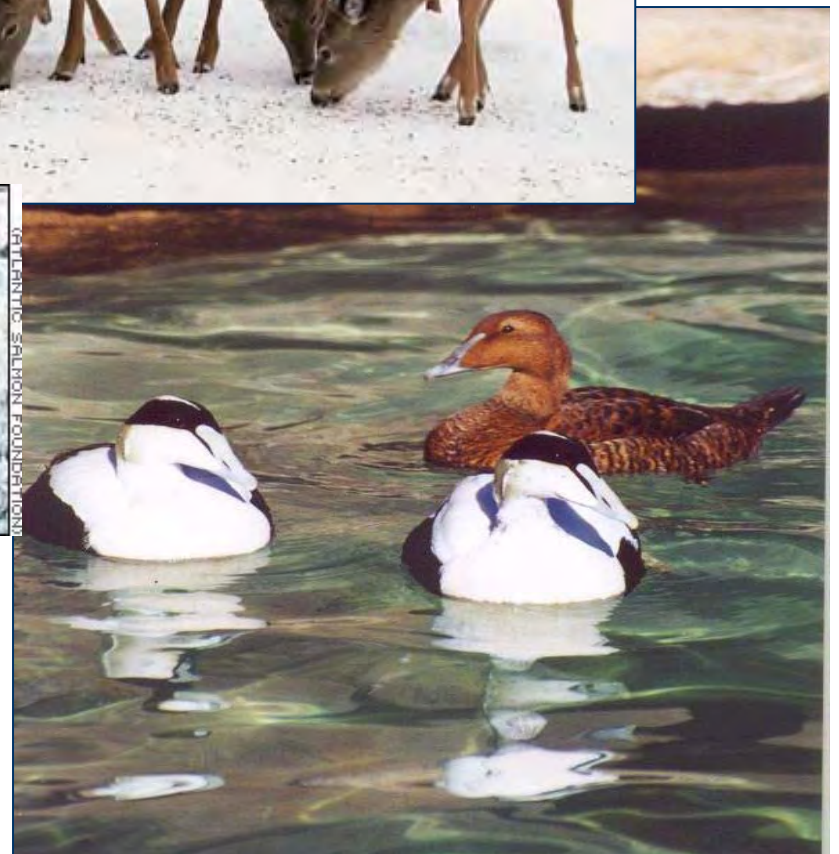


Regulating Significant Wildlife Habitat

Mary Pierce

Woodlot Alternatives, Inc.







Vernal Pools, WWH, & Shorebird Areas



How have the been they regulated?

38 MRSA §480-B (10) Significant Wildlife Habitat

- All SWH used to be:
 - ...**defined** habitats to the extent that they have been *mapped by MDIF&W...*
 - ...or are ***within another protected natural resource ...***



M.R.S.A §§ 481-490; Chapter 375: No Adverse Environmental Effect

- Section 12: Preservation of Unusual Natural Areas
- Section 15: Protection of Wildlife and Fisheries
- Vernal Pool Jurisdiction only for Site Law projects: structure, subdivision, developed area

Federal Regulations

- Army Corps of Engineers (ACOE), Section 404 of Clean Water Act
- Jurisdiction over wetland fill
- Vernal pools, WWH, Shorebird Habitat may be regulated if:
 - Impact to the wetland habitat
 - Impact to other wetlands as a result of the **activity**
- ACOE has recommended less than 25% development within 750 feet of vernal pools
- PGP says 500 feet habitat protection zone around pool

Why is the State Changing NRPA Now?

- 10 Years of research indicates that mapping by IF&W is not likely to be most effective for identifying and protecting vernal pools because:
 - Costs of mapping exact locations
 - Inequity of aerial photo interpretation for mapping
 - Private property issues

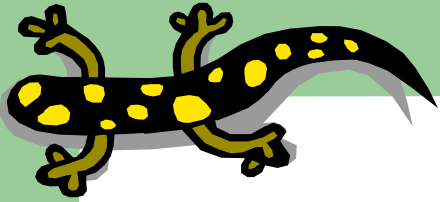
What are the steps for change?

- ✓ An idea for regulatory change based on science
- ✓ Internal approval by Commissioner at MDEP
- ✓ Approval by Governor
- ✓ Natural Resource Committee hearing & work session
- ✓ Legislative decision 😊
- ✓ Because 😊, BEP revises Chapters 335 and 375, Section 15
- 🕒 IF&W adopts definitions in rule, and
- 🕒 Provisionally adopted Chapter 335 goes back to the Legislature for approval ... dates yet to be assigned ... emergency legislation?

