Town of Reading Massachusetts

Conservation Commission

Wetlands Protection Regulations
November 2012

Authorized by
READING GENERAL BYLAW - SECTION 7.1
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SECTION 1 INTRODUCTION

The citizens of the Town of Reading, Massachusetts, through Town Meeting action, gave the Conservation Commission power to regulate and protect wetlands and floodplains by adding Section 7.1, Wetlands Protection, to the Reading General Bylaw. This Amendment to the Town Bylaw was approved by the Massachusetts Attorney General on February 29, 1980.

All filings made under the Wetlands Protection Act (Massachusetts General Laws, Chapter 131, Section 40) are also subject to the Town of Reading General Bylaw, Section 7.1 Some projects not subject to the Wetlands Protection Act may still be subject to Section 7.1.

From time to time and after a public hearing, the Commission amends the Reading Wetlands Protection Regulations. Amendments are intended to formalize actions that the Commission has taken to address recurrent issues, to clarify the language used in the regulations, and to maintain consistency with changes made by the Commonwealth of Massachusetts in the Wetlands Protection Act and its accompanying regulations, Title 310, Code of Massachusetts Regulations, Section 10.00. The amendments are based on the current body of experience and knowledge that the Commission has accumulated in implementing both the Act and the Wetlands Protection Regulations. The amendments are also based on new scientific and regulatory literature and workshops promulgated by the Massachusetts Association of Conservation Commissions and the Massachusetts Department of Environmental Protection. The amendments are intended to further clarify and streamline the regulatory process, to be more consistent with aspects of the State regulations, and to protect specific resources in Reading that are not well addressed in the statewide wetlands protection regulations.

Submission guidelines and forms are available through the office of the Conservation Commission at the Reading Town Hall. These guidelines are intended to maximize efficiency in project review, minimize post-application redesign, and minimize delay in the permitting process.

The Reading Conservation Commission recognizes that environmental review is a site-specific process. The submission guidelines are therefore intended to be taken as guidelines in the broadest sense. The Commission intends that consultants have maximum flexibility in design and freedom to employ innovative techniques to minimize adverse environmental impacts. Pre-application conferences and site visits are strongly encouraged.

SECTION 2 GENERAL PROVISIONS

A Authority

1 These Regulations are promulgated under the authority of the Home Rule Amendment of Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 and Section 7.1 of the General Bylaw of the Town of Reading ("the Bylaw"), and shall be effective upon the fulfillment of all legal requirements.

B Purpose

1 These Regulations are promulgated to create uniformity of process and to clarify and define the provisions of the Town of Reading Wetlands Protection Bylaw.

C Jurisdiction

1 Areas Subject to Protection under the Bylaw (Resource Areas):
Consistent with 310 CMR 10.55(2)(c)1 and 2, any fresh water wetland including marsh, meadow, or bog, that supports a preponderance of hydrophytic vegetation; the substrate in the uppermost foot is predominantly undrained hydric soil and the substrate is saturated with water or covered by shallow water at some time during the growing season of each year; any creek, river, stream, pond (including vernal pool), or lake whether permanent or intermittent; any land under water bodies; any land subject to flooding; and any riverfront area.

2 Activities Subject to Regulation under the Bylaw:
Any activity proposed or undertaken within an area specified above which will remove, fill, dredge or alter that area is subject to regulation under the Bylaw and requires the filing of a Notice of Intent or an Abbreviated Notice of Intent.

3 Activities within the Buffer Zone:
Any activity proposed or undertaken within one hundred feet of all areas specified above except for land subject to flooding, (hereinafter called the Buffer Zone) which, in the judgment of the issuing authority, is likely to alter an area subject to protection under the Bylaw is subject to regulation and requires the filing of a Notice of Intent, or an Abbreviated Notice of Intent.

4 Activities outside the Buffer Zone:
Any activity proposed or undertaken outside the areas specified above and outside the Buffer Zone is not subject to regulation under this bylaw and does not require the filing of a Notice of intent or Abbreviated Notice of Intent unless that activity is more likely than unlikely to alter an area subject to protection under this bylaw. In the event that the Commission determines that such activity is more likely than unlikely to alter an area subject to protection under the Bylaw, it shall impose conditions on the activity or any portion thereof as it deems necessary to contribute to the protection of the interests identified in the Bylaw.

D Filing Fees

1 The local newspaper charges the applicant for publishing the legal notice of the public hearing or public meeting that is required by law for all Requests for Determination, Notices of Intent, Abbreviated Notices of Intent, Abbreviated Notices of Resource Area Delineation, and Amendments to Orders of Conditions.

2 Town projects are exempt from filing fees under these Regulations.

3 The filing fee for a Request for Determination of Applicability shall be $ 75 for projects on single-family residential sites and $ 100 for all other projects.

4 Filing fees for Notices of Intent, Abbreviated Notices of Intent, and Abbreviated Notices of Resource Area Delineation shall be paid according to the Notice of Intent Filing Fee Schedule below. Filing fees must be submitted or the filing shall be deemed incomplete. Filing fees calculated from incorrect delineations of wetland resource areas shall be adjusted upon a determination of the correct delineation by the Commission. Where filing fees are listed for two different resource areas, and those two areas overlap on the site, only the higher of the two filing fees shall be paid. Although the Fee Schedule lists fees for alterations of specific resource areas, no such alteration shall be allowed that does not meet the performance standards in the Regulations or qualify for a variance from the performance standards.

5 The filing fee for a Request for an Extension Permit for an existing Order of Conditions shall be $ 25 for projects on single-family residential sites and $ 50 for all other projects.

