



**Town of Hopkinton
Wetlands Protection Regulations
for Applying the
Hopkinton Wetlands Protection Bylaw**

February 11, 2013

**Copies of Chapter 206, Wetlands Protection Bylaw, are available from the
Town Clerk**

TABLE OF CONTENTS

HOPKINTON WETLAND PROTECTION REGULATIONS

General Provisions

- 1.0 General Provisions
 - 1.1 Authority
 - 1.2 Purpose
 - 1.3 Jurisdiction
 - 1.4 Fee Schedule
- 2.0 Definitions
- 3.0 Additional Wetland Resource Areas Protected under the Bylaw and Regulations
 - 3.1 Determining the Edge of a Wetland Resource Area
 - 3.2 Vernal Pools and Vernal Pool Habitat
 - 3.3 Bordering Vegetated Wetland
 - 3.4 Isolated Vegetated Wetland
 - 3.5 Riverfront Area
 - 3.6 Buffer Zone
 - 3.7 Intermittent Streams
- 4.0 Conditional Exceptions
 - 4.1 Structures Used in the Service of the Public
 - 4.2 Emergency Projects
 - 4.3 Agricultural Lands
 - 4.4 Farm and Fire Ponds
 - 4.5 Pre-Existing Lots
 - 4.6 Minor Projects
 - 4.7 Removal of Invasive Species by Hand
- 5.0 Permit Applications
 - 5.1 Printing of Public Notices
 - 5.2 Request for Determination of Applicability
 - 5.3 Abbreviated Notice of Resource Area Delineation
 - 5.4 Notice of Intent
 - 5.5 Minor Project Exemption
 - 5.6 Limited Project Roadways or Driveways
 - 5.7 Renewable/Alternative Energy Research and Development or Manufacturing Facilities
- 6.0 Waiver Provisions and Alternative Analysis Requirements
 - 6.1 No-Disturbance Zones
 - 6.2 No-Build Zones
 - 6.3 Vegetated Wetland Alteration
 - 6.4 Alternatives Analysis
 - 6.5 Self-Imposed hardship
- 7.0 Replication Standards and Habitat Evaluations
 - 7.1 Wetland Replication
 - 7.2 Wildlife Habitat Evaluations
- 8.0 Stormwater Management and Flood Control

- 8.1 Overview
- 8.2 Jurisdiction
- 8.3 Stormwater Standards
- 8.4 Low Impact Development
- 9.0 Permits and Decisions
 - 9.1 Public Hearings
 - 9.2 Coordination with Other Town Boards
 - 9.3 Decisions
 - 9.4 Subdivisions Versus Individual Lots
 - 9.5 Permitting in the Context of Outstanding Violations
 - 9.6 Criteria for Negative Determinations of Applicability for Activities in the Buffer Zone
 - 9.7 Extension Permits
 - 9.8 Modifications, Amendments and Revocations
 - 9.9 Certificates of Compliance
- 10.0 Performance Guarantees
 - 10.1 Security
 - 10.2 Covenant
 - 10.3 Reduction of Security
 - 10.4 Release of Performance Guarantee
- 11.0 Availability of Regulations
- 12.0 Amendments
- 13.0 HCC Policy Statements
- 14.0 Effective Dates
- 15.0 Severability
- 16.0 Enforcement
 - 16.1 Violations
 - 16.2 Enforcement Procedures and Fines
 - 16.3 Enforcement and Restoration Orders
 - 16.4 Legal Fees Resulting from Enforcement Orders
- 17.0 Appeals

APPENDIX A – Vernal Pool Criteria

APPENDIX B – Wildlife Habitat and Rare Species

APPENDIX C – Waiver Request Form

APPENDIX D – Replication Guideline Checklist

APPENDIX E – Order of Conditions Compliance Certification Form

APPENDIX F – Hopkinton Conservation Commission Procedures Regarding Comprehensive Permit Applications

APPENDIX G – Appeals

APPENDIX H – Policy Statements

HOPKINTON WETLAND PROTECTION REGULATIONS

1.0 General Provisions

1.1 Authority

These Regulations are promulgated under the authority of the Home Rule Amendment Article LXXXIX (89) of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the Hopkinton Wetlands Bylaw (Chapter 206 of the Town of Hopkinton General Bylaw) and shall be effective upon fulfillment of all legal requirements.

1.2 Purpose

The purpose of the Hopkinton Wetlands Protection Bylaw (hereafter referred to as the “Bylaw”) is clearly stated in Section 206-1 of the Bylaw. These Regulations are promulgated to aid in the consistent and effective implementation of the Hopkinton Wetlands Protection Bylaw by way of further definition; explanation and specification; and illustration and example of the Bylaw’s provisions. These regulations are intended to clarify but not expand, extend, modify, or replace any provision of the Hopkinton Wetlands Protection Bylaw, except as specifically allowed by the Bylaw. These Regulations are administered by the Hopkinton Conservation Commission, hereafter called the “Commission” or “HCC.”

Wetlands contribute to a number of public interests and are therefore protected by the Bylaw. The Bylaw identifies three additional public interests not recognized by the Massachusetts Wetlands Protection Act (Massachusetts General Law Chapter 131, section 40, hereafter referred to as “the Act” or “WPA”). These are: erosion and sedimentation control, wildlife, and recreational values. Any permit issued under the Bylaw and Regulations must therefore not adversely affect these additional public interests, as well as the interests identified in the Act.

1.3 Jurisdiction

The areas subject to protection under the Bylaw differ from those protected solely by the Act in that additional wetland resource areas are protected by the Bylaw, as well as the additional interests previously described.

The Town of Hopkinton Wetland Protection Bylaw adds to the areas protected by the Act any bordering or isolated freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas. The resource areas protected by this bylaw are protected whether or not they border water bodies. Vernal pools and their 125-foot buffers are protected, regardless of whether they have

been certified under the state program or whether the pool and buffer are located within state-protected resource areas.

A buffer zone of 100 feet around any resource area is subject to protection under the Bylaw. Within this Buffer Zone, the Regulations define setbacks from the wetland edge and provide explicit guidance regarding areas where no disturbance or no building will be allowed.

Under the Regulations, the Commission must consider whether activities within the Buffer Zone will likely affect the wetland resource area and will presume that projects that work within specified setbacks from the wetland will so affect the wetlands. This presumption is rebuttable and may be overcome upon a clear showing by a preponderance of the evidence that the nature of the proposed work, special design measures, construction controls or site conditions which exceed the norm for work anywhere within the Buffer Zone will prevent alteration of the resource area. The Regulations establish specific minimum setbacks related to limit of work and limit of disturbance, which are tabulated according to project type.

The Town's wetland resource areas consist of:

1. Any bordering or isolated freshwater wetlands, marshes, wet meadow, bogs, swamps bordering a surface water (Bordering Vegetated Wetlands)
2. Any bordering or isolated freshwater wetlands, marshes, wet meadow, bogs, swamps not bordering a surface water (Isolated Vegetated Wetlands)
3. Any springs, banks, reservoirs, lakes or ponds of any size
4. Land under water bodies (any brook, creek, river, stream, pond or lake)
5. Intermittent streams, brooks, and creeks
6. Any lands subject to flooding or inundation by groundwater or surface water.
7. Lands adjoining any of the resource areas listed above (items 1 – 6) out to a distance of 100 feet (Buffer Zone)
8. Perennial rivers, streams, brooks and creeks
9. Lands adjoining any perennial rivers, streams, brooks and creeks out to a distance of 200 feet (Riverfront)
10. Vernal pool and vernal pool habitat/buffer zone (125 feet)

1.4 Fee Schedule

1.4.1. Definition and Types of Fees

Section 206-11 of the Bylaw provides for two types of payments by applicants. One is the filing fee, payable at the time of application submittal, and the other is a consultant fee. A minimum consultant fee is paid at the time of application submittal. Additional amounts are collected as needed during the course of the review of larger or more complicated projects.

1.4.2. Filing Fee

The purpose of the filing fee is stated in paragraph 206-11.E of the Bylaw: “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 Bylaw.”

The amount of the filing fee is defined in Table 1-1 of these Regulations. The filing fee is to be paid when an application is submitted and is non-refundable. Applications without the proper fee will not be accepted, or, if scheduled for a hearing, will not receive a permit (and may be denied), as provided in Section 206-11.H of the Bylaw.

Not-for-profit projects are not exempt from payment of applicable fees. There shall be no exceptions to this requirement.

The filing fee set forth in Table 1-1 may, in some individual cases, prove unreasonable. The Commission reserves the right to consider requests, during or before a hearing, for reduction of fees which prove unreasonable due to the size of the project’s impact on wetlands and Buffer Zones.

In accordance with the authority granted under Section 206-5.G and 206-11.A of the Bylaw, the following fee schedule has been determined by the Commission to be commensurate with the expense of providing review services to applicants and shall be paid at the time an application or other request for Commission approval is filed. These fees are in addition to those required by the Act (except where otherwise noted.) This fee schedule may be amended as necessary by majority vote of the Commission at any properly noticed public hearing.

Table 1-1: Bylaw Application Fee Schedule

At the time an application or other request for Commission approval is submitted, the applicant shall pay a fee according to the following schedule:

1	Minor project – house addition, tennis court, swimming pool, or other accessory residential activity	Filing fee of \$50 and 2 hours minimum consultant fee
2	Single-family dwelling	Filing fee of \$300 and 3 hours minimum consultant fee
3	Subdivision – road and utilities only	Filing fee of \$1,500 plus \$5 per foot of road sideline within the 50-foot No-Disturb zone or within a resource area and initial consultant fee in accordance with guidelines in Table 1-2
4	Multiple family dwelling and condominium	Filing fee of \$1,500 plus \$300 for each unit, all or part of which is within the 100-foot Buffer Zone or a resource area and initial consultant fee in accordance with guidelines in Table 1-2
5	Commercial and industrial projects	Filing fee of \$1,500 plus \$0.50 per square foot of disturbance within the 50-foot No-Disturb zone or within a resource area and initial consultant fee in accordance with guidelines in Table 1-2
6	Application filed after an Enforcement Order	Double above fees (1-5)
7	Determination of Applicability	Filing fee of \$50 and 2 hours minimum consultant fee
8	Application for Certificate of Compliance	Filing fee of \$0.00 and 1 hour minimum consultant fee
9	Abbreviated Notice of Resource Area Delineation	Filing fee of \$100 and 2 hours minimum consultant fee for single-family homes; Filing fee of \$300 and 2 hours minimum consultant fee for all other projects

The above fees are in addition to those required by the Wetlands Protection Act, M.G.L. c. 131, Sec. 40, and are not refundable. The Commission may waive the filing fee and the costs and expenses for a permit application or other request submitted by a government agency. The fee for an application for modification of a permit will be the excess, if any, of (i) the amount calculated as provided above for the activities requested to be allowed by the modified permit, or (ii) the fee paid for the original permit, provided the fee for an application for modification of a permit will in no event be less than \$25.

1.4.3. Consultant Fee

As provided in Section 206-11.A, B, and C of the Bylaw, the Commission may require an additional fee, beyond the filing fee of paragraphs 201-11.D and E. Although this too is called a “filing fee” in the Bylaw, the term “consultant fee” better explains its purpose and distinguishes it from the mandatory initial filing fee. Projects in Categories 1, 2, 7, 8 and 9 of Table 1-1 are required to pay a minimum consultant fee at the time of application. For larger projects, the consultant fee is determined by the Commission based on the characteristics, size, or complexity of the site and the requirement for independent consultations, or when the work proposed or history of violation requires that the Commission monitor the project to a higher degree. In such instances, the Commission shall notify the applicant of this need and the estimated costs and provide the opportunity for the application to be amended or withdrawn. Should an applicant choose to proceed, the Commission shall require the applicant to pay the reasonable costs and expenses borne by the Commission for these consulting services, as listed below in Table 1-2.

This fee will be deposited into an account established pursuant to MGL c. 44, § 53E1/2. The Commission shall use its best efforts to estimate the amount of the consultant fee, but reserves the right to require the applicant to pay additional amounts to cover the reasonable costs and expenses borne by the Commission for these consulting services should the initial estimate prove insufficient.

Table 1-2 provides guidelines for consultant fees, as typically charged by the Commission’s in-house consultant for reasonable costs and expenses, to be paid as the project proceeds:

Table 1-2. Consultant Fees

Project Cost	Typical Consultant Fee
Up to \$100,000	\$1,500
\$100,001 to \$500,000	\$3,500
\$500,001 to \$1,000,000	\$6,000
\$1,000,001 to \$1,500,000	\$8,500
\$1,500,001 to \$2,000,000	\$11,000

Note: These tabulated fees do not apply to Categories 1, 2, 7, 8 and 9 of Table 1-1, which are subject to a minimum consultant fee as per Table 1-1. Actual fees may be higher, depending on the scope of the review and completeness of the submittal.

Each additional \$500,000 project cost increment (over \$2,000,000) should anticipate an additional \$2,500 fee per increment. The project cost means the estimated, entire cost of the project including, but not limited to, site preparation, building construction, 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 the Bylaw. The project shall not be segmented to avoid being subject to 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 avoid payment of the consultant fee.

The consultant fees are due to the Commission prior to the initiation of the project. Should a project require additional consultant review from outside experts, the estimated amount of this consultant fee shall be paid in advance of such review.

1.4.4. Additional Definitions

Single Minor Project

For the purposes of fee determination, work to remove debris and hazardous materials from wetlands, wetland restoration projects, and similar projects for improving the natural capacity of a wetland resource to protect or enhance wetland values shall be considered a single minor project.

2.0 Definitions

Massachusetts General Laws, Chapter 40 Section 8C and Chapter 131, Section 40 (the Act), as well as 310 CMR 10.00, Massachusetts Wetlands Regulations (hereafter referred to as the "State Regulations"), are hereby incorporated by reference and made a part hereof, except as otherwise modified by the Hopkinton Wetlands Protection Bylaw and its Regulations promulgated herein and any subsequent amendments. The definitions provided in the State Regulations, 310 CMR 10.04, shall apply to the Bylaw and Regulations and as modified below. Definitions set forth in the Bylaw are included here for continuity, in addition to those definitions set forth in these Regulations.

- 2.1 Adjoining Land Area - the Buffer Zone measured 100 feet horizontally from the boundary of any wetland resource area as defined by the Act or the Bylaw or 125 feet horizontally from the boundary of any vernal pool.
- 2.2 Agriculture – refers to the definition provided by MGL Ch. 128, § 1A.
- 2.3 Alter - includes without limitation, the following actions when undertaken in areas subject to the Bylaw:
 - 2.3.1. Removal, excavation or dredging of soil, sand, gravel, clay, minerals or aggregate materials of any kind.
 - 2.3.2. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood-retention characteristics.
 - 2.3.3. Drainage or other disturbance of water level or water table.
 - 2.3.4. Dumping, discharging or filling with any material which may degrade water quality.
 - 2.3.5. Placing of fill or removal of material which would alter elevation.
 - 2.3.6. Driving of piles, erection or repair of buildings, or structures of any kind.
 - 2.3.7. Placing of obstructions or objects in water.
 - 2.3.8. Destruction of plant life, including cutting of trees.

- 2.3.9. Changing of water temperature, biochemical oxygen demand or other physical, chemical or biological characteristics of surface or ground water.
- 2.3.10. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- 2.3.11. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by the Bylaw.
- 2.4 Amendment - A change in the project that the Commission deems of sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of resource areas and interests covered under the Bylaw and Regulations (see Section 9.8.2).
- 2.5 Bank – 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 lower.
- 2.6 Buffer Zone – That area of land extending 100 feet horizontally outward from the boundary of any wetland resource area, not including the upland Buffer Zone, specified in 206-3 of the Bylaw.
- 2.7 Burden of Proof – The applicant shall have the burden of proving, by a preponderance of credible evidence, that the work proposed in the application shall not have an unacceptable significant and/or cumulative effect upon the wetland values protected by this Bylaw. Failure to provide adequate evidence that the work proposed in the application will have a significant and/or cumulative effect upon the wetland values protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.
- 2.8 Critical Area(s) – In addition to those area(s) identified under the Massachusetts Department of Environmental Protection Stormwater Management Handbook, Section 401 of the United States Clean Water Act, and the Massachusetts Surface Water Quality Standards (310 CMR 4.00 and 9.00), a Vernal Pool and its 125-foot Buffer Zone are “Critical Areas”.
- 2.9 Direct discharge - Direct discharge includes, without limitation, any outfall of water that empties into a resource area or Buffer Zone, including discharge from infiltration basins or other infiltration structures.
- 2.10 Distance – All distances noted in the Bylaw (excluding depth), such as buffer zone distances, are planar distances measured along a single elevation. Consequently, on steeply-sloped topography, the measured over-ground distance may not reflect accurately the distances specified in the permits and conditions specified by the Bylaw. In particular, the 100-foot Buffer Zone on steeply-sloped land will measure considerably more than 100 feet when measured over-ground on the site.
- 2.11 Discharges into wetlands – Discharges into wetlands shall include, without limitation, any discharge from the project that flows into a wetland resource area or Buffer Zone through new or existing drainage structures, including existing road drainage pipes, that empty into wetland resource areas or Buffer Zones regardless of the distance between the project site and the wetland resource areas or Buffer Zones.
- 2.12 Existing – The term ‘existing’ as used in the Bylaw shall mean existing in full as of November 1, 1995, unless specified otherwise in the Bylaw.