Check at Legislature website: <http://janus.state.me.us/legis/>

Changes to NRPA §480-B (10)

- Delete References to:
 - Waterfowl and Wading Bird Habitat
 - Shorebird Nesting, Feeding, & Staging Areas
 - Significant Vernal Pools



Changes to NRPA §480-B (10)

- Significant Wildlife Habitat means:
- Add Subsection B:
 - B.** Except for solely forest management activities, for which significant wildlife habitat is as defined and identified by IF&W, the following areas that are defined by the IF&W and are in conformance with criteria adopted by the MDEP or are within any other protected natural resource:
 - 1. Significant vernal pool habitat;**
 - 2. High and moderate value waterfowl and wading bird habitat including nesting and feeding areas; and**
 - 3. Shorebird nesting, feeding and staging areas.**

Changes to NRPA §480-Q (17)

- Wetlands that meet the definition of significant wildlife habitat will no longer qualify for the 'minor alterations' exemption



375 Section 15 (B) Updates

Final Adoption December 1, 2005

- Scope of Review now includes:
 - High and moderate value deer wintering areas
 - Habitat of T&E species
 - Seabird nesting islands
 - Significant vernal pools
 - High and moderate value WWH
 - Shorebird nesting, feeding, and staging areas
- Purpose – improve clarity & consistency of Site Law



Proposed State Identification Criteria

Wetland-Based
Significant Wildlife
Habitat

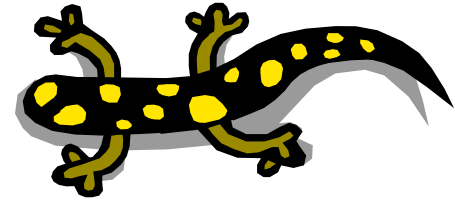


What are the proposed NRPA criteria for Significant Vernal Pool Habitat or...



How will we know one when we see one?

A Vernal Pool is...

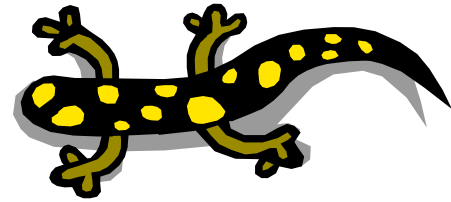


...a **naturally occurring, temporary to semi-permanent** body of water occurring in a shallow depression that typically fills during the spring or fall and may not dry during the summer. Vernal pools have **no permanent inlet and no viable populations of predatory fish**. A vernal pool may provide the primary breeding habitat for wood frogs, spotted-, blue-spotted salamanders, and fairy shrimp, as well as valuable habitat for other plants and wildlife including several rare, threatened, and endangered species. A vernal pool intentionally created for the purposes of compensatory mitigation is included in this definition.

(Draft definition, MDEP & MDIFW)

Significant Vernal Pools are ...

- ...significant wildlife habitats that consist of a **vernal pool depression** and a portion of the **critical terrestrial habitat measuring 250 feet** around a significant vernal pool depression from the spring or fall high water mark AND
- ...meet the criteria...



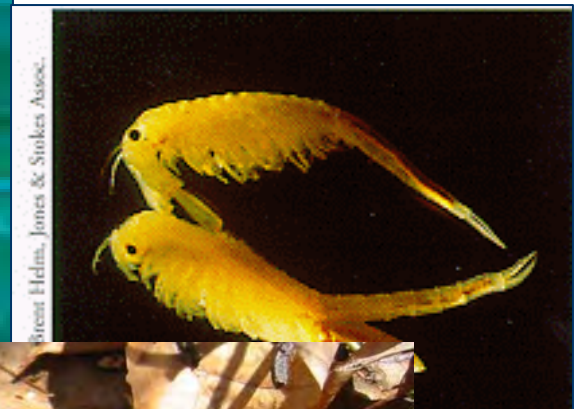
The Criteria

- **Rarity** – documented use by state-listed endangered or threatened species that commonly require a vernal pool to complete a critical portion of their life-history;
- **Abundance** – documented breeding abundance of one or more of the following indicator species:
 - blue-spotted salamanders: 10 or more egg masses
 - fairy shrimp: presence
 - spotted salamanders: 20 or more egg masses
 - wood frogs: 40 or more egg masses

