

REQUEST to AMEND an ORDER of CONDITIONS

Pursuant to DEP Policy 85-4:

*“Following the issuance of a Final Order of Conditions, unforeseen circumstances sometimes arise which may require minor deviations from the project approved in that Order. To allow for the smooth operation of the permitting procedure and to avoid unnecessary and unproductive duplication of regulatory effort after a Final Order of Conditions has been issued, the Department recognizes that it would not be reasonable to require a complete re-filing of the Notice of Intent when the changes sought in the Final Order of Conditions are relatively minor and will have unchanged or less impact on the interests protected by the Act. Amended Orders provide assurances to applicants that modifications undertaken in the course of the project are within the scope of the deviations allowed for the receipt of a Certificate of Compliance at 310 CMR 10.05(9)(d). Thus, the process of amending a Final Order of Conditions is acceptable to the Department as long as certain procedural safeguards are employed. **This policy does not apply to Final Orders of Conditions which have expired.***

Amending a Final Order of Conditions is at the discretion of the body that issued the Final Order of Conditions (“the issuing authority”). There is no provision in the wetland regulations that requires the issuing authority to consider or act upon a request to amend a Final Order of Conditions. 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 issuing authority refuses to amend a Final Order of Conditions, the only opportunity for further review is the filing of a new Notice of Intent.”

FIRST, make a request for an amendment to the Conservation Commission. Please submit the request in writing. The matter will be placed on the agenda for a regularly scheduled meeting of the Commission. You need not be present at this meeting. **Please include a narrative description of what changes have been proposed and any pertinent plans showing the changes. Refer to Section B of the original NOI WPA Form 3 in your request.**

The Commission will make 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 original Final Order of Conditions. In making this determination, the Commission will consider such factors as whether the purpose of the project has changed, whether the scope of the project has increased, whether the project meets relevant performance standards, and 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 Commission will not issue the amendment, but will require the filing of a new Notice of Intent.

If the Commission has determined the proposed change is within the scope of the original project and will accept the filing for a request to amend, the application materials must be submitted by noon, **15 days prior to a scheduled meeting.** A public hearing will be scheduled

with the Commission.

Request for Amended Order of Conditions Requirements:

- One hard copy and one digital copy of all revised plans and narratives, including owner's name, address, project address, and DEP File Number. The request should address all Buffer Zone and Resource Area impacts (temporary and permanent) listed in the original NOI, WPA Form 3, Section B.
- Proof of notice to all current 100-foot abutters per the instructions for an NOI (see Commission website shutesbury.org/wetlands-permit_applications or contact the Land Use Clerk for details).
- The applicant/representative must be present at the hearing. Through the hearing discussion, the Commission will determine whether the proposed changes are acceptable and if so will issue an amended Order of Conditions which may include additional conditions.

The granting of an Amended Order of Conditions does not change the original issuance date of the Order of Conditions.

There is no right to request a Superseding Order of Conditions from DEP or an adjudicatory hearing if a request to amend is not granted. If the Commission denies the request to amend, the only opportunity for further review is to file a new Notice of Intent.

Contact the Commission: concom@shutesbury.org; 413-259-3792

Reference: <https://www.mass.gov/guides/wetlands-program-policy-85-4-amended-orders>