6 The filing fee for a Minor Project permit under Section 4.G of these Regulations shall be $ 50.00.

7 The filing fee for a Request to approve a plan change as insignificant under an existing Order of Conditions shall be $ 25 for projects on single-family residential sites and $ 50 for all other projects.

8 The filing fee for a Request to Amend an existing Order of Conditions shall be $ 25 for projects on single-family residential sites and $ 100 for all other projects.

9 There is no filing fee for a Request for a Certificate of Compliance or a Partial Certificate of Compliance.

Notice of Intent Filing Fee Schedule

A For each addition to or accessory use activity associated with an existing single-family or multi-family residential dwelling, including but not limited to driveways, sheds, swimming pools, athletic courts, additions to existing houses, grading, and landscaping - $ 125.

B For each new single-family dwelling, including associated driveway, utilities, grading, landscaping, and drainage structures - $ 600.

C For each new multi-family dwelling - $ 600 for the first unit, plus $ 125 per unit located in any Resource Area or Buffer Zone, plus all applicable fees listed in lines F through K.

D For each subdivision roadway, or other roadway or driveway (other than for single-family dwelling), and all associated drainage structures, utilities, grading, curbing, landscaping, and other associated work exclusive of dwellings - $ 1000, plus $ 600 per house plus all applicable fees listed in lines F through K.

E For each commercial, industrial, institutional, or other non-residential project - $ 1000, plus all applicable fees listed in lines F through K.

F For boundary delineation for any Resource Area – $ 1.25 per linear foot of Resource Area boundary, up to a maximum of $ 125 for a single-family lot and $ 1250 for any other lot.

G For temporary and/or permanent alteration of land within the Buffer Zone - $ 1.25 per square foot of Buffer Zone altered for any temporary or permanent alteration within 25 feet of a Resource Area or any permanent structure within 35 feet of a Resource Area.

H For work in Floodplain - $ 1.25 per square foot of Floodplain temporarily or permanently altered outside of any other Resource Area and Buffer Zone.

I For Work in Vernal Pool habitat $ 11 per square foot of Vernal Pool habitat temporarily or permanently altered.

J For work in Freshwater Wetland, Wet Meadow, Bog, Swamp, Marsh, Creek, River, Stream, Pond, Lake, or Land Under water body $ 11 per square foot of Resource Area temporarily or permanently altered

K For work in Bank - $ 11 per linear foot of Bank temporarily or permanently altered.

E Variance from Regulations

1 The Conservation Commission may grant a variance from strict compliance with these regulations for a proposed activity when the Commission finds that:

a There are no reasonable conditions or alternatives that would allow the project to proceed in compliance with the performance standards in these Regulations; and

b Mitigating measures are proposed that will allow the project to be conditioned so as to have no adverse impact upon the wetland values set forth in Section 7.1 of the Reading General Bylaws; and

c The variance is necessary to accommodate an overriding community, regional, state, or national public interest. In the case of owner occupied single or two family residences, mitigation which improves the resource area quality may be considered to accommodate the public interest.

2 Any request for a variance shall be submitted to the Commission in writing as part of a Notice of Intent or a Request to Amend an Order of Conditions. The applicant shall submit an analysis of alternatives explored that would allow the project to proceed in compliance with these Regulations and an explanation of why each alternative is unreasonable. The applicant shall also submit a description of the mitigating measures to be used to prevent adverse impacts upon wetland values. The applicant shall also submit evidence that an overriding public interest is associated with the project that justifies the variance. After holding a public hearing on the Notice of Intent or Request to Amend an Order of Conditions, the Commission shall issue a written decision concerning the request for a variance as part of the Commission's decision on said Notice of Intent or Request to Amend an Order of Conditions.

F Burden of Proof

1 Any person who files a Request for Determination of Applicability, Notice of Intent or Abbreviated Notice of Intent to perform any work within an area subject to protection under the Bylaw, or within the Buffer Zone, has the burden of demonstrating to the Commission that:

a The area is not significant to any of the interests identified in the Bylaw; or

b The proposed work will contribute to the protection of the interests identified in the Bylaw by complying with the performance standards listed in these regulations.

G Emergencies

1 Any person requesting permission to do an emergency project shall specify why the project is necessary for the health or safety of the citizens of the Commonwealth and what agency of the Commonwealth or subdivision thereof, including the Town of Reading, is to perform the project or has ordered the project to be performed. If the project is certified to be an emergency by the Conservation Commission or its Administrator, 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. A site inspection shall be made prior to certification.

2 The time limitation for performance of emergency work shall not exceed 30 days unless written approval of the Commission is obtained. However, if the emergency work is for Immediate Response Actions approved by the Massachusetts Department of Environmental Protection, Bureau of Waste Site Cleanup, in accordance with the provisions of 310 CMR 40.0410, then the time limit shall not exceed 60 days unless written approval of the Commission is obtained.

3 The recipient of an emergency certificate may be required by the Administrator or a member of the Commission to meet with the Commission to explain the nature and extent of the work performed and its long-term impacts upon the interests protected by Section 7.1 of the Reading General Bylaws and these Regulations. The Commission may require that the recipient of the emergency certificate, the owner of the subject property, and/or the persons responsible for the emergency shall file a Notice of Intent documenting the impacts and setting forth a proposal for restoration, mitigation, and other actions to ameliorate the impacts.

