

**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.

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

2. Add a new Sec. 18-113. Vernal Pools Overlay District, as follows:

Sec. 18-113. Vernal Pools Overlay District

- (a) Intent: The purpose of the Vernal Pools Overlay District is to provide owners of property located within the overlay district that is subject to state or federal regulation with respect to vernal pools the option of developing and using the property in accordance with: 1) the applicable state and federal wetland regulations and associated requirements for the protection of vernal pools, or 2) the provisions of this section including the enhanced protection of other vernal pools through payment of a “vernal pools mitigation fee” or by undertaking “permittee-responsible mitigation activities.” Mitigation fees collected under this section shall be used only for the purpose of protecting other vernal pool ecosystems within the community or in other nearby communities identified through the application of the Maine Vernal Pool Conservation Criteria in the “Orono Vernal Pool Special Area Management Plan” (SAMP) and the conservation priorities of the Maine Vernal Pool SAMP.
- (b) Applicability: (i) The provisions of this section apply only to land located within the Vernal Pools Overlay District as shown on the Official Zoning Map. These provisions are optional. With respect to any application to develop land within the Overlay District that is subject to state or federal regulation with respect to wetlands and vernal pools, the applicant shall indicate at the time of application whether he/she intends to develop the project in accordance with those applicable state and federal requirements or to invoke the provisions of this section. (ii) If the applicant invokes the provisions of this section, he/she must still obtain all other local, state and federal permits and provide appropriate notice to the U.S. Army Corps of Engineers, as described in Section III.B of the “Vernal Pools Special Area Management Plan.” **[INSERT DIGITAL LINK]** Applicants who elect to opt out of this program should continue to consult with state and federal regulatory agencies for project-specific requirements. (iii) If the applicant invokes the provisions of this section and also proposes a clustered residential development under Section 18-136 of this ordinance, any vernal pool identified on the property may still be required to be part of the open space of the development. See Section 18-136(g)(1).

- (c) Effective date: Notwithstanding the adoption of this section as part of the ordinance, the provisions of this section shall be effective only when the Maine Board of Environmental Protection has certified in writing to the Code Enforcement Officer that the Town has been granted partial delegated authority with respect to the issuance of vernal pools permits in accordance with the Maine Vernal Pools Special Area Management Plan (SAMP). If the Maine Board of Environmental Protection notifies the Code Enforcement Officer in writing that Orono is no longer in compliance with the SAMP, or if Orono, Maine Department of Environmental Protection, or U.S. Army Corps of Engineers terminates the SAMP, this section shall no longer be in effect. Any development permits issued and vernal pools conserved prior to the date of such written notification shall remain in force.
- (d) Definitions: For definitions of words or phrases in this section that are contained in quotation marks, see Section 18-31, Definitions, of this Ordinance.
- (e) Vernal pool mitigation: As an alternative to complying with the applicable state and federal vernal pool regulations, the applicant for any development approval or building permit with respect to land located within the overlay district that elects to develop or build in accordance with the provisions of this section shall either: a) pay a “vernal pools mitigation fee”, or b) undertake “permittee-responsible mitigation activities” in accordance with the provisions of this section and the SAMP.

(1) Vernal Pool Mitigation Fee

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

b. Amount of the Mitigation Fee: The amount of the mitigation fee is the greater of: a) forty percent (40%) of the difference in the appraised value of the parcel proposed to be developed if it is subject to applicable state regulations and/or the U.S. Army Corps of Engineers general permit for the state with respect to vernal pools and the appraised value of the parcel if those state and federal vernal pool regulations no longer apply, or b) the minimum mitigation fee if, at its option, such a minimum is established **by the Town Council as part of its adopted license and permit fee schedule**. The minimum mitigation fee shall be adequate to accomplish vernal pool preservation at the programmatic level of two pools plus 70 acres of terrestrial amphibian post-breeding habitat conserved for each impacted pool. The phrase “programmatic level of two pools plus 70 acres” is intended as guidance to mean sufficient acreage associated with all pools conserved under the Orono Vernal Pool SAMP to indefinitely sustain a

healthy population of amphibians that depend on the pools and the associated post-breeding habitat. The amount of acreage shall contribute to the sustaining of this population but may vary for any one pool depending on configuration, quality, availability, adjacency to other habitat, and similar factors. **The phrase “adequate to accomplish vernal pool preservation” shall include, in addition to acquisition costs, reasonable administrative and due diligence costs, such as but not limited to surveying, legal, and environmental assessment costs, costs incurred by the Designated Third Party Conservation Organization to implement a mitigation project, and stewardship costs to maintain the project.**

