



BOARD ORDER

IN THE MATTER OF

TOWN OF ORONO) NATURAL RESOURCES PROTECTION ACT
Orono, Penobscot County)
VERNAL POOL) PARTIAL DELEGATION OF
SPECIAL AREA MANAGEMENT PLAN) PERMIT-GRANTING AUTHORITY
L-28059-06-A-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §480-F, the Board of Environmental Protection has considered the application of the TOWN OF ORONO for partial delegation of permit-granting authority under the Natural Resources Protection Act (NRPA) for impacts to vernal pools in the Town's Designated Development Area and other related materials on file and finds the following facts:

1. Authority Request. On October 31, 2018, the Town of Orono (Town) filed an application requesting partial delegation of permit-granting authority pursuant to 38 M.R.S. §480-F for impacts to vernal pools in accordance with the Special Area Management Plan for Vernal Pools in Maine.

The Maine Vernal Pool Special Area Management Plan (Vernal Pool SAMP or SAMP) was approved by the New England District of the U.S. Army Corps of Engineers in August of 2016, and by the Department of Environmental Protection (Department) Commissioner in September of 2016. The primary purpose of the Vernal Pool SAMP is to increase the compensation/mitigation options available to address proposed impacts to vernal pools by allowing a municipality to permit impacts to vernal pools in municipally designated development areas in exchange for compensation in municipally identified rural areas. Implementation of the Vernal Pool SAMP is intended to increase protection of the natural resource functions and values of vernal pools at the landscape scale while supporting municipal goals for growth.

2. Municipal Responsibilities under the Maine Vernal Pool Special Area Management Plan. The Vernal Pool SAMP establishes requirements that a municipality must meet to qualify for permit-granting authority for vernal pool impacts pursuant to the SAMP. These requirements and the Town's evidence with regard to its compliance with each requirement are set forth below.
 - a. Adopt a Consistent Comprehensive Plan and Land Use Ordinance. The Vernal Pool SAMP, in §IV(A)(1), requires that, to obtain delegated authority from the Board to participate in this SAMP program, a municipality must "demonstrate a strong

commitment to vernal pool conservation and landscape-scale planning, be committed to compact development, and have identified a reasonable delineation of rural and growth areas.” This is accomplished by developing and adopting a comprehensive plan and land use ordinance that are found to be consistent with Maine’s Growth Management Act.

To address this requirement, the Town submitted (in Section I, Exhibit 1 of its application) a letter dated September 5, 2014 from the Municipal Planning Assistance Program within the Maine Department of Agriculture, Conservation and Forestry stating that the 2014 Orono Comprehensive Plan Update is consistent with the Growth Management Act (Maine Planning and Land Use Regulation Act, 30-A M.R.S. § 4312). The Town’s Comprehensive Plan includes, among other things, a discussion of the significance of vernal pools; the Town’s work with Dr. Aram Calhoun, a professor of wetland ecology at the University of Maine, to identify vernal pools located in Orono; and a summary of the results of Orono’s town-wide vernal pool mapping efforts. The Orono Comprehensive Plan also includes goals, policies, and action items to pursue landscape scale protection of vernal pools, preserve large blocks of wildlife habitat, and direct future growth to in-town areas near infrastructure and services.

The Town submitted excerpts from its land use regulations (Chapter 18 of the Orono Code of Ordinances) that include the following: Zoning and Performance Standards, Site Plan Review, Subdivision Review, Flood Plain Management, and Shoreland Zoning. Section 1, Exhibit 3b of the application is a copy of “Amendments to Orono Land Use Ordinance to Create the Vernal Pools Overlay District” that was approved by the Town Council on October 15, 2018.

Based upon a review of these submissions, the Board finds that the Town has a comprehensive plan and land use ordinances consistent with Maine’s Planning and Land Use Regulation Act as required by the Vernal Pool SAMP which demonstrates, among other things, a commitment to vernal pool conservation and landscape-scale planning.

- b. Identify Designated Development Area. The Vernal Pool SAMP, in § IV(A)(2), requires that a municipality identify a Designated Development Area (DDA). An area within the Town’s Growth Area may only be designated as a DDA “if the area is zoned for moderate to high density development, will be infill in terms of developed area, is adjacent to existing development within the Growth Area, or is served by municipal sewer and water, adjacent to existing development and zoned for moderate or high density development.” The map showing the DDA must be submitted to the Army Corps of Engineers (Corps) for approval before the municipality requests delegated authority from the Department.