H Enforcement

1 The Commission shall have the authority to enforce the Bylaw and these Regulations by means of violation notices, and/or enforcement orders, administrative orders, civil actions and/or criminal proceedings. The enforcing person shall mean any member of the Commission or its agent. In addition, pursuant to Reading General Bylaws Section 7.1: the provisions of said Bylaw and these Regulations may be enforced by noncriminal disposition (fines) in accordance with the provisions of Bylaw Section 7.1 and Massachusetts General Laws Chapter 40 Section 21D. For the purposes of such noncriminal disposition the term “enforcing person” shall mean any member of the Conservation Commission, the Conservation Administrator or his or her designee.

2 Any enforcing person taking cognizance of a violation of RGB Section 7.1 or these regulations may, as an alternative to initiating criminal proceedings, give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof at any time during office hours, not later than twenty-one days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received.

3 The Town shall fix as penalty for such a violation a specific sum of money not exceeding three hundred dollars ($ 300.00). The payment to said clerk of such sum shall operate as a final disposition of the case.

4 No person shall; remove, fill, dredge or alter any area subject to protection under the provisions of the Bylaw without the required authorization; 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 an enforcement order issued pursuant to the provisions of this bylaw.

5 Each day a violation continues shall constitute a separate offense, except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the Conservation Commission shall not be subject to additional penalties under the Bylaw unless said person thereafter fails to comply with an enforcement order or order of conditions

6 Any person who violates any provision of said Bylaw or of these Regulations or of any condition of an order or a permit issued pursuant hereto, or who allows such violation to occur on his or her property, may be ordered to restore the property to its original condition and take other actions deemed necessary to remedy such violations, and shall, at the discretion of the enforcing person, be punished by a fine of not more than $ 300 for each offense. Notwithstanding the preceding sentence, failure to pay said fine within twenty-one (21) calendar days may result in criminal prosecution.

7 Citations issued by the enforcing person shall subsequently be presented to the Conservation Commission for its review. If the Commission does not take action at that time, it shall be deemed to approve of the issuance of such citation. Upon review, the Commission may, at its discretion, withdraw the citation. Notwithstanding said review, during the review the violator shall remain subject to all other provisions of this section.

8 The Town shall be the beneficiary of all fines imposed on account of the violation of said Bylaw or these Regulations, in order to help defray the expense of enforcing the same.

9 Upon request of the Commission, the Board of Selectmen and Town Counsel shall take such legal action as may be necessary to enforce said Bylaw and these Regulations.

10 Fine Schedule:

a Failure to file a Notice of Intent or Request for Determination of Applicability and to receive a valid Order of Conditions or Determination of Applicability prior to activity:
$ 300.00

b Failure to promptly comply with an Enforcement Order:
$ 300.00

c Failure to record Order of Conditions at the Registry of Deeds prior to activity:
$ 25.00

d Failure to notify the Commission prior to activity where a Condition of an Order of Conditions or a Request for Determination or a Minor Project permit requires such notice:
$ 25.00

e Failure to install and/or properly maintain erosion controls (per project):

First offense:	WARNING
Second offense:	$ 25.00
Third offense and each offense thereafter:	$ 100.00

f Failure to comply with any Condition of an Order of Conditions or Determination of Applicability or Minor Project permit
$ 25.00

g Failure to apply for a Certificate of Compliance in a timely manner:

First offense:	WARNING
Second offense:	$ 50.00

h Conducting an activity subject to the Bylaw and Regulations after the expiration of a valid Order of Conditions or Determination of Applicability:
$ 50.00

(Separate fines may be assessed for each violation and for each day of violation.)

I Limited Projects

1 If a project is considered limited as specified in 310 CMR 10.53(3) an Order of Conditions can be issued under the Reading Wetland Regulations notwithstanding the provisions of the Reading Wetland Protection Regulations if all conditions specified in 310 CMR 10.53(3) are satisfied.

J Normal Maintenance

1 Maintenance of existing developed or landscaped yards or structures within the buffer zone that does not result in any net loss of native vegetation or permanently alter the soil surface (other than for planting of vegetation) is exempt from filing under the Reading Wetland Regulations. Examples include but are not limited to: trimming of branches and shrubs, pruning (but not removing) trees, and removal of invasive species. If ornamental shrubs located within 25 feet of a Resource Area are removed, they must be replaced by a similar shrub.

SECTION 3 PERFORMANCE STANDARDS FOR RESOURCE AREAS

A General

1 The following section is intended to notify applicants proposing work that may alter areas subject to protection under the Bylaw of what performance standards should be applied, and to identify the level of protection needed to protect the interests identified in the Bylaw.

B Banks

1 Proposed work that may alter a bank shall not adversely affect the following:
   a The stability of the bank;
   b The capacity of the channel to convey water;
   c Ground water and surface water quality;
   d The capacity of the bank to provide important fisheries, wildlife habitat, food, shelter, migratory, breeding, and overwintering areas; or
   e The function of the bank to recharge or discharge groundwater.

C Fresh Water Wetlands

1 Because of the history, geography, geology and hydrology of Reading some wetlands may not qualify for state protection under 310 CMR 10.55 due to being isolated or disconnected from water bodies. These will be protected under the local By-Law provided that: (1.) they are 500 or more square feet in area, and (2.) they meet all of the other criteria of 310 CMR 10.55 with the exception of connection to water bodies.

2 It is the Commission's policy that there shall be no net loss of fresh water wetlands, including marshes, wet meadows, bogs, and swamps.

