

**TOWN OF ACTON  
CONSERVATION COMMISSION**

**Minutes**

**December 5, 2018**

**7:15 PM**

**TOWN HALL - 472 MAIN STREET**

**ROOM 204**

**COMMISSIONERS PRESENT:** Terry Maitland, , Amy Green, Jim Colman, Tim McKinnon, Suzanne Flint

**NATURAL RESOURCES DIRECTOR & RECORDING SECRETARY:** Tom Tidman

**VISITORS:** Robert Sekuler, Scott Hayes, Joseph Cooney, Tom Gillispie, Clare Siska, Angela Boheim, Uwe Winter, Richard Keleher, Samuel Jones, Olga Jones, Terra Friedrichs, Kim Kastens, Clare Siska, Jim Mengle

**Stormwater Bylaw Update:** Paul Campbell, Acton Engineering, presented an update of the latest Stormwater standards for the Commission. This is an effort to standardize language as it will appear in various bylaws. The Stormwater and Erosion bylaw has been approved. This bylaw, (Chapter X) catches projects that don't require a Notice of Intent. The Rules and Regulations for Chapter X have been written. MS4 requires that we change some of our stormwater rules. Chapter X rules require that the town use NOA data for 25 Year Storms.

The Commission discussed the material and made two recommendations:

1. No change will be made to the Chapter F Bylaw (Wetlands Bylaw)
2. Wetlands Bylaw Rules and Regulations should add a reference to Chapter X standards for Stormwater Standards.

**Notice of Intent:** 61 Central Street, 85-1242, continuance  
Scott Hayes presented modifications to the project. The garage has now been moved forward and attached to the house. Porous pavement is proposed which would result in a net reduction of impervious pavement. The buffer zone restoration has been increased to 8 feet from 6 feet as previously proposed. Several failing pine trees along Central Street will be removed.

The Commission discussed the changes presented, and there was a general consensus that the modifications would be acceptable.

**Decision:** Mr. Colman moved to issue a standard Order of Conditions with the following Special Conditions:

1. A row of 3 to 4 foot diameter boulders, buried to half their depth with a spacing of 10 feet on center will be placed along the northerly edge of pavement, and may also include plantings, to clearly delineate the property bound. This is to be done in consultation with the Natural Resources agent.
2. No sanding is permitted on the porous pavement.
3. Plantings will be monitored for a period of two calendar years, with reporting on the success.

Mr. McKinnon seconded the motion and it passed unanimously.

**Notice of Intent:** 530 Main Street, 85-1247.

The applicant's representative Seth Donohoe requested the meeting be continued. It was rescheduled for January 2, at 7:15PM.

**Presentation:** Dog Park Location, Clare Siska

The proposed source of funding for an Acton Dog Park is the Stanton Foundation: <http://thestantonfoundation.org/canine/dog-parks>. It offers 10 awards a year to Massachusetts towns: 100% design funding (up to \$25,000) and 90% of hard construction costs (up to \$225,000). This grant cannot be applied for until the Town affirms that a Town-owned parcel has been approved by the BOS and a 10% match of construction costs and all of the soft costs can be supplied by the Town or its volunteers.

The size of the park was discussed. There is planned parking for 20 cars. Numerous surveys have been done. Clare mentioned that the Walker property had some advantages. Some questions were raised about Great Hill being used for conservation.

Bob Seculer commented that Ice House Pond was not a great area; he also asked if the survey was still open.

Jim Mengle commented that parking behind the South Acton Firehouse is heavily used by commuters, and there is not nearly enough parking now. There is currently a very serious parking problem for commuters.

**Request for Extension, Order of Conditions 85-1188:** Nagog Pond Water Treatment Plant, Town of Concord.

Representing the Town of Concord Water Department was Alan Cathcart. Eric Kelley from Enviro Partners is the Engineering Project Manager and Peter Durning is town counsel.

Mr. Kelley explained that the original order is due to expire Jan. 6, 2019. The site plan was approved this year, and they are now ready to proceed with the project. Phase I is scheduled to go on line in 2021. (see attachment 1). The proposed treatment plant is the same as was originally approved in 2015, that is, no foot print changes. The changes that had been agreed to were 1. No PV array; 2. Change to fence location may occur as a result of an archeological study. Peter Durning from Makie Shea read a letter he had submitted, (see attachment 2).

Carolyn Kiely pointed out in the State Wetlands Regulations, 10.05, Sec. 8 (a) the Commission may extend an Order of Conditions up to three years. They may deny the extension if new information has become available. New information came to light during the Selectmen's special permit review of the project. New information must be considered, and there is no threshold for the level of new information. Sec. 19.10.2 of MACC's Conservation Commission Handbook states that new information must be considered and scrutinized. On March 23, 2017, Katie Green, BoS, discussed monitoring requirements for possible downstream impacts. The selectmen were not able to impose monitoring outside the zoning bylaw. Commission can require post construction monitoring for the project. The original order didn't include private water, fisheries, prevention of pollution. These three interests should be included in the OOC. She did not believe re-opening the OOC would be considered a hardship to Concord. There is not rush to extend the Order.

