

Chapter 191

WETLANDS PROTECTION

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Stoughton 5-5-1997, Art. 41 (Ch. 178 of the 1983 Code); amended in its entirety 5-26-2010 ATM, Art. 63; **amended in sections: 191-5 (4)&(a), 191-6 (A), 191-6(E) 191-7(E), 191-10(E)(F) 5-19-2025** (Subsequent amendments noted where applicable.)

GENERAL REFERENCES

Groundwater protection—See Ch. 107,
Hazardous waste—See Ch. 113.
Site plan review—See Ch. 149.

Zoning — See Ch. 200.
Conservation Commission — See Ch. 287.

§ 191-1. Purpose.

- A. The purpose of this chapter is to protect the wetlands; water resources, flood-prone areas, and adjoining upland areas in the Town of Stoughton by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat, including rare plant and animal species, agriculture, aquaculture, and recreation values, and also aesthetic values, deemed important to the community (collectively, the "resource area values protected by this chapter").
- B. This chapter is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (MGL c. 131, § 40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to

agricultural uses and structures of all kinds under the laws of the commonwealth and other relevant chapters of the Town of Stoughton.

§ 191-2. Definitions.

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

ABUT- Touching.

ABUTTER — The same as "owner of land abutting the activity."

AGRICULTURE — Land with resource areas or the buffer zone presently and primarily used in producing or raising one or more of the following agricultural commodities for commercial purposes:

- (1) Animals, including but not limited to livestock, poultry, and bees;
- (2) Fruits; vegetables, berries, nuts, and other foods for human consumption;
- (3) Feed, seed, forage, tobacco, flowers, sod, nursery or greenhouse products, and ornamental plants or shrubs; and
- (4) Forest products under a planned program to improve the quality and quantity.

ALTER- To change the condition of any area subject to protection under the chapter. Examples of alterations include, but are not limited to, the following:

- (1) The changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention areas;
- (2) The lowering or raising of the water level or water table;
- (3) The destruction of vegetation, including cutting or trimming of trees and shrubs, or mowing, in a manner that will, in the reasonable judgment of the Conservation Commission, result in a long-term or short-term adverse impact to the resource area;
- (4) The changing of water temperature, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water;
- (5) The discharge of dredged or fill material, including but not limited to vegetative debris, soil, dirt, rocks, stone, solid waste, or pollution;
- (6) Activities which may cause or tend to contribute to pollution of any body of water or groundwater;
- (7) Driving of piles, or erection or repair of buildings or structures of any kind unless the footprint of the building is altered at ground level;
- (8) Dumping, discharging, or filling any material which may degrade water quality;

- (9) Placing of material, or removal of material, which would alter elevation;
- (10) Placing of obstruction or objects; and
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this chapter.

APPLICANT - Any person who files a notice of intent, or on whose behalf such a notice is filed.

AREAS SUBJECT TO FLOODING — Depressions or closed basins which serve as ponding areas for runoff, snowmelt, heavy precipitation, or high groundwater which has risen above the ground surface, and areas which flood from a rise in a bordering waterway or water body.

AREAS SUBJECT TO PROTECTION- Wetlands, including bordering and isolated wetlands, marshes, wet meadows, bogs, swamps, isolated and bordering lands subject to flooding, streams, rivers, creeks, brooks, vernal pools, kettle holes, springs, land under water, ponds, lakes, banks, bogs, buffer zones and riverfront areas.

BANK — Includes the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

BORDERING — Touching in some manner, at any point or along any length of boundary, and including any portion of a resource area subject to protection under the chapter.

BREEDING AREA — Areas used by wildlife for courtship, mating, nesting, or other reproductive activity, and rearing of young.

BUFFER ZONE — That area of land extending 100 feet horizontally outward from the boundary of any area subject to protection in the chapter.

CERTIFICATE OF COMPLIANCE - A written determination by the issuing authority that work or a portion thereof has been completed in accordance with an order. It shall be made on Form 8 of 310 CMR 10.99.

DETERMINATION OF APPLICABILITY — A written finding by a conservation commission or the Department as to whether a site or the work proposed thereon is subject to the jurisdiction of the bylaw. It shall be made of Form 2 of 310 CMR 10.99.

DETERMINATION OF SIGNIFICANCE — A written finding by a conservation commission, after a public hearing, or by the Department, that the area on which the proposed work is to be done, or which the proposed work will alter, is significant to one or more of the interests identified in the bylaw. It shall be made as part of the order, on Form 5 of 310 CMR 10.99.

