

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.: 96-2209B

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COMMONWEALTH OF MASSACHUSETTS,)
)
	Plaintiff,)
)
	v.)
)
TOWN OF ESSEX,)
	Defendant.)
<hr/>)

JOINT MOTION FOR ENTRY OF SECOND MODIFIED FINAL JUDGMENT

The Commonwealth of Massachusetts (the “Commonwealth”) and the Town of Essex (the “Town), parties to the above-entitled action, hereby jointly move this Court to enter a Second Modified Final Judgment in this case in the form submitted herewith. Since the Court first entered judgment in this matter in April 1996, circumstances have changed significantly warranting revision of certain provisions of the original judgment pursuant to MRCP 60(b).

The Final Judgment required the replacement of inadequate septic systems in the Core Area of Essex with a combination of on-site septic systems, large Title 5¹ systems, and package groundwater treatment plants. As a result of the environmental review process, the Town determined that the most cost effective and environmentally appropriate mechanism for

¹ “Title 5” refers to the section of the State Environmental Code regulating the siting, construction, inspection, upgrade and expansion of on-site sewage treatment and disposal (septic) systems. 310 CMR 15.000.

achieving the replacement of inadequate septic systems in the Core Area is: 1) the construction of a wastewater collection system that would transport sewage from portions of the Core Area to the City of Gloucester's wastewater collection system for treatment at the City's wastewater treatment plant; and 2) upgrading the remaining inadequate septic systems in accordance with Title 5. The Town and Gloucester entered into an intermunicipal agreement that provided for the implementation of this remedy. The Commonwealth has agreed to the Town's schedule for the construction of this wastewater collection system and for the upgrade of the remaining failing septic systems as set forth in the Second Modified Final Judgment attached to this Motion (the "Second Modified Final Judgment").

Under the Court's April 26, 1996, Final Judgment, as amended by the Court on March 19, 1998, the Town was required to develop and implement an interim and long term remedy that would bring the sewage disposal systems on the Town-owned property at Conomo Point into compliance. Subsequent to the entry of the Final Judgment, the Town has decided not to renew the leases for the portion of its Conomo Point property located north of Robbins Island Road after the existing leases expire on December 31, 2011. The Town has not yet decided whether to renew the remaining leases on its Conomo Point property. As a result of the decision not to renew the existing leases for the portion of the Conomo Point property north of Robbins Island Road, any sewage disposal systems that remain on Conomo Point after December 31, 2011, shall be subject to the requirements of Title 5. In these circumstances, the Town and the Commonwealth have agreed that the Town shall bring any systems that remain in service after December 31, 2011, into compliance with Title 5. The Town has further agreed to take whatever actions are necessary to prevent the sewage disposal systems located at Conomo

Point from posing a threat to the public health safety or the environment as defined in 310 CMR

15.301. The Second Modified Final Judgment memorializes these agreements.

Because this motion is joint and assented to, the provisions of Superior Court Rule 9A do not apply.

TOWN OF ESSEX

COMMONWEALTH OF
MASSACHUSETTS

By its Attorney,

By its Attorney,
THOMAS F. REILLY
ATTORNEY GENERAL

John W. Giorgio, Esq.
BBO# 193540
Kopelman and Paige, P.C.
31 St. James Avenue
Boston, MA 02116-4102
(617) 556-0007

By:

I. Andrew Goldberg
BBO# 560843
Assistant Attorney General
Environmental Protection Division
200 Portland Street, 3rd Fl.
Boston, MA 02114
(617) 727-2200

Dated: July 11, 2003

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.: 96-2209-B

COMMONWEALTH OF MASSACHUSETTS,)
)
 Plaintiff,)
)
 v.)
)
 TOWN OF ESSEX,)
)
 Defendant.)

SECOND MODIFIED FINAL JUDGMENT

It appearing to the Court that the defendant has consented in the consent attached hereto to the entry of this Second Modified Final Judgment, and the Court finding both subject matter and personal jurisdiction and sufficient basis for the entry of judgment:

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Town of Essex (the "Town" or "Essex") is a political subdivision of the Commonwealth duly organized and existing under the laws of the Commonwealth.
2. Storm drainage facilities and culverts located in the Town, including, without limitation, facilities located in the Town on Pickering Street, Route 133, Spring Street, Shepard Memorial Drive, Eastern Avenue, Water Street, and Grove Street (collectively "storm drainage facilities") discharge pollutants into the Essex Bay, the Essex River, and tributaries of the Essex River (collectively the "Essex Bay receiving waters"), without a permit or other approval.

The discharge of pollutants from storm drainage facilities into waters of the Commonwealth without a permit violates the Clean Waters Act, G.L.c. 21, §§26-53, and the Marine Fish and Fisheries Act, G.L. c. 130, §25¹.

