contact numbers as well as the name and telephone number of a designated owner's representative for all Project related communication.
8. During construction of the Project, the applicant shall conform to all local, state and federal laws regarding noise and vibration. The applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction of the Project shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. except for certain operations such as concrete finishing and emergency repairs. Exterior construction shall not commence on Saturday before 8:00 a.m. and shall not continue beyond 5:00 p.m. with the same exceptions. The Building Inspector may allow longer hours of construction in special circumstances provided that such activity normally is requested in writing by the applicant except for emergency circumstances where oral communication shall be followed by written confirmation. There shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Gloucester Police Department.
9. The City Council's agents shall be allowed entrance onto and view and inspect the Site during regular business hours to ensure compliance subject to applicable safety requirements as established by the applicant or its contractor including signing in at the construction field office trailer prior to entering the site.
10. Construction monitoring shall occur as required under the Conservation Commission's Order of Conditions or any Final Order issued by DEP.
11. Dust from outside activities shall be controlled. The applicant and its contractors shall effectuate the following practices to minimize levels of dust:
- Wetting soils that are excavated from unsaturated zones
  - Wetting equipment during excavation/loading activities

- Minimizing dust generation from areas that have been excavated through the wetting of soils or by other means of stabilizing dust particles.
  - Stockpiles left more than 30 days shall be stabilized
  - Restricting vehicle speeds and travel routes on the Site
  - Covering truck beds transporting soils off-site/on-site to prevent dust generation
  - Regularly scheduled sweeping of paved areas to ensure a nuisance is not created by blowing soil, dust or debris.
12. Construction fencing shall be erected for the duration of construction, as shown on the Record Plans. Fencing shall be 6 foot wire fencing with fabric screen.
  13. Staging of equipment and material shall be located within the Project. Good faith efforts shall be made to schedule material deliveries to avoid peak traffic hours.
  14. Excavation shall be conducted according to all city and state regulations including 527 CMR. 13.00 And the Gloucester Code of Ordinances Section 13 Noise, and shall be conducted within the hours set forth in Condition #8.
  15. Sedimentation and erosion controls, as shown on the Record Plans, shall be maintained and inspected by an independent erosion control monitor on a weekly basis, or as directed by the Conservation Agent or Engineering Department and said inspections shall be reported in writing to Conservation and Engineering Departments.
  16. The applicant shall (at its own expense) be required to promptly repair any damage which applicant causes to sidewalks, street pavement, signs or other fixtures or features within the public right of way after obtaining permission from the City.
  17. The Project shall be connected to the City of Gloucester utility system for domestic water and fire flow. Final fire flows in compliance with state and local regulations shall be certified by the Fire Department.
  18. The Applicant shall follow the Operation and Maintenance Manual dated December 14, 2012, for the Project's stormwater management system. In the event that the Applicant fails to maintain the on-site stormwater management system in accordance with such Plan, the DPW shall give written notice of such failure and the Applicant shall have twenty (20) days to repair the cited failure. In the event of an emergency and an inability to contact the Applicant or its successor in interest, the DPW may conduct such emergency repair and the Applicant shall permit entry onto the Site to make such emergency repair. In the event the DPW conducts such emergency repair, the Applicant shall promptly reimburse the DPW for all reasonable expenses associated therewith. No entry by the DPW shall be made without prior written notice to the Applicant and without affording the Applicant a reasonable opportunity of not less than twenty (20) days as aforesaid to cure the maintenance or repair problem.
  19. The Applicant shall be responsible for Site security during and following construction. The Applicant shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Site, as directed by the Gloucester Police Department.
  20. Following construction of the Project, the applicant shall provide an "as-built" site plan to the Engineering Department, Building Department and Community Development Department prior to the issuance of a certificate of occupancy for the Project in accordance with applicable regulations. The applicant shall provide a separate as-built plan depicting the water mains and services and sewer mains and facilities to the Engineering Department demonstrating compliance with the Record Plans and installation specifications. These plans shall also be submitted in electronic format.

21. The applicant shall actively recruit in Gloucester for all open staff positions including making such efforts as advertising jobs in the local Gloucester newspapers and having a job fair in Gloucester for Gloucester residents
22. Construction shall commence within 2 years of the granting of this special council permit, as affected by state law.
23. That the Agreement between Beauport Gloucester, LLC and the City of Gloucester that was presented to the City Council on February 25, relating to conveyance of the beach parcel and contribution for off-site improvements is incorporated into this special permit (see Appendix 4) and any violation of the Agreement would be grounds to revoke this permit.
24. Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements (redacted as to financial terms) or copies of deed(s) for such parcel(s) shall be delivered to the Building Inspector, before a building permit is issued for the applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Building Inspector's determination that this condition has been satisfied shall be conclusive.
25. If the Applicant wishes to modify the approved Record Plans, it shall submit proposed modifications in accordance with the provisions of GZO Section 1.5.13 and/or the provisions of the Permit. Where such modification is deemed substantial, the same standards and procedures applicable to an original application for a special permit approval shall apply to such modification and review, and recommendation by the Planning Board and public hearing by the City Council; provided, however, that the Building Inspector may determine that a proposed modification is insubstantial and approve the same.
26. The Building Inspector, in consultation with the Conservation Agent, Planning Director, and the Director of Public Works shall determine whether any modifications to the Project are substantial or insubstantial. In making such determination, the following shall be presumed to constitute substantial modifications, subject to confirmation by the City Council by majority vote at a public meeting:
  - Changes to the building or grading that increase the building's height beyond that shown on the Record Plans;
  - Changes to the building that increase the total floor area of the Project beyond that shown on the Record Plans;
  - Changes to the architectural character of the buildings shown in the Record Plans.

**Authorization to modify the Record Plans shall be obtained prior to any substantial modification in the field.**

Condition #6 above suggests that any Order of Conditions issued by the Gloucester Conservation Commission, or Final Order issued by DEP, be incorporated by reference. The Board understands the Conservation Commission review is ongoing and additional information is being developed to address construction related issues including but not limited to: demolition, seawall construction and coordination with the proposed city infrastructure improvements.