ISOLATED LAND SUBJECT TO FLOODING — Shall be any isolated depression without an inlet which at least once a year confines standing water to a volume of at least 1/4 acre-foot of water with an average depth of at least six inches. The boundary is the perimeter of the largest observed or recorded volume of water confined in the basin.

NONTRANSIENT MACROORGANISMS — Includes the following wetland plants (as defined in MGL c. 131 § 40, or in regulations 310 CMR 10.00) and/or animals visible to the naked eye, including but not limited to: Eubrachiopods, Isopods, Amphipods, Coleoptera, Trichoptera and Pisidiid clams.

NOTICE OF INTENT — The written notice filed by any person intending to remove, fill, dredge or alter an area subject to protection under the chapter. It shall be made on Form 3 or 4 of 310 CMR 10.99.

NOTIFICATION OF NONSIGNIFICANCE — A written finding by a conservation commission, after a public hearing, or by the Department, that the area on which the proposed work is to be done, or which the proposed work will alter, is not significant to any of the interests of the bylaw. It shall be made on Form 6 of 310 CMR 10.99.

ORDER OF CONDITIONS - The document issued by a conservation commission containing conditions which regulate or prohibit an activity. It shall be made on Form 5 of 310 CMR 10.99.

OWNER OF LAND ABUTTING THE ACTIVITY — The owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across a street, way, creek, river, stream, brook or canal.

PLANS — Such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the issuing authority to describe the site and/or the work, to determine the applicability of MGL c. 131, § 40, or to determine the impact of the proposed work upon the interests identified in the Tori of Stoughton NOI guidelines.

POND- As defined by 310 CMR 10.04 except that the size threshold shall be 5,000 square feet.

PRIVATE WATER SUPPLY- Any source or volume of surface water or groundwater demonstrated to be in any private use or demonstrated to have a potential for private use.

PUBLIC WATER SUPPLY — Any source or volume of surface water or groundwater demonstrated to be in public use or approved for water supply pursuant to MGL c. 111, § 160, by the Division of Water Supply of the Department, or demonstrated to have a potential for public use.

RARE SPECIES — Those vertebrate and invertebrate animal species officially listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8.00.

RESOURCE AREAS BORDERING WATER BODIES — Any bank, flat, marsh, freshwater wetland, beach, meadow, dune or swamp that borders on any estuary, creek, river, stream, pond, or lake, or that touches one of the above land areas that itself borders a water body, is a protectable area. (Areas subject to flooding are also protectable.)

RIVER — A body of water as is defined in the Massachusetts Rivers Protection Act (Acts of 1996, c. 258)

RIVERFRONT AREA — Defamed in the Massachusetts Rivers Protection Act (Acts of 1996, c. 258).

SEASONAL WETLAND - Any areas subject to flooding which form temporary confined bodies of water during periods of high water table and high input from spring runoff or snowmelt or heavy precipitation, and support populations of no transient macroorganisms or serve as breeding habitat for select species of amphibians.

SELECT SPECIES OF AMPHIBIANS — Species of amphibians which depend on seasonal wetlands for breeding habitat, including: mole salamanders (*Ambystoma maculatum*, *A. jeffersonianum*, *A. laterale*, and *A. opacum*); four-toed salamanders (*Hemidactylium scutatum*); eastern spadefoot toads (*Scaphiopus holbrookii*); American and Fowler's toads (*Bufo americanus* and *B. woodhousii fowleri*); spring peepers (*Hyla c. crucifer*); gray tree frogs (*Hyla versicolor*); wood frogs (*Rana sylvatica*); and fairy shrimp (*Eubranchipus* sp.).

STORM DAMAGE PREVENTION- The prevention of damage caused by water from storms, including, but not limited to, erosion and sedimentation, damage to vegetation, property or buildings or damage caused by flooding, water-borne debris or water-borne ice.

TEMPORARY CONFINED BODIES OF WATER- Bodies of water with little or no flow that periodically become dry to such extent that they cannot support sustained fish populations,

TEMPORARY POND OR POOL- A seasonal wetland.

VERNAL POOL — Includes a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

VERNAL POOL HABITAT- Confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundaries of such depressions, to the extent that such habitat is within an area subject to protection under the Act, MGL c. 131, § 40, 310 CMR 10.02(1) as specified in § 191-2. These areas are essential breeding habitats, and provide other extremely important wildlife habitat functions during nonbreeding seasons as well, for a variety of amphibian species such as the wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitats for other wildlife species. Vernal pool habitat also includes the area within 200 feet of the mean annual boundaries of those vernal pools certified by the Natural Heritage and Endangered Species Program (NHESP), if such pools are contained within the estimated or priority habitats for rare species as mapped by NHESP.

