

ORDINANCE 85

WETLANDS

Adopted: August 3, 2004

ORDINANCE NO. 85

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, general 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 or siltation, minimizing disturbance, preserving natural habitats and protecting against flood and pollution by protecting the quality of 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 Adverse Impact - Anything 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.
- 3.2 Development - Any improvement or change to property brought about by human activity, including, but not limited to the construction of buildings and other structures, mining, dredging, filling, grading, paving, excavation or drilling.
- 3.3 Hydrophytic Vegetation - Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Plant species of this type are listed in: P .B. Reed, Jr., "National List of Plant Species that Occur in Wetlands (North Central - Region 3), Biological Report 88(24), (Washington, DC: U.S. Fish & Wildlife Service, 1988).
- 3.4 Mitigation: Any wetland to be developed within the corporate limits of the Town of Dauphin shall be mitigated at a 2:1 ratio on the same island within the corporate limits. The wetland created by mitigation must contain the same diversity of plants and animals as the wetland being destroyed.
- 3.5 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, waste water treatment facilities, farm ponds, landscape amenities, or those wetlands unintentionally created as a result of the construction of a road, street or highway. Wetlands shall include those artificial wetlands intentionally created from non-wetlands areas to mitigate the conversion of wetlands.

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 adverse impact upon wetlands within the corporate limits of the Town of Dauphin Island shall require the prior approval by majority of the Town Council.
- 4.3 No proposed development having an adverse impact upon wetlands within the corporate limits of the Town of Dauphin Island shall be permitted by the Town of Dauphin Island or by or through its Town Council without mitigation for the wetland bearing the adverse impact.

5 PROCEDURE.

- 5.1 Application to mitigate wetlands shall be made to the Planning Commission for its review and recommendation to the Town Council. Applicant shall provide application and four (4) full scale maps with eleven (11) maps of reduced size, not to exceed 11" x 17", and color photographs (4 each) as needed. All cost associated with notification of landowners within five hundred (500) feet and the general public shall be paid by applicant. If applicant requests a special meeting of the Planning Commission or Town Council a fee of five hundred dollars (\$500.00) shall be paid. Upon receipt of the Planning Commission recommendation, the Town Council shall make a determination of acceptability.
 - 5.2 All requests to mitigate wetlands will be coordinated with and approval obtained from the Corps of Engineers, Alabama Department of Environmental Management (ADEM) and the U.S. Fish & Wildlife Service. The Town Council shall not accept a recommendation from the Planning Commission without approval obtained from all three governmental agencies.
 - 5.3 Upon completion of the required mitigation and approval of the Town Council the Building Inspector 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 shall upon conviction 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 punished as such thereunder.
- 7 ENFORCEMENT: The Building Inspector 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 of 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 _____, 2004.

JEFF COLLIER, MAYOR

ATTEST:

GINGER SIMPSON, TOWN CLERK

1st Reading: July 6, 2004
Council Public Hearing: August 3, 2004
2nd Reading: August 3, 2004
Adopted: August 3, 2004
Posted: August 4, 2004