Kim Kastens presented Green Acton Water Committee's position in a Powerpoint slide presentation. (<http://doc.acton-ma.gov/dsweb/View/Collection-10451>) She included information showing a difference of 10 feet in height between the high and low water intakes.

Bob Sekuler commented that the Commission has an obligation to look very seriously as new information has come to light. The Commission has a number of options: 1. The Order of Conditions could be revised to request monitoring post construction. 2. A reasonable limit could be set on the level Concord could draw down: this could cause Concord to suspend draw down if water dropped below a certain level, noting Sandy Pond and the Concord/Lincoln agreement. 3. Concord asks for a three year extension. Concord is not clear what they would do for the entire three years of the extension.

Terra Friedrichs commented that the Commission should be certain "our own" consultants are reviewing these complex plans.

Mr. Durning responded that the area proposed for construction will not change from what was previously approved. Allan Cathcart described the dewatering process. Eric Kelley noted that the level is limited by the elevation of the gate house. Water flows by gravity from the intake pipe. The location of the intake pipe has not changed.

Mr. Maitland stated that the Commission needed to take some time to fully digest all the material provided. Mr. McKinnon pointed out that there are many new commissioners involved since the original OOC was issued. They need additional time to look at all aspects of the filing. Mr. Maitland stated further that he was not comfortable without further consultation about conditioning the existing OOC.

Mr. Durning cautioned that a long delay could cause jeopardy and that there was no new information presented at this meeting. Ms. Friedrichs requested the concerns be put in writing and the responses submitted in writing.

**Minutes:** November 7, 2018, reviewed by TM, TMc

**Decision:** Mr. McKinnon moved to accept the minutes of Nov. 7, Ms. Green seconded the motion and it passed unanimously.

**Meeting adjourned: 10:10 PM.**



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Terry Maitland

Chairperson

# Attachment 1



November 12, 2018

Tom Tidman  
Natural Resources Director  
472 Main Street  
Acton, MA 01720

**RE: Request for Extension of Order of Conditions (#85-1188)  
180 & 182 Skyline Drive (Nagog Pond Water Treatment Plant)**

To Mr. Tidman,

Environmental Partners Group, Inc. (Environmental Partners) has prepared this letter on behalf of the Town of Concord to request an extension to the Order of Conditions for the above referenced project. The existing Order of Conditions (OOC) (#85-1188) issued on January 6, 2016 expires on January 6, 2019 (Middlesex South Registry of Deeds, Book 71857 Page 499). Based on the current status of the project and discussions between representatives from the Town of Concord and Town of Acton on August 22, 2018, we are hereby requesting a three year extension of OOC. Within this letter, please find an updated project approach, the modified project schedule, and a discussion of the current project status.

#### Project Approach

In Fall of 2015, Environmental Partners began work on preparing and filing a Site Plan and Use Special Permit (SPUSP) with the Town of Acton. The SPUSP permit (#11/20/15-459) was approved on April 30, 2018, with an appeals period that closed on May 20, 2018. The permit approval is provided as Attachment A and a copy of the 2015 project permitting plans that were submitted with the original Notice of Intent application are included as Attachment B. This request for an extension of the existing Order of Conditions (#85-1188) is being made to address the extended project schedule driven by the SPUSP process.

After discussion with the Town of Concord, the decision has been made to separate the project into three separate contracts to allow for construction activities to begin in early 2019 thereby providing the Town of Concord with the opportunity to commission the new water treatment facility in early 2021.

1. **Contract 1 – Site Preparation and Ozone Contactor Construction**
  - a. Contract 1 includes the selective demolition, site preparation, and the construction of the new ozone contactor basin. The initial phase of the project will allow for use of a temporary ozone treatment system to supply treated water to the Town of Concord between June and September 2019. In addition, remaining permitting, archaeological investigation, site preparation, environmental protections, site electrical work, and start-up of the temporary ozone system, will take place under this phase. Site preparation will include clearing and grubbing, excavation to proposed sub-grade elevations, rough grading, removal of bedrock for sub-grade structures, temporary paving, temporary security fencing, and temporary backfilling of sub-grade excavations. The site design follows the site plan that was approved in the Town of Acton SPUSP, dated April 30, 2018. A copy of the approved site plans with fencing are included in Attachment C.

