

§4.7 Lands Subject to Flooding (LSF)

1. Preamble. Lands Subject to Flooding (LSF) include both isolated lands subject to flooding (ILSF) and bordering lands subject to flooding (BLSF) as described in 310 CMR 10.57 and adopted by the Ordinance in Section 13-179. LSF are likely to be significant to protection of public and private water supply, protection of ground water, flood control, storm damage prevention, prevention of pollution, protection of water quality, protection of fisheries and wildlife habitat, and protection of agriculture and aquaculture, protection of rare species and their habitat, erosion and sediment control, and protection of open land and public recreation values.
2. Definitions, Critical Characteristics, and Boundaries.
 - a) The boundary of LSF as determined within the most recent Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), Flood Insurance Rate Maps shall be presumed accurate. This presumption may be overcome only by submittal to the Commission of a determination document issued by FEMA NFIP for flood zone designation.
 - b) Bordering Lands Subject to Flooding: as defined in 310 CMR 10.57(2)(a).
 - c) Isolated Lands Subject to Flooding: In addition to the definition contained within 310 CMR 10.57(2)(b), the Ordinance protects Isolated Lands Subject to Flooding or Inundation which may not otherwise meet the definitions, critical characteristics, and boundaries as listed in 310 CMR 10.57(2). These areas include isolated shallow or special flood hazard areas, or closed basins, which at least once per year confine standing water characterized by ponding or sheet flow to an average depth of at least three (3) inches and a surface area of at least two thousand (2,000) square feet or an equivalent volume of 500 cubic feet.
3. Presumption. Where a proposed activity involves the removing, filling, dredging, or alteration of a Freshwater Wetland, the Commission shall presume that such an area is significant to the interests as specified in the Preamble above, §4.7(1). This presumption is rebuttable and may be overcome upon a clear showing that the LSF does not play a role in the protection of a majority of said interests. In the event that the Presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.
4. Performance Standards. Where the presumption set forth above is not overcome, any proposed work upon or within LSF shall not destroy or otherwise impair any portion of said area or the ability of said area to protect the Values of the Ordinance.

The General Performance Standards for BLSF and ILSF found in 310 CMR 10.57(4), as may be amended from time to time, shall apply in addition to the performance standards below.

- a) The location of compensatory storage shall not be within the Wetland Protection Zone.
- b) Compensatory storage shall be provided at a minimum 1:1 ratio in order to replace the flood storage volume that will be lost as the result of a proposed project within LSF.
- c) Where a project produces excess compensatory flood storage (known as “banked compensatory storage”) that is intended for future use, the applicant must submit clear documentation (i.e. engineering calculations) which demonstrates the amount of compensatory storage that is in excess, post construction. Said documentation shall be recorded within the Certificate of Compliance or Local Compliance Certificate.
 1. Failure of the applicant to provide such documentation of the excess storage, automatically waives the right to use the banked compensatory storage in the future.
 2. Where banked compensatory storage is used as part of a project proposal, the burden falls to the applicant to provide documentation (i.e. engineering calculations) that the banked compensatory storage created under a previously permitted project still exists and has not been used to offset any other work within LSF, in the same reach of the waterway or waterbody.
- d) Any compensatory storage created shall not be used for any other purposes, unless replaced following the same standards as within 310 CMR 10.57(4).
 3. A vegetation management plan shall be provided for compensatory storage areas.
 4. The Commission may require native plantings within the compensatory storage area.
 5. The Commission may require permanent markers which indicate the location of the compensatory storage area.
- e) Notwithstanding the provisions above, no project may be permitted which will have any adverse effect on sites specified as being habitat of rare plants, vertebrate, or invertebrate species as identified on the most recent Natural Heritage and Endangered Species Estimated Habitats of Rare Wildlife map and identified under Section 10.59 (Rare Species) of the Regulations which accompany the Wetlands Protection Act (310 CMR 10.59).