3 Any proposed work that may alter a fresh water wetland shall not destroy or otherwise impair any portion of the area. However, the Commission may issue an Order of Conditions permitting work that results in the alteration of less than 5000 square feet of fresh water wetland, provided the following requirements are met:

   a There is no reasonable alternative to a proposed crossing, utility easement, or roadway drainage structure;

   b All design mitigations, including the utilization of structures such as headwalls, have been utilized to minimize the alteration of wetlands;

   c A revegetation plan addressing issues of interspersion and diversity of vegetation has been submitted, describing the construction and the amount of recreated fresh water wetland necessary to compensate for that portion that is proposed to be destroyed;

   d The replacement fresh water wetland area must adequately replicate the wetland functions to be lost, and shall be at a 2:1 ratio to the area lost. The replacement freshwater wetland shall have an unrestricted hydraulic connection to the same fresh water wetland, waterbody, or waterway associated with the lost area;

   e The replacement area shall be located in the same general area of the fresh water wetland, water body, or reach of the waterway as the lost area;

   f All surface vegetation and contours of the replacement area shall be substantially restored within two growing seasons; and

g Excavation and soil preparation: Timing of any preparation of any replacement area shall be specified in the Order of Conditions.

4 Supporting biological data for fresh water wetland delineation shall be considered valid for a period of three years from the date of the issuance of an Order of Conditions or a Determination of Applicability.

D Zone of Natural Vegetation

1 Bordering any wetland, the Commission may require a Zone of Natural Vegetation (ZNV) of sufficient width and vegetative community type to assure that silt, soil, fertilizer in solution, organic chemicals, herbicides, organic manures, oils or petroleum products which may be carried by surface run-off shall not reach that wetland, but instead will be trapped by the natural mulch, soil and roots; and that light levels and temperature shall be moderated; and that dispersal of seeds of exotic or otherwise disruptive plant species, such as phragmites reed and purple loosestrife (Lythrum salicaria) shall be avoided; and that other alterations shall be avoided or mitigated within the wetland.

2 Under most conditions, a zone width of a minimum of twenty-five feet would be considered sufficient to accomplish this purpose. A wider ZNV may be required, depending on specific site conditions, such as grades, soil permeability or other impact potential.

3 Excavations for proposed structures extend beyond the finished limits of the structures. The extent of excavation varies depending on: the nature of the structure; the soil; depth of excavation; type of equipment used; construction techniques; slope; incidence of precipitation; groundwater flow; soil saturation and freeze/thaw cycles; existing vegetative cover; or other ground cover. An area of curtilage is developed around structures as a result of access for finish work, maintenance, foot traffic, and machine travel such as lawnmowers; and to provide a clear area for security; and to prevent moisture damage and physical damage from shading and plant structures such as tree limbs.

4 To protect the integrity of the Zone of Natural Vegetation, including the associated root system and canopy, no new foundations, including footings, frost walls or other in-ground structures, shall be permitted within ten feet of the ZNV. Depending on special site conditions, a greater distance may be required. Associated structures, including but not limited to the following: cantilevered structures, bay windows, eaves, and, garrisons, or other overhangs, may protrude to no closer than seven feet from the ZNV.

5 Notwithstanding the standards of the preceding paragraph, the Commission may grant a reduced setback distance of structures from the ZNV as a consideration of specific site conditions, such as limited vegetative cover or an existing developed condition, and provided that a permanent physical delineation, such as a solid hedge or an appropriate permanent fence or wall, of sufficient height, shall be provided and shall be maintained between the structure and the ZNV.

6 Permanent markers shall be installed and maintained in convenient locations along the limits of the ZNV, such as at any corners or along a radius, no more than fifty feet apart. Markers may be stone or concrete bounds, metal pipes or rods, trees, shrubs or other structures as approved.

E Land Subject to Flooding

1 Proposed work that may alter land subject to flooding shall not adversely affect the interests protected under the Bylaw, including the flood control capacity of said area.

2 Additional alterations beyond the above threshold, or altering vernal pool habitat, may be permitted if they will have no adverse effects on important wildlife habitat, food, shelter, migratory, breeding or overwintering areas.

3 Construction of the compensatory storage area shall be completed prior to any alteration of the existing storage area.

4 Compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within land subject to flooding, when in the judgment of the issuing authority said loss will cause an increase or will contribute incrementally to an increase in the horizontal extent and level of flood waters during peak flows. Compensatory storage shall mean a volume not previously used for flood storage and shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the 100-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river, stream, or creek.

5 Work within land subject to flooding, including that work required to provide the above-specified compensatory storage, shall not restrict flows so as to cause an increase in flood stage or velocity.

6 Work in those portions of land subject to flooding found to be significant to the protection of wildlife habitat shall not impair its capacity to provide important wildlife habitat functions. Except for work that would adversely affect vernal pool habitat, a project or projects on a single lot, for which Notice(s) of Intent is filed on or after November 1, 1987, that (cumulatively) alter(s) up to 10% or 5,000 square feet (whichever is less) of land in this resource area found to be significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to provide important wildlife habitat functions. Additional alterations beyond the above threshold, or altering vernal pool habitat, may be permitted if they will have no adverse effect on wildlife habitat, as determined by procedures contained in 310 CMR l0.60

F Land Under Water

1 Proposed work that may alter land under water shall not adversely affect the following:

a Water storage or carrying capacity of the waterbody, or of the land under the waterbody;

b Groundwater or surface water quality;

c The ability to provide important fisheries and wildlife habitat, food, shelter, migratory, breeding, and overwintering areas.

G Riverfront Area

1 Riverfront area shall be defined as in Massachusetts General Laws, Chapter 131, Section 40 and 310 CMR 10.00, as amended, except that all land within 200 feet of any stream or river that is also deemed to be a manmade canal in Reading shall be defined and protected as Riverfront Area. Proposed work in riverfront areas, including work within 200 feet of any perennial stream, river, or manmade canal, shall conform to the performance standards of 310 CMR 10.58, as amended.