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

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

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

(2) Permittee-Responsible Mitigation Activities

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

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

c. “Designated third party conservation organization”: The permittee must have an agreement with the “designated third party conservation organization” for conveyance to the organization of the vernal pool and associated lands intended for permanent conservation, either in fee (provided that the resulting lot complies with the dimensional standards of the zoning district in which it is located, as set forth in the Land Use Ordinance) or by deed of conservation easement consistent with the Orono Vernal Pool SAMP. The agreement shall set forth such terms, including fees for due diligence activities related to the conveyance of the property and long-term stewardship of the property, as the permittee and “designated third party conservation organization” agree are necessary to complete the conveyance and comply with the Orono Vernal Pool SAMP.

d. Verification: An applicant that elects to undertake “permittee-responsible mitigation activities” shall include in his or her Site Plan Review or Subdivision Plan application, if the development requires such review, evidence of title, right or interest in the property or properties subject to the proposed compensation activities **and any related pending agreement with the “designated third party conservation organization”**. In all cases, the “designated third party conservation organization” must certify to the Code Enforcement Officer that the “permittee-responsible mitigation activities” have occurred prior to the commencement of any site work on the parcel or the issuance of any building or plumbing permits for the project, whichever occurs first.

(f). Management of collected mitigation fees: All “vernal pool mitigation fees” shall be accounted for in a separate financial account maintained by the municipality. All revenue and disbursements shall be posted to this account and an annual report of the financial status of the account shall be provided to the Maine Department of Environmental Protection and the Army Corps of Engineers, New England District, within ninety (90) days of the end of

the Town's fiscal year as part of the annual report as described in the SAMP. These funds are subject to audit by the Maine Department of Environmental Protection and the Army Corps of Engineers, New England District.

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

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

3. Amend Article V, Performance Standards, Sec. 18-136. Clustered development, Sub-section (d), Inventory of resources; and Sub-section (g), Open space requirements, paragraph (1), Open space allocation, as follows:

Sec. 18-136. – Clustered development.

....

(d) *Inventory of resources.* In addition to the requirements for submission of a preliminary plan for subdivision review under Article VII, subsection 18-206(d), the preliminary plan shall include an inventory of natural resources contained on the parcel or parcels proposed for development, with the boundaries of the natural resources presented at a scale of one inch equals no more than 100 feet. Contour lines shall be provided for the entire property at an interval of

not more than two feet. The natural resources to be inventoried shall include wetlands and vernal pools identified by a qualified biologist or hydrologist, whose name shall appear on the plan; hydric soils not captured by wetland or vernal pool boundaries; streams, rivers, and ponds to their mean high water marks; any land specified by Maine's Shoreland Zoning Act and rules to be resource protection areas, whether or not actually zoned as resource protection; slopes in excess of 20 percent; ledge outcrops; and lands restricted by existing easements whose purposes include conservation of the land or natural resources or uses that affect or rely on those resources. The total area within the boundaries of these natural resource areas and easements shall be quantified, shall be considered part of the clustered development's green space, as defined in this chapter, and shall appear on the preliminary plan and any subsequent final plan. This total area, plus the area of streets or access and any area devoted to an allowed nonresidential use, shall be deemed unsuitable for residential development for the purpose of calculating net residential density, ~~if provided~~ the total is 50 percent or less of the gross acreage of the land within the proposed clustered development. If the total exceeds 50 percent, no more than 50 percent shall be subtracted to arrive at net residential density. If the property is within the Vernal Pools Overlay District and the applicant invokes the provisions of Section 18-113 of this ordinance, the area of any vernal pool identified in the inventory of resources shall be included in the area deemed unsuitable for development only if the vernal pool is wholly embedded within another natural resource that is unsuitable for development.

(g) *Open space requirements.* In addition to the applicable open space and recreation land standards of subsection 18-210(d), the following standards apply to clustered developments:

(1) Open space allocation:

i. *[In MDR, GMDR and C-2 districts:]* If the clustered development contains only single-family detached dwellings on individual lots, at least 25 percent of the gross acreage of the property shall remain as open space outside of the lots. If the clustered development includes dwellings not on individual lots, at least 30 percent of the gross acreage of the property shall remain as open space outside of the land assigned to individual dwelling units or within 20 feet of a building.

ii. *In LDR district:* In any clustered development in the LDR district, at least 40 percent of the gross acreage of the property shall remain as open space outside of the lots or, in the case of clustered development that includes dwellings not on individual lots, outside of the land assigned to individual dwelling units or within 20 feet of a building.

iii. *In F&A district:* In any clustered development in the F&A district, at least 55 percent of the gross acreage of the property shall remain as open space outside of the lots or, in the case of clustered development that includes dwellings not on individual lots, outside of the land assigned to individual dwelling units or within 20 feet of a building.