3. A source of the pollutants discharged to the Essex Bay receiving waters is failing septic systems which discharge inadequately treated sewage to the Town storm drainage facilities by means of direct or indirect connections. To address this source of pollution, the Town has identified the failing septic systems in the Core Area of the Town (the “Core Area”) as defined in Attachment A (“Attachment A”) to this Second Modified Final Judgment and has agreed to construct a wastewater collection system that will transport sewage from the Core Area to the City of Gloucester municipal sewer system (the “wastewater collection system”) and to require the upgrade in accordance with Title 5 of the remaining failing septic systems in the Core Area.

4. The Town owns property in the Conomo Point and Robbins Island area identified as Conomo Point on the map attached to this Second Modified Final Judgment as Attachment B (hereinafter collectively referred to as “Conomo Point”). Individual sewage disposal systems located on the Town-owned land discharge untreated or inadequately treated sewage to the ground. The Department of Environmental Protection (the “Department”) has determined that these systems have a capacity in excess of 15,000 gallons of wastewater per day. The Town does not hold a groundwater discharge permit for these discharges.

¹ Throughout this Second Modified Final Judgment, there are references to currently applicable Massachusetts environmental laws and regulations. If during the pendency of this Second Modified Final Judgment, there are changes to these laws and/or regulations, the revised and/or amended laws and/or regulations will apply.

5. To address the discharges from the sewage disposal systems located at Conomo Point, on January 15, 2003, the Town submitted to the Department for its review and approval, and to implement as approved, a plan and schedule for bringing the sewage disposal systems on the Town owned property at Conomo Point into compliance with Title 5 after the existing leases expire on December 31, 2011. By September 2, 2003, the Town shall submit a document to the Department addressing the Department's comments as to such plan and schedule.

6. This Court has jurisdiction over the subject matter and the parties in this action.

7. The provisions of this Second Modified Final Judgment shall apply to and be binding upon the defendant, its departments, boards, agencies, officers, employees, agents, successors and assigns and upon those persons in active concert or participation with them who receive actual notice of this Second Modified Final Judgment by personal service or otherwise.

8. This Court shall retain jurisdiction to enforce, including by contempt order, the terms and provisions of this Second Modified Final Judgment, to make modifications thereof, and to resolve all disputes hereunder as may be necessary or appropriate for the construction and execution of this Second Modified Final Judgment.

General Requirements

9. Thirty (30) days after opening bids for each construction contract, the Town shall provide to the Department and the United States Environmental Protection Agency (the "EPA") a copy of the notice of intent to award each such contract, which shall identify the name and address of the firm selected by the Town to construct that portion of the collection system to which the notice of intent to award refers.

10. From the date of the entry of this Second Modified Final Judgment and thereafter, the Town shall not issue a disposal works construction permit for a new subsurface sewage disposal system or for the alteration, upgrade or repair of such an existing system, unless the application for the proposed work complies with the requirements of Title 5 of the State Environmental Code, 310 C.M.R. 15.000 et seq. (“Title 5”).

11. From the date of the entry of this Second Modified Final Judgment and thereafter, the Town shall not issue a certificate of compliance for a new system or for the alteration, upgrade or repair of an existing system, unless the work complies with the requirements of Title 5.

12. From the date of the entry of this Second Modified Final Judgment and thereafter, the Town shall not issue a building or occupancy permit for an expansion of an existing “facility” as that term is defined in 310 C.M.R. 15.002, or for a change in use of an existing “facility,” unless the sewage disposal system serving that “facility” has been inspected and upgraded, if required, in accordance with Title 5.

13. As of January 15, 2003, the Town reported to the Department that it had employed or retained the services of staff sufficient to perform the work that it is required to perform under this Second Modified Final Judgment. The Town shall continue to employ or retain such staff until completion of the requirements of this Second Modified Final Judgment.

14. As of January 15, 2003, the Town reported to the Department that it had established procedures to ensure that all sewage treatment and disposal systems are inspected in conjunction with property transfer as required under Title 5, and that system approvals are granted only in accordance with Title 5. These procedures include a mechanism to ensure that

the Town's Board of Health is informed of all property transfers and keeps track of the status of all system inspections and upgrades required under Title 5.

Sampling Plan

15. The Town shall continue, pursuant to the original Final Judgment, the sampling plan approved by the Department for identifying locations where fecal coliform contamination is present in the Town storm drainage facilities and for monitoring water quality in the Essex Bay receiving waters. This plan provides for the periodic monitoring of both the Town storm drainage facilities and the Essex Bay receiving waters. Among other things, this sampling plan provides the information needed to implement the public warning program.

16. The results of this sampling shall be included in the report submitted to the Department pursuant to paragraph 38 of this Second Modified Final Judgment. The Town's sampling obligations under this Second Modified Final Judgment shall cease one year from the date that the Town completes the construction of the wastewater collection system and the upgrades of the remaining failing septic systems in the Core Area are completed in accordance with Title 5, whichever comes later.

