

TOWN OF HOPKINTON
GENERAL BYLAW

Chapter 206

WETLANDS PROTECTION

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[HISTORY: Adopted by the Hopkinton Annual Town Meeting(ATM) 5-2-1995, Art. 42. Amendments noted where applicable, Amended ATM 5-6-96, Art. 47, ATM 5-3-00, Art. 57, ATM 5-5-03, Art. 40 and Art. 41, ATM 5-3-04, Art. 48]

GENERAL REFERENCES

Trees -- See Ch. 186.

Wastewater collection system -- See Ch. 195.

Zoning -- See Ch. 210.

~ 206-1. Purpose.

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in the Town of Hopkinton by controlling activities deemed by the Conservation Commission likely to have a significant adverse effect, immediate or cumulative, upon wetland values, including but not limited to the following: protection of public or private water supply, protection of groundwater, flood control, erosion and sediment control, storm damage prevention, prevention of water pollution, fisheries, wildlife, wildlife habitat, rare species habitat, including rare plant species, and recreational values. These values are to be known collectively as the "wetlands values protected by this chapter."

~ 206-2. Definitions.

A. The following definitions shall apply in the interpretation and implementation of this chapter:

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ALTER -- Includes, without limitation, the following activities when undertaken upon, within or affecting resource areas protected by this chapter:

- (1) Removal, excavation or dredging of soil, sand, gravel, clay, minerals or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood-retention characteristics.
- (3) Drainage or other disturbance of water level or water table.
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill or removal of material which would alter elevation.
- (6) Driving of piles, erection or repair of buildings, or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting of trees.¹
- (9) Changing of water temperature, biochemical oxygen demand or other physical, chemical or biological characteristics of surface or ground water.
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this chapter.

BANK -- Includes any land area 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.

BUFFER ZONE -- That area of land extending 100 feet horizontally outward from the boundary of any area specified in 310 CMR 10.02(1)(a).

HYDRIC SOIL -- Any soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

INTERMITTENT STREAM -- A body of running water, including brooks and creeks, which moves in a definite channeled direction, that may cease to flow from time to time throughout the area, including portions upgradient of all bogs, swamps, wet meadows and marshes.

PERSON -- Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof

¹ Editor's Note: See Ch. 186, Trees.

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to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

RARE SPECIES -- Includes, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened or of special concern by the Massachusetts Division of Wildlife and Fisheries, regardless of whether the site in which they occur has been previously identified by the Division.

SUFFICIENT INFORMATION -- The compliance with all Commission requirements for submission of information, material and fees as set forth in ~ 206-5.

VERNAL POOL -- Includes a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, as well as the area within 125 feet of the mean annual boundary of such depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries, provided, however, the site can be so certified by the Commission based upon generally accepted scientific principles and methods. [**Amended 5-5-2003 ATM, Art. 41**]

- B. Except as otherwise provided in this chapter or in regulations of the Commission, the definitions of terms in this chapter shall be as set forth in the Wetlands Protection Act, MGL c. 131, ~ 40, and Regulations, 310 CMR 10.00.

~ 206-3. Jurisdiction.

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater or coastal wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, lands under water bodies, lands subject to flooding or inundation by groundwater or surface water and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by this chapter"). Said resource areas shall be protected whether or not they border surface waters.

~ 206-4. Exceptions.

- A. The application and permit required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunications services, sanitary sewers and storm sewers, provided that written notice has been given to the Commission at least 48 hours prior to the commencement of work and provided that the work conforms to the performance standards and design specifications in regulations adopted by the Commission.
- B. The application and permit required by this chapter shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to the commencement of the work or

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within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this chapter. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