H Public and Private Water Supply

1 Projects proposed in areas significant to public or private water supply shall be required to demonstrate that there will be no adverse impact on the water resources. Projects proposed for the Aquifer Protection District shall comply with the provisions of the Aquifer Protection Bylaw, Section 4.8 of the Reading Zoning Bylaws.

I Side Slope Grades Near Wetlands

1 Side slopes within 100 feet of a wetland shall have a finished grade according to the following:

a No steeper than a 3:1 (horizontal:vertical) slope for grassed and mulched slopes;

b Any slope steeper than 3:1 (horizontal:vertical) must be an engineered design with a stamped plan.

J Vernal Pools

1 The Town of Reading accepts and adopts the current (effective Jan 1, 2012) requirements, definitions, performance standards, and regulatory restrictions for vernal pools as specified pursuant to 310 CMR 10.00 and the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program criteria at 321 CMR 10.00. All Vernal Pools currently listed as certified by Natural Heritage and those that meet the criteria as so defined are protected by the Reading local regulations.

K Wildlife Habitat

1 The Town of Reading accepts and adopts the current (effective Jan 1, 2012) requirements, definitions, performance standards, and regulatory restrictions for wildlife habitat as specified in the Massachusetts Wetland Regulations 310 CMR 10.00 for jurisdictional wetlands under these Town of Reading Wetland Protection Regulations.

L Erosion Control

1 Disturbed soils areas near and within wetland resource areas shall be stabilized and protected from the erosive forces of wind and water. Erosion and sedimentation control devices shall be kept in functional condition until the soils are stabilized by vegetation and until removal of the devices is authorized by the Commission or its administrator.

M Crossing of Wetlands

1 In addition to the provisions of Section C, proposed crossings of wetland areas shall include the following: retaining walls, embankments, or other structures shall be required, to minimize wetland alteration.

N Stormwater Runoff

1 There shall be no significant change in runoff characteristics to any resource area. Any change in stormwater runoff characteristics, which may result in increased flooding off the site or degradation of water quality, must be mitigated by on-site controls. Such controls may include, but are not limited to, storm water detention facilities and stormwater retention facilities which do not alter existing wetlands.

O Discharge of Runoff into Resource Areas

1 All discharges must be appropriately treated to mitigate for turbidity, sedimentation, erosion, nutrients, water volume and rate, temperature, oil and grease, and other toxic substances. There shall be no unmitigated point source discharges directly into any resource areas or into their zones of natural vegetation (see Section D).

SECTION 4 DETERMINATION OF APPLICABILITY

A General

1 Any person who proposes to perform work within the Buffer Zone, or who desires a ruling as to whether or not the Bylaw applies to an area, or work to be performed on an area, shall submit to the Conservation Commission by certified mail or hand delivery a Request for Determination of Applicability. Any meeting held under the Bylaw shall be held simultaneously under the Wetlands Protection Act, M.G.L. Ch. 131, s.40, as it applies.

B Filing Procedure

1 The applicant shall obtain a certified abutters list, available from the Reading Assessors Office. The applicant shall submit stamped or properly metered (no date), legal-sized envelopes addressed with the names of all abutters, the applicants, their representatives, and all owners.

2 The applicant shall submit an original and eleven copies of the Request for Determination and of all supporting materials.

3 The applicant shall provide proof of payment for the required legal notice(s) prior to the public meeting.

C Public Meeting

1 The Commission shall hold a public meeting within twenty-one days of the submittal of a complete Request for Determination or by a later date agreed upon by the applicant. The Commission may continue the public meeting beyond the 21 days, with the consent of the applicant.

D Determination of Applicability

1 The Commission shall close the public meeting and issue its Determination within twenty-one days of the submittal of a complete Request for Determination, or by a later date agreed upon by the applicant.

E Appeal of Determination of Applicability

1 Any person may appeal a Determination to Superior Court according to the provisions of the Massachusetts General Laws, Chapter 249, Section 4

F Work Pending Appeal

1 Upon the issuance of a Positive Determination, work may not proceed until a judicial determination has been made by a court of competent legal jurisdiction that the proposed work is not subject to the bylaw or until a Notice of Intent has been filed and an Order of Conditions has been received by the applicant.

2 Upon the issuance of a Negative Determination, work may not proceed for the appeal period except at the applicant's risk.

G Minor Projects

1 Some projects are simple, routine, and involve very little activity or alteration within the Buffer Zone, and no significant potential adverse impact on a resource area. For such projects, it would be unreasonable to interpret this section to require a full Determination of Applicability. To avoid unnecessary regulation and its allied costs to the property owner, we establish a set of minor projects. These require the written approval of the Conservation Administrator or other agent duly appointed by the Commission. If a project is denied by the Administrator or other agent the decision may be appealed to

the Commission. Once approved unless contested, the project is merely reported to the Commission. The following minor projects, subject to the following conditions, shall require only the written approval of the Conservation Administrator or other agent duly appointed by the Commission.

2 Conditions

a The limit of the resource area must be clearly evident to the Conservation Administrator.

b A complete written description of all of the work and protective or mitigative measures, and an accurate sketch or plan must be submitted to the Conservation Administrator.

c All conditions prescribed by the Administrator must be met.

d The Administrator shall provide a copy of the proposal and any conditions to the Commission at its next regular meeting.

e If the Administrator grants approval, the proponent may proceed with the project at his/her own risk pending a review by the Commission; any person may file a formal Request for Determination pursuant to the preceding Section 4.A., and the Commission's Determination shall supersede the Administrator's decision.

3 Minor Projects checklist

Projects which have met Minor Project status are listed on the Minor Projects Checklist available from the Conservation Office in Town Hall.