Section 1, Exhibit 2 of the Town’s application is a Map of Orono with the DDA (Vernal Pools Overlay District) designated in green. The DDA is a subset of the Town’s Growth Area. A comparison of the DDA with the Town’s Zoning Map (adopted in 2010) shows that the DDA is limited to areas that are zoned EDZ

(Economic Development Zone), MDR (Medium Density Residential), HDR (High Density Residential), C-1 (Commercial 1), C-2 (Commercial 2), VC (Village Commercial), UNIV (University), or IND (Industrial-Conditional), but does not include all areas so zoned. Importantly, the DDA does not include any areas zoned F&A (Farming and Agriculture), LDR (Low Density Residential), LR (Limited Residential Shoreland Zone), or RP (Resource Protection Shoreland Zone).

The Town states that the DDA was developed in consultation with the Corps, the Maine Department of Inland Fisheries and Wildlife, and the Department. In accordance with the SAMP, the town's designation of its DDA was submitted to the Corps and the Department for review and approval prior to its adoption as part of the Town's Zoning Ordinance. By letter dated January 9, 2019, the New England District of the Corps confirmed that Orono's DDA is acceptable to the Corps.

Based on the Department's review of the location of the DDA with respect to the Town's Zoning Map and the approval by the Corps, the Board finds that the Town has specified a Designated Development Area consistent with the requirements of the Vernal Pool SAMP.

- c. Adopt a Vernal Pool SAMP Ordinance or Modify an Existing Ordinance. The Vernal Pool SAMP, in §IV(A)(3), requires a municipality to adopt ordinance language that allows it to participate in the Maine Vernal Pool SAMP. The ordinance must include, among other things, a mechanism for assessment and collection of vernal pool mitigation fees and retention of a Third Party to hold mitigation funds and undertake vernal pool conservation projects.

Section I of the Town's application includes, as Exhibit 3b, "Amendments to Orono Land Use Ordinance to Create the Vernal Pools Overlay District." The application states that the Town went through the required ordinance development and adoption process which included public workshops, a public hearing before the Planning Board, the recommendation of adoption by the Planning Board, review and a public hearing by the Town Council, and finally adoption by the Town Council on October 15, 2018.

Section 18-113 of the amendments to the Town's Ordinances establishes the Vernal Pools Overlay District. Related amendments to implement the Vernal Pool Overlay District were made to the following sections of the Town's ordinance: Article V, Performance Standards, Section 18-136 Clustered Development and Section 18-144 Wildlife/natural areas preservation; Article VI, Site Plan Review, Section 18-166 Classification of projects, Section 18-168 Site plan review application, and Section 18-177 Site plan review criteria; and Article VII Subdivision Review, Section 18-206 Preliminary plan for major subdivision, Section 18-208 Final plan for minor subdivision, and Section 18-210 Standards. Additionally, amendments to the Ordinances provide protection for vernal pools, whether or not they are deemed "significant" under the NRPA.

Based upon a review of these submissions, the Board finds that the Town has appropriately amended its zoning and land use ordinances to implement the Vernal Pool SAMP.

- d. Adopt Fee Mechanism. Section IV(A)(4) of the Vernal Pool SAMP requires that the municipality assess a fee equal to 40% of the difference between the appraised value of the property proposed for development in its current condition with vernal pools (and associated 250-foot buffer zone) and the value under the hypothetical condition that the property is no longer impacted by the vernal pool(s). The appraisal is to be completed using the Uniform Standards of Professional Appraisal Practice by a Certified General Appraiser licensed in Maine. The municipality is required to collect the fee each time the Vernal Pool SAMP is implemented to accomplish the goal of vernal pool conservation at the programmatic level of two pools plus 70 acres of terrestrial amphibian post-breeding habitat conserved for each vernal pool impacted in the DDA. The SAMP provides that a municipality may opt to adopt a minimum fee if the programmatic conservation goal cannot be met with the differential fee mechanism. The SAMP also provides for an applicant to choose to undertake development of a vernal pool compensation project (permittee responsible mitigation) instead of paying a fee.

