

Article XVIII – revisions proposed for March 24, 2007 Town Meeting

Section 1. Purpose

The purpose of this bylaw is to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing or potential water supplies, to protect the public health and safety, to protect the community against the costs ***which that*** may be incurred when development occurs in or adjacent to wetland resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of Lincoln.

Accordingly, this bylaw protects the wetlands, related water resources, the adjoining land areas, and important wildlife habitat areas in the Town of Lincoln by controlling activities deemed by the Conservation Commission (the "Commission") likely to have a significant effect, immediate or cumulative, upon resource area values including but not limited to the following: ~~protection of~~ public or private water supply, ~~protection of~~ groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, ***prevention***, avoidance ***and control*** of water pollution, ~~protection of~~ fisheries, ~~protection of~~ wildlife habitat and habitat for rare species including rare plant ***and animal*** species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the "resource area values protected by this bylaw").

This bylaw ~~is intended to~~ utilizes the Home Rule authority of the Town of Lincoln to protect ***the resource areas subject to regulation under the Wetlands Protection Act (M.G.L. c.131, §40) (the "Act") to a greater degree; to protect*** additional resource areas ***recognized by the Town as significant, beyond those subject to regulation under the Act; to protect all resource areas*** for ***their*** additional values, ~~with beyond those recognized under the Act, and to impose in local regulations and permits~~ additional standards and procedures stricter than those of the ~~State Wetlands Protection Act (M.G.L. Ch. 131 §40)~~ and ***its implementing*** regulations ***thereunder*** (310 CMR 10.00) (***the "Regulations"***), subject, however, to the rights and benefits accorded to agricultural uses and agricultural structures of all kinds ***under pursuant to*** the laws of the Commonwealth.

Section 2. Jurisdiction; Presumption

Except as permitted by the Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following wetland resource areas: any freshwater wetland; marsh; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake, pond of any size; river, stream, ***brook or*** creek, ***whether perennial or intermittent***; lands under any water body; land subject to flooding or inundation by groundwater or surface water; or the following upland buffer zone resource areas: lands within 200 feet of any river or ***any*** perennial stream, ***brook or creek (the "Riverfront Area")***; and lands within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond, intermittent stream, ***brook or*** creek, lands

under any water body, and land subject to flooding or inundation by groundwater or surface water. ~~(collectively the “resource areas protected by this bylaw”).~~ **Said Collectively, all such wetland resource areas and upland resource areas shall be deemed to be “resource areas shall be protected by this bylaw”** whether or not they border surface waters.

It shall be presumed that significant adverse effects on the values of a resource area protected by this bylaw will result from any filling, dredging, building upon or other alteration within a wetland resource area or within 50 feet of the edge of any freshwater wetland, marsh, wet meadow, bog, or swamp within 50 feet of the top of the bank of any lake, reservoir, pond or intermittent stream, brook or creek or within 100 feet of any vernal pool or the top of the bank of any river or any perennial stream, brook or creek unless the applicant demonstrates by clear and convincing evidence that such significant adverse effect will not occur.

Lands within 200 feet of rivers or perennial streams, brooks and creeks and lands within 100 feet of other wetland resource areas protected by this bylaw are presumed to be important to the protection of these resource areas because activities undertaken in these upland buffer zone resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction or clearing, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction, clearing and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, excess nitrogen and phosphorus loading, and loss of wildlife habitat. The Commission may therefore, by regulation, establish design specifications, performance standards setbacks, no-disturb areas, no-build areas, other work limits and other measures and safeguards for the protection of such upland buffer zone resource areas including, without limitation, strips of continuous, undisturbed vegetation or other form of work limit or setback to buildings, roads, landscaping and other features.

Section 3. Exemptions and Exceptions

The No application and or permit shall be required by this bylaw shall not apply to for the commencement of an emergency projects necessary for the protection of the health or safety of the public, provided that the work if such project is to be performed undertaken by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof provided, however, that (a) advance notice, oral or written, has been given to the Commission either prior to commencement of work such project or within 24 hours after commencement provided that (b) the Commission or its agent certifies the work as an emergency project: provided that the work (c) the project is performed undertaken only for the time and place certified by the Commission and for the limited purposes necessary to abate the emergency and (d) provided that within 21 days of the commencement of an emergency project a permit an application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and or other requirements of the Commission, the Commission may, after notice and a public hearing, order the modification or cessation of an emergency project or the implementation of

~~revoke or modify an emergency project approval and order~~ restoration ~~and~~ or mitigation measures.