- 2.13 Extended Drought (or Drought) – Coincides with an “Advisory” or more severe drought as declared by the Massachusetts Drought Management Task Force in accordance with a statewide drought management plan.
- 2.14 Flood storage as an alteration – The term “alter” includes storage of flood waters and storm water runoff waters in wetlands. Storage of flood waters and storm water runoff in wetland resource areas (excluding the Buffer Zone as may be permitted) is prohibited unless the Conservation Commission deems that such action would enhance wetland values and functions.
- 2.15 Growing Season – The entire period from March 15th to October 15th.
- 2.16 Hydric Soil – Any soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper layer.
- 2.17 Intermittent Stream – A body of running water, including brooks and creeks, which moves in a defined channel, that may cease to flow from time to time throughout the area, including portions upgradient of all bogs, swamps, wet meadows, and marshes.
- 2.18 Isolated Vegetated Wetland is defined in Section 3.4 of these Regulations.
- 2.19 Modification – A minor or insignificant project change (as determined by the Commission or the Conservation Administrator) that will not result in an adverse impact on the wetland resource areas and/or interests protected under the Act and this Bylaw.
- 2.20 Normal Maintenance of Land in Agricultural Use is defined under these regulations the same as it is in 310 CMR 10.04 (b)(Agriculture).
- 2.21 Passive Passage – The term passive passage connotes passage by foot for the purposes of passive recreation, as defined in these regulations.
- 2.22 Permits - refers collectively to Orders of Conditions, Orders of Resource Area Delineation, Notice(s) of Non-Significance, Enforcement Orders, and/or Determinations of Applicability.
- 2.23 Person – Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof 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.
- 2.24 Pond – The term “pond” shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.
- 2.25 Public Hearing - A formal meeting, subject to statutory requirements, at which certain and specific determinations are made. A public hearing is required for an Abbreviated Notice of Resource Area Delineation, a Notice of Intent and a Request for Determination of Applicability under the Bylaw.
- 2.26 Public Meeting – A meeting held when a formal public hearing is not required (e.g. to discuss a project prior to a permit filing, a proposed project modification, or a request for a Certificate of Compliance).
- 2.27 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.
- 2.28 Passive Recreation – Recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching and

- other nature studies, walking and hiking, canoeing, and as appropriate fishing, hunting, etc.
- 2.29 Revocation – The revoking of a Permit issued under the Act and Bylaw.
- 2.30 River – Any natural flowing body of water that empties into any ocean, lake, pond or other river and which flows throughout the year. Rivers include streams that are perennial because surface water flows within them throughout the year. Rivers have a 200-foot Riverfront Area associated with them. River is defined further in 310 CMR 10.58(2).
- 2.31 Riverfront Area – The area of land between a river’s mean annual high water line, measured horizontally outward from the river and a parallel line located 200 feet away. The Riverfront Area may include or overlap other resource areas or their Buffer Zones. The Riverfront Area does not have a Buffer Zone. Riverfront Area is defined further in 310 CMR 10.58(2).
- 2.32 Stream – A body of flowing water, including brooks and creeks, which moves in a channel in the ground due to a hydraulic gradient, and which flows within, into or out of an area subject to protection under the Act or Bylaw. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is also considered a stream unless it is determined to be a river in accordance with these Regulations.
- 2.33 Sufficient information – The compliance with all Commission requirements for submission of information, material and fees as set forth in section 206-5 of the Bylaw and these Regulations. This includes requests of the applicant at public meetings or hearings.
- 2.34 Vernal pool – Includes a confined basin depression which, at least in most years, hold water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, and which does not have to be located within another resource area, 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 (see Section 3.2.2).
- 2.35 Vernal pool habitat – The area within 125 feet of the mean annual boundary of the vernal pool confined basin depression.
- 2.36 Vernal pool species – Any species of reptile, amphibian, or invertebrate that breeds in a vernal pool. These species may be obligate or facultative vernal pool inhabitants.
- 2.37 Volume of a detention/retention basin – Basin volume shall be calculated as that volume contained between the basin’s unrestricted overflow elevation and the lowest elevation of the basin floor.
- 2.38 Wet detention basin – A wet detention basin is a detention basin designed to hold water for at least two continuous months during the spring/summer, where the ponding area covers at least one-third of the basin floor to an average depth of six inches of water, which supports wetland vegetation, and which meets the other design requirements set by the Conservation Commission. For the purposes of the Bylaw, a wet detention basin shall be considered a constructed wetland and not acceptable as part of a wetland replication plan. As a constructed wetland, a wet detention basin shall be presumed to serve three wetlands values: flood control, storm damage prevention and pollution attenuation. Consequently, a wet detention basin that functions as a constructed wetland

is considered a resource area, and may not be altered without prior notification to the Commission to describe the proposed work.

- 2.39 Wetland resource area – Those areas subject to protection under the Massachusetts Wetlands Protection Act (MGL c. 131, §40) and/or the Hopkinton Wetlands Protection Bylaw (Chapter 206) and Regulations.

3.0 Additional Wetland Resource Areas Protected under the Bylaw and Regulations

3.1 Determining the Edge of a Wetland Resource Area

Bordering Vegetated Wetlands and Isolated Vegetated Wetlands are defined by a combination of vegetation, soils, and indicators of hydrology. Other wetland resource areas are defined by water levels, breaks in slope, etc. Because these criteria require visual observations, the Commission or its consultant may decline to make a determination of a wetland/resource area boundary when conditions prevent a visual examination (e.g. flooding, snow cover, or frozen ground). Requests for such determinations may be deferred until conditions permit a visual examination and soil testing.

3.2 Vernal Pools and Vernal Pool Habitat

3.2.1. Preamble

Vernal pools and their and their associated habitat are likely to be significant to the protection of wildlife and wildlife habitat. Vernal pools constitute a unique and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on vernal pool habitat for their survival. The wood frog (*Rana sylvatica*) and all species of mole salamanders (genus *Ambystoma*) that occur in Massachusetts breed exclusively in vernal pools. Areas in the immediate vicinity of the pool also provide these species with important non-breeding habitat functions, such as food, shelter, and over-wintering sites. Many other species of amphibians utilize vernal pool habitat for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of vernal pools is essential for the continued survival of wildlife species that are dependent upon this unique and threatened resource area.

3.2.2. Definition, Critical Characteristics and Boundary

Vernal Pools and the area within a 100-foot buffer are given special protection under State law, and no adverse effects on the wildlife habitat characteristics are permitted. Pools must have been certified through the Natural Heritage and Endangered Species program or identified by a preponderance of credible evidence presented at a public hearing to be protected under the Act.

The Bylaw extends this protection to 125 feet, and presumes Vernal Pool Habitat exists if a wetland's physical characteristics conform with those defined for Vernal Pools in

Section 206-2 (Definitions) of the Bylaw. This paragraph of the Regulations clarifies the definition of Vernal Pool as follows.

The term “vernal pool” shall include, in addition to that already defined under the Act and its Regulations, a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or the summer, is free of adult fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, 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.

One point needs further clarification. Section 206-3 of the Bylaw defines Vernal Pools as a resource area, and protects “lands within 125 feet of any of the aforesaid resource areas”. A strict reading of the Section 206-2 definition, above, could be interpreted as defining vernal pool to include the area with 125 feet, and then adding another 100 feet to that. This is not the intent. The area protected consists of the Vernal Pool as the resource area, and lands within 125 feet of the mean annual boundary of the depression (Vernal Pool Habitat).

It is not necessary for a Vernal Pool to be located within another type of wetland resource area or to be certified as a Vernal Pool by the MA Division of Fisheries and Wildlife, to be eligible for protection under the Bylaw.

3.2.3. Presumption of Significance

Where a proposed activity involves the removing, filling, dredging, or altering of a Vernal Pool, the Commission shall presume that the Vernal Pool is significant to the interests specified in the Act and Section 1.2 of these Regulations. This presumption is rebuttable and may be overcome upon the presentation of a preponderance of credible evidence, which in the judgment of the Commission demonstrates that the Vernal Pool does not provide or cannot provide vernal pool habitat functions. 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.

For the purposes of overcoming the presumption of vernal pool habitat the Commission will consider:

- a. Evidence that the ponding area does not hold water for at least two continuous months when not in a period of extended drought or unusual weather conditions.
- b. Evidence that vernal pool species do not breed or have not bred in the ponding area. The Conservation Commission shall provide explicit guidelines for this evidence.
- c. Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation,

several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

Appendix A provides detailed information relative to information required to demonstrate that a ponding area is a vernal pool.

3.2.4. Vernal Pool Performance Standards

125-foot No-Disturbance Zone: No new activity shall be permitted within undisturbed Vernal Pool Habitat (within 125 feet of the delineated edge of a Vernal Pool). Prohibited activities include, but are not limited to grading, landscaping, vegetation removal, pruning, filling, excavating, roadway construction and/or driveway construction, or stormwater management structures or outfalls.

Additional 100-foot Septic System Setback: No newly proposed septic system leaching field shall be permitted within 100 feet of the delineated edge of a Vernal Pool or its 125-foot No Disturbance Zone when the proposed septic system is located up gradient of the Vernal Pool, where site conditions deem the adherence of these setbacks feasible.

Any permitted work or use of a proposed cart path or driveway within the 125-foot No Disturbance Zone shall not obstruct the migratory pathways of vernal pool breeders such as ambystomid salamanders and wood frogs.

3.3 Bordering Vegetated Wetland

3.3.1. Preamble

For the purposes of this Bylaw, the protections afforded to Bordering Vegetated Wetland (BVW) shall follow the Regulations promulgated under the Massachusetts Wetlands Protection Act (reference 310 CMR 10.55), except that replacement for any permitted wetland alteration shall be provided at a minimum ratio of 1.5 to 1 (replacement wetland to lost wetland).

3.3.2. Definition, Critical Characteristics and Boundary

As per 310 CMR 10.55(2).

3.3.3. Presumption of Significance

As per 310 CMR 10.55(3).

3.3.4. Performance Standards

It is the policy of the Commission that there shall be no net loss of wetlands in the Town of Hopkinton. When wetlands are destroyed by fill or other means, compensatory replication must be provided under the Act and the Bylaw. Further, as replicated

wetlands carry no assurance that the function of the destroyed wetlands will be replaced effectively, a destroyed wetland shall be compensated at a minimum ratio of 1.5 square feet of replicated wetland for every 1.0 square foot of destroyed wetland.

Replicated wetland shall be constructed according to the Replication Standards, Section 7.1 of these Regulations or other standards as appropriate such as MA Department of Environmental Protection or U.S. Army Corps of Engineers.

Work within 100 feet of any BVW shall conform to the standards for Buffer Zone disturbance set forth in Section 3.6.4 of these Regulations.

3.4 Isolated Vegetated Wetland

3.4.1. Preamble

Isolated vegetated wetlands (IVW) are likely to be significant to all of the interests identified in Section 206-1 of the Bylaw and are likely to support all of the functions and values identified for BVW in 310 CMR 10.55(1). These interests include 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.

3.4.2. Definition, Critical Characteristics, and Boundary

IVW protected under this Bylaw are freshwater wetlands that do not border on creeks, rivers, streams, ponds or lakes. The types of IVW may include wet meadows, marshes, swamps and bogs. IVW must be comprised of two of the following three delineation parameters:

- The vegetation community of an Isolated Vegetated Wetland consists of 50 percent or more wetland indicator plants. Wetland indicator plants are classified in the following categories: Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland (as determined by the most recent revision of the “1996 National List of Vascular Plant Species that Occur in Wetlands”, available from the U.S. Army Corps of Engineers),
- The presence of hydric soils (as defined in Field Indicators for Identifying Hydric Soils in New England, Version 3, New England Interstate Water Pollution Control Commission, April 2004; or other standards as appropriate),
- The presence of other indicators of hydrology including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, and recorded hydrologic data (stream or lake gauge, aerial photo, other),

3.4.3. Presumption of Significance

Where a proposed activity involves the removing, filling, dredging or altering of an IVW, the Commission shall presume that the IVW is significant to the interests specified in Section 1.2 of these Regulations. This presumption is rebuttable and may be overcome upon the presentation of a preponderance of credible evidence that the IVW does not play a role in the protection 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.

3.4.4. Performance Standards

When the presumption set forth in Section 1.2 of these Regulations is not overcome, any proposed work in an IVW shall not destroy or otherwise impair any portion of said area, unless permitted by the Commission in accordance with the following:

Any loss of IVW as a result of permitted fill or other permanent alteration shall be compensated at a minimum ratio of 1.5 square feet of replicated wetland for every 1.0 square foot of destroyed wetland.

Replicated wetland shall be constructed according to the Replication Standards, Section 7.1 of these Regulations.

Work within 100 feet of any IVW shall conform to the standards for Buffer Zone disturbance set forth in Section 3.6.4 of these Regulations.

3.5 Riverfront Area

For the purposes of this Bylaw and Regulations, the protections afforded to Riverfront Areas under the 1996 amendment to the Massachusetts Wetlands Protection Act (310 CMR 10.58) shall follow the regulations as listed under Regulation Section 3.6 for Buffer Zones, except that the reach of jurisdiction shall extend 200 feet from the stream or river bank as defined by the Act.

3.6 Buffer Zone

3.6.1. Preamble

The Buffer Zone is presumed important to the protection of adjacent wetland resource areas because activities undertaken in close proximity to wetlands resource areas have a high likelihood of adverse impact upon the resource area, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of activities. The adverse impacts from construction and use can include, without limitation: erosion, siltation, loss of groundwater recharge, poor water quality, harm to wildlife habitat, and changes to light and temperature regimes. For this reason, these buffer zone areas are a valuable resource under this Bylaw.

3.6.2. Definition, Critical Characteristics and Boundary

A Buffer Zone is the area of land extending:

- a. 100 feet horizontally outward from the boundary of the following resource areas:
 - Isolated Vegetated Wetlands;
 - Bordering Vegetated Wetlands;
 - Bank (including Bank of any lake, pond, or intermittent stream),
 - Freshwater wetlands, marsh, wet meadow, bog, swamp or spring;
 - Land under any river; perennial or intermittent stream, creek, or brook; reservoir; lake or pond
 - Lands subject to flooding or inundation by groundwater or surface water
- b. 200 feet horizontally outward from the boundary of the mean high water mark of perennial rivers, streams, creeks or brooks (Riverfront)
- c. 125 feet horizontally outward from Vernal Pools (Vernal Pool Habitat).

3.6.3. Presumption of Significance

The Commission shall begin with the presumption that lands within the Buffer Zone of a resource area are best left in an undisturbed, natural state. Based on experience to date with projects in the Buffer Zone, and in accordance with the Rivers Protection Act of 1996 (MGL Ch. 258), the Commission shall presume that work in the categories listed in Table 3-1 occurring within the respective tabulated distances from a resource area will result in alteration of the resource area, and will require that the applicant maintain a strip of continuous, undisturbed vegetative cover within this buffer area. This presumption is rebuttable and may be overcome upon a showing by a preponderance of the evidence that the nature of the proposed work, special design measures, construction controls, or site conditions will prevent alteration of the resource area, and will cause no significant harm to the areas or values protected by the Bylaw. In the event that the Commission deems that the presumption has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

3.6.4. Performance Standards

The Bylaw gives the Commission broad discretion to permit, condition, and prohibit work within the Buffer Zone as the specific situation warrants. Therefore the Conservation Commission shall consider proposals for work in the Buffer Zone in terms of five broad forms of disturbance areas. This approach is intended to allow flexibility for property use while maintaining adequate levels of resource protection. These areas include:

- No Disturbance Zone – an area in which virtually no activities or work, other than passive passage are permitted. No vegetation may be disturbed, leaf litter and debris remains in place, etc. The No Disturbance area should remain unchanged from its pre-development project state. The width of the No Disturbance Zone is presented in Table 3-1.

- No Build Zone – an area in which no structures (e.g. buildings, roadways, parking lots, utility lines, stormwater outfalls, etc.) are permitted. The width of the No Build Zone is presented in Table 3-1.
- Temporary Disturbance Area – an area in the Buffer Zone where temporary disturbance for a limited period of time is permitted, such as for regrading or travel by heavy machinery. Once the activity is completed, however, the area will be restored or will be allowed to return to natural vegetation and function. Any subsequent disturbance or activity shall require a new filing. The Conservation Commission shall establish specific time frames and conditions for allowing temporary disturbances, as well as set criteria for assessing the successful return of the Buffer Zone to its natural functions.
- Limited Disturbance Area – an area in the Buffer Zone where a limited set of activities and work is permitted in perpetuity. For example, understory clearing of poison ivy might be allowed, but no clearing of overstory and no planting of lawn is permitted. Limited (sustainable) harvesting of wood, composting, and storing of firewood are other examples of limited activities that might be allowed.
- Permanent Disturbance Area – an area in the Buffer Zone in which most, if not all, legal activities and permanent disturbances are permitted. Buildings, porches, roadways and driveways, and landscaped areas in the Buffer Zone represent permanent disturbance areas. Nevertheless, within the context of permanent disturbance, the Conservation Commission may set specific conditions prohibiting or restricting those forms of work and activities in the Buffer Zone deemed potentially harmful to the resource area values, such as, but not limited to, the use of herbicides and pesticides, installation of groundwater interceptor drains, swimming pool or backwash system discharges, or installation of in-ground sprinkler systems for irrigating areas in the buffer zone.