Except as provided herein, All natural resources identified in the inventory of resources as unsuitable for development shall be treated as green space, as defined by

this ordinance, and be part of the dedicated open space. In addition, at least one-third of the required open space shall be land that is both suitable for development and outside of the required buffers. Exceptions are as follows: (1) The Planning Board may, upon petition of the applicant, at its sole discretion allow development of resources considered to be green space only if it finds that disturbance of a resource regulated under the state Natural Resources Protection Act does not require more than a permit by rule, as established by the Maine Department of Environmental Protection or, in the case of wetlands, not more than a Tier 1 permits as defined in the Natural Resources Protection Act, and that the disturbance is otherwise the minimum necessary to fit the development appropriately into the parcel. (2) If the development is located within the Vernal Pool Overlay District, as specified in Section 18-113 and the applicant invokes the provisions of Section 18-113, a vernal pool must be included within the dedicated open space only if it is embedded in or contiguous with another natural resource identified as unsuitable for development and therefore preserved as part of the green space. In such a situation, the provisions of Section 18-113 otherwise apply. ~~In addition, at least one-third of the required open space shall be land that is both suitable for development and outside of the required buffers.~~

4. Amend Article V, Performance Standards, Sec. 18-144. Wildlife/natural areas preservation, by adding a paragraph specific to vernal pools, as follows:

Sec. 18-144. - Wildlife/natural areas preservation.

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

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

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

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

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

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

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

(b) Vernal pools: Unless a development is located within the Vernal Pools Overlay District as designated on the Official Zoning Map and the developer elects the vernal pools mitigation alternative set forth in Sec. 18-113(e) of this Ordinance, the development of a site with one or more vernal pools, whether or not such vernal pool or pools is deemed “significant wildlife habitat” under the Maine Natural Resources Protection Act, shall meet, within the boundaries of the land controlled by the developer, the Act’s standards of protection of vernal pools, namely:

(1) No disturbance within the vernal pool depression;

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

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

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

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

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

Alternatively, if the developer is located within the Vernal Pools Overlay District and elects the vernal pools mitigation alternative set forth in Sec. 18-113(e), he or she shall comply with the standards and procedures set forth in the district.

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

Sec. 18-166. - Classification of projects.

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

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

....

(2) *Minor developments and submission requirements*

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

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

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

Sec. 18-168. - Site plan review application.

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

....

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

....

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

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

Sec. 18-177. - Site plan review criteria.

....

(m) *Natural features.* The landscape must be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as practical during construction. Extensive grading and filling must be avoided as far as possible. The site plan shall be consistent with the performance standards in Sec. 18-144, Wildlife/natural areas protection. If the applicant is proposing to use the provisions of Section 18-113, Vernal Pools Overlay District, with respect to vernal pool mitigation, he or she shall provide evidence of payment of the vernal pool mitigation fee or the completion of permittee-responsible conservation activities.

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

(d) *Submission; contents.* Fifteen copies of the preliminary subdivision plan shall be submitted, which may be either printed or reproduced on paper. The preliminary plan, including the location map, shall be no less than eight and one-half inches by 11 inches and not more than 24 inches by 36 inches. The plan shall be drawn to 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. The preliminary plan and supporting data shall include the information as provided in Table 7.1.

**TABLE 7.1
MAJOR SUBDIVISION: CONTENTS OF PRELIMINARY PLAN**

Map information	Accompanying written information	Information Required About the Subdivision	
....
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.
....

9. 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.
....

10. 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.*

....

(3) *Protection of significant wildlife habitat.*

- a. If any portion of a proposed subdivision lies within 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife, ~~or the Comprehensive Plan,~~ or the applicant as part of the application submission requirements as:
- (i) Habitat for species appearing on the official State or Federal lists of endangered or threatened species;
 - (ii) High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
 - (iii) Shorebird nesting, feeding and staging areas and seabird nesting islands;
 - (iv) Critical spawning and nursery areas for Atlantic Sea Run Salmon as defined by the Atlantic Sea Run Salmon Commission; or
 - (v) ~~An area identified and mapped by the Department of Inland Fisheries and Wildlife as a~~ High or moderate value deer wintering area or travel corridor;
 - (vi) Vernal pools, whether or not deemed “significant” under the Maine Natural Resources Protection Act

The applicant shall demonstrate that there shall be no significant adverse impacts on the habitat and species it supports. A report prepared by a wildlife biologist with demonstrated experience with the wildlife resource being impacted shall be submitted. This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe appropriate mitigation measures to ensure that the subdivision will have no significant adverse impacts on the habitat and the species it supports. If the applicant is proposing to use the provisions of Section 18-113, Vernal Pools Overlay District, with respect to vernal pool mitigation, he or she shall provide evidence of payment of the vernal pool mitigation fee or the completion of permittee-responsible conservation activities.