

ORDINANCE 85A

WETLANDS

Adopted: _____, 2022

ORDINANCE NO. 85A

AN ORDINANCE REGULATING AND RESTRICTING DEVELOPMENT AFFECTING
WETLANDS, PROTECTING AND PRESERVING WETLANDS,
ADDRESSING WETLAND MITIGATION WHEN APPROPRIATE AND
PERMITTED BY APPROPRIATE STATE AND FEDERAL AGENCIES,
AND PROVIDING PENALTY FOR VIOLATIONS

BE IT ORDAINED BY TOWN COUNCIL OF THE TOWN OF DAUPHIN ISLAND,
ALABAMA, as follows:

1. STATUTORY AUTHORIZATION

WHEREAS, the legislature of the State of Alabama has in Section 11-45-1 of the Code of Alabama, 1975, authorized local governments to adopt regulations designed to promote the public health, safety, and general welfare of its citizens.

2. STATEMENT OF PURPOSE

WHEREAS, the Town of Dauphin Island finds that growth of population and attendant residential and commercial development and increasing demands upon natural resources have the potential of encroaching upon, despoiling, polluting or eliminating many of the wetlands, water bodies and watercourses of the Town of Dauphin Island which, if preserved, constitute important physical, economic, social, historic, archaeological, aesthetic, recreational and ecological assets to present and future residents of the Town of Dauphin Island and provide important beneficial functions, including natural flood and storm water control, groundwater recharge, natural pollution treatment, erosion and sediment control, wildlife habitat creation, recreation and open space enhancement and educational opportunities.

WHEREAS, it is the intent of this Ordinance to protect the public interest, health, safety, economic and general welfare of the citizens of the Town of Dauphin Island by providing for the protection, preservation, proper maintenance and use of its wetlands, water bodies and watercourses by preventing damage from erosion, siltation or filling; thereby minimizing disturbance, preserving natural habitats and protecting against flood and pollution by protecting such areas for their conservation, economic, aesthetic, recreational and other public uses and values. Further, it is the intent of this Ordinance to protect the surface and groundwater resources wholly and partly within the Town of Dauphin Island from the threat of pollution, misuse, or mismanagement. Therefore, because all wetlands, water bodies and watercourses are presumed to be of importance, it is hereby declared that the regulation and control of those areas in the Town of Dauphin Island, relative to any specific area is essential to the health, safety, economic and general welfare of the citizens of the Town of Dauphin Island.

3. DEFINITIONS

- 3.1 Development – Any change to property brought about by human activity including, but not limited to, construction of buildings and other structures, mining, dredging, filling, grading, paving, excavation, or drilling.
- 3.2 Impacts - Impacts include any action that would destroy, harm, impair, diminish, or degrade the value or utility of a wetland for pollution control, flood prevention, ground water recharge or habitat for fish and wildlife. Impacts include the placement of sand, dirt, gravel, concrete, excessive mulching, and the compaction of wetland soils with heavy machinery. All trees that a property owner cuts down within a wetland must be removed, or that will be considered a fill impact.
- 3.3 Mitigation - The process of addressing impacts to the environment caused by human action usually through measures required by regulation to moderate or alleviate environmental impacts. Note: Any wetland lost through development within the corporate limits of the Town of Dauphin Island shall be considered to represent high-quality habitat and shall be mitigated through creation, restoration, or enhancement of in-kind habitat within the corporate limits of the Town or through purchase of credits from an approved wetland mitigation bank whose service area includes Dauphin Island. The Wetlands Environmental Impact Fee levied by the Town of Dauphin Island is in addition to mitigation requirements.
- 3.4 Wetland - An area that is inundated or saturated by surface or ground water at a frequency and duration that under normal circumstances supports a prevalence of hydrophytic vegetation. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to, irrigation, drainage ditches, grass lined swales, canals, retention facilities, wastewater treatment facilities, farm ponds and/or, landscape amenities. Wetlands shall include those artificial wetlands intentionally created from non-wetlands areas to mitigate the conversion of wetlands. For the purpose of this ordinance, a wetland is an area that meets the criteria laid out in the Regional Supplement to the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). Findings must be documented with one or more regional supplement Wetland Determination Data Forms.
- 3.5 Wetland Delineation - Establishment of the location and physical limits of wetlands on a given property using methods as prescribed in the Regional Supplement to the U.S. Army Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). Findings are documented by completing a regional supplement Wetland Determination Data Form within each plant community present. Wetland boundaries must be clearly marked on a site plan drawn to scale and with survey flagging or other means on the property.
- 3.6 Wetland Determination – Evaluation of an area for the purpose of establishing presence/absence of wetlands as defined by this ordinance. A wetland determination

must be conducted by a qualified wetland specialist or by the USACE. If wetlands are determined to be present, a formal wetland delineation will be required.