4 Minor Projects include:

a Installation of unpaved pedestrian walkways for private use;

b Installation of fencing or free-standing stone walls, provided that they will not constitute a barrier to wildlife movement;

c Pruning of trees and shrubs located more than 50 feet from a wetland resource area, and pruning of existing landscaped areas regardless of distance to wetlands;

d Planting of species of trees, shrubs, or groundcover native to Massachusetts, but excluding planting of turf lawns where turf lawns do not presently exist;

e Conversion of existing lawns to uses accessory to existing single family houses, provided that the activity is located more than 50 feet from wetland resource areas, such as: open slotted decks without roofs; above-ground pools; freestanding (no foundation) sheds under 15 feet by 15 feet; steps under 100 square feet; patios under 100 square feet; porches under 100 square feet on existing foundations or on concrete footings;. The conversion of such accessory uses to lawn is also allowed.

5 Conversion of impervious surfaces to vegetated areas in the Buffer Zone;

6 Activities that are temporary in nature, have negligible impacts, necessary for planning and design purposes, and are located 35 feet from the resource area (e.g., installation of monitoring wells, exploratory borings, sediment sampling, and surveying).

7 Buffer Zone projects that are not permitted by this procedure include but are not limited to the following work (note: no work in a resource area can be permitted by this procedure):

a New or increased foundations;

b Filling, grading, or machine excavation;
c Additions except as listed in subsection 2;
d Work within 100 feet of a known vernal pool;
e Wells; and
f Work within land subject to flooding or within twenty-five feet of another resource area, or within ten feet if legally existing development exists in the location.

SECTION 5 NOTICE OF INTENT

A General

1 It is recommended that all applicants confer with the Conservation Administrator prior to filing.

2 Any person who proposes to do work that will remove, fill, dredge or alter any area subject to protection under the Bylaw shall submit a Notice of Intent.

a The requirement of the Bylaw to obtain or apply for all permits, variances, and approvals required by local bylaw with respect to the proposed activity shall include only those which are obtainable at the time the Notice of Intent is filed.

b Notwithstanding the preceding paragraph, when an applicant for a Comprehensive Permit (under M.G.L. Chapter 40B, Sections 20-23, a.k.a. Chapter 774) from a Board of Appeals has received a determination from that Board, whether to grant or deny the permit, and in the case of a denial, has appealed to the Housing Appeals Committee, said applicant shall be deemed to have obtained all local permits obtainable at that time.

c The applicant shall either obtain all permits prior to filing a Notice of Intent, or may file a Notice of Intent after the filing of application(s) for all such obtainable permits. The Notice of Intent shall then include any information submitted in connection with such other application(s) that is necessary to describe the effect of the proposed activity on the environment.

3 If the Conservation Commission rejects a Notice of Intent because of a failure to obtain or apply for all permits, variances, and approvals, it must specify in writing the permit, variance, or approval that has not been obtained or applied for. A ruling by the municipal body within whose jurisdiction the issuance of the permit, variance, or approval lies or by the Town Counsel concerning the applicability of such permit, variance, or approval shall be acceptable by the Commission.

4 Notwithstanding the foregoing, when the Commission has determined that an activity outside the areas subject to protection under this bylaw and outside the Buffer Zone is likely to alter an area subject to protection under this bylaw, the Commission may require such plans, supporting calculations and other documentation as are necessary to describe the entire activity.

B Abbreviated Notices

For certain purposes, other forms of Notices may be used.

1 The applicant shall have the option to file an Abbreviated Notice of Intent for proposed work only when the following criteria are met:

a The proposed work is within the Buffer Zone, or within land subject to flooding;

b The proposed work will disturb less than one thousand square feet of surface area within the Buffer Zone and/or land subject to flooding; and

c The proposed work will not require a U.S. Army Corps of Engineers Section 10 or Section 404 permit, or a license from the Department of Environmental Protection Division of Waterways pursuant to M.G.L. Chapter 91 (Waterways License).

2 Abbreviated Notice of Intent Submittal Requirements - The requirements are identical to those specified in 310 CMR 10.05, with the additional requirement of setback indications as specified in these Town of Reading Wetland Protection Regulations of any existing or proposed structures.

C Filing Procedure

1 A complete Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation shall meet requirements identical to those required in 310 CMR 10.05, with the additional requirement of setback indications as specified in these Town of Reading Wetland Protection Regulations of any existing or proposed structures.

D Administrative Review for Completeness

1 If the Administrator or a Commissioner determines that a Notice of Intent or an Abbreviated Notice of Intent or an Abbreviated Notice of Resource Area Delineation is incomplete or improper, he or she may return the entire filing, in which case all required time periods for processing the submitted Notice of Intent or Abbreviated Notice of Intent or Abbreviated Notice of Resource Area Delineation will no longer be applicable.

E Public Hearings

1 A public hearing shall be held by the Conservation Commission within twenty-one days of receipt of the minimum submittal requirements for a complete filing. Notice of the time and place of the public hearing shall be given by the Commission at the expense of the applicant not less than five business days prior to such public hearing, by publication in a local newspaper, and by mailing notices to abutters, the applicant, and the owner.

2 All hearings held under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, as it applies, may also be held simultaneously under Section 7.1 of the Reading General Bylaws.

3 After opening the public hearing, if the Commission determines that additional information is needed, the Commission may:

a Continue the public hearing, at the applicant's expense, to a future date to be specified at the hearing. All requested information shall be submitted no less than six business days prior to the date of the continuance; or

b Deny the project because the applicant failed to provide the necessary information that the Commission requested.

