

**PROPOSED AMENDMENT TO ORONO LAND USE ORDINANCE
TO CREATE THE VERNAL POOLS OVERLAY DISTRICT**

Legislative Intent: To simultaneously streamline the regulation of vernal pools within a designated development area of Town, so that desired development in locations close to Town services, the transportation network, schools, jobs and downtown can proceed more easily, while at the same time assuring the long-term protection of vernal pools at a landscape level within rural areas of Town.

Added text is underlined, deleted text is ~~struck through~~; text that is neither underlined nor struck through is unchanged from the current ordinance.

The Orono Land Use Ordinance is amended as follows:

1. Amend Sec. 18-31, Definitions, as follows, by adding the following definitions in proper alphabetical order:

Designated Third Party Conservation Organization means a conservation organization which has a formal agreement with the Town of Orono to carry out vernal pool conservation in accordance with the provisions of the Vernal Pool Overlay District and the Town’s Vernal Pools Special Area Management Plan (SAMP) and the conservation priorities of the SAMP.

Permittee-Responsible Mitigation Activities means vernal pool conservation carried out by an applicant for a development approval or permit in accordance with the provisions of the Vernal Pool Overlay District as an alternative to paying a vernal pool mitigation fee to the Town of Orono.

Rural Area means the portion of the Town of Orono designated as Rural in the adopted comprehensive plan.

Vernal Pool means depressional wetland basins that typically go dry in most years and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in both size and depth depending upon landscape position and parent material(s). Pools usually support one or more of the following indicator species: wood frog, spotted salamander, blue-spotted salamander complex and fairy shrimp. However, they should preclude sustainable populations of predatory fish.

Vernal Pool Suitability for Conservation Assessment means an evaluation of known vernal pools in the “Rural Area” of the Town resulting in a list and map of vernal pools developed by the Town and the “designated third party conservation organization” in accordance with the Vernal Pool Conservation Criteria in the Orono Vernal Pools Special Area Management Plan (SAMP). Such list and map may be updated from time to time as additional vernal pools are identified and assessed.

Vernal Pool Mitigation Fee means a fee paid by an applicant for a development approval or permit in accordance with the provisions of the Vernal Pool Overlay District.

1
2 Vernal Pool Special Area Management Plan means a plan approved by the U.S. Army Corps of
3 Engineers (USACE) and applicable in the State of Maine to provide for landscape-level
4 protection of vernal pools while allowing economic growth within a municipally-designated
5 development area. The Orono Vernal Pool Special Area Management Plan is this plan signed by
6 signed by USACE, Maine Department of Environmental Protection, and Town of Orono for
7 implementation in Orono.

8
9 **2. Add a new Sec. 18-112. Vernal Pools Overlay District, as follows:**

10
11 **Sec. 18-112. Vernal Pools Overlay District**

12
13 (a) Intent: The purpose of the Vernal Pools Overlay District is to provide owners of property
14 located within the overlay district that is subject to state or federal regulation with respect to
15 vernal pools the option of developing and using the property in accordance with: 1) the
16 applicable state and federal wetland regulations and associated requirements for the
17 protection of vernal pools, or 2) the provisions of this section including the enhanced
18 protection of other vernal pools through payment of a “vernal pools mitigation fee” or by
19 undertaking “permittee-responsible mitigation activities.” Mitigation fees collected under
20 this section shall be used only for the purpose of protecting other vernal pool ecosystems
21 within the community or in other nearby communities identified through the application of
22 the Maine Vernal Pool Conservation Criteria in the “Orono Vernal Pool Special Area
23 Management Plan” (SAMP) and the conservation priorities of the Maine Vernal Pool SAMP.

