

ARTICLE 15
WETLAND MITIGATION ORDINANCE

Section 1. Applicability

This section shall apply to all lands within the Shoreland Overlay District and Resource Protection District as defined in Article 3 of this ordinance

Section 2. Shoreland Permit Required

A. Purpose

The Town's freshwater wetlands, great ponds, coastal wetlands, rivers, streams, and brooks are resources of state significance, have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical, and environmental value of present and future benefit to town residents. Uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of town residents. The cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the Town and its quality of life.

The Town of Kennebunk wishes to minimize impacts to wetlands and take efforts to mitigate losses due to development activities.

B. Permit Required

There shall be no filling of wetlands per Article 10 Section 3, Performance Standards except as approved by the Planning Board (or Site Plan Review Board in the case of Site Plan Application) under the applicable provisions of Section 4 of this Article and as approved by the U.S. Army Corps of Engineers and by the Maine Department of Environmental Protection, as applicable.

C. Wetland Mitigation Application Procedures

1. Required Submissions:

- (a) Application – the applicant shall submit eleven (11) copies of the completed application and 1 digital copy, application fee including any professional review costs, and all items listed in Article 7 Section 2.B.1.
- (b) A plan showing the full extent of any wetlands impacts and encroachment and photographs of existing conditions.
- (c) If a road or driveway is associated with any wetlands impact or shoreland encroachment, then a road profile shall be submitted that shows the following:
 - Cross section of the roadway or driveway showing proposed slopes, materials, etc.
 - Erosion control measures
 - Area of disturbance during & post construction

- (d) Erosion control details fully illustrating the plan's conformance with Article 10 Section 3.C
2. Additional Requirements for projects requiring mitigation:
- (a) A mitigation plan prepared by a certified wetlands specialist which:
- Delineates and evaluates the functions and values of the wetland/shoreland site being impacted by the proposed development.
 - Addresses the impacts to the aquatic resource.
 - Proposes a plan for replacing the loss of the aquatic resource and/or buffer area by creating, restoring, and/or enhancing similar aquatic resource functions and values.
3. Review Procedures.
- (a) Once the Town Planner receives a complete application, the application set will be distributed to the Town Engineer, Code Enforcement Officer, and Conservation Commission for their review.
- (1) Applications for piers, docks, or wharves along the Kennebunk River shall be sent to the Kennebunk River Committee for their review.
- (b) The Town Planner will place the complete application on the next available development review meeting of the Kennebunk Planning Board if required.

Section 3. Performance Standards – See Article 10 Section 3

Section 4. Shoreland/Wetland Mitigation Plan

A. Purpose

The Town of Kennebunk's Shorelands and Wetlands are indispensable and fragile resources that provide many public benefits including:

- Maintenance of surface and groundwater quality through nutrient cycling, sediment trapping, and serving as biological and chemical oxidation basins;
- Flood and storm water runoff control through temporary water storage, slow release, and ground water recharge;
- Open space and passive outdoor recreation areas; and
- Habitat for fish and wildlife, and rare, threatened or endangered wildlife and plant species.

In recognition of the cumulative effect that frequent minor Shoreland/wetland alterations may have on the environment of the Town, as well as the less frequent larger alterations, these

mitigation/compensation standards require that all proposed wetland alterations to jurisdictional wetlands and/or development be reviewed by the Conservation Commission and receive Shoreland/Wetland mitigation plan approval by the Planning Board prior to receiving any permits from the Code Enforcement Officer.

B. Exemptions

1. A Shoreland / Wetlands Permit is not required under this section for:
 - (a) Alterations in a wetland for an emergency repair of a public road, rail or utility line crossing or a river, stream or brook for a distance of up to one hundred (100) feet from the normal high water line on both sides, measured perpendicular to the bank of the river, stream or brook, and provided the total project affects five hundred (500) square feet or less of the channel.
 - (b) Walkways/Access structures. A wetland alteration consisting of a walkway or access structure for public purposes or that is necessary to comply with the Americans with Disabilities Act.
 - (c) Wetland alteration activities required to perform compensation as a condition of a Natural Resources Protection Act (NRPA) permit by the Maine Department of Environmental Protection (MDEP) pursuant to the MDEP Wetlands and Waterbodies Protection Rules.