#### **Appendix 2 Conditions 1-7**

The City Council adopts as its own, the following conditions, as modified, that have been recommended by the Planning Board related to the parking management plan submitted by the applicant dated December 12,



2012 as part of the response to peer response proposed seven strategies. These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision:

1. As recommended by the Planning Board, Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements, (redacted as to financial terms) or copy(s) of deeds for such parcels shall be delivered to the Building Inspector, before a building permit is issued for the Applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Inspector of Buildings determination that this condition has been satisfied shall be conclusive
2. During busy periods, use of the garage spaces will be reserved primarily for Hotel guests, assisted and managed by the valet/parking manager. The surface parking spaces will be available for short term visitors and users of the restaurant and multi-use facilities.
3. During the peak busy season, on-site parking may be limited to one vehicle per room.
4. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand.
5. At peak times, valet service will be used to efficiently park vehicles in the garage. Managed parking will be done so as not to block circulation lanes.
6. Off-site parking, when needed, will be made available for employee parking or for parking for Hotel guests who do not anticipate needing their cars on a daily basis. A van can be utilized to provide shuttle service for employees and guests when off-site parking is required.
7. Groups using the Hotel for meetings or functions, particularly during peak seasons will be encouraged to arrive and depart in limousines and small buses and trolleys.

### ***Appendix 3 Order of Conditions***

The City Council adopts as its own, the following Order of Conditions, as modified, that have been recommended by the Conservation Commission as their Attachment "A". These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision:

Attachment A  
CITY OF GLOUCESTER, MA CONSERVATION COMMISSION  
ORDER OF CONDITIONS  
Applicant: Beauport Gloucester, LLC March 6, 2013  
Location: 47-61 Commercial Street, Gloucester, MA DEP FILE #028-2232 and  
City of Gloucester Wetlands Ordinance

The property site is defined as the property located at 47-61 Commercial Street in the City of Gloucester, Massachusetts, which is shown in part as Lot 33 on the City of Gloucester Assessor's Map 1. The upland parcel contains about 1.85 +/- acres of land. The property is described in a deed dated July 7, 2011 and recorded with Essex South District Registry of Deeds in Book 30521, Page 84, together with applicant's rights in the beach and flats thereto belonging.

The activity is defined as the construction of a 101-room hotel along with the construction of a seawall, walkway, utilities, construction of entrance and egress, parking areas and the construction of a stormwater management system, all as shown on the approved plans. Portions of the work lie within the 100' buffer of

the coastal bank, 100' foot buffer to the coastal beach, and within land subject to coastal storm flowage.

After conducting public hearings, conducting a site visit and obtaining professional review the Gloucester Conservation Commission has found as fact that portions of this property are defined as Coastal Beach and Land Subject to Coastal Storm Flowage. There are also areas defined as Coastal Bank, Land Under the Ocean, Shellfish Beds and Eelgrass Beds located seaward of the Coastal Beach fronting the property. The locations of the Coastal Resource Areas on the property were the subject of an Order of Resource Area Delineation, DEP File #28-2211 issued by the City of Gloucester Conservation Commission on September 14, 2012., the Gloucester Conservation Commission has found as matter of fact that a portion of the proposed project is subject to the Wetlands Protection Act and the City of Gloucester Wetlands Ordinance, Chapter 12 as well as the 2008 Massachusetts Department of Environmental Protection Stormwater Regulations.

**Special Conditions:**

1. No work shall commence on the affected property until all appeal periods pertaining to this order have elapsed. After the expiration of all such appeal periods in accordance with General Condition 9 on page 3 of this Order of Conditions and prior to commencement of any work on the affected property, this Order of Conditions must be recorded at the Southern Registry District of the Essex County Registry of Deeds. Failure to record this Order of Conditions will result in automatic revocation of this Order as provided by General Condition 1 on page 7 of this Order of Conditions.
2. The Gloucester Conservation Commission shall be notified in writing within fifteen (15) days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance. In conjunction with the transfer of ownership, interest, or control of the property subject to this Order and/or transfer of contract to perform the work conditioned by this Order, the applicant shall submit to the Gloucester Conservation Commission a statement signed by the successor(s) in ownership, interest or control of the property or contract to perform the work that she/he is aware of an outstanding Order of Conditions on the site, has received a copy of this Order of Conditions and has accepted responsibility required by General Condition 17 on page 5 of this Order of Conditions.
3. This Order shall be made part of all construction contracts and subcontracts dealing with the work proposed, and the requirements of this Order of Conditions shall supersede any conflicting contract requirements. The contractor or contractors responsible for the project's completion shall understand and be notified of the requirements of this Order of Conditions. Any person performing work on the activity that is the subject of this Order of Conditions is individually responsible for understanding and complying with the requirements of this Order of Conditions.
4. The contractor, contractors, or other individual(s) in charge of work on the site shall have a copy of this Order of Conditions, as well as all approved plans and documents referenced in Section A 8 of this Order available at the on-site office upon commencement of any site work and shall make the plans and documents available to any person doing work on the site at all times.
5. Prior to any work being done on the project site, the applicant shall inform the Gloucester Conservation Commission in writing of the names, addresses, business, mobile and home telephone numbers of both the project supervisor who will be responsible for ensuring on-site compliance with this Order and his/her alternate. The notification shall occur at least 48 hours prior to commencement of any work on the site. The 48 hours shall not be over weekends or holidays. The applicant shall also notify the Commission in writing of any changes in this information.
6. All work shall be conducted in strict accordance with the Notice of Intent and approved plans and supporting documentation unless otherwise specified in this Order of Conditions, which shall be the controlling document. Any other or additional activity in areas within the jurisdiction of the Gloucester Conservation Commission will require separate review and approval by the Conservation Commission.