- C. Other than as stated in this section, the exceptions provided in the Wetlands Protection Act, MGL c. 131, ~ 40, and Regulations, 310 CMR 10.00, shall not apply under this chapter.
- D. This chapter shall not apply to any activity performed for the normal maintenance or improvement of land activity devoted to agricultural use at the time of application. **[Added 5-6-1996 ATM, Art. 47]**
- E. Discretion of Commission. **[Added 5-3-2000 ATM, Art. 57]**
 - (1) Notwithstanding the provisions of the Hopkinton Wetlands Protection Bylaw, the Commission may, in its discretion, issue an order of conditions and impose such conditions as will contribute to the interests identified in the chapter permitting those limited projects identified in the Massachusetts Wetlands Protection Regulations, 310 CMR 10.53(3). No such project may be permitted which will have any adverse effect on specified habitat sites of rare vertebrate or invertebrate species.
 - (2) In the exercise of this discretion, the Commission shall consider the magnitude of the alteration and the significance of the project site to the interests identified in the chapter, the availability of reasonable or practical alternatives to the proposed activity, the extent to which adverse impacts are minimized and the extent to which mitigation measures, including replication or restoration, are provided to contribute to the protection of the interests identified in the chapter. If it is particularly important to avoid alteration of a resource area in order to protect the interests protected by the chapter. For example when the wetland lies adjacent to or above a public water supply, particularly in an area that is the primary cone of influence to a well; is in an area of critical environmental concern (ACEC); contains rare species habitat; is a Class A designated water body by the Division of Water Pollution Control; is an anadromous fish run or has some other special environmental attribute, the Commission may deny the proposal.
 - (3) The Commission shall consider as reasonable or practical alternatives those options that were available to the applicant but appear to be precluded due to self-imposed hardships or constraints (e.g., lot, roadway and drainage layouts engineered without prior regard to impact on bylaw resources). In making the determination regarding reasonable or practical alternatives, the Commission may require the applicant to evaluate the reasonableness of any previously or currently available alternatives, including the realignment or reconfiguration of the project, to conform with the requirements of the chapter, or to minimize to the greatest extent possible disruption of resource areas. The Commission may require the

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applicant to utilize an adjacent parcel of land owned by the applicant, or which the applicant has a beneficial ownership of through a realty trust, to avoid disruption of resource areas. The Commission may also consider whether adjacent property has been sold off or built on, thereby creating a self-imposed hardship.

- F. The application and permit required by this chapter shall not be required for emergency projects necessary to effectuate temporary repairs to preexisting structures, provided notice, oral or written, is given to the Commission prior to the commencement of work or within 24 hours after commencement; provided the Commission or its agent certifies the work as an emergency repair; provided the work is performed only for the time and place certified by the Commission or its agent for the limited purpose necessary to abate the emergency; and provided that within 21 days of commencement of the work a permit application shall be filed with the Commission for review as set forth under this chapter. Upon failure to meet these or other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures. **[Added 5-5-2003 ATM, Art. 41]**
- G. The application and permit required by this chapter shall not be required for maintaining, repairing and replacing, but not substantially enlarging, an existing lawfully located structure, facility, yard or landscaping on any pre-existing lot of record as of the time this Wetlands Protection Bylaw was first adopted by the Town. **[Added 5-5-2003 ATM, Art. 41]**
- H. Minor Projects Exemption – The application and permit required by this Chapter shall not be required for Minor Projects that occur within the buffer zone but not within any resource area, provided they meet the requirements outlined herein. Minor Projects are defined as those that occur:
1. within the outer or second 50 feet from a resource area but in all cases completely outside all Vernal Pool buffer zones; or
 2. within the outer riparian zone (outer or second 100 feet) from a river; or
 3. within pre-existing lawn areas where the work meets the following criteria:
 - a. lies within and/or outside the buffer zone,
 - b. will not go beyond the pre-existing lawn edge,
 - c. meets grandfathering setbacks as defined in Section 10 of the Regulations; and
 4. in all cases, where erosion and sedimentation controls shall be implemented during any construction that exposes bare soil.