~~The No~~ application ~~and or~~ permit ~~required by this bylaw~~ shall ~~not~~ be required ~~by this bylaw~~ for work performed for normal maintenance or improvement of land in agricultural use as defined by the ~~Massachusetts Wetlands Protection Act Regulations at 310-CMR-10.04.~~

No application or permit shall be required by this bylaw for filling, dredging, building upon or other alteration of a resource area undertaken by the Town of Lincoln Water Board, acting within its lawful authority and in compliance with applicable State and Federal laws and regulations.

Mosquito control work ~~which that~~ is exempted from ~~regulation under~~ the ~~State Wetlands Protection~~ Act is subject to this bylaw; ~~but provided, however, that~~ all such mosquito control work proposed throughout the Town in any year may be presented in a single application ~~to the Commission, that~~ no filing fee ~~will~~ ***for such application shall*** be charged, ~~that~~ no notice to abutters ~~will shall~~ be required ~~and~~ for such application, and that all such work may be allowed by a single annual permit.

~~No permit shall be required under this bylaw for filling, dredging, building upon or other alteration of a resource area undertaken by the Town of Lincoln Water Board, acting within its lawful authority and in compliance with applicable State and Federal laws and regulations.~~

Other than as stated in this section, ~~the exceptions provided in the State Wetlands Protection all work that is exempted from regulation under the Act (G.L. Ch. 131 §40) and in or the Wetlands Regulations (310 CMR 10.00) shall not apply is subject~~ to this bylaw. ***An application*** and a permit ~~shall may~~ be required ~~as set forth in by~~ this bylaw whether or not an Order of Conditions is also required under the ~~State Wetlands Protection~~ Act.

Section 4. Applications and Fees

~~A written application shall be filed with the Commission by~~ Any person who proposes to perform activities affecting resource areas protected by this bylaw ***shall file a written Notice of Intent with the Commission.*** ~~The permit application that~~ shall include such information and plans as are deemed necessary by the Commission to describe (a) the proposed activities; ~~and~~ (b) their effects on the resource areas protected by this bylaw; and (c) where ***applicable appropriate***, any practicable alternatives to such activities. No such activities shall commence without receiving and complying with ~~a permit an~~ ***Order of Conditions*** issued pursuant to this bylaw.

Any person desiring to know whether or not ~~any a~~ proposed activity or any area is subject to this bylaw may file a written Request for Determination of Applicability from the Commission. Such Request for Determination of Applicability shall contain data and plans sufficient to enable the Commission to identify and understand the proposed activity and its location or the location of the area to which the request relates. ***A negative Determination of Applicability shall authorize the work described in the Request to proceed***

subject to certain conditions that the Commission may impose. A positive Determination of Applicability will require the filing of a Notice of Intent.

Any person may file an Abbreviated Notice of Resource Area Delineation to determine the boundaries of resource areas protected by this bylaw on a specific site. The Commission will issue an Order of Resource Area Delineation either confirming or modifying the boundaries delineated in the filing.

The Commission, in an appropriate case, may accept ~~as the an~~ application and associated plans ~~under this bylaw the application and plans~~ filed ~~under pursuant to~~ the ~~State Wetlands Protection Act (M.G.L. Ch. 131 §40)~~ and Regulations ~~(310 CMR 10.00)~~ **as the application and associated plans filed pursuant to this bylaw.**

At the time of an application ~~or RFD~~ the applicant shall pay a filing fee specified ~~in by~~ regulation of the Commission. This fee ~~is shall be~~ in addition to that required ~~by the State Wetlands Protection pursuant to the Act and Regulations.~~ This fee ~~is shall not be~~ refundable. ~~The fee for an application for modification of a permit will shall be the excess, if any, of (i) the amount calculated as provided above for the activities requested to be allowed by the modified permit, over (ii) the fee paid for the original permit, but the fee for an application for modification of a permit will in no event be less than \$25.~~

