

**TOWN OF ESSEX
CONOMO POINT PLAN**

REVISED May 24, 2012

In 2003, the Town of Essex and the Department of Environmental Protection entered into a Second Modified Final Judgment to memorialize the Town's efforts to remediate pollution caused by failing septic systems in the Town of Essex. As part of that Final Judgment, the Town was required to develop a plan and schedule for bringing the sewage disposal systems on the Town owned property at Conomo Point into compliance with Title 5 after expiration of the leases then in effect. The Town submitted a plan in January 2003, and the plan, with a revision date of June 30, 2003 – which is on file with the Department, was subsequently amended, with the Department's approval, on July 9, 2003. The Town revised the Plan with the Department's approval with a revision date of July 30, 2007, which is on file with the Department. By letters dated June 16, 2009 and June 14, 2010 (also on file with the Department), the Department approved amendments to the July 30, 2007 plan. A further revision dated April 12, 2011 was approved by the Department in response to the Town's planning effort associated with the actual lease expiration.

In the years following the Town's initial plans for Conomo Point, the Town, through the efforts of several boards and committees, has worked towards the future use and occupancy of the property consistent with the requirements of the Final Judgment. These efforts have resulted in the creation of a new zoning district and subdivision to create forty-three individual lots in the area known as Southern Conomo Point (two of which will be retained as vacant space for future Town needs, such as parking). The Town is poised to sell the remaining 41 lots to individual owners and, although there are still contingencies that have to be met, it is expected that maximum feasible compliance with Title 5 will be achieved by the deadline set forth in the April 12, 2011 Conomo Point Plan.

While the Town's plans for the Southern Conomo Point Area are moving along as planned, the Town's efforts with respect to the Northern Conomo Point Area have not proceeded as expeditiously as hoped. As we have described in prior versions of the Plan, the Town's plans depend upon numerous discretionary decisions that are beyond the Board of Selectmen's control. The Board has brought these plans before the Planning Board and Town Meeting, but there is still no Town-wide consensus as to how the Northern Conomo Point Area should be used in the future. Although Town officials continue to work towards transition of that portion of the property at the earliest possible date, elements of the Town's plan involving the area north of Robbins Island Road simply cannot be implemented by the dates outlined in the most recent revision of the Plan (April 12, 2011). Therefore, because the Board feels that an extension of the deadline for achieving Title 5 compliance for systems in the northern area of Conomo Point is warranted (so as to provide a reasonable period of time for the Town's transition plan to come to fruition), the Town hereby proposes that the Conomo Point Plan be amended as follows:

By endorsing this Amended Conomo Point Plan, the Department agrees that the deadline for upgrading in accordance with Title 5 any failing septic systems in the area north of Robbins Island Road on the Town's property at Conomo Point shall be extended to December 31, 2015, subject to the following conditions. The deadlines for completion of upgrades for septic systems in the area South of Robbins Island Road shall remain as set forth in the April 12, 2011 Plan revision:

1. All systems that will remain in use after December 31, 2011 and that passed inspection in the past will be re-inspected between July 15 and September 1, 2012, and the occupants shall provide the Board of Health with inspection reports by September 15, 2012; or in lieu of inspection, occupants may provide the Board of Health with agreements to upgrade;
2. All systems that will remain in use after December 31, 2011 and that were previously identified as failing or where the occupants previously signed agreements to upgrade, may continue to be used subject to the terms and conditions set forth herein.
3. All imminent health hazards will be cured as soon as practicable upon discovery in accordance with the terms of paragraph 19 of the Second Modified Final Judgment;
4. The Town will diligently pursue all legal requirements for selling or long-term leasing, the process for which is described in greater detail below. It is expressly understood and agreed-to by the Town that the aggregate design flow of any long-term leases shall be less than 10,000 gallons per day;
5. The Town has attached a subdivision plan identifying all properties South of Robbins Island Road that will have septic systems in use after December 31, 2014; i.e. identifying all properties in the southern area that will be offered for sale (via the Town Meeting's vote to authorize said sales that was taken on May 7, 2012). Said plan was recorded on April 24, 2012 at the Essex South Registry of Deeds at Book 31278, Page 563 (Plan Book 97, Page 432) and the necessary zoning bylaw, Town Meeting vote, and Planning Board Subdivision Approval and Covenant are also attached.
6. By December 31, 2013, the town will submit a plan to the Department identifying all properties North of Robbins Island Road that will have septic systems in use after December 31, 2015 if Town Meeting authorizes sales and/or long-term leases. Said plan shall include proof that necessary zoning bylaws and subdivision plans have been approved.
7. By May 31, 2014, the Town will submit to the Department a revision to the plan identified in paragraph 6, above, that adds a section identifying all properties North of Robbins Island Road that will have septic systems in use after December 31, 2015; i.e. identifying all properties in the northern area that Town Meeting authorized for sale or long-term lease.