Table 3-1. Required No Disturbance and No Build Zones

Type of Work	No Disturbance Zone (Limit of Work or Disturbance)	No Build Zone (Limit of Structure)
Any activity abutting a river, stream or other body of water covered under the Rivers Protection Act	100	100
Any activity abutting a vernal pool, whether or not the activity is listed in any other category in this table	125	125
Residential activity, including residential lots and multi-family residential development, for which a definitive subdivision plan was approved by the Planning Board on or before November 1, 1995	25	50
Residential activity, including residential lots and multi-family residential development (Note: See 5.12 to see whether a negative Determination of Applicability may apply)	50	50
Utilities (electric or gas transmission, telecommunications, water main, sewer main, or drainage pipe)	10 (except for permitted crossings)	15
Stormwater management structures (including outfalls)	50	50
Roads or multiple concurrent driveways	25 (except for permitted crossings)	30
Private driveway (one)	10 (except for permitted crossings)	15
Commercial, industrial, parking lot, municipal or other non-residential activity not included above	50	75

The Commission may, at its discretion, require the installation of permanent, immovable barriers (large rocks, stone walls, or other types of permanent markers) along the line where the limit of work or disturbance is proposed. It has been the Commission's experience that permanent, immovable barriers are an effective visual reference, and serve to help avoid 'lawn creep' by future landowners, who may not be as aware of the wetland resource areas as the original applicant.

In considering designation of Buffer Zone disturbance areas, the types of work and activities allowable, and conditions to apply, the Conservation Commission shall consider:

- Values and Functions of the Resource Area. The quantity and quality of resource values and functions should be considered explicitly in placing conditions on Buffer Zone work.
- Pre-Project Characteristics of the Site. Ground slope, soil conditions, vegetation, and prior disturbance are some of the site-specific characteristics that shall be considered in setting conditions for work in the Buffer Zone.

- **Wildlife Habitat and Rare Species.** The Conservation Commission shall take into consideration the wildlife habitat and rare species characteristics, as described in Appendix B, in setting conditions for work within the Buffer Zone.

The applicant shall carry the burden of proof for demonstrating to the Commission's satisfaction that the proposed work or activities in the Buffer Zone are necessary, and that reasonable alternatives, including reducing the scale and scope of the project, do not exist.

3.7 Intermittent Streams

3.7.1. Preamble

Creeks, brooks and streams, including Intermittent Streams, are important for storm damage prevention, flood control, ground water protection, wildlife habitat, and recreation values. During spring, summer, and fall these streams disperse snowmelt and storm runoff across the landscape, thereby preventing dangerous volumes and flows of stormwater from spilling over roadways and property. This broad dispersal also allows for larger volumes of water to infiltrate into the ground, recharging groundwater supplies.

Intermittent Streams are an essential source of food and water for wildlife, and are often the only source of water in higher elevation areas. The moist soils that border Intermittent Streams are significantly richer in herbs and flowering/fruited plants than are surrounding upland areas. During all seasons, but especially in winter and spring, Intermittent Streams act as essential corridors for animal movement when food is scarce. Some animals, such as pickerel, frogs and eastern spotted newts, rely heavily on Intermittent Streams for movement.

Adjacent the upland areas surrounding Intermittent Streams also are heavily utilized by wildlife for living space, breeding, feeding, migrating, dispersal, and security.

3.7.2. Definition, Critical Characteristics and Boundary

An Intermittent Stream is a body of running water, including brooks and creeks, which moves in a defined channel, that may cease to flow from time to time throughout the year, including portions upgradient of all bogs, swamps, wet meadows and marshes.

The upper boundary of an Intermittent Stream is the first observable break in the slope or the mean annual flood level, whichever is lower.

3.7.3. Presumption of Significance

An Intermittent Stream is presumed significant to storm damage prevention, flood control, ground water protection, wildlife habitat, and recreation values. This presumption is rebuttable and may be overcome upon a showing by a preponderance of the evidence that the nature of the proposed work, special design measures, construction controls, or site conditions will prevent alteration of the resource area, and will cause no significant harm

to the areas or values protected by the Bylaw. In the event that the Commission deems that the presumption has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

3.7.4. Performance Standards

Work within an intermittent stream shall not impair its carrying capacity of stormwater, its flood storage volume, its capability of recharging groundwater, its wildlife habitat value, or its recreational value.

Work within the 100-foot buffer zone of an intermittent stream and its bank shall conform to Section 3.6.4 Performance Standards for Buffer Zones.

4.0 Conditional Exceptions

For a complete list of exceptions, refer to Section 206-4 of the Bylaw.

4.1 Structures Used in the Service of the Public

As stipulated in Section 206-4.A of the Bylaw: “The application and permit required by this bylaw 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 telecommunication services, sanitary sewers, and storm sewers provided that written notice has been given to the Commission at least forty eight (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.”

4.1.1. Definition and Application of the Term ‘Existing’

As stated in Section 2.12, above, the term “existing” refers to structures placed in service prior to November 1, 1995, and refers to both structures and any appurtenance claiming exemption. Therefore, the application and permit required by this Bylaw shall apply to work associated with entirely new structures (those that are not replacing antecedents) placed in service on or after November 1, 1995, whether or not they would be considered appurtenant.

4.2 Emergency Projects

4.2.1. Public Health and Safety

As stipulated in Section 206-4.B of the Bylaw: “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 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.”

4.2.2. Temporary Repairs

As stipulated in Section 206-4.F of the Bylaw: “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.”

4.3 Agricultural Lands

As stipulated in Section 206-4.D of the Bylaw: “This Bylaw shall not apply to any activity performed in the normal maintenance or improvement of land activity devoted to agricultural use at the time of application.” Agriculture is one of the interests and values protected by the Bylaw. Accordingly, the Bylaw exempts certain work on lands already in agriculture from permitting as long as that work meets approved performance standards under the Bylaw. Alterations of resource areas that are not land in agriculture, or going beyond what is allowable under state Regulations (310 CMR 10.04, definition of agriculture) without a permit may be cause for an Enforcement Order and may require restoration of the illegally-altered areas.

Expansion of agricultural activities onto lands not previously or not currently in agricultural use and within the jurisdiction of the Commission is considered new agricultural activity and requires a permit under the Act and the Bylaw. In protecting agricultural values and interests under the Bylaw, the Commission may require as one of its conditions for approval of new agricultural activities that the land be placed under a deed restriction for a least ten (10) years that limits the use of that land to agriculture, especially if that land previously was in an undisturbed state.

Applicants are reminded that the provisions of the state Regulations do apply to land activity devoted to agriculture [see 310 CMR 10.04 and 10.53(5)], along with DEP's publication entitled "Farming in Wetland Resource Areas" (January 1996). Applicants may be required to file a Notice of Intent (NOI) for certain categories of proposed work for land in agriculture, along with supporting information from the farm Conservation Plan, in order to fully describe the proposed work. The Commission is available to answer questions and to work with farmers to help them understand when a NOI should be filed.

4.4 Farm and Fire Ponds

Ponds under active use for agriculture or fire protection shall be exempt from the provisions of the Bylaw. But ponds inactive for five or more consecutive years from agriculture or fire protection use are subject to the Bylaw. Accordingly, stocking of abandoned farm and fire ponds with fish shall not be permitted except in those cases where the Commission determines that the pond does not currently, and in the future will not likely, serve vernal pool functions. Likewise, alteration of abandoned farm and fire ponds shall not be permitted except in those cases where the Commission determines that the pond does not currently, and in the future will not likely, serve vernal pool functions. Alteration, in this case, includes the removal of water by a tank or pump truck, such as a lawn service truck, hydro-seeding truck, or fire truck, and dredging. All such proposed activities require the filing of a Notice of Intent, except under emergency fire safety conditions.

4.5 Pre-existing Lots

As stipulated in Section 206-4.G of the Bylaw: "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."

4.6 Minor Projects

As stipulated in Section 206-4.H of the Bylaw: "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 Section 5-5 of these Regulations.

4.7 Removal of Invasive Species by Hand

The removal of invasive species by hand within resource areas and/or the Buffer Zone shall be exempt from the provisions of the Bylaw if the removal work is less than 500 square feet in area and the Commission is provided notice ten (10) business days prior to conducting the work in order to inspect the area prior to the start of the work.

5.0 Permit Applications and Public Hearings

It is the policy of the Commission to require that any person intending to perform work within 200 feet of a perennial river or stream, within 125 feet of a vernal pool, or within 100 feet of other resource areas must submit to the Commission either a Request for Determination of Applicability or an application for a permit. In this way, the Commission has an opportunity to review the proposed project to determine whether any alteration of the neighboring resource area will occur, and whether any resulting alteration is in compliance with other applicable performance standards.

Submission of all permit applications shall conform to the “Checklist for Completeness” for that particular permit application (e.g. Notice of Intent, Request for Determination of Applicability, and Abbreviated Notice of Resource Area Delineation). These checklists are available from the Conservation Office or the Town of Hopkinton Conservation Commission website (www.hopkinton.org/conservation/index.htm). These checklists may be modified periodically by the Commission as necessary.

All filings must be complete in order to qualify a project as having been filed. In the case of incomplete applications (i.e. applications that do not contain the information necessary for the Commission to complete its review), the applicant will be notified, the DEP Regional Office will be notified, and the application will be returned to the applicant for completion. In those instances where the application is returned to the applicant due to insufficient information, no public hearing will be advertised or held, and the 21-day period will not start until a complete application has been received by the Commission.

Completeness in this context means only that the application contains certain items specified in the Regulations and the Bylaw. It does not necessarily mean that the application contains all of the information the Commission will need to determine whether the proposed work meets the performance standards. The Commission’s review of the application and the public hearing are designed to ensure that all necessary information is provided.

5.1 Printing of Public Notices

Both the Bylaw (Section 206-6.B) and the state Act require the printing of public notice of hearings to be paid for by the applicant. The Commission will submit the notice to the newspaper and will ask the newspaper publishing the notice to bill the applicant directly. If the bill is forwarded to the Commission for whatever reason, the Commission shall require the bill to be paid before any permit is issued.

5.2 Request for Determination of Applicability (RDA)

5.2.1. Overview

Any person or persons who desire a Determination as to whether this Bylaw applies to an area, or work to be performed in an area, shall submit a written request to the Commission in accordance with Section 206-5 of the Bylaw. NOTE: The Commission

will not accept an RDA seeking confirmation of delineated state and/or local wetland resources where no work is proposed. Under such a scenario, applicants must submit an Abbreviated Notice of Resource Area Delineation and comply with the filing requirements referenced therein (Section 5.3).

5.2.2. Filing Procedures and Submittal Requirements

General Requirements

Three (3) paper copies of an RDA (WPA Form 1) and supporting documents (and one electronic copy of the same) with a check for the appropriate filing fee (payable to the “Town of Hopkinton”), shall be received at least fourteen (14) business days prior to the anticipated hearing date by certified mail or hand delivery to the Conservation Office at 18 Main Street, Hopkinton, MA 01758. The RDA submitted to the Commission must also include a completed “Checklist for Completeness of RDAs” and the information required therein.

Upon receipt of an application, the Commission or Conservation Administrator will determine, within three (3) business days, if the application meets the minimum submittal requirements identified on the “Checklist for Completeness of RDAs”. Those applications that do not meet the minimum submitted requirements of the application checklist will be rejected until the necessary information is provided.

Abutter Notification Requirements

The applicant shall provide proof of hand delivery, including the signature of the abutter, or proof of mailing by certified mail or certificates of mailing of notification to abutters, having been made at least seven (7) calendar days in advance of the anticipated meeting date and provide a completed and signed Affidavit of Service Form. This applicant shall submit with his RDA a list of abutters within 300 feet of the property line where work is proposed (certified by the Assessor within the prior 30 days from the date of filing) to whom public notice of this request has been sent. Notification to abutters shall be made using the “Notification to Abutters Form” available on the Conservation Commission page of the Town of Hopkinton website or from the Conservation Office at Town Hall. The notice to abutters shall include all information pertinent to the time and location of the public hearing or indicate where such information can be obtained.

When a person requesting a Determination is other than the property owner, the notice of hearing shall be sent to the property owner as well.

Filing Fee Requirements

To determine the applicable fees, refer to Section 1.4 of these Regulations for the fee schedule.

Plan Requirements

The Commission and/or its designated agent, may, at its discretion, accept less detailed plans for an RDA than generally are required for a Notice of Intent application. At a minimum, all plans submitted shall clearly and accurately show the present conditions and proposed work and depict the location of water bodies and wetlands. All plans must be signed and dated by the person who prepared them.

5.2.3. Public Hearings

The Commission shall hold a public hearing on the RDA within twenty one (21) days of receipt of a complete RDA and shall issue a written Determination within twenty one (21) days upon receipt of such a Request. Prior to making a Determination, the Commission may require the submission of additional data deemed pertinent to the Determination.

The Commission may continue or adjourn a public hearing in the following instances:

- With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
- Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including, but not limited to, receipt of additional information from the applicant or others.

5.3 Abbreviated Notice of Resource Area Delineation (ANRAD)

5.3.1. Overview

The ANRAD provides a procedure for an applicant to confirm the precise boundaries of Bordering Vegetated Wetlands and Isolated Vegetated Wetlands under the Bylaw and/or the Act. Applicants also may use the ANRAD to seek confirmation of the boundaries of other resource areas subject to the Bylaw and/or Act which have been delineated.

5.3.2. Filing Procedures and Submittal Requirements

General Requirements

Three (3) paper copies of an ANRAD (WPA Form 4A) and supporting documents (and one electronic copy of the same), along with a check for the appropriate filing fee (payable to the “Town of Hopkinton”), shall be received at least fourteen (14) business days prior to the anticipated hearing date by certified mail or hand delivery to the Conservation Office at 18 Main Street, Hopkinton, MA 01748. The ANRAD submitted to the Commission also must include a completed “Checklist for Completeness of the ANRAD” along with the information required therein.

Upon receipt of an application, the Commission or Conservation Administrator will determine, within three (3) business days, if the application meets the minimum submittal

requirements identified on the “Checklist for Completeness of the ANRAD”. Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Abutter Notification Requirements

The applicant shall provide proof of hand delivery, including the signature of the abutter(s), or proof of mailing by certified mail or certificates of mailing of notification to abutter(s), having been made at least seven (7) calendar days in advance of the anticipated meeting date and provide a completed and signed Affidavit of Service Form. This applicant shall submit with his ANRAD a list of abutters within 300 feet of the property line where work is proposed (certified by the Assessor within the prior 30 days from the date of filing) to whom public notice of this request has been sent. Notification to abutters shall be made using the “Notification to Abutters Form” available on the Conservation Commission page of the Town of Hopkinton website or from the Conservation Office at Town Hall. The notice to abutters shall include all information pertinent to the time and location of the public hearing or indicate where such information can be obtained.

Filing Fee Requirements

The fees charged for filing under the Bylaw shall be in addition to those required under the Act. To determine the applicable fees, refer to Section 1.4 of these Regulations for the Bylaw fee schedule and to 310 CMR 10.03(7) for the fee schedule under the Act.

Plan Requirements

At a minimum and/or unless otherwise directed by the Commission or its designated Agent, all plans submitted shall clearly and accurately show the present conditions, including topography (minimum two-foot contour intervals), property lines, the location of water bodies, and wetland resource areas. All existing conditions plans must be stamped and signed by a duly qualified Registered Professional Civil Engineer and/or Registered Professional Land Surveyor of the Commonwealth of Massachusetts. More detail relative to plan requirements is found in the “Checklist for Completeness of ANRADs”.

5.3.3. Public Hearings

The Commission shall hold a public hearing on the ANRAD within twenty one (21) days of a complete ANRAD and shall issue a written decision within twenty one (21) days of the close of the public hearing. Prior to the close of a public hearing, all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

- With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
- Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including, but not limited to, receipt of additional information from the applicant or others.

5.4 Notice of Intent (NOI)

5.4.1. Overview

Any person who desires review of an NOI shall file with the Commission plans and specifications as required under MGL Ch. 131, § 40 and as further defined below. In order to demonstrate full compliance with the Bylaw and these Regulations, the applicant has the burden of proof to describe completely the site, the work, and its effect on wetland resource areas and the interests they provide. The applicant is obligated to demonstrate that the work subject to regulation under this Bylaw and Regulations can be performed in a manner that meets all applicable performance standards.

Applicants are urged to retain the services of qualified, experienced professional consultants when filing an NOI. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in extensive delays and continuations in the review and approval procedure. Failure to supply adequate and credible documentation describing the impact of the project on resource areas may result in the issuance of a decision prohibiting the work for lack of information.

5.4.2. Filing Procedures and Submittal Requirements

General Requirements

Three (3) complete paper copies of the NOI application, supporting documents and appurtenant data (and one electronic copy of the same), along with a check for the appropriate filing fee (payable to the “Town of Hopkinton”), shall be received at least fourteen (14) business days prior to the anticipated hearing date by certified mail or hand delivery to the Conservation Office at 18 Main Street, Hopkinton, MA 01748. The NOI submitted to the Commission also must include a completed “Checklist for Completeness of the NOI” along with the information required therein.

Upon receipt of an application, the Commission or Town Conservation Administrator will determine, within three (3) business days, if the application meets the minimum submittal requirements identified on the “Checklist for Completeness of the NOI”. Those applications that do not meet the minimum submittal requirements of the application checklist will be rejected until the necessary information is provided.

Abutter Notification Requirements

The applicant shall provide proof of hand delivery, including the signature of the abutter, or proof of mailing by certified mail or certificates of mailing of notification to abutters, having been made at least seven (7) calendar days in advance of the anticipated meeting date and provide a completed and signed Affidavit of Service Form. This applicant shall submit with his NOI a list of abutters within 300 feet of the property line where work is proposed (certified by the Assessor within the prior 30 days from the date of filing) to whom public notice of this request has been sent. Notification to abutters shall be made using the “Notification to Abutters Form” available on the Conservation Commission page of the Town of Hopkinton website or from the Conservation Office at Town Hall. The notice to abutters shall include all information pertinent to the time and location of the public hearing or indicate where such information can be obtained.