As discussed above, Section I, Exhibit 3b of the Town's application includes amendments to the Orono Land Use Ordinance that establish the Vernal Pools Overlay District. Section 18-113(e) of the Ordinance sets forth requirements for vernal pool mitigation including a fee structure consistent with the requirements of the Vernal Pool SAMP as well as provisions governing payment of fees, management of collected mitigation fees, use of mitigation fees, responsibilities of the designed third party conservation organization, annual reporting, and the option for permittee-responsible mitigation in lieu of payment of the fee.

The Board finds that the vernal pool mitigation fee and mechanisms for assessment and transfer of funds incorporated in the Town's Vernal Pool Overlay District meet this requirement of the Vernal Pool SAMP.

- e. Identify a Third Party to Hold Funds and Undertake Vernal Pool Conservation Projects. Section IV(A)(5) of the Vernal Pool SAMP requires a municipality to enter into an agreement with a non-profit land conservation organization as the third-party entity that will hold mitigation funds and undertake vernal pool conservation projects in accordance with the Vernal Pool SAMP. Section IV(B) of the SAMP specifies the responsibilities of the third-party.

The Town has entered an agreement with the Orono Land Trust to serve as the third-party non-profit land organization to carry out the vernal pool conservation activities based on the use of the Vernal Pool SAMP. The Town submitted a copy of the "Agreement between the Town of Orono and the Orono Land Trust, Inc. Acting as the Third Party in the Implementation of the Orono, Maine Vernal Pool Special Area Management Plan" signed by both the President of the Orono Land Trust and the Orono Town Manager on October 18, 2018. The agreement specifies the roles and

responsibilities of the Town and the Land Trust. The agreement includes, among other things, criteria for the identification, prioritization, and approval of potential vernal pool conservation projects; requirements for monitoring projects; provisions for allocation of funds; timetable for conservation activities; financial controls and reporting; provisions for costs incurred by the Orono Land Trust; and requirements for program review. The agreement appends the Maine Vernal Pool SAMP including the Conservation Criteria and Site Checklist and a Model Easement developed and approved for use with the Maine Vernal Pool SAMP.

The Board finds that the Agreement between the Town and the Orono Land Trust meets the requirements specified in the Vernal Pool SAMP for a third-party entity to hold mitigation funds and undertake vernal pool conservation projects.

- f. Identify Vernal Pool Conservation Opportunities. The Vernal Pool SAMP, in § IV(A)(6), requires that the Maine Vernal Pool Conservation Criteria set forth in Appendix 2 of the Vernal Pool SAMP be applied to all known pools in the municipality's designated Rural Area to create a baseline vernal pool conservation suitability assessment.

The Town completed a town-wide municipal vernal pool mapping program. The process included aerial infrared ortho imagery by Sewall Company, interpretation of imagery by Stantec to identify potential vernal pools, requests for landowner permission to visit the pools, and field verification and biological assessment of those pools where landowner permission was received. Potential pools were screened using the Vernal Pool Conservation Criteria of the Vernal Pool SAMP to create a map of potential conservation opportunities. Section I, Exhibit 5 of the application is a map depicting the location of both field verified and potential vernal pools in the Town's growth area. The map also shows the location of vernal pools in the rural area and specifies whether each location meets, partially meets, or does not meet the Vernal Pool Conservation Criteria.

The Board finds that the Town has met the requirement to identify and assess the ecological value of the vernal pools located in its designated Rural Areas.

3. Criteria for Delegation of NRPA Permit-Granting Authority to Municipality. The statutory criteria for delegation of permit-granting authority to a municipality under the Natural Resources Protection Act are set forth in 38 M.R.S. §480-F. If the Board finds that all the criteria are met, the Board must grant the requested authority.
 - a. Establish a Planning Board and Board of Appeals. To receive permit-granting authority under the NRPA, a municipality must have a Planning Board and a Board of Appeals (38 M.R.S. §480-F(1)(A)).

In a January 17, 2019 addition to its application, the Town stated that it has a longstanding Planning Board and Board of Appeals pursuant to State Constitution and statute. The Town submitted information on the membership, organization, and

duties and powers of its Planning Board and Board of Appeals as set forth in Section 18-42 and Section 18-43 respectively of its Chapter 18 Land Use Ordinance.

The Board finds that the Town has met this requirement for partial delegation of permit-granting authority under the NRPA.

