

TOWN OF LITTLETON
WETLAND PROTECTION REGULATIONS

August 8, 2016

SECTION 1
GENERAL PROVISIONS

1.1 AUTHORITY

These rules and regulations (öRegulationsö) are promulgated by the Town of Littleton Conservation Commission (öCommissionö) under the authority of Chapter 171 of the Town of Littleton Bylaws, the Wetlands Protection Bylaw (the öBylawö), and shall have the force of law upon the date that they are approved by the Littleton Board of Selectmen (the öEffective Dateö). Definitions are provided in Appendix I.

1.2 PURPOSE AND INTENT

The purpose of these Regulations is to protect the wetland and water resources of the Town of Littleton by aiding the consistent and effective implementation of the Bylaw. These Regulations set uniform standards and procedures for Activities conducted in the Areas Subject to Protection and the Buffer Zone and for the filing and review of Applications under the Bylaw. Where not otherwise specified in the Bylaw or in these Regulations, the presumptions, definitions and performance standards set forth in the Wetlands Protection Act, M.G.L. c. 131, § 40, (the öActö) and the Massachusetts Department of Environmental Protection (öMassDEPö) Wetlands Protection Regulations, 310 CMR 10.00 *et seq.*, (the öMassDEP Regulationsö) shall apply.

1.3 JURISDICTION

No person shall remove, fill, dredge, or alter any Areas Subject to Protection in the Town of Littleton that are significant to the Interests Protected by the Bylaw without a Determination of Applicability or an Order of Conditions from the Commission as provided by the Bylaw and these Regulations.

(1) Areas Subject to Protection by the Bylaw and these Regulations are set forth in the Bylaw and further defined in the MassDEP Regulations; they include:

- a) Any Bordering Vegetated Wetland (öBVWö);
- b) The Bank of any river or stream (intermittent or perennial) or of any lake or pond;
- c) Land under any river or stream (intermittent or perennial) or under any lake or pond (öLand Under Water Bodies and Waterwaysö);
- d) Any Bordering Land Subject to Flooding (öBLSFö) or Isolated Land Subject to Flooding (öILSFö); and
- e) All lands within 200 feet of the Bank of a perennial river or stream (öRiverfront Areaö).

(2) The Buffer Zone is the area within 100 feet of the edge of a Bordering Vegetated Wetland or a Bank. To protect those Areas Subject to Protection (and the Land Under Water that they

border), these Regulations restrict activities in the Buffer Zone.

- (3) The provisions of this chapter shall not apply to work exempted under the provisions of the Wetlands Protection Act, M.G.L. c. 131 s40, and the Regulations, 310 CMR 10.00.

1.4 WAIVERS FROM REGULATIONS

Strict compliance with these Regulations may be waived when, in the judgment of the Commission, such action is

- in the public interest, necessary to avoid a taking, necessary to prevent a safety hazard, or water dependent; and
- consistent with the intent and purpose of the Bylaw; and
- the least environmentally damaging practicable alternative.

Any request for a Waiver must be submitted to the Commission in writing at the time of filing (unless there is good cause for later submission of a Waiver request). The request must state why a Waiver is desired or needed, and how it meets the Waiver criteria. Grant of a Waiver is at the discretion of the Commission. The Commission may impose conditions on any Waiver to protect the Interests Protected by the Bylaw and the Areas Subject to Protection by the Bylaw. Such conditions may include a requirement to record a notice of the presence of Areas Subject to Protection on the property, which notice shall be generally consistent with the form provided in Appendix II of these Regulations.

1.5 EMERGENCIES

- (1) Unless authorized by a Severe Weather Emergency Declaration issued pursuant to 310 CMR 10.06(8), any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the citizens of the Commonwealth and what agency of the Commonwealth or subdivision thereof is to perform the project or has ordered the project to be performed. If the project is certified to be an emergency by the Commission, the certification shall include a description of the work which is to be allowed and shall not include work beyond that necessary to abate the emergency. At the discretion of the Commission, a site inspection may be made prior to certification.
- (2) An emergency certification shall be issued only for the protection of public health or safety.
- (3) The time limitation for performance of emergency work shall not exceed 30 days, or 60 days for Immediate Response Actions (IRAs) approved by the Bureau of Waste Site Cleanup (BWSC) of the MassDEP in accordance with the provisions of 310 CMR 40.0410, unless written approval of the Commissioner is obtained.
- (4) A copy of an emergency certification shall be sent to the MassDEP when it is issued by the Commission.

