

**Maine Model Guidelines for a
Municipal Freshwater Wetlands Ordinance
Short Version**

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APPENDICES

- I. The Natural Resource Protection Act (Title 38, MRSA Section 480-A et. seq.).
- II. Natural Resources Protection Act Application and instructions with cover sheets indicating sections applicable to this Ordinance.
- III. Maine DEP Rules, Chapter 310: Natural Resources Protection Act, Wetlands and Waterbodies Protection Rules (Revised September 1, 2002).

Maine Model Guidelines for a Municipal Freshwater Wetlands Ordinance Short Version

[Explanatory Note: This model is designed as a stand-alone ordinance, with a complete set of administrative and review procedures (Part III) as well as post-approval, enforcement and appeals provisions (Part VI). 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 wetland issues.]

Section I. General

A. Title: Freshwater Wetlands Ordinance 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

The (Town of/City of [Municipality]) finds that freshwater wetlands are indispensable and fragile resources that provide many public benefits including maintenance of surface and groundwater quality through nutrient cycling, sediment trapping; flood and storm water runoff control through temporary water storage, slow release, and groundwater recharge; open space and passive outdoor recreation opportunities; and habitat for fish and wildlife, and rare, threatened or endangered wildlife and plant species. Loss of wetlands results in costs to the (Town of/City of [Municipality]) for increased water pollution control and drinking water treatment; stormwater management; repair of damages from floods, erosion and sedimentation, and loss in the quality of the environment and the quality of life of its residents.

The (Town of/City of [Municipality]) finds that the existing state regulation exempts small wetlands losses from compensation requirements; that small,

incremental losses to wetlands over time will cumulatively result in a serious degradation of wetland functions and values in the (Town/City); and that requiring compensation for wetland alterations not presently subject to compensation requirements under state regulation will reduce the net loss of wetlands in the (Town/City), which wetlands are of great public benefit to the (Town/City).

The purposes of this Ordinance are to:

1. minimize the net loss of freshwater wetlands resulting from wetland alterations in the (Town /City);
2. provide for compensation for wetland alterations subject to state regulation under the Maine Natural Resources Protection Act (38 MRSA §§ 480-A to 480-Z as amended from time to time) that are not subject to compensation requirements under Maine Department of Environmental Protection regulations implementing the Act;
3. coordinate review of projects with state and federal authorities.

Section II. Applicability

A. Activities Requiring a Wetland Permit

As of the effective date of this Ordinance, any person required to obtain a Natural Resources Protection Act (NRPA) Permit from the Maine Department of Environmental Protection (DEP) for alteration of a freshwater wetland, shall also be required to obtain a Wetland Permit from the (Town of/City of [Municipality]) pursuant to this Ordinance, unless the activity is explicitly exempted under paragraph B. of this Section.

[Explanatory Note: The following activities are subject to regulation under the NRPA if they occur in or adjacent to a protected natural resource. Freshwater wetlands are among the natural resources protected by the NRPA.

1. *Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;*
2. *Draining or otherwise dewatering;*
3. *Filling; or*
4. *Construction, repair or alteration of any permanent structure.]*

B. Exemptions

A Wetland Permit is not required under this Ordinance for

1. wetland alteration activities that are exempted from a NRPA permit pursuant to Section 480-Q of the NRPA;

[Explanatory Note: A number of activities are exempted from permitting under the Section 480-Q of the NRPA. Section 480-Q.17 “Minor alterations in freshwater wetlands” exempts wetland alterations involving less than 4,300 square feet except for certain types of wetland. Other wetland alteration activities are exempted regardless of the size of the wetland alteration (see Section 480-Q of the NRPA in Appendix I). This Ordinance also exempts these activities and “minor wetland alterations.”]

2. activities which are exempted from compensation requirements under the Maine DEP pursuant to the Maine DEP Wetlands and Waterbodies Protection Rules (Chapter 310); or

[Explanatory Note: Activities subject to NRPA regulation but exempted from compensation under DEP Rule 310 include:

- a. *Alterations in a wetland for a road, rail or utility line crossing of a river, stream or brook for a distance of up to 100 feet from the normal high water line on both sides, measured perpendicular to the thread of the river, stream or brook, and provided the total project affects 500 square feet or less of the channel [Chapter 310 Section C.(6).a.(iii)].*
- b. *Walkways/Access structures. A wetland alteration consisting of a walkway or access structure for public educational purposes or that is necessary to comply with the Americans with Disabilities Act. [Chapter 310 Section C.(6).(e).]*

3. wetland alteration activities required to perform compensation as a condition of a NRPA permit by the Maine DEP pursuant to the Maine DEP Wetlands and Waterbodies Protection Rules (Chapter 310).