Minor activities include, but are not limited to (1) unpaved pedestrian walkways for private use; (2) plantings of native, non-invasive species of trees, shrubs, or groundcover, but excluding turf lawns; (3) the conversion of impervious to vegetated surfaces; (4) fencing, stonewalls, and stacks of cordwood provided they will not constitute a barrier to wildlife movement, and where fences to contain livestock are located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther; (5) mowing of pre-existing lawns and pruning of pre-existing landscaped areas but not including disposal of lawn clippings or other yard debris; (6) vista pruning for branches less than 1 inch in diameter, provided the activity is located more than 100 feet from the mean annual high water line within a riverfront area or 50 feet from other resource areas, whichever is farther; (7) conversion of lawn to uses accessory to existing single family houses such as decks, patios, and gardens, and

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other accessory uses as may be authorized in the Regulations; (8) removal of dead or dying trees or pruning of live trees that pose a hazard to structures or public safety; (9) repair of existing structures provided the footprint of the structure does not change; and (10) activities that are temporary in nature, have no permanent impacts, and are necessary for planning and design purposes (including installation of monitoring wells, exploratory borings, sediment sampling, surveying and other uses as may be authorized in the Regulations).

Property owners who desire to have confirmation of Exempt status for their proposed work should submit an Exemption Request and a sketch plan to the Commission office at least seven (7) business days prior to the commencement of a minor project, for the sole purpose of determining whether the proposed work falls within its parameters. The Exemption Request is not mandatory under this section of the Bylaw; however, if no Exemption Request is submitted the Property Owner is solely responsible for ensuring that the proposed work is in compliance with all provisions of the Hopkinton Wetlands Protection Bylaw and that all required permit applications have been submitted.

[Added 5-3-2004 ATM, Art. 48]

~ 206-5. Applications for permits and requests for determination.

- A. A written application shall be filed with the Commission to perform activities affecting resource areas protected by this chapter. The permit application shall include such information and plans as are hereinafter set forth and as may be deemed necessary by the Commission to describe the proposed activities and their effects on the resource areas protected by this chapter. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.
- B. The Commission, in appropriate cases, may accept as the permit application and plans under this chapter the Notice Of Intent and plans filed under the Wetlands Protection Act, G.L. Ch. 131, Sec. 40, and Regulations, 310 CMR 10.00.
- C. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter may in writing request a determination from the Commission. Such a request for determination (RFD) shall include the information and plans hereinafter set forth and as may be deemed necessary by the Commission.
- D. At the time of a permit application or RFD, or application for certificate of compliance, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, ~ 40, and Regulations, 310 CMR 10.00.
- E. Upon receipt of a permit application or RFD, the Commission is authorized to require an applicant to pay a fee, pursuant to ~ 206-11 of this chapter, 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 final decision on the application and for enforcement services. This fee is called the filing fee. The specific consultant services may include but are not limited to resource area survey and delineation and analysis of resource area values, including wildlife habitat evaluations, hydrological and drainage analysis, hydric soil analysis and environmental or land use law.

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- F. The Commission may waive the filing fee, a permit application or RFD when such application is made by a government agency.
- G. Fees may be established by the Commission, and may be amended. No such fee schedule shall be implemented unless a public hearing is held to discuss the fee.
- H. The submission requirements are as follows:
 - (1) Plans: seven complete copies of the permit application and supporting documents to be submitted.
 - (2) Plan contents:
 - (a) The plans to be submitted to the Commission shall be highlighted with transparent marker pen in the following manner:
 - [1] Green: the edge of the bordering vegetated wetlands.
 - [2] Blue: bank.
 - [3] Yellow: the limit of the buffer zone.
 - [4] Red: all culverts and discharges.
 - [5] Purple: the edge of isolated wetlands.
 - [6] Orange: intermittent streams.
 - [7] Pink: the edge of other wetlands.
 - [8] Dotted red: one-hundred-year-flood elevation.
 - (b) The location of consecutively numbered flags denoting the wetland resources shall be shown on the plan and shall be certified by a registered land surveyor, registered sanitarian, professional engineer or wetland biologist.
 - (c) Elevation contours shall be shown in two-foot contours unless the slopes are very steep. Steep elevations, over 25%, shall be shown in five-foot contours.
 - (d) All offset distances from the proposed foundation(s), well(s) and septic systems or other proposed work to all wells, septic systems, wetland resources, property lines, streams, watercourses, drainage structures or easements within 150 feet shall be shown.
 - (e) All distances and percent slopes along septic system piping shall be shown.

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- (f) Where septic systems are proposed, the maximum groundwater elevation and the elevation of the bottom of the leaching facility, the elevations of the inlets, outlets and the finished grades shall be given, as well as breakout calculations where a septic system is located on a slope.
 - (g) All soil logs must be submitted showing the type of material, soil horizons, elevation of existing grades, maximum groundwater elevation, depth of hole and location of percolation test with corresponding elevations and percolation rates.
 - (h) All proposed grades must be shown.
 - (i) The limit of proposed work shall be shown.
 - (j) Plan scale shall be no less than one inch equals 40 feet.
 - (k) All proposed structures within 100 feet of the resource areas shall be shown.
 - (l) The Assessor's map, block, lot number, street number and subdivision lot number, where applicable, on the lot where work is proposed shall be shown.
 - (m) Since the intent of this chapter is to provide solutions to proposals which may affect the ecological/environmental integrity of the Town and to mitigate future or further impact on the values of this chapter and MGL c. 131, ~ 40:
 - [1] The owner/applicant of large parcels or adjacent property of which they may have a vested interest may be requested to supply a general scheme of any proposed development, i.e. what impacts (cumulative or significant) to the values protected by this chapter, will be addressed along with mitigation, compensation and remediation protocols; and
 - [2] Segmenting parcels to circumvent the intention of this chapter may be viewed as cause to deny future applications.
 - (n) The estimated project cost in accordance with ~ 206-11 of this chapter for site inspections.
- I. Adequate access must be granted to the Commission, its agents and consultants, to determine the accuracy of the information submitted in the permit application and the request for determination.
 - J. The location of the existing and/or proposed building corners, driveway, leaching area for septic systems, and well(s) or other proposed work must be marked by labeled stakes in the field.
 - K. Lot corners shall be staked to enable the Commission to find the lot.

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- L. All resource areas within 100 feet of all proposed work shall be marked by consecutively numbered tags.
- M. The lot shall be marked in a manner so as to enable the Commission to locate the areas of proposed activity.

~ 206-6. Public hearings and notifications.

- A. Any person filing a permit application or RFD with the Commission shall, at the same time, give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the Assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any other municipality or across any body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed and delivered, shall be filed with the Commission. When a person requesting a permit or RFD is other than the owner, the request, the notice of hearing and the decision shall be sent by the Commission to the owner as well as to the person making the request.
- B. The Commission shall conduct a public hearing on any permit application or RFD. Written notice of such hearing shall be given at the expense of the applicant, at least five business days prior to the hearing, by publishing notice of same in a newspaper of general circulation in the municipality.
- C. The Commission shall commence the public hearing within 21 days from the receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.
- D. The Commission shall issue its permit or determination in writing within 21 days from the date of completion of the hearing held after receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.
- E. The Commission in appropriate cases may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, ~ 40, and Regulations, 310 CMR 10.00.
- F. The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in ~ 206-7.

~ 206-7. Coordination with other boards.

Any persons filing a permit application or a request for determination with the Commission shall provide written notice thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Board of Health, Highway Surveyor and Building Inspector. The

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Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive copies of any such comments and recommendations, and to respond to them at the hearing of the Commission, prior to final action.

~ 206-8. Determinations, permits and conditions.