The full text of this letter may be found at the link below:[http://doc.acton-ma.gov/dsweb/Get/Document-65851/Nagog%20Pond%20OOC%20Ext%20Cover%20Letter-FINAL\\_111218.pdf](http://doc.acton-ma.gov/dsweb/Get/Document-65851/Nagog%20Pond%20OOC%20Ext%20Cover%20Letter-FINAL_111218.pdf)



**MACKIE  
SHEA<sub>PC</sub>**

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December 5, 2018

VIA HAND DELIVERY AND ELECTRONIC MAIL

Terry Maitland, Chair  
Acton Conservation Commission  
472 Main Street  
Acton, MA 01720

Re: Request for Extension Order of Conditions (# 85-1188)  
180 & 182 Skyline Drive (Nagog Pond Water Treatment Plant)

Dear Chair Maitland:

On behalf of the Town of Concord ("Concord"), I am writing to supplement the letter provided by Environmental Partners Group, Inc. ("EPG") dated November 12, 2018 ("EPG's Request") requesting an extension of the Order of Conditions issued for the Nagog Pond Water Treatment Plant (DEP# 85-1188) on January 6, 2016 (the "OOC"). The OOC, which was required is recorded in the Middlesex Registry of Deed at Book 71857, Page 499.

The Massachusetts Wetlands Protection Regulations provide for extensions of order of conditions at 310 CMR 10.05(8). The regulations require that the request be made at least 30 days prior to expiration of the Order. EPG's Request was filed with the Commission more than 30 days before the expiration of the OOC on January 6, 2019. The Acton Environmental Protection Bylaw, contains a similar provision in Section F6.3. The primary difference with the Acton extension provision is that it only provides for one extension.

The Conservation Commission's review of a request for an extension does not require a public hearing, and there is no regulatory provision providing an opportunity to appeal a decision on a request for an extension.

The extension outlined in EPG's Request is routine. Pursuant to 310 CMR 10.05(8)(b)(1), Concord is seeking an extension of the OOC because work pursuant to the OOC was delayed due to the protracted process of obtaining other necessary permits. As the Commission may be aware, the project was concurrently before the Commission in 2015 and the Acton Board of Selectmen for a Special Permit and Site Plan Special Permit. Though the Commission issued the OOC on January 6, 2016, the Acton Board of Selectmen did not conclude its hearings on the Special Permits until March 29, 2017. There was an appeal of the Special Permit, which resulted in two remanded hearings before the Board of Selectmen in November 2017 and April 2018. The Modified Special Permit was finally issued on April 30, 2018 and was certified by the Acton Town Clerk on May 22, 2018.



After securing the Special Permit, Concord moved forward to develop final design plans for the project. As noted in EPG's letter, Concord has decided to pursue three contracts to execute the work with the goal of completing the entire project in early 2021. As shown in the November 2018 Contract 1 Civil Site Plans (Attachment D to EPG's Request), the work under Contract 1 is well within the limit of work for the OOC. The proposed work for the demolition, site preparation, and temporary security fencing, and the construction of the new ozone contactor basin is not a change from the work approved in the OOC.

Concord understands that certain aspects of the project, including the revised fence line (as shown in Attachment C to the EPG letter, Sheet C-10A and C-10B), constitute changes to the work approved in the original OOC. Concord also understands that it must seek approval to execute any such new work under a new Notice of Intent. The present Request for an Extension does not seek approval for any work outside the work that has already been approved in the OOC. Concord DPW staff has a good working relationship with the Acton Natural Resources Director and will certainly continue their regular communications.

But for the observation that a pair of bald eagles have begun nesting near Nagog Pond, Concord rejects that assertion that any new information has become available or that the OOC is not adequate to protect the interests of the Wetlands Protection Act and the Acton Environmental Protection Bylaw. Through the Special Permit process and through Concord's direct interactions with state and federal regulators, the work is sufficiently conditioned to prevent impacts to the bald eagles. There has been no change in the delineation of the wetland resource areas on the property, and the OOC may be extended as a matter of course.

Sincerely,

A handwritten signature in cursive script that reads "Peter F. Durning".

Peter F. Durning

cc: *(via hand delivery and electronic mail)*  
Tom Tidman, Acton Natural Resources Director  
Richard Reine, Concord Public Works, Director  
Alan H. Cathcart, Concord Public Works, Superintendent  
Christopher Whelan, Concord Town Manager  
Eric A. Kelley, P.E., Environmental Partners Group, Inc.

**CONSERVATION COMMISSION  
AGENDA  
December 5, 2018  
7:15 PM  
ACTON TOWN HALL  
472 MAIN STREET  
Room 204**

- 7:15 Stormwater Bylaw Update:** Paul Campbell
- 7:20 Notice of Intent:** 61 Central Street, 85-1242, continuance
- 7:30 Notice of Intent:** 530 Main Street, 85-1247, continued to Jan. 2, 7:15
- 7:45 Presentation:** Dog Park Location, Clare Siska
- 8:00 Request for Extension:** Nagog Pond Water Treatment Plant, Town of Concord

**Citizens Concerns**

**Certificate of Compliance:** 149 Central Street, 85-0973

**Minutes:**

November 7, 2018, reviewed by TM, TMc  
November 28, 2018: Pending



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