- b. Comprehensive Plan and Land Use Ordinances / Consistency with the Maine Planning and Land Use Regulation Act. To receive permit-granting authority under the NRPA, a municipality must adopt a comprehensive plan and related land use ordinances that are determined to be consistent with the criteria set forth in Title 30-A, chapter 187, subchapter 2 (the Maine Planning and Land Use Regulation Act, or Act), and to be at least as stringent as the criteria set forth in 38 M.R.S. § 480-D of the NRPA (38 M.R. S. §480-F(1)(B)).

As discussed in Paragraph 2(a) of this Order, the Town has adopted a Comprehensive Plan that has been determined by the Municipal Planning Assistance Program within the Maine Department of Agriculture, Conservation and Forestry, to be consistent with the Act. The Town has also adopted Zoning, Site Plan Review, and Subdivision Ordinances consistent with its Comprehensive Plan. The process for amending the zoning and land use ordinances to implement the Vernal Pool SAMP included a public hearing before the Town's Planning Board, a recommendation for adoption of the amendments by the Planning Board, review and a public hearing by the Orono Town Council, and adoption by the Town Council on October 15, 2018. Consistency with specific NRPA criteria is discussed in Section 3(c) of this Order.

The Board finds that the Town has adopted a comprehensive plan and land use ordinances consistent with the Maine Planning and Land Use Regulation Act.

- c. Comprehensive Plan and Land Use Ordinances / Consistency with NRPA Criteria.

To receive permit-granting authority under the NRPA, the Town's ordinances must be at least as stringent as the criteria set forth in 38 M.R.S. §480-D. Section II of the Town's application includes excerpts from its land use ordinances including Chapter 225-23 Erosion Control, Chapter 225-24 Stormwater Management, Chapter 225-25 Floodplain Management, and Chapter 175-8(R) Site Plan.

In signing the Maine Vernal Pool SAMP, the Department found, in effect, that delegation of permit-granting authority to a municipality pursuant to the Maine Vernal Pool SAMP would provide for natural resource protections equivalent to those provided by the Department under the NRPA and associated rules. Each of the NRPA licensing criteria is discussed below.

- (1) 38 M.R.S. §480-D(1). The activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses. The Town states that, consistent with the terms of the Vernal Pool SAMP, development under the SAMP will only occur in the DDA, which already has considerable development within it. The DDA does not include areas such as shorelands, conservation

lands, and university forests that have scenic, recreational, or navigational uses. The Town states that to the extent that there may be direct or indirect impacts on such uses, the Land Use Ordinance has several provisions within Site Plan Review, Subdivision Review, and its Performance Standards intended to protect these uses. The application includes excerpts from the Town's Land Use Ordinances which include, among other things, standards governing site utilization and protection of environmentally sensitive areas, preservation of natural beauty and aesthetics, retention of open space and natural areas, buffer strips, and screening of development.

A review of the Town's zoning map shows that the DDA is located primarily between Interstate 95 and the Penobscot River. As discussed in Paragraph 2(b) of this order, the DDA is limited to areas that are zoned EDZ (Economic Development Zone), MDR (Medium Density Residential), HDR (High Density Residential), C-1 (Commercial 1), C-2 (Commercial 2), VC (Village Commercial), UNIV (University), or IND (Industrial-Conditional).

The Board finds that the vernal pools located in the Town's DDA are not likely to have or retain high value scenic, aesthetic, or recreational uses given the location of the DDA and the existing and anticipated level of development in the area. The Board notes that the location of the Town's DDA was reviewed and approved by the Corps prior to the Town's submission to the Department of its application for delegation of permit-granting authority. The Board finds that impacts to vernal pools in the Town's DDA with protection of vernal pools in rural areas in accordance with the Vernal Pool SAMP will provide protection consistent with this criterion of the NRPA.

- (2) 38 M.R.S. §480-D(2). The activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment. The Town states that because of the isolated nature and small size of vernal pools, impacts to vernal pools are unlikely to cause soil erosion or inhibit the transfer of sediment from the terrestrial to the marine or freshwater environment. The Town comments that, in any case, Orono is an MS4 community and has strict erosion control and stormwater management standards. These standards require compliance with the Maine Erosion and Sedimentation Control Law (38 M.R.S. § 420-C) and the Stormwater Management Law (38 M.R.S. § 420-D) and applicable best management practices. The Town also comments that most shoreland areas are excluded from the DDA. Excerpts from the Town's ordinances governing earth-moving and stormwater management are included in the application.

