

Wildlife Habitat Overlay District

[Explanatory Note: This example is not designed as a stand-alone ordinance. If a municipality chooses to incorporate the provisions of this ordinance into a comprehensive land use regulation ordinance, these provisions should be reviewed, amended, or omitted as may be necessary to ensure consistency, avoid redundancy, and to retain any provisions related specifically to project review.]

Section I. General

A. Title: Wildlife Habitat Overlay District for the (Town/ of City of [Municipality]).

B. Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A MRSA Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A MRSA Section 4301 et seq.

C. Effective Date

This Ordinance takes effect on _____

D. Findings and Purposes

1. The purpose of the Wildlife Habitat Overlay district is to reduce the continuing loss of habitat for native species in rural districts, while simultaneously accommodating development in those districts.

[Explanatory Note: As written, this example applies to “Rural Districts” (those areas outside of a designated growth zone) only. Residential growth in a community is inevitable and effective habitat conservation must be balanced with equally effective incentives for growth to occur in more appropriate areas where supporting infrastructure is already present (areas typically designated as “growth zones”).]

2. The intent of the requirements of this section is to minimize the removal of woody vegetation that breaks large unfragmented blocks of forest into smaller patches of forest; and to minimize activities that block or limit species movement between unfragmented blocks of forest. These activities are hereafter referred to as “fragmentation”.

[Explanatory Note: To be easily implemented and understood by citizens, an ordinance’s intent must be clear and definable. It must also be crafted in a way that accounts for as many situations as possible that could impact the resources to be conserved. The wording

of subsection 2 above is intended to be clear and simple regarding what is to be minimized (“fragmentation”) and to generally define the causes of fragmentation.]

3. The Wildlife Habitat Overlay District includes the following

- a. Wildlife Habitat Block Districts, are the rural portions of large (greater than XXX-acre) continuous blocks of naturally occurring stands dominated by woody vegetation, and;
- b. Wildlife Corridor Districts, are the overland connections between Wildlife Habitat Blocks and which provide naturally vegetated linkages that support daily and seasonal species movement between Wildlife Habitat Blocks

[Explanatory Note: Blocks: In different regions of the state, the size of blocks that rise to the level of significance will vary based on existing levels of regional fragmentation. In a southern Maine town near the coast where habitat is already considerably fragmented due to past development choices, a 150-acre block might be a conservation priority, whereas 500-acres may be the starting point in central and northern Maine where fragmentation is currently less of an issue. These decisions are ultimately political, but should have a scientifically defensible foundation. Beginning with Habitat (BwH) can offer advice for each local situation.

Corridors: The Town of Brunswick recently implemented this ordinance and mapped corridors as those areas providing: 1) the most direct connections between mapped unfragmented blocks; 2) the most remaining woody cover; 3) the lowest density of residential development; and 4) the fewest road crossings. Additional information on the importance of habitat connectivity and estimating where important connections may be can be found in [“Conserving Wildlife in Maine’s Developing Landscape”](#).]

E. District Boundary

1. Geographic Coverage

The provisions in this section apply only to overlay districts depicted on the Town/City of [Municipality], Maine Zoning Map as “Wildlife Habitat Overlay Zoning Districts” on file in the Department of Planning.

2. Boundary Determination

The overlay district boundaries are based on Beginning with Habitat unfragmented forest depictions that have been revised to reflect existing conditions. Boundary delineation was completed using the most recent available aerial photo imagery and have been updated to include land-use changes known to have occurred through [appropriate month/year based on adoption]. The boundary of the overlay districts will be adjusted as approved development within the overlay districts occurs.

[Explanatory Note: Beginning with Habitat (BwH) mapped “unfragmented blocks” are based on a landscape analysis technique that is basically a snapshot in time and that does not easily allow for town-by-town corrections utilizing the most up-to-date information. Updated aerial photos and local knowledge of new construction should be the basis for revising the relatively broad brush approach by BwH in determining mapped blocks. Accurately revising boundaries at the local level will ensure that overlay districts are drawn around blocks of forest and other habitat types that are truly unfragmented by improvements such as roads and structures and therefore defensible within this ordinance.]

