

# TOWN OF HEATH

## WETLANDS PROTECTION BYLAW

### SECTION 1: Purpose

The Purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in this municipality by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, wildlife habitat, recreation, aesthetics and agriculture values (collectively, the "wetland value protected by this bylaw").

### SECTION 2: Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 100 feet of any wetland, march, wet meadow, bog or swamp; within 100 feet of any bank or beach, any lake, river, pond, brook, creek or stream, intermittent or otherwise; any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

### SECTION 3: Exceptions

The permit and application required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially 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 telecommunication service, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission 30 days prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or 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 commencement of work or within 24 hours after commencement, provided that the Conservation Commission or its agent certifies the work as an emergency project a permit application shall be filed with the commission for review as provided in the bylaw. 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.

The provisions of this section shall not apply to work performed for maintenance of land in agricultural use.

Other than stated in this section the exceptions provided in the Wetlands Protection Act shall not apply.

### SECTION 4: Application for Permits and Requests for Determination

Written application which may be identical in form to the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. Chapter 131, Section 40, shall be filed via certified mail with the commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are 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 to this bylaw.

Any person desiring to know whether or not proposed activity or an area is subject to the Wetlands bylaw may submit a written request for determination from the Commission. This request is NOT subject to a filing fee. Within twenty-one (21) days of receipt of the request, the Commission shall make a written Determination of Applicability as to whether bylaw applies to any land or work thereon. When the person requesting a determination is other than the owner, a notice of the Determination shall be sent to the owner as well as the requesting person.

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 the required by the Wetlands Protection Act, G.L. Chapter 131, Section 40. In addition to the filing fee, the Commission is authorized to require any applicant, to pay the reasonable costs and expenses borne by the Commission for specific expert engineering and consultant services deemed necessary by the Commission to review a notice on intent, up to a maximum of two thousand and five hundred dollars (\$2,500.00). Said payment can be required at any point in the deliberations prior to a final decision rendered. Said services may include but are not necessarily limited to wetland survey and delineation, hydrogeologic and drainage analysis, wildlife evaluation, and environmental/land use law. The commission is hereby authorized to charge for said fee when a notice of intent proposes any of following: 500 square feet or greater of alteration of wetland; 50 linear feet or greater of alteration of a bank or waterway; 500 square feet or greater of alteration of the 100 foot resource area buffer zone; alteration of greater than 500 square feet of land under a water body; discharge of any pollutants into or contributing to surface or groundwaters of resource areas; or the construction of a detention or retention basis. Said fee shall be paid by the applicant to the Town of Heath. Any unused portion of said fee shall be returned by the Commission to the applicant within forty-five calendar days of written request for same by the applicant, unless the Commission decides in a public meeting that other action is necessary. Any applicant aggrieved by the imposition of, or size of, the fee, or any act related thereto, may appeal according to the provisions of Massachusetts General Laws.

#### **SECTION 5: Notice and Hearings**

Any person filing an application or a request for determination with Commission at the same time shall give written notice thereof, by certified mail or hand delivery, to all abutters according to the most recent records of the assessors, including those across a traveled way and/or across or downstream of a body of water for a distance of 1000 feet. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters.

The Commission shall conduct a public hearing on any application. A notice of the time and place of the hearing shall be given by the Commission at the expense of the applicant not less than five working days prior to the hearing by publication in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipts of a completed application or request for determination.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, G.L. Chapter 131, Section 40.

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



#### **SECTION 6: Coordination with other Boards**

Any person filing a permit application with the Conservation shall provide a copy thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and Building Inspectors. The Commission shall not take final action until such boards and official have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

#### **SECTION 7: Permits, Determinations and Conditions**

If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland 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 which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. Permits shall EXPIRE one (1) year from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to expiration. A request for renewal shall be made IN WRITING to the Conservation Commission at least two (2) weeks PRIOR to date of expiration.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; 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.

For good cause the Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing, and notice to the holder of the permit.

