

CONSERVATION COMMISSION

LOCAL WETLANDS PROTECTION ORDINANCE

AND

LOCAL WETLANDS PROTECTION RULES & REGULATIONS



**CITY OF ATTLEBORO,
MASSACHUSETTS**

BRISTOL COUNTY

**LOCAL WETLANDS PROTECTION ORDINANCE
OF THE
ATTLEBORO CONSERVATION COMMISSION**
§18-1 of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, AS AMENDED

ADOPTED
October 2, 2001

AMENDED
December 12, 2007
(effective December 12, 2007)

**LOCAL WETLAND PROTECTION RULES & REGULATIONS
OF THE
ATTLEBORO CONSERVATION COMMISSION**

For Applying The
Attleboro WETLANDS PROTECTION ORDINANCE
§18-1 of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, AS AMENDED

ADOPTED
November 17, 2004

AMENDED
August 6, 2008
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— LOCAL WETLANDS PROTECTION ORDINANCE —

§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 (MGL 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 “lands subject to flooding or inundation by groundwater or surface water” shall include Isolated or Bordering Land Subject to Flooding as defined in 310 CMR 10.57 as well as any isolated shallow or special flood hazard area, or closed basins, which at least once per year confine standing water characterized by ponding or sheet flow to an average depth of six (6") inches or more and a surface area of 2,000 square feet or more.

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 one hundred (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. The fee schedule is as follows:

Permit Application.....	\$150.00
Request for Determination of Applicability.....	\$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 three hundred (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 (5) 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 §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 three hundred (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 that 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 twenty-five (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 on any permit application, and delineate on any plans as are deemed necessary by the Conservation Commission, a 25-foot wide continuous and undisturbed Wetlands Protection Zone measured from and parallel to the resource area boundary. The Commission may (but shall not be required to):

- a. Allow the applicant to make use of the Wetlands Protection Zone in a passive manner if, in the opinion of the Commission, there is no significant adverse impact on the interests protected by this Ordinance.
- b. Allow the applicant to alter the Wetlands Protection Zone to access uplands areas if the Conservation Commission determines, by a majority vote of the appointed Commission, that the proposed work, including proposed replication of wetland resources or other resource areas, will have no significant adverse impact on interests protected by this Ordinance. The Wetlands Protection Zone shall then extend out from the newly created wetland or resource area line if greater than the pre-existing line.
- c. Allow the applicant to alter the Wetlands Protection Zone adjacent to “lands subject to flooding or inundation” (as defined in §18-1.3, DEFINITIONS) when no other reasonable alternative is available for any new construction or to repair, replace, modify, or maintain pre-existing structures if the Conservation Commission determines, by a majority vote of the appointed Commission, that the proposed work, including proposed mitigation, will have no significant adverse impact on interests protected by this Ordinance. If compensatory storage is required, the Wetlands Protection Zone shall then extend out from the newly created “lands subject to flooding or inundation” line if greater than the pre-existing line.

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 §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 (\$300.00) DOLLARS. 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 MGL 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 MGL 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.

— LOCAL WETLANDS PROTECTION RULES & REGULATIONS —

SECTION 1: GENERAL PROVISIONS

§1.1, AUTHORITY:

These rules and regulations are promulgated by the City of Attleboro Conservation Commission pursuant to, Chapter 18 LOCAL WETLANDS PROTECTION ORDINANCE of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, as amended (hereinafter “the ordinance”).

§1.2, PURPOSE:

These rules and regulations are promulgated to create uniformity of process and to help clarify the provisions of Chapter 18 LOCAL WETLANDS PROTECTION ORDINANCE of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, as amended (hereinafter the “ordinance”) and establish guidelines for the administration of activities within protected areas. The rules and regulations are intended to minimize delay in the permitting process by providing applicants and their consultants with information, to assist in compliance with the ordinance. The ordinance sets forth a public review and decision making process to protect wetlands and adjoining land areas by controlling activities deemed likely to have significant or cumulative impact on wetland values, including but not limited to the following:

- a. public or private water supply
- b. groundwater
- c. flood control
- d. erosion & sedimentation control
- e. storm damage prevention
- f. water quality
- g. water pollution control
- h. fisheries
- i. wildlife habitat
- j. rare species habitat
- k. agriculture
- l. aquaculture
- m. recreation

§1.3, AREAS SUBJECT TO PROTECTION UNDER THE ORDINANCE:

The following wetland resource areas are subject to protection under the Ordinance:

- a. any freshwater wetlands; including marshes, wet meadows, bogs or swamps;
- b. any lakes, ponds, reservoirs, rivers, streams, creeks; or their banks and beaches; and lands under waterbodies or waterways;
- c. any lands subject to flooding or inundation by groundwater or surface water;
- d. any vernal pool including lands within hundred (100') feet of the pool's mean annual high water line;
- e. any lands abutting or adjoining within twenty-five (25') feet of the areas set forth above in §1.3a, §1.3b, §1.3c, or §1.3d.

§1.4, DEFINITIONS:

Except as otherwise provided below, the definitions of terms in these rules and regulations shall be as set forth in the Massachusetts WETLANDS PROTECTION ACT (MGL CH.131 §40) and its regulations (310 CMR 10.00).

Activity: Any form of temporary or permanent draining, dumping, dredging, damming, discharging, excavation, filling or grading; the erection, reconstruction, or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of groundwater or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land.

Alter: To change the condition of any Wetland Resource Area protected by the ordinance. The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within, or affecting the Wetland Resource Areas protected by the ordinance:

- a. Removal, excavation or dredging of soil, sand, gravel, or aggregate material 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 including drainage discharges thereto from remote sources; and
- k. Incremental activities that have, or may have, a cumulative adverse impact on the Wetland Resource Areas protected by the ordinance.

Areas Subject To Protection: Those areas listed in §1.3 of these regulations is synonymous with Wetland Resource Area.

Bank: That portion of the land surface 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 high water level, whichever is higher.

Boundary: Means the boundary of Wetland Resource Areas protected by the ordinance.

Certificate Of Compliance: A written determination by the Conservation Commission that the proposed work has been completed in accordance with a Local Wetlands Permit and/or Order of Conditions.

Commission: The Attleboro Conservation Commission.

Conditions: Those requirements set forth in a written Permit issued by the Conservation Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters an Area Subject to Protection under the ordinance.

Detention Basin: A manmade or constructed pond, catchment area or basin designed to hold, control, store, or manage rainwater, stormwater or snow melt runoff, including the removal of pollutants. These include: retention systems (basins, trenches, and wells), detention basins (wet detention basins, dry extended detention basins, and wetlands), and overland flow (grassed channels and filter strips), as further defined by the Army Corp of Engineers and United States Geological Survey, including guidance documents. These basins may be surrounded by concrete, mowed grass, or by native vegetation.

Determination Of Applicability: A written finding by the Commission as to whether a site or the activity proposed thereon is subject to the jurisdiction of the ordinance.

Distance: All distances noted in the ordinance (excluding depth), such as buffer zones distances, are planar distances measured along a single elevation. Consequently, on steeply sloped topography the measured over-ground distance may not accurately reflect the distances specified in the permits and conditions specified by the ordinance.

Drought: Periods of extended drought shall be those periods where Attleboro is determined to be at the “Advisory” or more severe drought level by the Massachusetts Drought Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan.

Erosion Control: The prevention of the detachment or movement of soil, rock fragments, or vegetation by water, wind, ice, and/or gravity.

Extension Permit: A written extension of time within which the authorized activity shall be completed.

For Good Cause: Authority of the Commission to evaluate or review new or obtain missing or necessary information or data that is relevant to an application.

Freshwater Wetlands: Any area where the topography may be low and flat, where soils are annually saturated as demonstrated by the presence of hydric soils, or where the vegetation community is composed primarily of species adapted to or characteristic of saturated areas. The presence of either hydric soils or wetlands vegetation can be used to define an area. The Commission recognizes that soils can be slow to respond to hydrologic conditions and may allow a wetland delineation to be made without the presence of hydric soils provided there is a predominance of wetland vegetation and/or other wetland indicators present. Freshwater wetlands include Vegetated Wetlands both Bordering and Isolated.

Hydric Soil: A soil that is saturated, ponded, or flooded long enough during the growing season to cause anaerobic conditions in the upper part. The presence of hydric soils shall be determined using the methods presented in the text *Field Indicators for Identifying Hydric Soils in New England* published by the New England Interstate Water Pollution Control Commission or the text *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act* published by the Massachusetts Department of Environmental Protection, Division of Wetlands and Waterways.

Isolated Vegetated Wetland: A Vegetated Wetland that is not touching or otherwise connected by way of surficial hydrology to another Wetland Resource Area.

Lands Subject to Flooding or Inundation (by groundwater or surface water): Shall include Isolated or Bordering Land Subject to Flooding as defined in 310 CMR 10.57 as well as any isolated shallow or special flood hazard area, or closed basins, which at least once per year confine standing water characterized by ponding or sheet flow to an average depth of six (6") inches or more and a surface area of 2,000 square feet or more.

Local Wetlands Permit Application: The written notice filed by any person intending to remove, fill, dredge, or alter an Area Subject to Protection under the ordinance. In appropriate cases, a Local Wetlands Permit Application may be submitted concurrently with a Notice of Intent application.

Notice Of Intent: The written notice filed by any person intending to remove, fill, dredge, or alter an Area Subject to Protection under the Massachusetts WETLAND PROTECTION ACT (MGL CH. 131, §40).

Ordinance: The City of Attleboro LOCAL WETLANDS PROTECTION ORDINANCE (§18-1 of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, as amended), and any revisions thereto.

Permit: The “Local Wetlands Permit” document issued by the Conservation Commission containing conditions, which regulate or prohibit an activity under the ordinance. The Commission, in an appropriate case, may combine the permit or other action on an application issued under the ordinance with an Order of Conditions, issued under the WETLANDS PROTECTION ACT (MGL CH. 131, §40).

Person: Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to city ordinances, administrative agency, public or quasi-public corporation or body, the City of Attleboro, and any other legal entity, its legal representatives, agents, or assigns.

Plans: Such data maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Conservation Commission to describe the site and activity or project; to determine the applicability of the ordinance; or to determine the impact of the proposal upon the interests identified in the ordinance.

Pond: Any open body of fresh water of any size, either naturally occurring or man-made, which is not dry due to natural causes, except during periods of extended Drought. Basins or lagoons, which are part of wastewater treatment plants, shall not be considered ponds, nor shall swimming pools or other impervious man made retention basins, or stormwater detention basins.

Professional Consultant: A Professional Engineer, Registered Land Surveyor, or Registered Landscape Architect licensed by the Commonwealth of Massachusetts.

Quorum: The majority of the duly appointed members of the Conservation Commission that when duly assembled is legally empowered to transact business.

Rare Species: All vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 10.60, regardless of whether the site in which they occur has been previously identified by the Division of Fisheries and Wildlife.

Recreation: The term recreation connotes active or passive recreation activities, usually unstructured, which do not conflict with or diminish other wetland values and functions. Examples include, without limitation, aesthetic enjoyment, wildlife observation and other nature studies, walking and hiking, canoeing, and permitted fishing, hunting, etc. This does not include the construction of physical structures or facilities for recreational purposes.

Request For Determination Of Applicability: A written request made by any person to the Conservation Commission for a determination as to whether a site or a proposed activity thereon is subject to the ordinance.

Sedimentation Control: The prevention or reduction of the collection or concentration of sand, soil, rock fragments, or vegetation by the action of water, wind, ice or gravity.

Stream – a body of running water, including brooks, creeks and other watercourses, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of an Area Subject to Protection. A portion of a stream may flow through a culvert, beneath a bridge or other structures, or be naturally obscured. A stream’s flow may be intermittent or perennial.

Vegetated Wetlands: Any area where the soils are annually saturated (hydric), and/or where at least 50 percent of the plant community consists of wetland plant species. Vegetated wetlands include bogs, marshes, wet meadows, and swamps.

Vernal Pool: The term “vernal pool” shall include in addition to that already defined under the WETLANDS PROTECTION ACT, MGL CH. 131, §40 and regulations there under, 310 CMR 10.00, a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or the summer, and which is free of adult fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile, or other vernal pool community species, as well as the area within one hundred (100') feet of the mean annual high water line of such depression. To be classified as a vernal pool, the pool must be certified by Massachusetts Division of Fisheries and Wildlife (MDFW), or recognized by the Conservation Commission in accordance with MDFW certification criteria during the public hearing process.