Filing Fee Requirements

The fees charged for filing under the Bylaw shall be in addition to those required under the Act. To determine the applicable fees, refer to Section 1.4 of these Regulations for the Bylaw fee schedule and to 310 CMR 10.03(7) for the fee schedule under the Act.

Plan Requirements

All applications shall include three (3) paper copies and one electronic copy of detailed plans. Technical data should be submitted to support the plans and shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed. The applicant, upon submission of a NOI shall comply with the requirements in the “Checklist for Completeness of the Notice of Intent and shall incorporate the following:

- All drawings shall be drawn with the title designating the name of the project, location, and the names of the person(s) preparing the drawings, and the date prepared, including the latest revision date. Drawings shall be stamped and signed by a duly qualified Registered Professional Civil Engineer and/or Registered Professional Land Surveyor of the Commonwealth of Massachusetts (whichever expertise is applicable). For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a “base map”. In this case, the “base map” also shall be submitted or referenced.
- Plans depicting proposed drainage systems and/or a subsurface sewage disposal system must be stamped by a duly qualified Registered Professional Civil Engineer of the Commonwealth of Massachusetts.
- An 8 1/2 by 11-inch photocopy of the USGS topographic quadrangle indicating the location of the proposed activity and the outline of the area in which the activity is located.
- Technical reports on both the engineering aspects of the project as well as the wetland resources of the project site shall accompany the NOI application.
- Source material for any plan submitted must be referenced on the new plan.

Existing Conditions Site Plans and Calculations

The following standards and design specifications are intended to provide the Commission with the minimum amount of data necessary to determine the impact of a proposed project on wetland resource areas and/or the ability of said resource area to provide documented functions and values. The Commission may from time to time adopt and publish additional guidelines and minimum technical standards for plans, calculations, and environmental impact report submitted with an application for a permit. The Commission may find it necessary to request additional site-specific information to determine the effect of the work on resource areas.

Plans shall be submitted at an appropriate scale (typically 1" = 40' for subdivisions and 1" = 20' for single-family lots) and in cross-section as may be necessary. Additional plans with greater or less detail also may be required if such plans would provide valuable information to the Commission. The Commission may request a plan at a different scale.

Existing Conditions Site Plans and Calculations

Existing conditions site plans shall incorporate the following information, as applicable:

- Property boundaries and abutters from the most recent information on record at the Assessor's Office.
- Water Resources Protection Overlay District boundaries from the most recent Town of Hopkinton Map.
- Existing contours at two-foot intervals and the source for any datum used to establish these contours.
- All existing natural and man-made features including tree lines, rock outcrops, stone walls, fence lines, cart roads, foot paths, overhead and underground utilities, and drainage structures.
- The location of all surface water supplies, wells, and septic systems on the property and on abutting properties within 100 feet of the proposed work.
- Elevations of all natural and man-made drainage structures, waterways, and wetlands (as defined by the Act and Bylaw).
- All wetland resource areas including, but not limited to, all buffer zones described in Section 3.6.
- Flag numbers of all field-delineated wetland resource areas.
- 100-year flood elevations of a natural and man-made waterways and water bodies, as determined from the current FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. (Where the floodplain of wetlands and water bodies have not been mapped by FEMA, hydrologic calculations may be required, prepared by a Registered Professional Civil Engineer to determine the boundary of the 100-year floodplain. Watershed modeling, hydrograph routing, and backwater analysis shall be performed using the nationally-recognized modeling techniques developed by the NRCS Soil Conservation Service. The Cornell University Atlas of Short-Duration Precipitation Extremes for the Northeastern United States and Southeastern Canada, (Publication No. RR 95-1, March 1995, http://www.nrcc.cornell.edu/reports/RR_95-1.html, for calculating Massachusetts rainfall data) shall be used in the drainage calculations. Calculations based on a Rational Method analysis shall not be accepted.)

Developed Conditions Site Plans and Calculations

Developed conditions site plans shall include the following information, as applicable.

- All proposed man-made features including roads, driveways, parking areas, structures, buildings, and overhead and underground utilities.
- Subsurface sewage disposal systems, foundation drains, and perimeter drains.
- Proposed grading and changes in elevations, depicted with two-foot contours and spot grades to 0.1 feet for ground conditions and 0.01 feet for structures.
- All surface and subsurface drainage structures including the location, cross-section, slope, and surface treatment of all drainage channels and the inverts, slope, pipe materials, catch basins, manholes, and end treatment of all storm drains discharging within 100 feet of any wetland resource area.
- The location and detail of all temporary erosion control devices, diversions, terraces, silt fences, hay bale barriers, sediment stockpile locations, sedimentation basins, and any other erosion control structures, including the proposed sequencing of erosion control measures during the course of construction.
- The location and nature of all proposed alterations to wetland resource areas.
- The location and planting plans for any proposed mitigation areas.
- Flag numbers for all field-delineated wetland resource areas.

5.4.3. Public Hearings

The Commission shall hold a public hearing on the Notice of Intent within twenty one (21) days of a complete NOI and shall issue a written decision within twenty one (21) days after the close of the public hearing. Prior to the close of a public hearing, all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

- With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
- Without the consent of the applicant, to a specific date, for the reasons stated at the hearing, including but not limited to, receipt of additional information from the applicant or others.

5.5 Minor Projects Exemption

Section 206 -4.H of the Bylaw defines Minor Projects not requiring filings. These proposals occur within the Buffer Zone, but must be located:

- outside of any resource area
- more than 50 feet from a resource area, but completely outside the Vernal Pool Habitat (125-foot Buffer Zone)
- within pre-existing lawn areas where the work lies within and/or outside the Buffer Zone and will not extend beyond the pre-existing lawn edge.

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, stone walls, 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 one 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 other accessory uses as may be authorized in the Regulations 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, which ever is farther;
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 Bylaw and that all required permit applications have been submitted.

5.6 Limited Project Roadways or Driveways

For the purpose of calculating wetlands impact when limited project driveways adjoin, cross over or traverse wetland resource areas, and based upon discussions between and experience of the Building Inspector, Fire Chief, Conservation Commission, and Planning Board, the Commission shall assess wetlands impact based upon no less than a

12-foot wide traveled way and a 16-foot disturbance footprint. Experience of the Building Inspector shows this to be the minimum acceptable driveway width for fire safety in cases where the driveway forms a narrow causeway over or through a resource area.

The Commission shall exercise its discretion under 310 CMR 10.53 regarding minimum practical width, using the experience of Town Boards and guidance from the Planning Board, in order to ensure that the driveway is not understated during the planning and impact calculation stage, only to result in substantially greater alteration once construction begins. The Commission may, when site conditions suggest or upon recommendations from the Planning Board, use its discretion to adjust these minimum footprints depending upon specific project and site conditions, elevations, and slopes. The presumption of the specified impact width may also be overcome based upon sufficient documentation by the Applicant establishing a different impact width.

Where no alternative means of access from an existing public or private way to an upland area of the same owner is available, limited project roadway construction shall be of minimum legal and practical width consistent with Planning Board dimensional standards.

5.7 Permit Applications for Renewable/Alternative Energy Research and Development or Manufacturing Facilities

Notwithstanding anything to the contrary in these Regulations, the Commission must act on a permit application for a renewable/alternative energy research and development or manufacturing facility within 12 months of the date of submission of a complete application

6.0 Waiver Provisions and Alternatives Analysis Requirements

The performance standards for wetland resource areas have been created to ensure that the interests of the Act and Bylaw are protected adequately. The Commission recognizes that, in certain situations, a waiver of a specific wetland resource area performance standard may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations.

Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited.

Wetland alterations required to access upland parcels will not be allowed if that landowner landlocked the parcel by selling its upland access, thereby creating his own hardship (see Section 6.5).

The Commission may require the filing of a request for a waiver of certain Planning Board or Zoning Board of Appeals requirements in order to minimize wetland impacts.

The applicant shall have the burden of proof of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand deliver, its written decision. See Appendix C for a Waiver Request Form.

6.1 No-Disturbance Zones

The Commission may grant a waiver from these Regulations for alteration of a Buffer Zone resource area in situations where there are no feasible alternatives that provide fewer impacts to resource area values. The applicant is responsible for performing this alternatives analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the No-Disturbance Zone performance standards and impose such additional or substituted mitigative requirements as it deems necessary, upon a clear and convincing showing by the applicant that:

- There are no practicable conditions or alternatives that would allow the project to proceed in compliance with the Regulations; and
- The project, or its natural and consequential effects, will not have any adverse effects upon any of the interests protected by the Bylaw. It shall be the responsibility of the applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested may result in the denial of a request for a waiver pursuant to the subsection; and
- The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project may be permitted which would have an adverse impact on rare wildlife species.

In the case where a waiver is granted in the No-Disturbance Zone, the Commission shall require mitigation measures to be implemented to offset presumed impacts to the wetland resource areas (see Section 7.1).

6.2 No-Build Zones

The Commission may grant a waiver from these Regulations for an alteration of a Buffer Zone resource area in situations where there are no feasible alternatives that provide for fewer impacts to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no feasible alternatives. The Commission may grant a waiver of the No-Build Zone performance standards and impose such additional or substituted mitigative requirements as it deems necessary, upon a clear and convincing show by the applicant that:

- There are no practicable conditions or alternatives that would allow the project to proceed in compliance with the Regulations; and
- The project, or its natural and consequential effects, will not have any adverse effects upon any of the interests protected by the Bylaw. It shall be the responsibility of the

applicant to provide the Commission with any information that the Commission may request to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information that has been so requested shall result in the denial of a request for a waiver pursuant to the subsection; and

- The project will improve the natural capacity of a resource area to protect the interests identified in the Bylaw, provided any adverse effects on any such interests are minimized by carefully considered conditions. However, no such project may be permitted which would have an adverse impact on rare wildlife species.

In the case where a waiver is granted in the No-Build Zone, the Commission shall require mitigation measures to be implemented to offset presumed impacts to the wetland resource areas (see Section 7.1).

6.3 Vegetated Wetland Alteration

The Commission may grant a waiver from these Regulations for alteration of a Vegetated Wetland (Bordering or Isolated) in situations where there are no feasible alternatives that provide fewer impacts to the wetland resource values. The applicant is responsible for preparing an alternatives analysis to show that there are no feasible alternatives. The Commission may, pending the results of the alternatives analysis, allow the loss, alteration, or temporary surface disturbance of Bordering Vegetated Wetland and Isolated Vegetated Wetland when said areas are replaced or restored in accordance with Section 7.1 of these Regulations.

6.4 Alternatives Analysis

The Commission shall require the applicant to provide an analysis of alternatives to projects and associated disturbances proposed within any resource area protected under the Bylaw, including the No-Build and No-Disturbance zones of the Buffer Zone. Practical alternatives to locate the project outside these areas must be investigated and should one or more prove feasible, the plan must be amended to relocate all activities accordingly.

The Commission shall consider as practical alternatives options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered without prior regard to impact on Bylaw resources.) The project shall be located outside the resource area 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.

6.4.1. Self-Imposed Hardship

The Commission views the impact on or alteration of resource area on any adjacent properties or properties located nearby which are under common ownership as a cumulative impact to be considered when evaluating a proposed project. The applicant or property owner is advised to prevent situations where he has created his own hardship by not assessing all likely impacts to areas subject to the Act or the Bylaw.

In the case of limited project proposals, proposed roadways or driveways shall be designed to provide access to all areas of the proposed site without relying upon the possibility of future wetlands crossings. The Commission shall consider any future crossings or impacts proposed to be self-imposed and will not grant further crossings or alterations in subsequent filings on a lot-by-lot basis for any project.

7.0 Replication Standards and Habitat Evaluations

7.1 Wetland Replication

The importance of first avoiding and then minimizing wetland impacts is expressly recognized in the State Regulations and this Bylaw. The Act and Bylaw mandate that the Commission consider the availability of reasonable 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 and contribute to the protection of the interests identified in the Act and this Bylaw.

The above notwithstanding, projects that impact vegetated wetland resource areas will be required to provide replication under this Bylaw. The general conditions governing replication area design under this Bylaw shall include but not be limited to the following:

1. Notice of Intent applications must include as an attachment, the DEP “Replication Guideline Checklist” dated March 2002 (see Appendix D).
2. A narrative description of the existing and proposed wetland.
3. A 1” = 10’ to 1” = 40’ site plan (with cross sections) including easily-identifiable landmarks (e.g. surveyed flag locations, benchmarks, or structures), contour lines at one-foot intervals, and locations of soil test pits and vegetation plots, prepared and stamped by a Registered Professional Land Surveyor or Registered Professional Civil Engineer of the Commonwealth.
4. The area of replication must be at least 1.5 times as large as the area of the original resource that will be destroyed. Surface area calculations demonstrating a minimum 1.5 to 1 replacement to impact ratio shall be submitted. Side slopes shall not be counted as part of the replication area.
5. Replicated wetlands must be hydrologically and geographically associated with the same water body as the original wetland, unless the applicant is able to demonstrate that another location (adjacent to other resource areas) would have a greater ability to protect the interests of the Act and the Bylaw.
6. The replication area must have similar groundwater and surface water elevation as the lost area.
7. At a minimum the replicated wetland must reproduce all the values and functions of the original wetland as determined by the Commission. Site conditions permitting, the

Commission may require that additional values and functions be incorporated into the replication design.

In particular, in circumstances where replacement of specific functions and values would require substantial amounts of time before being completely replicated (for example, those provided by mature trees) the Commission may require additional compensation of area, functions, values, etc. beyond those required in other sections of the Bylaw and its Regulations.

8. Replacement areas must be constructed at the same time or prior to the wetland alteration. The replicated wetland must be constructed in full, and conditionally approved prior to construction of any structures.
9. Project surveyors shall re-establish all wetland flags and stake out the limits of the proposed wetland replication area. These stakes shall remain in place until wetland vegetation has become fully established.
10. The Conservation Commission shall be given adequate notice prior to commencement of excavation for the replication area so that inspections may be completed during the excavation procedure.
11. Monitoring by a qualified wetland scientist, employed by the applicant, shall be required by the Commission during the construction of the wetland replication area. The credentials of the wetland scientist shall be submitted to the Commission for approval prior to the start of construction.
12. Erosion control barriers shall be placed around the proposed wetland replication area prior to the start of construction.
13. Prior to the start of wetland construction, detailed measurements of the depth of the soil O and A horizons within the wetland to be lost during construction shall be conducted. The project shall use this information to determine the suitability of these horizons for reuse in the replication area and to calculate the need for additional soil materials. Where possible, the top 12 inches of soil from the original wetland shall be transplanted with soil structure - especially lamination and density profile – as intact as possible to the replication area. This is intended to preserve plant, invertebrate, and other biotic communities of the wetland and inhibit the germination and growth of invasive species.
14. Soil materials to be reused (from the wetland to be lost during construction) shall be removed and placed in the prepared replication area within one day. If this is not possible, these soils shall be stockpiled for the minimum amount of time and kept loosely covered and moist at all times.
15. The proposed replication area shall be excavated to a depth of one foot below the proposed final grade, as specified in the specifications and plans submitted as part of the Notice of Intent and referred to in the Order of Conditions. The subsoil within the replication area shall be examined by the wetland scientist to determine whether it is

fine textured (fine sandy loam or finer, as defined by United States Department of Agriculture Natural Resources Conservation Services standards). If the subsoil is coarse textured, it shall be replaced with fine textured material to allow for the development of a capillary fringe between the groundwater and the soil surface.

16. A minimum of one foot (12 inches) of good quality, organic-rich (>10 percent by weight) topsoil shall be placed in the replication area. This soil may consist of soil removed from the wetland to be lost during construction or from an outside source. The soil may be amended with peat moss, peat humus, or composted manure in order to provide the necessary organic matter. Soils from an outside source shall be free of chemical contamination, sticks, trash, and rocks more than one inch in diameter. Reused wetland soils shall be free of sticks, trash, and rocks greater than six inches in diameter. Reused wetland soils shall not be screened prior to use in order to avoid removal of existing wetland vegetation. No soils from areas containing either purple loosestrife (*Lythrum salicaria*), common reed grass (*Phragmites australis*), or any other invasive species, shall be used in the replication area.
17. Following placement of topsoil, a minimum of 48 hours shall pass prior to planting of wetland vegetation to allow for rebound of buried or compacted peat. The final grade shall be adjusted as necessary.
18. The exposed substrate shall be protected against erosion until re-establishment of wetland vegetation occurs. All exposed soil shall be stabilized using seed-free straw mulch or other appropriate erosion control measures in the event that seasonal conditions result in a delay in planting. If the site is excavated to the sub grade in the fall and a delay is inevitable, consideration should be given to stabilizing the site for winter and conducting final grading in the spring.
19. Interim as-built plans, complete with one-foot contours, spot elevations, surface area, and cross sections of the replication area shall be prepared by a Registered Professional Land Surveyor of the Commonwealth and submitted to the Commission within 30 days of completion of final grading.
20. The replication area shall be planted and seeded according to specifications and plans submitted as part of the Notice of Intent and referred to in the Order of Conditions. Plantings shall be fertilized and irrigated as necessary to promote successful establishment. A combination of natural re-seeding, transplanting, and new plantings shall be used to re-establish a similar vegetation community and structural diversity to that lost. All plantings should be made at the beginning or end of the growing season. Fall plantings should be done before the first frost. Prior to planting and seeding, project surveyors should again verify that grades have been achieved as shown on the record drawings.
21. The wetland scientist shall visit the replication area weekly, following planting and seeding, for the duration of the first growing season to determine the need for irrigation and additional fertilization and to inform the site contractor of these requirements.