Section II. Requirements of the Overlay District

A. Applicability

This section shall apply to the following activities in the overlay districts:

1. Disturbance, as defined in section XXX (*Definitions- see below*);
2. New subdivisions;
3. Construction, enlargement or placement of a new building or structure;
4. Construction of a road, driveway, or parking lot;
5. Creation or expansion of commercial utility corridors;
6. Installation of a fence within the Wildlife Corridors except:
 - a. fences used as lawn accessories;
 - b. fences that enclose existing cleared areas;
 - c. fences erected for standard agricultural purposes;
 - d. fences lower than 4-½ feet and that have at least 16 inches of clearance between the lowest horizontal part of the fence and the ground.

[Explanatory Note: Most activities that require formal project review or even just a building permit are obvious choices as applicable activities given that some degree of formal review of these activities is expected at the local level. Activities that could affect the functional value of the resource being considered by the ordinance, but that do not necessarily trigger review under current mechanisms need to be carefully considered. In the example above, fences (typically a benign structure) could block species passage if poorly placed and inappropriately designed.]

B. Exempt Activities

The following activities do not pose a significant adverse impact on the environmental value of unfragmented blocks and corridors, and therefore do not

require approval under this section of the ordinance. The standards of the underlying zone would continue to govern these activities where applicable:

1. Maintenance of existing hayfields and pastures
2. Standard farming activities at an existing establishment practicing agriculture, including but not limited to:
 - a. the construction of traditional walls and fences for the purpose of enclosing existing livestock areas or delineating existing fields, pastures, crops, and garden plots
 - b. construction or improvement of structures used for agriculture
 - c. bush-hogging existing regenerating fields for agricultural purposes
 - d. creation of utility lines and corridors directly associated with farm operations
 - e. creation of impervious surfaces for the purposes of equipment and product storage, and access to existing agricultural facilities, fields and pastures.
3. Forest management activities including commercial woodlot management completed in accordance with Maine Forest Practices Act; harvesting of wood products for personal use, but not permanent clearing as defined in section XXX (*Definitions- see below*); and removal of dead, dying, and diseased trees. The removal of stumps, and grading conducted to limit natural regeneration of trees is not considered a forest management activity.
4. Structures constructed or placed on existing maintained lawns or impervious surfaces.
5. Permanent clearings within Wildlife Corridors less than 10,000 square feet in size.

[Explanatory Note: Given that overland connecting corridors between unfragmented forest blocks typically have some inherent level of disturbance associated with existing development and that most use of these typically occurs at night, it is reasonable to consider an exemption window that would allow for creation of gardens, lawns, etc. The 10,000 square foot figure is currently used as a threshold in shoreland zoning rules.]

6. The construction of one single-family residence and accessory structures on a lot that is created by a single division of an existing parcel

and has frontage on a public road. The total area of disturbance in the overlay district on the parcel must not exceed 1 acre.

[Explanatory Note: As discussed above, this exemption is suggested as a mechanism to allow creation of a lot for a relative, or as a one time exemption allowing long-time landowners to realize additional income through a lot sale without increased regulatory burden. It is important to specify that the original lot has frontage on a public road to avoid potential abuse of the ordinance in a manner that could result in significant fragmentation such as un-reviewed division of back lots or flag lots within the interior of an unfragmented block.]

7. The enlargement of existing agricultural clearings, or the creation of new agricultural clearings including pastures, provided the permanent clearings are utilized for agricultural purposes for a minimum of 30 years prior to any non-agricultural use. If such clearings are used for agriculture for fewer than 30 years, but are maintained as permanent clearings (*conversion to lawn, house lots, etc.*), the area maintained as a permanent clearing within the Overlay District shall be considered a disturbance for the purposes of Section E. If the agricultural use is abandoned during the 30-year period and the clearing is allowed to naturally regenerate, the cleared area will not be considered a disturbance.

[Explanatory Note: This exemption is suggested as a way to not penalize rural agricultural uses and as a way to not inadvertently discourage new farms from becoming established. The 30-year clause is included as a mechanism to avoid abuse of the exemption. The timeframe suggested is fairly arbitrary, but assumes that if a landowner is willing to keep his or her land in agriculture for the 30 year period, then that person has contributed significantly to local rural character and should not be penalized for development after the 30 year term expires .

