

321 CMR 11.00: NATURE PRESERVES

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321 CMR 11.01

11.01: Authority, Purpose, Goals, and Dedication

- (1) Authority. 321 CMR 11.00 is promulgated under the authority of M.G.L. c. 131, § 10A through D.
- (2) Purpose and Goals. 321 CMR 11.00 is promulgated for the purposes of establishing a system of dedicated nature preserves and for guiding the Division of Fisheries & Wildlife in defining the criteria, scope, protocol and stewardship for the dedication and management of such preserves. Nature preserves are areas containing native natural communities which are as nearly as possible in their natural condition and are representative of significant habitats and ecosystems of the Commonwealth. Nature preserves are intended to serve in perpetuity as representatives of the state's native natural heritage, as habitats for plant and animal species, and as exemplary representatives of the natural communities and ecosystems of Massachusetts. Nature preserves are further intended to provide scientific research and education opportunities for the public to understand, and appreciate the state's natural heritage.
- (3) Dedication. Nature preserves are dedicated to the public benefit for scientific research, education, and the preservation of plant and animal species and natural communities of the Commonwealth. Nature preserves dedicated hereunder shall be recognized by EOEA-the Executive Office of Energy and Environmental Affairs (EOEEA) and its constituent agencies as areas to be monitored and maintained as nearly as possible in their natural condition. Nature preserves shall be used and managed in a manner consistent with the protection and perpetuation of such natural condition without impairment or development.
- (4) Policy. Agencies that choose to dedicate land as a nature preserve accept 321 CMR 11.00 applying to the Nature Preserve System will apply to all lands dedicated as nature preserves. Nothing in 321 CMR 11.00 shall be interpreted to require, nor to authorize the Council or the Division to require, a managing agency to dedicate or have dedicated as a nature preserve any area under its jurisdiction.

321 CMR 11.02

11.02 Definitions

For the purposes of 321 CMR 11.00 the following words and phrases shall have the following meanings:

Alcoholic beverage means that definition provided in M.G.L. c. 138.

Articles of Dedication means the documents that create the nature preserve which are filed with the Secretary of the EOEEA, that include the nomination form with the justification of qualification of the parcel, attachments to the nomination, and the protection plan for the nature preserve.

Biodiversity means the full range of variety and variability within and among living organisms and the ecological complexes in which they occur, and encompasses ecosystem or community diversity, species diversity, and genetic diversity.

Camping means the utilization of any piece of equipment for sleeping, including but not limited to, a sleeping bag, blanket, hammock, tent, tarp, motor or recreational vehicle, trailer, watercraft, or structure, for the purpose of occupying a piece of land or water for transient and temporary outdoor living.

Controlled substance means that definition provided in M.G.L. c. 94C, § 1.

Council means the Nature Preserve Council constituted under M.G.L. c. 131, § 10B, and including agency Associate Members as provided for in 321 CMR 11.03.

DCR means the Department of Conservation and Recreation.

~~DEM DEP means the Department of Environmental Management Protection.~~

DFW or Division means the Division of Fisheries and Wildlife within the Department of Fisheries, and Wildlife Game, and Environmental Law Enforcement.

Environmental Monitor means the twice monthly publication of EOEEA that provides notice of all submissions received by EOEEA under M.G.L. c. 30, §§ 62 through 62H. It contains descriptions of proposals and notices of matters before the Secretary.

EOEEA means the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

Managing agency means the agency with management responsibility for the area dedicated or under consideration for dedication as a nature preserve.

MDC means the Metropolitan District Commission.

Native, in reference to species, means a species which either occurs, or has occurred, within Massachusetts; provided that the original occurrence of such species is not the result of a deliberate or accidental introduction by humans into Massachusetts nor an introduction elsewhere which spread into Massachusetts.

Natural Heritage and Endangered Species Program means the program within the Division of Fisheries and Wildlife responsible for the inventory, research, and protection of rare plant and animal species and natural communities, and the maintenance of computerized and manual records of rare species and natural community locality information.

Natural community means a recurrent group of native plants and animals that share particular environmental requirements and which naturally occur together and which are recognized as such a community by the Natural Heritage and Endangered Species Program.

Natural condition of an area means that the vegetation has the composition and structure similar to that likely to have been found in the vicinity of the site before European settlement. Successional plant communities are included if they are biologically appropriate to the site, even if they must be managed to remain in the preferred successional stage. Land forms in such areas should be relatively unaltered by impacts of post European settlement activities.

Nature Preserve means any area dedicated according to the provisions of M.G.L. c. 131, § 10A, and 321 CMR 11.00.