24
25 (b) Applicability: The provisions of this section apply only to land located within the Vernal
26 Pools Overlay District as shown on the Official Zoning Map. These provisions are optional.
27 With respect to any application to develop land within the Overlay District that is subject to
28 state or federal regulation with respect to wetlands and vernal pools, the applicant shall
29 indicate at the time of application whether he/she intends to develop the project in
30 accordance with those applicable state and federal requirements or to invoke the provisions
31 of this section. If the applicant invokes the provisions of this section, he/she must still
32 obtain all other local, state and federal permits and provide appropriate notice to the U.S.
33 Army Corps of Engineers, as described in Section III.B of the “Vernal Pools Special Area
34 Management Plan.” **INSERT DIGITAL LINK** Applicants who elect to opt out of this
35 program should continue to consult with state and federal regulatory agencies for project-
36 specific requirements.

37
38 (c) Effective date: Notwithstanding the adoption of this section as part of the ordinance, the
39 provisions of this section shall be effective only when the Maine Board of Environmental
40 Protection has certified in writing to the Code Enforcement Officer that the Town has been
41 granted partial delegated authority with respect to the issuance of vernal pools permits in
42 accordance with the Maine Vernal Pools Special Area Management Plan (SAMP). If the
43 Maine Board of Environmental Protection notifies the Code Enforcement Officer in writing
44 that Orono is no longer in compliance with the SAMP, or if Orono, Maine Department of
45 Environmental Protection, or U.S. Army Corps of Engineers terminates the SAMP, this

1 section shall no longer be in effect. Any development permits issued and vernal pools
2 conserved prior to the date of such written notification shall remain in force.

3
4 (d) Definitions: For definitions of words or phrases in this section that are contained in
5 quotation marks, see Section 18-31, Definitions, of this Ordinance.

6
7 (e) Vernal pool mitigation: As an alternative to complying with the applicable state and federal
8 vernal pool regulations, the applicant for any development approval or building permit with
9 respect to land located within the overlay district that elects to develop or build in
10 accordance with the provisions of this section shall either: a) pay a “vernal pools mitigation
11 fee”, or b) undertake “permittee-responsible mitigation activities” in accordance with the
12 provisions of this section and the SAMP.

13
14 (1) Vernal Pool Mitigation Fee

15
16 a. Regulatory Flexibility: An applicant that elects to pay a “vernal pools mitigation
17 fee” in accordance with the following provisions must comply with the provisions of
18 this section rather than the otherwise applicable vernal pool provisions found in 38
19 MRSA Section 480 Chapter 3, DEP Rules- Chapter 335 and federal vernal pool
20 provisions found in the Maine General Permit. This provision of the Maine “Vernal
21 Pool SAMP” shall not extend to other state and federal wetland regulations or other
22 natural resource regulations that may apply to the development.

23
24 b. Amount of the Mitigation Fee: The amount of the mitigation fee is the greater of: a)
25 forty percent (40%) of the difference in the appraised value of the parcel proposed to be
26 developed if it is subject to applicable state regulations and/or the U.S. Army Corps of
27 Engineers general permit for the state with respect to vernal pools and the appraised
28 value of the parcel if those state and federal vernal pool regulations no longer apply, or
29 b) the minimum mitigation fee if, at its option, such a minimum is established by the
30 Town. The minimum mitigation fee shall be adequate to accomplish vernal pool
31 preservation at the programmatic level of two pools plus 70 acres of terrestrial
32 amphibian post-breeding habitat conserved for each impacted pool. The phrase
33 “programmatic level of two pools plus 70 acres” is intended as guidance to mean
34 sufficient acreage associated with all pools conserved under the Orono Vernal Pool
35 SAMP to indefinitely sustain a healthy population of amphibians that depend on the
36 pools and the associated post-breeding habitat. The amount of acreage shall contribute
37 to the sustaining of this population but may vary for any one pool depending on
38 configuration, quality, availability, adjacency to other habitat, and similar factors.

39
40 The difference in the appraised value of the parcel with and without the applicable state
41 and federal vernal pool regulations shall be determined by a Certified General
42 Appraiser (CGA) currently licensed in Maine. The appraiser shall be employed by the
43 applicant subject to approval by the Town. The appraisal shall meet the Uniform
44 Standards of Professional Appraisal Practice (USPAP) and will be subject to a peer
45 review by a CGA selected by the Town.