C. Compensation Project Plans

1. Additional Plan Information: Any plan which includes a compensation project will include the information required in the Town of Kennebunk Compensation Project Application.
2. For compensation projects involving a covenant and restriction or a conservation easement, the proposed deed or easement language must be submitted with the application. Additionally, any agreements or terms necessary to execute the restriction or easement, such as an agreement for the holder of the easement, must also be included.
3. Types of Compensation: More than one type of compensation may be allowed on a single project. Compensation may include:
 - (a) Preservation: Preservation of existing wetlands and/or adjacent uplands where the site to be preserved provides significant wetland functions and values that might otherwise be degraded by unregulated activity.
 - (b) Fees in lieu of preservation as established by Section 4.D.
4. Preservation project compensation amounts: The following ratios indicate the acreage needed in a compensation project relative to the acreage altered by the proposed project or activity.
 - 8:1 for preservation projects. At the discretion of the permitting authority, upland areas adjacent to a wetland may be included in a preservation project;

5. Location of preservation projects – The preservation project shall take place in a location:
 - (a) Where development could be permitted under Town Ordinance and State law.
 - (b) On or as close to the project site as possible; preference shall be given to preservation projects that will offset lost functions and values within, or in close proximity to, the affected wetland.
 - (c) If approved by the permitting authority, compensation may occur in an off-site location within Kennebunk where it will satisfy local wetland protection priorities.
 - (d) Standards for Compensation Projects – Where a compensation project is required, the following standards shall apply:
 - i. Protection - A compensation project involving preservation of wetlands and/or upland areas adjacent to wetlands shall ensure that the wetlands will remain wetlands in perpetuity, and any upland areas will remain undeveloped in perpetuity, through a covenant and restriction in the deed, or a conservation easement conveyed to a local or state conservation group, and approved by the permitting authority. The scope of permitted land management practices to be included in the easement or covenant and deed restriction shall be subject to approval by the permitting authority.
 - ii. Completion – The preservation must be completed prior to, or concurrent with, the permitted alteration, unless otherwise approved by the permitting authority.

D. Wetland Compensation Fees

1. When a proposed activity or development will unavoidably impact a wetland area of five hundred (500) square feet to fourteen thousand nine hundred ninety-nine (14,999) square feet, a fee shall be assessed and payment shall be submitted in accordance with Section 4.D.3, payable to the Town, prior to issuance of a permit. Such fee will only be accepted if the applicant is not able to propose a feasible wetland compensation project that would receive approval consistent with this Ordinance and shall be submitted with the information required for compensation projects required by the Town's Wetlands Compensation Project Application. A wetland compensation project must be approved by the permitting authority.

2. Compensation Fee Amounts

- (a) Compensation fees shall be computed using the calculation devised under NRPA (38 M.R.S.A. § 480-Z). The average assessed land valuation will be the current average assessed per acre value of land in the Town, as calculated by the Town Assessor. Any compensation fee shall be paid to the Town and deposited into a Wetlands Compensation Fund.

- (b) An administration fee will be assessed by the Town.