1.6 ADVICE FROM TOWN STAFF

Any advice, opinion, or information given to an Applicant by a Commission member outside of a Commission meeting, or by any agency, officer, or employee of the Town, shall be considered advisory only, and not binding on the Commission.

1.7 GRANDFATHERING

These Regulations shall not apply to any Applications submitted before the Effective Date.

SECTION 2

APPLICATION PROCEDURE

2.1 GENERAL

- (1) Any Person proposing an Activity may arrange a preliminary discussion by contacting the Conservation Office and arranging a time at a Commission meeting, or may satisfy their questions during the new business portion of any regular Commission meeting.
- (2) A Request for Determination of Applicability (RDA) or Notice of Intent (NOI) shall be filed with the Commission before performing Activities that may affect an Area Subject to Protection under the Bylaw. The Applicant shall provide the Commission with two paper copies and one electronic copy of the filing. The Application shall include such information and Plans as are deemed necessary by the Commission to locate and view the project area and to determine whether there is an Area Subject To Protection in the vicinity of the proposed Activities; the Application shall also sufficiently describe the proposed Activities and potential effects on the Interests Protected in all Areas Subject to Protection and Buffer Zones. One copy of the complete Application shall be submitted to the MassDEP Regional Office.
- (3) For an RDA, the Commission shall hold a public meeting within 21 Calendar days of its receipt. For an NOI, the Commission shall hold a public hearing within 21 Calendar days of its receipt.
- (4) Any Person filing an Application shall notify at the same time by certified mail or hand delivery all Abutters (including abutters in adjacent towns) to the parcel(s) on which the Activities will be conducted, pursuant to MassDEP guidelines. If a Town line is within 300ø of the Limit of Work, then that Townø Conservation Commission must also be notified. Such Notice shall include:
 - a) clear identification of the land on which the Work is to be done;
 - b) a description of the general nature of the Work; and
 - c) where the Plans may be reviewed.
- (5) A list of Abutters so notified and proof of such notification shall be filed with the Commission prior to the opening of the public hearing/meeting on an Application. If proof of said notification is not presented to the Commission, the public hearing shall not be opened. Said notification of Abutters should be sent not less than ten (10) business days prior to the scheduled hearing.
- (6) When a Person filing an Application is not the owner, the Applicant shall send the application, the notice of the hearing, and the findings to the owner, and shall supply the Commission with the name and current address of the owner.
- (7) Notice of an Application shall be given by the Commission at the expense of the Applicant not less than five days prior to the meeting, by publication in a newspaper of general circulation in Littleton. The Applicant shall indicate at the time of filing to the Commission who will be responsible for payment to the newspaper.

2.2 TIME PERIODS

- (1) All time periods of ten days or less specified in the Bylaw or in these Regulations shall be considered business days only. Time periods of more than ten days shall be considered calendar days, unless the last day falls on a Saturday, Sunday or legal holiday, in which case the last day shall be the next business day to follow.
- (2) All initial permit application documentation must be submitted to the Commission no later than 19 calendar days prior to the scheduled public hearing/meeting in order to be accepted.
- (3) The Commission shall give notice of the time and place of the hearing/meeting as described in the Bylaw, sections 171-4.A and B.
- (4) Documentation submitted by the Applicant five business days or less before the opening of the public hearing may be excluded from said hearing or held for discussion at a later date to which the hearing is continued.
- (5) Hearings/meetings may be continued in accordance with Section 171-4.C. of the Bylaw.

2.3 REQUEST FOR DETERMINATIONS OF APPLICABILITY

- (1) The RDA shall include the following information at a minimum:
 - a) MassDEP WPA Form 1 (available on the MassDEP website);
 - b) Such Plans, prepared and stamped by a Registered Professional Engineer and Registered Professional Land Surveyor, as are needed under section 2.1(2) of these Regulations. The requirement that Plans be stamped by a registered professional engineer and registered professional land surveyor may be waived by the Commission or its agent if deemed unnecessary. These Plans shall show, at a minimum:
 - i. all Areas Subject to Protection that are within 100 feet of the edge of Activity;
 - ii. the 200-foot Riverfront Areas;
 - iii. the 50-foot No-Disturb and the 100-foot Buffer Zone, each in its own color as measured from BVW and/or Bank;
 - iv. Bordering and Isolated Lands Subject to Flooding;
 - v. Land Under Water Bodies and Waterways (LUWW);
 - vi. Erosion and sedimentation control/prevention devices and method of maintenance;
 - vii. The edge of disturbance, if different from the erosion control/prevention devices; and
 - viii. Location of stockpiled materials, if any.
 - c) All BVW and Bank within 100 feet of the edge of Activity shall be marked on the site with numbered flagging tape which will correspond to the limits of Areas Subject to Protection as shown and numbered on the Plans. Documentation, such as data forms, supporting the delineation of BVW, Bank, BLSF, ILSF and LUWW shall be included

in the submission.