1 c. Appraisal Review Fee: If the applicant elects the difference in appraised value
2 approach, the applicant shall deposit the estimated cost for the peer review of the
3 appraisal with the Town. The Town shall hold the fee in a separate account and shall
4 use the fee only for the purpose of compensating the review appraiser. Should the
5 amount of the initial deposit not cover the full costs for the review, the applicant shall
6 be responsible for the difference and shall pay the Town prior to the issuance of any
7 permits or approvals for the project. If the amount of the initial deposit exceeds the full
8 costs for the review, the Town shall refund the balance to the applicant within thirty
9 (30) days of paying the peer review appraiser.

10
11 d. Payment of the Mitigation Fee: The mitigation fee shall be payable to the Town and
12 submitted to the Code Enforcement Officer as part of a Site Plan Review application or
13 a Subdivision Plan Review application, if such review is required for the proposed
14 development; or, if no such review is required, prior to the commencement of any site
15 work on the parcel or the issuance of any building or plumbing permits for the project
16 whichever occurs first.

17
18 (2) Permittee-Responsible Mitigation Activities

19
20 a. Regulatory Flexibility: An applicant that elects to undertake “permittee-responsible
21 mitigation activities” in accordance with the following provisions must comply with the
22 provisions of this section rather than the otherwise applicable vernal pool provisions
23 found in 38 MRSA Section 480 Chapter 3, DEP Rules- Chapter 335 and federal vernal
24 pool provisions found in the Maine General Permit. This relief shall not extend to other
25 state and federal wetland regulations or other natural resource regulations that may
26 apply to the development.

27
28 b. Acceptable Mitigation Activities: The applicant shall arrange for the protection of
29 other vernal pools and associated amphibian terrestrial post-breeding habitat within
30 designated “Rural Areas” of the community or in other communities in accordance with
31 the conservation criteria of the SAMP. The compensation activities shall be adequate
32 to accomplish vernal pool preservation at the programmatic level of two pools plus 70
33 acres of amphibian terrestrial post-breeding habitat conserved for each impacted pool.
34 The phrase “programmatic level of two pools plus 70 acres” is intended as guidance to
35 mean sufficient acreage associated with all pools conserved under the Orono Vernal
36 Pool SAMP to indefinitely sustain a healthy population of amphibians that depend on
37 the pools and the associated post-breeding habitat. The amount of acreage for any one
38 pool shall contribute to the sustaining of this population but may vary for any one pool
39 depending on configuration, quality, availability, adjacency to other habitat, and similar
40 factors. The Planning Board shall determine whether this standard has been met after
41 consulting with Town’s “designated third party conservation organization.”

42
43 c. Verification: An applicant that elects to undertake “permittee-responsible mitigation
44 activities” shall include in his or her Site Plan Review or Subdivision Plan application
45 evidence of title, right or interest in the property or properties subject to the proposed
46 compensation activities, if the proposed development requires such review. In all

1 cases, the “designated third party conservation organization” must certify to the Code
2 Enforcement Officer that the “permittee-responsible mitigation activities” have
3 occurred prior to the commencement of any site work on the parcel or the issuance of
4 any building or plumbing permits for the project, whichever occurs first.

5
6 (f). *Management of collected mitigation fees:* All “vernal pool mitigation fees” shall be
7 accounted for in a separate financial account maintained by the municipality. All revenue
8 and disbursements shall be posted to this account and an annual report of the financial status
9 of the account shall be provided to the Maine Department of Environmental Protection and
10 the Army Corps of Engineers, New England District, within ninety (90) days of the end of
11 the Town’s fiscal year as part of the annual report as described in the SAMP. These funds
12 are subject to audit by the Maine Department of Environmental Protection and the Army
13 Corps of Engineers, New England District.

14
15 (g) *Use of mitigation fees:* “Vernal pool mitigation fees” collected by the Town shall be used
16 only to fund vernal pool conservation projects carried out by the “designated third party
17 conservation organization” in accordance with the Town’s approved “Vernal Pool
18 Conservation Suitability Assessment” or other vernal pool conservation in accordance with
19 the conservation priorities set forth in the SAMP. Any third party receiving mitigation funds
20 shall enter into a formal agreement with the Town spelling out its roles and responsibilities
21 with respect to the management and use of the funds, administrative fees, monitoring of
22 conservation projects, and annual reporting requirements in accordance with the
23 requirements of the SAMP. No funds shall be provided to the “designated third-party
24 conservation organization” from the Vernal Pools Mitigation Fees account until such an
25 agreement is in place.