[Explanatory Note: The Maine DEP requires compensation for projects involving 20,000 square feet or more of freshwater wetland alteration, and alterations to wetlands of special significance involving alterations of more than 500 square feet (or less than 500 square feet if it is determined that the activity has more than a minimal effect on the wetland functions and values).

See Appendix III, Maine DEP Wetlands and Waterbodies Protection Rules (Chapter 310).

Hence, this Ordinance would cover wetland alterations involving 4,300 square feet up to 20,000 square feet which do not involve a wetland of special significance; and which do not involve activities exempted under paragraphs II.B 1. or II.B.2.of this Ordinance.]

Section III. Administrative and Review Procedures

A. Review and Approval Authority.

[Explanatory Note: Two basic options are suggested for review and approval of Wetland Permits: either 1) the Planning Board acts to both review and approve permit applications; or 2) the review function is assigned to either a Planning Staff or Code Enforcement Officer; and the Planning Board acts upon recommendations from the assigned review authority and issues the permit. If a municipality has the appropriate review capability either through a paid Planning Staff or Code Enforcement Officer, and if the number of Wetland Permit applications is expected to be substantial, it could ease the burden of the Planning Board to assign the review function to either the Planning Staff or Code Enforcement Officer.

For an indication of how many projects a municipality might face, refer to data on the number of wetland fill and alteration projects permitted by DEP with and without compensation, by town, for the period September of 1995 through December of 2001 as registered in Appendix E and Appendix F of the State Planning Office and DEP report "Wetlands Regulation Under the Natural Resources Protection Act: Program Overview 2002.]

Option A: The [Planning Staff/Code Enforcement Officer] is authorized to review and process all Wetland Permit Applications, and may act to recommend approval, denial, or approval for the proposed activity with conditions as authorized by this Ordinance.

The Planning Board is authorized to act upon the recommendations of the [Planning Staff/Code Enforcement Officer], and may approve, deny, or approve the proposed activity with conditions as authorized by this Ordinance.

Option B: The Planning Board is authorized to review and process all Wetland Permit Applications, and may act to approve, deny, or approve the proposed activity with conditions as authorized by this Ordinance.

B. Application

1. Copies of the Maine Department of Environmental Protection (DEP) Natural Resources Protection Act (NRPA) Permit Application as submitted to DEP, including that Application's required attachments and notifications, shall serve as the [(Town of/City of [Municipality]) Wetland Permit Application.

*[Explanatory Note: See **Appendix II** which contains a NRPA Permit Application form with instructions).*

2. The applicant shall submit [eight (8)] copies of the Application to the [Municipal Clerk/ Planning Staff/ Code Enforcement Officer], along with a check payable to the (Town of/ City of [Municipality]) for fees as established pursuant to Section III.D in the amounts listed in the (Town of/ City of [Municipality]'s) Fee Schedule. All applications shall be signed and dated by

the owner(s) of the property or their authorized representative (which authorization shall be submitted in writing), certifying that the information in the application is complete and correct. The date the application is received shall be noted upon each application by the receiving agent.

3. The receipt of the Application shall constitute permission from the owner(s) of property(ies) involved in the Application for the Planning Board, Planning Staff, Code Enforcement Officer, or the [Town's/City's] authorized agent, as appropriate, to conduct an on-site inspection.

C. Review Procedures

[Explanatory Note: The following sections include bracketed choices for the review authority, depending on whether Option A or Option B is selected in Section II.A above.]