The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

**Pre-Acquisition Violation.** Any person who purchases, inherits or acquires real estate upon which work has been done in violation of the provisions of this bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation; however, that no action, civil or criminal, shall be brought against such person unless commenced within three (3) years following the date of acquisition of the real estate by such person.

#### **SECTION 8: Regulations**

After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purpose of this bylaw. 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 bylaw.

At a minimum these regulations shall define key terms in this bylaw not inconsistent with this bylaw.

#### **SECTION 9: Definitions**

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

The term "person" shall include any individual, group of individuals, associations, 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.

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

- (a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind.
- (b) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- (c) Drainage or other disturbance of water level or water table.
- (d) Dumping, discharging or filling with any material which may degrade water quality.
- (e) Placing of fill, or removal of material, which would alter elevation.
- (f) Driving of piles, erection or repair of buildings, or structures of any kind.
- (g) Placing of obstructions or objects in water.
- (h) Destruction of plant life including cutting of trees.
- (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water.
- (j) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

#### **SECTION 10: Security**

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

- (a) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission.
- (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.

#### **SECTION 11: Enforcement**

The Commission, its agent, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.



Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission the chief of police shall take legal action for enforcement under criminal law.

Municipal boards and officers including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense.

In the alternative to criminal prosecution the Commission may elect to utilize the noncriminal disposition procedure set forth in G.L., Chapter 40, Section 21D.

#### **SECTION 12: Burden of Proof**

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interest protected by this bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interest protected by this bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

#### **SECTION 13: Wetland Delineation**

The delineation of wetland boundaries must be done by a person approved by the Conservation Commission such as a competent wetlands biologist, wetlands scientist, or other qualified person. All delineation of wetland boundaries shall be done by botanical analysis between the period of May 1 - October 30. All other delineations outside of this time period must be accompanied by soil-type analysis and positive hydrologic data that indicate the location of the boundary.

#### **SECTION 14: Relation to the Wetlands Protection Act**

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G.L., Chapter 131, Section 40, and regulations thereunder.

#### **SECTION 15: Severability**

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

# REGULATIONS

## HEATH WETLANDS BYLAW

### 1. INTRODUCTION

These regulations are promulgated by the Heath Conservation Commission (HCC) pursuant to the authority granted under the Town of Heath General Bylaws Article adopted April 29, 1989 and approved by the Attorney General August 22, 1989.

### 2. PURPOSE

The bylaw establishes a decision-making and permit process by which the HCC will regulate activities affecting wetlands, surface waters, banks, beaches, flood prone areas, and buffer areas around these "resource areas." Regulation is for the purpose of preventing: damage to public or private water supply or groundwater, flooding, erosion or sedimentation, storm damage, water pollution, and damage to fisheries, wildlife habitat, recreation, aesthetic and agricultural values.

The purpose of these regulations, as required by §8 of the bylaw, is to define and clarify that process by establishing uniform standards, procedures and policies by which the HCC will carry out its responsibilities.

### 3. DEFINITIONS

Abutter is any landowner, as determined by the most recent assessor's records, whose land immediately abuts the property which is the subject of the notification, or whose land lies across a public or private traveled way or across any river, stream, pond or lake, or downstream to a distance of 1000 feet. In particular cases, the HCC can add persons to the list of abutters to be notified.

Bank is any land adjoining any body of water which such confines such water.

Issuance of an order shall be determined under the state regulations promulgated under the state Wetlands Protection Act (WPA) in 1983 and updated 1987.

Land subject to flooding is land subject to inundation from any source of water, including a rise in groundwater, up to the level of the "100 year" flood or storm, determined as under the state WPA regulations.

Pond includes any body of fresh water of 500 ft. or more, including vernal pools as defined in the state WPA regulations.

Resource area is a term including all areas listed in §2 above.

Stream includes any body of running water moving in a channel in the ground, including intermittent streams and headwaters of streams above the point where there are wetlands adjoining them.