(Draft definition, IF&W and MDEP)



Endangered or Threatened VP Species



The Indicator Species

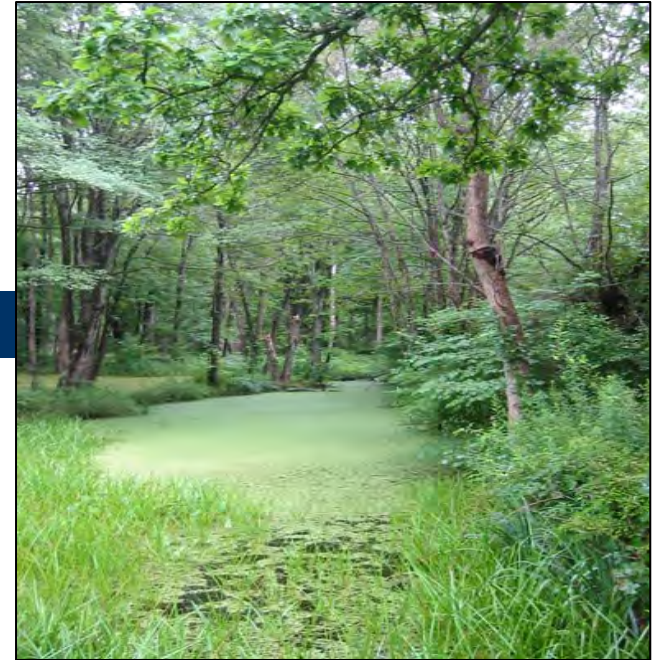






Definition of “Natural”

- “...includes pools of natural origin that have been modified or excavated...”
- Does not include other natural wetland types that have been altered and function as vernal pools:
 - Wet meadows
 - Marshes
- ACOE and other states may be different



Why do we care?

- PB amphibians show high natal site fidelity for breeding: i.e. they come back to the pool where they were born
- Vernal pools are biomass exporters:
leaves → insects → amphibians → everything else
- Mole salamanders can live to be twenty
- Frog and salamander diversity is declining globally
- Use by other animals, including T&E species and game species
- Science education

When do we Count Egg Masses?

Geographic Region	Wood Frogs	Salamanders
Northern Maine	May 1 – May 21	May 10 – May 31
Southern Maine	April 7 – April 21	April 20 – May 21

Geographic Region: north and south of a line extending approximately from Fryeburg to Auburn to Skowhegan to Bangor to Calais

These dates may vary based on weather conditions.

What are the NRPA Criteria for High and Moderate Value WWH?



Waterfowl & Wading Birds

- brant
- wild ducks
- geese
- swans
- and others...



- herons
- glossy ibis
- bitterns
- rails
- coots
- common moorhens
- sandhill cranes
- and others...



Two ways WWH are designated high or moderate value:

- The WWH is a wetland complex that meets IF&W guidelines
 - The WWH has documented outstanding use by waterfowl or wading birds
- ★ This significant habitat includes a 250 habitat management zone associated with the inland WWH; tidal WWH has 75 ft management zone only

What are the proposed NRPA criteria for High and Moderate Value Shorebird Nesting, Feeding, & Staging Areas?



Shore Birds

- sandpipers
- plovers
- and others...



What does this habitat include?

- Areas for overnight roosting
- Areas for loafing and resting
- Areas for feeding prior to migration
- Areas for feeding at other times
- IF&W has not yet defined nesting habitats