- A. The Commission shall have the authority after a public hearing to determine whether a specific parcel of land contains or does not contain a resource area protected by this chapter. If the Commission finds that no such resource areas are present, it shall issue a negative determination.
- B. If the Commission, after a public hearing on the permit application, determines that the activities which are the subject of the application are likely to have a significant or cumulative adverse effect upon the wetland values protected by this chapter, the Commission, within 21 days of the close of the hearing, shall, subject to the provisions of ~ 206-8.1 of this chapter, issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose such conditions that it deems necessary or desirable to protect those values, and all activities shall be completed in accordance with those conditions. **[Amended 5-3-2000 ATM, Art. 57]**
- C. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet design specifications, performance standards; and other requirements in the regulations of the Commission; for failure to avoid or prevent significant or cumulative detrimental effects upon the wetland values protected by this chapter; for failure to provide sufficient information; and where no conditions would be adequate to protect the values set forth herein.
- D. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuing maintenance work, provided that annual notification of the time and location of work is given to the Commission. Any permit may be renewed once for one additional year at the discretion of the Commission.
- E. The Commission may revoke or amend a permit issued under this chapter after public notice and a public hearing and notice in writing to the holder of the permit.
- F. The Commission in appropriate cases may combine the permit or other action on an application issued under this chapter with the order of conditions or other action issued or taken under the Wetlands Protection Act, MGL c. 131, ~ 40, and Regulations, 310 CMR 10.00.
- G. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or in the Land Registration section of said Registry as may be appropriate for the district wherein the land lies and until the holder of the permit provides a certified copy of the recording activity to the Commission.

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~ 206-8.1. Tentative decisions; requests for reconsideration. [Added 5-3-2000 ATM, Art. 57]

- A. Notwithstanding any other provision of this chapter, all decisions of the Commission issued under ~ 206-8B shall be deemed tentative decisions subject to the procedure for reconsideration and review set forth in this section.
- B. Any applicant aggrieved by the denial of a permit, or by conditions of approval contained in any permit, issued under this chapter may request reconsideration and review by written notice to the Commission. Such notice shall be hand delivered or sent by certified mail to the Commission within 10 business days of the delivery or mailing of the tentative decision, shall include a statement of the grounds for the request and shall specify the changes to the decision requested. A request for reconsideration under the bylaw must be submitted to the Commission as specified herein separate from any Request for a Superseding Order of Conditions filed with the Department of Environmental Protection. **[Amended 5-5-2003 ATM, Art. 40]**
- C. Within 21 days following the receipt of a request for reconsideration, the Commission shall either issue a final decision incorporating the changes to the tentative decision requested by the applicant, or vote to reopen the hearing. If the applicant has also filed a request for superseding order of conditions under the Wetlands Protection Act, the applicant may request that the reopened hearing be scheduled after the issuance of such superseding order; otherwise, the reopened hearing shall be convened within 30 days of the request for reconsideration. Such reopened hearing shall be subject to the notice requirements in ~ 206-6 of this chapter.
- D. Following the conclusion of the reopened hearing, the Commission shall issue a final decision in which it may reaffirm its tentative decision or modify the tentative decision as requested by the applicant in whole or in part, provided that if the Commission includes conditions of approval stricter than those imposed under the Wetlands Protection Act, or if the Commission denies a permit for a project approved under the Wetlands Protection Act, it shall include in its final decision a statement specifying each relevant respect in which this chapter, or regulations promulgated thereunder, are stricter than the requirements of the Wetlands Protection Act as applied to the project. In the event of any appeal to the Superior Court under MGL c. 249, the tentative decision, the request for reconsideration, the superseding order of conditions (if any) and the Commission's final decision shall be included in the record.
- E. If the applicant does not request reconsideration as provided herein, the tentative decision shall be deemed final as of the date of issuance. If the applicant files a written statement waiving the right to reconsideration or withdrawing a request for reconsideration previously filed, the tentative decision shall be deemed final as of the date such notice is received by the Commission.
- F. It is the policy of the Town of Hopkinton to encourage the resolution of disputes arising under this chapter by settlement wherever possible. Consistent with this policy, in the event of an appeal to the Superior Court under MGL c. 249 from a final decision by the Commission, the Commission shall, subject to the availability of any funds required therefor, participate in good faith in mediation if the party appealing the decision makes a

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request to the Commission for it to do so, provided that all other parties to the appeal so agree.

~ 206-9. Written conditions.

Permits issued with conditions shall be written on the same order of conditions as that issued pursuant to the Wetlands Protection Act. Conditions authorized solely by the provisions of this chapter shall be in a separate section under the heading "Additional conditions pursuant to the Town of Hopkinton Wetlands Protection Bylaw."

