

LEBANON WETLANDS CONSERVATION ORDINANCE

Lebanon, Maine

Article I. Findings of Fact and Purpose

1.1 The wetlands of Lebanon are sensitive natural resources which benefit residents by filtering and purifying surface water, controlling flood waters, reducing soil erosion, providing -opportunities for recreation, education and scientific study, and providing valuable wildlife habitat. Many wetlands have been lost due to draining, filling and other actions which destroy wetlands and their beneficial functions. The purpose of this ordinance is to prevent the loss of those wetlands which remain.

1.2 It is therefore the policy of Lebanon:

- A. To prevent the loss of wetlands which benefit present and future citizens of the town by:
 - 1. Storing large amounts of stormwater and controlling flooding;
 - 2. Controlling erosion by storing and slowly releasing water
 - 3. Filtering silt, organic matter, and other pollutants from surface waters
 - 4. Providing living, feeding, and breeding areas for waterfowl and wildlife and critical habitat for unique plant life;
- B. To encourage appropriate uses in wetland areas that do not impair their beneficial functions;
- C. To restrict inappropriate land uses which adversely affect wetland functions.

Article 2. Definitions

Draining: The artificial lowering of the water table by ditching, channeling, or pumping water.

Dredging: The removal of more than one (1) cubic yard of saturated soil.

Filling: The placement- of more than one (1) cubic yard of soil, rock, or other material on the ground.

Grading: The movement or removal of more than one (1) cubic yard. of soil material.

Hazardous waste: As defined in M.R.S..A., Section 1303(5), a waste substance or material, in any physical state, designated as hazardous by the Board of Environmental Protection under 38 M.R.S..A., Sec. 1303—A. It does not include wastes resulting from normal household or agricultural activities.

Structure: Anything constructed or erected, the use of which requires a fixed location on or in the ground, or an attachment to something having a fixed location on the ground, including buildings, carports, porches, and other building features.

Wetland (hydric) soil: A soil that in its undrained condition is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophilic(wetland) vegetation. Definition from *Hydric Soils of the State of Maine* 1985, USDA, SCS.) Hydric soils found in Lebanon include but are not limited to: Biddeford, Chocorua, Rumney, Scantic, Sebago, Vasselboro, Waskish.

Waste: Any useless, unwanted or discarded substance or material, whether or not such substance or material has any future use and Includes any substance or material that is spilled, leaked, pumped, poured, emitted, disposed of, emptied, or dumped onto the land or into the water.

Wetland: An area characterized by wetland soils and wetland vegetation.

Wetland vegetation: Those plants classified as Obligate, Facultative Wetland, or Facultative in the U.S. Fish and Wildlife publication, Wetland Plants of the State of Maine 1985,

Article 3. Determination of Wetlands

3.1 This ordinance regulates only those wetlands which are two (2) or more acres in size. A map showing wetland soils be available at the Town Clerks office for use as a general guide in determining where wetlands are located, but wetland location shall be confirmed by field investigation.

3.2 The Conservation Commission shall make the final determination of wetland location, considering its field investigation, other reliable sources, and information provided by the individual.

3.3 If an individual is uncertain as to whether an area is a wetland regulated under this ordinance, he or she may request a determination from the Conservation Commission prior to submitting an application. The Conservation Commission shall undertake a field investigation of the area in question. If the size or the complexity of soil and vegetative conditions make determination of wetland boundaries difficult, Commission may direct the individual to provide it with additional information from a licensed Soil Scientist or an experienced wetland scientist, such as a high intensity soil survey, vegetative survey, or wetland evaluation of the area proposed for use. The Conservation Commission shall make its field investigation and render its decision on whether the area is a wetland within 30 days of the request, or, if additional information is required, within 15 days of receiving the required information.

Article 4. Land Uses

4.1 Any lawfully existing use or structure located in a wetland which is made non-conforming by the enactment of this ordinance is grandfathered and may be continued. New uses and expansions of existing uses are subject to the provisions of the Wetlands Conservation Ordinance.

4.2 The following uses are permitted in wetlands as of right (except that any structure, grading, filling, draining, or dredging required in connection with any such use requires a Special Permit under Section 5).