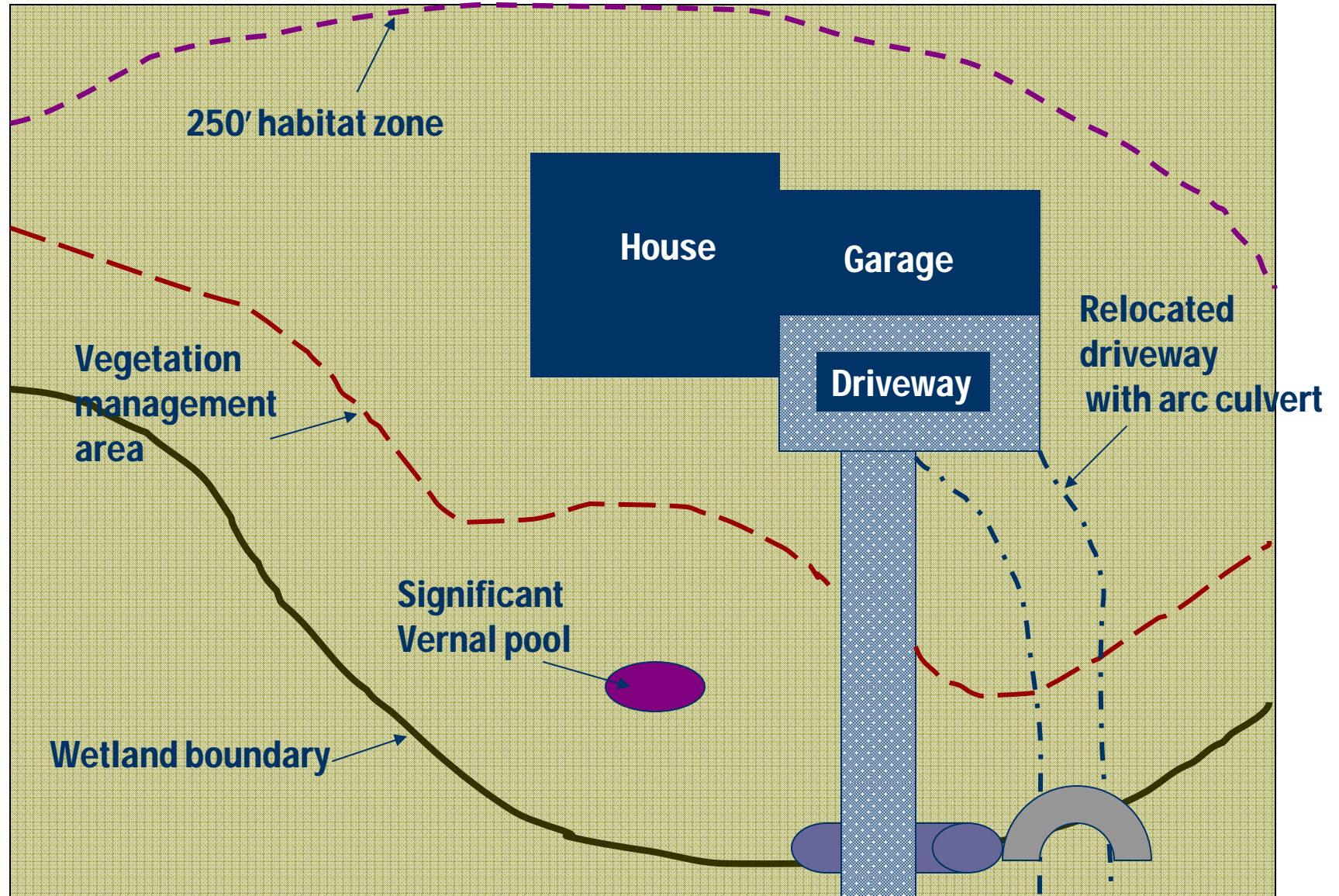
Criteria for Identification

- IF&W rates habitat based on:
 - Number of observations of shorebirds since 1987 per site
 - Number of shorebirds per species per shorebird survey unit
- ★ This significant habitat includes a 250 foot wide zone associated with wetlands used by shorebirds
- ★ Shorebird Occurrence database at IF&W:
<http://www.maine.gov/ifw/index.html>

