

PART I. PURPOSE AND PROCEDURES

1.0. AUTHORITY, PURPOSE, AND WETLAND VALUES

1.1. Purpose. These Regulations were promulgated under the Town of Duxbury Wetlands Protection Bylaw (General Bylaws of the Town of Duxbury, Chapter 9), henceforth known as the Bylaw, in order to implement the purposes of the Bylaw and to protect the wetlands, related water resources and adjoining land areas of the Town of Duxbury by controlling activities affecting Resource Areas. These Regulations set forth additional definitions, regulations and performance standards necessary to protect the values and/or intent of the Bylaw, protect additional Resource Areas and wetland values, and specify standards and procedures stricter than those of the Wetlands Protection Act, M.G.L. Ch. 131, § 40 and implementing regulations at 310 CMR 10.00.

1.2. Authority. The Town of Duxbury Wetland Regulations (DWR) were promulgated by the Town of Duxbury Conservation Commission (Commission), pursuant to the authority granted to them under the Bylaw and under the Home Rule authority of this municipality. The DWR shall complement the Bylaw, and shall have the force of law upon their effective date. Following public notice and a public hearing thereon, these Regulations may be amended and/or added to by a majority vote of the Commission.

1.3. Wetland Values. These regulations are promulgated in order to protect the following wetland values, including, but not limited to:

- 1) protection of public or private water supply;
- 2) protection of groundwater;
- 3) flood control;
- 4) erosion and sedimentation control;
- 5) storm damage prevention, including coastal storm flowage;
- 6) prevention of water pollution;
- 7) protection of fisheries;
- 8) protection of shellfish;
- 9) protection of wildlife and wildlife habitat;
- 10) protection of rare species habitat, including rare plant and animal species;
- 11) protection of recreation;
- 12) protection of agriculture;
- 13) protection of aquaculture; and
- 14) protection of aesthetics.

2.0. JURISDICTION

The Bylaw and Regulations provide protection for Resource Areas and their wetland values. Resource Areas protected under the Bylaw are ANY of the following:

- 1) Any freshwater or coastal wetland, isolated wetland, beach, dune, flat, marsh, wet meadow, bog, swamp, vernal pool, creek, river, stream, pond, lake, estuary, or ocean;
- 2) Any bank bordering on a freshwater or coastal wetland or water body;
- 3) Land under water bodies, including but not limited to, land under the ocean, ponds, lakes, rivers, streams, creeks, any fresh water or coastal wetland, and estuaries;
- 4) Land subject to flooding or inundation by groundwater or surface water, including but not limited to, fresh water wetlands, isolated wetlands, beaches, wet meadows, marsh, swamps, bogs, vernal pools, streams, rivers, ponds, lakes, or reservoirs;
- 5) Land bordering on the ocean, including but not limited to, beaches, dunes, tidal flats, coastal bank, salt marshes, salt meadows, estuaries;
- 6) Land within a minimum distance of 100 feet from any of the aforementioned Resource Areas (1-5 described above) (hereinafter referred to as the “Buffer Zone”);
- 7) Land subject to tidal action, coastal storm flowage, or flooding, including but not limited to, the coastal floodplain (FEMA Flood Zones A and V, as shown on the Flood Insurance Rate (FIRM) maps for the Town of Duxbury); or
- 8) Land within 200 feet of any river, stream, or creek (hereinafter referred to as the “Riverfront Area”, refer to DWR 21.1 (c)).

Resource Areas shall be protected whether or not they border surface water.

3.0. REGULATED ACTIVITIES

Activities subject to regulation under the Bylaw and Regulations include the following:

- 3.1. Activity proposed or undertaken within a Resource Area as described in DWR 2.0 et seq.;
- 3.2. Any activity deemed by the Commission as likely to have a significant or cumulative adverse effect upon Resource Areas as defined herein;
- 3.3. Any activity, including but not limited to, any and all of the following activities when undertaken to, upon, within or affecting Resource Areas or their wetland values, as determined by the Commission :
 - a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;

- c) Drainage, or other disturbance of water level or water table;
- d) Dumping, discharging, or filling with any material which may degrade water quality;
- e) Placing of fill, or removal of material;
- f) Driving of piles, construction or expansion or repair of buildings or structures or construction of any kind whether it be for industrial, commercial, residential, recreational or other purposes, regardless of its size;
- g) Placing of obstructions or objects in water or the surface water or groundwater hydrology of any resource area;
- h) Destruction or removal of plant life, including, but not limited to, cutting or trimming of trees and shrubs;
- i) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- j) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater; and
- k) Incremental activities which cause, or may cause, a cumulative adverse effect on the resource areas and interests protected by this Bylaw.