1. The [Planning Board, Planning Staff, or Code Enforcement Officer] may, at their discretion, conduct, or authorize an agent for the [Town/City] to conduct, an on-site inspection of the proposed project site, and may require the participation of a qualified, independent Wetland Consultant, or other technical consultant as may be deemed necessary to evaluate the proposal, in the site visit. The [Planning Board, Planning Staff, Code Enforcement Officer] shall post notice of any scheduled site visit and shall notify the Owner(s) and abutters in advance of conducting the site visit.
2. The [Planning Board, Planning Staff, Code Enforcement Officer] may, at its discretion, consult with technical experts, including but not limited to a Wetland Consultant, during the course of its review of the project to ensure that proposed methods of compensation are adequate. The cost of any technical reviews shall be paid using the Technical Review Fees collected pursuant to Section III.D. of this Ordinance.
3. [Option A:] The [Planning Staff, Code Enforcement Officer] shall submit their review and recommended action to the Planning Board within 60 days following receipt of a complete Application. The Planning Board shall issue its decision at the first regularly scheduled meeting following receipt of the [Planning Staff's, Code Enforcement Officer's] review and recommendations. In issuing its decision, the Planning Board shall make written findings of fact establishing that the proposed activity or project does or does not meet the approval criteria of this Ordinance.

[Option B:] The Planning Board shall complete its review and shall issue its decision within 60 days following receipt of a complete Application. In issuing its decision, the Planning Board shall make written findings of fact establishing that the proposed activity or project does or does not meet the approval criteria of this Ordinance.

D. Fees

1. **Application Fees:** A Wetland Permit Application must be accompanied by an application fee. This fee shall be collected to cover the administrative costs of processing the application, and shall not be refundable.
2. **Technical Review Fee:** A technical review fee shall be paid to an escrow account established for Wetland Permit reviews, separate from all other municipal accounts, for the estimated cost of outside consultant(s) who may be retained in connection with the review of the Application. The [Planning Board/ Planning Staff/ Code Enforcement Officer] may reduce the amount of the technical review fee or waive it if it is determined that the scale or nature of the project will require little or no outside review. If the escrow account is drawn down and an insufficient amount remains to cover expected expenses for additional technical reviews, the [Planning Board/ Planning Staff/ Code Enforcement Officer] shall notify the applicant of an additional amount to be paid into the escrow account. Failure to pay any such additional amount shall be reason for suspending further action on an application. In the event the cost of the services of the consultant(s) is less than the escrow fee, the applicant shall be refunded the balance within sixty (60) days of a decision by the Board on the permit.
3. **Establishment of Fees:** The Municipal Officers may, from time to time and after consultation with the [Planning Staff,] Code Enforcement Officer and Planning Board, establish the appropriate fees following posting of the proposed schedule of fees and public hearing.

Section IV. Wetland Compensation

- A. Wetland Compensation:** Where a wetland will be unavoidably impacted by a proposed activity or development, a fee shall be assessed in accordance with Section IV.B., and payment shall be submitted, payable to the (Town of/ City of [Municipality]) prior to issuance of a permit. In lieu of a compensation fee, an applicant may propose a compensation project consistent with the requirements specified in Section IV.C. of this Ordinance, and shall submit information required for compensation projects as provided in Part II. of the NRPA Permit Application.
- B. Wetland Compensation Fees.**
 1. **Compensation fee amounts.** Compensation fees shall be computed as the acreage of wetland altered multiplied by eight (8) times the average assessed per acre value of similar land in the (Town/ City). Any compensation fee shall be paid to the (Town of/ City of [Municipality]) which shall deposit it into a

Wetlands Compensation Fund established pursuant to Section IV.B.2 of this Ordinance.

[Explanatory Note: This compensation formula is based on DEP's regulations: Chapter 310, Wetlands and Waterbodies Protection Rules, which specifies the ratio of compensation required (8:1) when a preservation project is proposed as wetland compensation.]

2. Wetland Compensation Fund

- a. **Establishment.** The municipal officers shall establish a Wetland Compensation Fund on or before 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 compensation projects as defined in this Ordinance, which are approved by the Planning 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/City) 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/City) may make payments from the fund consistent with the purposes and uses of the fund as provided in Section IV.B.2.b of this Ordinance.
 - (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/City) 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/City).
 - (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 five years of deposit into the Fund shall be refunded to the permittee.