7. If the Gloucester Conservation Commission finds, by majority vote, any changes as referenced in General Condition 14 on page 4 of this Order of Conditions to be significant and/or to deviate from the original plans, the Notice of Intent, or this Order of Conditions, the applicant shall provide written notice to the Gloucester Conservation Commission for approval prior to implementing the change in the field. The Commission shall determine whether the change is significant enough to require a new Public Hearing and/or the filing of a new Notice of Intent within 21 days. If a new public hearing is required or a new Notice of Intent is required these shall all be conducted and advertised and noticed to the abutters at the expense of the applicant, in order to take testimony from all interested parties. Within 21 days of the close of said hearing, the Commission shall issue an amended or new Order of Conditions.
8. Any material errors found in the plans or information submitted by the applicant shall be considered as changes, and the procedures outlined in General Condition 14 and Special Condition 7 above shall be followed.
9. No on-site wells for irrigation shall be constructed within 100 feet of any Coastal Resource Area without the filing of a new Notice of Intent with the Gloucester Conservation Commission.
10. Issuance of these conditions does not in any way imply or certify that the site or adjacent areas will not be subject to flooding, storm damage, or any other form of water damage.
11. The applicant agrees with the Gloucester Conservation Commission's position that the Order of Conditions as written, individually or as a group, protects the Interests of the Act. In the event that an Enforcement Order is issued to the applicant and/or the property owner and the applicant and/or the property owner fails to act after five (5) business days from the receipt of said Enforcement Order, the Gloucester Conservation Commission may satisfy the requirements of the Enforcement Order and the applicant agrees to reimburse the Gloucester Conservation Commission for all administrative costs and other expenses required to satisfy the Enforcement Order including but not limited to all costs incurred by the City due to the use of its own resources or the use of outside resources including the employment of experts, specialized contractors or any other individual or organization it deems necessary to satisfy the requirements of the Enforcement Order.
12. By accepting this Order of Conditions the Applicant, the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants may enter and inspect the property and the project pursuant to Condition 15, with or without probable cause or prior notice, and until a Certificate of Compliance is issued. After a Certificate of Compliance is issued the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants may enter and inspect the property and the project, with or without probable cause or prior notice for the purpose of monitoring compliance with those Conditions of this Order of Conditions which remain in effect in perpetuity. The Agent or members of the Gloucester Conservation Commission or their designees and consultants will follow the Owner's on-site check-in and safety procedures.
13. It is the responsibility of the applicant to satisfy all procedural requirements of all agencies which may have jurisdiction over the activity that is the subject of this Order of Conditions, and to obtain all required licenses, permits, or authorizations. These may include but are not limited to the following: a) Massachusetts Department of Environmental Protection Waterways License and other approvals, if required, b) NPDES Stormwater Pollution Prevention Permit, c) Massachusetts Highway Department Access Permit, if required, d) City of Gloucester City Council, e) Permits from the City of Gloucester Building Department including building, wiring and plumbing permits. Copies of all such licenses, permits and authorizations shall be provided to the Gloucester Conservation Commission immediately upon receipt.

Prior to Construction

14. At least 30 days prior to any construction or activity on the site the Applicant shall submit the following revised or supplemental final engineering drawings and information to the Gloucester Conservation Commission for their Approval. As appropriate the revised or supplemental plans and information shall be signed and sealed by a Massachusetts Registered Professional Engineer, Registered Professional Land Surveyor, Massachusetts Registered Landscape Architect, Massachusetts Licensed Site Professional or Massachusetts Licensed Soil Evaluator.
15. At least 30 days prior to the commencement of any activity on this site, the applicant shall pay for the services of the Gloucester Conservation Commission's consultant for the project to perform the following services:
  - Review and make recommendations to the Gloucester Conservation Commission on the applicant's revised plans, information and submittals as required by this Order of Conditions;
  - Attend the pre-construction meeting with the Gloucester Conservation Agent;
  - Inspect the installed erosion controls with the Gloucester Conservation Agent;
  - Conduct inspections of the site with the Gloucester Conservation Agent on a monthly basis while the work is being performed;
  - Conduct inspections of the site with the Gloucester Conservation Agent on a regular basis
16. The Gloucester Conservation Commission's consultant shall provide the Conservation Commission and the Applicant with a Scope of Services and proposed budget for the inspectional and consulting services required by this order. Upon acceptance of the proposal by the Conservation Commission, the Applicant shall fund an account administered by the City of Gloucester in the full amount of the estimated cost for the environmental monitoring at least 7 days prior to the commencement of any of the consultant's work. The consultant shall submit monthly invoices for services rendered to the Conservation Commission for approval and payment.
17. The Applicant shall submit the final SWPPP which includes all of the appendices, forms and attachments required by the 2008 NPDES General Permit for Stormwater Discharges From Construction Activities and which identifies the responsible parties. The construction period checklist should be revised to meet all of the requirements of the 2008 NPDES General Permit for Stormwater Discharges from Construction Activities. A sample inspection report form is available from the US EPA at [http://www.epa.gov/npdes/pubs/exampleswppp\\_residential\\_apppe.pdf](http://www.epa.gov/npdes/pubs/exampleswppp_residential_apppe.pdf). The SWPPP shall include a spill control and response plan.
18. The Applicant shall submit a detailed vibration monitoring plan to monitor vibrations near the Coastal Bank during the pile driving phase of the project. The plan shall be prepared by a Massachusetts Registered Professional Engineer experienced in pile driving operations and monitoring vibrations. Results of the monitoring shall be reported to the Gloucester Conservation Commission on a weekly basis. At no time shall the peak particle velocity adjacent to the coastal bank exceed 0.75 in/sec.
19. Design calculations supporting the final seawall construction plans and certification of the structure by a Massachusetts Licensed Engineer responsible for the design of the wall shall be submitted to the Conservation Agent for the City files prior to construction. Final Construction Plans depicting the Seawall and associated details shall be submitted by the design engineer noted above. Said plans shall incorporate any and all revisions requested by the Conservation Commission and agreed to by the applicant.
20. The ramps and stairway to the beach shall be ADA compliant and shall be designed to account for normal fluctuations of the level of sand.

