



LEICESTER CONSERVATION COMMISSION RULES AND REGULATIONS FOR ADMINISTERING THE TOWN OF LEICESTER WETLANDS PROTECTION BYLAW

Effective May 6, 2009, revised November 18, 2015

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Note: Most of language in these regulations repeats language contained in the Wetland Bylaw, but is reformatted herein to be easier to read and understand. Sections that are only in the Regulations or are significantly different from the bylaw include: Section III: 25 Foot No Disturb Zone, and

Section V: Applications and Fees.

Authority: These rules and relations are promulgated by the Leicester Conservation Commission ("Commission") pursuant to authority granted it under the Leicester Wetlands Protection Bylaw ("bylaw").

Purpose: These rules and regulations are promulgated to create uniformity of process and to help clarify the provisions of the bylaw.

Revision: These regulations may be revised from time to time by a majority vote of a quorum of the Commission, in accordance with procedures stated herein in Section IX.

I. Purpose

The purpose of these regulations is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Leicester by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the “resource area values protected by these regulations”).

These regulations is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (G.L. Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Leicester.

II. Jurisdiction

Except as permitted by the Conservation Commission no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water; and lands subject to flooding (collectively the “resource areas protected by these regulations”). Said resource areas shall be protected whether or not they border surface waters.

The jurisdiction of these regulations shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

III. 25-foot "No Disturb Zone"

Disturbance of vegetation or soils within 25 feet of a resource area creates direct, observable impacts to the resource area. Activities undertaken in close proximity to wetlands and other resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, but are not limited to, erosion, siltation, loss of groundwater recharge, disruption of hydrologic connections, poor water quality, harm to wildlife habitat, or disruption of wildlife habitat corridors.

The minimum strip of continuous undisturbed vegetative cover for any and all resource areas (as defined in these regulations) is 25 feet from the outermost edge of the protected resource area in all directions. For example, a stream will have a minimum 50-foot corridor, plus the actual width of the stream based on the mean annual highwater mark. The 25-foot buffer is to be considered a "No Disturb Zone" and a "No Build Zone". The minimum distance for a new structure will be 25 feet from any resource area. For structures existing within the 25-foot buffer, which are not being removed but for which the footprint is changing, any increase in footprint must take place at the greatest feasible distance from the resource area.

The limits of the 25-foot "No Disturb Zone", the 100-foot buffer zone and all other relevant buffer zones, must be clearly indicated on all submitted plans.

Vegetation in the No Disturb Zone shall not be cut or trimmed in any manner. Prohibited activities within the No Disturb Zone include, but are not limited to, grading, landscaping, planting, harvesting, mowing, vegetation clearing, cutting, trimming, filling, depositing of any materials (including yard waste and construction debris) composting, excavating, construction, fencing and installation of roads, driveways and walkways.

The Commission shall have the power to issue a waiver to an applicant requesting to perform specific activities within the 25-foot "No Disturb Zone". A waiver may be granted to applicants whose projects occur within previously developed or highly disturbed areas and/or for projects and activities that will improve the protection to the resource area. Said applicant must show that measures will be incorporated into the project to ensure that there will be no significant adverse impacts to resource areas.

IV. Exemptions and Exceptions

A. Exemptions

Agricultural Uses

The applications and permits required by these regulations shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

Public Utilities

The applications and permits required by these regulations shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been

given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

Emergencies

The applications and permits required by these regulations shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by these regulations. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

General

Other than stated in the bylaws and these regulations, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) shall not apply under these regulations.

B. Waivers

Strict compliance with the requirements of these Rules and Regulations may be waived when, in the judgment of the Conservation Commission, such action is in the public interest and not inconsistent with the Leicester Wetland Bylaw, or the MA Wetland Protection Act (MGL Ch.131§40) and related Regulations (310 CMR 10.00). Waiver requests may be approved at the discretion of the Board by majority vote.

V. Applications and Fees

A. Application Requirements

Request for Determination (RDA) Applications

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. (It is the applicant's responsibility to determine the location of wetlands on site or in the vicinity of the subject work.) Such a Request for Determination of Applicability (RDA) shall include information and plans as required by the Massachusetts Wetlands Protection Act (MGL Ch. 131 §40) and related Massachusetts DEP Wetland Regulations (310 CMR 10.00) and the information required by the Leicester Wetland Regulations. Applications shall include the following:

1. Two (2) copies of the following:
 - a. A complete MassDEP WPA Form 1 (RDA)
 - b. 8 1/2 x 11 inch USGS map or other locus map sufficient to show the location of the affected area.
 - c. A detailed written description of proposed work that is the subject of the request.

- d. Optional: photographs to help describe the proposed project and wetland impacts
2. Five (5) copies of plans of sufficient size, scale, and detail to completely and accurately describe the site and to clearly describe the extent of the work to be performed and any potential impacts on resource areas (if plans are larger than 11" x 17" submit 2 full-size copies and 3 reduced-size copies).
3. Certified Abutters List, including only direct abutters of the property line of the land where the activity is proposed, including abutters across the street
4. Electronic submission of all application materials and plans in .pdf format or other electronic format specified by the Commission.
5. Local RDA Filing Fee (see Section V.B. of these Regulations).