Based on a review of the Town's erosion control and stormwater management ordinances, the Board finds that the Town's ordinances are as stringent as this criterion of the NRPA.

- (3) 38 M.R.S. §480-D(3). The activity will not unreasonably harm any significant wildlife habitat; freshwater wetland plant habitat; threatened or endangered plant habitat; aquatic or adjacent upland habitat; travel corridor; freshwater, estuarine or marine fisheries; or other aquatic life. The Vernal Pool SAMP authorizes impacts to vernal pools in a municipality's DDA in exchange for preservation in perpetuity of high value vernal pools located in rural areas. Preservation of vernal pools in rural areas will compensate for the filling or other disturbance of vernal pools in the DDA with the goal of protecting two vernal pools and 70 acres of adjacent terrestrial habitat embedded in an unfragmented landscape for each vernal pool impacted. The preservation of seventy acres in which a vernal pool is located represents the equivalent of a setback of approximately 1000 feet, which is larger than the 250-foot State zone of consultation. This compensation goal exceeds the minimum level of compensation for impacts to wetlands of 8:1 for preservation currently required by the Department's Chapter 310 Wetlands and Waterbodies Protection rule.

The Town's Site Plan Review and Subdivision Ordinances require an applicant that proposes to use the provisions of the Town's Vernal Pool Overlay District to mitigate impacts to vernal pools by providing evidence of payment of the vernal pool mitigation fee or evidence of completion of permittee-responsible mitigation activities.

In accordance with Section III(B) of the Vernal Pool SAMP, the Vernal Pool SAMP cannot be used if the vernal pool to be impacted supports state or federal threatened or endangered species unless a determination of no effect or not likely to adversely affect is made by the Corps in consultation with the U.S. Fish and Wildlife Service. This limitation appears on the Town's application form "Vernal Pool Impact in Vernal Pool Overlay District"; however, the Board finds that this limitation should also be stated in the applicability section of the Town's Vernal Pools Overlay District. Provided this limitation is included in the Town's ordinance, the Board finds that the Town's implementation of the Vernal Pool SAMP in its DDA will provide protection consistent with the NRPA criterion governing impacts to habitat and the other potentially applicable aspects of this criterion.

- (4) 38 M.R.S. §480-D(4). The activity will not unreasonably interfere with the natural flow of any surface or subsurface waters. The Town states that vernal pools are not connected to other surface waters and that, due to their small size and ephemeral nature, the impact of vernal pools on the flow of subsurface waters is considered minimal.

A vernal pool is by definition "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. Vernal pools have no permanent inlet or outlet and no viable populations of predatory fish" (06-096 CMR Ch 335, §9).

The Board finds that, based on the nature of vernal pools, impacts to vernal pools in the Town's DDA in accordance with the Vernal Pool SAMP will not unreasonably interfere with the natural flow of any surface or subsurface waters.

- (5) 38 M.R.S. §480-D(5). The activity will not violate any state water quality law, including those governing the classification of the State's waters. The applicant states that this standard is not applicable because vernal pools are not classified bodies of water.

The Board finds that the vernal pools in the Town's DDA as described in Section II(B) of this Order are ephemeral in nature and are not independently classified bodies of water pursuant to 38 M.R.S. § 464 et seq., the State's Water Classification Program. The Board further finds that impacts to any such vernal pools will not violate any State water quality law, including those governing the classification of the State's waters.

- (6) 38 M.R.S. §480-D(6). The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties. The Town has adopted a Floodplain Management ordinance that meets the standards of the National Flood Insurance Program. Article VIII of the Land Use Ordinance requires that any development in specified flood hazard areas requires a permit from the Town, must meet development standards, and requires a certificate of completion prior to occupancy. The Vernal Pool SAMP does not impact this requirement. The Town states that, given the small size and limited capacity of vernal pools to hold water, impacts to vernal pools in the DDA will have little to no effect on flooding. The Town's zoning map also indicates that many sections of the 100-year floodplain along the Penobscot River, Stillwater Branch and Pushaw Lake are excluded from the DDA. Additionally, the Town comments that the Town's Stormwater Management Ordinance addresses flooding impacts from new development including requirements to prevent adverse impacts on abutting and downstream properties and resources.