~~Upon receipt of an application, or~~ At any point ~~prior to or~~ during ~~the~~ any hearing ~~process on an application filed pursuant to this bylaw,~~ the Commission ~~is authorized to may~~ require ~~an the~~ applicant to pay a **consultant** fee for the reasonable costs and expenses borne by the Commission for ~~the services of~~ specific expert ~~engineering and other~~ consultants, ~~including engineers, wetlands scientists, wildlife biologists or others services~~ deemed necessary by the Commission to ~~aid in the review of proposed projects including, but come to a final decision on the application. This fee is called the "consultant fee". The specific consultant services may include, but are~~ not limited to, performing or verifying the accuracy of any resource area survey ~~and or~~ delineation; analyzing resource area functions and values, including wildlife habitat evaluations pursuant to Section ~~VII-7~~; hydrogeologic and drainage analysis; and researching ~~and interpretation of applicable environmental or land use~~ law.

Pursuant to Massachusetts General Law, Chapter 44, Section 53G ~~and regulations promulgated by the Commission, any such~~ consultant fees shall be deposited ~~in with the Town Treasurer, who shall create~~ a special account ~~specifically for this purpose, to be established by the town treasurer in the municipal treasury and shall be kept~~ separate and apart from other monies ~~held by the Town. The Funds in such~~ special account (including accrued interest, if any) ~~shall may~~ be expended at the direction of the Commission without further appropriation; provided, however, that such funds ~~are to be may~~ be expended ~~by it~~ only in connection with ~~carrying out the Commission's responsibilities under the law. Any excess amount in the account attributable to a specific the~~ project ~~for which the consultant fee has been~~

~~collected. including any accrued interest, at Upon the completion of said such the consultant's services pursuant to this section and the payment of all fees incurred in connection therewith, project any excess funds remaining in the special account that are attributable to the project, including any accrued interest, shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information available only through outside consultants is necessary for the making of an objective decision. The Commission may waive the filing fee or consultant fee of an application filed by a government agency.~~

~~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 the Massachusetts General Laws. The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit or other application or Request for Determination of Applicability filed by a government agency.~~

~~The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:~~

Project Cost (\$)	Maximum Fee (\$)
Up to 100,000	500
100,001 - 500,000	2,500
500,001 - 1,000,000	5,000
1,000,001 - 1,500,000	7,500
1,500,001 - 2,000,000	10,000

~~Each additional \$500,000 project cost increment (over \$2,000,000) may be charged not more than an additional \$2,500 maximum fee per increment.~~

~~The project cost means the estimated, entire cost of the project, including but not limited to, resource area delineation, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro rata for that portion of the project cost applicable to those activities within resource areas protected by this bylaw. The project shall not be segmented to avoid the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not impact payment of the consultant fee.~~

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

Within ten (10) business days of the date that a request for consultant fees is made by the Commission or an applicant is informed of the Commission's selection of an expert consultant pursuant to this section, whichever is later, the applicant may appeal such selection in writing to the Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The filing of an appeal pursuant to this paragraph shall extend the applicable time limits for action upon the application by the amount of time during which such appeal is pending before the Board of Selectmen.

Section 5. Notice and Hearings

Any person filing an application ~~for a permit or RFD~~ with the Commission, shall, within seven (7) days after such person is informed of the date and time of the **public** hearing thereon, give written notice thereof, by certified mail (return receipt requested) or hand delivery, **to the owner of the land to be affected by the proposed work, if different from the applicant;** to all ~~abutters owners~~ **abutters owners** according to the most recent records of the assessors, **of land abutting the affected land,** including owners of land **located** across a traveled way or body of water **therefrom;** ~~to the owner of the land affected, if different from the applicant,~~ and to abutters to ~~the such~~ **the such** abutters **whose property is located** within 300 feet of the ~~property line of the applicant,~~ **affected land,** including any **property located** in another municipality or across a body of water **therefrom.** Such notice shall state the time and place of the hearing, shall identify the applicant, the property affected and the work proposed, and shall either ~~(1) (a)~~ **(1) (a)** enclose a copy of the application or request, with plans, or ~~(2) (b) shall~~ **(2) (b) shall** state where copies may be examined and duplicated. The applicant shall submit to the Commission, at or before the public hearing, receipts for such notices or other satisfactory evidence that such notices have been given, ~~and.~~ **Failure to provide such evidence shall be grounds for rescheduling of the hearing or, if intentional or repeated, denial of the requested permit.**

The Commission shall conduct a public hearing on any application, ~~Abbreviated Notice of Resource Area Delineation (ANORAD), or RFD,~~ with notice given at the expense of the applicant at least five business days prior to the hearing, in a newspaper of general circulation in the Town of Lincoln.

