

To see if the Voters will adopt an ordinance entitled “An Ordinance to amend the Town Code, Chapter 225 Land Use Code, Chapter 191 Subdivision, and Chapter 175 Site plan; by amending current vernal pool SAMP standards and replacing with new standards that meet state and federal updated SAMP language.”

1. Amend §225-6 Definitions by revising the definitions of Permittee-Responsible Conservation Activities and Vernal Pool Mitigation Fee to read:

Permittee-Responsible ~~Mitigation Conservation~~ 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 paying a vernal pool mitigation fee complying with the normal state and federal requirements with respect to the conservation of vernal pools.

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 normal state and federal requirements with respect to the conservation of vernal pools.~~

2. Amend §225-6 Definitions by adding a definition of Vernal Pool in proper alphabetical order to read:

Vernal Pool

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 obligate indicator species: wood frog, spotted salamander, blue-spotted salamander, marbled salamander, Jefferson’s salamander and fairy shrimp. However, they should preclude sustainable populations of predatory fish.

3. Amend Section 225-20.2 Vernal Pools Overlay District to read:

§225-20.2 Vernal Pools Overlay District (VPO District)

A. Purpose

The Vernal Pools Overlay District (referred to as the designated development district in the SAMP) 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 conservation~~ 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 of Topsham Vernal Pools Special Area Management Plan (SAMP) and the conservation priorities of the Maine Vernal Pools SAMP.

B. Applicability

The provisions of this section apply only to land located within the Vernal Pools Overlay District as shown on the Official Zoning Overlay District Map. These provisions are optional. After a pre application meeting with the Town Planner, –aAn applicant may choose to invoke the provisions of this section under the following conditions in accordance with the Maine Vernal Pools SAMP:

(1) The impact occurs within the vernal pool or within a 250 foot zone around the pool.

(2) The total impacts to aquatic resources of a single and complete project fall below 3 acres.

(3) The vernal pool does not support state or federal threatened or endangered species unless a determination of no effect or not likely to adversely affect is made by the U. S. Army Corps of Engineers in consultation with the U. S. Fish and Wildlife Service.

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. 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. Developers that elect to opt out of this program should continue to consult with state and federal regulatory agencies for project-specific requirements.

Authority for the Town to issue Vernal Pool permits as referred to in this ordinance and the SAMP are provided under 38 M.R.S.A. Chapter 480-F.

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

D. Definitions

For definitions of words or phrases in this section that are shown in **bold** font, see §225-6, Definitions, of this Ordinance.

E. Vernal pool mitigation

As an alternative to ~~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: 1) pay a **vernal pools mitigation fee**, or 2) undertake **permittee-responsible mitigation compensation 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 will have to 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 Pools SAMP shall not extend to other state and federal wetland regulations or other natural resource regulations that may apply to the development. ~~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 normal state and federal vernal pool requirements. This relief shall not extend to other state and federal wetland regulations that may apply to the development.~~

(b) Amount of the Mitigation Fee: The amount of the mitigation fee is the greater of: 1) 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 requirements no longer apply, or 2) the minimum mitigation fee if such a minimum is established by the Town. The minimum mitigation fee shall be adequate to accomplish vernal pool preservation at the programmatic level of two pools plus ~~the necessary~~ seventy (70) acres of terrestrial amphibian post-breeding habitat conserved for each impacted pool.

The difference in the appraised value of the parcel with and without the vernal pool requirements 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 Planning Department. 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 of Topsham and submitted to the Planning and Code Enforcement Office ~~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 Compensation Activities

(a) Regulatory Flexibility: An applicant that elects to undertake permittee-responsible mitigation activities in accordance with the following provisions will have to 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-flexibility shall not extend to other state and federal wetland regulations or other natural resource regulations that may apply to the development. ~~Relief: An applicant that elects to undertake permittee-responsible compensation activities in accordance with the following provisions will not have to comply with the normal state and federal vernal pool requirements. This relief shall not extend to other state and federal wetland regulations that may apply to the development.~~

(b) Acceptable Permittee-responsible Mitigation Compensation 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 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 seventy (70) acres of the necessary terrestrial amphibian post-breeding habitat conserved for each impacted pool. The adequacy of the conservation shall be determined by the Planning Board in consultation with the Town's **designated third party conservation organization**.

(c) Verification: An applicant that elects to undertake **permittee-responsible mitigation compensation 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 and certification that the designated third party conservation organization is willing to accept the conservation project. In all cases, the **designated third party conservation organization** must certify to the Code Enforcement Officer that the **permittee-responsible mitigation compensation 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 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 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 Planning Department shall prepare an annual report on the use of the Vernal Pools Overlay District and provide the report to the 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 compensation~~ 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.

4. Amend §175-5. Site plan content and application procedures by revising item (13) under subsection B. Statement by applicant to read:

(13) If there is a vernal pool(s) on the property, a statement indicating how the site has been designed to minimize the impact on the vernal pool and its adjacent habitat except for projects involving vernal pool mitigation in accordance with §225-20.2 Vernal Pools Overlay District. If the vernal pool(s) is subject to state or federal regulation, evidence of compliance with those regulations must be included. If the applicant is proposing to use the provisions of §225-20.2 Vernal Pools Overlay District (VPO District) with respect to vernal pool mitigation, evidence of payment of the vernal pool mitigation fee or the completion of permittee-responsible ~~mitigation conservation~~ activities shall be provided.

5. Amend subsection B. Additional Information in §191-5. Preliminary Plan by adding a new item (19) Wetlands and vernal pools to read:

(19) Wetlands and vernal pools. The location of all wetlands and vernal pools on the site. If there is a vernal pool(s) on the property, a statement indicating how the site has been designed

to minimize the impact on the vernal pool and its adjacent habitat except for projects involving vernal pool mitigation in accordance with §225-20.2 Vernal Pools Overlay District. If the vernal pool(s) is subject to state or federal regulation, evidence of compliance with those regulations must be included. If the applicant is proposing to use the provisions of §225-20.2 Vernal Pools Overlay District (VPO District) with respect to vernal pool mitigation, evidence of payment of the vernal pool mitigation fee or the completion of permittee-responsible mitigation ~~conservation~~ activities shall be provided.