C. Wetland Compensation Projects.

1. **Compensation Project Plans.** Any compensation plan including a compensation project shall submit the information required in Part II. of the NRPA Application; except that any deed restrictions or conservation easements shall authorize the (Town of/ City of [Municipality]) to act as an enforcing agent.
2. **Types of Compensation Projects:** More than one type of compensation project may be allowed as compensation for a single wetland alteration project. Preference shall be given to projects that will off-set functions and values lost in the affected wetland. Compensation projects 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. Restoration: Returning a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater acreage or function. Restoration most frequently is viewed as reversing the damage from filling or draining activities that have essentially resulted in the loss of a wetland.
 - c. Enhancement: Increasing the net value of a wetland where function has been previously degraded. Enhancement most frequently is viewed as improvement in the functions or values of an existing wetland that has been degraded, but not destroyed by influences that are reversible, such as pollution, invasive plants, and alterations in the hydrology caused by ditching, or improperly placed or sized culverts. It can also include enhancing the value of upland buffers where timber harvesting or other activities have degraded the value for wildlife.

[Explanatory Note: This ordinance omits creation of new wetlands as an option for compensation projects. This type of compensation projects is inherently technical and uncertain – that is, there is a risk that the compensation project may not perform as expected. This necessitates ongoing monitoring, evaluation, and follow-up to assure achievement of compensation objectives and compliance with the permit. Hence, it was considered potentially too burdensome to include this option when the project is required only by local regulation and lacks review and oversight by the DEP or Corps of Engineers.]

3. **Compensation amounts.** The following ratios indicate the acreage needed in a compensation project relative to the acreage altered by the proposed project

or activity:

- b. 8:1 for preservation projects. At the discretion of the Planning Board, upland areas adjacent to a wetland may be included in a preservation project and may be counted as acreage towards the 8:1 required ratio.
 - b. 2:1 for restoration or enhancement to compensate for impacts in wetlands of special significance or wetlands of local significance
 - c. 1:1 for restoration or enhancement to compensate for impacts in wetlands that are not of special significance or of local significance.
4. **Location of Compensation Projects.** Compensation projects shall be located within the (Town of/City of [Municipality]). Projects shall be located within, or in close proximity to, the affected wetland; or in a location that will address local priorities for wetland preservation, restoration, or enhancement.
5. **Standards for Compensation Projects.** Where a compensation project is required, except as amended below, the standards set forth for compensation projects in Section 6 of the Maine DEP regulations, Chapter 310: Wetlands and Waterbodies Protection Rules, which are hereby incorporated by reference as they may be amended from time to time, shall apply.
- a. Expertise. As set forth in DEP Chapter 310 Rules.
 - b. Financial Resources. As set forth in DEP Chapter 310 Rules.
 - c. Persistence. As set forth in DEP Chapter 310 Rules., except that “Planning Board” shall replace “department.”
 - d. Monitoring. As set forth in DEP Chapter 310 Rules.
 - e. Maintenance. As set forth in DEP Chapter 310 Rules.
 - f. Protection. As set forth in DEP Chapter 310 Rules except that “(Town of/ City of [Municipality])” shall replace “department” as an enforcing agent for any conservation easement. “Planning Board” shall replace “department” for approval of land management practices.
 - g. Implementation Schedule. As set forth in DEP Chapter 310 Rules, except that “Planning Board” shall replace “department.”

Section V. Approval Criteria

The Planning Board shall grant approval for a permit [pursuant to the recommendation(s) of the (Planning Staff/Code Enforcement Officer)] upon proper

application, including payment of all fees required by Section III.D and IV.B. of this Ordinance; upon a finding that the standards for compensation as specified in the Maine DEP regulations, Chapter 310: Wetlands and Waterbodies Protection Rules, as amended in Section IV. of this Ordinance, have been met; and upon a finding that the applicant has an approved NRPA permit from the Maine DEP.

Section VI. Post-Approval, Enforcement, and Appeals Provisions

A. Expiration of Permits

A Wetland Permit issued pursuant to this Ordinance shall remain effective for as long as the accompanying NRPA permit is valid.

B. Amendments to the Permit

Wetland Permits are dependent upon and limited to the wetland compensation proposals contained in the Permit Application and supporting documents submitted and affirmed by the applicant. Any variation from the wetland compensation plans, proposals, and supporting documents, except minor changes which 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, is subject to review and approval by the Planning Board.