Based on a review of the Town's floodplain management and stormwater management ordinances, the Board finds that the Town's ordinances are as stringent as the flooding criterion of the NRPA.

- (7) Other NRPA Criteria. The applicant states that the following NRPA criteria are not applicable to the Town's request for partial delegation of permit granting authority under the Vernal Pool SAMP: 38 M.R.S. § 480-D(6) Sand or gravel supply, as there are no vernal pools in sand dunes within the DDA; § 480-D(7) outstanding river segments, as there are no outstanding river segments within the Town's DDA; and § 480-D(9) dredging, as the Vernal Pool SAMP does not involve dredging activities.

The Board concurs with the Town's assessment and finds that the NRPA standards governing sand or gravel supply, outstanding river segments, and

dredging are not applicable to the Town's request for partial delegation of permit granting authority for vernal pools located within its DDA.

- d. Financial, Technical and Legal Resources. Title 38, §480-F(1)(C) requires that a municipality requesting delegation of permit-granting authority demonstrate the financial, technical, and legal resources to adequately review and analyze permit applications and oversee and enforce permit requirements.

Section III, Exhibit 6 of the Town's application provides the job descriptions and professional qualifications of municipal personnel responsible for reviewing vernal pool permits in the DDA including the Town Planner, the Code Enforcement Officer, and the Director of the Office of Community Development. The job descriptions for each of these positions and the resumes of persons currently serving in these positions are included in the application.

The Town retains outside civil engineering services of Olver Associates of Winterport and uses the legal services of the law firm of Farrell, Rosenblatt and Russell of Bangor as needed. The Planning Board and Town Planner are also authorized by ordinance to obtain expert reviews from other professionals such as wetland biologists and transportation planners as needed to review applications.

Based upon the job descriptions and the resumes of current planning and code enforcement personnel and the Town's ability to engage additional legal and technical staff as needed, the Board finds that the Town has the financial, technical and legal resources to review and analyze permit applications and enforce permit requirements as required by the NRPA.

- e. Notice to Commissioner. Title 38, §480-F(1)(D) requires that a municipality requesting delegation make provision by ordinance or rule for prompt notice to the Commissioner of the Department of all applications received except for permit-by-rule, prompt notice to the public of receipt of an application, and written notification to the applicant and the Commissioner of the issuance or denial of a permit, except for permits for which no public notice or written decision is required.

The procedures listed on the Town's application form "Vernal Pool Impact in Vernal Pool Overlay District" include notification of Maine DEP; however, this requirement does not appear in the text of the Town's ordinances governing the Vernal Pools Overlay District. Provided the Town's ordinance is amended to include this requirement, the Board finds that the Town's application for partial delegation of permit granting authority will meet this NRPA requirement.

- f. Application Form. Title 38, §480-F(1)(E) requires that the municipality provide an application form that is substantially the same as that provided by the Commissioner.

The Town has submitted a copy of the Town's Application for "Vernal Pool Impact in Vernal Pool Overlay District." The form provides information on the nature and location of the proposed development, the appraised value of the property with and

without the potential restrictions on development due to the vernal pool(s), and the mitigation fee. Attachments to the application form are to include: development parcel location map; copy of appraisal; documentation of title, right or interest in the development parcel; project plans that show the approximate location of vernal pools on the development parcel; and information on any proposed permittee-responsible mitigation parcel and communication with the Orono Land Trust indicating the willingness to accept the conservation project. It also requires certification by the applicant that the proposed project meets the standards for use of the Vernal Pool SAMP.

The Board finds that the Town has designed an application form substantially the same as application forms used by the Department for reduced permitting in accordance with standards established in rule and, in this case, with the requirements set forth in the Vernal Pool SAMP.

- g. Code Enforcement Officer. Title 38, §480-F(1)(F) requires that the municipality appoint a code enforcement officer who is certified pursuant to 30-A M.R.S. §4451.

The Town has submitted the job description for the Town's code enforcement officer which specifies essential duties and responsibilities and required education and experience. The resume of the current code enforcement officer is included as well as a copy of his Municipal Code Enforcement Certification by the State of Maine Department of Economic and Community Development.