The Commission shall commence the public hearing within 21 days from receipt of a completed application, ~~ANORAD, or RFD~~ unless **the applicant authorizes** an extension ~~is authorized~~ **is authorized** in writing ~~by the applicant.~~

The Commission shall issue its permit ~~other order or Determination of Applicability~~ in writing within 21 days of the close of the public hearing ~~thereon~~ unless **the applicant authorizes** an extension ~~is authorized~~ in writing ~~by the applicant.~~

The Commission ~~shall may,~~ whenever appropriate, combine its hearing ~~under pursuant to~~ this bylaw with ~~the any~~ hearing conducted ~~under pursuant to~~ the ~~State Wetlands Protection Act (M.G.L. Ch.131 §40) and Regulations (310 CMR 10.00).~~

The Commission shall have authority to continue the hearing to a **specific** date announced at the hearing, for reasons stated at the hearing, which may include **the** receipt of **new additional** information offered by the applicant or others, **or the need for additional** information **and or** plans **required of from** the applicant ~~which are deemed necessary by the Commission in its discretion,~~ or comments and recommendations **of from** boards and officials **listed referenced** in Section 6 **of this bylaw. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.**

Section 6. Coordination With Other Boards

Any person filing an **permit** application, ~~ANORAD, or RFD~~ with the Commission, or any amendment ~~thereof thereto~~, shall provide a copy thereof, together with any accompanying plans, within seven (7) days after filing with the Commission, by certified mail (return receipt requested) or hand delivery, to the Planning Board, Board of Health, **and** Building Inspector, ~~or and to~~ such other Town boards and officials as the Commission or its Administrator may request. A copy shall be provided in the same manner to the Conservation Commission of ~~the any~~ adjoining municipality, if the application, ~~ANORAD, or RFD~~ pertains to property within 300 feet of that municipality. The applicant shall submit, ~~receipts for such copies to the Commission~~ at or before the public hearing, **receipts for such copies or other satisfactory evidence that such copies have been provided in accordance with this section.**

Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before ~~the any~~ public hearing. The Commission shall take **any** such comments and recommendations into account **during its deliberations** but shall not be bound by them. The applicant shall have the right to receive copies of any such comments and recommendations at or before the public hearing.

Section 7. Permits, Determinations, Conditions and Appeals

If the Commission, after a public hearing determines that the activities ~~which that~~ are the subject of ~~the an permit~~ application, or the land **and or** water uses ~~which that~~ will result therefrom, are likely to have an effect, immediate or cumulative, upon the resource area values **of the resource areas** protected by this bylaw, the Commission **shall**, within 21 days of the close of the hearing, ~~shall~~ issue or deny a permit for the activities requested. **When making its decision the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt; the proposed activities and foreseeable future activities.** If ~~it the Commission~~ issues a permit ~~an Order of Conditions or Determination of Applicability, the Commission it shall~~ may impose conditions ~~which the Commission that it~~ deems necessary or desirable to protect ~~those resource area values, and~~ All activities **authorized by a permit issued pursuant to this section** shall be ~~done conducted~~ in accordance with ~~those the~~ conditions **of such permit.**

~~It shall be presumed that significant adverse effect on the resource area values protected by this bylaw will result from any filling, dredging,~~

~~building upon or other alteration within a wetland resource area or within 50 feet of the edge of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool, within 50 feet of the top of the bank of any lake, pond or intermittent stream, or within 100 feet of the top of the bank of any river or perennial stream, unless the applicant demonstrates by convincing evidence that such significant adverse effect will not occur.~~

~~Lands within 200 feet of rivers or perennial streams, and lands within 100 feet of other wetland resource areas are presumed important to the protection of these resources because activities undertaken in these upland buffer zone resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction or clearing, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction, clearing and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, excess nitrogen and phosphorus loading, and loss of wildlife habitat. The Commission may therefore, establish performance standards for protection of such lands including, without limitation, strips of continuous, undisturbed vegetative cover within the upland buffer zone resource area, or other form of work limit or setback to buildings, roads, landscaping and other features, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw. The specific size and type of protected area may be established by regulations of the Commission.~~

