

## Model Vernal Pools Overlay Provisions

### Section \_\_. Vernal Pools Overlay District

#### 1. PURPOSE

The Vernal Pools Overlay District is intended 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 pools within the community or in other nearby communities identified through the application of the Vernal Pools Conservation Criteria in the (Town)(City) Vernal Pools Special Area Management Plan (SAMP) and the conservation priorities of the SAMP.

#### 2. APPLICABILITY

The provisions of this section apply only to land located within the Vernal Pools Overlay District as shown on the Official Zoning Map (or Zoning Overlay District 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 utilize the provisions of this section. Applicants that elect to opt out of this program should continue to consult with state and federal regulatory agencies for project-specific requirements.

#### 3. EFFECTIVE DATE OF THIS SECTION

Notwithstanding the adoption of this section as part of the ordinance, the provisions of this section shall be effective only when the Maine Department of Environmental Protection has certified in writing to the Code Enforcement Officer that (Town)(City) has been granted partial delegated authority with respect to the issuance of vernal pools permits in accordance with the Vernal Pools Special Area Management Plan

(SAMP). If the Maine Department of Environmental Protection notifies the Code Enforcement Officer in writing that the (Town)(City) is no longer in compliance with the SAMP, or if the (Town)(City), Maine Department of Environmental Protection, or U.S. Army Corps of Engineers terminates the SAMP, this section shall no longer be in effect.

#### 4. DEFINITIONS

For definitions of words or phrases in this section that are contained in quotation marks, see Section \_\_, Definitions, of this Ordinance.

#### 5. VERNAL POOL MITIGATION

In lieu of complying with the applicable state vernal pool regulations and/or the U.S. Army Corps of Engineers general permit for the state, 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.

##### A. Vernal Pool Mitigation Fee

1. Regulatory Relief: An applicant that elects to pay a “vernal pools mitigation fee” in accordance with the following provisions will not have to comply with the applicable state and federal vernal pool regulations. This relief shall not extend to other state and federal wetland regulations that may apply to the development.

2. 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 such a minimum is established by the (Town)(City). The minimum mitigation fee shall be adequate to accomplish vernal pool preservation at the programmatic level of two pools plus the necessary terrestrial amphibian post-breeding habitat conserved for each impacted pool.

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)(City). 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)(City).

3. 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)(City). The (Town)(City) 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)(City) 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)(City) shall refund the balance to the applicant within thirty (30) days of paying the peer review appraiser.

4. Payment of the Mitigation Fee: The mitigation fee shall be payable to the (Town)(City) 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.

#### B. Permittee-Responsible Mitigation Activities

1. Regulatory Relief: An applicant that elects to undertake “permittee-responsible mitigation activities” in accordance with the following provisions will not have to comply with the applicable state and federal vernal pool regulations. This relief shall not extend to other state and federal wetland regulations that may apply to the development.

2. Acceptable Mitigation Activities: The applicant shall arrange for the protection of other vernal pools within designated “Rural Areas” of the community or in other communities in accordance with the municipality’s “Vernal Pool Conservation Plan” and the conservation priorities of the SAMP. The compensation activities shall be adequate to accomplish vernal pool preservation at the programmatic level of two pools plus the necessary terrestrial amphibian post-breeding habitat conserved for each impacted pool. The adequacy of the mitigation shall be determined by the Planning Board in consultation with the (Town’s)(City’s) “designated third party conservation organization.”

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

#### 6. 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)(City’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.

#### 7. USE OF MITIGATION FEES

“Vernal pool mitigation fees” collected by the (Town)(City) 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)(City’s) approved “Vernal Pool Conservation Plan” 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)(City) 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.

#### 8. ANNUAL REPORTING

The (Planning) Department shall prepare an annual report on the use of the Vernal Pools Overlay District and provide the report to the (Town Council)(City Council)(Board of Selectmen), 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.

## Definitions Related to the Model Vernal Pools Overlay Provisions

The following definitions should be added to the appropriate definitions section in the community's ordinance in the form of the other definitions in the ordinance:

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

**Permittee-Responsible Mitigation Activities:** 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 complying with the applicable state and federal regulations with respect to vernal pools.

**Rural Areas:** The portion of the (Town)(City) designated as Rural in the adopted comprehensive plan.

**Vernal Pool:** A natural, temporary to semi-permanent body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. A vernal pool has no permanent inlet or outlet and no viable populations of predatory fish. A vernal pool may provide the primary breeding habitat for wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp (*Eubrachipus* sp.), as well as valuable habitat for other plants and wildlife, including several rare, threatened, and endangered species.

**Vernal Pool Conservation Plan:** A plan developed by the (Town)(City) that assesses the known vernal pools in the community's Rural Area and establishes a list of target conservation pools and conservation actions in accordance with the Vernal Pool Conservation Criteria in the (Town)(City) Vernal Pools Special Area Management Plan (SAMP).

**Vernal Pool Mitigation Fee:** A fee paid by an applicant for a development approval or permit in accordance with the provisions of the Vernal Pool Overlay District as an alternative to complying with the applicable state and federal regulations with respect to vernal pools.