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

§ 191-3. Jurisdiction.

- A. Except as permitted by the Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas:
- (1) Any freshwater wetland, marsh, wet meadow, springs, bog, swamp, vernal pools, reservoirs, lakes, ponds;
 - (2) Any bank or beach;
 - (3) Any lake, pond, river, stream, whether intermittent or continuous, or natural, manmade;
 - (4) Any land under aforementioned waters;
 - (5) Any land subject to flooding or inundation by groundwater, surface water, stormwater flowage;
 - (6) Isolated wetlands, including kettle
holes; (7) Seasonal wetlands;
 - (8) Any lands within 100 feet of any of the aforementioned resource areas or any lands within 200 feet of any river;
 - (9) Any lands within 200 feet of any certified vernal pool within estimated habitat or priority habitat for rare species as mapped by the Natural Heritage and Endangered Species Program.
- B. Said resource areas (collectively, the "resource areas protected by this chapter") shall be protected, whether or not they border surface waters.
- C. The jurisdiction of this chapter shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations found at 310 CMR 10.04

§ 191-4. Exceptions.

- A. The application and permit required by this chapter shall not be required for maintaining, repairing, or replacing, but not changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunications services, sanitary sewers, storm sewers, provided that written notice has been given to the Commission at least 48 hours prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

- B. The application and permit required by this chapter shall not be required for work performed for the normal maintenance or improvement of lands in agricultural use.
- C. The application and permit required by this chapter shall not apply to emergency projects necessary for the protection of public health and safety, 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 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 in 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 subsequently order restoration and mitigation measures.
- D. The property located in the Stoughton Technology Park (formerly the North Stoughton Industrial Park) (the "Park") is subject to Final Orders of Conditions dated October 24, 1984, recorded with the Norfolk Registry of Deeds in Book 6533, Page 230; the Conservation Restriction dated September 26, 1984, recorded with said Deeds in Book 6533, Page 236; and the Declaration of Industrial Park Restrictions dated September 26, 1984, recorded with said Deeds in Book 6533, Page 247. In consideration of these existing controls, the application and permit required by this chapter shall not be required for any work performed within the Park. The Park contains approximately 272 +/- acres of land and is bounded by Lindelof Avenue (Route 139), Route 24, Page Street and the municipal boundaries with the Towns of Avon and Randolph.
- E. Other than stated in this chapter, the exceptions provided in the Wetlands Protection Act (MOL c. 131, § 40) and regulations (310 CMR 10.00) shall not apply under this chapter.

§ 191-5. Requests for determinations; applications for permits, fees.

- A. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter, may request, in writing, a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.
- B. The Commission in an appropriate case may accept as the request under this chapter the request for determination of applicability (RFD) filed under the Wetlands Protection Act, MOL c. 131, § 40.
- C. Written application shall be filed with the Commission to perform activities regulated by this chapter affecting resource areas protected by this chapter. The application shall include such information and plans deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.

- D. The Commission in an appropriate case may accept as the application and plans under this chapter the notice of intent (NOI) application and plans filed under the Wetlands Protection Act, MGL c. 131, §40.
- E. At the time of an application or request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, MGL c. 131 § 40.
- F. Upon receipt of a NOI application or RFD, the Commission shall require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee." The specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitat evaluations, hydrogeologic and drainage analysis, and environmental or land use law.
- (1) The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.
 - (2) The Commission may require the payment of the consultant fee at any point in its deliberation prior to a final decision. The applicant shall pay the fee to be put into a consultant services account of the Commission, which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public hearings.
 - (3) The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.
 - (4) The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following fee schedule:

Project Cost	Maximum Fee
Up to \$50,000	\$1,500 <u>\$5,000</u>
\$50,000.01 to \$2,000,000	\$10,000 <u>\$50,000</u>

- (a) Each additional project cost increment of \$500,000 (over \$2,000,000) shall be charged at an additional ~~pet~~ per-increment fee of ~~\$2,500~~ up to \$12,500.
- (b) The "project cost" means the estimated entire cost of the project, including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro rata for that portion of the project applicable to those activities within resource areas protected by this chapter. 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 the payment of the consultant fee.