- (2) At the public meeting the Commission shall vote to issue either a positive or negative Determination of Applicability (DoA).
- (3) At its discretion, the Commission may make recording of the DoA a condition of a DoA.

2.4 NOTICES OF INTENT (NOI)

- (1) No Activities proposed under an NOI shall commence without receiving, recording and complying with an Order of Conditions issued pursuant to the Bylaw and these Regulations, and receiving a file number from the MassDEP. Section 4 of these regulations describes required performance standards and restrictions for an NOI application.
- (2) The Commission may accept as the Application and Plans under the Bylaw the NOI and associated Plans filed pursuant to the MassDEP Regulations. The filing shall include those items specified in any applicable policy adopted by the Commission.
- (3) All BVW, Bank and LUWW within 100 feet of the edge of Activity shall be marked in the field with numbered flagging tape, which will correspond to the Areas Subject to Protection numerically indicated on the Plans. All other Areas Subject to Protection within 100 feet of the edge of Activity shall be shown on the plans.
- (4) For Activity that requires replication of an Area Subject to Protection, the Commission may require a bond to be posted that will enable the Commission to complete the replication should the applicant fail to do so as set forth in the Order of Conditions.

2.5 APPLICATION FEE SCHEDULE

- (1) Permit fees are payable at the time of application and are non-refundable. Fees shall be calculated by the Commission or its agent according to the schedule listed below. Town projects are exempt from Bylaw fees. These fees are in addition to and separate from those fees required by the MassDEP. The Commission can choose to waive Bylaw filing fees for projects that are solely being carried out in the public interest on Town property, such as Littleton Conservation Trust or Scout projects.
- (2) The following fees shall be applied:
 - a) Request for Determination of Applicability \$25
 - b) Notice of Intent
 - i. Category 1 \$25
 - ii. Category 2 \$125
 - iii. Category 3 \$300
 - iv. Category 4 \$600
 - v. Category 5 \$1 per linear foot
\$25 minimum and \$500 maximum

- vi. Category 6 \$0.50 per linear foot
\$25 minimum and \$500 maximum
- vii. All NOIs for Activities within riverfront will have 25% added to their fee(s).
- c) Request for Extension Permits
 - i. single family home \$25
 - ii. all other projects \$100
- d) Amended Order of Conditions ½ of the original fee
- e) Certificates of Compliance
 - i. single family home \$25
 - ii. all other projects \$100
- f) Filing after violation Application fees double

2.6 FEES FOR OUTSIDE CONSULTANTS

Upon receipt of an Application, or at any point in its deliberations, the Commission may deem it necessary to obtain Town Counsel or outside consultant services in order to reach a final decision on the application.

In such instances the Commission shall notify the Applicant of this need and shall provide the opportunity for the Application to be amended or withdrawn. Should an Applicant choose to proceed, the Commission shall require the Applicant to pay the reasonable costs and expenses for these consulting services as required under Sections 171-3.C.-G. of the Bylaw.

2.7 SITE INSPECTIONS

Site inspections on properties for which an Application has been submitted are scheduled at the discretion of the Commission. If the Areas Subject to Protection on the permitted property cannot be adequately viewed (for example, during periods of snow cover or when vegetation is not present), the Commission may determine that the Application is incomplete until conditions change such that a meaningful site inspection can be conducted.

SECTION 3

ORDERS OF CONDITIONS, DETERMINATIONS OF APPLICABILITY, AND CERTIFICATES OF COMPLIANCE

3.1 ORDERS OF CONDITIONS

- (1) Orders of Conditions (OofC) shall expire three years from the date of issuance.
- (2) Notwithstanding the above, an Order of Conditions may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall run with the land.