26
27 (h) *Annual reporting:* The Orono Office of Community Development shall prepare an annual
28 report on the use of the Vernal Pools Overlay District and provide the report to the Town
29 Council, Maine Department of Environmental Protection, and Army Corps of Engineers
30 within ninety (90) days of the end of each fiscal year covering the prior fiscal year. The
31 report shall document the number of times the mitigation provisions were utilized, the
32 permittees’ and projects’ names, the permit/authorization numbers or other identifiers, the
33 number and location of vernal pools within the Overlay District that were involved, the
34 conservation projects undertaken with mitigation fees or through permittee-responsible
35 mitigation activities, the financial accounting for all collected mitigation fees, and the
36 documentation of ongoing monitoring of properties conserved through the use of the
37 mitigation fees. Documentation of monitoring visits shall include photos and a report
38 describing the condition of each pool, the surrounding landscape, and other relevant factors.

39
40
41 **3. Amend Article V, Performance Standards, Sec. 18-144. Wildlife/natural areas**
42 **preservation, by adding a paragraph specific to vernal pools, as follows:**

43
44 **Sec. 18-144. - Wildlife/natural areas preservation.**
45

1 (a) *General*: Any project affecting significant wildlife or fisheries habitat, as identified in the
2 current Comprehensive Plan or by state or federal agencies, shall include mitigation
3 measures aimed at minimizing the adverse impacts of development on these resources. Such
4 mitigation shall include as a minimum:

5
6 (1) ~~The clustering of the project to protect to the greatest extent the wildlife habitat pursuant~~
7 ~~to the standards of the clustered development standards of this article~~ Siting development on
8 the parcel in a manner that avoids or reduces impact on the wildlife habitat to the greatest
9 extent practicable, and in accordance with any applicable local, state and federal ordinances
10 or rules;

11
12 (2) Setting back of any construction at least 100 feet from the upland edge of any wetland
13 area over 20,000 contiguous square feet;

14
15 (3) The setting back of any construction at least 75 feet from any stream or waterway subject
16 to shoreland zoning;

17
18 (4) Efforts to preserve the existing vegetation in such a manner that the only vegetation cut
19 or removed shall be necessary for the actual construction involved. Specific vegetation to be
20 retained and to be removed shall be indicated on the development plan;

21
22 (5) Provisions to ~~eliminate~~ mitigate noise disturbance in the area. This shall include the
23 construction of sound barrier fencing, and the planting of additional vegetation such as trees;

24
25 (6) Best management practices for erosion control ~~shall be used~~.

26
27 (b) *Vernal pools*: Unless a development is located within the Vernal Pools Overlay District as
28 designated on the Official Zoning Map and the developer elects the vernal pools mitigation
29 alternative set forth in Sec. 18-112(e) of this Ordinance, the development of a site with one
30 or more vernal pools, whether or not such vernal pool or pools is deemed “significant
31 wildlife habitat” under the Maine Natural Resources Protection Act, shall meet, within the
32 boundaries of the land controlled by the developer, the Act’s standards of protection of
33 vernal pools, namely:

34
35 (1) No disturbance within the vernal pool depression;

36 (2) Maintenance of a minimum of 75 percent of the area within 250 feet of the vernal pool,
37 which is considered the vernal pool’s critical terrestrial habitat, as unfragmented forest with
38 at least a partly closed canopy of overstory trees to provide shade, deep litter, and woody
39 debris;

40 (3) Maintenance or restoration of forest corridors connecting wetlands and the vernal pools;

41 (4) Minimization of disturbance to the forest floor within the critical terrestrial habitat; and

42 (5) Maintenance of native understory vegetation and downed woody debris within the
43 critical terrestrial habitat.