3. Wetland Compensation Fund

- (a) Establishment. The municipal officials shall establish a Wetland Compensation Fund within thirty (30) days of the effective date of this Ordinance.
- (b) Purposes and Uses. The Fund shall be permanently and exclusively dedicated to payment of costs and related expenses of wetland preservation, restoration, replacement or enhancement, which are approved by the Town's permitting authority and the Select Board. Costs for administering the fund may be charged to the fund, but shall not exceed five percent of the fees collected or deposited pursuant to this Ordinance.
- (c) Payments to the Fund. Compensation fees collected pursuant to this Ordinance shall be deposited into the Fund. The Town may accept payments into the Wetland Compensation Fund for compensation required by the state or federal governments for permits issued by those authorities for wetland alterations.
- (d) Administration.
 - (1) The Town may make payments from the fund consistent with the purposes and uses of the fund as stated in Subsection 4.D.3.b.
 - (2) Income received under this subsection may be invested as provided by law. Interest on these investments must be credited to the Wetlands Compensation Fund.
 - (3) The Town may enter into an enforceable, written agreement with a public, quasi-public, or private non-profit organization dedicated to the protection of wetlands and other natural areas for the purposes of administering the Wetlands Compensation Fund and ensuring that compensation projects are implemented consistent with the standards and provisions for compensation projects set forth in this Ordinance. If compensation fees are provided to an authorized organization, the organization shall maintain records of expenditures and provide an annual summary report to the Town. If the organization does not perform in accordance with this subsection or with the requirements of the written agreement, the Town may revoke the organization's authority to conduct activities in accordance with this subsection. If an organization's authorization is revoked, any funds provided to it must be returned to the Town's Compensation Fund.
 - (4) Any compensation fee deposited into the Fund for a permit issued pursuant to this Ordinance that is not committed to a specific wetland compensation project within ten years of deposit into the Fund shall be transferred to the Kennebunk Conservation Land Purchase Account to be used for wetland restoration, replacement or enhancement.

E. Expiration of Permits

A Shoreland Permit issued pursuant to this Ordinance shall remain effective for one (1) year, and may be extended upon showing that the accompanying NRPA permit remains valid.

If the project does not move forward, the wetlands compensation fee shall be refunded. The fee shall be refunded upon the expiration of approvals or upon notice from the applicant that they are abandoning the project

F. Amendments to the Permit

Shoreland Permits are dependent upon and limited to the wetland mitigation proposals contained in the permit application and supporting documents submitted and affirmed by the applicant. Any variation from the wetland mitigation plans, proposals, and supporting documents, except minor changes that do not affect approval standards or alter the essential nature of the compensation proposal and which have been endorsed in writing on the permit by the Code Enforcement Officer, are subject to review and approval by the Board that granted the original approval.

G. Review and Approval Criteria

The Planning Board (or Site Plan Review Board in the case of Site Plan Application) may permit wetland fills and/or development within the Shoreland setback area upon a positive finding that each of the following criteria has been met:

(1) The project will not fill or disturb a Wetland of Special Significance or its setback.
(2) For projects that fill or disturb from one (1) to four hundred ninety-nine (499) square feet of wetland not described in Section 4.B the applicant has made a clear showing that:

- (a) No reasonable alternative exists and no greater setback from the shoreland/wetland area can be achieved. The applicant shall provide evidence that the following alternatives are not feasible:
 - i. Utilizing, managing or expanding one (1) or more other sites that would avoid or reduce the wetland impact.
 - ii. Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact.
 - iii. Developing alternative project designs, such as cluster development, that avoids or lessens the wetland impact.
- (b) The project meets all applicable Federal and State permit requirements, and the applicant provides evidence that those agencies have approved the application.

(3) In addition to meeting the criteria in Subsection 2.a of this Section, for projects filling or disturbing from five hundred (500) to fourteen thousand, nine hundred ninety-nine (14,999) square feet of wetland, or as otherwise required by the reviewing authority, the applicant shall submit a wetland compensation plan showing proposed compensation measures (as set forth in Section 4.C) to be taken to offset potential adverse environmental impacts to the resource. Mitigation includes the preservation of upland adjacent to the affected wetland, and compensating for an impact by replacing or restoring affected

resources.

The reviewing authority may consult with technical experts, including but not limited to a wetlands consultant, during the course of its review of the project to ensure that proposed methods of compensation are adequate. The applicant is responsible for reimbursing the Town for all consulting fees charged to the Town for this review.