- 3.7 Wetlands Environmental Impact Fee - A fee levied by the Town of Dauphin Island on approved wetland impacts to compensate for loss of fish and wildlife habitat, diminished groundwater recharge, increased stormwater runoff, or diminished pollution control, and to potentially purchase additional wetlands located within the corporate limits of the Town for the purpose of permanently removing them from the threat of development. The fee will be levied, at a rate of \$5.00 per square foot, on any Town of Dauphin Island-approved wetland impacted property. NOTE: The Environmental Impact Fee will be assessed on the total square footage of the entire wetland area within the lot, parcel, or plat where the activity is taking place.

4. APPLICATION

- 4.1 This ordinance shall apply to all land lying within the corporate limits of the Town of Dauphin Island.
- 4.2 Any proposed development having an impact upon wetlands within the corporate limits of the Town of Dauphin Island shall require the prior approval of the Building Inspection Department (BID).
- 4.3 No proposed development having an impact upon wetlands within the corporate limits of the Town of Dauphin Island shall be permitted by the Town BID without an application having been made through the USACE, Alabama Department of Environmental Management (ADEM) and the Town of Dauphin Island; and performing all required mitigation through the ADEM as well as paying the Wetland Environmental Impact Fee to the Town of Dauphin Island.
- 4.4 Where development will not impact wetlands but is to take place on property in close proximity to wetlands, measures must be taken to protect the wetlands from disturbance. The property owner will be required to demonstrate minimization and avoidance of impacts to the wetland resources. Buffers from construction and development near wetlands are hereby established. Construction or development bordering wetlands must be performed using appropriate Best Management Practices that prevent all impacts to the wetlands. This will include a permanent buffer from existing wetlands and said buffer must be protectively fenced during construction and development activities. For wetlands bordering salt or brackish bodies of water, the buffer shall be a minimum of thirty feet (30'). For wetlands surrounded by land or bordering small creeks or lakes, the buffer shall be a minimum of ten feet (10'). Permanent protection of the wetlands on the finished sites will be required by the Town BID.

5. PROCEDURE

- 5.1 All permit requests for building, land disturbance and or tree removal must be compared to the Sensitive Habitat Management and Protection Plan Overlay Map, adopted by the

Town Council on August 17, 2021. If the proposed building site is listed as potential wetlands on this map or if the Town BID believes there to be wetlands on the site, an application, including a wetland determination, and delineation if wetlands are found, and associated documentation, must be made to the Town BID to move forward with the permitting process as outlined below. All requests to impact wetlands will be coordinated with and approval obtained from the USACE, ADEM, and Town of Dauphin Island BID.

- 5.2 Application to impact wetlands shall be made to the USACE and ADEM using the Joint Application and Notification which may be obtained from ADEM. An application to impact wetlands must also be submitted to the Town of Dauphin Island BID along with four (4) drawn to scale (1" equals 30' or greater scale) maps and a digital map of reduced size, so it may be printed on 11" x 17" paper, and color photographs (4 each) as needed. When obtaining a permit for fill in wetlands, the property owner will be required to demonstrate minimization and avoidance of impacts to those resources.
- 5.3 Upon completion of the USACE and ADEM application and permit process and payment of any ADEM required provision of compensatory mitigation credits to offset the losses of wetland resources on the property, as well as payment of the Dauphin Island Wetlands Environmental Impact Fee, the BID may issue a building permit. Any person, firm, partnership, or corporation that adversely impacts wetlands without a permit shall be punishable per paragraph 6.
6. PENALTY: Any person, firm, partnership, or corporation that violates any provision of this ordinance upon conviction shall be punished by a fine of not more than \$500.00 or imprisonment for a term not to exceed thirty (30) days or both, at the discretion of the Court. Each day the violation continues shall constitute a separate offense and shall be punishable as such thereunder. Note: Protection of wetlands falls under the Clean Water Act Section 404 Program. The principal federal program that provides regulatory protection for wetlands is found in Section 404 of the Clean Water Act (CWA). Its intent is to protect water and adjacent wetland areas from adverse environmental effects due to discharges of dredged or fill material. This regulatory program carries additional penalties.
7. ENFORCEMENT: The Building Inspection Department shall enforce the provisions of this subchapter in the manner and form and with the powers provided by the Town of Dauphin Island and the State of Alabama.
8. SEVERABILITY: If any part of this subchapter is found by the courts to be unconstitutional or invalid, that finding shall not affect the validity of this subchapter as a whole or any part of the subchapter other than the part specifically declared to be unconstitutional or invalid.
9. EFFECTIVE DATE: This ordinance shall become effective immediately upon its passage and required posting, or otherwise becoming law.

APPROVED AND ADOPTED THIS _____ DAY OF _____, 2022.

JEFF COLLIER, MAYOR

ATTEST:

WANDA SANDAGGER, TOWN CLERK

1st Reading:
Council Public Hearing:
2nd Reading:
Adopted:
Posted: