

October 4, 2001

The Honorable Judith H. Robbins
Mayor of the City of Attleboro
77 Park Street
Attleboro, MA 02703

Dear Mayor Robbins:

At the regular meeting of the Attleboro Municipal Council held on Tuesday, October 2, 2001 the following vote was taken:

15. Voted on Roll Call—11 yeas—0 nays to adopt the following ordinance:

CHAPTER 18
WETLANDS PROTECTION

Section 18-1 Wetlands Protection Ordinance

18-1.1 Purpose

The purpose of this ordinance is to protect the wetlands, water resources, and adjoining land areas in Attleboro by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the "resource areas or values protected by this ordinance"). This ordinance is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures beyond those of the Wetlands Protection Act (G.L. Ch. 131 §40) and the Wetlands Protection Act Regulations promulgated thereunder (310 CMR 10.00).

18-1.2 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this ordinance, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater

wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; lands abutting any of the aforesaid resource areas (collectively the "resource areas protected by this ordinance"). Said resource areas shall be protected whether or not they border surface waters.

18-1.3 Definitions

Except as otherwise provided in this ordinance or in regulations of the Conservation Commission, the definitions of terms in this ordinance shall be as set forth in the Wetlands Protection Act and the Regulations.

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

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

- a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- b. Changing, of preexisting 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 with the exception of temporary recreational items such as boats
- h. Destruction of plant life including cutting of trees
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- j. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- k. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this ordinance.

The term "bank" shall include 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.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to city ordinances, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife.

The term "vernal pool" shall include 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. To be classified as a vernal pool, the pool must be certified by the Massachusetts Division of Fisheries and Wildlife (MDFW), or recognized by the Conservation Commission in accordance with MDFW certification criteria during the public hearing process.

18-1.4 Conditional Exceptions

This ordinance is applicable to applicants who seek to develop property or otherwise conduct an activity requiring the approval of the Conservation Commission after adoption of this ordinance. The application and permit required by this ordinance shall not apply to maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure, or a facility used in the service of the public to provide electric, gas, water, sewer, telephone, telegraph, or other telecommunication services, provided that the required permit process has been followed, the work conforms to performance standards and design specifications in regulations adopted by the Commission. Notwithstanding the provisions of this paragraph 18-1.4, a project accessory to an existing and lawfully located structure may be permitted, provided that the required permit process has been followed, the work conforms to performance standards and design specifications in regulations adopted by the Conservation Commission.

The application and permit required by this ordinance 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 or has been ordered to be performed by any agency of the Commonwealth or by the Mayor; that advance notice, oral or written, has been given to the Conservation Commission prior to commencement of the work or within twenty-four (24) hours after commencement; that the work is performed only for the time and place certified by such agency or the Mayor for the limited purposes necessary to abate the emergency; and that within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this ordinance. Upon failure to meet these requirements, the Commission may, after

notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures with a majority vote of the Municipal Council.

18-1.5 Applications for Permits and Requests for Determination

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this ordinance. The permit application shall include such information and plans as are deemed necessary by the Conservation Commission to describe proposed activities and their effects on the resource areas protected by this ordinance. No activities shall commence without receiving and complying with a permit issued pursuant to this ordinance.

The Commission in an appropriate case may accept, as the permit application and plans required under this ordinance, the Notice of Intent and plans filed under the Wetlands Protection Act and the Regulations, notwithstanding the fact that the permit application requirements of this ordinance are in excess of the requirements of the Wetlands Protection Act and the Regulations.

Any person desiring to know whether or not a proposed activity or an area is subject to this ordinance may in writing request a determination from the Commission. Such a Request for Determination (RFD) shall include information and plans as are deemed necessary by the Commission.

At the time of a permit application or RFD, the applicant shall pay a filing fee specified below. The fee is in addition to that required by the Wetlands Protection Act and the Regulations. The fee shall be deposited in a dedicated account, for use only for wetlands protection activities, from which the Commission may withdraw funds without further appropriation.

Fee Schedule

<i>Permit Application</i>	\$150.00
<i>Request for Determination of Applicability</i>	\$25.00

Upon receipt of a permit application or RFD, or at any point during the hearing process, the Commission is authorized to 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, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law. Any unused funds shall be returned to the applicant forthwith after the service has been satisfactorily performed by a vote of the Commission.