C. Standards for Development Activity

1. Activities in the overlay districts shall minimize disturbances to the extent feasible.
2. Activities in the overlay districts are subject to habitat mitigation, or eligible for bonus densities, based on the provisions in Section E Habitat Disturbance Analysis.
3. The Codes Enforcement Officer or Planning Board may reduce front, side, and rear setback requirements to minimize disturbances within the overlay district provided:
 - a. no other reasonable alternative exists, and
 - b. the setback reduction(s) will not cause unreasonable adverse impacts to the adjacent property.

[Explanatory Note: This ordinance attempts to get applicants for development projects to: 1) consider alternative project designs that would avoid impacts to the mapped resource; 2) if avoidance is impractical, then design the project to minimize the amount of disturbance (C.3 allows flexibility in design standards to help accomplish impact avoidance and minimization); and 3) if significant disturbance is unavoidable as a result of the project design analysis, then allow the applicant to replace a percentage of the lost habitat functions through “habitat mitigation” .]

D. Approval of Activities

1. Development review classifications (*Major and Minor*) and thresholds are defined under Section XXX of the town land use ordinance.
2. Activities requiring a building permit, but not formal development review, will be reviewed jointly by the Codes Enforcement Officer and Planning Department for compliance with this section of the ordinance.
3. Activities requiring an entrance (*driveway opening*) permit must include a copy of the entrance permit application with the building permit application. Clearing for these activities shall not occur until the driveway location and layout is approved as part of building permit review.
4. On-site project planning meetings with the Town Planner or Codes Officer are encouraged in order to avoid and minimize disturbance of the overlay district.

[Explanatory Note: This ordinance has been written to apply in the review of both large projects that require formal planning board review such as subdivisions, and smaller projects such as single home construction projects that may only need a building permit. An additional provision has been added to capture driveway entrance permits that are often only reviewed by a public works director or road commissioner. Placement of roads, even private gravel drives, can result in significant habitat impacts themselves and ultimately determine the pattern of future development.]

E. Habitat Disturbance Analysis

In the case of subdivisions, disturbance shall include the area within residential lots other than those portions of the lot encumbered by deed restriction, conservation easement, or similar mechanism that limits future disturbances to those which meet the purposes of this ordinance.

[Explanatory Note: The disturbance analysis, in keeping with the general approach of this ordinance, is designed to offer project design flexibility. The project applicant can design a project using any lot size desired, and will only be asked to base habitat mitigation on those areas directly disturbed, and those portions of the individual lots that could be further cleared in the future should the lot owners desire. Order of review is important to successfully meet the objectives of minimizing fragmentation. Section C-1 should be used to guide project design such that it minimizes disturbance first before any discussions of mitigation under Section E are initiated.]

1. Wildlife Habitat Block

Habitat mitigation, or density bonus eligibility, within the Wildlife Habitat Block District shall be provided in accordance with the following table. The amount of the disturbance is the cumulative amount on parcels that exist as of record on the date this section is adopted (“original parcel”). Division of the original parcel after the adoption of this ordinance does not change the measurement of cumulative disturbance on the original parcel. *The mitigation requirement is determined separately for each percentage category of disturbance. Examples of how to calculate mitigation requirements are attached below under “Explanation of Terms Used”.*

Area of Overlay District within Original Parcel that is disturbed up to:	Area of Original Parcel covered by Overlay: 0 - 50%	Area of Original Parcel covered by Overlay: 51 -75%	Area of Original Parcel covered by Overlay: 76 - 100%
0%	no mitigation	15% density bonus	20% density bonus
15%	no mitigation	no mitigation	15% density bonus
25%	1:1 mitigation	no mitigation	10% density bonus
50%	2:1 mitigation	1:1 mitigation	1:1 mitigation
100%	3:1 mitigation	2:1 mitigation	2:1 mitigation

[Explanatory Note: If an ordinance is to be successful and receive public support, it needs to be crafted in a manner that it treats a variety of parcel specific situations equitably. The table above is intended to create a sliding scale for review based on the percentage of the applicant’s land in the overlay district and the proposed amount of disturbance. It allows landowners whose parcels are completely, or mostly within the overlay district, more flexibility in terms of the amount of disturbance allowed than those landowners whose parcels allow greater avoidance and minimization potential. Threshold percentages that trigger mitigation or allow a density bonus should be carefully considered and adjusted to fit the local situation. Determining the mitigation requirement separately for each percentage category can help to avoid situations where a small increase in disturbance necessitates a doubling of mitigation required (refer to “Explanation of Terms Used” attached below.)]