Public Warning Program

17. The Town shall continue, pursuant to the original Final Judgment, the program approved by the Department (the "public warning program") for locations in the Town storm drainage facilities where fecal coliform bacteria is found to be present in excess of 200 colonies/100 m.l. (the "public warning standard"). This program shall include the posting, repair and maintenance of signs at any contaminated storm drainage outfalls or ditches within seven (7) days of receiving sampling results that indicate the presence of fecal coliform bacteria in excess

of the public warning standard. The Town shall also post notices at the Town fire station, the Town Hall, the water filtration plant and the elementary school. The Town shall maintain each sign posted pursuant to the public warning program until the Town receives results from two (2) consecutive sampling rounds taken in the vicinity of the posted location that indicate that the fecal coliform bacteria count is less than the public warning standard.

18. The Town shall include in the report required by Paragraph 38 of this Second Modified Final Judgment a section listing the location and sign installation dates for the reporting period.

Emergency Repairs

19. If at any time after the entry of this Second Modified Final Judgment, the Town discovers any sewage disposal systems in the Town that are allowing the breakout of sewage above the ground, discharging directly to the Town storm drainage facilities or a surface water body, or posing an imminent threat to the public health or the environment, or any other unlawful connections to the Town storm drainage facilities that pose an imminent threat to the public health or the environment, the Town shall, within fourteen (14) days after such discovery, order the owner of that sewage disposal system or unlawful connection to implement within thirty (30) days: (i) an emergency repair pursuant to 310 C.M.R. 15.353; or (ii) other temporary measures to eliminate the breakout, discharge, unlawful connection or imminent threat. Any orders issued pursuant to this Paragraph shall also require the owner to take any additional action required by Title 5. If an owner fails to eliminate the breakout, discharge, unlawful connection or imminent threat within the thirty (30) day period required by the order, the Town shall commence enforcement proceedings against the owner within thirty (30) days after the expiration of the

aforementioned thirty (30) day period. Thereafter, the Town shall pursue such enforcement actions in an appropriate manner. The Town shall report all actions taken pursuant to this Paragraph including the temporary measures taken and the issuance of enforcement orders and the status of any enforcement proceedings commenced by the Town in the report required by Paragraph 38 of this Second Modified Final Judgment.

Other Connections

20. The Town shall, pursuant to this Second Modified Final Judgment, prevent unlawful connections to the Town storm drainage facilities at the elementary school and other Town facilities.

21. If at any time after the entry of this Second Modified Final Judgment, the Town discovers the existence on Town property of an unlawful connection that allows the direct discharge of pollutants other than sewage or septage to the Town storm drainage facilities, and the connection does not pose an imminent threat to the public health and the environment, the Town shall notify the Department and EPA within ten (10) days of such discovery. Within three (3) months of such discovery, the Town shall submit to the Department for its review and approval and to EPA a plan and schedule for eliminating the unlawful connection within one year of its discovery. Thereafter, the Town shall eliminate the unlawful connection in accordance with the plan and schedule approved by the Department. If at any time after the entry of this Second Modified Final Judgment, the Town discovers the existence of an unlawful connection located on private property in the Town that allows the direct discharge of pollutants other than sewage or septage to the Town storm drainage facilities, and the connection does not pose an imminent threat to the public health and the environment, the Town shall order the owner of the

property to eliminate the unlawful connection within one hundred and eighty (180) days. If the owner fails to eliminate the unlawful connection within the one hundred and eighty (180) day period required by the order, the Town shall commence enforcement proceedings against the owner after the expiration of the aforementioned one hundred and eighty (180) day period. Thereafter, the Town shall pursue such enforcement action in an appropriate manner. The Town shall report all actions taken pursuant to this Paragraph in the report required by Paragraph 38 of this Second Modified Final Judgment.

Core Area Program

22. The Town has identified the failing septic systems in the Core Area as defined in Attachment A to this Second Modified Final Judgment. The Town shall address the failing systems in the Core Area by constructing the wastewater collection system to transport sewage from portions of the Core Area to the City of Gloucester municipal sewer system and by requiring the upgrade in accordance with Title 5 of the remaining failing septic systems in the Core Area as follows.

23. On or about September 16, 2002, the Town commenced construction in accordance with the plans and specifications approved by the Department of the wastewater collection system for serving Contract I, the Gloucester extension.

24. On or before June 28, 2004, the Town shall complete construction in accordance with the plans and specifications approved by the Department of the wastewater collection system serving Contract I.