Notice of Intent (NOI) Applications

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include information and plans as required by the Massachusetts Wetlands Protection Act (MG.L. Ch. 131 §40) and related Massachusetts DEP Wetland Regulations (310 CMR 10.00) and the information required by these Leicester Wetland Regulations. Applications shall include the following:

1. Two (2) copies of a complete NOI application with supporting documents:
 - a. Completed MassDEP WPA Form 3
 - b. NOI Wetland Fee Transmittal Form
 - c. 8 1/2 x 11 inch USGS map or other locus map sufficient to show the location of the affected area.
 - d. A detailed written description of work to be performed, to include a description of existing conditions, proposed conditions, wetland delineation information, stormwater information, construction sequencing, and how project will contribute to the protection of the interest of the Wetlands Protection Act.
 - e. Optional: photographs to help describe the proposed project and wetland impacts
2. Five (5) sets of plans: 3 full-size (24" x 36") and 2 half-size (11" x 17" or similar). In all cases, plans shall be of adequate size, scale, and detail to clearly and accurately describe the site, property boundaries, resource area boundaries, extent of the proposed work and potential impacts on resource areas.
3. Certified Abutters List (abutters to the abutters within 300 feet of the property line of the land where the activity is proposed, including any in another municipality or across a body of water¹)
4. Electronic submission of all application materials and plans in .pdf format or other

¹ Consistent with 310 CMR 10.05(4)(a), an applicant who proposes work solely within Land under Water Bodies or Waterways, or solely within a Lot with an area greater than 50 acres, is required to provide notification only to Abutters whose Lot is within three hundred feet from the *Project Site* (as defined by 310 CMR 10.04). An applicant proposing a Linear- shaped Project greater than 1,000 feet in length is required to provide notification only to Abutters whose Lot is within 1,000 feet from the Project Site. Abutter notification is not required for projects proposed by the Massachusetts Department of Transportation Highway Division pursuant to St. 1993, c. 472 as approved on January 13, 1994.

electronic format specified by the Commission.

5. Filing Fees (DEP fee, plus local fees described in Section V.B. of these Regulations).

Abbreviated Notice of Resource Area Delineation (ANRAD) Applications

Any person desiring to determine if the resource area boundary lines delineated in the field and shown on plans are accurate may in writing request a determination from the Commission. (It is the applicant's responsibility to determine the location of wetlands on site or in the vicinity of the subject work.) Such an Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as required by the Massachusetts Wetlands Protection Act (MG.L. Ch. 131 §40) and related Massachusetts DEP Wetland Regulations (310 CMR 10.00) and the information required by these Town of Leicester Regulations.

Applications shall include the following:

1. Two (2) copies of the following:
 - a. A complete MassDEP Form 4A (ANRAD) application
 - b. ANRAD Wetland Fee Transmittal Form
 - c. 8 1/2 x 11 inch USGS map or other locus map sufficient to show the location of the affected area.
 - d. A detailed written description of proposed work that is the subject of the request.
 - e. Optional: photographs to help describe the proposed project and wetland impacts
2. Five (5) copies of plans of sufficient size, scale, and detail to completely and accurately describe the site and to clearly describe the extent of the work to be performed and any potential impacts on resource areas (if plans larger than 11" x 17" submit 2 full-size copies and 3 reduced-size copies).
3. Certified Abutters List to include abutters to the abutters within 300 feet of the property line of the land where the activity is proposed, including any in another municipality or across a body of water¹
4. Electronic submission of all application materials and plans in .pdf format or other electronic format specified by the Commission.
5. Filing Fees (DEP fee, plus local fees described in Section V.B. of these Regulations).

B. Filing Fees

At the time of an application, the applicant shall pay a filing fee in accordance with these Regulations, as specified in the Table 1. ***This filing fee is in addition to that required by the Wetlands Protection Act and Regulations.*** Make check payable to the "Town of Leicester." For all fees paid, the applicant shall include a brief narrative statement indicating how the fees were calculated.

Note: Total State Fee as used in these Regulations is the Total Project Fee on the DEP NOI Wetland Fee Transmittal Form (Step 5), not the state portion of the total state fee. [Example: Total State Fee/Total Project Fee of \$500.00 for a new single-family home (237.50 state portion/267.50 local portion) = Leicester Wetland Regulation Fee of **\$125.00** (\$500.00 x .25).