22. Erosion control structures shall be removed upon stabilization of the replication area to allow free circulation of water between the wetland replication area and the adjacent, natural wetland.
23. The wetland scientist shall inspect the wetland replication area twice each year, during late spring and during the late summer of the first two full growing seasons. A written report shall be submitted to the Commission at the end of each growing season. The spring inspection shall include monitoring of the groundwater elevation within a soil pit a minimum of 18 inches deep at each of three randomly distributed quadrats. The summer inspection shall include groundwater elevation monitoring and a vegetation survey to determine compliance with the general performance standard of 75 percent of the wetland surface being reestablished with indigenous wetland plant species within two growing seasons following planting. Vegetation monitoring shall occur within three randomly distributed quadrats sampled within the tree, shrub, and herb strata. Photos of each quadrat shall be taken during the summer inspection and submitted with the Commission report.
24. Invasive species colonization shall be documented and controlled. Evidence of the spread of invasive species within replacement wetlands will require the development and implementation of an invasive species management/control plan.
25. An inspection report shall be submitted to the Commission no later than October 15 of each of the first two years. The report shall include all data collected during the inspections and photographs, and shall include recommendations for additional plantings or other remedial work as required, to ensure successful wetland replication.
26. No wetland replacement area will be certified to be in compliance unless it has survived a minimum of two (2) growing seasons, and does not support a predominance of exotic, invasive species.
27. Any replication or restoration work that creates a resource on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource on that property prior to commencement of the work.
28. A bond shall be posted that will enable the Commission to complete the replication should the applicant fail to fulfill obligations set forth in the Order of Conditions. The amount of the bond shall be determined by the Commission.

The Commission may set other conditions as required on a project/site specific basis. The required documentation and materials shall be submitted to the Commission as applicable for a specific replication project. Specific requirements may be waived by the Commission if the appropriateness of the waiver is sufficiently documented in the application.

7.2 Wildlife Habitat Evaluations

Where alterations exceed the maximum allowable thresholds described in 310 CMR 10.00 for Bank, Land under a Water Body, Bordering Land Subject to Flooding, or Riverfront Area, or where the alteration of a habitat of rare species is involved, or where a Vernal Pool or Vernal Pool Habitat would be altered, a wildlife habitat evaluation shall be performed in accordance with 310 CMR 10.60. The Commission may also require, at its discretion, a wildlife habitat evaluation when the applicant proposes alteration to a wetland resource area that the Commission deems of exceptional value to the wildlife and wildlife habitat interests of the Bylaw.

Projects resulting in the loss of critical habitat, or causing negative impacts on critical habitat, of rare, threatened, or endangered species or species of special concern shall not be permitted. Valuable upland habitat shall, to the fullest extent possible, not be used to locate wetland replacement areas.

8.0 Stormwater Management and Erosion Control

8.1 Overview

The construction of impervious surfaces such as roadways or parking lots can alter significantly the quantity and quality of stormwater runoff and affect important groundwater characteristics. Impervious surfaces reduce surface infiltration, potentially worsening flooding problems by increasing stormwater runoff volumes and by redirecting flows within a watershed. The increase in surface flows from impervious surfaces may create new erosion problems where storm flows are directed and discharged.

Impervious surfaces increase the opportunities for various pollutants to mix into water flows. Roadways, for example, will retain a surface coating of petroleum and combustion-byproduct pollutants that will flush during the early stages of a storm. Snow and slush can introduce substantial quantities of road sand, salt, and associated pollutants. Roof runoff can pick up a variety of chemicals used in fertilizers, pesticides, and herbicides as it transverses lawns and landscape areas.

Impervious surfaces that direct water flows into wetlands may inundate sensitive resources and thereby destroy vital vegetative and wildlife characteristics, reduce pre-existing flood storage capacity, and contaminate groundwater recharge areas.

Conversely, impervious surfaces may direct traditional surface and groundwater flow patterns away from wetlands and thereby destroy the necessary hydrological conditions needed to maintain wetland functions and values.

8.2 Jurisdiction

Stormwater management and erosion control in the Town of Hopkinton is subject to review by the Commission when any work is proposed within its jurisdiction under the Act and the Bylaw and/or by the Hopkinton Planning Board when any work is proposed

under the jurisdiction of the Stormwater Management and Erosion Control Bylaw (Chapter 172 of the Town of Hopkinton General Bylaw, hereafter referred to as the “Stormwater Bylaw”). In cases where a project is subject to both Bylaws, it is the policy of the Commission to subject stormwater management and erosion control review for that project to the Stormwater Bylaw process.

All proposed projects meeting the applicability criteria under the Stormwater Bylaw shall apply for a Stormwater Permit with the Hopkinton Planning Board concurrently with the NOI filing for the project. The applicant shall provide the Commission with a copy of the final Stormwater Permit prior to the closing of the NOI hearing and the Commission’s issuance of the Order of Conditions. The Stormwater Permit shall be referenced in the Order. The Commission shall provide comments on the Stormwater Permit application to the Board during the course of its review process.

For those projects not subject to the Stormwater Bylaw the Commission shall require compliance with 310 CMR 10.05(6)(k through q) and the DEP Stormwater Handbook, Volumes I – III, as applicable.

For projects of any size, direct discharge of untreated stormwater to wetland resource areas is prohibited and erosion and sedimentation control must be provided during construction.

8.3 Stormwater Standards

8.3.1. Applicable Standards

For purposes of flood control, erosion control, water quality protection, and wildlife habitat preservation the Commission shall review all roadway and parking lot construction plans for impact, both immediate and cumulative, on resource area functions and values in accordance with the Town of Hopkinton Stormwater Management Bylaw or 310 CMR 10.05(6)(k through q) and DEP's Massachusetts Stormwater Handbook, Volumes I - III, as described in Section 8.2, above.

8.3.2. Requirements for Hydraulic Calculations

In accordance with the above, the Commission shall require as part of the application for permit complete hydrological calculations for the two, ten, twenty-five, and one-hundred year storm events. Such calculations shall include:

- runoff from all impervious surfaces associated with the project, including individual lot construction; and
- both pre- and post-project calculations for discharge volumes, concentration times, discharge velocities, and other quantities that the Commission may require for complete information.

- all stormwater management calculations shall utilize both the Cornell University Atlas of Precipitation for the Northeastern United States and Southeastern Canada, Publication No. RR 93-5, September 1993, http://www.nrcc.cornell.edu/reports/RR_93-5.html, and the Cornell University Atlas of Short-Duration Precipitation Extremes for the Northeastern United States and Southeastern Canada, Publication No. RR 95-1, March 1995, http://www.nrcc.cornell.edu/reports/RR_95-1.html, for calculating Massachusetts rainfall data.

All calculations and analysis shall be summarized and provided in an easily readable and understandable format and shall include a narrative summary.

8.3.3. Groundwater Flows and Impact to Water Quality and Groundwater Recharge

In cases where significant amounts of bedrock or ledge are present near the surface, or where naturally occurring springs exist, or where the project involves substantial potential for changes in groundwater flows (i.e. construction of wells, groundwater diversion trenches, etc), or in large subdivision projects, the Commission shall require as part of the application for permit detailed information on pre- and post-construction groundwater flows. In such cases, the Commission shall review the information to ensure there are no detrimental impacts to water quality, groundwater recharge, or wetland resource areas as a result of the proposed project. All calculations and analysis shall be summarized and provided in an easily readable and understandable format and shall include a narrative summary.

8.4 Low Impact Development (LID)

The Commission encourages the implementation of LID measures for all projects wherever practicable.

9.0 Permits and Decisions

9.1 Public Hearings

9.1.1. Simultaneous Hearing under Bylaw and Act

Public hearings on applications filed pursuant to the Bylaw and Regulations may be conducted simultaneously with public hearings held pursuant to the Act. Permit applications filed with the Commission under local and state laws shall include filings under both the Act and Bylaw under one cover.

9.1.2. Lack of a Quorum

From time to time, the Commission may find that it does not have a quorum present at a given hearing of a permit application, and therefore legally cannot act upon the applicant's submission. Every effort is made to ensure that a quorum is always present,

but in certain instances, emergencies or unexpected obligations may cause a member to be unavailable.

In such instances, it is the policy of the Commission to open and continue (if a new hearing) or continue the hearing to the next available date. This action is necessary because the law requires that the Commission act to open a hearing within a set time period from the filing date of the permit application.

9.2 Coordination with Other Town Boards

As appropriate, the Commission may choose to solicit the advice and opinions of other Town boards and officials in the course of its deliberations. Town boards and officials shall be entitled to file written comments and recommendations with the Commission at or before the public hearing. The Commission shall take any such comments and recommendations into account, but shall not be bound by them. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

9.3 Decisions

The Commission is empowered to deny a permit for failure to meet the requirements of the 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 the Regulations; and for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this Bylaw. Failure to provide necessary information includes failure to allow site visits by the Commission and its staff or representatives for the purpose of directly observing pre-project and post-project conditions on the property, at seasonally appropriate times. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

When the Commission votes to deny a permit, it shall issue a written decision supported by facts and findings explaining why the project may not be properly conditioned to meet the interests of the Act and the Bylaw.

Permits approved pursuant to this Bylaw may be:

- Combined and released with an Order of Conditions which may be issued pursuant to the Act; or
- Issued separately.

Upon closing the hearing and voting on the approval or denial of the NOI, the Commission may not issue an Order of Conditions under the Act until a DEP file number has been issued.

9.3.1. Tentative Decisions and Final Decisions

In accordance with Bylaw Section 206-8.1, all decisions issued by the Commission shall be Tentative Decisions. Tentative Decisions become Final Decisions as follows.

1. All decisions by the Commission, under the Bylaw, are tentative.
2. Any applicant can request reconsideration under the Bylaw within 10 days. A request for reconsideration under the Bylaw must be submitted to the Commission, separate from any Request for Superseding Order of Conditions filed with the Department of Environmental Protection.
3. Within 21 days following receipt of a request for reconsideration, the Commission can issue a final decision or vote to reopen the hearing. The hearing reopening can wait, with the applicant's specific request, until after the DEP appeal has ended; otherwise, it must reopen within 30 days of the request for reconsideration.
4. The Commission will then consider any new facts brought to light by the applicant, plus any new facts from DEP's decision, and then close the hearing and issue a final decision.
5. The applicant can then appeal the final decision to Superior Court.
6. If no request for reconsideration is filed within 10 days, the tentative decision becomes final as of the date of issuance. If the applicant chooses to waive the right to reconsideration or withdraw a request, the tentative decision shall become final as of the date this notice is received by the Commission.
7. The Commission clearly will participate in good faith efforts to resolve the remaining issues through mediation if possible.

9.4 Subdivisions vs. Individual Lots

Unless otherwise specifically identified, Orders of Conditions approving subdivisions apply only to the roads, drainage, and related infrastructure on the definitive plan, and do not apply to any individual lots. Each lot within a resource area and its Buffer Zone as defined under the Bylaw shall be required to file a separate NOI and obtain a separate Order of Conditions.

9.5 Permitting in the Context of Outstanding Violations

No permit shall be issued for any project to an applicant who has an outstanding violation of this Bylaw for which either a) no corrective order of Conditions has been recorded at the Registry of Deeds, or b) which is not under legal appeal.

9.6 Criteria for Negative Determination of Applicability for Activities in the Buffer Zone

The Commission shall presume that activities that are proposed to occur exclusively within the Buffer Zone and outside of any No-Disturb or No-Build Zone are eligible for a Negative Determination of Applicability if:

1. Alteration within the Buffer Zone is less than 4,000 (5,000 under DEP policy) square feet or 10 percent of the Buffer Zone on the lot, whichever is less;
2. At a minimum, a 50-foot wide area of undisturbed vegetation in the Buffer Zone along the resource area is provided;
3. Stormwater is managed according to standards in Section 8.0;
4. The Buffer Zone where the project is proposed does not border an Outstanding Resource Water (i.e., public water supply or Area of Critical Environmental Concern (ACEC) or a Vernal Pool;
5. The Buffer Zone does not contain estimated wildlife habitat which is indicated on the most recent Estimated Habitat Map of State-listed Rare Wetlands Wildlife; and
6. Erosion and sedimentation controls are provided at the limit of work to protect resource areas.

The Commission may determine that this presumption should not apply based on unusual characteristics of the site (e.g., steep slopes) or of the project (e.g., potential for impacts over time that may require oversight through continuing conditions in a Certificate of Compliance). If the Commission determines the presumption should not apply, or if an applicant does not submit sufficient information to allow the Commission to determine whether the criteria are met, it may issue a Positive Determination and require a Notice of Intent. Applicants proposing activities which do not meet these criteria may be required to submit a Notice of Intent to the Commission for preconstruction review and conditions to protect the interests of the Act and the Bylaw.

The Commission should always conduct a site visit to verify that the project is limited to work within the Buffer Zone and the criteria are met. The Commission should be confident that the boundaries of wetland resource areas have been properly delineated and may request an assessment by the Commission's consultant.

Work must conform to the plans submitted with the Request for Determination or any modifications imposed by the Commission in the Determination of Applicability. Failure to conform to the plans and specifications shall constitute grounds for requiring a Notice of Intent or enforcement action by the Commission.

9.7 Extension Permits

The Commission may issue an Extension Permit for a period of one year, or longer at the discretion of the Commission, provided that the written request for an extension is filed at least thirty (30) days prior to the expiration date of the Order of Conditions.

Extension Permit requests also must meet all of the following conditions at the time of the written request:

- No request for an Extension Permit will be granted unless, at the discretion of the Commission, the wetland is either re-flagged by a qualified wetland scientist or the original scientist, and approved flagging is re-established in the field by survey. Re-flagging shall be required when previously established flagging are illegible or no longer sufficiently present. At the discretion of the Commission, re-flagging shall be based upon consideration of the current condition of flagging, as well as the proximity to proposed work. The wetland delineation shall be verified by the Commission and/or its designated agent. The Commission may require a new filing if the wetland delineation has changed from that of the original submittal.
- No request for an Extension Permit will be granted for an expired Order of Conditions.
- At the time of the request for an Extension Permit, the project must be in compliance with the Order of Conditions and any permits issued by other Town boards and departments.

9.8 Modifications, Amendments, and Revocations

9.8.1. Modifications

The Commission may modify, upon its own initiative or petition from the applicant, an Order of Conditions issued under the Bylaw and its Regulations. The Commission considers a Modification to be an “an insignificant project change” when said change will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and this Bylaw. No public hearing is required for a Modification to an Order of Conditions, but the applicant must file a written request with the Commission, describing the Modification.

A request for a Modification will not be reviewed or considered under the following instances:

- If the appropriate filing fee is not submitted with the request to the Commission.
- If the wetland resource area has not been re-flagged and/or the originally-approved flagging has not been re-established in the field by survey as deemed appropriate by the Commission. NOTE: The Commission may require a new filing if the wetland delineation has changed from that of the original submittal

9.8.2. Amendments

The Commission may require the filing of an Amended Notice of Intent when a change in a permitted project has occurred that the Commission deems of sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of wetland resource areas and/or the interests covered under this Bylaw and Regulations. In the event that the Commission initiates an Amendment, written notification shall be provided to the applicant by certified mail.

A request for an Amendment will not be reviewed or considered under the following instances:

- If the appropriate filing fee is not submitted with the request to the Commission.
- If the Order of Conditions has expired.
- If the wetland resource area has not been re-flagged and/or the originally-approved flagging is not re-established in the field, as deemed appropriate by the Commission.
NOTE: The Commission may require a new filing if the wetland delineation has changed from the original submittal.

If the scope or purpose of the proposed project has changed substantially, or the wetland interests identified in the Act and Bylaw are not protected, the Commission shall require the applicant to file a new Notice of Intent.

9.8.3. Revocations

The Commission may revoke an Order of Conditions issued under the Bylaw and Regulations if any of the following circumstances occur:

- The applicant and/or his successor(s) fail to comply with the terms of the permit; or
- New information relating to the project is obtained which indicates that previous information presented to the Commission was inaccurate; or
- The project changes substantially after the completion of the Commission's review.

In considering a revocation of an Order of Conditions, the Commission shall officially notify the interested parties through certified mail and hold a public hearing within twenty one (21) days of the notification date.

9.9 Certificates of Compliance

Upon completion of the project, the applicant may request in writing from the Commission a Certificate of Compliance. As-built plans may be required to accompany the request, as noted in the Order of Conditions issued for the project. All as-built plans must be at the same scale as the plans approved as part of the Order of Conditions.

If requested by the Commission, the applicant or his representative shall attend any scheduled meeting to answer any questions the Commission may have. If the

Commission determines that the requirements of the Order have not been met, the request for a Certificate of Compliance shall be denied. The reasons for the denial shall be forwarded to the applicant within twenty one (21) days of the receipt of the request.

The Commission may specify on the Certificate of Compliance that certain conditions of the Order of Conditions, such as maintenance of waterways and catch basins, and erosion control measures, are imposed in perpetuity and do not expire with the issuance of the Certificate of Compliance.

The person to whom the Certificate is issued shall forthwith record it in the Middlesex Registry of Deeds or Land Court, as appropriate, in the chain of title of the affected property and shall notify the Commission, in writing, that said recording has occurred by sending a copy of the stamped, recorded instrument to the Commission.

