

**DARTMOUTH  
WETLANDS PROTECTION  
BYLAW**

**SECTION 1: PURPOSE**

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in this municipality by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, shellfish, wildlife habitat, recreation, and aesthetics (collectively, the "wetland values protected by this bylaw").

**SECTION 2: JURISDICTION**

Except as permitted by the Conservation Commission or as provided for in this bylaw, no person shall remove, fill, dredge, build upon, or alter land in or within a 100-foot buffer zone of the following resource areas: any freshwater wetlands, coastal wetlands marsh, wet meadow, bog, swamp, or vernal pond; any bank, beach, dune, or flat; any lake, river, pond, stream, estuary, or the ocean; or any land under said waters. Included in this jurisdiction is any land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage.

**SECTION 3: EXCEPTIONS**

**A. Public Services**

The permit and application required by this bylaw shall not be required for maintaining or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

## **B Emergencies**

The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement, provided that the Conservation Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purpose necessary to abate the emergency, and provided that within 21 days of commencement of an emergency project a Permit Application shall be filed with the Commission for review as provided in this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

## **SECTION 4: APPLICATION FOR PERMITS and REQUESTS FOR DETERMINATION**

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. c.131, Section 40.

Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may in writing request a Determination from the Commission. Such a Request for a Determination shall contain data and plans specified by the regulations of the Commission.

At the time of an application or request the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, M.G.L. c.131, Section 40. In addition, the Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request up to a maximum of \$2,500.00. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency. A Revolving Consultant Fee Account shall be established in which the expert consultant's fee monies shall be deposited and the Conservation Commission may draw upon that account to pay for the services of the expert consultant hired by it.

## **SECTION 5: PUBLIC HEARINGS**

The Commission shall conduct a public hearing on any Application or Request for Determination within 21 days from receipt of a completed application or request for determination. Written notice shall be given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall issue its Permit or Determination in writing within 21 days of the close of the public hearing thereon.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L. c.131, Section 40.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

## **SECTION 6: COORDINATION WITH OTHER BOARDS**

Any person filing a permit application or request for determination with the Commission shall provide a copy thereof at the same time, by certified or hand delivery, to the Planning Board, Board of Appeals, Board of Health, Building Inspector, and Department of Public Works. The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

## **SECTION 7: DETERMINATIONS PERMITS, and CERTIFICATES OF COMPLIANCE**

### **A: Determination and Permit**

If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a Permit for the activities requested. If it issues a Permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The 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 Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A Permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a Permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. A Permit may be renewed for an additional one year period, provided that a request for Renewal is received in writing by the Commission prior to expiration.

For good cause the Commission may revoke or modify a Permit issued under this bylaw after public notice and public hearing, and notice to the holder of the Permit.

The Commission in an appropriate case may combine the Permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

#### **B. Dartmouth Certificate of Compliance**

Upon completion of the work described in the Permit and shown on the final Plan of Record, the applicant may request in writing that a Certificate of Compliance be issued. A request for a Certificate of Compliance shall be reviewed by the Commission within 21 days of receipt thereof.

### **SECTION 8: REGULATIONS**

After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purpose of this bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

At a minimum these regulations shall define key terms in this bylaw not inconsistent with this bylaw.

### **SECTION 9: DEFINITIONS**

The following definitions shall apply in the interpretation and implementation of this bylaw:

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any legal entity, its legal representatives, agents, or assigns.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas 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, which would alter elevation;
- (f) Driving of piles, erection or repair of buildings or structures of any kind;
- (g) Placing of obstructions or objects in water;
- (h) Destruction of plant life including cutting of trees;
- (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- (j) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

## **SECTION 10 : 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 Commission may require that the performance and observance of the conditions imposed hereunder 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 Commission;
- (b) By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of 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.

### **SECTION 11: ENFORCEMENT**

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

The Commission shall have 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 Commission, the City Council/Select Board and the City Solicitor/Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission the chief of police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, regulations thereunder, or Permits issued thereunder, shall be punished by a fine of not more than \$300.00. 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.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c.40, Section 21D.

### **SECTION 12: BURDEN OF PROOF**

The applicant for a Permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effects upon the wetland values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a Permit or grant a Permit with conditions.

**SECTION 13: RELATION TO THE WETLANDS PROTECTION ACT**

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. c.131, Section 40, and regulations thereunder.

**SECTION 14: SEVERABILITY**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Permit or Determination which previously has been issued.

**SECTION 15: NUMBER OF CONSERVATION COMMISSION MEMBERS**

The Dartmouth Board Select Board may appoint up to four individuals to serve as Associate Members on the Dartmouth Conservation Commission. Each appointed Associate Member is required to attend all of the regularly scheduled Conservation Commission meetings. In the absence of one or more of the seven regular members of the Dartmouth Conservation Commission, an Associate Member shall be asked to sit in for that absentee during a public hearing and so vote as a regular member would.