Wetlands under this bylaw includes wet meadows, marshes, bogs and swamps of all kinds, regardless of whether they border on surface waters. Isolated wetlands are governed by this by-law if they are 500 square feet or greater.

### 4. PROCEDURES

- A. Unless otherwise indicated in the bylaw or these regulations, definitions, time frames, forms and procedures shall be the same as under the state WPA. This will be indicated by addition of reference to the Town of Heath bylaw under the DEQE heading on the DEQE forms and



in publication of notice of hearing. Because the town bylaw and these regulations and new jurisdiction (e.g., vernal pools, 100-foot buffer around floodplain, headwaters of streams, isolated wetlands), cover new wetlands values, some notices, conditions, etc., issued by the HCC under the bylaw may differ from decision issued under the state law. Where this happens, the HCC shall endeavor to make clear the distinction. Where clarity demands, it, the HCC can use its own forms.

- B. Notice of hearings shall be the same as under the WPA, with the addition of reference to the town bylaw and notice to abutters as required under §5 of the bylaw. All hearing notices shall be published at the expense of the applicant. Abutters shall be notified by the applicant by certified mail. Proof of notification will be required.
- C. Public hearings shall be held in accordance with the state WPA, except that hearings may be continued by the HCC as set out in §5 of the bylaw. If continuance is to a date certain, then no further publication is required; if not, then notice must be replenished.
- D. Determinations and Orders of Condition issued under the bylaw are good for only one year, while Determinations and Orders issued under the state WPA are good for three years. Extensions are available according to the terms of the bylaw.
- E. The HCC may deny any application under this bylaw for good cause; including: failure to supply needed information, failure to meet the requirements of the bylaw or the regulations, possibility of significant damage to resource areas covered by the bylaw, including incremental damage and damage from erosion, sedimentation, runoff or effluent coming into the buffer area or resource areas.
- F. Certificates of compliance may be requested and issued under the bylaw in accordance with the regulations for such certificates under the state WPA.

#### **5. RECORDING OF DETERMINATIONS AND ORDERS OF CONDITION**

Every Determination of Applicability issued under this bylaw shall be recorded by the applicant in the registry of deeds within 20 days after it becomes final, and notice of such recording sent to the HCC. If the applicant fails to so record, the HCC may do so at its own or applicant's expense. Every Order of Conditions issued under this bylaw shall be similarly recorded, by the applicant or by the HCC. No work shall commence on any area encompassed by this bylaw without such recording.

#### **6. CHANGES IN PLANS**

The HCC may make clerical changes to a Determination or an Order of its own accord or upon application. Typical clerical changes include changing the name of the landowner or correcting typographical errors. Substantive changes require new hearings.

#### **7. EXTENSIONS**

The HCC may extend an Order of Conditions for one or more periods of one year each to a total of six years if the extension is requested in writing within two weeks before expiration date, as set out in §7 of the bylaw.

The HCC may deny a request for an extension and require a new Notice of Intent under any of the following circumstances:

- A. Where no work has begun on the project within two years after issuance of the first Order, and the HCC is not satisfied the delay was unavoidable;
- B. Where an extension was not requested before the order expired;
- C. Where new information, not given the HCC at the time the Order was issued, indicates the Order is not adequate to protect the resource areas;



- D. Where work has been done in violation of the Order or these regulations;
- E. Where work has caused damage to the resource areas; or

F. Where work does not conform to approved plans, or plans have been materially changed.

## 8. REVOCATIONS

The HCC may revoke an Order of Conditions for the reasons set out in 7C, D, E, or F, provided a hearing is held and the applicant is given a chance to explain.

## 9. APPEALS

Any person aggrieved by the decision of the HCC, whether or not previously involved in the proceedings, may appeal the decision of the HCC under provision of the General Laws. Notice of said appeal and a copy of the complaint shall be sent by certified mail or hand delivery to the HCC (or its authorized representative if it names one) and to town counsel.

## 10. POLICIES OF THE HCC

These policies are set forth to give guidance to the HCC and to applicants and townspeople on a number of issues which frequently arise in the regulation of these resource areas.