Wetland Plant Species: Those species listed as occurring in bogs, marshes, swamps, or wet meadows, as well as any other plant species known to occur primarily in wetlands, and including all species classified as obligate wetland, facultative wetland, or facultative in the most recent edition of the *National List of plant Species That Occur in Wetlands* published by the United States Fish and Wildlife Service.

Wetlands Protection Zone (WPZ): This is the area that is abutting or adjoining within twenty–five (25') feet of the areas set forth in §1.3a, §1.3b, §1.3c, or §1.3d above.

Wetland Replication Area: The re–establishment of processes, functions, and related biological, chemical, and physical linkages between the aquatic and associated riparian ecosystems; it is the repairing of damage or alteration of wetlands or resource areas caused by human activities. Returning a wetland or resource areas to its native condition before alteration, including its pre–disturbance function and related physical, chemical, and biological characteristics; full restoration is the complete return to its original state.

Wetland Resource Areas: Those areas listed in §1.3 of these regulations; is synonymous with Areas Subject to Protection under the ordinance.

Wildlife Habitat: Areas Subject to Protection, which due to their plant community composition and structure, hydrologic regime, or other characteristics provide food, shelter, migratory, over wintering, or breeding areas for wildlife.

§1.5, REVISIONS:

These rules and regulations may be revised from time to time by a majority vote of a quorum of the Conservation Commission provided that after public notice, a public hearing has been held in accordance with §18–1.9 of the ordinance.

SECTION 2: FILING FEES

§2.1, FILING FEE SCHEDULE:

At the time of filing of a Local Wetlands Permit Application or Request for Determination of Applicability (RDA) under the ordinance, the applicant shall pay a filing fee in accordance with the following schedule. This fee is in addition to that which may be required under a filing pursuant to the Massachusetts WETLANDS PROTECTION ACT (MGL CH. 131, §40) (hereinafter “the Act”) and its regulations (310 CMR 10.00). These fees do not include any additional costs or expenses which may be necessary under §18–1.5 of the ordinance and do not include costs of placing a public hearing notice in the local newspaper.

Request for Determination of Applicability.....\$25.00
Local Wetlands Protection Application.....\$150.00

§2.2, LEGAL ADVERTISING FEE:

In addition to the filing fee(s), the applicant shall also pay at the time of filing, an advertising fee to cover the cost of legal advertisement in the Sun Chronicle newspaper. The advertising fee for both a Request for Determination of Applicability and a Local Wetlands Permit Application is as follows:

Advertising Fee.....\$50.00

The Conservation Commission may amend the amount of this fee as needed if it becomes apparent that the funds are not sufficient to cover the costs of advertising.

§2.3, CONSULTANT FEE:

As provided by MGL CH. 44 §53G, and §18–1.5 of the ordinance, the Commission may impose reasonable fees for the employment of outside consultants, engaged by the Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirements of the ordinance, the Act, the Conservation Commission Act (MGL CH. 40 §8C), or any other state or municipal statute, ordinance or regulation, as they may be amended or enacted from time to time. Funds received by the Conservation Commission pursuant to these rules shall be deposited with the City treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Commission without further appropriation as provided in §18–1.5 of the ordinance and MGL CH. 44 §53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant. Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Agent. The Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five (5) days of the date notice is given. The consultant fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to determine that the application is administratively incomplete (except in the case of an appeal) relative to the Act. The Commission shall state such in a letter to the applicant, copied to the Massachusetts Department of Environmental Protection (MADEP). No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment shall be cause for the Commission to deny the permit application under the ordinance.

§2.4, FEE FOR ADDITIONAL SITE VISITS:

Initial requests for a Certificate of Compliance for projects permitted under the ordinance will be reviewed for no charge. If a site fails to be approved for a Certificate of Compliance, a fee will be assessed for subsequent site visits needed to issue the Certificate of Compliance as follows:

Re-Inspection Fee.....\$75.00

SECTION 3: APPLICATION PROCEDURES

§3.1, APPLICATION FORMS:

Applicants filing a Request for Determination of Applicability (RDA) under the ordinance shall use the current *WPA Form 1 Request for Determination of Applicability* produced by MADEP. Applications shall be submitted in general accord with the instructions included in **Appendix A**. Applicants filing a Local Wetlands Permit Applications (LWPA) application under the ordinance shall use the current *Local Wetlands Permit Application* form produced by the Conservation Commission as well as the current *WPA Form 3 Notice of Intent* produced by MADEP. Applications shall be submitted in general accord with the instructions included in **Appendix B**.

Local Wetland Permits issued under the ordinance will expire three years from the date of issuance unless the permit expressly set forth a longer term. Requests for a renewal of a Local Wetlands Permit and/or an Extension Permit for an Orders of Conditions shall be submitted in compliance with the procedures and timelines found in §18-1.8 of the ordinance and 310 CMR 10.05(8). Local Wetlands Permits may be renewed once for an additional one-year period. Requests shall be made in writing and include a brief description of the permitted project, the status of work completed, and the reason(s) necessitating the request for a renewal or extension. Requests for a Certificate of Compliance shall be submitted in writing using the current *WPA Form 8A Request for Certificate of Compliance* produced by MADEP and be accompanied by a written statement from a Professional Consultant certifying substantial compliance with the approved site plans and setting forth any deviation, if any, exists from the plans approved in the Order in accordance with 310 CMR 10.05(9)(d). In appropriate cases, the Conservation Commission may accept an as-built plan prepared by such a Professional Consultant in lieu of a written statement. This requirement for use of a Professional Consultant may be waived by the Conservation Commission for small projects where professional design may not be warranted. Application forms and instructions may be obtained from the Conservation Commission office located within the Department of Planning and Development at Government Center, 77 Park Street, Attleboro, Massachusetts 02703. This information may also be obtained from the City of Attleboro web site at www.cityofattleboro.us.

§3.2, TIMING REQUIREMENTS:

The date of filing of the application shall be the date when all required forms, fees, plans, and supporting information have been received and deemed complete by the Conservation Commission or its Agent. All time periods set forth under §18-1.6 of the ordinance shall commence from this date. Once a complete application is filed, the Commission will schedule a hearing within twenty-one (21) days of its receipt. Supplemental information should be submitted within five (5) days of the public hearing to be considered. Failure to submit supplemental information within this time frame may be grounds for the Commission to continue a public hearing.

§3.3, PLANS AND INFORMATION:

A detailed checklist of information that may be required by the Commission to deem a filing complete is provided in **Appendix A** and **Appendix B**. The following provides a general guideline of the minimum information necessary to present a proposal to the Commission. Plans and information shall be submitted which completely and accurately describe the proposed activity and its effect on Wetland Resource Areas protected by the ordinance. Plans must be clearly drawn at a scale of no less than 1"=40' and shall depict sufficient details to clearly describe the proposed project. Plans should include at a minimum: property lines; existing and proposed grades with at least two foot contours; the boundary of wetland resources denoted with consecutively numbered flags; the boundary of the one hundred (100') foot buffer zone; the boundary of the twenty-five (25') foot "WPZ"; all proposed structures within the buffer zone; offset distances from proposed structures and the limit of work from resource areas; and the Assessor's plat and lot number, street number, and

subdivision lot number, where applicable. All plans shall be highlighted with transparent marker pen as follows: wetland boundary in blue; one hundred (100') foot buffer zone in yellow; twenty-five (25') foot "WPZ" in green; and 100-year floodplain in orange. The Conservation Commission requires that plans be stamped by a duly licensed Professional Consultant as defined in these regulations. This requirement may be waived by the Conservation Commission for small projects where professional design may not be warranted. If a septic system is proposed in an area subject to Conservation Commission jurisdiction, plans must show compliance with Title 5 of the Massachusetts Sanitary Code. In addition to the site plan, a locus plan consisting of an 8.5'x11" portion of the United States Geological Survey (USGS) topographic quadrangle map clearly identifying the location of proposed work is required. Additional plans and information, which may be required by the Commission, include, but are not limited to:

- A copy of the Federal Emergency Management Agency, Flood Insurance Rate Map clearly identifying the location of proposed work.
- A copy of the Massachusetts Division of Fisheries and Wildlife's Natural Heritage and Endangered Species Program (NHESP) Estimated Habitats of Rare Wildlife and Vernal Pools map depicting the property subject to the proposed development where the property is located within an Estimated Habitat of Rare Wildlife or contains a certified vernal pool(s).
- Quantitative documentation (i.e., MADEP Field Data Forms) to support the delineation of a vegetated wetland, with certification from the wetland biologist responsible for the delineation, stating the basis for the delineation, the date on which the delineation was performed, and stating that the delineation as shown on the plans appears to be correct.
- A wetlands replication plan detailing the methods of construction for any wetland replication area proposed as mitigation for wetland alterations, pursuant to the MADEP *Massachusetts Inland Wetland Replication Guidelines*.
- A plan detailing justification, mitigation and enhancement for alterations to Areas Subject to Protection Under the ordinance including the WPZ.
- Alternatives Analysis (see §4.10): When work is being proposed within Wetland Resource Areas, including the WPZ, an Alternatives Analysis may be required by the Commission. An Alternatives Analysis should describe a cost benefit analysis of project alternatives including alternative economic uses of the land as well as alternate layouts or sizes of the existing project and discuss the impact of these alternative projects on resource areas.
- A Wildlife Habitat assessment (see §4.7), where alterations to a Wetland Resource Area, including the WPZ, are proposed.
- WPA **Appendix C** – *Stormwater Management Form* including appropriate calculations for projects which require conformance with MADEP's Stormwater Management Policy prepared by a competent professional. The Commission may require that calculations and plans be stamped by a Professional Engineer. Drainage calculations should be based on the United States Department of Agriculture, Natural Resource Conservation Service (NRCS) TR-55 or TR-20 method for the 2-year, 10-year, 25-year, and 100-year storm events. Drainage calculations for each sub watershed area shall include the hydraulic length drawn on the watershed plan, time of concentration calculation, pre and post development curve number calculation, average watershed slope calculations, peak rate of runoff and volume of runoff.

§3.4, NOTICE TO ABUTTERS:

All LWPA and RDA applications shall be accompanied by the Conservation Commission's *Certified List of Abutters* form (available from the Commission office or the City of Attleboro web site). The list shall include the names and addresses of all abutters and shall be signed by an authorized representative of the City Tax Assessor's Office. Written notification of the filing of a LWPA shall be delivered by the applicant by certified mail or hand delivery to all abutters of the property subject to the application. Abutters include any property located directly opposite on any public or private street or way, and any abutters to the abutters within three hundred (300') feet of the property line of the applicant including any abutters located in another community or across a body of water. The notice shall be made using the Conservation Commission's *Notification to Abutters* form (available from the Commission office or the City of Attleboro web site), and shall provide the time, place, and subject matter of the public hearing. Written notice shall be given to abutters not less than five days prior to the public hearing. Evidence of proper abutter notification shall be provided to the Conservation Commission prior to its opening of the public hearing. The Conservation Commission will notify abutters by mail of all public hearings for RDA applications. It is the applicant's responsibility however to obtain a *Certified List of Abutters* signed by an authorized representative of the City Tax Assessor's Office and submit the list with their RDA application.

SECTION 4: PERFORMANCE STANDARDS

§4.1, INTRODUCTION:

Each application shall be reviewed, and its expected impacts on Wetland Resource Areas evaluated by the Commission on a case-by-case basis. The Commission will require that applicants avoid alterations to Wetland Resource Areas wherever feasible. If the Commission determines that a project would result in significant adverse impacts to Wetland Resource Areas, the project shall be denied. The introduction, purpose and performance standards set forth in 310 CMR 10.51 through 10.57 and 10.59 through 10.60 shall apply to Areas Subject to Protection by the ordinance, and are hereby incorporated by reference as if set forth fully herein, except if stated otherwise.

§4.2, DISCRETIONARY WAIVER:

The Commission may (but shall not be required to) waive strict compliance with the ordinance and these regulations if the commission finds that the proposed work, including proposed mitigation, will have no significant adverse impact on interests protected by the ordinance.