~ 206-10. Regulations.

- A. After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this chapter. These regulations shall be consistent with the terms of this chapter. The Commission may amend the rules and regulations after public notice and public hearing.
- B. Failure by the Commission to promulgate 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 chapter.
- C. Unless otherwise stated in this chapter or in the rules and regulations promulgated under this chapter, the definitions, procedures and performance standards of the Wetlands Protection Act, MGL c. 131, ~ 40, and associated Regulations, 310 CMR 10.00, most recently promulgated shall apply.

~ 206-11. Fees.

- A. The Commission in its discretion is authorized to require an applicant to pay a filing fee for the reasonable costs and expenses borne by the Commission in its consideration of the application.
- B. The Commission is authorized to utilize the filing fee to obtain consultant services and/or to provide enforcement services which may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitats' evaluations, hydrogeological and drainage analysis, hydric soil testing and environmental land use law.
- C. The Commission may require the payment of additional filing fees for any of the purposes referred to in Subsection B above at any time prior to the issuance of a certificate of compliance.
- D. The exercise of discretion by the Commission in making its determination to require the payment of a filing fee shall be based upon its reasonable finding that the additional information acquirable only through outside consultants or to provide enforcement services is necessary for the rendering of an objective decision.
- E. The applicant shall pay the filing fee to the Town of Hopkinton to be put into an account established pursuant to MGL c. 44, ~ 53E1/2, which account may be drawn upon by the Commission as necessary to carry out the provisions of this chapter.

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- F. At the time of a permit application or RFD, the applicant shall pay the filing fee as specified in the Hopkinton Wetlands Protection Regulations. Such fee is in addition to those required by the Wetlands Protection Act, MGL c. 131, ~ 40, and is not refundable. The Commission may waive the filing fee and the costs and expenses for a permit application or RFD submitted by a government agency. The fee for an application for modification of a permit will be the excess, if any, of the amount calculated as provided in the regulations for the activities requested to be allowed by the modified permit over the fee paid for the original permit, provided that the fee for an application for modification of a permit will in no event be less than \$25. [**Amended 5-3-2000 ATM, Art. 57**]
- G. Any applicant aggrieved by the imposition of or the amount of the fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.
- H. No project shall be segmented to avoid being subject to the filing fee referred to herein.
- I. In the event that the applicant has not paid the filing fee as required herein, the Commission may deny the requested permit for lack of sufficient information.

~ 206-12. Security.

As part of a permit issued under this chapter, 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 (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

- A. By 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 the issuance of a certificate of compliance for work performed pursuant to the permit.
- B. By 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 condition 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.

~ 206-13. Enforcement.

- A. No person shall remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this chapter, 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 enforcement order pursuant to this chapter.
- B. The Commission, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the Constitutions and the laws of the United States and the commonwealth.

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- C. The Commission shall have the authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates any provision of this chapter may be ordered to restore the property to its original condition and to take other action deemed necessary to remedy such violation, or may be fined, or both.
- D. Upon request of the Commission, the Board of Selectmen, the Town Counsel or special counsel shall take legal action for enforcement of this chapter under civil law. Upon the request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Commission in enforcement.
- F. Any person who violates any provision of this chapter, or regulations, permits or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations and permits or administrative orders violated shall constitute a separate offense.
- G. As an alternative to criminal prosecution in a specific case, the Commission may issue a citation under the noncriminal disposition procedure set forth in MGL c. 40, ~ 21D, if adopted by the Town as a general bylaw.²

~ 206-14. Burden of proof.

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

~ 206-15. Appeals.

A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, ~ 4.

~ 206-16. Relation to the Wetlands Protection Act.

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, MGL c. 131, ~ 40, and Regulations, 310 CMR 10.00, thereunder.

~ 206-17. Severability.

²Editor's Note: See Ch. 1, General Provisions, Art. II, Noncriminal Disposition.

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The invalidity of any provision of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination that previously has been issued.