1 In addition, if the development will encroach on a vernal pool or its adjacent habitat in a manner
2 that falls under state or federal regulation, no activity shall occur until the developer has received
3 the appropriate permit from the state and/or federal agency.

4
5 Alternatively, if the developer is located within the Vernal Pools Overlay District and elects the
6 vernal pools mitigation alternative set forth in Sec. 18-112(e), he or she shall comply with the
7 standards and procedures set forth in the district.

8
9 **4. Amend Article VI, Site Plan Review, Sec. 18-166, Classification of Project, Sub-section**
10 **(2), Minor developments, as follows:**

11
12 **Sec. 18-166. - Classification of projects.**

13
14 Projects subject to site plan review shall be classified by the Code Enforcement Officer into one
15 of the following classes:

16
17 (1) *Major developments.* Projects involving any of the following shall be classified by the Code
18 Enforcement Officer as a major development:

19
20

21 (2) *Minor developments* and submission requirements

22
23 a. Projects not classified by the Code Enforcement Officer as a major development shall be
24 considered a minor development under this section.

25
26 b. Projects classified as minor developments have to submit the information specified in section
27 18-168 and such additional information as may be requested by the Planning Board in order to
28 make findings concerning the site plan review criteria under this Article VI and the performance
29 standards contained in Article V of this Ordinance. Projects classified as major developments
30 are required to submit the information specified in sections 18-168 and 18-169 and such
31 additional information as may be requested by the Planning Board in order to make findings
32 concerning the site plan review criteria under this Article VI and the performance standards
33 contained in Article V of this Ordinance.

34
35 **5. Amend Article VI, Site Plan Review, Sec. 18-168. Site plan review application to clarify**
36 **submission requirements related to major natural areas, as follows:**

37
38 **Sec. 18-168. - Site plan review application.**

39 Applications for site plan review shall be submitted on application forms provided by the
40 Town. The complete application form, required fees, and the required plans and related
41 information shall be submitted to the Code Enforcement Officer who shall forward it to the
42 Planning Board. The submission shall contain at least the following exhibits and information:

43

1 (5) *Information regarding existing conditions.* The following information regarding existing
2 conditions is required:

3
4

5
6 (j) Major natural features on the site and including within 250 feet beyond the boundaries of the
7 site, wetlands, streams, ponds, floodplains, and groundwater aquifers; significant wildlife
8 habitats including but not limited to deer wintering areas identified in the ~~1998~~ 2015 Update of
9 the Comprehensive Plan and vernal pools whether or not classified as “significant” under the
10 Maine Natural Resources Protection Act; scenic areas identified in the ~~1998~~ 2015 Update of the
11 Comprehensive Plan; archaeological resources; and ~~or~~ other important natural features;

12
13 **6. Amend Article VI, Site Plan Review, Sec. 18-177. Site plan review criteria, Sub-section**
14 **(m), to more explicitly reference significant natural resources including vernal pools, as**
15 **follows:**

16
17 **Sec. 18-177. - Site plan review criteria.**

18
19

20
21 (m) *Natural features.* The landscape must be preserved in its natural state insofar as practical by
22 minimizing tree removal, disturbance and compaction of soil, and by retaining existing
23 vegetation insofar as practical during construction. Extensive grading and filling must be avoided
24 as far as possible. The site plan shall be consistent with the performance standards in Sec. 18-
25 144, Wildlife/natural areas protection. If the applicant is proposing to use the provisions of
26 Section 18-112, Vernal Pools Overlay District, with respect to vernal pool mitigation, he or she
27 shall provide evidence of payment of the vernal pool mitigation fee or the completion of
28 permittee-responsible conservation activities.

29
30
31 **7. Amend Article VII, Subdivision Review, Sec. 18-206. - Preliminary plan for major**
32 **subdivision, Sub-Section (d) Submission; contents, to clarify the submission requirement**
33 **for vernal pools, as follows:**

34
35 (d) *Submission; contents.* Fifteen copies of the preliminary subdivision plan shall be submitted,
36 which may be either printed or reproduced on paper. The preliminary plan, including the location
37 map, shall be no less than eight and one-half inches by 11 inches and not more than 24 inches by
38 36 inches. The plan shall be drawn to a scale in which one inch equals no more than 100 feet and
39 shall be oriented so the north direction is the same on all sheets. The preliminary plan and
40 supporting data shall include the information as provided in Table 7.1.