Based upon the job description and resume of the Town's Code Enforcement Officer, the Board finds that the Town has met this requirement for partial delegation of permit-granting authority under the NRPA.

BASED on the above findings of fact, the Board makes the following CONCLUSIONS:

1. The Town of Orono has met the requirements for participation in the Maine Vernal Pool Special Area Management Plan dated August 2016.
2. The Town of Orono has met the requirements for partial delegation of permit-granting authority pursuant to 38 M.R.S. §480-F for impacts to vernal pools in the Town's Designated Development Area in accordance with the Vernal Pool SAMP provided the Town's ordinances governing implementation of the Vernal Pool SAMP are amended to:
 - (a) specify in the Vernal Pools Overlay District applicability section the limitations on use of the SAMP as they pertain to state or federal threatened or endangered species, and
 - (b) incorporate notice to the Commissioner of the Department of applications received and permits issued in accordance with the SAMP.

THEREFORE, the Board APPROVES the application of the TOWN OF ORONO for partial delegation of permit-granting authority under the NRPA for the issuance of permits pursuant to the Maine Vernal Pool Special Area Management Plan SUBJECT TO THE FOLLOWING CONDITIONS:

1. Signatory to Maine Vernal Pool SAMP. In accordance with Section IV(A)(8) of the Maine Vernal Pool SAMP, upon receipt of partial permit-granting authority, the Town of Orono must become a signatory to the Maine Vernal Pool SAMP along with the U.S. Army Corps of Engineers and Maine DEP for implementation of the Vernal Pool SAMP at the municipal level. The Town must become a signatory prior to receipt of a fee from any applicant for impacts to vernal pools within the DDA and prior to issuance of an NRPA vernal pool permit. The Town must comply with all terms and conditions of the Maine Vernal Pool SAMP.
2. Threatened or Endangered Species. The Town's ordinances governing use of the Maine Vernal Pool SAMP must be amended, prior to use of the SAMP, to include the limitations set forth in the VP SAMP pertaining to state or federal threatened or endangered species.
3. Notice to the Department of Applications and Permits Issued. In accordance with 38 M.R.S. § 480-F, except for permits-by-rule, the Town shall provide prompt notice to the Commissioner of all applications received for use of the Vernal Pool SAMP, and shall send a copy of each permit issued by the municipality with the associated application to the Commissioner immediately upon issuance of the permit, by registered mail. No permit issued by the Town pursuant to the Vernal Pool SAMP may become effective until 30 days after its receipt by the Commissioner unless approved by the Commissioner in less than 30 days. The Town's ordinances governing use of the Maine Vernal Pool SAMP must be amended to include this requirement prior to use of the Vernal Pool SAMP.
4. Third Party Agreement. The Town shall notify the Department of any changes to the Third Party Agreement to ensure continuing compliance with the requirements of the Maine Vernal Pool SAMP.
5. Reporting Requirement. The Town of Orono shall submit an annual report on the use of the Vernal Pool Overlay District to the Department and the U.S. Army Corps of Engineers within 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 to preserved pools shall include photos and a report describing the condition of each pool, the surrounding landscape, and other relevant factors.

6. Limit of Delegation. Delegation of permit-granting authority by this Order applies only to vernal pool impacts located within the Town of Orono's Designated Development Area and the associated Vernal Pools Overlay District as the DDA and Overlay District exist on the date of this approval. The Town of Orono shall submit to the Department within 14 days of adoption any changes or amendments to the Town's Vernal Pool Overlay District and associated ordinances.

7. Termination of Maine Vernal Pool SAMP. In accordance with Section IV(G) of the Maine Vernal Pool SAMP, delegation of permit-granting authority by this Order will terminate if the Department or the U.S. Army Corps of Engineers terminates the Maine Vernal Pool SAMP. Termination of the Maine Vernal Pool SAMP or a municipality's participation in the Maine Vernal Pool SAMP does not terminate the Third Party's responsibility for conservation in perpetuity of projects completed in part or in total with funds acquired through use of the Maine Vernal Pool SAMP.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL, OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED AT AUGUSTA, MAINE THIS 4th DAY OF April, 2019.

BOARD OF ENVIRONMENTAL PROTECTION

By: 
MARK C. DRAPER, CHAIR

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.