8. If the Town decides to offer current occupants the right of first refusal to purchase or long-term lease, any occupant with a failed septic system or who signed an agreement to upgrade, during the term of the bridge lease, will be required to make a deposit and sign an agreement that: for properties south of Robbins Island Road, the septic system will be upgraded within two years of transfer or by December 31, 2014, whichever occurs first; or, for properties north of Robbins Island Road, the septic system will be upgraded within two years of transfer or by December 31, 2015, whichever occurs first;

9. If the Town decides not to offer current occupants the right of first refusal, or if an occupant declines the Town's offer to purchase or long-term lease a property with a failed septic system or an agreement to upgrade, the property may be offered for sale or long-term lease on the open market with the condition that: for properties south of Robbins Island Road, the purchaser or lessor will upgrade the septic system within two years of transfer or by December 31, 2014, whichever occurs first; or, for properties north of Robbins Island Road, the purchaser or lessor will upgrade the septic system within two years of transfer or by December 31, 2015, whichever occurs first; and

10. If a property is not identified on the May 31, 2014 final plan as being authorized for sale or long-term lease, the Town will take all necessary steps to terminate the bridge lease for that property prior to October 1, 2014. If a property is identified on the May 31, 2014 final plan as being authorized for sale or long-term lease, but the property is not sold or long-term leased by December 31, 2015, the septic system will be abandoned by that date.

11. *Caveat* – the Town's plan is expressly contingent upon Town Meeting approval of several articles on the Warrant for the Annual Town Meeting in May of 2013. If the Town Meeting does not vote in the manner proposed by the Board of Selectmen, the Board will withdraw this plan and submit a new plan in its place within sixty days of said Annual Town Meeting.

The Board of Selectmen believes that there is a reasonable basis for the requested amendment because it will enable the Town to transition the property at Conomo Point to long-term occupancy, while at the same time working towards the elimination of all failing septic systems in this area of Town. More specifically, the Board's transition plan is as follows:

Current Situation

With the expiration of 123 long-term leases on December 31, 2011, the Town offered so-called Bridge Leases to allow short-term occupancy for 121 properties. Ninety-eight percent (98%) – a total of 118 - of the occupants who were offered this opportunity entered into Bridge Leases. A total of five occupants (two of whom were not offered bridge leases due to complex breach of lease and estate issues; two of whom decided to quietly surrender their leaseholds to the Town; and one of whom has suggested that legal action will be pursued) did not sign bridge leases. Those five properties remain vacant at this time.

Bridge Leases allow continued occupancy for one year, but they may be extended for up to five years. All bridge leases contain a provision that all septic systems that will remain in use

after December 31, 2011 and that passed inspection in the past will be re-inspected between July 15 and September 1, 2012 and the occupants shall provide the Board of Health with inspections reports by September 15, 2012; or in lieu of inspection, occupants may provide the Board of Health with agreements to upgrade. Holders of Bridge Leases are also required to agree to comply with any orders of the Board of Health relative to imminent health hazards that may occur during the lease term. The Board of Health is currently working on enforcement of this requirement.

Current Situation – Southern Conomo Point

Although Bridge Leases can be extended for up to five years, it is not anticipated that they will be needed for that length of time. In fact, the Town has made significant progress towards realization of its long-term goals and towards achieving compliance with the requirements of the Final Judgment.

