

An Ordinance to amend the Town Code, Chapter 225-6, Definitions; 225-11 Establishment of Zones; add section 225-20.2, Vernal Pool Overlay District; add section 225-41.1 Vernal Pools; amend chapter 175, Site Plan; amend chapter 191, Subdivision to adopt a vernal pool overlay zoning district that offers landowners the option to offer mitigation for the disturbance of vernal pool habitat as laid out in State and Federal adopted Special Area Management Plan.

Topsham Vernal Pool Amendments

Proposed additions to the ordinances are underlined;
proposed deletions are ~~struck-out~~.

Amendments to Chapter 225 Zoning

1. Amend §225-6 Definitions by adding the following definitions in proper alphabetical order:

Designated Third Party Conservation Organization

A conservation organization which has a formal agreement with the Town of Topsham to carry out vernal pool conservation in accordance with the provisions of the Vernal Pool Overlay District and the Town of Topsham Vernal Pools Special Area Management Plan (SAMP) and the conservation priorities of the SAMP.

Permittee-Responsible 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 complying with the normal state and federal requirements with respect to the conservation of vernal pools.

Rural Areas

The portion of the Town designated as Rural in the adopted comprehensive plan.

Vernal Pool Conservation Plan

A plan developed by the Town 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 of Topsham 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 normal state and federal requirements with respect to the conservation of vernal pools.

2. Amend subsection B. Overlay Districts of §225-11. Establishment of Zones to add a new item (5) to read:

(5) Vernal Pools Overlay District to be known as the “VPO District.”

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

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 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

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 compensation activities** in accordance with the provisions of this section and the SAMP.

(1) Vernal Pool Mitigation Fee

(a) 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 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 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 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 Compensation Activities

(a) Regulatory 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 Compensation 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 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 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. In all cases, the **designated third party conservation organization** must certify to the Code Enforcement Officer that the **permittee-responsible 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 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. Create a new Section 225-41.1 Vernal Pools to read:

§225-41.1 Vernal Pools

All activities shall be carried out to minimize the impact on vernal pools except for projects involving vernal pool mitigation in accordance with §225-20.2 Vernal Pools Overlay District. All development activities on a site with one or more vernal pools shall be located and designed to conserve the pools plus the necessary terrestrial amphibian post-breeding habitat adjacent to each pool to the maximum extent reasonable consistent with the proposed use of the property unless vernal pool mitigation is proposed. If the encroachment on a vernal pool or its adjacent habitat falls under state or federal regulation, no activity shall occur until the property owner has received the appropriate permit from the state and/or federal agency or has met the requirements of (VPO District) with respect to vernal pool mitigation.

Amendments to Chapter 175 Site Plan Review

1. Amend §175-5. Site plan content and application procedures by adding an item (13) under subsection A. Map to read:

(13) Location of wetlands and vernal pools

2. Amend §175-5. Site plan content and application procedures by adding an 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 conservation activities shall be provided.

3. Amend §175-8. Performance standards by amending item R. o read:

R. Natural beauty; historic sites: habitat. The development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant habitats, or rare and irreplaceable natural areas.

- (1) If any portion of the land within the proposed development has been identified as containing historic or archaeological resources by the Comprehensive Plan, the Town of Topsham Historic District Commission or the Maine Historic Preservation Commission, the development proposal shall include appropriate measures for protecting these resources, including but not limited to modification of the proposed design of the site, timing of construction and limiting the extent of excavation.
- (2) If any portion of the land within the proposed development is located within a medium or high potential archaeology zone as delineated on the Cultural Resource Protection Zone Map and the Comprehensive Plan, a Phase I reconnaissance level archaeological survey shall be conducted, unless those lands have previously been surveyed in accordance with Maine Historic Preservation Commission guidelines.
 - (a) The requirement for a survey may be waived for those lands which are proposed to be left in their natural state, undisturbed or undeveloped. The plan shall, by notes on the final plan and deed restrictions, prohibit the development of those areas designated on the plan.
- (3) If any portion of a proposed development lies within:
 - (a) Two hundred fifty (250) feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife or the Comprehensive Plan as:
 - [1] Habitat for species appearing on the official state or federal lists of endangered or threatened species;
 - [2] High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
 - [3] High and moderate value fisheries habitat, including spawning and nursery areas;
 - (b) One thousand three hundred twenty (1,320) feet of an area identified and mapped by the Department of Inland Fisheries and Wildlife or other agency or report as a high (c) S. (1) (2) (3) (4) A. or moderate value deer wintering area or travel corridor;
 - (c) Or other important habitat areas identified in the Comprehensive Plan,

the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species which it supports. A report prepared by a qualified wildlife biologist with demonstrated experience with the wildlife resource

being impacted shall be submitted. This report shall assess the potential impact of the development 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 development will have no adverse impacts on the habitat and the species which it supports.

(4) If the development site contains one or more vernal pools, all activities shall be carried out to minimize the impact on the vernal pools except for projects involving vernal pool mitigation in accordance with §225-20.2 Vernal Pool Overlay District. All development activities shall be located to conserve the vernal pools plus the necessary terrestrial amphibian post-breeding habitat adjacent to each pool to the maximum extent reasonable consistent with the proposed use of the property unless vernal pool mitigation is proposed.

Amendments to Chapter 191 Subdivision of Land

1. 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 conservation activities shall be provided.