~~Where~~ **When** the Commission determines that ~~the a~~ proposed activity would have **an** adverse effects on the ~~wetland~~ values **of resource areas** protected by this bylaw the **Commission shall not permit such activity unless** the applicant **shall prove** demonstrates by a preponderance of the credible evidence that there is no practicable alternative to the proposed activity **which that** would have materially less adverse effect on the ~~wetland~~ values **of all resource areas** protected by this bylaw. The Commission shall regard as practicable an alternative **which that** is reasonably available and **capable of being done after taking into feasible consideration considering** the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

~~When making its decision the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.~~

~~To prevent wetlands loss,~~ The Commission shall require applicants to avoid **all** wetland resource area alterations wherever feasible. Where alteration is unavoidable **the Commission shall require such alteration to it shall** be minimized, and shall require full mitigation **of the adverse effects of such alteration**. The Commission may authorize or require replication of wetland resource areas as a form of **such** mitigation, but only with adequate security,

professional design, and monitoring to assure ~~the success because of the high likelihood of failure of replication to restore the wetlands values of the original resource area of such replication activities.~~

The Commission may require **any applicant to obtain and to submit** a wildlife habitat study of the project area, ~~to be paid for by the applicant, whenever it deems appropriate,~~ regardless of the type of resource area or the amount or type of alteration proposed. ~~The decision~~ **Such a requirement** shall be based upon the Commission's **estimation estimate** of the importance of the habitat area considering ~~(but not limited to) such factors as the project area's~~ proximity to other areas suitable for wildlife, ~~the~~ importance of wildlife corridors in the area, ~~the actual~~ or possible presence of rare **plant or animal** species in the area ~~or other relevant factors.~~ The **work study** shall be performed by an individual who at least meets the **applicable** qualifications set ~~out forth~~ in the ~~wildlife habitat section of the State Wetlands Protection Act~~ Regulations (**310 CMR 10.60**).

The Commission shall presume that all ~~areas meeting the definition of~~ "vernal pools" ~~under Section 9 of this bylaw,~~ including their adjacent **upland buffer zone resource** areas, perform essential **wildlife** habitat functions. This presumption may be overcome only by the presentation of **credible clear and convincing** evidence ~~which, in the judgment of the Commission, demonstrates~~ that the ~~basin or depression vernal pool~~ does not provide essential ~~vernal pool~~ habitat functions. Any formal **vernal pool** evaluation **submitted to the Commission by an applicant** shall be performed by an individual **who at least meets the applicable meeting the** qualifications ~~under the wildlife habitat section of the State Wetlands Protection Act set forth in the~~ Regulations.

The Commission is empowered to deny or revoke a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; ~~or~~ if the project as proposed might cause significant adverse effects, immediate or cumulative, upon the **values of any** resource area ~~values~~ protected by this bylaw; or where no conditions are adequate to protect those values.

A permit **issued pursuant to this bylaw** shall expire three years from the date of **its** issuance ~~Notwithstanding the above, provided, however, that~~ the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, ~~provided subject to the condition~~ that annual notification of ~~the~~ time and location of work is given to the Commission. Permits issued ~~under pursuant to~~ this bylaw may be extended for one or more periods of up to three years each, if **such an extension is** requested in writing at least thirty days before the **applicable** expiration ~~date of the permit, provided that and~~ the Commission finds that ~~(1) (a)~~ good cause has been shown for such extension: and ~~(2) (b)~~ such extension will not have significant adverse effects, immediate or cumulative, upon any of the **values of** resource areas ~~values~~ protected by this bylaw. The Commission may grant such an extension at any public meeting but if it determines that the public interest so

requires the Commission may defer action on a request for an extension until after notice is given and a public hearing is conducted, ~~all as provided above with respect in accordance with the requirements applicable~~ to the original application. If ~~such an extension is not obtained and~~ a permit expires before all activities authorized by such permit have been completed, then all such activities shall cease until a new permit has been issued pursuant to the procedures set forth in this bylaw.

Notwithstanding the ~~above time limits established in this Section~~, a permit may ~~identify be made subject to~~ conditions or requirements ~~which that~~ shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and ~~that shall~~ apply to all ~~present and future~~ owners of the land.