2. Wildlife Corridor

Subdivisions that avoid disturbance in the Wildlife Corridor, and place structures so as to avoid blocking wildlife travel ways, are eligible for a 15% density bonus. Any unavoidable non-exempt disturbance shall be mitigated.

F. Density Bonus -- Permanent Habitat Protection Requirement

A density bonus will be granted only if the remaining land in the overlay district on the parcel is permanently protected through a conservation easement, deed restriction, or similar mechanism that limits future disturbance.

G. Habitat Impact Mitigation Requirements

Applicants are encouraged to discuss approaches to meeting this requirement with staff of the Department of Planning and Development prior to finalizing formal real estate agreements.

1. Acceptable Mitigation

a. Wildlife Habitat Block Requirement

i. Land for mitigation shall be permanently protected through a conservation easement, deed restriction, or similar mechanism that limits future disturbance. Mitigation land should be within the same continuous block as the disturbed area; if the CEO or Planning Board determines that no land is available in the same district, then land in other wildlife overlay districts may be used to satisfy this requirement.

[Explanatory Note: By delineating the overlay districts, the municipality is designating priority areas for conservation. The mitigation requirements can be satisfied by protecting the necessary acreage anywhere in the block being impacted. This provision allows for greater flexibility for the developer and can often result in “interior” or less fragmented and more ecologically significant lands being protected rather than tying the applicant to designating open space within the project parcel.]

ii. The Town will maintain a list of landowners who are potentially willing sellers of acreage in fee, or development rights, of a portion of their property located within Wildlife Habitat Blocks.

[Explanatory Note: One goal of this ordinance is to create mechanisms that would allow large landowners, who do not want to divide their property, additional options to reduce financial burdens of ownership. This provision is included to cultivate private partnerships for habitat protection.]

iii. A conservation easement, deed restriction, or similar mechanism that limits future disturbance can be utilized on portions of newly created lots to meet the mitigation requirement.

[Explanatory Note: Some developers prefer selling larger lots in rural areas rather than reducing lot size to reduce disturbance calculations. This provision allows the project applicant to place portions of individual lots under conservation easements thereby avoiding having the entire lot counted as an impact. This provision should be considered carefully. Easements require monitoring and enforcement which can be a burden for the easement holder. This provision may also encourage more fragmented open space being conserved rather than a contiguous chunk that is more valuable as habitat. It is important to first require that an applicant meet the avoidance and minimization standard (C-1) prior to using this section for mitigation purposes.]

iv. Projects that require mitigation within the Wildlife Habitat Block Overlay District may pay a fee in lieu of land protection equivalent to \$5,000 per acre of mitigation acreage required only after the land protection option of A.1.a has been considered and the reviewing authority finds that land is not available.

Payment of a fee can be used in combination with land protection to meet the overall mitigation requirement.

[Explanatory Note: Payment of an in lieu fee can be an important alternative in the rare case that no suitable lands exist for preservation in the designated overlay, or if the project is on a short time frame and cannot secure land for protection without unreasonably delaying project approval. This mechanism would allow the Town to collect monies that would go into a land acquisition fund.

b. Wildlife Corridor Requirement

i. Land for mitigation within the Wildlife Corridor must be permanently protected through a conservation easement or similar mechanism that limits future disturbance. Mitigation land must be within the corridor as the disturbed area.

ii. If the requirements under b.i cannot be met, then the applicant can satisfy mitigation requirements by restoring or enhancing woody vegetation cover in portions of the mapped corridor that have been previously disturbed by clearing or similar disturbance. Restoration and enhancement proposals must be reviewed and approved by the Director of Planning and Development, and the restored and /or enhanced acreage must be placed under permanent protection through a deed restriction, conservation easement or similar mechanism.