25. On or about April 22, 2003, the Town commenced construction in accordance with the plans and specifications approved by the Department of the wastewater collection system serving Contract II.
26. On or before December 31, 2004, the Town shall complete construction in accordance with the plans and specifications approved by the Department of the wastewater collection system serving Contract II and complete the connection to the wastewater collection system of all facilities in the Contract II sewer service area served by failing septic systems within 180 days of completion of construction.
27. On or before September 8, 2003, the Town shall commence construction in accordance with the plans and specifications approved by the Department of the wastewater collection system serving Contract III.
28. On or before December 16, 2004, the Town shall complete construction in accordance with the plans and specifications approved by the Department of the wastewater collection system serving Contract III and complete the connection to the wastewater collection system of all facilities in the Contract III sewer service area served by failing septic systems within 180 days of completion of construction.
29. On or before November 5, 2003, the Town shall commence construction in accordance with the plans and specifications approved by the Department of the wastewater collection system serving Contract IV.
30. On or before October 5, 2005, the Town shall complete construction in accordance with the plans and specifications approved by the Department of the wastewater collection system serving Contract IV and the connection to the wastewater collection system of the

facilities in the Contract IV sewer service area served by failing septic systems within 180 days of completion of construction. Also, the Town is in the process of constructing a new DPW facility off Landing Road. The Town shall connect such facility to the wastewater collection system as soon as practicable after completion of Contract IV. In the interim, the Town shall construct a tight tank facility, as approved by the Essex Board of Health, as a temporary measure for the collection of wastewater generated from the new facility. The Town shall connect the DPW facility to the sewer within 90 days of the date when the sewer becomes available.

31. On or about January 15, 2003, the Town reported to the Department that it had ordered the owners of facilities in the Phase I Unsewered Area, the Phase II Unsewered Area, the Phase III Unsewered Area, and the Phase IV Unsewered Area (collectively the "Unsewered Areas") outside of the sewer service area served by failing septic systems to upgrade their sewage systems within two years in accordance with Title 5 of the State Environmental Code, 310 C.M.R. 15.000 ("Title 5"). On or before February 15, 2005, the Town shall notify the Department in writing the name of the owner and the address of any facility in the Unsewered Areas that is served by a failing septic system that has not been upgraded in accordance with Title 5. If an owner fails to have the system upgraded in accordance with Title 5 by March 15, 2005, the Town shall commence enforcement proceedings against the owner in accordance with 310 C.M.R. 15.025 and notify the Department in writing by April 15, 2005, that such proceedings have commenced. Thereafter, the Town shall pursue such enforcement actions in an appropriate manner. The Town shall report the status of any enforcement proceedings commenced by the Town pursuant to this Paragraph in the report required by Paragraph 38 of this Second Modified Final Judgment.

Conomo Point Program

32. On or about January 15, 2003, the Town submitted to the Department for its review and approval a plan and schedule for bringing the sewage disposal systems on the Town owned property at Conomo Point into compliance with Title 5 after the existing leases expire on December 31, 2011. At a minimum, this plan shall include a plan for inspecting in accordance with Title 5 all systems that will remain in service after December 31, 2011, by December 31, 2009, and for upgrading in accordance with Title 5 by December 31, 2011, any systems determined to be failing as defined in Title 5. The plan and schedule shall also include a plan and schedule for abandoning in accordance with Title 5 by December 31, 2012, any septic systems taken out of service after the existing leases expire on December 31, 2011. On or before September 2, 2003, the Town shall submit a document to the Department addressing the Department's comments as to such plans and schedules. Thereafter, the Town shall implement the plan and schedule as approved by the Department. The Town shall report the actions taken to implement the plan and schedule in accordance with Paragraph 38 of the Second Modified Final Judgment.

33. From the date of entry of this Second Modified Final Judgment until December 31, 2011, the Town shall not allow any facilities or changes to facilities that would increase the annual or daily discharge of pollutants from Conomo Point. From the date of entry of this Second Modified Final Judgment and thereafter, the Town shall take whatever actions are necessary to prevent the sewage disposal systems located at Conomo Point from posing a threat to the public health, safety or the environment as defined in 310 C.M.R. 15.301. On or about January 15, 2003, the Town submitted to the Department for its review and approval its plan for

addressing such threats, and on or before July 1, 2003, the Town shall address any of the Department's comments regarding such plan. The Town shall implement such plan as approved by the Department.

Stipulated Penalties

34. In the event that the Town violates this Second Modified Final Judgment, the Town shall pay stipulated penalties as follows:

(a) In the event that the Town violates Paragraphs 10, 11, or 12 of this Final Judgment by issuing a disposal works construction permit, a certificate of compliance or a building or occupancy permit for the alteration, upgrade, repair or construction of a subsurface sewage disposal system that violates the requirements of Title 5 pertaining to size of leaching area, depth of naturally occurring pervious soil, depth to groundwater, setback from surface water bodies, wetlands, or drinking water supplies, the Town shall pay stipulated penalties as follows:

Number of Violations During Calendar Year Per Paragraph	Amount of Penalty For Each Violation
Second Violation	\$100
Third Violation	\$250
Fourth Violation	\$500
Subsequent Violations	\$1000

(b) For each notice that the Town fails to post or maintain in accordance with Paragraphs 17 and 18, the Town shall pay a stipulated penalty of \$50 and no more.