For good cause the Commission may revoke or modify a permit, ~~other Order, Determination or other decision~~ issued ~~under pursuant to~~ this bylaw after ~~public notice and public hearing and~~ notice ~~to the holder of the permit, abutters, and town boards, public notice and a public hearing. Amendments to permits or determinations shall be handled in the manner set out in the regulations and policies hereunder, and a public hearing provided in the same manner as required by this bylaw for an original permit.~~

~~The Commission~~ In an appropriate case ~~the commission~~ may combine ~~the any permit or other~~ action on an application ~~issued under filed pursuant to~~ this bylaw with ~~the an~~ Order of Conditions, Order of Resource Area Delineation, Determination of Applicability or Certificate of Compliance issued ~~under pursuant to~~ the ~~State Wetlands Protection~~ Act and Regulations. In the event that conditions are imposed ~~under pursuant to~~ this bylaw ~~which that~~ are not ~~also~~ imposed ~~under pursuant to~~ the ~~State Wetlands Protection~~ Act, such conditions shall be imposed by a separate written permit.

No activity subject to any ~~such permit Order of Conditions issued pursuant to this bylaw~~ shall commence until ~~the such~~ permit ~~issued by the Commission with respect to such work~~ has been recorded with the ~~applicable appropriate~~ Registry of Deeds and the holder ~~thereof of the permit certifies in writing provides satisfactory evidence of such recording~~ to the Commission. ~~that the document has been recorded.~~ If the applicant fails to perform, the Commission may record the documents itself at the applicant's expense. ~~The Commission may also, at its discretion, require the recording of an Order of Resource Area Delineation at the applicant's expense.~~

~~The Commission shall, after Upon~~ receiving a written request for a Certificate of Compliance, ~~the Commission shall~~ inspect the ~~resource~~ area where any activity governed by ~~a permit an Order of Conditions~~ issued ~~under pursuant to~~ this bylaw was ~~carried out undertaken~~ and, if such activity has been completed in accordance with said permit, the Commission shall, within twenty-one (21) days after such request, issue a Certificate of Compliance evidencing such determination, which may in an appropriate case be combined with a Certificate of Compliance issued ~~under pursuant to~~ the ~~State Wetlands~~

Protection Act. A Certificate of Compliance may specify conditions in the permit **which that** will continue to apply **after its issuance**.

Section 8. Regulations

After public notice and public hearing, the Commission **shall promulgate may issue** rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to **promulgate issue** such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations **shall may** define key terms **contained** in this bylaw, **as well as additional terms** not inconsistent with **the this** bylaw, **establish governing** the amount **of and** filing **of and consultant** fees **and procedures governing the filing of applications**.

Section 9. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or actually affecting any resource area protected by this bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, organic matter or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage, or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material **which that** may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind, except **(i) (b)** work wholly inside a building and **(ii) (a)** exterior repair of existing buildings or structures **which if such repair** presents no risk of alteration of land, waters or vegetation;
- G. Placing of obstructions or objects in water;
- H. Destruction of plant life including cutting or trimming of trees and shrubs;
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of water;
- J. Any activities, changes, or work **which that** may cause or tend to contribute to pollution of any body of water or groundwater, including, without limitation, any activity **which that** may cause surface water runoff contaminated with sediments, chemicals or animal wastes;

K. **Incremental** activities ~~which that~~ have, or may have, a cumulative adverse impact on the **values of a** resource areas protected by this bylaw.

The term “application” shall mean a wetlands filing to the Commission and includes the following: Notice of Intent, Abbreviated Notice of Resource Area Delineation and Request for Determination of Applicability.

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

The term “Commission” shall mean the Conservation Commission of the Town of Lincoln.

The term “~~important~~ wildlife corridor” shall include any land, the topography, soil structure, plant community composition and structure, proximity to water bodies and waterways, and hydrologic regime of which provides food, shelter, migratory, breeding or overwintering areas for birds, mammals, reptiles or amphibians.

The term “permit” shall include the following decisions of the Commission: Order of Conditions, Order of Resource Area Delineation and Determination of Applicability.