§4.3, CONDITIONAL EXCEPTIONS:

The ordinance as well as these rules and regulations are applicable to those who seek to develop property or otherwise conduct an activity requiring the approval of the Conservation Commission after November 12, 2001. The ordinance includes several exceptions whereby the application and permit procedures required by this ordinance would not apply. These exceptions include:

- The maintenance, repair, or replacement, but not the substantial changing or enlarging, of an existing and lawfully located structure; and
- the maintenance, repair, or replacement, but not the substantial changing or enlarging, of an existing facility used in the service of the public to provide electric, gas, water, sewer, telephone, telegraph, or other telecommunication services.

The ordinance does require that work performed under the above exceptions conform to performance standards and design specifications included in these regulations. The term “existing” above refers to structures placed in service prior to November 12, 2001 and refers to structures and any appurtenance claiming exception. Therefore, the application and permit required by the ordinance shall apply to work associates with entirely new structures (those that are not replacing antecedents) placed in service on or after November 12, 2001, whether or not they would be considered appurtenant. The ordinance also allows an exception for emergency projects necessary for the protection of the health and safety of the public provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or by the City. This exception allows agencies to avoid application and permit requirements for emergency projects provided that advance notice has been given to the Commission prior to commencement of work or within twenty-four (24) hours after commencement. Any Person requesting permission to conduct an emergency project shall specify why the project is necessary for the protection of the health or safety of the public and what agency of the Commonwealth or subdivision thereof is to perform the project or order it to be performed. The request may be written or oral but if oral must be confirmed by written notice within twenty-four (24) hours of the commencement of work. Requests for emergency projects must be made prior to the commencement of any work, except for emergency response activities by public officials to safeguard life, health, and property damage. An emergency certification shall be issued only for the protection of public health or safety. A majority of the Commission must certify the work as an emergency project to be performed only for the time and place certified by the Commission for the limited purpose of abating the emergency. The time limit for performance of emergency work shall not exceed twenty-one (21) days from the day of certification by the Commission. Within twenty-one (21) days of commencement of an emergency project, a Local Wetlands Permit Application shall be filed with the Commission for review as provided in the ordinance and in these regulations.

§4.4, LIMITED PROJECTS:

The “Limited Projects” status granted pursuant to 310 CMR 10.53(3) is not recognized under the ordinance. As such, the Commission is not bound to grant wetland resource area alterations for activities proposed as a Limited Project under the Act. The Commission will review applications and evaluate resource area alterations associated with proposed Limited Projects, in accordance with the performance standards and procedures included in these regulations.

§4.5, FRESHWATER WETLANDS:

Freshwater Wetlands include both Bordering and Isolated Vegetated Wetlands. Isolated Vegetated Wetlands are those areas that cover a surface area of at least one thousand and five hundred (1,500) square feet, and meet the definition and critical characteristics of Bordering Vegetated Wetlands but do not border on a creek, river, stream, pond or lake. They exist as “pockets” of wetland vegetation and are supported by Hydric Soils and /or hydrologic conditions. The Commission has determined that Vegetated Wetlands, which are isolated and have a surface area measuring less than five hundred (1,500) square feet, are not likely to be significant to the protection of wetland values identified in §1.2.

§4.6, LAND SUBJECT TO FLOODING:

The Commission shall rely on information contained within the Federal Emergency Management Agency, National Flood Insurance Program (NFIP), Flood Insurance Rate Maps for determining the extent of Bordering Land Subject to Flooding (BLSF), which in most cases extends up to and includes the 100 year flood elevation. In the event that NFIP Profile data is unavailable, the boundary of BLSF shall be determined using the methods described in 310 CMR 10.57(2)(a)3. The engineering calculations referred to in 310 CMR 10.57(2)(a)3 shall be based on a design storm of seven (7") inches of precipitation in twenty-four (24) hours (i.e., a Type III Rainfall, as defined by NRCS). The ordinance protects Isolated Land Subject to Flooding (ILSF), as defined in 310 CMR 10.57(2)(b), as a Wetland Resource Area. The ordinance also protects other isolated Lands Subject to Flooding or Inundation, which may not be large enough to meet the definition of ILSF under the Act. These areas include any isolated shallow or special flood hazard area, or closed basins, which at least once per year confine standing water characterized by ponding or sheet flow to an average depth of at least six (6") inches and a surface area of at least two thousand (2,000) square feet or an equivalent volume of one thousand (1,000) cubic feet.

§4.7, VERNAL POOLS:

The ordinance recognizes Vernal Pools as a protected Wetland Resource Area. The area within one hundred (100') feet of the mean annual boundary of a vernal pool depression is considered to be part of the Vernal Pool resource area. In areas where there is a disagreement between the applicant and the Commission as to the presence or extent of a Vernal Pool, the burden of proof falls on the applicant. The Commission need not identify a vernal pool and vernal pool habitat locations prior to an application being filed with the Commission. The Commission may postpone vernal pool determination until an appropriate time of year or non-drought year. It shall be the applicant's responsibility to identify the location of potential vernal pools and vernal pool habitats on the subject property during the application process. The Commission shall have the discretion to invalidate any Permit previously issued if the applicant failed to designate an area as a potential vernal pool site. The applicant may submit a Request for Determination of Applicability for the purpose of identifying whether a vernal pool exists on the subject site prior to submitting a Local Wetlands Permit Application.

§4.7.1 PRESUMPTION OF VERNAL POOL HABITAT:

Vernal Pools are afforded protection under various State laws including the Massachusetts Wetlands Protection Act, Massachusetts Surface Water Quality Standards (314 CMR 4.00), Title 5 of the Massachusetts Environmental Code (310 CMR 15.00), and the Forest Cutting Practices Act Regulations (304 CMR 11.00). However, in most instances, Vernal Pools must have been certified through the NHESP or identified by a preponderance of credible evidence presented at a public hearing to be protected. The ordinance extends and expands upon this protection, and presumes Vernal Pool habitat exists if a wetland's physical characteristics conform to the definition of a “vernal pool” set forth in §1.4 of these regulations. §18-1.2 of the ordinance identifies vernal pools as a Wetland Resource Area, and the definition for vernal pools provided in §18-1.3 of the ordinance includes the area within one hundred (100') feet of the mean annual high water line of such a depression. This presumptive definition for vernal pools is based on systematic field observations showing that most basins that possess the above characteristics host breeding vernal species. These areas are essential breeding habitat, and provide other important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species.

Vernal pools include depressions in uplands, temporary and/or permanent ponds in kettleholes, depressions in swamps and wet meadows, old river oxbows and other floodplain pools, and isolated Lands Subject to Flooding or Inundation, ranging from small depressions to multi-acre expanses. These pools are essential breeding sites for certain amphibians, which require isolated, seasonally wet areas without the presence of predatory fish. Most of these amphibians require areas of undisturbed woodlands as habitat during the non-breeding seasons. Some species require continuous woody vegetation between woodland habitat and the breeding pools. Depending on the species, during non-breeding seasons these amphibians may remain near the pools or travel one-fourth mile or more from the pools. Reptiles, especially turtles, often require areas along rivers to lay their eggs. Since amphibians and reptiles are less mobile than mammals and birds, maintaining integrity of their habitat is critical. Various kinds of animals, including several amphibian species and a number of invertebrate groups, occur or reproduce only in vernal pools. These animals often live their lives a quarter mile or more from the vernal pool and migrate to the pool only for a few days each year for breeding purposes. Many of these animals only return to their own birth pool to mate, therefore increasing the importance of protecting all vernal pools. The presumption of vernal pool habitat may be overcome with the presentation of a preponderance of credible evidence, which in the judgment of the Conservation Commission, and if necessary its consultant, demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat functions.

§4.7.2, DEMONSTRATING THAT A PONDING AREA IS NOT A VERNAL POOL:

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

- Evidence that the ponding area does not hold water for at least two continuous months when not in a period of drought.
- Evidence that vernal pool species do not breed or have not bred in the ponding area, due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

§4.7.3, DEMONSTRATING THAT A PONDING AREA IS A VERNAL POOL:

In determining if an area is a vernal pool, the Conservation Commission will rely on the certification criteria published by NHESP and included in the most recent version of their publication titled *Guidelines for Certification of Vernal Pool Habitat*. A copy of this document is included as **Appendix C**.

§4.7.4, TIMING OF EVIDENCE COLLECTION:

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

§4.8, WILDLIFE HABITAT:

Wetland Resource Areas are important to the protection of Wildlife Habitat and in many cases Rare Species habitat. In addition, the near-upland areas around wetland resources often play important roles in determining and maintaining the Wildlife Habitat values of associated wetlands. While it is common to think of the protective or "buffering" value of buffer zones in terms of area undisturbed, habitat values may be equally affected by the configuration of the buffer zone perimeter, the inclusion or exclusion of specific topographical and ecological features (such as an abutting sandy knoll or tree canopy), etc. The potential presence of rare or endangered species and their specific sensitivity to proposed activities shall be considered by the Commission when evaluating proposed projects. The Conservation Commission shall consider evidence of the presence of such species or evidence of likely habitat. Prior designation of rare or endangered species habitat by the Massachusetts Division of Fisheries and Wildlife Natural Heritage Program (NHESP) is not necessary. The Commission may consult with the NHESP or other authorities, as it deems necessary for guidance and recommendations.

§4.8.1, NO SIGNIFICANT ADVERSE IMPACT ON WILDLIFE HABITAT:

Wildlife Habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these Wildlife Habitat functions are presumed to exist in Wetland Resource Areas. Therefore, in accordance with the ordinance's fundamental purposes (see §18-1.1) no project proposed within Areas Subject to Protection may have a significant adverse impact — either project-specific or cumulative — on Wildlife Habitat. For Wildlife Habitat purposes, a significant adverse project-specific impact is defined as an impact caused by work within a Wetland Resource Area that would under reasonable assumptions: (a) result in a measurable decrease in the extant wildlife populations or biological composition, structure, or richness on the site or in the vicinity exclusive of the present or future state of adjacent and nearby properties; or (b) impair, damage, destroy, or reduce in value for wildlife purposes certain specific habitat features. Studies have shown that direct impacts from work — filling, grading, vegetation removal, construction of barriers to movement, etc. — in resource areas can severely harm wildlife populations. For example, low stone walls, culverts or roadways bisecting a resource area can prevent amphibians that live in upland areas from reaching breeding pools, marshes, and streams. Or, removal of large snags (dead trees) can virtually eliminate nesting by barred owls, pileated woodpeckers, mink, etc. Accordingly, the Commission shall prohibit the placement of fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features. Examples of protected habitat features include (but are not limited to):

- large cavity trees;
- turtle nesting areas;
- existing nest trees for birds that reuse nests (e.g., great blue herons, osprey);
- beaver dams, dens, and lodges;
- mink or otter dens;
- vernal pools and adjacent upland areas;
- vertical sandy banks;
- migration corridors that provide connectivity between wildlife habitats; and
- sphagnum hummocks and pools suitable to serve as nesting habitat for four-toed salamanders.

Indirect impacts — the effects of human activities near wildlife habitat — may have equally harmful effects. Therefore the Commission shall take into account indirect effects on a project-by-project basis. For example, work within resource areas may be restricted within one hundred (100') feet of existing beaver, mink or otter dens, or within two hundred (200') feet of existing osprey or great blue heron nests.

The purpose of the ordinance is to protect for future generations of residents the natural wetland and water resources and amenities, including wildlife, we presently enjoy in Attleboro. The ordinance protects Wetland Resource Areas from cumulative impacts as well as from immediate ones. Therefore, the Commission must be cognizant of the likelihood of cumulative impacts from work within resource areas. For Wildlife Habitat purposes a significant cumulative adverse impact is defined as an impact that would under reasonable assumptions result in a measurable decrease in the extant wildlife populations or biological structure, composition, or richness on the site or in the vicinity taking into account the projected impacts of future projects that could be proposed in the vicinity with similar, comparable, or other significant impacts and disturbance. This method for assessing cumulative impacts avoids the pitfall of placing an unreasonable burden of resource protection on subsequent applicants/projects in the vicinity while subsidizing those who are first to develop land. It allows the Commission to level the marginal impact of all proposed projects in the vicinity while ensuring appropriate protection — present and future — of the values and interests protected by the ordinance. A wildlife habitat assessment may be required for any project where alterations of Wetland Resource Areas totaling two thousand and five hundred (2,500) square feet or more are proposed. This assessment shall be performed by an individual with at least a Master's Degree in wildlife biology or ecological science from an accredited college or university, or other competent professional with at least two (2) years experience in wildlife habitat evaluation. The assessment shall include an evaluation of the potential importance of the given resource area to wildlife habitat and shall include an evaluation of potential impacts from proposed activities within the resource area(s) to wildlife habitat.