- Agriculture, including pasturing, farming, haying, truck gardening, and harvesting of crops. Agriculture shall not cause or contribute to surface or groundwater pollution by use of pesticides, toxic chemicals or other pollutants and shall not cause soil erosion.
- Conservation of soil, water, vegetation, fish, and wildlife
- Education and scientific research
- Forestry, tree farming
- Non—intensive and non—commercial recreation, such as hunting, hiking, boating, trapping, fishing, horseback riding
- Open space (including land fulfilling lot size requirements)
- Repair and maintenance of existing ways, roads, railroad beds, or utilities, provided no watercourse is substantially altered.
- Repair and maintenance of existing permanent structures requiring the addition or removal of less than one (1) cubic yard of material

- Wilderness areas, wildlife refuges

In addition, the following structures are permitted by right providing they do not involve draining, grading, fill or dredging: catwalks, piers, fences, duck blinds, wildlife management shelters, footbridges and similar structures. All such structures must be constructed so as to permit the unobstructed flow of waters and must preserve the natural contour of the wetland, unless otherwise authorized by Special Permit.

4.3 The following uses are prohibited in wetlands:

- Disposal or storage of waste and/or hazardous materials
- Gasoline storage tanks
- Manure stockpiles
- Road salt stockpiles
- Topsoil removal
- Underground oil storage tanks

4.4 Uses other than those specifically mentioned in 4.2 and 4.3 are permitted in wetlands only upon issuance of a Special Permit by the Conservation Commission as outlined in Article 5.

4.5 Performance standards:

Setbacks: Disposal or storage of waste and/or hazardous materials, gasoline storage tanks, road salt stockpiles, and underground oil storage tanks shall be set back a minimum of 300 feet from a wetland.

Article 5. Standards and Procedures for Special Permit Uses

5.1 Application for a Special Permit shall be made to the Conservation and the cumulative effect of reasonably anticipated future uses similar to the one proposed. Preference shall be given to activities that must have a wetland location in order to function and that will have as little impact as possible upon the wetland area. In general, a permit shall not be granted for dredging or ditching solely for the purpose of draining wetlands, and building structures that may be located elsewhere. The activity must to the greatest extent feasible, be confined to the portion of a lot outside of a wetland. In evaluating the proposed activity, the Conservation Commission may consult with expert persons or agencies. The Conservation Commission shall grant a Special Permit, or grant a permit with conditions, if it finds that all of the above criteria will be met.

Article 6, Appeals

6. 1 if the Conservation Commission disapproves an application or grants approval with conditions that are objectionable to the applicant or abutting landowner, the aggrieved party may appeal the decision to the Board of Appeals. The appeal must be filed with the Board of Appeals within 30 days of final action by the Conservation Commission.

6.2 If the Special Permit application is denied because the proposed use does not meet the performance standards in Article 5, the Appeals Board has the authority to override the denial provided the Board finds that the property cannot yield a reasonable return without a Special Permit. If the Board overturns the denial, the applicant may reapply to the Conservation Commission to obtain a Special Permit.

6.3 If the applicant appeals because a condition of the Special Permit is objectionable, the Appeals Board has the authority to change the condition only if the Board finds that the property cannot yield a reasonable return if the condition is enforced.

6.4 If an abutter initiates an appeal, the Board of Appeals has the authority to order the Conservation Commission to reconsider the case only if the Board of Appeals finds that the Conservation Commission made an error in procedure or failed to implement the criteria of this ordinance.

6.5 All appeals shall be heard in accordance with the procedure set forth in Title 30, Section 2411. If a public hearing is held, all abutters and the applicant shall be notified in writing of the time and place of the hearing at least 10 days in advance.

6.6 The application for an appeal shall include a copy of the Special Permit application and the written decision of the Conservation Commission.

6.7 The Appeals Board shall make a decision within 30 days of the public hearing.

Section 19. Violation Penalties.

The violation of any provision of this article shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of this article, by appropriate action, including but not limited to revocation of the license. The Town shall be entitled to recover its costs of any enforcement action, including its attorney's fees.

Section 20. Validity of Ordinance.

If any portion of this Ordinance is held to be invalid or unconstitutional by a Court of competent jurisdiction, then this shall not effect the validity of the remaining ' provisions of this Ordinance.

Historical Note: This Ordinance was passed at a Special Town Meeting on March 27, 1993.