(c) For each unlawful connection that does not pose an imminent threat to the public health and the environment that the Town fails to address in accordance with Paragraph 21, the Town shall pay a stipulated penalty of \$100 and no more.

(d) For each sewage disposal system that is allowing the breakout of sewage above the ground, discharging to the Town storm drainage facilities or posing an imminent threat to the public health or the environment or each unlawful connection that poses an imminent threat to the public health or the environment that the Town fails to address in accordance with Paragraph 19, the Town shall pay a stipulated penalty of \$250 and no more.

(e) For each round of sampling that the Town fails to perform in accordance with the sampling plan required by Paragraphs 15 and 16, the Town shall pay a stipulated penalty of \$250 and no more.

(f) For violations of Paragraphs 13, 20, and 22-33 of this Second Modified Final Judgment, the Town shall pay stipulated penalties for each day of each violation as follows:

Days of violation	Stipulated Penalties
1st through 30th day	\$100 per day per violation
31st through 60th day	\$250 per day per violation
61st through 90th day	\$500 per day per violation
any day after 90th day	\$1000 per day per violation

(g) Failure of the Town to deliver a submission to EPA shall not by itself cause the Town to owe any stipulated penalties under this Final Judgment.

(h) The Commonwealth may in its sole discretion expressly agree to waive some or all of the stipulated penalties required by this Final Judgment. Failure by the Commonwealth to demand any stipulated penalties required by this Final Judgment shall not be deemed a waiver of the Commonwealth's right to obtain the stipulated penalties otherwise due under this Final Judgment.

(i) All stipulated penalties required by this Paragraph shall be paid to the Commonwealth without demand by means of a certified check tendered to the Attorney General before the

fifteenth day of the month immediately following a month in which a violation of a provision of this Final Judgment has occurred.

Monitoring Compliance

35. The Department shall have the right to enter upon the Town's properties during reasonable business hours without notice in order to monitor the Town's compliance with this Second Modified Final Judgment, Title 5, and the Clean Waters Act and to inspect the Town's records including without limitation certificates of compliance issued by the Town and inspection reports submitted to the Town.

36. To enable the Department to monitor the Town's compliance with this Second Modified Final Judgment, the Department may request that the Town submit to the Department for its review a draft of some or all of the disposal work construction permits to be issued by the Town along with the application for said permit fourteen (14) business days before the Town plans to issue said permit. The Town shall comply with such request. Upon such a request, the Town may issue a draft disposal works construction permit as a final permit, only if the Department has failed to notify the Town within fourteen (14) business days after the date that the Town sent the draft permit to the Department that it has reviewed the permit and has not been able to verify that the permit complies with the requirements of Title 5 and this Second Modified Final Judgment. If thirty (30) days from the date of a notice from the Department indicating that it cannot verify that the permit complies with Title 5 and this Second Modified Final Judgment, the parties are unable to agree on the permit, the Town shall deny the permit application. The denial shall inform the applicant of his right to appeal the permit. If the application is to remedy

a failing system, the Town shall also order the applicant to take additional action to remedy the failing system.

37. To enable the Department to monitor the Town's compliance with this Second Modified Final Judgment, the Department may request that it have an opportunity to inspect some or all of the systems being upgraded before the Town issues a certificate of compliance for that system. The Town shall comply with such a request.

Reporting

38. The Town shall notify the Department and EPA of its progress in complying with the terms of this Second Modified Final Judgment by submitting to the Commonwealth written quarterly reports on or before the first business day of January, April, July and October of each year. In particular, these reports shall document the results of the sampling program and contain a detailed summary describing all work done by the Town to implement the public warning program and Conomo Point plans, and emergency repair and enforcement actions taken by the Town during the reporting period.

Force Majeure

39. If any event occurs which delays a performance date established by this Second Modified Final Judgment, the Town shall within ten (10) days of obtaining knowledge of the occurrence but in no event after the performance date, notify the Department and the Attorney General in writing of the anticipated length of the delay, the cause of the delay, and the steps or measures to be taken by the Town to prevent or minimize the delay, including a timetable by which the Town intends to implement such steps or measures. The Town shall adopt all reasonable measures to avoid or minimize the delay. Failure by the Town to comply with the

notice requirements of this Paragraph shall render Paragraphs 40-42 inoperative as to the particular delay, and shall constitute a waiver of the Town's right to request an extension of time with regard to the delay.

40. If the parties agree that the delay was caused by circumstances beyond the control of the Town and of any entity controlled by the Town, including its consultants and contractors, and that neither the Town, nor any such entity controlled by the Town could have prevented the delay, the Town shall be excused for the delay for the period of time that the delay continued due to such circumstances not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances, and stipulated penalties shall not be due for the number of days of delay caused by such circumstances.