Nature Preserve System means the collection of lands, waters, shores, and interests there in dedicated as a nature preserve under M.G.L. c. 131, § 10A, and 321 CMR 11.00.

Nongame Advisory Committee means the committee established under M.G.L. c.131, § 5B.

Permit means written permission from the managing agency for visitor use of a nature preserve in accordance with 321 CMR 11.00, the articles of dedication of the particular nature preserve, and the provisions of any applicable general or special law.

Prescribed burning means the open burning of plant life under controlled conditions which limits the fire to a predetermined area and which accomplishes environmentally beneficial objectives including, but not limited to, habitat management and the prevention or control of wildfire.

Protection plan means a plan prepared by the managing agency and agreed to by the Council to guide management activities on a nature preserve.

Quality in reference to a natural community means, but is not limited to, its vegetation structural characteristics, species composition, age, and degree of disturbance.

321 CMR 11.03

11.03: Nature Preserve Council

(1) Membership. The Council shall consist of seven members who shall be appointed by the Secretary of EOEEA, four of whom shall be members of the Nongame Advisory Committee, two of whom shall be trained in plant ecology and shall represent colleges, universities, primary and secondary schools, outdoor education programs, science museums, and arboreta, and one of whom shall be knowledgeable in natural history and shall represent the general public. Each member shall be appointed for a term of three years, except as otherwise provided in M.G.L. c. 131 § 10B. Any person appointed to fill a vacancy shall serve for remainder of the unexpired term. Any member shall be eligible for reappointment. The Council shall annually select from among its members a chairperson.

(2) Associate Members. The Commissioners of ~~MDC-DCR~~ and ~~DEM-DEP~~ and the Secretary of EOEEA may each appoint up to two associate members to the Council. Such associate members shall serve in an advisory role only.

(3) Division Personnel. Because the Division is the agency with direct statutory authority over the Nature Preserve System personnel from DFW may be present at all meetings of the Nature Preserve Council.

(4) Meetings. The Council shall hold meetings at least once every three months. Special meetings may be called by the chairperson and shall be called upon written request of at least two members of the Council. Each member and associate member shall be notified of the time and place of each meeting by the Division at the request of the chairperson at least two days prior to the date scheduled for said meeting. Meetings are governed by the open meeting law, M.G.L. c. 30A, § 11A½.

(5) Duties. The Council's duties shall include, but not be limited to:

- (a) advising the Division on policies, rules, regulations, and forms relative to nature preserves;
 - (b) receiving nominations, providing preliminary evaluations of the qualifications of nominated areas, and consulting with managing agencies and the Division about nominated areas;
 - (c) assisting in the preparation of a protection plan for each nature preserve;
 - (d) evaluating research performed on nature preserves;
 - (e) advising the Division on budgetary matters concerning nature preserves;
 - (f) recommending changes to 321 CMR 11.00 or to specific articles of dedication;
 - (g) implementing a periodic review of the Nature Preserve System and its components and recommending additional types of natural communities or natural areas for inclusion; and
 - (h) submitting a biennial report to the governor on or before May first of odd numbered years, describing the condition of each nature preserve, outlining any actions taken by the Council since the last report, and making any recommendations related to the nature preserve program which the Council deems appropriate.
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321 CMR 11.04

11.04: Nomination Process

(1) Qualifications. Any lands, waters, shores, or interests therein owned by the Commonwealth and under the control of an agency of EOEEA (DFW, ~~DEMDEP~~, or ~~MDCDCR~~), whether or not in a natural condition, which contain rare, exemplary, or other significant natural or biological communities or which contain significant features of native biodiversity are eligible for consideration as a nature preserve.

321 CMR 11.05(3)

11.05: Protection Plan and Dedication

(3) Public Hearing. Within 60 days of receiving a recommendation for acceptance of the draft protection plan from the Council and a copy of the draft protection plan, the Director of DFW shall hold a public hearing so that the public and other interested parties may comment on the nomination and draft protection plan.

(a) Not less than 21 days before the public hearing the Director of DFW shall make available the nomination and draft protection plan. The Director of DFW shall send notice of the public hearing to the Council, the managing agency, and an area newspaper at least 21 days before the hearing and shall submit to the Secretary of EOEEA in time for publication in the Environmental Monitor at least 21 days prior to the public hearing a notice of such hearing and the availability of the draft protection plan.

321 CMR 11.05(5)

(5) Dedication. The Council shall send the final, accepted protection plan to the Director of DFW for inclusion in the articles of dedication. On receipt of the protection plan, the Director of DFW shall file an article of dedication with the Secretary of EOEEA, which shall include, but not necessarily be limited to:

- (a) the name or designation of the area;
- (b) the managing agency having jurisdiction over the area;
- (c) a summary of the objectives and reasons for dedication of the site; and
- (d) the protection plan as described in 321 CMR 11.05.