The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust or estate, any regional, county or municipal governmental body, administrative agency or public or quasi-public corporation or body, including the Town of Lincoln, and any other legal entity, its legal representatives, agents, or assigns.

The term “pond” shall ~~follow~~ include any body of water satisfying the definition of ~~310 CMR 10.04 except that~~ “pond” in the Regulations, without regard to the size threshold of 10,000 square feet ~~shall not apply~~.

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

The term “vernal pool” shall include, in addition to scientific definitions found in the Regulations ~~under the State Wetlands Protection Act~~, any confined basin or depression not occurring in existing lawns, ~~gardens~~ or driveways ~~which that~~, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area. The adjacent

upland buffer zone resource area for vernal pools shall extend 100 feet outward from the mean annual high-water line defining the depression.

Except as otherwise provided in this bylaw or in regulations of the Commission, ~~the definitions of~~ terms and procedures *used* in this bylaw shall ~~be have the same definitions~~ as set forth in the ~~State Wetlands Protection Act (M.G.L. Ch. 131 Section 40)~~ and Regulations (~~310 CMR 10.00~~).

The Commission shall have copies of the ~~State Wetlands Protection Act and the Wetlands~~ Regulations available for inspection and, at the expense of the person requesting a copy, duplication.

Section 10. Security

As part of *any* permit issued *under pursuant to* this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

Section 11. Enforcement

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

The Commission, its agents, officers, and employees shall have authority to enter upon public or private land for the purpose of performing their duties *under pursuant to* this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the limitations imposed by applicable Federal or State law.

The Commission and the Board of Selectmen shall have authority to enforce this bylaw, its regulations, and permits issued hereunder by *letters, phone calls, electronic communication and other informal methods*, violation notices, administrative orders, *non-criminal citations pursuant to M.G.L. c.40, §21D*, and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen and the Town Counsel ~~shall may~~ take **appropriate** legal action for **civil** enforcement **of this bylaw pursuant to applicable under civil** law. Upon request of the Commission, the Chief of Police ~~shall may take legal action for enforcement under~~ initiate criminal **proceedings charging violation of this bylaw**.

Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement **of this bylaw**.

Any person who violates provisions of this bylaw, or regulations, permits, or administrative orders issued hereunder, shall be served with a Notice of Violation and may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Violations shall be punishable by ~~a fine of \$300 per offense an amount up to or equal to the maximum fine allowed under §21D as allowed by Article XVI of Lincoln's General Bylaws~~. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and **violation of** each provision of ~~the this~~ bylaw **or of** regulations, permits or administrative orders ~~violated issued hereunder~~ shall constitute a separate offense.

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

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of ~~the this~~ bylaw or in violation of any permit issued pursuant to this bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against **any** such person **who at the time such property was acquired, had no actual or constructive knowledge of such violation** unless **such action is** commenced within three years following the date of acquisition of the real estate by such person.

Section 12. Burden of Proof

~~The Except where a higher burden of proof is specified in this bylaw or regulations, the~~ applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the **permit** application will not have adverse effects, immediate or cumulative, upon the resource area values protected by this bylaw. ~~The applicant has the additional burden to overcome the presumption set forth in Section 7 above when activities will be located within a wetland resource area or within 50/100 feet of the edge of an area listed in that Section.~~ Failure to provide adequate **credible** evidence to the Commission ~~supporting satisfying~~ this burden shall be sufficient cause for the Commission to deny ~~a permit an application~~ or to impose conditions sufficient to prevent any adverse effects on the ~~resource area~~ values **of any resource area** protected by this bylaw.

Section 13. Appeals

A decision of the Commission shall be reviewable in the superior court in accordance with M.G.L. ~~Chapter c.249, Section §4.~~

Section 14. Severability

~~The invalidity of any section or provision or phrase of this bylaw, or disapproval of any section or provision or phrase of this bylaw by the Attorney General, shall not invalidate any other section or provision or phrase thereof, nor shall it invalidate any permit, Determination of Applicability, or other order or decision which previously has been issued.~~

If any provision of this bylaw shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the bylaw shall be deemed to be amended to the minimum extent necessary to provide to the Town substantially the benefits set forth in this bylaw. No judicial determination of invalidity of any section or provision or phrase of this bylaw shall be construed to invalidate any permit, Determination, Order or other decision issued prior to such determination to which such determination does not specifically apply.