

HOLLAND CONSERVATION COMMISSION

PROCESS TO AMEND AN ORDER OF CONDITIONS (OOC)

Based on the policy promulgated by the Department of Environmental Protection (DEP) known as Policy 85-4 "Amending an Order of Conditions", and the recent appeals court case "Matthew Haney v Department of Environmental Protection & Others" which gave this policy the force of law, the Conservation Commission's procedure to amend an order of conditions (OOC) is below. Please bear in mind that amending a final OOC is at the discretion of the Conservation Commission. There is no provision in the wetland regulations that requires the Conservation Commission to consider or act upon a request to amend a final OOC. There is no right to request a superseding order of conditions or an adjudicatory hearing if a request to amend is not granted. If the Conservation Commission refuses to amend a final OOC, the only opportunity for further review is the filing of a new Notice of Intent.

Therefore, to receive an amendment to an OOC:

1. 1. The applicant makes a request for an amendment to the Conservation Commission by submitting the request to the Commission in writing. A copy of the request, a narrative description of what changes have been proposed and any pertinent plans showing the changes are to be sent to the DEP's Regional Office.
2. The Conservation Commission first makes a determination whether the requested change is great enough to warrant the filing of a new Notice of Intent or whether it is of a relatively minor nature and can be considered as an amendment to the OOC. In making this determination, the Conservation Commission must consider the following factors:
 - 2.1. Whether the purpose of the project has changed, whether the scope of the project has increased;
 - 2.2. Whether the project meets relevant performance standards;
 - 2.3. Whether the potential for adverse impacts to the protected statutory interests will be increased.

Relatively minor changes which result in the same or decreased impact on the interests protected by the Act are appropriate for amendments. If the determination is made that the project purpose or scope has changed substantially or that the interests specified in

the Wetlands Protection Act are not protected, then the Conservation Commission will not issue the amendment, but will require the filing of a new Notice of Intent.

3. If the Conservation Commission determines that a new Notice of Intent is not necessary, the Conservation Commission will publish newspaper notice (at the applicant's expense) in the same general manner as outlined in the Act for new Notices of Intent and as required by the Open Meeting Law, M.G.L. c. 39, 23B, to inform the public that the request for amendment to the Order of Conditions will be considered by the commission at a public hearing. In addition, the applicant must follow the requirements of abutter notification as if filing a Notice of Intent as described in the Act.
4. If, after considering the information presented by the applicant and any comments received at the public hearing, and the Conservation Commission decides to issue an amended Order of Conditions, a copy of such order should be forwarded to DEP's Regional Office, at the time of issuance. The usual appeal procedure to the amendments to the OOC shall apply. The issues under appeal will be limited to those issues subject to the amendment(s) or the change(s) made in the final OOC. Until there is a final resolution of the appeal, no work may continue on those portions of the project not permitted under the Final OOC but only permitted by the amendment(s) which has been appealed.
5. Under no circumstances will the issuance of an amended OOC extend the effective date of the original final OOC. The amended Order shall run with the term of the original OOC or the effective date of an extended OOC.
6. Amended Orders must be recorded with the registry of deeds in the same manner as the original OOC.

NOTE: Wording is taken directly from and/or based on the DEP policy and was adopted by the Commission on 5/10/22.