A Certificate of Compliance can be granted for an expired Order of Conditions.

When granted, a Certificate of Compliance will be issued to either the original applicant or the current landowner.

The following additional requirements must be satisfied in order to receive a Certificate of Compliance:

1. No request for a Certificate of Compliance will be reviewed until all necessary filing fees and any outstanding consultant fees are submitted to the Commission.
2. The following information must be submitted to the Commission in writing, in addition to the requirements of the Order of Conditions, when requesting a Certificate of Compliance:
 - The name and address of the current landowner.
 - The name and address of the individual/trust or corporation to whom the Compliance is to be granted.
 - The street address and lot number for the project.
 - The DEP file number
 - A statement certifying compliance with the Order of Conditions and the approved plan.
3. The person certifying Compliance with the Order of Conditions must have inspected the site, read the Order of Conditions and all referenced documents, and reviewed the contents of the Commission's files on the project. Upon completion of these tasks the person certifying compliance must submit the "Order of Conditions Compliance Certification Form" located in Appendix E.
4. The Commission may withhold the issuance of a Certificate of Compliance if the project in question is part of (or related to) another project which is not currently in compliance.

10.0 Performance Guarantees

10.1 Security

The Commission may require the applicant to furnish a performance guarantee in the form of a proper bond or deposit of money or negotiable securities under a third-party escrow agreement or other undertaking of financial responsibility sufficient, in the opinion of the Commission, in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the Permit and/or shown on the plans approved by the Commission. This security shall be deposited in the name of the Town of Hopkinton. The standard agreement is included on the "Performance Guarantee Form" which can be obtained from the Conservation Office. Security amounts will be set so that funds will be adequate to comply with the Order of Conditions, repair damage to wetlands, and to permanently stabilize the work site and all disturbed soils. Security shall be determined on a site-by-site basis.

10.2 Covenant

The Commission may require the applicant to secure the performance and observance of conditions imposed on the project 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 the Town, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

10.3 Reduction of Security

The penal sum of any required performance guarantee, or the amount of any deposit held hereunder may, from time to time, be reduced by the Commission and the obligations of their parties thereto released by the Commission in whole or in part. The release schedule(s) for the security may be proposed by the applicant, and if acceptable, approved by the Commission.

10.4 Release of Performance Guarantee

Upon completion of site alterations required in the permit, security for the performance of which was given by security, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on the terms of release with the Commission.

If the Commission determines that said alterations have been completed in compliance with the conditions of the permits, it shall release the interest of the Town in such security and return the deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance with the permit, it shall, within 45 days, specify to the applicant in writing the details wherein said alterations fail to comply with the permits.

If the Applicant fails to complete the work secured by this agreement by the above-stated or extended deadline, the deposit of money may be applied in whole or in part, by and upon a vote of the Commission for the benefit of the Town of Hopkinton, to the extent of the reasonable cost to the Town of completing such construction or installation, as specified in this agreement. Any unused money and the interest accrued on the deposit of money, unless said interest is used to complete such construction or installation, shall be returned to the Applicant upon completion of such construction or installation by the Town upon a vote of the Commission.

11.0 Availability of Regulations

Copies of these Regulations and the Bylaw shall be made available for download on the Town of Hopkinton website (www.hopkintonma.gov). Printed copies of the Bylaw are available from the Hopkinton Town Clerk, Town Hall, 18 Main Street, Hopkinton, MA 01748. Printed copies of the Regulations are available from the Hopkinton Conservation Commission, Town Hall, 18 Main Street, Hopkinton, MA 01748, for the applicable Town Hall rate per page for copies in cash or a check payable to the Town of Hopkinton.

12.0 Amendments

These Regulations may be amended from time to time by a majority of vote of the Commission. Prior to taking a vote on an amendment, the Commission shall have held a public hearing on the proposed change(s).

13.0 Hopkinton Conservation Commission Policy Statements

These Regulations may be supported by policy statements issued by the Commission. These Policies will be made available to any individual upon request. Persons seeking permits under the Bylaw and Regulations should review the Policy Statements available in the Conservation Office.

14.0 Effective Dates

These Regulations were adopted as policy by the Commission on 27 April 1998. Following a review by the Bylaw Study Committee the Regulations were revised, discussed at an advertised public hearing, and approved by a vote of the Commission on 29 February 2000, effective immediately. Subsequent revisions to these Regulations have been made as follows:

3 May 2000	ATM Article 57
8 January 2001	Addition of ANRAD fee
25 June 2001	Addition of Comprehensive Permit Procedures
9 September 2002	Fee update
28 April 2003	Fee update
16 June 2003	ATM Articles 40 and 41, clarify setbacks table
11 February 2013	All sections

15.0 Severability

If any provision of these Regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these Regulations not specifically held invalid, nor shall it invalidate any Order, Permit, or Determination which previously had been issued, and to this end, the provisions of these Regulations are declared to be severable.

16.0 Enforcement

The following guidelines outline the response the Commission will take to violations or apparent violations of the Act or the Bylaw. Experience has shown that enforcement situations are rarely alike; each can present its own combination of characteristics such as: type of violation; availability and reliability of evidence; severity and immediacy of the threat posed to wetland values; ability to identify and contact responsible parties; applicability of state and town laws. Therefore, this regulation is meant to provide an adaptable model, not a strict recipe to be followed in all cases. The intent is to establish as much uniformity as possible consistent with effective and appropriate enforcement.

16.1 Violations

The Commission may enforce these Regulations, or an Order, permit, or Determination issued thereunder, in any manner consistent with Section 206-13 of the Bylaw and all other applicable laws. Enforcement orders may be issued under the guise of the Bylaw and the Act for the following violations:

- Working within any resource area or its Buffer Zone without a valid Order of Conditions, Determination of Applicability, or Minor Project exemption (Buffer Zone only); or
- Altering any resource area or its Buffer Zone as a result of work adjacent to these areas, even if the work area is outside the Commission's jurisdiction; or
- Violating of the terms of any Order of Conditions or Determination of Applicability; or
- Failing to complete a project if it has resulted in an adverse impact to any resource area; or
- Failing to comply with an Enforcement Order or an Enforcement and Restoration Order.

16.2 Enforcement Procedures and Fines

The following enforcement procedures shall be followed by the Commission:

1. When the Commission determines that an activity is in violation of the Bylaw or a Permit issued under the Bylaw, the Commission may a) issue an Enforcement Order or an Enforcement and Restoration Order, and/or b) hold a public hearing to consider whether the landowner should be fined for the violation.

2. Violations include those activities listed in Section 16.1, above.
3. In appropriate cases, the Commission may issue an Enforcement Order or an Enforcement and Restoration Order under the Wetlands Protection Act. Fines under the Act are administered by the Department of Environmental Protection.
4. An Enforcement Order issued by the Commission shall be signed by a majority of the Commission members present. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or agent of the Commission, if said Order is ratified by a majority of the members present at the next scheduled meeting of the Commission.
5. If a fine or an adjustment of a fine for a violation is contemplated, the Commission shall hold a public hearing to discuss the violation and to give the landowner or the landowner's representative an opportunity to respond to the evidence and circumstances. The landowner must be given at least 48 hours notice in writing of the date, time and place of a public hearing, by certified mail or hand delivery. If a majority of the Commission present at the hearing finds by a preponderance of the evidence that a violation has occurred, the landowner shall be levied a fine.
6. The Commission hereby established guidelines for calculating the appropriate amount of the fine if levied by the Commission after a public hearing (see Section 16.2.1). Each day of the violation constitutes a separate violation under the Bylaw.
7. The notice of a fine or fines and explanation thereof, including the date or approximate date of the violation from which daily violations are counted, will be sent in writing to the responsible landowner(s) by certified mail or hand delivery. The fine or fines under the Bylaw are payable to The Town of Hopkinton within twenty-one (21) days of the date of issuance of the notice.
8. The Town Collector may record in the Registry of Deeds a conservation lien for non-payment of accumulated fines. The lien shall be against all property in the Town of Hopkinton held by the landowner at the time of the violation which is contiguous to the area of the violation. The Commission shall hold a public hearing, in accordance with number 5, above, in order to decide the amount of the lien which may not exceed the amount of accumulated fines to-date.
9. A landowner can apply in writing for a continuance of the public hearing stating in full the reason for the request. The Commission may grant such a continuance for compelling and/or environmentally sound reasons.
10. An Enforcement Order issued under the Wetlands Protection Act MGL Chapter 131 Section 40 and its regulations 310 CMR 10, or under the Town Bylaw will constitute a warning that a public hearing and possible fine may result from any violation.
11. The Commission reserves the right to adjust the fine in response to new information or new circumstances at a public hearing to which the landowner will be given notice as outlined in (5) above. A written notice of the adjustment of fine shall be sent to the

landowner by certified mail or hand-delivery.

12. The Commission may accept a written plan with timetable for full restitution of the violation and may then withhold sending the notice of fine(s) for a specified time period. If satisfactory restitution is not made in a timely manner, the notice of fines shall be retroactive to the start of the violation.
13. Unless otherwise stated in the Bylaw or in the regulations promulgated under the Bylaw, the definitions, procedures, and performance standards of the Wetlands Protection Act MGL Chapter 131 Section 40 and associated Regulations, promulgated as 310 CMR 10, shall apply.

16.2.1. Fines

Violations without a Permit or a valid Order of Conditions:

- a) Any action which removes, fills, dredges, builds upon, degrades, discharges into, or otherwise alters (collectively 'alteration of') 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 waterbodies; lands subject to flooding or inundation by groundwater or surface water; or other wetland resource areas as defined in the Bylaw: \$300.00 per violation as provided under the Bylaw. Restoration of the area to its pre-existing condition shall be required under a Restoration Enforcement Order.
- b) Alteration of No-Disturbance Zone (going beyond Limit of Work setbacks as defined in the Regulations) not including the areas above: \$250.00 per violation. Restoration of the area to its pre-existing condition shall be required under an Enforcement and Restoration Order.
- c) Alteration of No-Build Zone (going beyond Limit of Build setback) not including the areas above: \$200.00 per violation. Restoration of the area to its pre-existing condition shall be required under an Enforcement and Restoration Order.
- d) Alteration of 100-foot Buffer Zone not including the areas above: \$100.00 per violation. Restoration of the area to its pre-existing condition shall be required under an Enforcement and Restoration Order.
- e) Cutting of plant life or trees anywhere in the buffer zone: \$200.00 per inch of caliper per tree. For plant life smaller than 1-inch caliper, the fine shall be \$200.00 per plant destroyed.

Violations which occur on a project with a Permit or for which a valid Order of Conditions exists:

- a) Alteration of 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 waterbodies; lands subject to

flooding or inundation by groundwater or surface water; or other wetlands as defined in the Bylaw: \$300.00 per violation. Restoration of the area to its pre-existing condition shall be required under an Enforcement and Restoration Order. In addition, a fine of \$600.00 per numbered condition violated in the Order of Conditions shall be assessed.

- b) Alteration of No-Disturbance Zone (going beyond Limit of Work setbacks as defined in the Regulations) not including the areas above: \$250.00 per violation. Restoration of the area to its pre-existing condition shall be required under an Enforcement and Restoration Order. In addition, a fine of \$500.00 per numbered condition violated in the Order of Conditions shall be assessed.
- c) Alteration of No-Build Zone (going beyond Limit of Build setback) not including the areas above: \$200.00 per violation. Restoration of the area to its pre-existing condition shall be required under an Enforcement and Restoration Order. In addition, a fine of \$400.00 per numbered condition violated in the Order of Conditions shall be assessed.
- d) Alteration of 100-foot Buffer Zone not including the areas above: \$100.00 per violation. Restoration of the area to its pre-existing condition shall be required under an Enforcement and Restoration Order. In addition, a fine of \$200.00 per numbered condition violated in the Order of Conditions shall be assessed.
- e) Cutting of plant life or trees anywhere in the buffer zone: \$200.00 per inch of caliper per tree. For plant life smaller than 1-inch caliper, the fine shall be \$200.00 per plant destroyed.

16.3 Enforcement and Restoration Orders

Enforcement and Restoration Orders for permits associated with violations shall include explicit dates for milestones and completion of work. Enforcement and Restoration Orders associated with violations shall include explicit restoration requirements as well as dates for review of restoration plans, restoration milestones and completion of work.

16.4 Legal Fees Resulting from Enforcement Orders

The Town of Hopkinton shall not be held liable to pay for legal services required to enforce the Act or the Bylaw. In the case of an Enforcement Order issued by the Commission requiring assistance of legal counsel, it is the policy of the Commission that settlement may include payment of legal counsel. In any legal proceedings this policy will be brought to the attention of the presiding court officers.

17.0 Appeals

Permits issued by the Commission under the Bylaw may be appealed in the Commonwealth of Massachusetts Superior Court.

End of Regulations

Appendix A.
Vernal Pool Criteria

Appendix A. Vernal Pool Criteria

According to these Regulations, the term "vernal pool" shall include, in addition to that already defined under the Wetlands Protection Act, MGL. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or the summer, is free of adult fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, 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.”

This presumptive definition for vernal pools is based on systematic field observations showing that most basins that possess the above characteristics host breeding vernal species, and upon the importance of vernal pools. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species.

Vernal pools include tiny pockets in uplands and barrier beaches, temporary and/or permanent ponds in kettleholes, depressions in swamps and wet meadows, old river oxbows and other floodplain pools, and isolated lands subject to flooding, ranging from small puddles to multi-acre expanses.

Most vernal pools either (a) lie within Bordering Land Subject to Flooding; (b) lie within Isolated Land Subject to Flooding, or (c) lie within depressions in riverfront areas. These pools are essential breeding sites for certain amphibians which require isolated, seasonally wet areas without predator fish. Most of these amphibians require areas of undisturbed woodlands as habitat during the non-breeding seasons. Some species require continuous woody vegetation between woodland habitat and the breeding pools. Depending on the species, during non-breeding seasons these amphibians may remain near the pools or travel one-fourth mile or more from the pools. Reptiles, especially turtles, often require areas along rivers to lay their eggs. Since amphibians and reptiles are less mobile than mammals and birds, maintaining integrity of their habitat is critical. Various kinds of animals, including several amphibian species and a number of invertebrate groups, occur or reproduce only in vernal pools (e.g. mole salamanders and wood frogs live in the uplands surrounding a vernal pool). These animals often live their lives a quarter mile or more from the vernal pool and migrate to the pool only for a few days each year for breeding purposes. Many of these animals only return to their own birth pool to mate, therefore increasing the importance of protecting all vernal pools.

Much has been written on the subject of certification of vernal pools. One useful publication, available from the Massachusetts Audubon Society, is entitled *Certified: A Citizen's Step-by-Step Guide to Protecting Vernal Pools*, edited by Elizabeth A. Colburn, PhD. This publication focuses on achieving certification of a vernal pool, which is not

required under the Town bylaw. Copies are available from the Audubon headquarters in Lincoln (617-259-9500) and at some of the sanctuaries around the state. The following material has been drawn from this source, as a guide to what makes a vernal pool.

Vernal Pool Characteristics

Vernal pools vary in size, shape, and location. Some are as small as a few square feet in area; others extend to several acres during maximum flooding. They occur in gravel pits, small depressions in the woods, kettle holes, and oxbows on river floodplains. Many occur in isolated depressions in areas far away from rivers and streams, lakes, and typical wetland areas. These differences are of little significance to the wildlife that depends on vernal pools for habitat; for them, the important considerations are water, food, and safety.

Under the State Wetlands Protection Act and Regulations, a vernal pool is automatically protected if it has been certified by the Massachusetts Natural Heritage and Endangered Species Program. Under state law, a certified vernal pool, and any land within 100 feet of it that is also within the wetland resource area, is protected from any "impairment of its capacity to provide wildlife habitat" [310 CMR 10.57(4)(b)4]. Generally, this means that no filling of the pool can occur and that no development can take place within any part of the 100-foot protected area surrounding the vernal pool.

In summary, to be considered a vernal pool, the pool must:

- a. Be a "confined basin depression";
- b. Hold water for a minimum of two continuous months during spring and/or summer for most years;
- c. Be free of adult fish populations or dry up sometime during the year or every few years; and/or
- d. Provide essential breeding habitat for certain amphibians and/or food, shelter, migrating, and breeding habitat for other wildlife species.

Under the State regulations, a vernal pool can still be protected even when it has not been certified. If credible evidence is presented at the public hearing that the area supports a vernal pool community and functions as vernal pool habitat, the conservation commission may make a finding that the pool is significant to the protection of wildlife habitat and may impose protective conditions, including denial of activities that would fill or alter the pool or its buffer. In such a case, the burden of proof is on the conservation commission and/or those who provide the evidence to show that the pool does in fact serve an important vernal pool wildlife habitat function. The commission may draw upon its consultant or other experts to assist in making determinations. In contrast, if the pool has been certified, then the burden of proof is on the person proposing to alter the area to show that the wildlife habitat value will not be altered or impaired.

Under the Bylaw, it is not necessary for the pool to have been certified by the Massachusetts Natural Heritage and Endangered Species program. The intent of the following section is to establish guidelines for determining what constitutes a vernal pool. Once again, the commission may draw upon its consultant or other experts to assist in

making determinations, or in reviewing data submitted by interested parties.

Vernal pool habitat is extremely important to a variety of wildlife species. Some amphibians breed exclusively in vernal pools, whereas other organisms such as fairy shrimps spend their entire life cycles confined to vernal pool habitat. Many additional wildlife species utilize vernal pools among various aquatic habitats for breeding, feeding and other important functions.

