

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 69,
L.D. 97, Bill, "An Act to Promote Cranberry Cultivation in Maine"

Amend the amendment by striking out everything after the
title and inserting in its place the following:

'Amend the bill by striking out everything after the
enacting clause and before the statement of fact and inserting in
its place the following:

'Sec. 1. 38 MRSA §480-B, sub-§2-D is enacted to read:

2-D. Floodplain wetland. "Floodplain wetland" means lands
adjacent to a river, stream or brook that are inundated with
floodwater during a 100-year flood event and that under normal
circumstances support a prevalence of wetland vegetation
typically adapted for life in saturated soils.

Sec. 2. 38 MRSA §480-U is enacted to read:

§480-U. Cranberry cultivation

1. General permit. An individual permit is not required
for the alteration of freshwater wetlands to cultivate
cranberries as long as the provisions of this section are met.

2. Requirements. An application must be filed with the
department and must meet the following requirements.

A. The application must contain written certification by a
knowledgeable professional that the cranberry cultivation
project will not be located in a wetland that has one or
more of the following characteristics:

(1) Is a coastal wetland or is located within 250 feet
of a coastal wetland;

(2) Is a great pond;

(3) Contains endangered or threatened plant species listed under Title 5, section 3315;

(4) Contains any type of palustrine natural community of which there are 20 or fewer occurrences in the State;

(5) Contains any of the following resources:

(i) Habitat for species appearing on the official state or federal lists of endangered or threatened species when there is evidence that the species is present;

(ii) As defined by rule by the Commissioner of Inland Fisheries and Wildlife, whether or not the resource has been mapped, high-value and moderate-value deer wintering areas; deer travel corridors; high-value and moderate-value waterfowl or wading bird habitats, including nesting and feeding areas; shorebird nesting, feeding or staging areas; or seabird nesting islands; or

(iii) Critical spawning and nesting areas for Atlantic sea run salmon as defined by rule by the Atlantic Sea Run Salmon Commission whether or not mapped;

(6) 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 section 465-A;

(7) Is a bog dominated by ericaceous shrubs, sedges and sphagnum moss and usually having a saturated water regime, except that applications proposing reclamation of previously mined peat bogs may be considered;

(8) Is land adjacent to the main stem of a major river, as classified in section 467, that is inundated with floodwater during a 100-year flood event and that under normal circumstances supports a prevalence of wetland vegetation, typically adapted for life in saturated soils; or

(9) Contains at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for man-made ponds or impoundments, during most of the growing season in most years; except that

cranberry cultivation is allowed more than 250 feet from the edge of the area of aquatic vegetation, emergent marsh vegetation or open water.

A project to cultivate indigenous cranberries may be located in wetlands described in subparagraphs (6) and (7) only if the project location is a natural cranberry bog and provisions of paragraph D are met. For purposes of this paragraph, "natural cranberry bog" means an area with indigenous large cranberries, *Vaccinium macrocarpon* Ait., comprising more than 50% of the cover in the herbaceous layer; and "cover in the herbaceous layer" means all herbaceous or woody vegetation less than 10 inches in height.

B. The application must contain a plan that includes the following elements:

(1) A top view drawing of the entire project including existing and proposed beds, dikes, ditches, roads and reservoirs; cross-sectional drawings of beds, dams, dikes and ditches; length, width and depth of beds, dikes and ditches; delineation of the wetland boundaries and calculated area of wetlands affected; description of existing vegetation; amount and type of fill material to be discharged over the beds and location of borrow area; type and size of water control structures; and placement and description of water sources;

(2) A soil erosion and sedimentation control plan that is consistent with erosion and sediment control specifications as determined by the Department of Agriculture, Food and Rural Resources and the department;

(3) A plan for a water recovery system, including either a reservoir or the cranberry beds themselves, that is designed to contain the runoff from the project area during a 10-year, 24-hour storm event;

(4) A plan to maintain a 75-foot buffer strip from any river or stream draining a watershed of 100 acres or more, except that excavated ditches and water intake and outfall pipes or control structures may be allowed in the 75-foot buffer area;

(5) Design specifications for water intake and outfall pipes and excavated ditches which must be consistent with specifications as determined by the Department of Agriculture, Food and Rural Resources and the department;

2 (6) A plan to maintain minimum base flows for each
3 water supply area. Minimum base flow is the aquatic
4 base flow for that watershed, or a flow that can be
5 shown to protect designated uses and characteristics
6 assigned in section 465; and

7 (7) Appurtenant facilities, including, but not limited
8 to storage buildings, parking areas and processing
9 areas may not be located in the freshwater wetland.
10 This limitation does not apply to pump houses,
11 roadways, service areas and other appurtenant
12 facilities directly related and needed to carry out the
13 water related activities.