41. If the parties are unable to agree (a) that the delay has been caused by circumstances beyond the control of the Town and of any entity controlled by the Town, including its consultants and contractors, or (b) that neither the Town nor any entity controlled by the Town could have prevented such delay, or (c) on the number of days of delay that were caused by circumstances beyond the control of the Town and any entity controlled by the Town, the matter may be submitted by any party to this Court for resolution. If this Court determines that the delay was caused by circumstances beyond the control of the Town and of any entity controlled by the Town, including its consultants and contractors, and that neither the Town nor any entity controlled by the Town could have prevented the delay, the Town shall be excused for the delay for the period of time that the delay continued due to such circumstances. Stipulated penalties shall not be due for such period.

42. In any proceeding brought under Paragraph 41, the Town shall bear the burden of proving that: (a) the delay was caused by circumstances beyond the control of the Town and of any entity controlled by the Town, including its consultants and contractors; (b) neither the Town nor any entity controlled by the Town could have prevented such delay; and (c) each day of the delay was caused by circumstances beyond the control of the Town and of any entity controlled by the Town.

43. Unanticipated or increased costs or expenses associated with the implementation of the actions required under this Second Modified Final Judgment and changed financial circumstances shall under no circumstances serve as the basis for changes in this Second Modified Final Judgment or extensions of time for the performance of the actions required by this Second Modified Final Judgment. Performance of the obligations required under this Second Modified Final Judgment is not conditioned on the receipt of any federal or state grant funds or loans and is not excused by the lack of any federal or state grant funds or loans.

Notice

44. Written submissions required by this Second Modified Final Judgment shall be made to the following or to such other persons who shall be designated by the parties in writing:

FOR THE COMMONWEALTH

Madelyn Morris
Northeast Regional Office
Department of Environmental Protection
One Winter Street
Boston, MA 02108

AND

I. Andrew Goldberg
Assistant Attorney General
Environmental Protection Division
200 Portland Street
Boston, MA 02114

FOR THE TOWN

Town of Essex
Board of Selectmen
Town Hall, Martin Street
Essex, MA 01929-1219

AND

John Giorgio, Esq.
Kopelman & Paige
31 St. James Ave.,
Boston, MA 02116

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Eric Hall
Water Compliance Unit SEW
Office of Environmental Stewardship
JFK Federal Building
Boston, MA 02203

Miscellaneous Provisions

45. This Second Modified Final Judgment is not and shall not be interpreted to be a discharge permit or a modification of a discharge permit. This Second Modified Final Judgment shall not in any way relieve the Town of its obligation to comply with all state laws and regulations, including without limitation the Clean Waters Act, the regulations promulgated pursuant to that Act, Title 5, and the Massachusetts Environmental Policy Act. By agreeing to the entry of this Second Modified Final Judgment, the Commonwealth of Massachusetts including the Department of Environmental Protection and the Division of Water Pollution

Control does not waive any right it may have to require the Town to apply for a discharge permit for the Town storm drainage facilities, and the Town does not waive any right it may have to dispute that such a permit is or may be required by law.

46. Compliance with the requirements of this Second Modified Final Judgment shall release the Town only from liability for the claims made in the Complaint that occurred prior to the entry of this Second Modified Final Judgment. This Second Modified Final Judgment shall not release the Town from liability on, or act as a bar to, any other claims, including claims unknown to the Commonwealth on the date of the entry of the Second Modified Final Judgment and claims based on future violations.

47. If, at any time, the Town either (a) operates or maintains the Town storm drainage facilities or any sewage disposal systems or (b) allows or permits on its property the operation or maintenance of a drainage system or sewage disposal system in a manner that (i) causes or contributes harm to the environment or the citizens of the Commonwealth, (ii) poses a danger to the public health or welfare, or (iii) violates applicable water quality standards, the Commonwealth may seek further relief as it deems appropriate in accordance with applicable law.

48. The Town does not, by entering into this Second Modified Final Judgment, admit any fact or any liability nor does the Town admit it violated any law or regulation or otherwise committed a breach of duty at any time. Except as to the allegations made to establish both personal and subject matter jurisdiction, the Town shall be deemed to have denied the allegations of the Complaint, and no part of this Second Modified Final Judgment shall constitute an admission of liability admissible in any court as evidence of same, and this Second Modified

Final Judgment shall not be admitted as an admission of liability by the Town in any other proceeding.

49. The Town's obligation to pay stipulated penalties under Paragraph 34 relating to the sewerage activities in Paragraphs 22-30 of this Second Modified Final Judgment shall terminate one year from the date the Town completes the construction of the wastewater collection system and connection to the City of Gloucester's wastewater treatment plant.