§4.8.2, PROJECTS TO ENHANCE OR BENEFIT WILDLIFE HABITAT:

The Conservation Commission may, as part of the permitting process, require at its discretion any project that proposes to alter the extant wildlife populations or biological composition, structure, or richness of an area for the purpose of enhancing or benefiting Wildlife Habitat to have that plan approved by the Massachusetts Division of Fisheries and Wildlife.

§4.9, WETLANDS PROTECTION ZONE (WPZ):

The land area located within twenty-five (25') feet of the Wetland Resource Areas identified in §1.3a, §1.3b, §1.3c, or §1.3d of these regulations is also a protected Wetland Resource Area pursuant to §18-1.2 and §18-1.8 of the ordinance. This area shall be known as the Wetlands Protection Zone (“WPZ”). As stated in the §18-1.8 of the ordinance, the WPZ is “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”. Important functions of the WPZ include, but are not limited to: Protecting the Wetland Resource Area it surrounds, i.e. by shading; filtering stormwater runoff; reducing noise and wind; and reducing the inflow of pollutants such as salts, pesticides, herbicides and fertilizers; providing wildlife habitat, including food, shelter, nesting, and migratory areas; providing traversable recreation areas; and allowing for wetland plant growth and wetland expansion. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the WPZ and set other conditions on this area, unless the applicant provides evidence deemed credible and sufficient by the Commission that the area or part of it may be disturbed without harm to the values protected by the ordinance. As stated in §18-1.8 of the ordinance, the Commission may allow the WPZ to be utilized in a passive manner. As such, in some circumstances activities, when properly conditioned, may be acceptable in WPZ areas. Under other circumstances even minimal adjacent disturbance may have serious harmful effects on Wetland Resource Area values and functions. When the presumption of significance is questioned the actual determination of impact must be made on a project and site-specific basis. In this respect the actual impact of proposed work or activities within the WPZ on wetland values and functions can often be reduced substantially, and thus made permissible, when appropriate conditions are imposed. The ordinance gives the Conservation Commission broad discretion to permit, condition, and prohibit work within the WPZ as the specific situation warrants. Therefore the Commission shall consider proposals for work in the WPZ in terms of four broad forms of disturbance. This approach is intended to allow flexibility for property use while maintaining adequate levels of resource protection.

§4.9.1, NO DISTURBANCE:

The Commission may find that the specific characteristics of the WPZ on a particular site are so important to the protection of the Wetland Resource Area values that that virtually no activities or work, other than passive passage, will be permitted. In these cases, no vegetation should be disturbed, leaf litter and debris should remain in place, etc., and the WPZ should remain unchanged from its pre-project state.

§4.9.2, TEMPORARY DISTURBANCE:

The Commission may find that the specific characteristics of the WPZ on a particular site are such that a temporary disturbance for a limited period of time may be permitted, such as for regrading or travel by construction machinery. Once the activity is completed, however, the area would be allowed to return to natural vegetation and pre-disturbance functions. Any subsequent disturbance or activity would require additional filings and review by the Commission. In these instances, the Commission shall establish specific time frames and conditions for allowing temporary disturbances, as well as setting criteria for assessing the successful return of the WPZ to natural functions.

§4.9.3, LIMITED DISTURBANCE:

The Commission may find that the specific characteristics of the WPZ on a particular site are such that a limited set of activities and work may be permitted in perpetuity. For example understory clearing of vegetation may be allowed, but no clearing of overstory and no conversion of ground cover to lawn would be allowed. Limited (sustainable) harvesting of wood, composting of brush, and storing firewood are other examples of limited activities that might be allowed.

§4.9.4, PERMANENT DISTURBANCE:

The Commission may find that the specific characteristics of the WPZ on a particular site are such that permanent disturbances are permitted. Dwellings, parking areas, driveways, decks, and lawns in the WPZ represent permanent disturbance areas. Within the context of permanent disturbance within the WPZ, the Commission may set specific conditions prohibiting or restricting those forms of work and activities deemed potentially harmful to resource area values, such as the use of herbicides and pesticides, the use of interceptor drains, swimming pool discharge or filter backwash systems, or the installation of in-ground sprinkler systems for irrigation.

§4.9.5 PERMANENT IMMOVABLE BARRIERS AND ENHANCEMENT:

The Commission may, at its discretion, require the installation of a permanent immovable barrier(s) (split-rail fence, large rocks, stonewalls, shrub barriers, etc.) along the WPZ boundary or the line within the WPZ where the limit of work or disturbance is approved. It has been the Commission's experience that permanent immovable barriers are an effective visual reference, and serve to help avoid 'lawn creep' by future homeowners, who may not be as aware of the resource areas as the original applicant. Enhancements, such as the removal of invasive/exotic plant species or the planting of native vegetation may be required as compensation for authorized disturbances within the WPZ at the discretion of the Commission.

§4.10, ALTERNATIVE ANALYSIS:

The ordinance in §18-1.2 states that "Except as permitted by the Conservation Commission, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into" any Areas Subject to Protection by the ordinance. Accordingly, projects and associated disturbances shall be located outside any Wetland Resource Areas, including the WPZ. Practical alternatives to locate the project outside these areas must be investigated and should one or more prove feasible, development plans must be amended to relocate activities accordingly. The Commission shall consider as practical alternatives options that were available to the applicant but appear to be precluded due to self-imposed hardships and constraints (e.g., lot, roadway, and drainage layouts engineered without prior regard to impact on Wetland Resource Areas protected by the ordinance). The project shall be located outside the resource area unless the applicant convinces the Commission that the area or part of it may be altered without harm to the values protected by the ordinance. In accordance with §18-1.8 of the ordinance, the Commission shall require applicants to avoid wetlands alterations, and minimize wetlands alterations and require mitigation where alterations are unavoidable. In all cases where wetland alterations are proposed, impacts must be minimized and mitigated so there are no significant adverse impacts to the Wetland Resource Area. If the Commission determines that a project would have significant adverse impacts on a Wetland Resource Area then the project shall be denied. The applicant shall carry the burden of proof for demonstrating to the Conservation Commission's satisfaction that the proposed work or activities within Wetland Resource Areas are necessary and that reasonable alternatives, including reducing the scale and scope of the project, do not exist. The Commission shall consider the specific characteristics of the work proposed for immediate and cumulative impact on the wetland resource. The Commission may offer suggestions and advice for altering plans and proposals to reduce impact on wetland values and functions toward the goal of modifying the project to make it acceptable. However, the Commission is not obligated to do so and shall not be bound in its decision making by any prior advice or suggestions offered to applicants.

§4.11, SELF IMPOSED HARDSHIP:

When evaluating proposed impacts to Wetland Resource Areas, the Conservation Commission will view any adjacent properties or properties located nearby when evaluating cumulative resource area impacts pursuant to §18-1.8 of the ordinance. The applicant or property owner is advised to prevent situations where they have created their own hardship through design by not carefully considering all likely impacts to areas subject to the Act or the ordinance. In the case of Limited Project proposals under the Act, proposed roadways or driveways shall be designed to provide access to all areas of the proposed site without relying upon the possibility of future wetlands crossings. The Commission shall consider any future crossings or impacts proposed to be self-imposed and will not grant further crossings or alterations in subsequent filings on a lot-by-lot basis for any project.

§4.12, WETLAND REPLICATION AREAS:

In situations where wetland alterations are unavoidable as determined by the Conservation Commission, a compensatory wetland replication area shall be provided. The applicant has the affirmative burden of proving to the Commission that the wetland alteration is unavoidable by a fair preponderance of the evidence. Should the Commission makes a finding that a wetland alteration is unavoidable, then the Commission may order the applicant to construct wetland replication areas and/or other suitable enhancements. At a minimum, the replication area shall measure at least 1.5 times the area of the wetland to be altered, and for Vegetated Wetlands shall be designed and constructed to meet the general conditions found in 310 CMR 10.55(4)(b) as well as the replication plan procedures found in the most current version of MADEP's *Massachusetts Inland Wetland Replication Guidelines*. The Commission in appropriate circumstances may not authorize any building construction until such time that wetland replication areas required for access and utility construction have been substantially completed, inspected, and approved by the Commission. The Commission shall retain the exclusive authority to determine substantial completion of a wetland replication area and such determination resides solely within the sound discretion of the Commission.

SECTION 5: DESIGN CRITERIA AND CONSTRUCTION METHODS

§5.1, CALCULATING IMPACTED RESOURCE AREAS:

When calculating the extent of proposed disturbances to Wetland Resource Areas in §4 above, the applicant shall make adequate provision for the physical construction of all proposed structures, embankments, grading, and all other proposed activities. The impacted area must be clearly shown on the proposed site development plans. Sufficient workspace shall be considered as part of the altered area when calculating the amount of resource area impacted. The area required for workspace will vary on a site-by-site basis.

§5.2, DRAINAGE:

All proposed stormwater management systems shall, at a minimum, conform to Chapter 19 STORMWATER MANAGEMENT ORDINANCE, of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, as amended.

§5.3, DETENTION/RETENTION BASINS:

Detention basins and retention basins shall be designed in compliance with Chapter 19 STORMWATER MANAGEMENT ORDINANCE, of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, as amended.

§5.4, EROSION AND SEDIMENTATION CONTROL:

Applicants shall implement controls that prevent erosion, control sediment movement, and stabilize exposed soils to prevent pollutants from moving offsite or entering Wetland Resource Areas during land disturbance and construction activities. Erosion and sedimentation controls shall be designed, installed and maintained in general accord with specifications included in the latest version of the Massachusetts Erosion and Sedimentation Control Guidelines for Urban and Suburban Areas: A Guide for Planners, Designers, and Municipal Officials published by the Massachusetts Executive Office of Environmental Affairs (EOEA) as well as with Chapter 19 STORMWATER MANAGEMENT ORDINANCE, of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO, as amended.

SECTION 6.0: VIOLATIONS AND ENFORCEMENT:

§6.1, INTRODUCTION:

The following section presents what acts the Conservation Commission may consider a violation of the Act or ordinances, and outlines actions the Conservation Commission and its Agent may employ in response to violations or apparent violations of the Act or ordinances. Experience of this Commission demonstrates that enforcement situations are rarely alike. Each situation presents its own combination of characteristics such as: the nature of the violation; availability and reliability of evidence; severity and immediacy of the threat posed to wetland values; ability to identify and contact responsible parties; and the applicability of the State laws and City ordinances.

§6.2, POWERS OF THE CONSERVATION AGENT:

The Conservation Agent is duly authorized to act on behalf of the Conservation Commission to the extent allowed by the Act and the ordinance to enforce the provisions of these laws and all Permits and Orders issued by the Commission.

§6.3, VIOLATIONS DEFINED:

Each day a violation exists constitutes a separate violation. Violations include, but are not limited to:

- Refusal or failure to comply with a Local Wetlands Permit;
- Failure or refusal to observe a particular condition or time specified in a Local Wetlands Permit;
- Refusal or failure to complete work described in a Local Wetlands Permit, whether or not such failure causes damage to the interests protected by the ordinance; and
- Refusal or failure to obtain a valid Local Wetlands Permit prior to conducting an activity subject to regulation under the ordinance.

§6.4, ENFORCEMENT:

If the Commission determines that an activity is in violation of the ordinance and/or a Permit issued pursuant to the ordinance, the Commission may: (1) issue an Enforcement and Restoration Order; and/or (2) hold a public hearing to consider whether the landowner should be fined for the violation. In appropriate cases, the Commission may issue an Enforcement Order under the Act in lieu of or in addition to a Restoration Enforcement Order issued under the ordinance. Restoration of the area to its pre-existing condition shall be required under a Restoration Enforcement Order. The WETLANDS PROTECTION ACT carries its own provisions for fines, which will be enforced by the Commission where appropriate. An Enforcement Order issued under the Act and its regulations, and/or under the City ordinance shall constitute a warning that a public hearing and a possible fine may result.

§6.4.1, ADDITIONAL ENFORCEMENT ACTIONS:

The following remedies are available to the Commission, and shall be employed in addition to or in lieu of the other provisions of this section where the Commission deems appropriate.