[Explanatory Note: Wildlife corridors identified under this approach are those areas that provide the shortest distance between the unfragmented blocks with the greatest

amount of woody cover, fewest road crossings, and least amount of existing development. By their nature (outside of blocks and typically crossing roads), these corridors include clearings, residential yards, and other inclusions of disturbance. Given the type of use these corridors receive and their purpose, it is not critical that they be undisturbed. The goal is that they maintain cover conditions adequate to provide for species movement primarily at night. Small openings and clearings do not negate their utility, but significant swaths of residential development might. The goal in designing corridor mitigation should be to link protected areas in a way that vegetated pathways persist. This may involve replanting previously disturbed areas.

Definitions Specific to this Ordinance

Agricultural Clearing: a clearing created to support the production of traditional agricultural crops including grazing areas for livestock, fields used for the production of hay, straw, and other fruit, grain, and vegetable crops, Christmas tree farms, and orchards, etc. This definition does not include mineral extraction.

Naturally occurring stands dominated by woody vegetation: an area of forest, shrub land, heath barren, or regenerating timber harvest. This definition does not include artificially planted Christmas tree farms or maintained pine plantations.

Disturbance: For the purposes of this overlay district, “disturbance” shall be defined as the area to be filled, graded and/or permanently cleared of naturally occurring stands dominated by woody vegetation for activities included in Section II.A.

Permanent Clearing: For the purposes of the overlay districts, “permanent clearing” shall be defined as the removal of 40% or more of the volume of trees, or the creation of a cleared opening in the forest canopy that is greater than 250 square feet as measured from the outer limits of the tree crown, neither of which is allowed to naturally regenerate.

[Explanatory Note: Disturbance and permanent clearing are the basis for impact analysis and must be clearly defined with little room for misinterpretation. The Permanent Clearing definition draws on standards included in state shoreland zoning guidelines that are familiar to both local planners and codes enforcement officers.]

Explanation of Terms Used

Chart in E.1:

“Area of Overlay District within Original Parcel that is disturbed up to” =
Area of Overlay District within Original Parcel **a parcel that exists as of the date of effectiveness of these amendments, i.e. 4/6/2006** that is **proposed to be** disturbed up to

HOW TO CALCULATE AMOUNT OF MITIGATION REQUIRED? TWO EXAMPLES

Example A: Assume 20-acre parcel of which 10 acres is covered by overlay district (50%)

If up to 15% proposed impact on 10 acres of the overlay (=1.5 acres), then *no mitigation is required.*

If 25% proposed impact on 10 acres of the overlay (=2.5 acres), then 2.5 acres of mitigation required.

This can be satisfied by permanently protecting 2.5 acres of the 7.5 acres of unimpacted overlay.

If 50% proposed impact on 10 acres of the overlay (= 5.0 acres), then 2.5 acres (for impact up to 25% - see above) plus 2.5 acres times 2 (for impact between 25 and 50%) for a total of 7.5 acres of mitigation is required.

This can be satisfied by permanently protecting the remaining 5.0 acres of unimpacted overlay plus another 2.5 acres of overlay elsewhere.

If 100% proposed impact on 10 acres of the overlay (= 10.0 acres), then 2.5 acres (for impact up to 25% - see above) plus 2.5 acres times 2 (for impact between 25 and 50%) plus 5 acres times 3 (for impact between 50 and 100%) for a total of 22.5 acres of mitigation is required.

This can be satisfied by permanently protecting 22.5 acres of overlay elsewhere.

Example B: Assume 20 acre parcel of which 15 acres is covered by overlay district (75%)

If up to 15% proposed impact on 15 acres of the overlay (= 2.25 acres), then no mitigation is required.

If 25% proposed impact on 15 acres of the overlay (= 3.75 acres), then *no mitigation is required.*

If 50% proposed impact on 15 acres of the overlay (= 7.5 acres), then 7.5 acres of mitigation is required.

This can be satisfied by permanently protecting the remaining 7.5 acres of unimpacted overlay.

If 100% proposed impact on 15 acres of the overlay (= 15.0 acres), then 7.5 acres (for impact between 25 and 50%) plus 7.5 acres times 2 (for impact between 50 and 100%) for a total of 22.5 acres of mitigation is required.

This can be satisfied by permanently protecting 22.5 acres of overlay elsewhere.