3.2 EXTENSIONS

- (1) The Commission may extend an Order of Conditions for one or more periods up to three years. A written request for an Extension shall be made not less than 30 days prior to the expiration of said Order of Conditions. Consideration for approving an Extension shall include evidence that the project is moving forward under construction and/or financing and reasons as to why the project was not completed within three years.
- (2) The Commission may deny a request for Extension under the following circumstances:
 - a) where no Work has begun on the project, except where such failure is due to unavoidable delay, such as delays in obtaining other necessary permits;
 - b) where new information, not available at the time of original NOI filing, has become available and indicates the Order of Conditions is insufficient to protect the Interests Protected or the Areas Subject to Protection;
 - c) where incomplete Work is causing damage to the Areas Subject to Protection;
 - d) where Work has been done in violation of the Order of Conditions; or
 - e) where an Extension has previously been granted for said project.
- (3) Said Extension shall be recorded by the Applicant or Owner in the Registry of Deeds or Land Court, whichever is applicable.

3.3 AMENDMENTS

- (1) The Applicant to whom an Order of Conditions has been issued may submit a written request for an amendment to the Commission, including a narrative description of what changes have been proposed and any pertinent plans showing the changes, with a copy to the MassDEP Regional Office. The Commission shall publish newspaper notice (at the Applicant's expense) in the same general manner as required by these Regulations for Notices of Intent. In addition, the applicant must follow the requirements of abutter notification as if filing a Notice of Intent.
- (2) Amending an Order of Conditions is at the discretion of the Commission. The Commission will make a determination whether the requested change is great enough to warrant the filing of a new Notice of Intent or whether it is of a relatively minor nature and can be considered

as an amendment to the original Order of Conditions. In making this determination, the Commission will consider such factors as whether the purpose of the project has changed, whether the scope of the project has increased, whether the project meets relevant performance standards, and whether the potential for adverse impacts to the protected statutory interests will be increased. Relatively minor changes which result in the same or decreased impact on the interests protected by the Bylaw are appropriate for amendments. If the Commission determines that the project purpose or scope has changed substantially or that the interests specified in the Bylaw are not protected, it will not issue an amendment.

- (3) The issuance of an Amended Order of Conditions does not extend the effective date of the original Order of Conditions. The Amended Order shall run with the term of the original Order of Conditions or the effective date of an extended Order of Conditions. Amended Orders must be recorded with the Registry of Deeds or Land Court in the same manner as Orders of Conditions.

3.4 PERMIT COMBINATIONS

The Commission, in appropriate cases, may combine the Order of Conditions or Determination issued under these Regulations with the Determination of Applicability or Order of Conditions issued under the Act and MassDEP Regulations.

3.5 PERMIT RECORDATION

No work proposed in any NOI shall be undertaken until the Order of Conditions 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 permit has been recorded. Such certification shall include the book and page or instrument number and date. The same requirements apply to work under any Determination of Applicability for which the Commission requires recording as a condition of the DoA.

3.6 PERMIT REVOCATION OR MODIFICATION

Violations of this article, submission of false or erroneous information, or new information that substantially alters the likely impact of the project on Areas Subject to Protection or values may cause the Commission to revoke an Order of Conditions or Determination issued under this article after notice to the holder of the permit or Determination and a public hearing.

3.7 CERTIFICATES OF COMPLIANCE

- (1) Upon completion of the Activity and stabilization of the site, a request for a Certificate of Compliance (COC) shall be made in writing on the appropriate form to the Commission. The COC shall include an as-built plan and/or Engineer's Certification that the work was done as approved in the OofC. Any changes shall be explained. The Commission will act on the request within 21 days of receipt of such a request.

- (2) Prior to issuance of the COC, a site inspection shall be made by the Commission and/or its agent. The Applicant shall be notified prior to the inspection and may be present at the inspection if that is desired.
- (3) If the Commission determines after review and inspection that the Work has not been done in compliance with the Order, it shall refuse to issue said COC and specify the reasons for denial in writing to the Applicant.
- (4) If such activity has been completed in accordance with said permit, the Commission shall issue a COC, which may, in an appropriate case, be combined with a COC issued under the Wetlands Protection Act.
- (5) If the COC does not apply to all Work regulated by the Order of Conditions, it shall state to what portions of the Work it applies.
- (6) The COC, if issued, shall be recorded by the Applicant in the Land Court or Registry of Deeds, whichever is applicable.
- (7) A COC may specify conditions in the permit which will continue to apply for a fixed number of years or permanently and shall apply to current and future owners of the land.