F Decision

1 The Commission shall issue a decision on a Notice of Intent, an Abbreviated Notice of Intent, or an Abbreviated Notice of Resource Area Delineation within 21 days of the close of the public hearing or, where Notice has also been filed under MGL Chapter 131, Section 40, within 3 business days of receipt of a written Notification of File Number from DEP, whichever comes later.

2 The Commission may decide to deny permission for the activity proposed under a Notice of Intent or an Abbreviated Notice of Intent in accordance with Section 7.1 of the Reading General Bylaws. The Commission may decide to issue an Order of Conditions permitting the proposed activity in accordance with Section 7.1 of the Reading General Bylaws.

3 The Commission may issue an Order of Resource Area Delineation that determines that the wetland resource area boundaries set forth in an Abbreviated Notice of Resource Area Delineation have been identified and delineated according to the definitions in

Section 7.1 of the Reading General Bylaws and these Regulations, or the Commission may modify the delineation submitted.

SECTION 6 PLANS AND TECHNICAL DATA

A General

1 Plans submitted to accompany a Notice of Intent, an Abbreviated Notice of Intent, or an Abbreviated Notice of Resource Area Delineation shall include a complete description of the wetlands resource areas, the proposed activity, and the effect of the proposed activity on the resource areas and the interests protected under the Bylaw

2 All submittals shall meet plans and technical data requirements specified in 310 CMR 10.05, with the additional requirement of setback indications as specified in these Town of Reading Wetland Protection Regulations of any existing or proposed structures.

SECTION 7 ORDER OF CONDITIONS and ORDER OF RESOURCE AREA DELINEATION

A Definition

1 An Order of Conditions is a document issued by the Conservation Commission, after receipt and review of a Notice of Intent or an Abbreviated Notice of Intent, that permits, regulates, requires, and/or prohibits activities under the Commission's jurisdiction. An Order of Conditions shall be valid for a period of three years from the date of issuance.

2 An Order of Resource Area Delineation is a document issued by the Conservation Commission, after receipt and review of an Abbreviated Notice of Resource Area Delineation, that confirms or modifies the delineation submitted. An Order of Resource Area Delineation shall be valid for a period of three years from the date of issuance.

B Pre-Construction Requirements

1 The Conservation Commission shall receive proof that the Order of Conditions has been recorded at the Middlesex South Registry of Deeds showing date and instrument number(s) and/or Certificate number(s) of the recording.

2 The applicant shall inform the Reading Conservation Commission, in writing, of the names, addresses, business and home telephone numbers of both the project supervisor who will be responsible for ensuring on-site compliance with this Order, and his/her alternate. This list will be kept current, and the Reading Conservation Commission shall he notified of all changes.

3 A pre-construction meeting shall take place between the contracting agent and the Conservation Administrator for the purpose of reviewing the requirements of the Order of Conditions and establishing a general construction schedule.

4 Proof of receipt of a DEP file number and proper registration with the Massachusetts Natural Heritage Program--Appendix A--(if the site of the proposed work is shown on the most recent Natural Heritage Program Map of Estimated Habitats of State-Listed Rare Wetlands Wildlife) shall be provided to the Reading Conservation Commission prior to any work subject to an Order of Conditions.

C Copies

1 A copy of the Order of Conditions shall be kept on site at all times.

D Requests for Plan Change

1 After the Commission has issued an Order of Conditions for a proposed activity, if changes are proposed in the activity, the applicant must notify the Commission in writing requesting approval for these changes. The applicant must submit with the request adequate site plans, calculations, data, descriptions of the proposed changes, and any other information that the Commission may require to understand the proposed changes and to make the determination. No work shall be done on the subject area until the Commission has reviewed and approved the changes.

2 The Commission shall review the proposed changes and may determine:

a That the plan change is insignificant and the Order of Conditions requires no Amendment; or

b That the plan change is significant and the Order of Conditions requires an Amendment; or

c That the plan change is sufficiently different from the approved plan that a new Notice of Intent or Abbreviated Notice of Intent must be filed.

3 The applicant shall be notified of the decision of the Commission within 21 days of the receipt of the applicant's notification of the changes.

4 If the Commission decides that the plan change requires an Amendment of the Order of Conditions or a new Notice of Intent or Abbreviated Notice of Intent, a public hearing shall be held in accordance with Section 5.D of these Regulations. If the applicant anticipates that the Commission will require an Amendment, the applicant may request that the Commission bypass the determination under Section 7.D.2 and proceed directly to the public hearing for the Amendment. If the applicant anticipates that the Commission will require a new Notice of Intent or Abbreviated Notice of Intent, the applicant may file the new Notice without first undergoing the determination process in Section 7.D.2.

E Extensions

1 The Commission may issue an Extension Permit for an Order of Conditions or an RDA for a period of up to three years to an applicant who has demonstrated reasons for such a permit. The Commission may deny an Extension to a project that has not commenced within the original time limit. The applicant must apply in writing for an Extension Permit at least 30 days prior to expiration (note: application for an Extension Permit may trigger a redelineation of the wetlands.

2 For projects upon which work has not yet begun within three years of the issuance of an Order of Conditions or an Order of Resource Area Delineation, and for which an Extension Permit has been requested, the Commission may review the wetland resource area delineations before granting an Extension Permit. If the Commission finds that a delineation is no longer valid, the Commission may amend the Order of Conditions or Order of Resource Area Delineation before granting an Extension Permit, following the procedure set forth in Section 7.D. above, or may deny the Extension

F Appeals

1 Any person may appeal an Order of Conditions to Superior Court according to the provisions of Massachusetts General Laws, Chapter 249, Section 4.