Table 1: Town of Leicester, Local Wetland Bylaw Fees

Type of Application	Local Application Fee
Request for Determination of Applicability (RDA)	\$50 for single-family or two-family residential; \$100 for all other applications
Notice of Intent (NOI)	25% of Total State Fee , except as below: 50% of Total State Fee for commercial projects or residential subdivisions with a Project Site ² area of 5 – 10 acres 100% of Total State Fee for commercial projects or residential subdivisions with a Project Site area of more than 10 acres.
Abbreviated Notice of Resource Area Delineation (ANRAD)	25% of Total State Fee
Legal Advertisement in Newspaper	Cost of Advertisement ³
Extension of Notice of Intent 3-year Deadline (no other changes)	No charge if request received prior to expiration; \$25 if received after expiration
Minor Modification or Amendment to an Order of Conditions	\$25; changes that require re-filing of amended NOI with DEP: 25% of state fee.
Certificate of Compliance	\$0; \$50 if requested more than 1 year after expiration of the Order of Conditions
After the Fact Applications	Double normal filing fees
Consultant Review Fees	Actual Cost. See Section IV. C. of these Regulations

C. Consultant Review Fees

Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole

² Project Site as defined 310CMR 10.04: the area within the Project Locus that comprises the limit of work for activities, including but not limited to, the dredging, excavating, filling, grading, the erection, reconstruction or expansion of a building or structure, the driving of pilings, the construction or improvement of roads or other ways, and the installation of drainage, stormwater treatment, environmentally sensitive site design practices, sewage and water systems.

³ The Town of Leicester shall be responsible for placing the legal notice. Costs associated with the publication of legal notices shall be paid directly by the applicant to the Town of Leicester prior to issuance of a decision.

discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the select board, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

VI. Notice and Hearings

Any person filing a permit, Notice of Intent (NOI), or other application or RDA or ANRAD or other request with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and for NOI and ANRAD applications also to abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters shall also state where copies may be examined and obtained by abutters. A copy of the notice mailed and receipt(s) for certified mail shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, NOI, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, NOI, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §VII.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission will combine its hearing under these Regulations with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00), except that the Commission reserves the right to hold a separate hearing in an appropriate case.

VII. Coordination with Other Boards

Any person filing an NOI permit application, RDA, or ANRAD with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the selectboard, planning board, board of appeals, board of health, agricultural commission, town engineer, and building inspector. This requirement is waived for applicants that submit **all application materials** in .pdf format. The Conservation Commission will provide application notice to the Departments above and electronic copies upon request; paper copies may be viewed in the Conservation Commission Office. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the above boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

VIII. Permits and Conditions

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by these Regulations, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of these Regulations. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by these Regulations. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design

specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw or these regulations.

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of these regulations, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by these regulations. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the definition of "vernal pools" under §X of these regulations, including the adjacent area, perform essential habitat functions. This

presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

A permit, Order of Conditions, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance.⁴ Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke any permit, Order of Conditions, DOA, or ORAD or any other order, determination or other decision issued under these regulations after notice to the holder, the public, abutters, and town boards, pursuant to §V and §VI, and after a public hearing.

Amendments and extensions to permits, Order of Conditions, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

The Commission in an appropriate case may combine the decision issued under these regulations with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

IX. Amendment of Regulations

After public notice and public hearing, the Conservation Commission may amend these rules and regulations, effective when voted and filed with the town clerk. Failure by the Commission to promulgate such amendment to these rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of these regulations or the bylaw. At a minimum these regulations shall reiterate the terms defined in the bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

X. Definitions

The following definitions shall apply in the interpretation and implementation of these regulations.

The term “**agriculture**” shall refer to the definition as provided by G.L. Ch. 128 §1A.

⁴ Although the Leicester Wetland Bylaw authorizes 5 year permits for certain projects, this is inconsistent with the Wetland Protection Act.

The term “**alter**” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the bylaw and these regulations:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage, or other disturbance of water level or water table
- D. Dumping, discharging, or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the bylaw and these regulations.

The term “**bank**” shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term “**person**” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term “**pond**” shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term “**rare species**” shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

The term “**vernal pool**” shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression. Except as otherwise provided in these regulations or in associated regulations and bylaws of the Conservation Commission, the definitions of terms and the procedures in these regulations shall

be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

XI. Security

As part of a permit issued under these regulations, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission (the Security), to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit. The amount of any such Security shall be set by the Commission based on estimate of the cost of work submitted by the Applicant. The Applicant's estimate proposal will be reviewed by the Commission and used to assist in setting the required amount of the performance guarantee. The sum of any such performance guarantee shall bear a direct and reasonable relationship to the expected cost necessary to complete the subject work plus a contingency amount of no more than 50% of the expected cost to guard against unexpected costs and the effects of inflation. However, the estimate shall reflect the cost for the *Town* to complete the work as a public works project which may necessitate engineering, inspection, legal and administrative fees, additional staff time and public bidding procedures.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

XII. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by these regulations, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to these regulations.

The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under these regulations and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce the bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non- criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of the bylaw or these regulations may be ordered to restore the property to its original condition and take other action deemed necessary to remedy

such violations, or may be fined, or both.

Upon request of the Commission, the selectboard and town counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of the bylaw, regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D, which has been adopted by the Town in § 6.1 of the general bylaws.

XIII. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by the bylaw and these regulations. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

XIV. Appeals

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch. 249 §4.

XV. Relation of Bylaws to the Wetlands Protection Act

The bylaw was adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) thereunder. It is the intention of the bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

XVI. Severability

The invalidity of any section or provision of these regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

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