3.8 APPEALS

A decision of the Commission under the Bylaw and these Regulations may be reviewed by the Superior Court in an action filed within 60 days thereof, in accordance with Massachusetts General Laws Chapter 249, Section 4.

SECTION 4
PERFORMANCE STANDARDS AND RESTRICTIONS

4.1 SEQUENCE OF CONSTRUCTION

The Applicant shall provide a detailed sequence of construction to the Commission in the Application as part of the standard filing requirements. Said sequence shall be followed by the Applicant, unless amended and approved by the Commission.

4.2 WETLAND SETBACKS FOR NEW ACTIVITIES AND STRUCTURES

- (1) In order to fulfill the purpose of the Bylaw, new activities and structures in Areas Subject to Protection or Buffer Zones shall be avoided to the extent practicable. Any such activities that are permitted shall be restricted as set forth within this Section.
- (2) In the judgment of the Commission, any new activity (other than travel by foot or non-motorized vehicle or removal of invasive vegetation using proper methods) or structure within 50 feet of a Bank or BVW is likely to alter the Bank or BVW. No activity shall be allowed within the No-Disturbance Area(s) set forth below except under a Waiver as provided in Section 1.4 of these Regulations. This is the minimum distance for the No-Disturbance Area; the distance may be extended further by the Commission if deemed necessary for the protection of the Interests of the Bylaw, up to the outer extent of the Buffer Zone as established in the Bylaw.
 - a) No-Disturbance Area: This is any area within the BVW or Bank and the first 50 feet of the Buffer Zone from BVW or Bank. No activities or work is permitted other than passive (foot or non-motorized vehicle) passage and removal of invasive vegetation if done in compliance with these Regulations. Except as noted, no vegetation may be disturbed, and the area should remain unchanged from its pre-project state.
 - b) Marking the No-Disturbance Area: The commission may require the limits of No-Disturbance be marked prior to construction.

4.3 PERFORMANCE STANDARDS FOR WORK IN THE BUFFER ZONE

The Commission shall begin with the presumption that lands within the Buffer Zone are best left in an undisturbed and natural state to protect the adjacent Area Subject to Protection. Any activity allowed within the Buffer Zone shall be conditioned as necessary to meet the following performance standards:

- (1) The activity shall not significantly impair the values and functions of the adjacent Areas Subject to Protection. The quantity and quality of resource values and functions, as well as pre-project conditions, such as ground slope, soil conditions, vegetation, and prior disturbance of the site should be considered explicitly in making this determination. Any offsetting mitigation provided shall also be considered, including the inclusion of pedestrian and bicycle access rights-of-way in the project (which can reduce the pollutant runoff and climate change contribution associated with the project.)
- (2) The amount of net additional impervious coverage created in the Buffer Zone shall be minimized to the extent feasible (including by use of pervious alternatives).

- (3) Land owners shall minimize application of fertilizers containing nitrogen and phosphorus, other than for agricultural uses.

4.4 WILDLIFE HABITAT AND RARE SPECIES

- (1) The Commission shall give special attention to inclusion inside the No-Disturbance Area of those topographical and ecological features that it deems important for maintaining the wildlife habitat of the Area Subject to Protection.
- (2) In evaluating impacts on wildlife habitat in all Areas Subject to Protection, evidence of the presence of rare or endangered species or of likely habitat of such species shall be considered by the Commission. Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife's (F&W) Natural Heritage Program (NHP) is not necessary for the Commission to find that such habitat is present.
- (3) The Commission may consult the Division of F&W's NHP or other authorities as it deems necessary for guidance and recommendations.
- (4) No activity shall be permitted in a Resource Area that is mapped as Priority Habitat or Estimated Habitat without approval from NHP, such as a No Take finding or a Conservation and Management Permit.
- (5) ILSF shall be presumed to provide wildlife habitat. Impacts shall be identified by the Applicant and, if the impacts are found significant by the Commission, mitigation shall be provided by the Applicant to protect the interests of the Bylaw and these regulations.

4.5 WETLAND SETBACKS FOR EXISTING STRUCTURES AND ACTIVITIES

Work associated with pre-existing structures or activities not presently in compliance with Section 4.2 may not increase the degree of "non-conformance" of those structures or activities.