- The Town has formally created forty-one buildable lots for the area South of Robbins Island Road, through the passage of a zoning bylaw and the approval of a subdivision plan. The Plan is recorded at the Essex Registry of Deeds at Book 31278, Page 563 (Plan Book 97, Page 432).
- On May 7, 2012, Town Meeting authorized the Board of Selectmen to sell those forty-one lots to private parties.
- On May 23, 2012, the Governor signed into law Chapter 104 of the Acts of 2012, which grants the Town clemency from the provisions of Chapter 30B of the Massachusetts General Laws, so as to allow the Board to give current occupants preference in the process leading to sale of the properties.
- Each of the forty-one lots has been appraised, and the Board of Selectmen is currently working with Town Counsel to develop purchase and sale agreements. Although final terms of purchase and sale agreements are not yet known, the Selectmen intend to include a provision in all purchase and sale agreements to the effect that any failed septic system will be upgraded within two years of transfer or by December 31, 2014, whichever occurs first. For purposes of this provision, a system subject to an agreement to upgrade will be deemed in failure. It is also expected that purchase and sale agreements will include a provision that the purchaser will form and perpetually participate in a private wastewater management entity with full legal authority and financial culpability to maintain and monitor on-site wastewater systems at Conomo Point, all at the expense of the new property owners.
- It is expected that most of the 41 lots will be sold by the end of Calendar Year 2012.

Current Situation – Northern Conomo Point

In accordance with the April 12, 2011 version of the Conomo Point Plan, the Board of Selectmen took several steps towards transition of the Northern Conomo Point Area. The Board

caused the creation of an existing conditions plan and a draft zoning bylaw and brought the draft bylaw before the voters at the May 7, 2012 Annual Town Meeting. However the draft bylaw did not receive sufficient Town-wide acceptance. Based on feedback received to date, the Selectmen expect that the process of determining the future use of the area north of Robbins Island Road will take significantly longer. In order to move this process forward, however, the Board has obtained funding for a consultant to assist in planning for the future of Northern Conomo Point. In the meantime, the Board will continue to work with the Conomo Point Planning Committee, the Planning Board and other interested parties to develop a plan that will receive approval of the Town and that will comply with the requirements of the Final Judgment.

It is the present intention of the Board of Selectmen to present to Town Meeting in May of 2014 a proposal to sell a portion of the Northern Conomo Point Property on an individual basis and to enter into long-term residential leases for other portions of the Northern Conomo Point Property. It is expressly understood and agreed-to by the Town that the aggregate design flow of any long-term leases shall be less than 10,000 gallons per day.

For the portion of the Northern Conomo Point Property that will be sold to third parties, the Town must go through the process of creating legally cognizable lots. The Selectmen expect that the process for creating legally cognizable lots for the Northern Conomo Point area will take significantly longer, however, because there is not yet a consensus as to what portion of the property will be sold, the zoning bylaw has not been accepted (although it does exist in draft form), and no preliminary subdivision plan has been prepared. The Selectmen expect that it will be prepared to present a zoning bylaw to Town Meeting in the spring of 2013.

If Town Meeting approves the request for authority to sell portions of the Northern Conomo Point property, the Selectmen intend to include a provision in all purchase and sale agreements to the effect that any failed septic system will be upgraded within two years of transfer or by December 31, 2015, whichever occurs first. For purposes of this provision, a system subject to an agreement to upgrade will be deemed in failure. It is also expected that purchase and sale agreements will include a provision that the purchaser will form and perpetually participate in a private wastewater management entity with full legal authority and financial culpability to maintain and monitor on-site wastewater systems at Conomo Point, all at the expense of the new property owners.

Likewise, if the Town determines that it is going to enter into long-term leases for portions of the Northern Conomo Point property, the Selectmen intend include a provision in all leases to the effect that any failed septic system will be upgraded within two years of transfer or by December 31, 2015, whichever occurs first. For purposes of this provision, a system subject to an agreement to upgrade will be deemed in failure. It is also expected that the lease agreements will include a provision that the purchaser will form and perpetually participate in a private wastewater management entity with full legal authority and financial culpability to maintain and monitor on-site wastewater systems at Conomo Point, all at the expense of the tenants.