1. The Commission may seek remedies authorized under the Act including instituting a civil action seeking injunctive relief, penalties up to TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS per day, and access to the site. The Commission may also seek under the Act criminal enforcement including penalties up to TWENTY-FIVE THOUSAND (\$25,000.00) DOLLARS per day. The Commission may also seek enforcement by the Massachusetts Department of Environmental Protection, which may include investigation and enforcement by the Attorney General, and/or administrative penalties.
2. The Commission may also seek remedies under the ordinance, including instituting a civil action to obtain an injunction without the imposition of penalties, criminal enforcement of up to THREE HUNDRED (\$300.00) DOLLARS per day, and non-criminal citations of up to THREE HUNDRED (\$300.00) DOLLARS per day.

§6.4.2, ISSUANCE OF ENFORCEMENT ORDER:

An Enforcement Order issued by the Commission shall be signed by a majority of the Commission present to constitute a valid order. Should a situation require immediate action, an Enforcement Order may be signed by a single member of the Commission or by the Conservation Agent. In such a case, the Order shall be ratified by a majority of members at the next scheduled meeting of the Commission. Any Commissioner or the Agent shall be the sole determining authority whether such violations require immediate attention.

§6.4.3, ISSUANCE OF CRIMINAL FINES:

If the Commission contemplates a criminal fine or an adjustment of a fine for a violation, the Commission shall at its next public hearing discuss the violation and give the landowner or the landowner's representative an opportunity to respond to the evidence and circumstances. Consistent with due process, the applicant shall have the opportunity to present evidence on his/her behalf at such hearing. The landowner shall be given at least forty-eight (48) hours notice in writing of the date, time and place of the public hearing, by certified mail or hand delivery. The Commission reserves the right to adjust a fine in response to new information or new circumstances at a public hearing to which the landowner will be given notice as herein outlined. The WETLANDS PROTECTION ACT carries its own provisions for fines, which will be enforced by the Commission where appropriate.

§6.4.3.1, AMOUNT OF CRIMINAL FINES:

If a majority of the Commission present at the hearing finds by a preponderance of the evidence that a violation has occurred, the landowner shall be levied a fine of not more than THREE HUNDRED (\$300.00) DOLLARS per violation in accordance with the ordinance.

§6.4.3.2, CALCULATION OF CRIMINAL FINES:

The Commission hereby establishes guidelines for calculating the appropriate amount of the fine if levied by the Commission.

1. Each day a violation exists constitutes a separate violation.
2. A fine may be issued in conjunction with or in lieu of any other enforcement issued under this section.
3. The Commission may levy a fine of THREE HUNDRED (\$300.00) DOLLARS for any action which removes, fills, dredges, builds upon, degrades, discharges into, or otherwise alters (collectively “alteration of”) a Wetland Resource Area as defined in the ordinance.
4. The Commission may levy a fine of THREE HUNDRED (\$300.00) DOLLARS for cutting of plant life or trees anywhere within an Area Subject to Protection.
5. The Commission may levy a fine of THREE HUNDRED (\$300.00) DOLLARS per one hundred (100) square feet of area destroyed for plant life smaller than one–inch caliper.

§6.4.3.3, NOTICE OF CRIMINAL FINES:

The Commission shall send in writing to the responsible landowner by certified mail or by hand delivery a Notice of Fine, or fines, which includes an explanation thereof, and the date or approximate date of the violation from which daily violations are counted.

§6.4.3.4, RESERVATION OF CRIMINAL FINES:

The Commission may, in its discretion, withhold sending the Notice of Fine for a specified time where the landowner submits a written plan with a timetable for full restitution of the violation. However, if satisfactory restitution is not made in a timely manner, the notice shall be retroactive to the start of the violation.

§6.4.3.5, PAYMENT OF CRIMINAL FINES:

The fine or fines under the ordinance shall be made payable to the City of Attleboro and shall be due within twenty–one (21) days of the date of issuance of the notice.

§6.5, NON–CRIMINAL ENFORCEMENT OF ORDINANCE VIOLATIONS:

In addition to other remedies provided herein, the Commission may employ the non–criminal enforcement procedure Pursuant to MGL CH. 40 §21D, adopted by the Attleboro Municipal Council as a City ordinance. A violator of the ordinance may be issued a non–criminal citation and assessed a fine up to THREE HUNDRED (\$300.00) DOLLARS per violation. Each day a violation exists constitutes a separate violation. A separate citation may be issued for each violation.

Any person so notified may appear before the clerk of the District Court and pay the fine, or may mail the fine together with a copy of the notice to the City Clerk. Any appearance or payment under this paragraph is not deemed to be a criminal proceeding. If the citation is not paid in full within twenty–one (21) days of its issuance, the Agent shall make application for a criminal complaint in the District Court.

The procedure for appeal of a citation is described in the City’s Non–Criminal Disposition of Violations Ordinance (§1–5.2 of the REVISED ORDINANCE OF THE CITY OF ATTLEBORO, as amended) as well as in MGL CH. 40, §21D, and allows the violator to request a hearing in writing within twenty–one (21) days after the date of the notice. Such hearing will be held before a district court judge, clerk, or assistant clerk, or, as the court shall direct.

SECTION 7: SEVERABILITY

The invalidity of any section or provision of these rules and regulations shall not invalidate any other section or portion thereof, nor shall it invalidate any permit or determination that previously has been issued.

SECTION 8: EFFECTIVE DATE

These regulations shall be effective upon the date of adoption by the Attleboro Conservation Commission.

APPENDIX A

GENERAL INSTRUCTIONS AND CHECKLIST FOR COMPLETING REQUEST FOR DETERMINATION OF APPLICABILITY



CITY OF ATTLEBORO CONSERVATION COMMISSION

GOVERNMENT CENTER, 77 PARK STREET
ATTLEBORO, MASSACHUSETTS 02703
(508) 223-2222 FAX 222-3046

GENERAL INSTRUCTIONS AND CHECKLIST FOR COMPLETING REQUEST FOR DETERMINATION OF APPLICABILITY

The Massachusetts Wetlands Protection Act, M.G.L. Ch131 §40 (hereafter Act) and the City of Attleboro Wetlands Protection Ordinance, Chapter 18 of the REVISED ORDINANCES OF THE CITY OF ATTLEBORO (hereafter Ordinance) were enacted to provide protection of wetland resources of the Commonwealth. Under these laws, no alteration, as defined in the laws, is allowed in or within one hundred (100') feet of a wetland or two hundred (200') feet of a perennial river or stream without the review and approval of the Conservation Commission. In the case of the Ordinance, there may be additional jurisdiction over isolated wetlands and vernal pools. The Ordinance also provides for a “no disturbance” area within twenty-five (25') feet of all protected wetland resources in Attleboro.

Any person desiring to know if a proposed activity or an area is subject to protection under the Act or the Ordinance may file a Request for Determination of Applicability (RFD). In order to facilitate review of your proposal, please be sure that the following items are included in your RFD application.

Filing Requirements

- ❑ Two (2) complete copies of the Massachusetts Department of Environmental Protection (DEP) WPA Form 1 – *Request for Determination of Applicability* (revised 2/00). **This form may be used for filings under both the Act and the Ordinance.** The RFD application must be completed in accordance with DEP instructions and include all necessary supporting documentation. One must include the original signatures of the applicant and representative (if any).
- ❑ Two (2) *copies* of a locus map consisting of an 8.5"x11" portion of the United States Geological Survey (USGS) topographic quadrangle map clearly identifying the locations of proposed work.
- ❑ Two (2) copies of an 8.5"x11" portion of the Federal Emergency Management Agency, Flood Insurance Rate Map clearly identifying the location of proposed work.
- ❑ Nine (9) copies of a site plan describing the proposed work. Plans must be clearly drawn and depicting sufficient details to clearly describe the proposed project and/or resource area in question. Plans should, at a minimum, include the following items where applicable: property lines; existing and proposed grades with at least two (2') foot contours; the boundary of wetland resource areas; the boundary of the one hundred (100') foot buffer zone; the boundary of the twenty-five (25') foot “no disturb” zone; all proposed structures within the buffer zone; offset distances from proposed structures and the limit of work from resource areas; and the Assessor’s plat and lot number, street number, and subdivision lot number, where applicable. All plans shall be highlighted with transparent marker pen as follows: wetland boundary in blue; one hundred (100') foot buffer zone in yellow; twenty-five (25') foot “no disturb” zone in green; and 100-year floodplain in orange. If a septic system is proposed in an area subject to Commission jurisdiction, the Commission may require plans showing compliance with Title 5 of the Massachusetts Sanitary Code.
- ❑ A check in the amount of FIFTY (\$50.00) DOLLARS made payable to the City of Attleboro to cover the

cost of the newspaper legal advertisement.

- ❑ There is no filing fee for a determination under the Act. However, if you are requesting a determination under the Ordinance, a filing fee of TWENTY-FIVE (\$25.00) DOLLARS is required. Make check payable to the City of Attleboro.
- ❑ Two (2) copies of the Conservation Commission's *Certified List of Abutters* signed by an authorized representative of the City Assessor's Office.
- ❑ One set of mailing labels with the typed or neatly printed names and addresses of all abutters. Labels are usually included with the signed *Certified List of Abutters* provided by the Assessor's Office.
- ❑ Two (2) copies of the RFD and supporting documents, including site plans must be delivered to the DEP Southeast Regional Office in accordance with filing instructions contained within the RFD.

Note: Anyone desiring to confirm the precise boundaries of Bordering Vegetated Wetlands (BVW) or other wetland resource areas protected under the Act should file WPA Form 4A – *Abbreviated Notice of Resource Area Delineation*.

Public Hearing Schedule and Filing Deadline: Once a complete RFD application is filed, the Conservation Commission will schedule a hearing and issue a decision within twenty-one (21) days of its receipt. The RFD must be submitted to the Commission no later than thirteen (13) days prior to a scheduled meeting. Generally, the Commission meets every first and third Wednesday of the month. You may call the Conservation Commission office to confirm the schedule. Applicants who wish guidance prior to submitting an application should consult with the Conservation Agent for further assistance

Site Visits: Conservation Commission members and/or the Conservation Agent will typically conduct a site visit to view the site as part of the information gathering process. Site visits are conducted prior to the public hearing in order to adhere to the twenty-one (21) day limit for the Commission to issue a decision. On occasion, the Conservation Commission may wish to conduct an additional site visit after hearing testimony at the public hearing. In these instances, the Commission will request the applicant's permission to continue the public hearing to the next regularly scheduled meeting date in order to provide time for the site visit. A date and time for the site visit will be determined at the public hearing and efforts will be made to assure that the site visit is compatible with the applicant's schedule.

APPENDIX B

GENERAL INSTRUCTIONS AND CHECKLIST FOR COMPLETING NOTICE OF INTENT AND LOCAL WETLANDS PERMIT APPLICATION



CITY OF ATTLEBORO CONSERVATION COMMISSION

GOVERNMENT CENTER, 77 PARK STREET
ATTLEBORO, MASSACHUSETTS 02703
(508) 223-2222 FAX 222-3046

GENERAL INSTRUCTIONS AND CHECKLIST FOR COMPLETING NOTICE OF INTENT AND LOCAL WETLANDS PERMIT APPLICATION

The Massachusetts Wetlands Protection Act, M.G.L. Ch131 §40 (hereafter Act) and the City of Attleboro Wetlands Protection Ordinance, Chapter 18 of the Revised Ordinances of the City of Attleboro (hereafter Ordinance), were enacted to provide protection of wetland resources of the Commonwealth. Under these laws, no alteration, as defined in the statutes, is allowed in or within one hundred (100') feet of a wetland or two hundred (200') feet of a perennial river or stream without the review and approval of the Conservation Commission. In the case of the Ordinance, there may be additional jurisdiction over isolated wetlands and vernal pools. The Ordinance also provides for a “no disturbance” area within 25 feet of all protected wetland resources in Attleboro.