JUDGMENT is hereby entered in accordance with the foregoing Second Modified Final Judgment, this day of , 2003

APPROVED AS TO FORM:

Justice

Assented to:

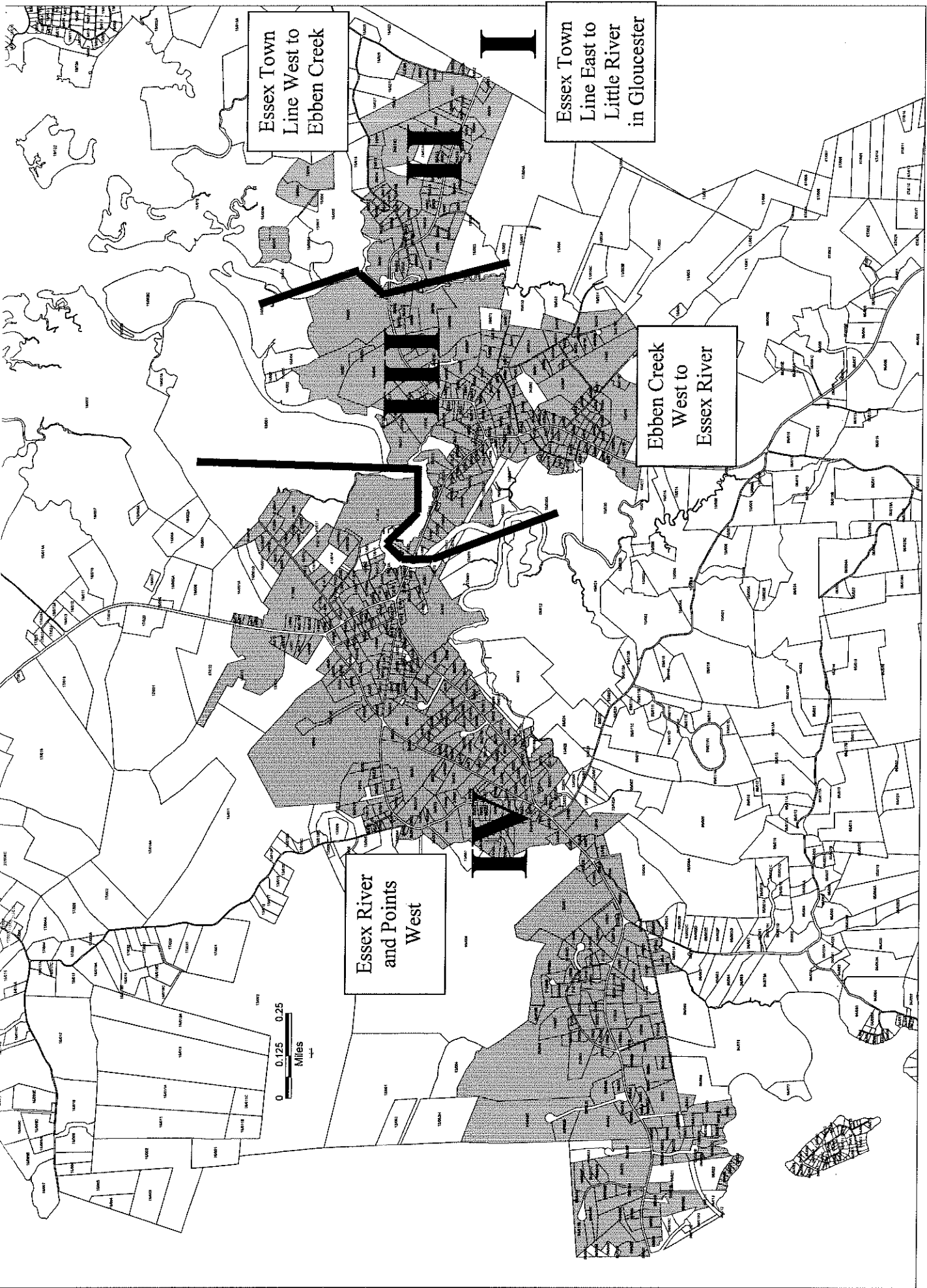
On behalf of the Town of Essex
By its Attorney,

John Giorgio, BBO# 193540
Kopelman & Paige
31 St. James Ave.
Boston, MA 02116-4102
(617) 556-0007

On behalf of the Commonwealth of Massachusetts
By its Attorney,
THOMAS F. REILLY
ATTORNEY GENERAL