The Commission may require the payment of the consultant fee at any point during the public hearing process prior to a final decision. The applicant's fee shall be put into a revolving fund for consultant expenses and fees, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings. Any unused portion of the consultant fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.

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. Any applicant aggrieved by the imposition of, or amount of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws. The Municipal Council may waive the filing fee, consultant fee, and costs and expenses for a permit application or RFD.

18-1.6 Notice and Hearings

Any person, upon the filing of a permit application with the Conservation Commission shall give written notice thereof, by certified mail (return receipt requested) to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application with plans, or shall state where copies may be examined and obtained by abutters.

The Commission shall conduct a public hearing on any permit application with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed permit application unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within twenty-one (21) days of the close of the public hearing unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act and the Regulations .

The Commission shall have authority to continue the hearing to a certain date for reasons stated at the hearing, which may include the receipt of additional information from the applicant or others deemed necessary by the Commission or the comments and recommendations of the boards and officials listed in Section 18-1.7.

18-1.7 Coordination with Other Boards

Upon receipt of a permit application, the Conservation Commission shall provide a copy of the public notice thereof to the Mayor, planning board, zoning board of appeals board of health, department of public works, and the inspector of buildings. A copy of such notice shall also be given to the Conservation Commission of an adjoining municipality if the application pertains to property within 300 feet of that municipality. The Commission shall ask such officials and boards to submit their comments and recommendations with respect to the application to the Commission within fourteen (14) days from their receipt of such notice. The Commission shall not take final action on the application until such fourteen (14) days have expired. The applicant shall have the right to receive any such comments and recommendations and respond to them at a hearing before the Commission before final action is taken. The Commission shall take into account such comments and recommendations but shall not be bound by them.

18-1.8 Permits and Conditions

If the Conservation 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 ordinance, 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 it 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 protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

The Commission is empowered to deny a permit for failure to meet the requirements of this ordinance; 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 resource area values protected by this ordinance; 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.

Lands within 25 feet of resource areas protected by this ordinance are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, 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 therefore shall require that the applicant maintain a 25-foot wide continuous, undisturbed vegetative buffer measured from and parallel to the resource area boundary, as an absolute minimum. The Commission may, however, allow this buffer area to be utilized in a passive manner by the landowner(s).

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring, to assure success, because of the high likelihood of failure of replication.

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 time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. 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.

For good cause, the Commission may revoke or modify a permit or determination issued under this ordinance after the giving of written notice of such intent to the holder thereof and the holding of a public hearing thereon. Such notice shall also be given to the abutters and to city boards and officials in the manner set forth in Section 18-1.6.

The Commission in an appropriate case may combine the permit or determination issued under this ordinance with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act and the Regulations.

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.

18-1.9 Regulations

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this ordinance. They shall become effective upon their filing with the City Clerk. The failure by the Commission to promulgate and, from time to time, to amend such rules and regulations, or the legal declaration by a court of their invalidity shall not act to suspend or invalidate any provision of this ordinance. The purpose of the rules and regulations is to further define and clarify the terms and procedures set forth in this ordinance. In the event of any conflict between this ordinance and such rules and regulations, the ordinance shall prevail. The Commission may waive any provision of its rules and regulations when it is not deemed appropriate.

18-1.10 Security

As part of a permit issued under this ordinance, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods as described in the regulations.

18-1.11 Enforcement

The Conservation Commission shall have authority to enforce this ordinance, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates provisions of this ordinance 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.

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 ordinance 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.

Upon request of the Commission, the Mayor and city solicitor may take legal action for enforcement under civil law. Upon request of the Commission and the approval of the Mayor, the chief of police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including, the Conservation Agent, 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 ordinance, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300). 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 ordinance, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission, or its Agent may issue citations under the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D.

18-1.12 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 protected by this ordinance. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

18-1.13 Appeals

A decision of the Conservation Commission may be appealed to the Superior Court in accordance with G.L. Ch. 249 §4.

18-1.14 Severability

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

Very Truly Yours,

Susan D. Flood,
City Clerk/Clerk of the Municipal Council

SDF/lsa