C. Violations, Enforcement and Penalties

- 1. Notice of Violation.** If, upon investigation, the Code Enforcement Officer determines that activities are occurring or have occurred that are in violation of this Ordinance or any permits or approvals granted for a project pursuant to this Ordinance, the Code Enforcement Officer shall give written notice to the owner and/or occupant of the premises. The notice shall specify the nature of the violation, actions necessary to abate the violation, and the time frame within which these actions shall occur. In addition, the notice shall advise the party of the right to appeal the Code Enforcement Officer's decision.
- 2. Enforcement Action.** If, after such notice and demand, the violation has not been abated within the time provided, the Code Enforcement Officer and/or the (Town Council/Municipal Officers) shall institute appropriate action in the name of the (Town/City) to prevent, correct, restrain, or abate the violation. In the event that any person has altered a wetland without first obtaining a permit as required by this Ordinance, the (Town/City) shall have the power to order payment of [double or triple] the compensation fee that would have been assessed if the violator had obtained a Wetland Permit, by the person or agent responsible for the violation.

3. **Penalties.** Any person, firm, or entity being the owner of or having control or use of or engaged in the construction, alteration, or repair of or receiving a permit for, any building or land or part thereof, found to violate any of the provisions of this Ordinance shall be fined in accordance with Title 30-A, MRSA §4452. Each day such a violation is permitted to exist after written notification thereof by the Code Enforcement officer shall constitute a separate offense. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action.

D. Appeals

1. **Administrative Appeals to the [Municipal] Board of Appeals.** Appeal of any actions taken, or failure to act, by the Planning Board, Code Enforcement Officer shall be filed with the [Municipal] Board of Appeals 30 days of the date of the action being appealed. The Board of Appeals may reverse the decision, or failure to act of the Planning Board or Code Enforcement Officer only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance.
2. **Appeals to the Superior Court.** Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B, within 45 days from the date of the decision of the Board of Appeals.

Section VII. Amendment/Interpretive Provisions

A. Amendments to the Ordinance

Amendments to this Ordinance may be initiated by the municipal officers or the Planning Board, or as specified in the [Town Charter]. No proposed amendments to this Ordinance shall be referred to the [Town Meeting, Town Council] until the municipal officers have held a public hearing on the proposal, notice of which shall be posted at least fourteen (14) days prior to such hearing and advertised in a newspaper of general circulation in the (Town of/ City of [Municipality]) at least two (2) times with the date of the first publication being at least fourteen (14) days prior to the meeting and the second at least seven (7) days prior to the hearing. The amendments shall be adopted by a simple majority vote of the [Town Meeting, Town Council].

B. Interpretations of the Ordinance

The Code Enforcement Officer (CEO) shall be responsible for interpreting and enforcing the provisions of this Ordinance. Any person who believes that the

CEO has made an error in the interpretation or application of the provisions of this Ordinance may appeal such determination to the Board of Appeals as an administrative appeal. If the Board finds that the CEO has erred in his/her interpretation of this Ordinance, it shall modify or reverse the action accordingly.

C. Conflicts with Other Provisions or Ordinances

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation, or statute, the more restrictive provision or ordinance shall control.

D. Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

Section VIII. Definitions

The following terms, as used in this Ordinance, have the following meanings, unless the context indicates otherwise.

Compensation. Off-setting or replacement of a lost or degraded wetland function with a function of equal or greater value.

Compensation fee. A fee paid in lieu of an action to replace or offset lost or degraded wetland functions resulting from an activity.

Development. The alteration of a property for human-related use including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other non-native vegetation, and any other appurtenant facilities, but excluding temporary structures.

Dredge. To move or remove, by digging, scooping or suctioning any sand, silt, mud, gravel, rock, or other material from the bottom of a water body or wetland surface.

Enhancement. An activity increasing the net value of a wetland where function has been previously degraded. Enhancement most frequently is viewed as improvement in the functions or values of an existing wetland that has been degraded, but not destroyed by influences that are reversible, such as pollution, invasive plants, and alterations in the hydrology caused by improperly placed or sized culverts. It can also include enhancing the value of upland buffers where timber harvesting or other activities have degraded the value for wildlife.