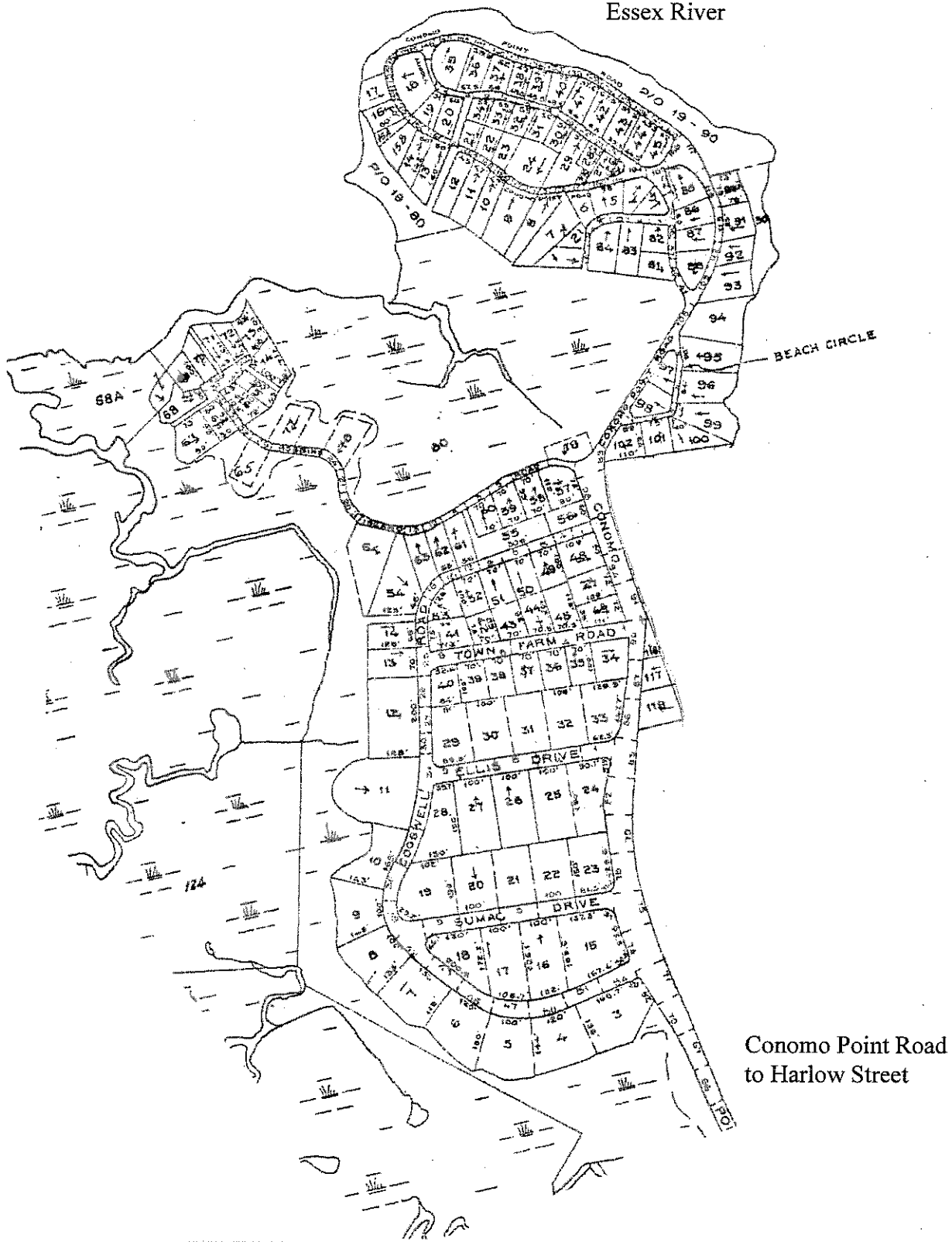
I. Andrew Goldberg, BBO# 560843
Assistant Attorney General
Environmental Protection Division
200 Portland Street, 3rd Floor
Boston, MA 02114
(617) 727-2200

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Attachment A. General, Diagrammatic Depiction of Sewer Contracts I, II, III, and IV
 (Sewer Service Area is Represented by Shading)

Essex River



Attachment B. Conomo Point.

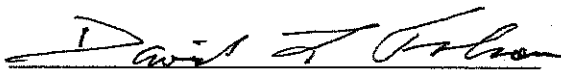
CONSENT

The defendant, Town of Essex (the "Town"), a political subdivision of the Commonwealth of Massachusetts, duly organized and existing under the laws of the Commonwealth, admits the continuing jurisdiction of the Suffolk Superior Court as to the personal and subject matter jurisdiction of this action and hereby consents to the entry of the Second Modified Final Judgment in the form attached hereto. In consenting, each of the undersigned members of the Town's Board of Selectmen (the "Board") states that he or she has personally read and understands each of the numbered paragraphs in the Second Modified Final Judgment. The Board of Selectmen hereby authorizes Town Counsel to execute the Second Modified Final Judgment on behalf of the Town.

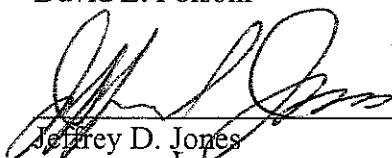
The members of the Board of Selectmen further understand that any violation of this Second Modified Final Judgment may result in the imposition of stipulated penalties and in the Town being adjudged in contempt of court.

ATTESTING TO AND WAIVING ALL RIGHTS OF APPEAL

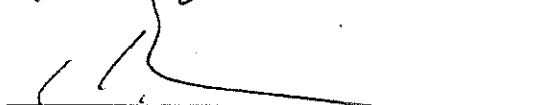
The Town of Essex
By Its Board of Selectmen



David L. Folsom



Jeffrey D. Jones



Rolf P. Madsen

Dated: 7/28/2003, 2003