The species listed under categories A and B below are "obligate" vernal pool species-- that is, species that are found only in vernal pools during all or part of their lifetimes, and that require vernal pools for their survival. They serve as direct indicators for the existence of vernal pool habitat. These species are the intended primary beneficiaries of vernal pool habitat protection.

Documentation of vernal pool utilization by these species is the preferred method of identifying vernal pools. It is also generally the easiest type of evidence to find in the field.

The animal and plant species listed under categories C and D below are "facultative" vernal pool species--that is, species which occur in vernal pools, but which can also be found in permanent water. They serve as indirect indicators for the existence of vernal pool habitat. Because these species also occur in permanently aquatic habitats that support fish populations, it is essential that the absence of fish be documented for these vernal pools prior to the submittal of evidence for consideration for certification status. Generally, such documentation will consist of evidence that the pool dries up during the year. Category E may include a combination of obligate and facultative vernal pool species, including those not specifically listed in A and C, such as Spadefoot Toads (*Scaphiopus holbrookii*).

ANY ONE OF THE FOLLOWING (A THROUGH E) WILL VERIFY THE EXISTENCE OF A VERNAL POOL:

- A. Existence of (1) a confined basin depression and (2) evidence of breeding in standing water by any of the following amphibian species (these species breed only in vernal pools):
- Wood Frog (*Rana sylvatica*)
 - Spotted Salamander (*Ambystoma maculatum*)
 - Blue-spotted Salamander (*Ambystoma laterale*)
 - Jefferson Salamander (*Ambystoma jeffersonianum*)
 - Silvery Salamander (*Ambystoma "platineum"*)
 - Tremblay's Salamander (*Ambystoma "tremblayi"*)
 - Marbled Salamander (*Ambystoma opacum*)

The salamander species listed above are collectively known as mole salamanders.

The presence of any of the following will be considered as acceptable proof that a vernal pool is utilized for breeding purposes by one or more of the above-named species:

1. Breeding adults
 - Wood frog – breeding chorus and/or mated pairs
 - Mole salamanders – courting individuals and/or spermatophores
 2. Two or more egg masses of any of the above-named species
 3. Wood frog tadpoles or mole salamander larvae
 4. Transforming juveniles
 - Wood frog – tail stubs evident
 - Mole salamanders – gill remnants evident; or
- B. Existence of (1) a confined basin depression and (2) the presence of fairy shrimp (*Anostraca*) or their eggs therein. These species spend their entire life cycles in vernal pool habitat; or
- C. Existence of (1) a confined basin depression which (2) contains standing water that dries up during the year (or which for other reasons is free of adult fish populations) and (3) the presence of two or more of the following in standing water (these species are not found in water that persists for less than two continuous months in the spring and/or summer):

- Breeding spring peepers (*Hyla crucifer*)*
- Breeding gray treefrogs (*Hyla versicolor*)*
- Breeding green frogs (*Rana clamitans*)*
- Breeding American toads (*Bufo americanus*)*
- Breeding Fowler's toads (*Bufo woodhousii fowleri*)*
- Breeding four-toed salamanders (*Hemidactylium scutatum*)*
- Adult red-spotted newts (*Notophthalmus viridescens*)
- Spotted turtles (*Clemmys guttata*)
- Painted turtles (*Chrysemys picta*)
- Snapping turtles (*Chelydra serpentina*)
- Water scorpions (*Nepidae*)
- Predaceous diving beetle larvae (*Dytiscidae*)
- Whirligig beetle larvae (*Gyrinidae*)
- Caddisfly larvae (*Trichoptera*)
- Dragonfly larvae (*Odonata, Anisoptera*)
- Damselfly larvae (*Odonata, Zygoptera*)
- Leeches (*Hirudinea*)

* Evidence for breeding activity includes breeding adults, eggs, tadpoles or larvae, and transforming juveniles (see category A. 1-4 above); or

- D. Existence of (1) a confined basin depression which (2) lacks standing water or which contains standing water that dries up during the year (or is otherwise free of adult fish populations) and (3) the presence of one or more of the following (these species

are found only in areas that contain water for at least two continuous months in the spring and/or summer):

1. Cases of caddisfly larvae (*Trichoptera*)
2. Adults, juveniles or shells of either of the following:
 - Freshwater clams (*Pisidiidae*)
 - Amphibious air-breathing snails (*Basommatophora*)
3. At least six of the following wetland plant species:
 - Duckweeds (*Lemna* spp., *Spirodela* spp., *Wolffia* spp.)
 - Fountain moss (*Fontinalis* spp.)
 - False mermaid weeds (*Proserpinaca palustris* and *P. pectinata*)
 - Bur-reeds (*Sparganium angrocladum* and *S. chlorocarpum*)
 - Buttonbush (*Cephalanthus occidentalis*)
 - Pondweeds (*Potamogeton* spp.)
 - Bladderworts (*Utricularia clandestina*, *U. gibba* and *U. subulata*)
 - Water-milfoils (*Mvriophyllum humile* and *M. tenellum*)
 - Water plantain (*Alisma plantago-aquatica*)
 - Yellow water-crowfoot (*Ranunculus flabellaris*)
 - Featherfoil (*Hottonia inflata*)
 - Water-starworts (*Callitriche* spp.)
 - False pimpurnels (*Lindernia anagallidea* and *L. dubia*)
 - Lance-leaved violet (*Viola lanceolata*)
 - St. John's-worts (*Hypericum adpressum*, *H. boreale*, *H. canadense*, and *H. mutilum*)
 - Smartweeds (*Polygonum amphibium*, *P. hydropiper*., *P. hydropiperoides*, *P. pennsylvanicum* and *P. punctatum*)
 - A rush (*Juncus pelocarpus*)
 - Sedges (*Rhynchospora capitellata* and *R. fusca*)
 - Grasses
 - a. *Agrostis scabra*
 - b. *Glyceria acutiflora*
 - c. *Glyceria canadensis*
 - d. *Glyceria fernaldii*
 - e. *Glyceria pallida*
 - f. *Muhlenbergia uniflora*
 - g. *Panicum dichotomiflorum*
 - h. *Panicum meridionale*
 - i. *Panicum philadelphicum*
 - j. *Panicum rigidulum*
 - k. *Panicum tuckermanii*
 - l. *Panicum verrucosum*

E. Existence of all of the following:

1. Documented presence of water in a confined basin depression for at least two continuous months in the spring and/or summer; and
2. Confirmation that the vernal pool area becomes completely dry during a portion of the year (or other documentation proving the absence of adult fish populations); and
3. Presence of any amphibians and/or reptiles in standing water within the confined basin depression.

Timing of Evidence Collection

Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available. Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence. It is the Commission's intent that no applicant will be required to wait longer than 12 months for a vernal pool determination except in periods of extended drought, in which case the Commission will make its determination as soon as possible.

Appendix B.
Wildlife Habitat and Rare Species

Appendix B. Wildlife Habitat and Rare Species

The near-upland areas around wetland resources often play important roles in determining and maintaining the wildlife habitat values of associated wetlands. While it is common to think of the protective or 'buffering' value of buffer zones in terms of area undisturbed, habitat values may be equally affected by the configuration of the buffer zone perimeter, the inclusion or exclusion of specific topographical and ecological features (such as an abutting sandy knoll or tree canopy), etc.

Therefore where significant wildlife habitat values and functions are present delineation of non-disturbance areas within the buffer zone shall, as is reasonable, minimize the length of perimeter to area left undisturbed, exclude fingers, islands, or other projections or indentations of the non-disturbance zone, and in general avoid delineating oddly shaped non-disturbed areas. The Commission shall give special attention to inclusion inside the no disturbance area of those topographical and ecological features that it deems important for maintaining the wildlife habitat value of the resource.

The potential presence of rare or endangered species and their specific sensitivity to buffer zone activity shall be considered in determining buffer zone restrictions. The Conservation Commission shall consider evidence of the presence of such species or evidence of likely habitat. Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage Program is not necessary. The Commission may consult with the Division of Fisheries and Wildlife Natural Heritage Program or other authorities as it deems necessary for guidance and recommendations.

No Significant Adverse Impact On Wildlife Habitat

Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas.

Therefore in accordance with the Bylaw's fundamental purposes (see Section 206-1) no project may have a significant adverse impact - either project-specific or cumulative - on wildlife habitat. Any proposal to alter or impact wildlife habitat must be filed as a Notice of Intent and reviewed by the Commission and expert consultants.

For wildlife habitat purposes, a significant adverse project-specific impact is defined as an impact caused by work in a resource area that would under reasonable assumptions (a) result in a measurable decrease in the extant wildlife populations or biological composition, structure, or richness on the site or in the vicinity exclusive of the present or future state of adjacent and nearby properties, or (b) impair, damage, destroy, or reduce in value for wildlife purposes certain specific habitat features.

Wildlife studies have shown that direct impacts from work - filling, grading, vegetation removal, construction of barriers to movement, etc. - in resource areas can severely harm

wildlife populations. For example, low stone walls, culverts or roadways bisecting a resource area can prevent amphibians that live in upland areas from reaching breeding pools, marshes, and streams. Or, removal of large snags (dead trees) can virtually eliminate nesting by barred owls, pileated woodpeckers, mink, etc. Accordingly, the Commission shall prohibit the placement of fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features.

Examples of protected habitat features include (but are not limited to):

- Large cavity trees
- Turtle nesting areas
- Existing nest trees for birds that reuse nests (e.g., great blue herons, osprey)
- Beaver dams, dens, and lodges
- Mink or otter dens
- Vernal pools and their 125-foot buffer zones
- Vertical sandy banks
- Migration corridors that provide connectivity between wildlife habitats
- Sphagnum hummocks and pools suitable to serve as nesting habitat for four-toed salamanders

But indirect impacts - the effects of human activities near wildlife habitat can have equally harmful effects. Therefore the Commission shall take into account indirect effects on a project by project basis. So, for example, work within resource areas may be restricted if existing beaver, mink or otter dens, or osprey or rookery nests are present.

As clearly stated in Section 206-1 of the Hopkinton Wetlands Protection Bylaw the purpose of the Bylaw is to preserve for future generations of residents the natural resources and amenities - including wildlife - we presently enjoy in Hopkinton. The Bylaw protects cumulative values as well as immediate ones. Therefore, the Commission must be especially cognizant of the likely cumulative impact of work within resource areas.

For wildlife habitat purposes a significant cumulative adverse impact is defined as an impact that would under reasonable assumptions result in a measurable decrease in the extant wildlife populations or biological structure, composition, or richness on the site or in the vicinity taking into account the projected impacts of future projects that could be proposed in the vicinity with similar, comparable, or other significant impacts and disturbance.

This method for assessing cumulative impacts avoids the pitfall of placing an unreasonable burden of resource protection on subsequent applicants/projects in the vicinity while subsidizing those who are first to develop land. It allows the Commission to level the marginal impact of all proposed projects in the vicinity while ensuring appropriate protection present and future - of the values and interests protected by the Bylaw.

Appendix C.
Waiver Request Form

Appendix C. Waiver Request Form

Hopkinton Conservation Commission
Waiver Request Form

All projects submitted for review to the Conservation Commission should comply with the Hopkinton Wetlands Protection Regulations as well as the State Wetland Regulations (310 CMR 10.00). If you cannot comply with any portion of the Hopkinton Wetlands Protection Regulations you should file this Waiver Request identifying any areas where your proposed project is not in full compliance.

Project: _____

Applicant: _____

Applicant's
Address: _____

Phone: _____

I hereby request a Waiver from Section(s) _____

of the Hopkinton Wetlands Protection Regulations. The reason(s) for this Waiver Request are described below:

Signature of Applicant

Date

Appendix D.
Replication Guideline Checklist

Appendix D. Replication Guideline Checklist

Department of Environmental Protection (DEP) Massachusetts Inland Wetland
Replication Guidelines – 01 March 2002

A. Sequencing (See DEP Section 1.3 for further guidance)

1. The Notice of Intent should include the following information:

- Narrative on avoidance of wetland Impacts.
- Narrative and plans showing minimization of wetland impacts.
- Narrative/drawings of alternative replication designs to ensure success.
- Carefully designed replication plans with identified goals for unavoidable impacts.

B. Elements of a Complete Replication Plan (See DEP Section 2.3 for further guidance)

1. The application should include the following general information:

- Narrative description of the existing and proposed wetland;
- A site location map (such as a USGS locus) of existing and proposed wetlands;
- A 1"=10' to 1" = 40' plan including easily identifiable landmarks (e.g. surveyed flag locations, benchmarks, or structures), contour lines at 1-foot intervals, and locations of soil test pits and vegetation plots. A Professional Land Surveyor (PLS) and/or a Registered Professional Engineer (PE) should stamp plans.
- Grading should demonstrate elevation differences for different vegetation classes (forested, shrub, herbaceous, open water);
- Surface area calculations demonstrating a minimum 1:1 replacement to impact ratio (consider greater than 1:1 to ensure the success of at least 1:1). Do not count side slopes as part of the replication area; (Note: Bylaw requires a minimum of 1.5:1 replacement to impact ratio)
- Cross-sections of subsurface soil types, depths and locations, 100-year floodplain using both horizontal and vertical scale, existing and predicted high and low groundwater elevation, perched water conditions and other indicators of hydrology. Indicate cross-section locations on plan view;

2. Hydrology – The narrative and plans should include the following:

- The expected seasonal depth, duration, and timing of both inundation and saturation must be established for the existing wetland and for each of the proposed vegetation class in the mitigation area.
- Evidence of soil including free water in a soil test hole, soil color, saturated soil or oxidized rhizospheres.

In addition, the inputs and outputs in the water budget should be described. Ideally, replication areas should not depend on precipitation and sheet runoff flow only, but must have a seasonal source of groundwater and should have a surface water source as well. Perched wetlands may be established without these latter inputs, but monitoring wells or piezometers should demonstrate that runoff and precipitation inputs would exceed infiltration rates into the summer.

Demonstration that groundwater and surface water will have unrestricted hydraulic connections to the replication area;

Only the flood storage that the existing BVW provides should be designed in the replication areas;

3. Soils- the narratives and plans should include the following information:

Test pits of translocated soils including horizons, characteristics such as texture, organic matter, Munsell hue, value and chroma, consistence and evidence of hydrologic influence, e.g. mottles (frequency and color), gleying, and root depth;

Replication areas should have a minimum of 6-12" of A- Horizon soil. If used, soil amendments for the A-Horizon consist of equal volumes of organic and mineral materials. No woodchips should be used, and organic material should be well or partially decomposed.

Enough A and B-Horizon material (or A over a suitable composition of the C horizon) should be provided to create a suitable rooting medium, and to approximate the conditions at the nearest undisturbed existing wetland. Consistency should be loose to friable and texture should be loamy sand to silt loam.

Although not required, use of Redox and pH Meters in the replication area and adjacent wetlands may aid in replication success. Seek guidance of a professional experienced in this testing.

A detailed schedule for collection, stockpiling and placement of soils, including a discussion of techniques used to prevent the drying out and contamination of hydric soils.

Confirmation that invasive species listed in Section 2.3.3 are not present in the vicinity of the soil to be translocated.

If soil amendments will be brought from off-site, a description of the source, preparation and placement should be included.

Discussion of a method to ensure appropriate compaction levels and the final consistency and texture of mitigation soils, by horizon.

Survey of finished elevations during construction should be conducted frequently and a proposed schedule included.

Discussion of post-construction soil characteristics such as horizons, depths, texture, organic matter, Munsell hue, value and chroma, consistence and evidence of hydrologic influence, e.g. mottles (frequency and color), gleying, percent gravel and rock, and root depth;

4. Vegetation- narratives and plans should include the following information:

- The dominant plants in each layer of the existing and proposed wetland and the relative cover and wetland indicator status for each vegetative layer proposed (herbaceous, shrub, sapling, tree and climbing woody vine);
- Transplantation techniques including maintenance of viability of seeds, rootstock and plants during transplantation. Shrubs should be planted 8-10" on center and trees should be planted 10-15' on center unless otherwise recommended by a nursery or wetland professional.
- Consideration should be given to leaving mature trees on hummocks for shading if they are facultative or wetter.
- A detailed description of sources of off-site plant material, species list, and methods to be used for planting.
- Schedule for planting (at the beginning or end of the growing season - before the first frost). Check each species for ideal planting times. See Appendix 2 for growing seasons.
- Wetland vegetation expected after two growing seasons as well as predicted community after natural succession.
- Contingency plan in case of mortality of vegetation, invasive species, complete failure, inadequate size, etc.
- For larger projects micro topography should be shown in cross-sections including number of mounds and pools if proposed to replicate existing conditions.

5. Wildlife Habitat

- Documentation of the *Estimated Habitat Map of State-Listed Rare Wetlands Wildlife* findings for the site should be included.
- For projects impacting the wildlife habitat functions of BVW's, wildlife habitat characteristics of the site, including vernal pools, should be described and replicated. Design should include diversity of vegetation structure and composition, and of hydrological conditions. Credentials of wildlife habitat specialist should be included.

6. Stormwater Management

- Created wetlands for stormwater "best management practices" shall not be given credit as replication areas;

7. Erosion Control- narratives and plans should include the following:

- An erosion control plan that details stabilization techniques during construction and a contingency plan for construction and post- construction periods.
- A commitment to remove erosion control measures once the site is stabilized and following approval by the issuing authority.
- Embankment slopes should be no greater than 2H: 1V unless structural stabilization.