41
42 **TABLE 7.1**
43 **MAJOR SUBDIVISION: CONTENTS OF PRELIMINARY PLAN**

Map information	Accompanying written	Information Required About the Subdivision
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	information		
....
X		7.	Location of any watercourses, floodplains, wetlands, <u>vernal pools (whether or not deemed "significant" under the Maine Natural Resources Protection Act)</u> , or unique natural features on the parcel, including trail systems open to the public, historic resources included in the National Register of Historic Places and archaeological resources identified in the Comprehensive Plan.
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8. Amend Article VII, Subdivision Review, Sec. 18-208. - Final plan for minor subdivision, Sub-section (c), Submission and contents, to clarify the submission requirement for vernal pools, as follows:

(c) *Submission and contents.*

(1) The final plan for a minor subdivision shall consist of two transparencies of all maps or drawings and 12 copies of all items necessary to complete the submission. The final plan shall be not less than eight and one-half inches by 11 inches and not more than 24 inches by 36 inches. The plan should be drawn at a scale in which one inch equals no more than 100 feet and shall be oriented so the north direction is the same on all sheets.

(2) The items shown in Table 7.3 shall be required as part of the final plan submission.

**TABLE 7.3
MINOR SUBDIVISION: CONTENTS OF FINAL PLAN**

Map information	Accompanying written information	Information Required About the Subdivision	
....
X		8.	Location of any watercourses, floodplains, wetlands, <u>vernal pools (whether or not deemed "significant" under the Maine Natural Resources Protection Act)</u> , or unique natural features on the parcel, including trail systems open to the public, historic resources included in the National Register of Historic Places and archaeological resources identified in the Comprehensive Plan.
....

9. Amend Article VII, Subdivision Review, Section 18-210, Standards, Sub-section (d), Open space and recreation land, to clarify the standard for protection of significant wildlife habitat including vernal pools, as follows:

Sec. 18-210. - Standards.

(d) *Open space and recreation land.*

....

1 (3) *Protection of significant wildlife habitat.*

2 a. If any portion of a proposed subdivision lies within 250 feet of the following
3 areas identified and mapped by the Department of Inland Fisheries and Wildlife,
4 ~~or the Comprehensive Plan, or the applicant as part of the application~~
5 submission requirements as:

6
7 (i) Habitat for species appearing on the official State or Federal lists of
8 endangered or threatened species;

9
10 (ii) High and moderate value waterfowl and wading bird habitats, including
11 nesting and feeding areas;

12
13 (iii) Shorebird nesting, feeding and staging areas and seabird nesting islands;

14
15 (iv) Critical spawning and nursery areas for Atlantic Sea Run Salmon as defined
16 by the Atlantic Sea Run Salmon Commission; or

17
18 (v) ~~An area identified and mapped by the Department of Inland Fisheries and~~
19 ~~Wildlife as a~~ High or moderate value deer wintering area or travel corridor;

20
21 (vi) Vernal pools, whether or not deemed “significant” under the Maine Natural
22 Resources Protection Act

23
24 The applicant shall demonstrate that there shall be no significant adverse impacts
25 on the habitat and species it supports. A report prepared by a wildlife biologist
26 with demonstrated experience with the wildlife resource being impacted shall be
27 submitted. This report shall assess the potential impact of the subdivision on the
28 significant habitat and adjacent areas that are important to the maintenance of the
29 affected species and shall describe appropriate mitigation measures to ensure that
30 the subdivision will have no significant adverse impacts on the habitat and the
31 species it supports. If the applicant is proposing to use the provisions of Section
32 18-112, Vernal Pools Overlay District, with respect to vernal pool mitigation, he or
33 she shall provide evidence of payment of the vernal pool mitigation fee or the
34 completion of permittee-responsible conservation activities.

35