- A. Identification of Wetlands Vegetation. In any case where the issue of wetlands boundaries arises, the HCC may require the applicant to employ a qualified wetlands scientist to identify the vegetation. If vegetation has been disturbed or destroyed, the HCC may require the use of a soils analysis and proof of present wetland hydrology. Normally, vegetation shall not be determined after the growing season or in drought conditions. Botanical analysis shall be undertaken from May 1 to October 30. Delineations outside of this time period must be accompanied by soil analysis and hydrologic investigation. This information will be used to locate the wetland boundary.
- B. Wildlife Habitat. On application for approval of a project involving the disturbance of more than two acres of resource areas protected by this bylaw, the HCC may require that the applicant hire a competent wildlife biologist to analyze the wildlife habitat value of the area to be disturbed and adjacent areas and the impact of the proposed development on wildlife populations and also to propose measures to mitigate these impacts. Where project size warrants, the HCC may require submission of a quantitative habitat analysis such as the Habitat Evaluation Program developed by the U.S. Fish and Wildlife Service.
- C. Development in Floodplains. Both the state wetlands act and town zoning permit some development in floodprone areas subject to this bylaw. Buildings in floodplains, even if well designed, may be seriously damaged by floodwaters and debris. Access to such structures is hazardous and sometimes impossible. Furthermore, vehicles and their accessories (road salt, sand, oil, gas) stored in the floodplain will pollute surface water during flooding events, as well as themselves become dangerous debris. Therefore, the HCC shall not generally permit any buildings or storage of autos or other vehicles in any area located below the 10 year flood level. The 10 year flood level, as well as the 100 year flood elevation, must be shown on applicant's plans. One hundred percent compensatory storage at the same elevation is required for all filling and building in floodplains in the 100 year floodplain.
- D. Use of "Buffer" Areas. It is the policy of the HCC to consider the 100-foot jurisdictional area around the wetlands, floodplains, banks, etc. as a buffer area, in which work shall be minimized in order to protect the resource areas which are the focus of this bylaw. What can be permitted in the buffer areas will depend on such elements as: proximity to the resource area, sensitivity of resource area, slope, soil types, likelihood of erosion, groundwater direction, whether effluent will be emitted in the buffer area, and similar criteria. Except for minor activities which can be accomplished without bringing in large machinery, the HCC



will require that the 50 feet nearest the resource areas, especially banks and vegetated wetlands, be left in their natural condition during and after work, with preservation of natural vegetation.

The banks of streams, and surface drainage gullies are unstable, inviting erosion and structural instability. Even though the height of such slopes may exceed the definition of the "bank" because the water would not come to the top of the slope even in the 100-year flood, the HCC will require a minimum 50-foot setback from the top of any such bank slope, for any construction.

In an especially sensitive area, the HCC may require that the landowner execute a covenant running with the land to protect the resource areas and adjacent undeveloped buffer strips. Where possible, this shall be processed as a "conservation restriction" under the provisions of GL Ch. 84, §31-33. The wording of such a covenant may vary, depending on the resource areas involved: for example, farming and forestry may be permitted in floodplains. The aim of such a covenant is not to further restrict the use of land beyond the conditions set out in the Order of Conditions: it is to insure that areas which that Order protects will remain protected after the Order has ceased to be effective and/or the property has been transferred. For this reason, any such covenant shall run with the land, and shall be recorded with the registry of deeds before any work is done under the Order or before the property is transferred to another owner.