21. The applicant shall coordinate with the City DPW and their engineers on the details of the connection at the east end of the seawall.
22. All of the above items shall receive Approval from the Gloucester Conservation Commission prior to any work on the site. The applicant shall pay for the Conservation Commission's NOI consultant, who will review and make recommendations to the Conservation Commission on the applicant's revised plans, information and submittals.
23. At least 7 days prior to the commencement of any construction or activity on the project site, an on-site Preconstruction Meeting must be held with the contractor, designated agent and the Conservation Agent and the selected environmental monitor to review this Order of Conditions to ensure that all conditions of this Order are understood and review the construction sequencing.
24. At the Preconstruction Meeting, the Applicant shall submit the documents listed below. These documents shall be updated regularly until construction on the project is complete. Documents shall include the following:
  - Photographs depicting the project site along the Coastal Resource Areas.
  - Results of sand density testing and grain size analysis. This shall form the basis of the sand specification required below.
  - Sand specifications shall be prepared by the applicant's engineer and submitted at the preconstruction meeting
  - Construction sequencing plan.
    - Construction schedule.
25. At least 7 days prior to the commencement of any activity on the project site the applicant shall notify the Gloucester Conservation Commission in writing that activity is commencing on a date certain. The 7 calendar days shall not include holidays.
26. No clearing of vegetation, including trees, or disturbance of soil on any areas within 100 feet of any wetland resource area shall occur prior to the Preconstruction Meeting, except such minimal disturbance required in order to stake the required erosion control lines.
27. After the Preconstruction Meeting and prior to any construction at the site, all erosion controls shall be installed along the approved staked line. The erosion controls shall consist of devices as located and detailed on the approved plans.
28. The construction and associated protective measures for the installation of the sheet pile wall, demolition of the existing building, placement of armor stone and the construction of ramps and stairways, shall be monitored and inspected by an independent engineering/environmental monitor as chosen by the Conservation Agent on a schedule determined and directed by the Conservation Agent. Periodic reports by the Monitor shall be filed with the Conservation Agent.
29. During demolition, and during construction of the seawall, the Applicant's consultant shall submit weekly monitoring reports with photos of the work and site, a description of work that took place that week and a description of work planned for the following week.
30. Prior to pouring the concrete for the seawall cap, the condition of the protective coating shall be inspected and any deterioration of the steel sheet piles shall be addressed.

31. Sand brought to the site for placement on the beach shall be compatible in color, shape and grain size with existing sand on the beach. A material specification shall be filed with the Conservation Agent prior to construction.
32. Construction safety fencing shall be installed prior to construction as outlined on the project plans and shall be modified as directed by the City Staff. The limits of the fencing adjacent to Coastal Resource Areas may be phased to maximize protection to the Coastal Resource Areas during the demolition of the existing building. Temporary protective fencing may be placed on the beach portion of the site at the Conservation Agent's direction if it is determined that further beach protection is necessary during demolition or during seawall construction.
33. No construction activities or alterations shall occur to the westerly end of Pavilion Beach on the seaward side of the upland parcel. This area shall be left in a "natural" state.
34. The designated inspector under the NPDES Permit and the SWPPP shall provide the Gloucester Conservation Commission with copies of all SWPPP Inspection Reports. Inspections shall be conducted at the intervals required under the NPDES. The inspection reports shall address the current condition of erosion and sedimentation controls; describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail.
35. The Applicant's Engineer shall provide the Gloucester Conservation Commission with a minimum of two (2) progress reports per month or at intervals as agreed with the Conservation Agent when work is ongoing directly adjacent to the Coastal Beach or work on the stormwater management system is ongoing. Progress reports shall indicate what work has been completed and what work is anticipated to be done over the next reporting period. The report shall also address the current condition of erosion and sedimentation controls and shall describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail. Failure to provide these reports within two days of the Applicant's Engineer's inspection of the site shall constitute a violation of this Order of Conditions and the Commission may issue an Enforcement Order requiring that all work be ceased until the reports are provided and the site is inspected by the Gloucester Conservation Commission, the Commission's Agent and/or the Commission's consultant.

#### **During Construction**

36. Accepted engineering and construction standards shall be followed in the completion of this project. This includes proper installation and maintenance of Erosion & Sediment Control (E&SC) Best Management Practices (BMPs) per applicable DEP, US Department of Agriculture Natural Resource Conservation Service (NRCS), and/or manufacturers' guidelines.
37. The erosion controls shall be maintained per General Condition 18 on page 8 of this Order of Conditions until the referenced stabilization efforts are inspected and approved in writing by the Commission. Upon completion of the project, the applicant shall remove and discard all E&SC materials determined to be detrimental to the resource areas and restore the soil and vegetation beneath the barriers to pre-disturbance condition.
38. The applicant shall have on hand at the start of any soil disturbance, removal or stockpiling, an emergency supply of erosion control materials consisting of a minimum of 200 feet of filter mitts in good condition and sufficient stakes for securing the filter mitts. The additional supply of filter mitts and stakes shall be used only for the control of emergency erosion, and shall be installed in accordance with the details shown on the approved plans. An emergency-use only reserve of products for other methods of E&SC, if previously approved in writing by the Commission, may be substituted. (See Standard Condition 17.)

39. The Owner must maintain erosion control devices and check on a weekly basis and after any rain event totaling more than 0.5" of precipitation over any 24-hour period. Filter mitts shall be maintained and replaced on an as-needed basis, unless the Gloucester Conservation Commission determines otherwise, to prevent the passage of accumulated sediments to resource areas downgradient of the site and the work areas. Accumulated sediment upgradient of erosion control devices shall be removed immediately if its depth exceeds 6 inches or every two weeks during construction.
40. The erosion control specifications provided in the Notice of Intent and the erosion control provision in the Order of Conditions will be the minimum standards for this project. Erosion control devices may be modified based upon experience at the site. Additional or modified erosion control measures may be required by the Gloucester Conservation Commission at any time before, during and after construction. These will be maintained until the Applicant's Engineer and a member or agent of the Gloucester Conservation Commission agree that they are no longer needed, at which time they will be removed, using mutually satisfactory removal procedures.
41. All existing catch basins and stormwater inlets and all new catch basins and stormwater inlets (immediately upon their installation) on and immediately adjacent to the site shall be protected by Silt Sacks to prevent sediment from entering the stormwater drainage system. Silt Sacks shall be maintained and regularly cleaned of sediments until all areas associated with the work permitted by this Order of Conditions have been permanently stabilized and the Gloucester Conservation Commission and/or Staff has formally approved their removal. Filter fabric placed under the inlet rim is not an acceptable substitute for silt sacks.
42. The contractor shall install temporary erosion controls on all stormwater drainage system and stormwater management system inlet and outlet pipes until the construction of the systems and their tributary pre-treatment measures has been completed and all surfaces on the site have been stabilized.
43. Until the proposed impervious surfaces and travel ways within the site have been paved, a temporary stabilized construction entrance for the site shall be maintained.
44. Street sweeping to eliminate any siltation and deposited material on paved surfaces on and immediately adjacent to the project site (on Commercial Street and Fort Square) during construction will be provided by the Owner and/or his Contractor as necessary until all affected surfaces of the site have been stabilized.
45. All equipment shall be operated and maintained to prohibit alterations of Coastal Resource Areas not allowed by this Order of Conditions and to minimize disturbance in buffer zones to those areas clearly identified on the plans, demarcated in the field, and permitted by this Order of Conditions. No equipment is to enter or cross any Coastal Resource Area (other Land Subject to Coastal Storm Flowage) at any time. At the end of each work day all equipment shall be parked outside of the 100 foot resource area buffer zone as shown on the plans.
46. Immediately upon the completion of the foundation for the proposed building, the applicant shall engage a Registered Professional Engineer or Land Surveyor to prepare an as-built plan accurately depicting the foundation location and its proximity to wetland resource areas and certifying that the completed foundation is located as shown on the approved plans. This plan shall be submitted to the Gloucester Conservation Commission Agent for approval prior to proceeding with any further work on the building.
47. Grading shall be performed in accordance with the approved plans for the project and shall not direct runoff to the property of others, unless such conditions already exist. This project shall not increase runoff, nor cause flood or storm damage to abutters or the property of others.
48. If any dewatering activities are necessary for the project, water shall not be directly released into any Coastal Resource Area or stormwater drainage system. Water from dewatering activities shall first be deposited into and filtered by a Dirt Bag® or similar device such as a sediment sump surrounded by a crushed stone and filter fabric dike or a stilling basin to remove sediment before the water is released.