SECTION 8 CERTIFICATE OF COMPLIANCE

A Definition

1 Certificate of Compliance shall mean a written determination made by the Conservation Commission verifying that work has been completed in accordance with an Order of Conditions.

B Request

1 Upon completion of work under an Order of Conditions, the applicant or owner shall submit a written request for a Certificate of Compliance to the Commission. The applicant or owner may request a Partial Certificate of Compliance for discrete portions of the work under the Order of Conditions. The Commission may require that a request be accompanied by:

a As-built plans (1” = 40' or 1" = 20' scale, corresponding to submission plans) stamped by a registered professional engineer and/or register land surveyor showing:

1 All structures, buildings, impervious surfaces, and existing grading;
2 Wetlands resource areas and mitigation areas; and
3 Any other elevations or distances the Commission may specify to ensure compliance with the Order of Conditions.

b A written statement by a registered professional civil engineer and/or other qualified professional, as may be required by the Commission, certifying compliance with the approved plans referenced above and this Order of Conditions and setting forth what deviations, if any, exist.

c Any other reports or documents related to the work that are required by the Order of Conditions.

C Decision

1 Upon receipt of a request for Certificate of Compliance, the Commission shall make a site inspection with the applicant/owner or the representative of the applicant/owner, and shall review the materials submitted with the request. The Commission may issue the Certificate of Compliance within 21 days of the receipt of the request, or may determine that the requirements for the Certificate of Compliance have not been met and deny the request. In the case of a denial, the reasons for the denial shall be issued in writing to the applicant within 21 days of the receipt of the request. If the Order of Conditions contains conditions that continue past the completion of construction, the Certificate shall specify which conditions shall continue in effect. The applicant or owner shall record the Certificate of Compliance at the Registry of Deeds or the Land Court, as appropriate, and shall submit certification of the recording to the Commission.

D Burden of Proof

1 The applicant shall have the burden and obligation of bringing the property into compliance with the Order of Conditions.

SECTION 9 SECURITY

1 A bond or other means of financial responsibility acceptable to the Commission and the Town Counsel, may be required to secure performance of work required by an Order of Conditions. It shall be held by the Town, and shall be released by the Commission only upon satisfactory completion of the work required by the Order, and the issuance of a Certificate of Compliance.

2 The amount of security shall not exceed the cost, as estimated by the Town or their agent, of the required work or of the restoration of affected lands and properties if the work is not faithfully performed as required, whichever is greater.

3 Forfeiture of such bond or security shall be recoverable at suit of the Town in Superior Court, pursuant to the provisions of the Massachusetts General Laws, Chapter 249, Section 4.

SECTION 10 CONSULTANT FEE

1 The Commission may require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to make a Determination of Applicability, complete the review of a Notice of Intent or other application or request made pursuant to Reading General Bylaw Section 7.1 or these Regulations. This fee is called the Consultant Fee and shall be in the maximum amount of Twenty-Five Thousand Dollars ($ 25,000.00).

2 The specific consultant services may include, but are not limited to, the following:
   a Resource area and wetland survey and delineation,
   b Analysis of resource area and wetland values,
   c Wildlife habitat evaluations,
   d Hydrogeologic and drainage analysis, and
   e Environmental and land use law.

3 The Commission may require the payment of the Consultant Fee at any point in its deliberations prior to a final decision. The applicant shall pay the Consultant Fee to the Town to be put into a revolving fund for consultant fees of the Commission, which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings.

4 Any unused portion of the Consultant Fee shall be returned to the applicant unless the Commission determines at a public meeting that other action is necessary.

5 Any applicant aggrieved by the imposition of, or size of, the Consultant Fee, or any act related thereto, may appeal according to the provisions of Massachusetts General Laws.

6 The minimum qualifications of any consultant selected by the Commission shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.

SECTION 11 SEVERABILITY

1 The invalidity of any section of these Regulations shall not invalidate any other section or subsection, nor shall it invalidate any permit or determination that has been previously issued.

2 If any court of the Commonwealth shall invalidate any provision of the Bylaw or of these Regulations, the Commission shall promulgate additional Regulations, or present to the next Town Meeting after such invalidation, amendments to the Bylaw or Regulations which are designed to comply with any court decision invalidating such provision or Regulation.

SECTION 12 DEFINITIONS

1 The definitions and discussion of terms in the Massachusetts Wetlands Protection Act Regulations 310 CMR 10.00 shall apply in the interpretation and implementation of this bylaw with following exceptions:

HYDRIC SOIL: soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic (oxygen-lacking) conditions in the upper part of the soil.

HYDROPHYTIC VEGETATION: plant life growing in water and/or saturated soil that is at least periodically deficient in oxygen. Hydrophytic plant species include but are not limited to those listed in Massachusetts General Laws Chapter 131, Section 40.

QUORUM: a quorum consists of four (4) members of a seven (7) member committee.

RARE SPECIES: Those vertebrate and invertebrate animal species officially listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8, as well as those plant species listed as rare, threatened, or endangered by the Massachusetts Natural Heritage Program.

RIVER: a natural course of water that has a continuous or intermittent flow and empties to any wetland, lake, pond or other river, including canals, natural or manmade.

WETLANDS: lands where the water table is usually at or near the surface, or where the land is covered by shallow water. This shall include swamps, wet meadows, bogs and marshes, creeks, streams, ponds, rivers, and lakes and bordering vegetated wetlands. Wetlands must have a preponderance of hydrophytic vegetation or have the following attributes:

1 The substrate in the uppermost foot is predominantly undrained hydric soil; and

2 The substrate is saturated with water or covered by shallow water at some time during the growing season of each year.

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