In order to facilitate review of your proposal, please be sure that the following items are included in your Notice of Intent (NOI) application. **If activities are proposed within a wetland resource area protected under the Ordinance, including lands within 25 feet, you must also file a *Local Wetlands Permit Application*.**

Filing Requirements

- Two (2) complete copies of the Massachusetts Department of Environmental Protection (DEP) WPA Form 3 – *Notice of Intent* (revised 12/15/00). The NOI application must be completed in accordance with DEP instructions and include all supporting documentation. One must include the original signatures of the applicant, property owner, and representative (if any).
- Two (2) complete copies of the Conservation Commission’s *Local Wetlands Permit Application* if work is proposed within a wetland resource area or its twenty-five (25') foot “no disturbance” zone. One must include the original signatures of the applicant and property owner.
- Nine (9) copies of site plan(s) describing the proposed work. Plans must be clearly drawn at a scale of no less than 1"=40' and depicting sufficient details to clearly describe the proposed project. Plans should include at a minimum: property lines; existing and proposed grades with at least two (2') foot contours; the boundary of wetland resources denoted with consecutively numbered flags; the boundary of the one hundred (100') foot buffer zone; the boundary of the twenty-five (25') foot “no disturb” zone; all proposed structures within the buffer zone; offset distances from proposed structures and the limit of work from resource areas; and the Assessor’s plat and lot number, street number, and subdivision lot number, where applicable. All plans shall be highlighted with transparent marker pen as follows: wetland boundary in blue; one hundred (100') foot buffer zone in yellow; 25 foot “no disturb” zone in green; and 100-year floodplain in orange. The Conservation Commission may require that plans be stamped by a Professional Engineer or Registered Land Surveyor. If a septic system is proposed in an area subject to Conservation Commission jurisdiction, plans must show compliance with Title 5 of the Massachusetts Sanitary Code.

- Two (2) copies of supporting calculations, and other documentation necessary to completely describe the proposed work and mitigation measures, including where appropriate:
 - An 8.5"x11" portion of the United States Geological Survey (USGS) topographic quadrangle map clearly identifying the location of proposed work.
 - An 8.5"x11" portion of the Federal Emergency Management Agency, Flood Insurance Rate Map clearly identifying the location of proposed work.
 - Quantitative documentation (i.e., DEP Field Data Forms) to support the delineation of a vegetated wetland, with certification from the wetland biologist responsible for the delineation, stating the basis for the delineation, the date on which the delineation was performed, and stating that the delineation as shown on the plans appears to be correct.
 - A wetlands replication plan detailing the methods of construction for any wetland replication area proposed as mitigation for wetland alterations. The plan should be prepared by a competent professional with experience in the design and construction of wetland replication areas.
 - A wildlife habitat assessment, where alteration to a wetland resource area or naturally-vegetated "no disturbance" zone are proposed.
 - WPA Appendix C – *Stormwater Management Form* including appropriate calculations for projects which require conformance with DEP's Stormwater Management Policy prepared by a competent professional. The Commission may require that calculations and plans be stamped by a Professional Engineer.
- Two (2) copies of WPA Appendix B – *Wetland Fee Transmittal Form* including the appropriate filing fee, and two (2) copies of the payment checks submitted to DEP and the Conservation Commission (make Commission's check payable to the City of Attleboro). If you are filing a *Local Wetlands Permit Application*, a filing fee of ONE HUNDRED FIFTY (\$150.00) DOLLARS is also required.
- A check in the amount of FIFTY (\$50.00) DOLLARS made payable to the City of Attleboro to cover the cost of the newspaper legal notice.
- Two (2) copies of the Conservation Commission's *Certified List of Abutters* signed by an authorized representative of the City Assessor's Office. Evidence that all required abutters have been notified (refer to the form for abutter notification procedures). Notification should be made by using the Conservation Commission's revised *Notification to Abutters* form. Certified mail receipts or receipts of hand delivery must be delivered to the Commission prior to opening the public hearing.
- If applicable, evidence that a copy of the NOI was delivered to the Massachusetts Natural Heritage and Endangered Species Program (NHESP) in accordance with NOI instructions.
- Two (2) copies of the NOI, filing fee, and supporting documents, including site plans must be delivered to the DEP Southeast Regional Office in accordance with filing instructions contained within the NOI.

The Conservation Commission may choose, at its discretion, to waive some of the above requirements for projects likely to result in minimal or no impact. However, the Commission reserves the right to require additional information during the course of the public hearing. Applicants who wish guidance prior to filing an application may consult with the Conservation Agent.

Public Hearing Schedule and Filing Deadline: Once a complete NOI application is filed, the Conservation Commission will schedule a hearing within twenty-one (21) days of its receipt. The NOI must be submitted to the Commission no later than thirteen (13) days prior to a scheduled meeting. Generally, the Commission meets every first and third Wednesday of the month. You may call the Conservation Commission office to confirm the schedule. **Supplemental information should be submitted within five (5) days of the public hearing to be considered.** Failure to submit supplemental information within this timeframe may be grounds for the Commission to continue a public hearing.

Site Visits: The Conservation Commission typically conducts a site visit as part of the information-gathering process. Site visits are typically conducted prior to regularly scheduled meetings (daylight permitting) or on Saturday mornings. The date and time for the site visit will be determined at the public hearing and efforts will be made to assure that the site visit is compatible with the applicant's schedule and will not result in unnecessary delays in the application process.

APPENDIX C

Massachusetts Division of Fisheries and Wildlife's Natural Heritage

and

**Endangered Species Program Guidelines
For
Certification of Vernal Pool Habitat**



Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

Guidelines for the Certification of Vernal Pool Habitat

Vernal Pool Fact Sheet

WHAT ARE VERNAL POOLS?

Vernal pools are temporary bodies of fresh water that provide critical habitat for many vertebrate and invertebrate wildlife species. "Vernal" means spring, and indeed, many vernal pools are filled by spring rains and snowmelt, only to dry up during the hot, dry months of summer. However, many vernal pools are filled by the rains of autumn and may persist throughout the winter. Vernal pools are quite often very small and shallow; vernal pools that support rich communities of vertebrate and invertebrate animals may measure only a few yards across. However, vernal pools of several acres occur throughout Massachusetts.

WHERE ARE VERNAL POOLS FOUND?

Vernal pools are common in Massachusetts, occurring in every town in the state. Vernal pools are found across the landscape where small woodland depressions, swales or kettle holes collect spring runoff or intercept seasonally high groundwater tables. Although many people associate vernal pools only with dry woodland areas, vernal pools also occur in meadows, river floodplains, interdunal swales, and large vegetated wetland complexes. Vernal pool habitat occurs wherever water is contained for more than 2 months in the spring and summer of most years and where no fish are present.

WHY ARE VERNAL POOLS VALUABLE?

Vernal pools constitute a unique and increasingly vulnerable type of wetland. Vernal pools are inhabited by many species of wildlife, some of which are totally dependent on vernal pools for their survival. Vernal pools do not support fish because they dry out annually or at least periodically. Some may contain water year round, but are free of fish as a result of significant drawdowns that result in extremely low dissolved oxygen levels. The wood frog (*Rana sylvatica*) and the four local species of mole salamander (*Ambystoma* spp.) have evolved breeding strategies intolerant of fish predation on their eggs and larvae; the lack of

Some state-listed species that may be found in vernal pools

Species	Status ¹
Blue-spotted salamander (<i>Ambystoma laterale</i>) ²	SC
Jefferson salamander (<i>Ambystoma jeffersonianum</i>) ²	SC
Marbled salamander (<i>Ambystoma opacum</i>) ²	T
Four-toed salamander (<i>Hemidactylium scutatum</i>) ³	SC
Eastern spadefoot toad (<i>Scaphiopus holbrookii</i>) ²	T
Spotted turtle (<i>Clemmys guttata</i>) ³	SC
Wood turtle (<i>Clemmys insculpta</i>) ³	SC
Blanding's turtle (<i>Emydoidea blandingii</i>) ²	T

¹ Status pursuant to the MA Endangered Species Act - T: Threatened; SC: Special Concern

² Obligate species require vernal pool habitat to successfully breed

³ Facultative species may use vernal pools but do not require them

fish populations is essential to the breeding success of these species. Other amphibian species, including the American toad (*Bufo americanus*), green frog (*Rana clamitans*), and the red-spotted newt (*Notophthalmus viridescens*), often exploit the fish-free waters of vernal pools but do not depend on them. Vernal pools also support rich and diverse invertebrate faunas. Some invertebrate species, such as fairy shrimp (*Eubranchipus* spp.), are also entirely dependent upon vernal pool habitat. Invertebrates are both important predators and prey in vernal pool ecosystems. Vernal pools are an important habitat resource for many birds, mammals, reptiles and amphibians, including many state-listed rare species.

VERNAL POOL PROTECTION

The Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00), the Massachusetts Surface Water Quality Standards (314 CMR 4.00) used to administer section 401 of the federal Clean Water Act, the Massachusetts Environmental Code: Title 5, and the Forest Cutting Practices Act regulations all provide protection to vernal pools that have been officially certified. The regulations for both the Wetlands Protection Act and Forest Cutting Practices Act also provide protection to vernal pools that have not been certified if their occurrence is adequately documented during permit review. Protection under any of these laws requires the following:

- 1) the vernal pool occurs in an area subject to the jurisdiction of the regulations; and
- 2) the activities proposed are regulated.

The Massachusetts Wetlands Protection Act regulations (310 CMR 10.00) protect certified vernal pools and *up to* 100 feet beyond the boundary of the pool (referred to as the “vernal pool habitat”), by preventing alterations which would result in the reduction of the wildlife habitat value of the certified vernal pool. A certified vernal pool is not automatically protected by these regulations, though. Certified vernal pools must occur within a resource area that comes under the jurisdiction of the Act before they receive protection. Similarly, the 100 feet around the vernal pool does not extend into non-jurisdictional upland or the buffer zone of a resource area. Though the regulations specify performance standards for vernal pools that are located in Bordering or Isolated Land Subject to Flooding (BLSF and ILSF respectively), vernal pools that occur within any wetland resource area are protected for their wildlife habitat value under the Wetlands Protection Act. Performance standards may be applied by a conservation commission to protect vernal pools that occur in any jurisdictional wetland resource area.

Vernal pools that are not certified may also be protected by a local conservation commission or the DEP if credible scientific evidence is presented up until the end of the appeals period for a Superseding Order of Conditions issued by the DEP. A conservation commission, or the DEP on appeal, can incorporate protective conditions into an Order of Conditions that would prevent the alteration of the wildlife habitat value of the pool and its 100 foot “vernal pool habitat” if they occur within a regulated wetland even though it is not certified.

Each DEP Regional Office has at least one Vernal Pool Liaison who should be contacted for all questions related to the protection of both certified and uncertified vernal pools. Since regulatory authority rests with the Department, they are best able to answer questions about what may or may not happen in or around vernal pools. Your regional liaison may be reached at the following addresses:

Northeast Regional Office
Wayne Lozzi
203-A Lowell Street
Wilmington, MA 01887
(978) 661-7600

Southeast Regional Office
Daniel Gilmore
20 Riverside Drive
Lakeville, MA 02347
(508) 946-2700

Central Regional Office
Marielle Stone
627 Main Street
Worcester, MA 01608
(508) 792-7650

Western Regional Office
Karen Hirschburg
State House West, 4th Floor
Springfield, MA 01103
(413) 748-1100

The Massachusetts Surface Water Quality Standards (314 CMR 4.00) administer Section 401 of the federal Clean Water Act and protect certified vernal pools. Under these regulations, any certified vernal pool is classified as an Outstanding Resource Water (ORW). The regulations, administered by the DEP, strictly prohibit discharges of solid or liquid fill within certified vernal pools. Storm drainage from roads and rooftops as well as solid fill are prohibited within the boundaries of the pool. As is the case with the Wetlands Protection Act however, the certified vernal pool as well as the proposed activity must be within the jurisdiction of these regulations - the state's Clean Water Act - before it receives this protection.

The Massachusetts Environmental Title 5 (310 CMR 15.000) regulates the siting and construction of subsurface sewage disposal (septic) systems in the state. A system's septic tank and distribution box must be located a minimum of 50 feet, and the leaching field a minimum of 100 feet, from the boundary of a certified vernal pool.

The Massachusetts Forest Cutting Practices Act Regulations (3.04 CMR 11.00) protect certified vernal pools from certain forestry impacts. Harvesting requirements limit cutting to no more than 50% of the trees within 50 feet of a certified vernal pool. They also require that trees or tree tops not be felled in certified vernal pools, and restrict the use of pools as staging areas or skidder trails. Guidelines, similar to the regulations, are established for activities planned near uncertified vernal pools identified by consulting foresters.

THE VERNAL POOL BOUNDARY

The extreme edges of vernal pool habitat represent one of the most ecologically valuable portions of these habitats. Shallow water at the edge of a pool is generally the first to thaw in the spring. This provides early access to the pool for the earliest breeding species. The shallow water zones also tend to be significantly warmer than the deeper portions of a vernal pool throughout the spring. Egg masses of early breeding amphibians benefit from the warmer water temperatures at the pool edges that promote rapid egg development.