This requirement also applies to discharge of any and all construction-generated runoff, whether released by gravity or pumped.

49. The area of construction shall remain in an environmentally stable condition at the close of each construction day.
50. If any of the stormwater management structures or stormwater treatment systems are to be used as sedimentation control during construction, all accumulated silt and debris shall be thoroughly removed to the naturally occurring soil and cleaned prior to final construction and final stabilization. If fill is required to bring the basin to proposed subgrade the fill shall be clean gravel fill. The stormwater management and treatment structures and/or infiltration areas shall be inspected by the Gloucester Conservation Commission and/or its agent and consultant when they have been cleaned and prior to adding any fill or surfacing materials.
51. Prior to final installation of the subsurface infiltration structures, any fill and accumulated silt and debris shall be removed to the naturally occurring soil. If fill is required to bring the infiltration area to proposed subgrade, the fill shall be Title 5 fill. The installation of the subsurface infiltration structures shall be inspected by the Gloucester Conservation Commission and/or its agent when they have been cleaned down to the natural soil and prior to adding any fill or surfacing materials.
52. Prior to the creation of any impervious surfaces for any building or structure (roof), parking areas, roadways, walkways within a particular phase of the project, all stormwater drainage collection, treatment and control systems including infiltration and detention structures serving that phase shall be fully constructed and functional.
53. Beach profile monitoring shall be required immediately after the seawall is constructed and annually for three years post-construction to determine if the seawall is causing any adverse impacts to the coastal beach. Beach profile monitoring shall consist of elevation profiles taken from the face of the seawall across the coastal beach to approximately the low tide line. Profiles should be taken approximately every 100 feet along the coastal beach starting at the southeasterly edge of the property to just beyond the westerly property line. Adverse impact to the coastal beach will be deemed to be changes that cannot be attributed to normal seasonal fluctuations to the coastal beach.
54. The applicant will be required to submit an annual report by a qualified coastal geologist or coastal engineer along with these surveys. This report will summarize the surveys with a discussion of any profile changes and whether the coastal geologist/ coastal engineer deems that these are natural changes or whether changes have occurred that are deemed to be adverse impacts resulting from the seawall construction. If it has been determined based on these surveys that the seawall has caused adverse impacts to the coastal beach, the applicant will be required to perform beach nourishment with compatible sediment to remedy the impacts.
55. The applicant shall provide the Commission with an illicit discharge statement prior to discharging any stormwater to post-construction Best Management Practices (BMPs).
56. All plantings on the site must be regionally native and shall not be non-native invasive plants.
57. If the work undertaken for this project results in the introduction of or growth of invasive species, it shall be the Applicant's responsibility to remove the invasive species (including the roots) and re-establish native vegetation within the affected areas.
58. All debris, fill and excavated material shall be stockpiled as far away from Coastal Resource Areas as possible and surrounded by a double row of staked filter mitts to prevent sediment from surface runoff entering the resource areas. At no time shall any debris or other waste material be buried or disposed of within a Coastal Resource Area or Coastal Resource Buffer Zone.



59. No unsuitable material of any kind (stumps, roots, trash, debris, etc.) may be buried, placed or dispersed on the property.
60. All construction debris that is not recycled for appropriate on-site use shall be removed from the site. All void areas shall be brought to grade and any imported backfill material shall be tested for contaminants prior to being imported to the site. The results of the testing of all imported soil testing shall be submitted to the Gloucester Conservation Commission along with a certified statement by a Massachusetts Licensed Site Professional that all soil materials imported to the site are clean and free from contamination.
61. Concrete trucks and other vehicles shall not be washed out in any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), Buffer Zone, or into any stormwater drainage system components. Any deposit of cement or concrete products into a Buffer Zone, or Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage shall be immediately removed and the area shall be restored.
62. During and after work on this project, there shall be no discharge or spillage of fuel, oil, or other pollutants into any Coastal Resource Area or Buffer Zone. Also, there shall be no refueling of mechanical equipment within a Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone, Equipment for fuel storage and refueling operations shall be located outside all areas within the jurisdiction of the Gloucester Conservation Commission (excepting Land Subject to Coastal Storm Flowage). The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism.
63. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone, except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
64. Any future work, excluding routine landscape maintenance, within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone other than that permitted under this Order of Conditions, must be reviewed and approved by the Gloucester Conservation Commission. In the event sand replenishment is required in the area in front of the seawall, such replenishment shall be permitted on an as needed basis under this order with notice to the Conservation Agent of the time, amount, and need for such replenishment.