321 CMR 11.06(3)

11.06: Management of Nature Preserves

(3) Ecological Management Practices.

(a) Fire.

1. Prescribed burning may be undertaken for fire-adapted natural communities as identified in the protection plan and in accordance with guidance provided by the Council. The managing agency, with advice from persons with experience in ecological burning, shall prepare a written plan for each prescribed burn and all necessary permits shall be obtained. Burning shall not be

done under conditions more hazardous than those specified in the prescribed burn plan. No firefighting chemicals which are known to cause damage to or alteration of natural vegetation, fauna or soils may be used. The use of equipment and motorized vehicles, size and experience of crew, identity and qualifications of the fire boss, time of year for the burn, frequency of burning, and amount of area to be burned shall be specified in each prescribed burn plan. Ecological objectives of prescribed burning shall be stated in the protection plan, and monitoring of the vegetation should be undertaken in order to determine the efficacy of the burn program. Copies of the fire prescriptions and the monitoring reports shall be supplied to the Council to be kept in the record of the nature preserve.

2. Fire management plans specifying fire suppression techniques for wildfire shall be prepared for nature preserves with fire-prone vegetation. Such plans shall be produced by the managing agency in consultation with persons with experience in fire in natural areas, local fire department, and the Bureau of ~~Fire Control~~Forest Fire Control of ~~DEMDCR~~. The plans should specify firebreaks, equipment, and chemicals to be used on the nature preserve and note areas of particular sensitivity to be avoided. A copy of the fire management plan shall be sent to the Council for the nature preserve record. After a fire within a nature preserve, there shall be no cleanup, fire hazard reduction, or replanting except in accordance with the protection plan, guidance provided by the Council, or as required by law. Council recommendation shall consider health and safety issues, as well as the need for ecological restoration.

3. When boundary firebreaks are necessary, they shall be constructed outside the nature preserve, when possible. Firebreaks shall be kept to a minimum and shall be constructed only in accordance with the protection plan. Temporary firebreaks made by raking, mowing, or wetting, may be used in conjunction with a prescribed burn.

321 CMR 11.09(2)

11.09: Release from Nature Preserve Status

(2) The managing agency may request, in writing, the release from nature preserve status of a nature preserve that meets the above criteria. The Division shall, in consultation with other managing agencies which have control of said parcels, consider adverse impacts of release on biological communities and species in the Nature Preserve and recovery potential, as well as the public interest in the conservation and preservation of such nature preserve and any federal, state or local program in furtherance thereof, and state, regional or local comprehensive land use or development plan affecting said parcel and any proposal by a governmental body for the use of said parcel.

(a) The Council shall, on behalf of the Director of DFW, acknowledge receipt of request for release and conduct an initial review thereof at the next scheduled meeting of the Council after receipt of such request.

(b) The Council shall ask for such additional information from the managing agency as deemed necessary. Any requests for release for which additional information has been requested may receive further review at subsequent meetings.

(c) Within 60 days of receiving a request for release from the managing agency or of receiving additional information that may have been requested, the Director of DFW shall hold a public hearing so that the public and other interested parties may comment on the request for release.

1. The Director of DFW shall send notice of the public hearing to the Council, the managing agency, and an area newspaper at least three weeks before the hearing. The Director shall submit a notice of the hearing to the Secretary of EOEEA in time for publication in the Environmental Monitor at least 21 days before the hearing.

2. The Director of DFW shall notify the Council and the managing agency of the results of the public hearing within 30 days and provide copies of any comments received to the Council for consideration in their recommendation on the request for release.

(d) The Council shall make recommendations to the Director of DFW in writing whether to reject or approve the request for release no later than 90 days following the receipt of the results of the public hearing. The Council's recommendations about accepting or rejecting requests for release shall be based on whether a site no longer meets the criteria established in M.G.L. c. 131, §§ 10A through D and 321 CMR 11.00. The managing agency shall be sent a copy of the Council's recommendation to the Director of DFW.

(e) The Director of DFW shall decide within 30 days of receiving the Council's recommendation whether to accept or reject the request for release. The Council, managing agency, and Secretary of EOEEA shall be notified in writing of the decision of the Director of DFW.

(f) In the case of DFW lands, the decision of the Director shall be final. In the case of other lands, an appeal to the Secretary of EOEEA, or his or her designee, can be made if there is disagreement about release. Upon opinion of the Secretary, the Director of DFW shall implement the decision.

REGULATORY AUTHORITY

321 CMR 11.00: M.G.L. c. 131, §§ 10A through D.