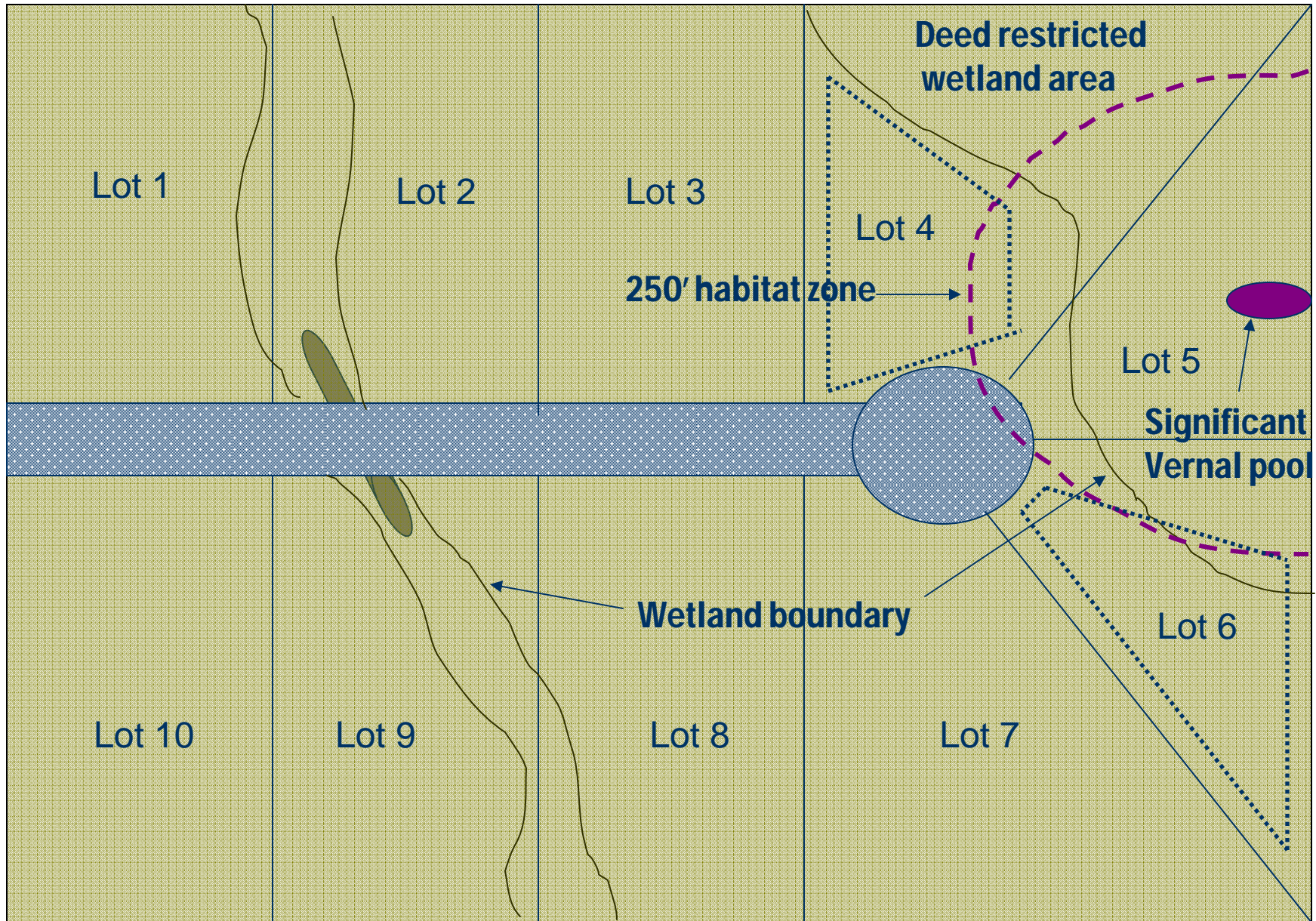
General Standards for Protection

- **Avoidance:** No activity that would degrade or affect continued use of the SWH by the subject wildlife, either during or as a result of activity if practicable alternative exists
- **Minimization:** Size, duration, proximity
- **Unreasonable Impact:** Potential denial based on area of SWH affected, including areas beyond physical boundaries of activity & cumulative impacts

Permitting Scenario 1: Single-family residence (lot approx. 2 acres)



Permitting Scenario 2: Residential subdivision (Lot size approx. 2 acres)



What will the changes accomplish?

- Add predictability by adopting criteria for significant vernal pool habitat, WWH habitat, & Shorebird areas;
- Increase consistency for wetland-based significant wildlife habitats;
- Provide an incentive for multi-pronged habitat protection efforts (e.g., BWH); and
- Reduce cost and labor associated with intensive, location-specific mapping.

Acknowledgements

- Vernal Pool Working Group
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 - Mary Pierce, DEP/Woodlot

- University of Maine
- Maine Audubon
- ME Department of Inland Fisheries & Wildlife
- Maine Department of Environmental Protection
- Maine Department of Conservation
- Maine State Planning Office



For More Information

- MDEP
 - Augusta (800) 452-1942
 - Bangor (888) 769-1137
 - Portland (888) 769-1036
 - Presque Isle (888) 769-1053
- ACOE Manchester, ME (207) 623-8367