- E. Vernal Pools or Ponds. It is the policy of the HCC to protect vernal pools because they provide valuable and increasingly rare wildlife habitat. Because these ponds do not contain water at all seasons of the year, a vernal pool must be identified in order to be protected. This can be done as a part of a Determination of Applicability or part of the Notice of Intent review, or prior to these processes, by the landowner, the HCC, or another qualified person. The HCC must be satisfied that the person so identifying a vernal pool is qualified to do so.
- F. Drainage. Because of dangers of off site flooding and/or loss of natural recharge, it is the policy of the HCC that there be no net increase in runoff from a site after its development. To this end, the HCC may require detention ponds or swales to hold the runoff, which shall be maintained by the landowner, as well as retention ponds to limit peak runoff.
- G. Agricultural Work. The HCC respects the exemption for maintenance of land in agricultural use set out in §2 of this bylaw. "Land in agricultural use" shall be defined as under the state WPA that "maintenance" of such agricultural land is limited to customary tilling and harvesting practices; addition of organic materials and chemicals subject to state and federal regulation; and building of fences and structures on upland. Improvements such as the building of ponds, dams, water control structures, sediment basins and related activities are therefore not exempt under this bylaw, even if they are carried out on land actively devoted to agriculture. It will be the policy of the HCC to approve such activities after a Notice of Intent is duly submitted, if they can be carried out without undue damage to resource areas.
- H. Forestry. Improper forestry practices can have devastating effects on wetland resource areas. In order to maximize the protection of wetlands in or near forest harvesting operations the following are required.
  - 1.) Where a vegetative buffer is required or exists, only 50% of the basal area may be removed. This thinning must be evenly dispersed throughout the area.
  - 2.) Work in bordering vegetated wetlands, swamps, bogs, and isolated wetlands are allowed only under frozen conditions.
  - 3.) Complete and total restoration of all banks and eroded areas, as the result of forestry work, shall be accomplished within 30 days of the projects completion. This includes restoration of plant life, slopes, grading, and wildlife habitat.



- I. Mitigation. The HCC recognized that the state WPA regulations permit but do not require the HCC to approve certain activities in wetlands, e.g., driveways through wetlands to reach upland of the same owner, and up to 5000 square feet of fill in wetlands where the wetlands are replicated elsewhere on the site. In general, it is the policy of the HCC under the town bylaw not to permit alteration of wetlands because of scientific determinations (including those found in the Preamble to the state WPA regulations), that replication does not in fact substitute for many wetlands values. The HCC may therefore forbid multiple access to wetlands and/or scale down that access so it may not be possible to develop the whole site. The HCC will not consider replication of wetlands adequate mitigation for the destruction of natural wetlands. The HCC believes that alteration of wetlands should generally be permitted only where, and to the extent that, in the absence of such alteration the landowner will be deprived of substantially all economic use of the property.

## 11. ENFORCEMENT

The HCC is the designated authority of the town of Heath, authorized and directed to enforce the bylaw. Members and agents of the HCC may enter upon privately owned land for the purpose of performing their duties under the bylaw and these regulations.

When the HCC determines that an activity is in violation of the bylaw or of these regulations, or of a final Order or Determination, the HCC may issue an Enforcement Order in the same form as that used under the state WPA or in any other form. The order shall normally be signed by a majority of the HCC; but in a situation requiring immediate action, the Order may be signed by a single member or an agent of the HCC, provided this action is ratified by a majority of members at the next scheduled meeting of the HCC.

Any person who violates any provision of the bylaw, these regulations, or a permit issued thereunder shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense. If more than one condition of a permit is violated, each violation shall constitute a separate offense. It is the intent of these regulations that permitting fill or other illegal activity to remain in an area constitutes a continuing offense.

## 12. FILING FEES

The HCC filing fees under this bylaw shall be as follows:

\$55.00 for all applications filed under the Town Wetlands Protection Bylaw.

This fee is concurrent with the fee under the state WPA, and in addition to publication fees to be paid by the applicant under this bylaw and the state WPA. The fee shall be calculated by the applicant and paid when the application is filed. If the HCC determines the fee was incorrectly computed, it shall so state at the hearing. Failure to pay the proper fee is cause for denial of an application.

The HCC may waive the filing fee, or reimburse it if the waiver is not sought before filing, based on such considerations as: hardship to the applicant; the size of the project; and the perceived level of difficulty of reviewing the project.

The purpose of the fee is to cover the normal and predictable expense of the HCC in reviewing the project.