14
15 C. The applicant must provide a management plan that
16 includes a pesticide and fertilizer program approved by the
17 Department of Agriculture, Food and Rural Resources. The
18 plan must include the following practices:

19 (1) The application of nutrients and soil amendments
20 in terms of timeliness, amounts, materials and method
21 of application;

22 (2) The use of current integrated pest management
23 practices for applying pesticides properly and in the
24 minimum amounts necessary to control pests; and

25 (3) The management of water in terms of bed drainage,
26 runoff disposal, sprinkler irrigation, control devices
27 to separate natural water from pumping supply for
28 irrigation purposes, back-siphoning prevention devices
29 and flooding.

30
31 D. A person applying for approval on the basis that the
32 project location is a natural cranberry bog as defined in
33 paragraph A must provide a management plan that meets all of
34 the requirements of paragraph C and the requirements of this
35 paragraph.

36 (1) The cranberries must be cultivated in accordance
37 with organic production standards established in Title
38 7, section 551, subsection 2 and section 553,
39 subsection 1, paragraph A.

40 (2) A person may not introduce nonindigenous cranberry
41 plants to the project site. A person may not remove
42 cranberry plants existing on the project site.

(3) Cultivation practices may not alter natural drainage. Filling is limited to placement each year of up to 1 inch of sand on bearing cranberry vines.

3. Agriculture certification. The Department of Agriculture, Food and Rural Resources shall review all plans submitted pursuant to subsection 2, paragraphs B, C or D and shall certify compliance of these sections to the department within 20 days of receipt of an application.

4. Review period. Work may not occur until 45 days after the department has accepted an application for processing.

5. Notification. The department shall notify an applicant in writing within 45 days of acceptance for processing if the department determines that the requirements of this section have not been met. Any such notification must specifically cite the requirements of this section that have not been met. If the department has not notified the applicant under this subsection within the specified time period, a general permit is deemed to have been granted.

6. Deferrals. The 45-day time limit for processing a completed application under subsection 5 does not apply when winter conditions prevent the department from evaluating a permit application. Under such circumstances, the department may defer action for a reasonable period. The department shall immediately notify the applicant of a deferral under this subsection.

7. Fees. The department shall assess a fee for review of applications filed pursuant to this section. The fee must be equivalent to the amount assessed to activities requiring an individual permit for freshwater wetland alterations.

8. Violation. Any action taken by a person receiving a general permit under this section that is not in compliance with the plans submitted under subsection 2, paragraphs B, C or D is a violation of the general permit.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

FISCAL NOTE

This emergency legislation will allow the Department of Environmental Protection to recapture a loss of dedicated revenue from application and processing fees from the cranberry cultivations exemption through the assessment of a fee. The effect on dedicated revenue is expected to be negligible.

2 The Department of Environmental Protection will absorb the
costs associated with the application and certification review
4 requirement. The Department of Agriculture, Food and Rural
Resources will absorb the costs associated with the review and
6 certification of certain cultivation practices.' '

8
10 **STATEMENT OF FACT**

12 This amendment replaces the majority report. The amendment
provides a general permit process to facilitate the consideration
of cranberry cultivation projects in certain types of wetlands.
14 Persons seeking to cultivate cranberries in compliance with the
terms of the general permit do not require individual permits
16 from the Department of Environmental Protection. This department
is afforded a 45-day review period prior to any development of
18 the proposed cranberry cultivation site located in a wetland.
During the review period the department may determine whether or
20 not the proposed project actually meets the provisions of the
general permit. The Department of Agriculture, Food and Rural
22 Resources is charged with certifying the adequacy of the
cranberry cultivation practices proposed by the applicant.
24

Filed by Rep. Tardy of Palmyra
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