- G. Filing fees and consultant fees collected pursuant to this chapter shall be administered pursuant to MGL c. 44, §§ 53E and 53E 1/2, respectively.
- H. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency or a nonprofit organization.
- I. The Commission shall establish an escrow account for fees imposed to the applicant upon the selection of independent specialized consultant. review by the Commission under MGL c. 44, § 53G (§ 53G). In accordance with § 53 G the applicant has the right for an administrative appeal to the Board of Selectmen. The grounds for the appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum qualifications in accordance with MGL c. 44 § 53G. This shall be for review of projects under the regulatory jurisdiction of the Act and Chapter 191, Stoughton Wetlands Bylaw. Any excess amount of funds collected and held in a § 53G account shall be returned to the applicant when the review is completed.

§ 191-6. Public notice and hearings.

- A. An application or a request for determination shall be hand delivered or sent by certified mail to the Commission; eight copies are required. A copy of all applications shall be given by the applicant to the Planning Board, the Zoning Board of Appeals, ice Building Inspector and the Board of Health for comments prior to the public hearing. Any person filing a permit application or an RFD with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), **or United States Postal Service Certificate of Mailings for notification of abutters in filing procedures as acceptable to MADEP consistent with 310 CMR 10.00 et seq.** or hand delivered, to all owners of land abutting the subject property at their mailing addresses shown on the most recent applicable tax list from the Assessors.
- B. "Abutter" is defined as (1) owners of land within 100 feet of the property lines, including being directly opposite on any public or private street or way, (2) directly abutting a shoreline or bank along any common abutting lake, pond, or river, or within 500 frontage feet along the mean annual high water mark of any pond, lake or reservoir served by a shoreline or 500 feet downstream along a river along the boundaries of the subject property, or (3) or in another municipality within 300 feet of the project. With regard to apartment units and condominium units, abutter notification will be sent to the property owner on record. In addition, abutter notification can be sent to the property manager. The notice to abutters shall have enclosed a copy of the permit application or request, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request. The property owner's signature must be on the application.
- C. The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, no less than five business days' prior

to the hearing, in a newspaper of general circulation in the municipality. The fee for publishing the notice must be provided by the applicant to the Commission simultaneously with the submission of a permit application or RFD.

- D. The Commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
- E. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RFD unless an extension is authorized, in writing, by the applicant. The public hearing will not commence until the applicant provides the majority of the return receipts from the certified mail abutter notice to the Commission. **The Commission may also accept United States Postal Service Certificate of Mailings for notification of abutters consistent with 310 CMR 10.00 et seq.**
- F. The Commission shall issue a permit or determination, in writing, within 21 days of the close of the public hearing thereon unless an extension is authorized, in writing, by the applicant.
- G. The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for good cause stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in § 191-6A.

§ 191-7. Permits and conditions.

- A. 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 chapter, 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 which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation and replication of the protected resource areas throughout the community and the watershed resulting from past activities, permitted and exempt, and foreseeable future activities.
- B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in the regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this chapter; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- C. Review of activities within the buffer zone and riverfront area by Commission.

- (1) In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, for the purposes of protecting the resource area.
 - (2) In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this chapter, has convinced the Commission by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this chapter. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.
- D. To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation; The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR. 10.60). The Commission shall presume that all areas meeting the definition of "vernal pools," including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

- E. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of the time and location of work is given to the Commission. **Any permit may be renewed once for an additional one-year to three year or a five year period depending upon the original approved expiration period application period.** provided that a request for a renewal is received, in writing, by the Commission prior to expiration. **Any three year permit may be renewed for up to three additional years. Any five year permit may be renewed for up to five additional years.** Failure to complete a project within the extension period shall require a new filing of a notice of intent. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land. An applicant shall seek a Certificate of Compliance or otherwise report to the Commission at or prior to the expiration of the applicant's order of conditions. Failure to report on or prior to the expiration date may result in a fine as defamed by our regulations.
- F. For good cause the Commission may revoke or modify a permit or determination issued under this chapter after notice to the holder of the permit or determination, notice to the public, abutters, and Town boards, pursuant to this section and a public hearing.
- G. The Commission in an appropriate case may combine the permit or determination issued under the chapter with the order of conditions or determination of applicability issued under the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 10 CMR 10.00.
- H. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the registry section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies, in writing, to the Commission that the permit has been recorded.
- I. The Commission shall, after receiving a written request for a Certificate of Compliance and an as-built plan certified as necessary and appropriate in the Commission's discretion, by a registered professional engineer and/or a registered professional land surveyor both licensed in the Commonwealth of Massachusetts, to be in substantial compliance with the plan approved under the order of conditions, inspect the resource area and buffer zone where any activity governed by a permit issued under this chapter was carried out, and, if such activity has been completed in accordance with said permit, the Commission shall, within 21 days after receiving such written request, issue a Certificate of Compliance evidencing such determination, which may in appropriate cases be combined with a Certificate of Compliance issued under the Wetlands Protection Act. A Certificate of Compliance may specify conditions in the permit which will continue to apply. The Certificate of Compliance shall be recorded in the same manner as a permit, and proof of recording shall be provided by the applicant to the Commission, as set forth herein. Said letter and plan from the registered professional engineer and/or the registered professional surveyor shall clearly delineate any and all deviations from the approved plan.
- J. Any person, entity, or successors in interest granted the authority to work within any resource area as defined by this chapter shall be bound to assure that said work will be completed in a manner that will ensure that the resource area and associated buffer zones will be protected and that the work performed will function in the manner intended. If