#### **CERTIFICATE OF COMPLIANCE**

65. Upon completion of the work on the project, the applicant shall request in writing a Certificate of Compliance from the Gloucester Conservation Commission and shall submit the following information with the request:
66. A certification from a Massachusetts Registered Professional (Civil) Engineer stating that construction complies in all respects with this Order of Conditions and setting forth deviations, if any exist.
67. Two sets of field surveyed as-built site plans prepared, signed and stamped by a Massachusetts Registered Professional Land Surveyor or a Massachusetts Registered Professional (Civil) Engineer. The as-built plan shall include, at a minimum, and as applicable to the project, elevations of all pipe inverts and outlets, pipe sizes, materials, and slopes; all other drainage structures, limits of clearing, grading and fill; all structures, pavement and spot elevations and 2 foot contour elevations within 100 feet of Coastal Resource boundaries; locations of wetlands boundaries; all alterations within Coastal Resource areas; and all dates of fieldwork. The as-built survey shall include a statement that the survey was made on the ground under the direct supervision of the Surveyor/Engineer and that the survey conforms to all of the requirements of 250 CMR 6.02.
68. A CD containing the electronic drawing file for the As-Built Survey in .pdf and AutoCAD 2004 formats.

69. The as-built plans shall locate at least three control points and at least three benchmarks.
70. Post-construction photographs demonstrating compliance with this Order of Conditions, including established vegetation where required.
71. All fees for the Gloucester Conservation Commission's Consultant required by this Order of Conditions shall be paid in full by the Applicant prior to any request for a Certificate of Compliance.

#### **PERPETUAL CONDITIONS**

Conditions 72 through 77 shall survive the expiration of this Order of Conditions and shall be included as continuing requirements in perpetuity on the Certificate of Compliance and the property owner shall be the party responsible for compliance with these conditions. These conditions shall survive the Order of Conditions and shall run with the title of the property in Perpetuity. The Gloucester Conservation Commission or its agent shall have permanent rights of entry onto the property to check on compliance with these Conditions.

#### **GENERAL**

72. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Wetland Resource Area, or within the 100-foot Coastal Buffer Zone except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
  - The expanded beach area seaward of the seawall shall be monitored on an annual basis for the purposes of determining if there has been loss of sand over the course of natural beach cycles. In the event it is determined that there has been a loss of sand due to reasons other than natural beach cycles, the applicant shall be allowed to perform beach nourishment programs upon written notification to the Gloucester Conservation Commission. Such nourishment shall result in a sand condition similar in nature to the condition prior to sand loss with respect to color, grain size and density of material.
73. Any new owner or successor in title shall, within 30 days of assuming ownership, provide a letter to the Gloucester Conservation Commission acknowledging that they understand their obligations under this Order of Conditions. This requirement shall be recorded in the deed and on subsequent deeds for the property.

#### **STORMWATER MANAGEMENT**

74. The applicant shall provide the Gloucester Conservation Commission with a copy of any Ownership documentation along with the contact name and telephone number for the agent or property manager. The property owner(s) are responsible for the Operation and Maintenance Plan, of the stormwater collection, treatment and management systems on the property.
75. The applicant shall comply with all requirements of the Operation and Maintenance Plan filed with the Order of Conditions. The applicant shall maintain and repair the stormdrain collection system and appurtenances in order to ensure that the design capacity, the storm water treatment and pollution abatement capacity, and structural integrity of these facilities are maintained. The applicant shall maintain all stabilized surfaces as designed including maintenance and repair of pavement and maintenance of landscaped areas maintaining a vigorous growth of all plant materials. Catch basins and stormwater treatment units shall be inspected and cleaned and roadways, driveways and sidewalks shall be swept at intervals specified in the O&M Plan. Accumulated sediments shall be removed from sumps and floatable wastes shall be removed from the surface of every catch basin at intervals specified in the O&M Plan. All drain pipes shall be inspected and sediment and debris removed at intervals specified in the O&M Plan. Sediments and wastes shall be disposed of in accordance with all applicable federal, state, and local laws.

76. Snow shall not be stockpiled on the property. Snow shall be removed from the site upon completion of plowing activities and disposed of in accordance with proper procedures.
77. The applicant and his successors in ownership shall file written reports of the inspections, cleaning and stormwater maintenance along with an up to date certified illicit discharge statement with the Gloucester Conservation Commission on an annual basis, by November 1<sup>st</sup> beginning the year the binder course of pavement is first installed.
78. Any issues which arise at any time affecting the function of any components of the Stormwater Management system on the site, including the underground infiltration system, the biofiltration swales or the constructed stormwater wetlands must be addressed immediately by the property owner at his sole expense.

#### **APPENDIX # 4 Beach and Development Agreements**

The following Agreements are to be recommended to the City Council by the Planning and Development Committee. These Agreements are to be binding on the Applicant and are to become part of the Special City Council Permit Decision.

##### **Agreement**

This Agreement (the "Agreement") is made as of \_\_\_\_\_, 2013, by and between Beauport Gloucester, LLC, a Massachusetts limited liability company ("Beauport") and the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts (the "City").

WHEREAS, Beauport is the owner of certain uplands now known as and numbered 47-61 Commercial Street in Gloucester and claims to have ownership of certain beach and flats seaward of the uplands (the "Property"); and

WHEREAS, the City of Gloucester disputes Beauport's claim of ownership of Pavilion Beach, and claims that it owns the Beach, and the City of Gloucester believes that Pavilion Beach is one of the oldest public bathing beaches in the United States of America; and

WHEREAS, Beauport is applying for permits in order to be able to construct a hotel and appurtenances (the "Project") within a portion of the Property under the Gloucester Zoning Ordinance (the "Ordinance"); and

WHEREAS, the Project is shown on certain plans (which may be amended and supplemented, from time to time) submitted to the Gloucester City Council as part of the City Council Special Permit processes and other provisions of the Ordinance; and

WHEREAS, the City has requested that Beauport convey to it that portion of the Property comprising the beach and flats known as Pavilion Beach (the "Pavilion Beach Portion"); and

WHEREAS, Beauport is agreeable to deeding the Pavilion Beach Portion to the City for \$1.00, subject to the terms and conditions set forth below; and

WHEREAS, independent of the Project, the City intends to make certain improvements to the sewer, water, storm drainage and roadways in the Commercial Street and Fort Square area (the "Infrastructure Improvements"), and may also make improvements to the West End Intersection (collectively with the Infrastructure Improvements, the "Improvements"); and

WHEREAS, Beauport has already contributed \$600,000.00 to the City for such Infrastructure Improvements, and is willing to contribute an additional \$1,400,000.00 to the City for the Improvements, subject to the terms and conditions set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Beauport and the City agree as follows:

- (i) The deed (the "Deed") to the City of the Pavilion Beach Portion will be in the form attached hereto as Exhibit One which is made a part hereof;
- (ii) The Deed will be executed and delivered in escrow to the City within ten (10) days of the filing in the City Clerk's Office of a City Council Special Permit approving the Project;
- (iii) The City shall be entitled to remove the Deed from escrow and record it after the Building Inspector confirms to the City and to Beauport, that the foundation, seawall, stairs and ramps have been completed;
- (iv) In mitigation of the cost and expense to the City of making the Improvements necessary for the construction and uninterrupted use of the Hotel, Beauport shall make the additional \$1,400,000.00 contribution to the City for the Improvements in three installments, one within ten (10) days of the issuance of a building permit for the Project, one six (6) months thereafter, and the final one within ten (10) days of the issuance of a final certificate of occupancy for the Project; and
- (v) This Agreement shall bind the parties and their successors and assigns, including any of Beauport's successors in title to the Property;
- (vi) It is further agreed that if Beauport shall make customary beach amenities available (which may include without limitation, towels, beach chairs or umbrellas or the like) to its guests, Beauport shall make the same available to members of the general public;
- (vii) Except as provided in the Deed, at no time during the construction of the Project, will Beauport interfere with the public's right to use Pavilion Beach.

Beauport's obligation to convey the Property to the City and to make the additional \$1,400,000.00 contribution for the Improvements shall automatically terminate, and the City shall promptly return the Deed to Beauport, if Beauport notifies the City in writing that it is not proceeding with the Project. In such event, the City and Beauport agree that the City Council Special Permit shall be null and void. The failure of the City to enforce any provision of this Agreement shall not be deemed a waiver by the City of its enforcement rights, unless it issues a waiver in writing.

Time is of the essence of this Agreement.

All notices to the City shall be addressed to the Mayor and the City Council.

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

Executed in duplicate under seal as of the date first above written.

BEAUPORT GLOUCESTER, LLC

By: \_\_\_\_\_  
Name:  
Title:

CITY OF GLOUCESTER

By: \_\_\_\_\_  
Name:  
Title:

### **Exhibit One**

#### **DEED**

Beauport Gloucester, LLC, a Massachusetts limited liability company (“Grantor”), for One Dollar (\$1.00) consideration paid, grants to the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts (“Grantee”), all of its right, title and interest in and to that certain parcel of beach and flats in Gloucester, Essex County, Massachusetts (the “Premises”) described in Exhibit A, attached hereto and incorporated herein by reference, for use, in common with others entitled thereto, for all purposes for which public beaches are now or hereafter used in the City of Gloucester.

Grantor reserves the perpetual right and easement, as appurtenant to Grantor’s Remaining Land, as defined in Exhibit A, to utilize the Premises as a public beach and for all purposes which are not materially inconsistent with the rights of the general public to utilize the Premises as a public beach. No rights reserved by Grantor hereunder shall be exercised in a manner which is materially inconsistent with the general public’s rights to utilize the Premises as a public beach, other than as provided herein.

Subject to obtaining all required permits therefor, the Grantor reserves the perpetual right and easement, from time to time, as appurtenant to Grantor’s Remaining Land, to use, maintain, alter, repair, add to, remove, construct, install and replace the following improvements, which now exist or which Grantor, or its successors and assigns may hereafter locate in whole or in part on the Premises and/or on Grantor’s Remaining Land:

- (1) Revetments, seawalls, and/or retaining walls including any already in existence;
- (2) Walkways, including stairways and ramps, providing access to the Premises from Grantor’s Remaining Land and/or Fort Square, including any already in existence;
- (3) Any other coastal structures which are reasonably necessary to protect Grantor’s Remaining Land and any improvements now and hereafter thereon, or to enable occupants of Grantor’s Remaining Land to have reasonable access to and from the Premises; and
- (4) Any other improvements which are required or mandated by any governmental agency or entity having jurisdiction.

Notwithstanding anything to the contrary herein contained, Grantor, subject to obtaining all required permits therefore, in exercising any of its rights hereunder, shall have the temporary right, from time to time, to bring onto the Premises, such personnel, equipment and materials as may be reasonably necessary or appropriate for Grantor to so exercise its rights. In such instances, the general public’s right to utilize the Premises, or portions thereof, may be temporarily interrupted. In addition, any improvements constructed or installed on the Premises by Grantor which are approved by the Commonwealth of Massachusetts or by the Grantor, or which are required by or mandated by any governmental agency or entity, shall be presumptively deemed not to be materially inconsistent with the general public’s rights to utilize the Premises as a public beach.

Grantor shall include its employees, guests, invitees and licensees and its successors and assigns.

No rights to use the Grantor’s Remaining Land are being granted or created, including, but not limited to, any rights by implication or necessity.

WITNESS the execution hereof under seal this \_\_\_\_ day of \_\_\_\_\_, 2013.

Beauport Gloucester, LLC

By: \_\_\_\_\_

Name:

Title: Manager

COMMONWEALTH OF MASSACHUSETTS

On this \_ day of \_\_\_\_\_, 2013 before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were a \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Manager for Beauport Gloucester, LLC.

\_\_\_\_\_  
Notary Public

Commission expires:

**Exhibit A to Deed from Beauport Gloucester, LLC to the City of Gloucester**

The "Premises" are that certain parcel of land located southwesterly of, but not on, Commercial Street in Gloucester, Essex County, Massachusetts consisting of beach and flats and shown as Parcel 2 on a plan (the "Plan") entitled " \_\_\_\_\_ " by \_\_\_\_\_, dated \_\_\_\_\_, to be recorded herewith.

Parcel 1 on the Plan is referred to in the Deed to which this Exhibit is attached as "Grantor's Remaining Land".

For Grantor's title to the Premises and Grantor's Remaining Land, see Deed dated July 7, 2011, recorded with the Essex South District Registry of Deeds in Book 30521, Page 84 and Confirmatory Deed dated July 15, 2011, recorded with said Deeds in Book 30531, Page 311.

**These documents will be included upon signature and receipt. Further, Exhibit A: Plan as rendered by Beals Associates, Inc. dated January 24, 2013 is hereby incorporated by reference herein.**

**Councilor Tobey** enumerated the City staff to be present at the public hearing on Tuesday evening: The Fire Chief, the Police Chief, the Building Inspector, General Counsel, the Planning Director, the City Engineer and the DPW Director. He also asked the General Counsel be on "standby" if and when the Council gets to the point of motions being proposed and conditions being amended so that there is a very "clean" exercise on each amendment that might be proposed. **Councilor Hardy** added that the City Councilors in attendance and have obtained a copy of the Appendices and the conditions imposed by the Council that they are free to offer up conditions to be incorporated into the decision.

