

## **CHAPTER 9 WETLANDS PROTECTION**

### **9.1 WETLANDS PROTECTION**

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**9.1.1. Purpose and Scope.** The purpose of this Bylaw is to protect the wetlands, related water resources and adjoining land areas of the Town of Duxbury by controlling activities deemed by the Duxbury Conservation Commission (“Conservation Commission”) likely to have a significant or cumulative adverse effect upon protection of the following resource area values, including but not limited to the following: protection of public or private water supply; groundwater; flood control, erosion and sedimentation control; storm damage prevention, including coastal storm flowage; prevention of water pollution; fisheries, shellfish, wildlife habitat, rare species habitat, including rare plant and animal species; recreation, agriculture, aquaculture and aesthetics (collectively, “the wetland values (interests) protected by this Chapter”). This Chapter is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act, M.G.L. Ch. 131, § 40 and Regulations thereunder, 310 CMR 10.00. Activities for the normal maintenance or improvement of land in agricultural or aquacultural use, as defined in the Wetland Protection Act and its implementing regulations at 310 CMR 10.04, shall not be subject to this Bylaw.

**9.1.2. Jurisdiction.** Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any bank, fresh water or coastal wetland, isolated wetland, beach, dune, flat, marsh, wet meadow, bog, swamp, vernal pool, the ocean, estuary, creek, river, stream, pond or lake, land under water body, land subject to tidal action, coastal storm flowage, or flooding, land subject to flooding or inundation by ground water or surface water, land within a minimum distance of 100 feet from any of the aforesaid resource areas (buffer zone), and land within 200 feet of a river (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

**9.1.3. 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.

**9.1.4. Promulgation of Regulations.** The Conservation Commission may adopt such additional definitions, regulations, fees, and performance standards as they may deem necessary to protect the interests 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.

**9.1.5. Definitions.**

**Adverse effect:** A greater than negligible change in the resource area or one of its characteristics or factors that diminishes the value of the resource area to one or more of the specific interests of this Bylaw, as determined by the issuing authority. “Negligible” means small enough to be disregarded as determined by the Conservation Commission.

**Aesthetics:** The natural scenery and appearance of any resource area.

**Alter:** Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas or interests protected by this Bylaw:

- 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 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.

**Cumulative adverse effect:** The adverse effects of activities regulated under this Bylaw which may be individually insignificant to the interests and values under this Bylaw, but when considered in relation to other past or present activities in a given area may be significant to said interests and values in the aggregate.

**Person:** The term “person,” as used in this Bylaw, shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents or assigns.

Except as otherwise provided in this Bylaw or in regulations of the Conservation Commission, the definitions of terms and procedures in this Bylaw shall be as set forth in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

**9.1.6 Permit Applications, Notice and Hearings.** No one intending to conduct any of the above named activities may commence such activity within the jurisdiction of this Bylaw without filing written notice of their intention so to remove, fill, dredge or alter and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Such notice shall be sent by certified mail or hand delivered to the Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment. The Conservation Commission may require additional materials or information in addition to the plans and specifications required to be filed by an applicant under MGL c. 131, § 40, in order to fulfill the requirements of this Bylaw. The said Conservation Commission, in its discretion, may hear any oral presentation under this Bylaw at the same public hearing required to be held under the provisions of said c.131, § 40. The Conservation Commission shall make a determination as to whether or not this Bylaw applies to a specific situation prior to the filing of a written notice of intent under the provisions hereof, within twenty-one (21) days of the receipt of a written request sent by certified mail or hand delivered from any person desiring such determination.

The Duxbury Conservation Commission shall within five (5) business days of receiving a request for determination or a notice of intent for the proposed activities within a coastal resource area as defined in Chapter 131, section 40 of M.G.L. or as determined by the Duxbury Conservation Commission, request that the Duxbury Bay Management Commission provide written comments and recommendations before the DCC takes final action on said request for determination or notice of intent.

**9.1.7. Approval, Conditions and Denials.** The Conservation Commission is authorized to approve a permit when it determines that the proposed work meets all applicable performance standards and procedures under this Bylaw or when work can be conditioned to meet all such performance standards, and where it determines that the work will not result in significant or cumulative adverse effects upon wetland interests protected by this Bylaw. The Conservation Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw; for failure to submit necessary information and plans requested by the Conservation Commission; for failure to meet the design specifications, performance standards and other requirements in regulations of the Conservation Commission; for failure to avoid or prevent significant or cumulative effects upon the wetland interests protected by this Chapter; or where no conditions are adequate to protect those values, in its sole discretion as the issuing authority. Notwithstanding anything to the contrary herein, each permit, application, notice and hearing will be considered on its own merits. The Conservation Commission is empowered to deny permission for any removal, dredging, filling, or altering of subject lands within the town if, in its judgment, such denial is necessary to preserve environmental quality of either or both the subject lands and contiguous lands. Due consideration shall be given to possible effects of the proposal on all values to be protected under this Bylaw and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing. Any order of conditions issued under this Bylaw may differ from any such order issued by the Conservation Commission under the provisions of MGL, c. 131, § 40.