Fill. a. (verb) To put into or upon, supply to, or allow to enter a wetland or water body any earth, rock, gravel, sand, silt, clay, peat or debris; b. (noun) material, other than

structures, placed adjacent to a wetland or water body; or material placed in a wetland or water body with the result of a change in the bottom elevation or character or boundaries of the wetland or water body. This term also includes roads, paths and other projects consisting of uncontained material regardless of how long the material remains in the wetland or water body.

Freshwater wetlands. "Freshwater wetlands" means freshwater swamps, marshes, bogs and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Functional Assessment. A determination of the functions of a wetland and their relative values, and an analysis of the extent to which any function will be impaired, degraded, or lost by a proposed activity or project.

Functions. The roles wetlands serve which are of value to society or the environment including, but not limited to, flood water storage, flood water conveyance, ground water recharge and discharge, shoreline stabilization, sediment retention, wave attenuation, nutrient/toxicant removal, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat, wildlife habitat, endangered species habitat, recreation, and education/scientific uses.

Invasive non-native wetland plant. Wetland grasses, forbs, shrubs, or trees not native to the State of Maine, and which proliferate in and dominate wetland vegetation to the exclusion or elimination of native wetland plants.

Maintenance. Activities required to assure continuation of a wetland or the accomplishment of project goals after a restoration project has been technically completed, including, but not limited to, water level manipulations and control of non-native plant species.

Persistence. The overall ability of a wetland to be self-sustaining, continue to exist, and to serve intended functions over an indefinite period of time, although its vegetation, soils, hydrologic characteristics and precise boundaries may change.

Permanent structure. "Permanent structure" means any structure constructed or erected with a fixed location or attached to a structure with a fixed location for a period exceeding 7 months each year, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings.

Preservation. The maintenance of a wetland or protected buffer adjacent to a freshwater wetland or associated upland areas that contribute to the wetland's functions so that it remains in a natural or undeveloped condition. Preservation measures include, but are not limited to, conservation easements and land trusts.

Restoration. An activity returning a wetland from a disturbed or altered condition with lesser acreage or fewer functions to a previous condition with greater acreage or function. Restoration most frequently is viewed as reversing the damage from filling or draining activities that have essentially resulted in the loss of a wetland.

Vegetation Removal or Displacement. "Removal or displacement" means cutting, herbicide spraying, uprooting, shading by structures or any other type of activity that results in a change in plant species diversification.

Wetland Alteration. Dredging; bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering or otherwise altering the hydrology; filling; or any construction, repair or alteration of any permanent structure in a wetland. On a case-by-case basis and as determined by the [Planning Board], the term "alteration" may not include:

- (1) An activity disturbing very little soil such as installing a fence post or planting shrubs by hand;
- (2) The addition of a minor feature to an existing structure such as a bench or hand rail; and
- (3) The construction, repair or alteration of a small structure with minimal impact such as a nesting box, pasture fence, or staff gauge.

Wetland of Local Significance. A wetland identified as providing a specific value or function that, while not of statewide significance as defined by Wetlands of Special Significance, is significant locally for flood protection, wildlife, water quality protection, education, or some other function or value.

[NOTE: A community should define a standard and systematic process for identification of wetlands of local significance, so that there is consistency and a degree of predictability in how these wetlands are defined. This can include use of standard procedures such as a "Wetland Characterization" study, supplemented by local knowledge. Contact the State Planning Office for more information about wetland characterizations.]

Wetland of Special Significance. A freshwater wetland of special significance has one or more of the following characteristics.

- (1) Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the Natural Areas Program.
- (2) Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. § 480-B(10).
- (3) Location near coastal wetland. The freshwater wetland is located within 250 feet of a coastal wetland.

- (4) Location near GPA great pond. The freshwater wetland is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A. § 465-A.
- (5) Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial pond or impoundment.
- (6) Wetlands subject to flooding. The freshwater wetland is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.
- (7) Peatlands. The freshwater wetland is or contains peatlands, except that the [Planning Board] may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.
- (8) River, stream or brook. The freshwater wetland is located within 25 feet of a river, stream or brook.

Wetland Value. The importance of a wetland with respect to the individual or collective functions it provides.

NOTE: A wetland may have different values for different functions. For example, a wetland may have a high value for wildlife habitat, but little value for flood storage.