**2. Consideration of Beach & Development Agreement/Deed re: Pavilion Beach pursuant to Application of Beauport Gloucester LLC under Sec. 5.25 Hotel Overlay District; GZO Sec. 5.5.4 Lowlands; Sec. 5.7 Major Project**

**Ms. Egan** said that the Beach and Development Agreement has been submitted to the City Council and referred to the Planning and Development Committee. This matter is before the Committee, she said, as the legislative authority as opposed to the Special Permit Granting Authority, and that is why it is a separate agenda item. When the Agreement was submitted to the P&D Committee in context of the Special Permit, there were certain additions

the P&D Committee asked for which was whether or not the entire interest in Pavilion Beach would be conveyed to the City in this draft that the Committee has, she said, as opposed to what was originally proposed that Beauport Gloucester LLC retain their interest in the 10 foot portion of it but provide the City with an easement. She explained that Beauport Gloucester LLC has responded to the Committee's request and agreed to convey all their interest in the beach reserving the right to maintain, repair and construct any existing improvements on the beach. That, she said, is in the deed. The agreement also sets out process through which the deed will be conveyed to the City. The deed will be delivered to the City in escrow at the issuance of the Special Permit filed in City Clerk's office. At a point when the seawall, ramps, stairways and foundation have been built to the specifications of the Building Inspector, once he signs off on that, then the deed will be released from escrow to be recorded, she said. She added she believed it was Councilor Hardy who wanted to have that deed released prior to the Certificate of Occupancy being issued as a good faith effort on Beauport Gloucester LLC's part which she said demonstrates that. That addresses all issues in the deed, she added. The Development Agreement also addresses the \$2,000,000 contribution to infrastructure in the Fort infrastructure project, and it also sets out the timeframe for the granting of the funding. **Ms. Egan** said that in the agreement it states Beauport Gloucester LLC has already provided \$600,000 for the design of the infrastructure project and the remainder of the funding will be given to the City in equal portions – at the building permit, six months hereafter and the Certificate of Occupancy.

**Councilor Verga** moved to accept the terms and conditions of the Agreement between Beauport, LLC and The City of Gloucester regarding Beauport's contribution of one million four hundred thousand dollars and the conveyance of Beauport LLC's right, title and interest in the portion of Pavilion Beach and to authorize the Mayor to execute it on behalf of the City, and **Councilor Hardy** seconded.

#### **DISCUSSION:**

**Councilor Hardy** asked for timeframe for the Mayor to sign the document. Would she have the 10 days? **Ms. Egan** said "Yes." **Councilor Tobey** expanded that if the Mayor doesn't veto what the Council passes, at what point would she execute the documents. **Ms. Egan** said it could be made a condition to sign the documents promptly. **Councilor Tobey** asked Ms. Egan to discuss this matter with the Mayor so that the Council would know her "world view" on it. **Ms. Egan** further explained on inquiry by **Councilor Hardy**, that the terms of the Agreement sets out the terms under which the deed would be conveyed and the deed would be accepted. Once the Building Inspector determines those trigger points are met, the deed is released and is recorded right away and that would be from the Escrow Agent, which would likely be her department that would hold onto the deed and have the deed recorded. she said. **Councilor Tobey** commended the Council for not jumping on the first offer of the easement. Some thought they could see this through to a complete public title which if this goes through, he said this accomplishes it.

**MOTION: On motion by Councilor Verga, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council to accept the terms and conditions of the Agreement between Beauport, LLC and The City of Gloucester regarding Beauport's contribution of one million four hundred thousand dollars and the conveyance of Beauport LLC's right, title and interest in the portion of Pavilion Beach and to authorize the Mayor to execute it on behalf of the City.**

**Councilor Verga** moved to accept a One Million Four Hundred Thousand Dollar (\$1,400,000.00) contribution to the City of Gloucester for certain improvements to the sewer, water, storm drainage and roadways in the Commercial Street and Fort Square area and improvements to the West End Intersection in three installments, in equal parts, one within ten (10) days or the issuance of a building permit for the construction of a hotel located on 47-61 Commercial Street, the second within six (6) months thereafter and the final within ten (10) days of the issuance of a final certificate of occupancy for the Hotel which **Councilor Hardy** seconded.

#### **DISCUSSION:**

**Councilor Verga** said this motion specifies when the City receives funds from Beauport Gloucester LLC for the City's infrastructure project in the Fort area.

**MOTION: On motion by Councilor Verga, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council to accept a one million four**

**hundred thousand dollars (\$1,400,000.00) contribution to the City of Gloucester for certain improvements to the sewer, water, storm drainage and roadways in the Commercial Street and Fort Square area and improvements to the West End Intersection in three installments, in equal parts, one within ten (10) days or the issuance of a building permit for the construction of a hotel located on 47-61 Commercial Street, the second within six (6) months thereafter and the final within ten (10) days of the issuance of a final certificate of occupancy for the Hotel.**

**Councilor Verga** moved to accept the deed from Beauport LLC conveying all of its right, title and interest in and to a certain parcel of beach and flats in Gloucester, described as Parcel 2 and shown on a plan of land entitled 47-61 Commercial Street, Map 1, Lot 33, Book 30524, Page 84, Book 30531, Page 311, prepared for Beauport Gloucester, LLC, 6 Rowe Square, Gloucester, MA, by Beals Associates, Inc. dated January 24, 2013 and **Councilor Hardy** seconded.

**DISCUSSION:** None.

**MOTION:** On motion by Councilor Verga, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council to accept the deed from Beauport LLC conveying all of its right, title and interest in and to a certain parcel of beach and flats in Gloucester, described as Parcel 2 and shown on a plan of land entitled 47-61 Commercial Street, Map 1, Lot 33, Book 30524, Page 84, Book 30531, Page 311, prepared for Beauport Gloucester, LLC, 6 Rowe Square, Gloucester, MA, by Beals Associates, Inc. dated January 24, 2013.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 8:58 p.m.**

**Respectfully submitted,**

**Dana C. Jorgensson**  
Clerk of Committees

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:** None.