The boundary of vernal pool habitat must incorporate the shallowest reaches of the pool. Where there is no distinct and clear topographic break at the edge of a pool, the maximum observed or recorded water level represents the ecological boundary of the vernal pool. This boundary is evident and should be delineated by leaf staining and other indicators of hydrology outside of the peak-flood stage of early spring (March through early April in most cases).

PLEASE NOTE The boundary of vernal pool habitat may be defined differently for the purpose of state or federal protection.

The physical, on-the-ground, boundary of a certified vernal pool is not established when a certification number is issued. Field observations of maximum flood levels, or of indicators of the maximum water level, must be made to determine the boundary. The boundary must be established based on field observation of water level indicators. The NHESP, in certifying a vernal pool, does not visit the pool, and as such does not establish the actual boundary through the certification process. Therefore, in recording observations of vernal pools for the purpose of certification, notes pertaining to observed water level and recognizable landmarks that show maximum flooding are extremely helpful in boundary delineation.

The Wetlands Protection Act regulations allows a project proponent to submit an opinion as to the extent of a certified vernal pool that is based upon a theoretical one year storm of a total of 2.7 inches of water in 24 hours. If an opinion based on this theoretical storm event is to be submitted, it should also include ground water that the basin is holding at the beginning of the spring amphibian breeding season. Calculations without groundwater inputs will under-represent the true size of the vernal pool. The DEP has stated in its program policies that ground water inputs should not be ignored in these calculations because it will result in a total volume that may be considerably smaller than the basin holds in any given spring.

HOW CAN VERNAL POOLS BE CERTIFIED?

The Massachusetts Natural Heritage & Endangered Species Program administers the official vernal pool certification program. The certification program depends entirely on volunteer effort and the initiative of interested individuals and organizations. Interested parties should locate potential vernal pools and then:

1. Contact the Massachusetts Natural Heritage & Endangered Species Program [(508) 792-7270, ext. 200 or www.state.ma.us/dfwele/dfw/nhesp/heritage.htm] to obtain the official *Guidelines for the Certification of Vernal Pool Habitat*, along with Vernal Pool Field Observation Forms;

Certification is based on proof that a confined basin depression provides important wildlife habitat consistent with the vernal pool certification criteria in the *Guidelines*. Animals that use vernal pools at some point in their life cycle are generally divided into two groups:

Obligate Species: those vertebrate and invertebrate species that rely on vernal pools for all or a portion of their life cycle and are unable to successfully complete their life cycle without vernal pools

Facultative Species: those vertebrate and invertebrate species that can use vernal pool habitat for all or a portion of their life cycle, but are able to successfully complete their life cycle in other water bodies

Obligate species serve as *direct* indicators of vernal pool habitat because they require at least two months of flooded conditions and the absence of established fish populations. When breeding evidence of obligate species is documented, it is not necessary to prove that an established, reproducing fish population does not exist. Facultative species serve as *indirect* indicators of vernal pool habitat. Therefore, if only facultative species are observed, evidence that there is no reproducing fish population must also be submitted for certification.

2. Fill out and submit a Field Observation Form along with photographic documentation of the physical and biological criteria required by the *Guidelines* and required maps to the NHESP for review. Photographs (slides or prints) are the preferred type of documentation of the biological certification criteria observed in a vernal pool. The most easily photographed evidence of vernal pool indicator species is egg masses of wood frogs and mole salamanders. These are conspicuous in the early spring and easily distinguished from other amphibian eggs. See the *Guidelines* for details.

Following receipt of certification materials, the Natural Heritage & Endangered Species Program assesses the completeness and accuracy of the information and documentation submitted. The NHESP does not field visit pools prior to certification but relies on the presentation of accurate and clear documentation.

After it is determined that a vernal pool meets the physical and biological criteria established in the *Guidelines*, it will be officially certified by the NHESP. The observer, local conservation commission, regional office of the Department of Environmental Protection and the landowner are notified of the certification. The locations of certified vernal pools are plotted on the NHESP's "Estimated Habitats of Rare Wetlands Wildlife and Certified Vernal Pools" on a biennial basis. These maps are sent to the town clerk and to the conservation commission, and are available for viewing by the public. The NHESP also produces a statewide Atlas of these maps, reproduced at a reduced scale, which is available at cost. The certified vernal pool datalayer is also available in digital format through the MassGIS office.

January 1, 2001

Guidelines for the Certification of Vernal Pool Habitat

CERTIFICATION CRITERIA

Please read and understand the DOCUMENTATION REQUIREMENTS in the next section before submitting vernal pool certification applications.

Documentation of the biological and physical criteria described in this section is necessary to obtain official certification of any vernal pool.

DOCUMENTATION OF ANY ONE OF THE FOLLOWING (1-3) WILL CONFIRM THE EXISTENCE OF VERNAL POOL HABITAT AND IS SUFFICIENT FOR OFFICIAL CERTIFICATION

- 1) The Obligate Species Method**
- 2) The Facultative Species Method**
- 3) The Dry Pool Method**

1) The Obligate Species Method

Evidence of a confined basin depression with no permanently flowing outlet **AND** one or more of the following:

1A Breeding* Obligate Amphibian

- Wood frog (*Rana sylvatica*)
- Spotted salamander (*Ambystoma maculatum*)
- Blue-spotted salamander (*Ambystoma laterale*)**
- Jefferson salamander (*Ambystoma jeffersonianum*)**
- Marbled salamander (*Ambystoma opacum*)**
- Eastern spadefoot toad (*Scaphiopus holbrooki*)**

OR

1B Adult Obligate Invertebrate

- Fairy shrimp (ANOSTRACA: *Eubranchipus*)

*** Acceptable Breeding Evidence**

Documentation of **any one** of the following proves that an area functions as vernal pool habitat. For the purposes of official certification, if amphibian evidence is submitted it must show evidence of breeding.

1. Breeding Adults
 - Frogs and toads: breeding chorus and/or mated pairs
 - Salamanders: courting individuals (congressing) and/or spermatophores
2. Egg Masses (**two or more are required**)
3. Larvae (tadpoles or salamander larvae)
4. Transforming Juveniles
 - Frogs and toads: tail remnants evident
 - Salamanders: gill remnants evident

**** State-listed Species**

State-listed Endangered (E), Threatened (T) and Special Concern (SC) species are protected under the Massachusetts Endangered Species Act (321 CMR 10.60); fill out a Rare Animal Observation Form and submit along with Certification Form.

Guidelines for the Certification of Vernal Pool Habitat

**CERTIFICATION CRITERIA
Continued**

2) The Facultative Species Method

Evidence of a confined basin depression with no permanently flowing outlet **AND** evidence that there is no established, reproducing fish population

AND photographs of two or more of the following:

AMPHIBIANS

- Breeding* Spring peeper (*Pseudacris crucifer*)
- Breeding* Gray treefrog (*Hyla versicolor*)
- Breeding* American toad (*Bufo americanus*)
- Breeding* Fowler's toad (*Bufo woodhousii*)
- Breeding* Green frog (*Rana clamitans melanota*)
- Breeding* Pickerel frog (*Rana palustris*)
- Breeding* Leopard frog (*Rana pipiens*)
- Breeding* Four-toed salamander
(*Hemidactylium scutatum*)**
- Adult or Breeding* Red-spotted Newt
(*Notophthalmus v. viridescens*)

REPTILES

- Spotted turtle (*Clemmys guttata***)
- Blanding's turtle (*Emydoidea blandingii***)
- Wood turtle (*Clemmys insculpta***)
- Painted turtle (*Chrysemys p. pictata*)
- Snapping turtle (*Chelydra serpentina*)

INVERTEBRATES

- Predaceous diving beetle larvae (*Dytiscidae*)
- Water scorpion (*Nepidae*)
- Dragonfly larvae (*Odonata: Anisoptera*)
- Damselfly larvae (*Odonata: Zygoptera*)
- Dobsonfly larvae (*Corydalidae*)
- Whirligig beetle larvae (*Gyrinidae*)
- Caddisfly larvae (*Trichoptera*)
- Leeches (*Hirundinea*)
- Freshwater (fingernail) clams (*Pisidiidae*)
- Amphibious, air-breathing snails (*Basommatophora*)

3) The Dry Pool Method

Evidence of a confined basin depression containing no standing water (dry pool)

AND one or more of the following:

- Cases of caddisfly larvae (*Trichoptera*)
- Adults, juveniles or shells of either of the following:
 - Freshwater clams (*Pisidiidae*)
 - Amphibious, air-breathing snails (*Basommatophora*)
- Shed skins (exuvia) of dragonfly or damselfly larvae on vegetation along the edge of pool

Guidelines for the Certification of Vernal Pool Habitat

DOCUMENTATION REQUIREMENTS

Documentation of the biological and physical characteristics listed in the CERTIFICATION CRITERIA must be submitted for official certification of a vernal pool. Photographic prints or slides are the preferred method of documentation, but video tapes of evidence or audio recordings of calling frogs are acceptable. Field notes are encouraged, but are not accepted as the sole source of evidence; they must be submitted along with photographic or taped documentation.

Label all photographs as follows:

**Location of pool
(or your tracking number)
Date of photograph
Observer's name**

The following field observations must be adequately documented

1. Biological criteria:

1A Clear photographs or video of obligate amphibian breeding evidence

OR

1B Clear photographs or video of facultative invertebrate or vertebrate species (**AND** 2B or 2C)

OR

1C Audio tape of frog breeding chorus

2. Fishlessness:

2A Evidence of obligate species per CERTIFICATION CRITERIA (1A above)

OR

2B Photograph of dry vernal pool

OR

2C Scientific evidence (e.g. seining) that documents the absence of fish

3. Physical criteria:

Clear photographs or video of the vernal pool demonstrating the lack of permanently flowing connections to larger wetlands

MAPPING REQUIREMENTS

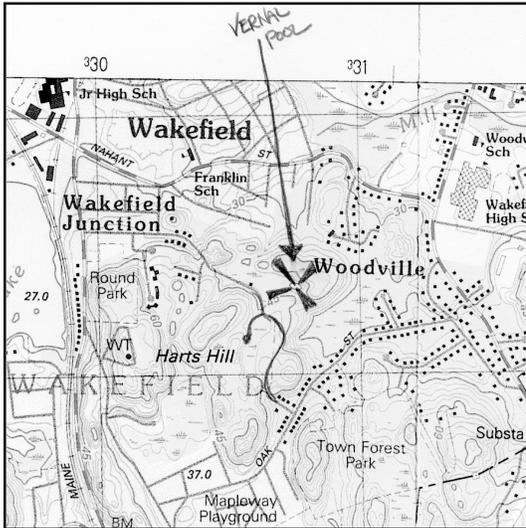
It is critical to provide maps that are accurate and clear when submitting information for state vernal pool certification. A copy of a 1:24,000 or 1:25,000 scale **U.S. Geological Survey topographic map is required**, and additional maps that clarify the position of the vernal pool must be submitted. There are many maps are acceptable for this purpose, but please note that street maps generally are not. Supporting maps should provide more detail than the USGS topo map.

At least one from each of the following groups must be submitted:

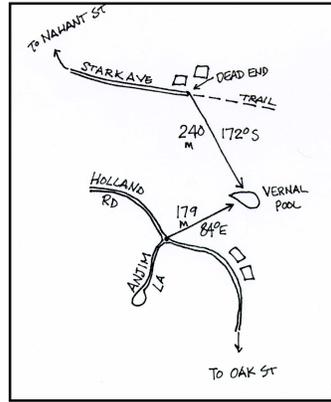
GROUP 1	GROUP 2
<p>USGS topographic: The location of the vernal pool must be clearly and accurately marked with an 'X' or dot. Be sure to write down the name of the map (found in the bottom right-hand corner) on the copy sent in</p>	<p>Aerial photograph Large scale (1:12,000 or better) with pool clearly visible Sketch map with compass directions and distances Magnetic compass direction and distances from two permanent landmarks within 1000 feet of the pool. Landmarks should be readily identifiable in the field and clearly described on the submitted map Professional survey or local 1- or 2-foot contour topographic map Large scale topographic maps or project plans where the depression is evident</p>

Guidelines for the Certification of Vernal Pool Habitat

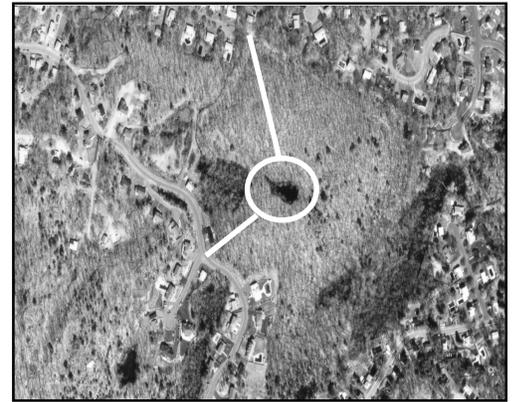
Examples of maps that can be submitted for certification. A USGS topographic map must be submitted (please note the map name, found in the lower right and upper left corners of the map), along with at least one additional map (see previous page for list).