3.4. Activities Outside the Areas Subject to Protection Under the Bylaw. Any activity proposed or undertaken outside the areas specified in DWR 2.0 is not subject to regulation under the Bylaw, and does not require the filing of a Permit Application unless and until that activity actually alters a Resource Area. In the event that the Commission determines that such activity has in fact altered a Resource Area referenced in DWR 2.0(1) through (8), it shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the protection of the wetland values identified in DWR 1.3.

4.0. EXCEPTIONS

Exceptions may be made for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services.

5.0. PROMULGATION OF REGULATIONS

The Commission may adopt such additional definitions, regulations, fees, and performance standards as they may deem necessary to protect the wetland values of this Bylaw. Said definitions, regulations, fees and performance standards shall become effective upon publication following a public hearing for which public notice has been provided.

6.0. DEFINITIONS

Definitions of selected words, terms and phrases used in these Regulations are provided below, where they have not already been defined in the Bylaw. Definitions of Resource Areas are found in subsequent sections for each Resource Area. Where applicable, the definitions, presumptions of significance, and performance standards, set forth in the Massachusetts Wetlands Regulations, 310 CMR 10.00 et seq., are hereby incorporated herein only when no definitions, presumptions of significance or performance standards are given in these regulations.

Minimize means to make as small as possible. To achieve the least amount of adverse effect that can be attained using best available measures or best practical measures, whichever is referred to in the pertinent section.

Naturally vegetated condition means an area on a lot or parcel of land, or portion thereof, that is left in a natural, undisturbed vegetative state; has existed in a primarily natural, undisturbed state, but has been enhanced with indigenous plantings conducive to improved wildlife habitat according to a plan approved by the Commission; or has been disturbed, but is revegetated with indigenous plantings that will return the land to its pre-disturbance condition according to a plan approved by the Commission.

Navigation means the ability to traverse a waterway and is part of the wetland value of recreation under the Bylaw.

Pier means the entire structure of any pier, dock, wharf, walkway, bulkhead or float, and any part thereof including pilings, ramps, walkways, floats and/or tie-off pilings attached to the shore.

Rare species habitat means the following areas utilized by threatened, rare, or endangered plant or animal species, or species of Special Concern; or species on the "Watch List"; or Priority Sites of Rare Species habitat; or Exemplary Natural Communities; (all of which are determined by the Massachusetts Division of Fisheries and Wildlife, Natural Heritage & Endangered Species Program).

Recreation means the use and enjoyment of our natural surroundings in a manner consistent with their preservation. Activities should not hinder access to coastal and inland resources. Activities that shall be considered part of the use and enjoyment of our natural surroundings in a manner consistent with their preservation shall include but not be limited to recreational boating, swimming and shellfishing. The Commission's analysis of the project's effect on the wetland value of recreation should be relative to a proposal's potential impacts on other protected wetland values, with priority given to enhancing and protecting those recreational values which are not detrimental to the continued natural functions of wetlands or their wetland values.

Redevelopment means replacement, rehabilitation or expansion of structures currently existing on the site or improvement of currently existing roads or other surfaces passable to motor vehicles.

Resource Area means any of the areas specified in DWR 2.0. It is used synonymously with Area Subject to Protection Under The Bylaw, each one of which is described in DWR 17.0 through 22.0.

Significant means plays a role. A Resource Area is significant to a wetland value when the Resource Area plays a role in the provision or protection of that wetland value.

Water-dependent uses mean those uses and facilities which require direct access to, or location in, marine, tidal or inland waters and which therefore cannot be located away from said waters, such as: marinas, public recreational uses, navigational and commercial fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels.

Wildlife habitat means areas which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide food, shelter, migratory or overwintering areas, or breeding areas for animals. This includes all areas in a naturally vegetated condition.