**9.1.8. Emergency Certification.** The notice required by this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the citizens of Duxbury and to be performed or ordered to be performed by an administrative agency of the Commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Conservation Commission or its agent. In no case shall any removal, filling, dredging or alteration authorized by such certification extend beyond the minimum amount of work and time necessary to abate the emergency. The Conservation Commission or its agent may impose conditions to protect wetland interests and values of this Bylaw. Failure to agree to or follow these conditions shall be due cause for stopping all work. Upon failure to meet these requirements, the Conservation Commission may order all such work stopped and require the filing of a Notice of Intent or other application, as described under Permitting.

**9.1.9. Right of Entry.** The Conservation Commission, its agent, and officers, may enter upon the land which the proposed work is to be done in response to a request for a prior determination or for the purpose of carrying out its duties under this Bylaw and may make or cause to be made such examination or survey as deemed necessary.

**9.1.10. Enforcement.** The Conservation Commission shall have the authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Upon request of the Conservation Commission to the Board of Selectmen, the Town Counsel may take legal action for enforcement under civil law. Upon request of the Conservation Commission, the Chief of Police may take legal action for enforcement under criminal law.

Any person who violates any provision of this Bylaw, regulations thereunder, or permits issued thereunder, shall be punished by a fine set by the Conservation Commission in a manner consistent with Section 7.8. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations or permit violated shall constitute a separate offense.

Non-criminal Disposition – In addition to the procedure of enforcement as described above, the provision of this Bylaw may also be enforced by the Conservation Commission or its agent, by non-criminal complaint pursuant to the provisions of MGL, c. 40, § 21D. The penalty for violation of any provision of this Bylaw shall be \$100.00 for the first offense; \$200.00 for the second offense; \$300.00 for the third offense and each subsequent offense. Each provision of the chapter, regulations or permit violation that is violated shall constitute a separate offense.

**9.1.11. Security.** As part of a permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency or official, the Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including requiring mitigation work) be secured wholly or in part by one or more of the methods described below.

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Conservation Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit. Such bond or deposit shall be released only upon issuance of a Certificate of Compliance.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner or record, running with the land to the benefit of this municipality whereby the

permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

**9.1.12. Burden of Proof.** The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have significant or cumulative adverse effects upon the wetland values protected by this Chapter, as determined by the Conservation Commission. Failure to provide evidence to the Conservation Commission to support this burden shall be sufficient cause for the Conservation Commission to deny a permit or grant a permit with conditions.

**9.1.13. Consultant Fee.** Upon receipt of a permit application or request for determination of applicability or other filing, the Conservation Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Conservation Commission for specific expert engineering and other consultant services deemed necessary by the Conservation Commission to make a final decision on the application and for enforcement services. This fee is called the consultant fee. The specific consultant services may include, but are not limited to, resource area survey and delineation, analysis of resource area values, such as wildlife habitat evaluations, hydrological and drainage analysis, hydric soil analysis, and other analyses; and review of applicable environmental or land use law. Fees are to be established by the Conservation Commission acting under M.G.L. Chapter 40 Section 8C and M.G. L. Chapter 44 Section 53G.

**9.1.14. Fee Waiver.** The Conservation Commission may waive fees when an application fee for a permit filing or request for determination of applicability or other application is made by a government agency or not-for-profit organization.

**9.1.15. Appeals.** Any applicant, owner or abutter, any person aggrieved or any ten (10) residents of Duxbury may appeal an order of the Conservation Commission under this Bylaw to the Superior Court of Plymouth County within sixty (60) days following the date of issuance of the order, in accordance with M.G.L. Ch. 249 § 4.

**9.1.16. Severability.** Should any section or provision of this Chapter be found invalid, the validity of any other section or provision thereof shall not be affected, nor shall it invalidate any permit, approval or determination which previously has been issued.

**9.1.17. Relation to the Wetlands Protection Act and Other Federal, State and Local Statutes.** This Bylaw is adopted under the Home Rule Amendments of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act M.G.L. Ch. 131 § 40 and implementing regulations, and other federal, state and local environmental statutes. Activities that may not require review or permitting under the Wetlands Protection Act, the Rivers

Protection Act, or other federal, state or local statutes are not assumed to be exempt from this Bylaw.

**9.1.18. Coordination of Permitting.** In order to ensure that various permit granting authorities review the impacts upon resources protected by this Bylaw in a coordinated manner, and where the provisions of this Bylaw are applicable, applicants for permits under federal, state or local statute or regulation shall comply with the requirements for filing under this Bylaw within forty-five (45) days of said application made under federal, state or local statute or regulation.