4.6 NOTICE REGARDING WORK IN RIVERFRONT AREA

If the Commission issues an Order of Conditions for a project that will develop the maximum percentage of Riverfront Area allowed under the MassDEP Regulations, it may require that the Applicant record a notice that no further development will be allowed in the Riverfront Area. Such notice shall be generally consistent with the form provided in Appendix III of these Regulations.

4.7 EROSION PREVENTION

Installation of a siltation barrier between the proposed Limit of Work and the remaining Buffer Zone is required to prevent sediment-laden runoff from entering Areas Subject to Protection. Such sediments shall be removed and siltation barriers monitored and replaced when deemed necessary by the Commission or its agent. In addition, soil stabilization of disturbed areas is required to minimize migration of soil to and beyond said siltation barriers.

4.8 EROSION PREVENTION INSTALLATION

Proposed location of the siltation barriers (e.g., silt fencing, wattles, and/or strawbales) and soil stabilization method(s) shall be shown on the Plan submitted in the application. Erosion prevention devices shall be installed prior to the commencement of Activities on the site. The Commission requires erosion prevention installation standards as defined in: Erosion and Sedimentation Control Standards, Middlesex Conservation District.

4.9 STORAGE OF FILL AND SNOW

- (1) **Fill.** If any Fill is to be stored on site, it shall be stored outside of the No-Disturbance Area, and outside of the Buffer Zone unless there is no practicable alternative. If fill must be stored within the Buffer Zone it shall be surrounded by strawbales, wattles, or an equally or more effective material, to prevent erosion. The location of said Fill shall appear on any Plans submitted to the Commission pursuant to NOI requirements. If the Commission determines that the proposed location of Fill threatens the Areas Subject to Protection, it may require the Applicant to store said Fill in a different location or to remove it completely from the site.
- (2) **Snow.** If any snow is to be stored on site, it shall be stored outside of the No-Disturbance Area, and outside of the Buffer Zone unless there is no practicable alternative. If it is demonstrated by the Applicant that there is no alternative and that snow must be stored within the Buffer Zone it shall be surrounded by strawbales, wattles, or an equally or more effective material, to prevent erosion. The location of said snow storage shall appear on any Plans submitted to the Commission pursuant to NOI requirements. If the Commission determines that the proposed location of snow storage threatens the Areas Subject to Protection, it may require the Applicant to store the snow in a different location or to remove it completely from the site.

4.10 CONSTRUCTION DEBRIS

There shall be no disposal or burial of construction debris (i.e. scrap lumber, metals, concrete, asphalt, piping, logs, stumps, etc.) within the Buffer Zone unless approved by the Commission under the filing. Illegal disposal of said debris shall result in a stop work order, fine, required removal of said debris, or all of the above. The Commission may allow the creation of a spoils area, which would be required to be designated on the project Plans, if it will not harm Areas Subject to Protection.

4.11 ADVICE FROM THE COMMISSION

The Commission may offer suggestions and advice for altering plans and proposals to reduce impact on wetland values and functions toward the goal of modifying the project to make it acceptable. However, the Commission is not obligated to do so and shall not be bound in its decision-making by any prior suggestions or advice offered to applicants.

SECTION 5 **WETLANDS MITIGATION**

5.1 WETLANDS MITIGATION

In order to meet performance standards set forth in MassDEP Regulations or in these Regulations, or to meet the conditions of a Waiver, it may be necessary to create replacement areas to compensate for Areas Subject to Protection that are altered. Mitigation is understood to include such activities as Bordering Vegetated Wetlands replication, Land Subject to Flooding compensatory storage and wildlife habitat and/or riverfront area restoration, or other activities as permitted

5.2 MITIGATION REQUIREMENTS

The Commission recognizes that the history of mitigation, and specifically vegetated wetland replication is mixed. Scientific reviews conclude that for the most part, replications fail to reproduce the range of values of the wetlands they are intended to replace. Difficulties in replicating proper hydrological conditions in a consistent and enduring fashion seem to be a major source of the problem. The Commission strongly discourages any plan that requires wetland replication. Projects that necessitate wetland replication to mitigate unavoidable impacts to Areas Subject to Protection shall meet the pertinent requirements of the MassDEP Regulations and the following additional requirements of the Commission:

- (1) Proposed replacement area design shall:
 - a) be submitted as part of the project NOI. Applicants are advised to appear before the Commission for preliminary review prior to submittal of the NOI.
 - b) reproduce all the values and functions of the wetland(s) proposed to be altered, as determined by the Commission;
 - c) provide a 3:1 area ratio of replacement wetlands to wetlands proposed to be altered; and
 - d) include details as outlined in the Massachusetts Inland Wetland Replication Guidelines.
- (2) The proposed replacement area must be clearly flagged for the Commission's site inspection before the NOI filing shall be considered complete, and the numbering of said flagging shall correspond to that shown on the Plans.
- (3) Any replication or restoration work that creates a resource on (an) abutting property(ies) shall require an easement from the affected property(ies) owner/owners covering the full extension of the resource on the property prior to commencement of the work.
- (4) The replacement area shall be constructed, to the extent possible, immediately after alteration of the existing wetland and during the same growing season, and conditionally approved prior to construction of any structures.
- (5) The applicant must provide a construction sequence which includes progress reports on the construction, planting and growth of vegetation within the replacement area.

- (6) Replications that do not properly perform the approved functions and values as specified in the Order of Conditions, will not be deemed acceptable not matter how closely they adhere to approved plans. Monitoring reports shall be submitted at the end of each of the three growing seasons after installation of the replication area. If, after three growing seasons, the Commission determines that the replacement area has not satisfactorily developed into a wetland the applicant or owner may be required to submit new Plans to successfully replace said wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory replacement area has been completed at the end of three growing seasons.

SECTION 6
STORMWATER MANAGEMENT

6.1 EXPANSION OF APPLICABILITY OF THE MASSACHUSETTS
STORMWATER STANDARDS

Regulation of stormwater runoff is important to the protection of Areas Subject to Protection. Therefore, the following categories of activities, if they require an Order of Conditions under the Bylaw, must demonstrate compliance with the Massachusetts Stormwater Standards for all stormwater originating from the portions of the project subject to the Commission's jurisdiction or discharging from the project to Areas Subject to Protection or the Buffer Zone:

- (1) All industrial, commercial, institutional, office, and transportation projects;
- (2) All residential projects creating more than one dwelling unit;
- (3) All new development or redevelopment that disturbs one or more acres of land; and
- (4) All activities that result in a net increase of impervious area within the Buffer Zone and Areas Subject to Protection of more than 1,000 sf or 5%, whichever is less.

APPENDICES

APPENDIX I: DEFINITIONS

If any terms used in the Regulations are not defined below, then the definitions provided in the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Department of Environmental Protection Wetlands Protection Regulations, 310 CMR 10.00, shall apply.

APPLICATION shall mean a written Request for Determination or Notice of Intent submitted to the Commission pursuant to the Bylaw and these Regulations.

AREAS SUBJECT TO PROTECTION shall be as defined in the Bylaw.

BOUNDARY means the boundary of an Area Subject to Protection under M.G.L. c. 131, § 40 and the Bylaw. A description of the boundary of each area is found in the appropriate section of the Act and MassDEP Regulations. For inland areas, see 310 CMR 10.51 through 10.60.

BUFFER ZONE shall mean the area defined in 310 CMR 10.02(b), i.e., land within 100 feet of a Bank or a Bordering Vegetated Wetland.

BYLAW shall mean the Town of Littleton Wetlands Protection Bylaw (Chapter 171 of the Town of Littleton Bylaws) as amended.

COMMISSION shall mean the Town of Littleton's Conservation Commission.

DATE OF RECEIPT shall mean the date of delivery to the Littleton Conservation Department by mail or by hand.

DEPARTMENT or MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION or MassDEP shall mean the Massachusetts Department of Environmental Protection.

EXTENSIONS shall mean as outlined in Section 3.2 of these Regulations.

EFFECTIVE DATE shall mean the date of approval of these Regulations by the Littleton Board of Selectmen.

INTERESTS PROTECTED shall mean those interests listed in Section 171-1.A. of the Bylaw.

LIMIT OF WORK shall mean the area of Activity including all impacts within the Buffer Zone which may be, but are not always, limited to the area outlined by the erosion controls. Any work outside of the Buffer Zone which also impact the Interests Protected or the Areas Subject to Protection, shall also be included in the Limit of Work.

MASSACHUSETTS WETLANDS PROTECTION ACT (the "Act") shall mean the Massachusetts Wetlands Protection Act, Mass. Gen. Laws c. 131, §40.

MASSDEP REGULATIONS: The regulations promulgated by the Department of Environmental Protection at 310 CMR 10.00.