C. Considerations During Construction (See DEP Section 3.0 for further guidance)

- The erosion and sedimentation control plan must be implemented.
- The wetlands and replication area should be reflagged prior to construction start date if the flags placed during permitting are not clearly visible.
- A construction schedule listing the sequence of events for replication construction (preferably before work in the existing wetland);
- A project monitor with a minimum 5 years experience should be identified;

D. Monitoring Plan (See DEP Section 6.0 for further guidance)

- A plan to monitor the construction and subsequent growth for at least two years or until the 75% criteria is met following construction should be included (See Appendix 3 for example checklist). Include contingency plan in the event that the replication area does not meet the 75% reestablishment standard.
- Colored photographs from established reference points should be included with each monitoring report.
- Plan must include inspection of embankments to ensure that they are stable, properly vegetated and constructed as designed.

Appendix E.
Order of Condition Compliance Certification Form

Appendix E. Order of Condition Compliance Certification Form

Hopkinton Conservation Commission
Order of Conditions Compliance Certification Form

I, _____ on oath do
(authorized agent of applicant and/or owner)

hereby depose and state: (PLEASE CHECK AT LEAST ONE LINE)

1) _____ I am the _____ of _____
(position with applicant) (applicant's name)

the applicant upon whom Order of Conditions _____ have been placed upon
(DEP or HCC File #)

by the Hopkinton Conservation Commission (HCC)

and/or

2) _____ I am the _____ of _____
(position with owner) (owner)

the owner upon whose land Order of Conditions _____ has been placed upon by the
HCC (DEP or HCC File #)

- I hereby affirm and acknowledge that I have received said Order of Conditions and have read the same and understand each and every condition which has been set forth in said Order of Conditions.
- I hereby affirm and acknowledge that on this _____ day of _____ 20____, I inspected said property together with any and all improvements which have been made to same and hereby certify that each and every condition set forth in Order of Conditions are presently in compliance. Supplemental information has been provided which addresses any deviations from the Order of Conditions.
- I hereby affirm and acknowledge that this document will be relied upon by the HCC as well as any potential buyers of said property which is subject to said Order of Conditions.

Signed under the pains and penalties of perjury this _____ day of _____
20____

(Authorized agent of applicant or owner)

Appendix F.
Hopkinton Conservation Commission Procedures Regarding
Comprehensive Permit Applications

Appendix F. Hopkinton Conservation Commission Procedures Regarding Comprehensive Permit Applications

The Hopkinton Conservation Commission, upon request from the Zoning Board of Appeals, shall review plans provided by the ZBA or by an Applicant for a Comprehensive Permit under the State Chapter 40B Section 20-23 process. The following information and guidelines shall form the basis for reviews by the Commission.

- The Comprehensive Permit process does not set aside local Bylaws, but rather places the rulemaking authority for multiple local Boards under the coordination of the ZBA in order to simplify the permitting process for Applicants.
- The Mass Department of Housing and Community Development's Housing Advisory Committee, in providing 'Guidelines for Local Review of Comprehensive Permit Applications (see <http://www.state.ma.us/DHCD/components/hac>), has interpreted the enabling legislation to provide ZBA with the authority to act for all local Boards, including the Conservation Commission. There is some question whether Chapter 40B Sections 20-23 provides the authority to set aside Home Rule local bylaws, which, as non-zoning laws, may not fall under ZBA jurisdiction. Until subsequently clarified by case law, the Commission shall work closely and cooperatively with the ZBA to ensure that all applicable local regulations governing wetlands protection in Hopkinton under the home rule bylaw are applied to Comprehensive Permit projects consistently, fairly, and in the same manner as they would be applied to market-rate projects.
- Ch 40B Section 20-23 filings are clearly not exempt from the State Wetlands Protection Act, and do not constitute any form of Limited Project or other exemption under the State Wetlands Protection Act. If the project proposes work within an area subject to State jurisdiction under the Wetlands Protection Act (Chapter 131 Section 40 and its regulations 310 CMR 10), or within an area subject to local jurisdiction under the Bylaw (Chapter 206) and its regulations the Applicant must file the necessary permit applications with the Conservation Commission.
- All applicable fees, including consultant's fees necessary to review and permit the project, are to be paid either by the Applicant or the ZBA, which has the authority to have applicable costs paid by the Applicant. Such fees must be reasonably related to costs incurred in reviewing the application and permitting the project and may not be higher than fees ordinarily charged for comparable permits.
- The enabling legislation, Section 21 of Chapter 40B states that before conducting the Comprehensive Permit hearing, "the board of appeals shall request the appearance at such hearing of such representatives of said local boards... and, in making its decision on said application, shall take into consideration the recommendations of the local boards....". HAC guidelines stress that "Input from local boards and professional staff is critical to sound, well documented permit decisions."
- The Housing Advisory Committee guidelines state "The law enables a local Zoning Board of Appeals (ZBA), in consultation with other local boards and officials, to grant a single permit to an eligible developer proposing state or federally sponsored low or moderate income housing. It also permits the Board to override local requirements and regulations that are inconsistent with affordable housing needs *if environmental and planning concerns have been addressed.*" (italics added for emphasis)

- The Housing Advisory Committee guidelines state “The Conservation Commission and the Board of Health have separate jurisdictions, which are not subsumed within the comprehensive permit process. They should conduct separate hearings relating to state requirements in their areas (i.e., the Wetlands Protection Act and state "Title 5" septic regulations). However, local bylaws or regulations enforced by these boards that are more restrictive than state requirements may be waived by the ZBA if requested by the applicant and if waiver is consistent with local needs.”

- The Housing Advisory Committee guidelines state ““In considering conditions that might be imposed on a project, the Zoning Board of Appeals should focus on the health, safety, environmental, design, open space, and planning impacts of the development. *The Board may impose conditions either to eliminate or to mitigate the adverse impact of the development.*” “Conditions must not be imposed in a manner that places additional burdens on an affordable housing development that would not be imposed in similar circumstances upon market-rate housing.”

- The statute requires that a comprehensive permit be granted when it is "consistent with local needs," and describes a balancing test. That is, on some sites it may be possible to build affordable housing that does not comply with certain local restrictions, but nevertheless *has no negative impact on local health, safety, environmental, design, open space, and planning concerns*. For other sites, the impact on these local concerns may be limited enough so that these concerns are outweighed by the need for low and moderate-income housing.

In accordance with the above information, the Commission shall review materials as provided by the ZBA or the Applicant for compliance with the Hopkinton Wetlands Protection Bylaw (Chapter 206 of the Code of the Town of Hopkinton). If conducted in parallel with the Commission’s review under the State Act, the Order of Conditions for the project shall clearly identify the provisions and conditions applicable under the State Act from those applicable under the local Bylaw.

**Appendix G.
Appeals**

Appendix G. Appeals

Article 57 of the Spring 2000 Annual Town Meeting provides the Commission with the ability to issue Tentative Decisions. This new language offers a substantial improvement to the appeals process.

Under state law, an applicant wishing to appeal a decision by the Commission must follow two paths. Under the state Wetlands Protection Act, an applicant must appeal to DEP. Under local law prior to May 2000, applicants were also forced within 10 days under state law to appeal the decision under the Bylaw to Superior Court. Since DEP seldom renders an opinion within 10 days, applicants were forced to file the Court appeal to preserve their standing, while waiting for DEP to act.

The new language of Bylaw Section 206-8.1 allows the Commission to issue Tentative Decisions, wait for DEP's response, and then reconsider the project using DEP's findings before any decision becomes a Final Decision. This in effect preserves an applicant's right to appeal under the Bylaw, until he sees how DEP rules on the case. The article also establishes the Commission's policy of encouraging dispute resolution through mediation and settlement wherever possible.

The main points of the Appeals language, section 206-8.1, are as follows:

1. All decisions by the Commission, under the Bylaw, are tentative.
2. Any applicant can request a reconsideration under the Bylaw, while that applicant can appeal the decision, under the state law, to DEP.
3. In response to a request for reconsideration, the Commission can issue a final decision or vote to re-open the hearing. The hearing re-opening can wait, with the applicant's approval, until after the DEP appeal has ended.
4. The Commission will then consider any new facts brought to light, plus DEP's decision, and then close the hearing and issue a final decision.
5. The applicant can appeal the final decision to Superior Court.
6. If no request for reconsideration is filed within ten (10) days, the tentative decision becomes final as of the date of issuance.
7. The Commission clearly states its desire to resolve the remaining issues through mediation if possible.

There are exceptions. A Commission may approve work under the state law but deny it under the stricter standards of the local Bylaw. In that case, a dissatisfied applicant would request reconsideration and/or appeal the Bylaw decision but not the Order of Conditions issued under the Act. On the other hand, dissatisfied abutters might want to appeal the Act decision, but not the Bylaw decision. Or an Enforcement Order may have been issued under both the Bylaw and the Act. Since such Enforcement Orders cannot be appealed to DEP, all appeals of Enforcement Orders will be to the Superior Court.

In most cases, an appeal will be filed with DEP. Assume that the appellant is a dissatisfied applicant for a permit (the most common appellant). Under the Wetlands

Protection Act he must file an appeal with DEP within ten days after the Commission issues the Order of Conditions or Determination of Applicability. DEP will then proceed to process the appeal in the usual way, issuing a Superseding Order of Conditions which may in turn, be appealed to an administrative law judge in DEP under an adjudicatory hearing. If a court appeal is filed under a Bylaw, the administrative law judge hearing will be delayed to see what the judge will rule (DEP Policy 89-1). Ultimately, the administrative law judge will uphold or reject the Superseding Order of Conditions. If that result offends any of the parties to the adjudicatory hearing (including the Commission, automatically a party to such appeals), that person must file a legal action with a trial court. There are some possible short cuts through this lengthy procedure, but in most cases, the full DEP administrative procedure must be observed. Courts are not anxious to overturn decisions arrived at through this procedure.

Once the DEP findings are known, and assuming the applicant requested reconsideration in accordance with Section 206-8.1 of the Bylaw, the Commission will vote to reopen the hearing. Following the conclusion of the reopened hearing, the Commission will 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 Act, or if the Commission denies a permit for a project approved under the Act, it shall include in its Final Decision a statement specifying each relevant respect in which this Bylaw, or regulations promulgated thereunder, are stricter than the requirements of the Act as applied to the project.

In the event of any appeal to the Superior Court under M.G.L. 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. If the applicant still chooses to file a suit in Superior Court, the appellant must file a lawsuit in the superior court attacking the Bylaw decision, which cannot be reviewed by DEP (even if the decisions are virtually the same). This kind of review, called "certiorari," is discussed below.

It should be noted that it is the policy of the Town of Hopkinton to encourage the resolution of disputes arising under this Bylaw by settlement wherever possible. Consistent with this policy, in the event of an appeal to Superior Court under M.G.L. c. 249 from a Final Decision by the Commission, the Commission shall, subject to the availability of any funds required therefore, participate in good faith in mediation if the party appealing the decision makes a request to the Commission for it to do so, provided that all other parties to the appeal so agree. If the party appealing the decision elects not to participate in mediation, the appeal to Superior Court proceeds.

The certiorari process is found in M.G.L. Ch. 249 §4 which governs appeals of permit decisions of many kinds. The appeal must be filed within 60 days after the Commission issues its final Bylaw decision, either in the Superior Court or in the Supreme Judicial Court. However, an appeal directed to the latter is likely to be sent to the Superior Court anyway, so most are submitted directly to that court.

Certiorari is a limited review, based on the record of the proceedings of the permit body. The standard of proof requires a showing that an error of law was committed, e.g., that the Commission failed to follow proper procedures, or that its decision was arbitrary and not based on evidence. The judge is not supposed to substitute her/his judgment for that of the Commission, if the latter was based on reasonable evidence. The burden of proof is on the plaintiff. The town counsel or city solicitor will file, as a response to the complaint, either an "answer" or a certified copy of the administrative record (sometimes called a "return") or both. The record compiled at the public hearing is instrumental in shaping court review.

In contrast, review by DEP on an appeal under the Act is "de novo": Agency review of the application and plans for the project starts afresh, as if the application were filed with DEP to begin with. DEP automatically treats the Commission as a party, but by no means does the Commission enjoy a benefit of doubt. The opposite is true in Superior Court, given the burden of proof.

A Superior Court trial ends with the judge's written decision. Generally, the judge simply rules in favor of the plaintiff or the defendant, though it may "remand" (send back) the matter to the Commission for further findings about what the permit really means. Courts will not rewrite permits. It is therefore up to the appellant and the appellee (the town) to decide exactly what "relief" (decision) they want from the court. In the typical appeal, the appellant will want the court to invalidate the Commission's decision because it was arbitrary or something was wrong with the process (e.g., the hearing was not posted or advertised, the neighbors were not notified). The municipality will want the judge to uphold the local permit. Decisions of the Superior Court may be appealed by either party to the Appeals Court or even to the Supreme Judicial Court, which selects the cases it wants to review.

An applicant must obtain all necessary permits before he can do work. Therefore, an applicant filing the two appeals discussed above must win in both instances. If DEP approves a Superseding Order of Conditions, this may be offered as evidence in the court action under the Bylaw, to show that the applicant is doing the right thing. However, the court is not bound by the DEP decision, nor vice versa.

**Appendix H.
Policy Statements**

Appendix H. Policy Statements

Enforcement Sequence

The Commission shall follow the sequence below in carrying out its enforcement activities:

Step 1 and Continuing: DOCUMENT THE VIOLATION as best as possible.

Step 2: INFORMAL CONTACT. Contact the violator or property owner by phone, to arrange a meeting (on site, in office, or at a Commission meeting). Discuss with the contact the site activity, the legal requirements, and possible remedial action. If full cooperation and agreement is achieved, Commission may issue an Enforcement and Restoration Order (see below).

Step 3: VIOLATION LETTER: If informal contact cannot be made, send a violation letter, informing the violator or owner of the wetlands protection laws and the apparent violation. Include a cease and desist warning and a requirement to prevent further damage. Ask for a response by a certain date, typically in 10-14 days, in writing or by phone, to set up a meeting, preferably on site. Or, the letter may set a date and time for the respondent to appear at a Conservation Commission meeting.

Step 4: ENFORCEMENT ORDER #1: Failing an adequate response to step 2 or step 3, issue an Enforcement Order (DEP WPA Form 9) with:

- a cease and desist order (checked off on the DEP Enforcement Order form);
- a restoration order (also checked off);
- an order to prevent further violations (also checked off);
- an order that states: "The property owner (or agent) shall appear before the Conservation Commission at its meeting on Monday, _____, _____, at _____ pm, to show cause why further enforcement action should not be taken."

Step 5: ENFORCEMENT ORDER #2: Failing an adequate response to step 4, issue a second Enforcement Order, setting specific requirements for the restoration of the site to its original condition within a specified time period (typically 14 days) or court action will be taken under the Act and/or the Bylaw. Make reference in this Order to past enforcement efforts and to the legal penalties for non-compliance.

Step 6: CIVIL COMPLAINT: Failing adequate response to step 5, file a civil complaint with the district court.

If the violator does respond and is at least mildly cooperative, draw up an Enforcement and Restoration Order spelling out the terms and conditions of the restoration work. The Commission may direct the violator to record this order, so long as it states that it will issue a Certificate of Compliance fully discharging the violator from any further liability regarding the violation once the restoration work has been satisfactorily completed.

All Enforcement Orders and letters will be directed toward restoration rather than toward the filing of plans or a Notice of Intent. If further enforcement action is required, it should be for failure to restore illegally altered land to its original condition rather than for failure to submit plans.

Non-criminal Enforcement of Bylaw Violations

Under MGL Chapter 40 Section 21D, adopted by Hopkinton Town Meeting as a Town Bylaw, a violator of the Hopkinton Wetlands Protection Bylaw may be issued a ticket and assessed a fine of \$50 per violation. Each day constitutes a separate violation. A separate ticket is used for each violation.

Any person so notified to may appear before the clerk of the district court and confess the offense charged and pay the fine, or may mail the fine together with a copy of the notice to the Town Clerk. Any appearance or payment under this paragraph is not deemed to be a criminal proceeding. The procedure for appeal of a ticket issuance is described in the Town's non-criminal disposition bylaw and state law, and allows the violator to request a hearing in writing within 21 days after the date of the notice. Such hearing will be held before a district court judge, clerk or assistant clerk as the court shall direct.

Suggested guidelines for ticketing:

1. At steps 2 and 3 (listed above), warn the violator that fines may be assessed if the violation is not addressed or removed within seven (7) days. After that deadline, issue ticket if no or inadequate response is received.
2. A ticket will be issued at any point in the above sequence when in the judgment of the Commission it is deemed to the most effective means of enforcement. In making that judgment, the Commission (or its agent) may consider the following factors: a) The ability to reach the violator or property owner to deliver the ticket; b) The severity of the violation and the importance of prompt remediation and compliance; c) The relationship of the amount of the fine to the size of the violation;
3. If ticket is ignored (not paid and no hearing is requested) past the 21-day deadline: a) send a letter granting an additional 10 days to pay before a criminal complaint is issued. b) issue a criminal complaint.

Further Enforcement Actions

If the above actions do not secure compliance, the following remedies are available to the Commission, and will be selected as the Commission finds appropriate.

Remedies under the Act

- a) Civil suit - Injunctive order, penalties up to \$25,000 a day; possible site access.
- b) Criminal action - penalties up to \$25,000 a day
- c) DEP action - administrative penalties, Attorney General pursuing a) and b), above.

Remedies under the Bylaw

- a) Civil suit - Injunctive order, no penalties available
- b) Criminal action - penalties up to \$300 a day
- c) Non-criminal citations, \$50 per citation.