USGS Topographic map section with pool clearly marked



Sketch map with compass directions and distance from landmarks



B&W copy of color infra-red aerial photograph (1:12,000 scale) with pools visible or clearly marked

Field Observation Form

Application for certification of vernal pool habitat should be made using the standard field observation form (revised in 1999). All requested information should be filled out to the fullest extent possible. Additional directions are provided on the field form.

Please give particular attention to the following items:

Section 1: Written directions to the pool must be provided, noting field markers to help navigation.

Section 2: Please indicate the dates on which evidence was collected, including the year.

Section 3: Indicate the evidence of obligate and facultative species collected at each pool. If egg masses were found, indicate the number of masses discovered.

Section 4 and 5: Check the boxes corresponding to evidence submitted for each pool (in photographs or tape)

Optional Information: Information provided in this section gives the Natural Heritage & Endangered Species Program a better sense of the type of vernal pools that are being identified through the certification program, and aides in-field identification of the pools should anyone need to visit it. This section is optional, but provides very helpful information.

Section 6: Field forms must be signed at the bottom of page 2.

Incomplete submissions will be returned in full with a letter indicating any missing information. When the requested information has been collected, the application may be resubmitted.

Submit completed applications to:

Vernal Pool Certification
 Natural Heritage & Endangered Species Program
 Route 135
 Westborough, MA 01581



Natural Heritage & Endangered Species Program Massachusetts Division of Fisheries and Wildlife Vernal Pool Field Observation Form

(7/99)

(For use with *Guidelines for Certification of Vernal Pool Habitat*)

PVP

For office use only.

1. Pool location

Town _____ County _____

USGS Quadrangle name _____ SERIES 7.5' X 7.5'

SERIES 7.5' X 15'

WRITTEN DIRECTIONS TO POOL: _____

THIS INFORMATION
MUST BE SUBMITTED

(USE ADDITIONAL PAGES, IF NECESSARY.)

Instructions

FOR COMPLETE INFORMATION ABOUT CERTIFICATION, REFER TO *GUIDELINES FOR CERTIFICATION OF VERNAL POOL HABITAT*.

PROVIDE ALL OF THE INFORMATION REQUESTED IN BOXES 1-6. IF MORE SPACE IS REQUIRED, ATTACH ADDITIONAL PAGES. INCLUDE ALL REQUIRED PHOTOGRAPHS AND DOCUMENTATION. SIGN THE FORM IN THE AREA PROVIDED ON THE REVERSE SIDE. **INCOMPLETE OR UNSIGNED SUBMISSIONS WILL BE RETURNED.**

THE FOLLOWING INSTRUCTIONS REFER TO EACH OF THE NUMBERED BOXES.

1. THE 7.5 X 7.5 SERIES HAS THE LEGEND "7.5 MINUTE SERIES" IN THE UPPER RIGHT HAND CORNER ALONG WITH THE QUADRANGLE NAME. THE 7.5 X 15 MINUTE SERIES IS SO LABELED IN THE UPPER RIGHT HAND CORNER AND HAS THE QUADRANGLE NAME IN THE LOWER RIGHT CORNER.

WRITTEN DIRECTIONS **MUST** BE INCLUDED.

2 INDICATE THE FIRST AND LAST DATES THAT THE POOL OR ITS BIOLOGICAL COMPONENTS WERE OBSERVED.

3. PART A AND B ARE FOR CERTIFICATION BY OBLIGATE SPECIES. PART C IS EITHER FOR ADDITIONAL INFORMATION (APPRECIATED) OR FOR CERTIFICATION BY THE FACULTATIVE SPECIES. IF CERTIFYING BY OBLIGATE SPECIES, PROVIDE A PHOTOGRAPH OF THE POOL HOLDING WATER AND AT LEAST ONE PHOTOGRAPH (OR AUDIO TAPE FOR CHORUSING) OF BREEDING ACTIVITY.

FOR CERTIFICATION BY FACULTATIVE SPECIES, PROVIDE PHOTOGRAPHS OF THE POOL HOLDING WATER AND PHOTOGRAPHS (OR TAPES) OF THE FACULTATIVE SPECIES AS REQUIRED. ADDITIONALLY, PROVIDE A PHOTOGRAPH OF THE POOL WHEN DRY OR OTHERWISE PROVE THAT IT HAS NO FISH.

2. Observation dates

First date pool/species observed _____

Last date pool observed _____ Last date species observed _____

3 A. Evidence: obligate amphibians

Indicate date of observation.

* = RARE SPECIES	COURTING ADULTS	SPERMATOPHORES	EGG MASSES (2+)	SALAMANDER LARVAE	TRANSFORMING JUVENILES
SPOTTED SALAMANDER					
* BLUE-SPOTTED SALAMANDER					
* JEFFERSON SALAMANDER					
* MARBLED SALAMANDER					
UNIDENTIFIED MOLE SALAMANDER					
	BREEDING CHORUS	MATED PAIRS	EGG MASSES (2+)	FROG TADPOLES	TRANSFORMING JUVENILES
WOOD FROG					
* SPADEFOOT TOAD					

3 B. Evidence: fairy shrimp

DATE OBSERVED _____

3 C. Evidence: facultative organisms

Two or more must be documented. Indicate date of observation.

* = RARE SPECIES	DATE OBSERVED	ACTIVITY OBSERVED	DATE OBSERVED	ACTIVITY OBSERVED
BREEDING SPRING PEEPERS			PAINTED TURTLES	
BREEDING GRAY TREEFROGS			SNAPPING TURTLES	
BREEDING GREEN FROGS			PREDACEOUS DIVING BEETLE LARVAE	
BREEDING LEOPARD FROGS			WATER SCORPIONS	
BREEDING PICKEREL FROGS			DRAGONFLY NYMPHS	
BREEDING AMERICAN TOADS			DAMSELFLY NYMPHS	
BREEDING FOWLER'S TOADS			DOBSONFLY LARVAE	
* BREEDING FOUR-TOED SALAMANDERS			WHIRLIGIG BEETLE LARVAE	
RED-SPOTTED NEWT (ADULTS)			CADDISFLY LARVAE	
* SPOTTED TURTLES			LEECHES	
* WOOD TURTLES			FINGERNAIL (FRESHWATER) CLAMS	
* BLANDINGS TURTLES			AMPHIBIOUS AIR-BREATHING SNAILS	

Instructions (continued)

- 4. INDICATE THE PHOTOGRAPHS BEING SUBMITTED. LABEL, DATE, AND SIGN ALL PHOTOS.
- 5. MARK THE POOL CLEARLY ON ALL MAPS. THE POOL MUST BE CLEARLY DISTINGUISHED FROM OTHER WETLANDS AND BE LOCATABLE BY OTHERS. PROVIDE ANY MAPS THAT WOULD HELP SOMEONE UNFAMILIAR WITH THE AREA LOCATE THE VERNAL POOL IN THE FIELD.
- 6. THE FORM **MUST** BE SIGNED. UNSIGNED SUBMISSIONS WILL BE RETURNED WITHOUT FURTHER ACTION.

OPTIONAL INFORMATION:

PROPERTY OWNER. PROVIDE INFORMATION ABOUT PROPERTY OWNER(S), IF KNOWN. IT IS RECOMMENDED THAT YOU SEEK PROPERTY OWNER PERMISSION PRIOR TO CERTIFICATION ACTIVITIES.

RARE SPECIES. A PHOTOGRAPH IS NECESSARY FOR DOCUMENTATION OF RARE SPECIES HABITAT.

DESCRIPTION. PROVIDE ANY INFORMATION THAT WILL DISTINGUISH THE POOL FROM OTHER WETLANDS (BOULDERS, DEBRIS, TREE SPECIES, ETC.).

Optional information

Although the following information is not required for certification, it is useful to NHESP to possibly better protect the vernal pool, its habitat and species.

Property owner

IT IS STRONGLY RECOMMENDED THAT LANDOWNER PERMISSION BE OBTAINED PRIOR TO COLLECTING CERTIFICATION DOCUMENTATION.

Name _____

Address _____

Town _____ State _____ ZIP _____

Rare wetland species

Y N WERE ANY RARE STATE-LISTED SPECIES OBSERVED USING THIS POOL?

Y N IS A PHOTOGRAPH OF THE RARE SPECIES INCLUDED WITH THIS FILING?

Description of pool and surroundings

DIMENSIONS: APPROXIMATE LENGTH _____ APPROXIMATE WIDTH _____

APPROXIMATE DEPTH _____

DESCRIBE DISTINCTIVE FEATURES (ROADS, STRUCTURES, BOULDERS, ETC.) WHICH ARE VISIBLE FROM OR NEAR THE POOL.

ARE THERE OTHER DISTINCTIVE FEATURES ABOUT THIS POOL (VEGETATION TYPES, ABANDONED VEHICLES, FOOT TRAILS, ETC.) THAT WOULD HELP SOMEONE RECOGNIZE IT?

4. Photographs

MUST BE LABELED, DATED, AND SIGNED.

- POOL HOLDING WATER
- OBLIGATE +/-OR FACULTATIVE SPECIES
- DRY POOL (**REQUIRED** FOR EVIDENCE 3C)

5. Maps submitted

- USGS TOPOGRAPHIC MAP (**REQUIRED**)
- AND ONE OR MORE OF THE FOLLOWING:**
- AERIAL PHOTOGRAPH
- SKETCH MAP WITH COMPASS DIRECTIONS AND DISTANCES FROM LAND MARKS
- PROFESSIONAL SURVEY
- LARGE SCALE TOPO

OPTIONAL EXTRA INFORMATION

- SKETCH MAP OF AREA
- ASSESSOR'S MAP
- GPS LONGITUDE/LATITUDE COORDINATES

6. Observer information & signature

Name _____

Address _____

Town _____ State _____ ZIP _____

Telephone _____

e-mail _____

I hereby certify under the pains and penalties of perjury that the information contained in this report is true and complete to the best of my knowledge.

Signature _____ Date _____

SEND COMPLETED FORM AND SUPPORTING DOCUMENTATION TO:

NH&ESP
 VERNAL POOL CERTIFICATION
 MA DIVISION OF FISHERIES & WILDLIFE
 ROUTE 135
 WESTBOROUGH, MA 01581

All submissions and supporting documents will be retained by the Natural Heritage & Endangered Species Program. Information submitted on this form and other documents is part of the public record and is available to interested parties under the State Documents Request Law.



PVP

Rare Animal Observation Form

* Species name (scientific or common): _____

* Date and time of observation: _____

Amount of time spent surveying area: _____

In order for this form to be processed, the sections preceded by an asterisk (*) must be completed.

* Town: _____ County: _____ Waterbody: _____

* Please attach a photocopy of the appropriate section of a USGS topo map (or similar map if a topo map is unavailable) with the site of the observation marked. Please indicate available or occupied habitat and extent of population, if known. Indicate area searched including negative results (i.e. apparently suitable habitat was or was not surveyed). USGS (7.5 or 15) Topographic Map Name: _____

* Describe how to get to the site using obvious permanent landmarks such as a road intersection (measuring to at least the nearest 1/10 mile). _____

* Number, age, and sex of individuals: _____

Please describe how age and sex were determined: _____

Evidence of reproduction (e.g., eggs, nests, carrying food to young, copulation): _____

Behavioral notes (e.g., crossing the road, basking): _____

* Photographs taken? (Y / N) If Y, please submit one clear photograph.

* Specimen taken? (Y / N) If Y, where will the specimen be deposited: _____

* ID is based on what (e.g., sculpted shell, flight pattern): _____

Have you observed this species at this site in previous years? (Y / N) If Y, please give details: _____