NO-DISTURBANCE AREA shall mean an area in which no activity is permitted other than travel by foot or non-motorized vehicle and removal of invasive species using appropriate methods.

PLANS shall mean such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Commission to describe the site and/or the work, to determine the applicability of the Act and the Bylaw or to determine the impact of the proposed work upon the Interests identified in the Act and the Bylaw.

QUORUM shall mean more than half of the members of the Commission then in office.

REQUEST FOR DETERMINATION OF APPLICABILITY (RDA): This term shall have the meaning stated in the MassDEP Regulations, and shall be synonymous with the term "request of determination (RFD)" used in the Bylaw.

WAIVER shall mean an authorization from the Commission to an applicant for a deviation from the terms of the Bylaw and Regulations as described in Section 1.4 of these Regulations.

WILDLIFE HABITAT shall mean areas having plant community composition and structure, hydrologic regime, or other characteristics sufficient to provide shelter, nutrient sourcing, growing conditions, nesting or breeding sites conducive to the propagation and preservation of wildlife.

**APPENDIX II: NOTICE OF PRESENCE OF AREAS SUBJECT TO PROTECTION
(see following page)**

NOTICE OF PRESENCE OF AREAS SUBJECT TO PROTECTION UNDER THE
LITTLETON WETLANDS PROTECTION BYLAW

This Notice is made as of this ___ day of ___, 20___, by _____ (öOwnerö).

WHEREAS, _____ is the owner in fee simple of that certain parcel of land known as [street address], Littleton, Massachusetts, Assessorø Map __, Lot __, shown on a Plan of Land [insert Registry or Land Court reference] and more particularly described in a deed [insert deed reference] (öPropertyö);

WHEREAS, the Property contains or abuts one or more Area Subject to Protection under the Littleton Wetlands Protection Bylaw, Chapter 171 of the Code of the Town of Littleton, Massachusetts;

WHEREAS, [Owner] has received an Order of Conditions from the Littleton Conservation Commission permitting work in or near one or more Area Subject to Protection, pursuant to a Waiver of one or more of the requirements of the Littleton Wetlands Protection Regulations;

NOW, THEREFORE, as required by said Order of Conditions, notice is hereby given that:

1. The Property contains or abuts one or more Area Subject to Protection under the Littleton Wetlands Protection Bylaw and Regulations.
2. The Bylaw provides as follows (as of the recording of this Notice):

Except as permitted by the Littleton Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, meadow, bog, or swamp bordering any creek, river, stream, pond, or lake, or land under said waters or any land subject to flooding or riverfront area (collectively, the öareas subject to protectionö).

WITNESS my hand and seal this ___ day of ___, 20___.

(Ownerø Signature)

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. _____, 20___

On this ___ day of ___, 20___, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:_____

**APPENDIX III: NOTICE OF DEVELOPMENT OF RIVERFRONT AREA
(see following page)**

NOTICE OF DEVELOPMENT OF RIVERFRONT AREA

This Notice is made as of this ___ day of ___, 20___, by _____ (öOwnerö).

WHEREAS, _____ is the owner in fee simple of that certain parcel of land known as [street address], Littleton, Massachusetts, Assessorö Map __, Lot __, shown on a Plan of Land [insert Registry or Land Court reference] and more particularly described in a deed [insert deed reference] (öPropertyö);

WHEREAS, the Property contains Riverfront Area, the development of which is regulated by the Massachusetts Wetlands Protection Act (G.L. c. 131, § 40) and the Littleton Wetlands Protection Bylaw, Chapter 171 of the Code of the Town of Littleton, Massachusetts;

WHEREAS, [Owner] has received an Order of Conditions from the Littleton Conservation Commission permitting work in Riverfront Area;

NOW, THEREFORE, as required by said Order of Conditions, notice is hereby given that:

1. The Property contains Riverfront Area under the Massachusetts Wetlands Protection Act and the Littleton Wetlands Protection Bylaw.
2. The Riverfront Area contained on the Property has been developed to the maximum extent allowable under the Massachusetts Wetlands Protection Act and the Littleton Wetlands Protection Bylaw. It is unlikely that additional development within the Riverfront Area on the property can be permitted by the Littleton Conservation Commission.

WITNESS my hand and seal this ___ day of _____, 20___.

(Ownerö Signature)

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. _____, 20___

On this ___ day of _____, 20___, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:_____