after completion of the work, or anytime thereafter, the work does not perform as intended to protect the wetland, or otherwise serves to harm the resource area, the applicant or property owner shall be obligated, at the request of the Conservation Commission, to make whatever repairs, alterations, or modifications necessary to protect the wetland resource area, and associated buffer zones.

§ 191-8. Rules and regulations promulgated by Commission.

- A. After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.
- B. At a minimum these regulations shall define key terms in this chapter not inconsistent with the chapter and procedures governing the amount and filing of fees.

§ 191-9. Security.

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

- A. By deposit of money (certified check or cash) sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit. Any deposit of money received in accordance with this section shall be administered in accordance with MGL c. 44, § 53E 112.
- B. By a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

§ 191-10. Violations and penalties; enforcement.

- A. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this chapter, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this chapter.
- B. The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the commonwealth.

- C. The Commission shall have authority to enforce this chapter, its regulations, and permits issued thereunder by violation notices, enforcement orders and civil and criminal court actions. Any person who violates provisions of this chapter may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- D. Any person who violates any provision of this chapter, or regulations, penalties, or enforcement orders issued thereunder shall be punished by a fine, at the discretion of the Board, as outlined below. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place; shall constitute a separate offense, and each provision of the chapter, regulations, penalties, or administrative orders violated shall constitute a separate offense.
- E. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the noncriminal disposition procedure set forth in M.G.L. c. 40, § 21D. **Each day on which a violation exists shall be deemed a separate offense. Each violation of any separate provision of this chapter and/or the Wetlands Protection By-law Regulation shall be deemed a separate offense.**

Violations shall be as follows:

Type 1: (a) any unauthorized removing, filling, dredging, or altering of any of the following resource areas: surface water body; vegetated wetland or unvegetated wetlands; any land under said waters; any land subject to flooding or inundation by groundwater, surface water, tidal action or coastal storm flowage; any coastal bank; (b) any unauthorized removing, filling, dredging, or altering within 100 feet of any of the following resource areas: surface water body; vegetated wetland or unvegetated wetlands; any land under said waters; any land subject to flooding or inundation by groundwater, surface water or tidal action; any coastal bank.

Type 2: failure to comply with an enforcement order issued by the Stoughton Conservation Commission or its agents; any unauthorized activity beyond the scope of an order of conditions, determination of applicability or certificate of compliance issued by the Conservation Commission.

The Commission may also establish additional Guidelines in the Wetlands Protection By-law Regulation that calculate the amount of any Type 1 fine per square foot of alterations, each such increment being a separate offence subject to a specific penalty as set forth in subsections (1) through (4), provided, however, that no fine therefore individually exceed \$300.00.

When so enforcing, any violation of this chapter shall be punishable as follows:

(1) First Type 1 offense: a penalty of \$100.00

**(2) Second Type 1 offense: a
penalty of \$200.**

**(3) Third Type 1 offense: a penalty
of \$300.**

(4) Each additional offense or any Type 2 violation: a penalty of \$300.

F. The Environmental Affairs Officer, Building Inspector and the Stoughton police officers shall be the enforcing persons for the purpose of this chapter.

§ 191-11. Burden of proof.

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

§ 191-12. Appeals.

A decision of the Commission shall be reviewable in a court of competent jurisdiction Superior Court in accordance with MGL c. 249, § 4.

§ 191-13. Relation to Wetlands Protection Act.

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

§ 191-14. Severability.

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