April 24, 1990

**TOWN OF DARTMOUTH**  
**WETLANDS PROTECTION BYLAW REGULATIONS**  
**EFFECTIVE DATE - JANUARY 20, 2009**

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## **PART I. GENERAL PROVISIONS**

### **1.01. Introduction**

These regulations are promulgated by the Town of Dartmouth Conservation Commission (hereinafter referred to as the "Commission") pursuant to the authority granted to it under Section 8 of the Town of Dartmouth Wetlands Protection Bylaw (hereinafter referred to as the "Bylaw").

The regulations should be read together with the Bylaw, which has many important provisions not repeated in these regulations. These regulations shall be used to enforce and implement the Bylaw, and shall have the force of law upon their effective date. These regulations supersede all existing rules and practices previously applicable to procedures and proceedings before the Commission.

### **1.02. Purpose**

The purpose of these regulations is to create a uniformity of process and to clarify and define the provisions of the Town of Dartmouth Wetlands Protection Bylaw, as amended from time to time.

### **1.03. Burden of Proof**

The Applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not have unacceptable significant or cumulative effects upon the wetland values protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this Burden shall be sufficient cause for the Commission to deny a Permit or grant a Permit with conditions.

### **1.04. Definitions**

The definitions in Section 1.04. of these regulations are for terms as used in the Bylaw and for terms as used in these regulations. To the extent not defined herein or in the Bylaw, words used in the Bylaw or in these regulations shall have the definitions contained in the Massachusetts Wetlands Protection Act (M.G.L. c.131, sec.40) regulations, 310 CMR 10.00 et seq.

**ABUTTER** means an owner of land in any direction sharing a common boundary with the site of the proposed activity, even where that boundary is located in a street, way, stream, pond, or diagonally across an intersection of roads.

**ACTIVITY** means any form of draining, dumping, dredging, damming, discharging, excavating,

filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of runoff characteristics; the intercepting or diverting of ground or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants, including those contained in stormwater; the destruction of plant life; and any other changing of the physical characteristics of land, through change of use, or changing of the physical, biological, or chemical characteristics of water.

**ADJOINING LAND AREAS** means non-wetland areas immediately adjacent to, and extending in a horizontal direction from any wetland area (wetland areas as stated in Section 2 of the Bylaw and further defined in the applicable section of these Regulations) extending to the limit of jurisdiction as defined in Section 2 of the Bylaw.

**AESTHETICS** means the visual appearance or quality, including visual linkage for the public with scenic vistas of and over wetland areas typical of the unique Dartmouth environment.

**ALTER** - In addition to the items listed in 310 CMR 10.04 Alter (a) - (d), the term "alter" shall include, without limitation, the following activities:

- (a) Removal, excavation or dredging of soil, gravel, or aggregate materials of any kind;
- (b) Drainage or other disturbance of water level or water table;
- (c) Dumping, discharging or filling with any material which may degrade water quality;
- (d) Placing of fill, or removal of material, which would change elevation;
- (e) Driving of piles, erection or repair of buildings or structures of any kind;
- (f) Placing of obstructions or objects in water;
- (g) Destruction of plant life including, but not limited to, cutting of trees and shrubs;
- (h) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

**APPLICANT** means any person who signs where indicated as "Applicant" on an Application for Permit, Request for Determination, or an A-1 Site Inspection Form.

**AREAS SUBJECT TO PROTECTION** means land areas and/or water bodies subject to protection under the Bylaw, as set forth in Section 2: Jurisdiction.

**BANK (coastal)** means the seaward face or side of any elevated land form, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action or storm flooding, or other wetland. Any minor discontinuity of the slope notwithstanding, the top of the bank shall be the top of the face of the bank or the break in slope above the relevant 100-year flood plain elevation. A bank may be partially or totally vegetated, or it may comprise exposed soil, gravel, stone or sand.

**BORDERING** means touching at any point.

**BUILDING UPON** means construction of any kind of structure, whether on land or in water; placing of obstructions or objects in water (other than boats, moorings, fish or shellfish traps, and aids to navigation).

**BUFFER ZONE** means that area of land extending one hundred (100) feet horizontally outward from the boundary of any resource area specified in Section 2: Jurisdiction.

**BYLAW** means the Dartmouth Wetlands Protection Bylaw, as amended.

**CERTIFICATE OF COMPLIANCE** means a written determination by the Commission that work, or a portion thereof, has been completed as required by a Permit or Determination issued by the Commission.

**COASTAL WETLAND** means any bank, beach, dune, estuary, marsh, swamp, meadow, flat, or other lowland that is subject to tidal action or coastal storm flowage.

**COMMISSION** means the Dartmouth Conservation Commission, pursuant to M.G.L. c.40, sec.8C and the Dartmouth Wetlands Protection Bylaw, as amended.

**CONDITIONS** means those requirements set forth in a written Determination of Applicability or Permit issued by the Conservation Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters an Area Subject to Protection Under the Bylaw.

**CONTAMINATION** means the same as pollution.

**CUMULATIVE** means increasing in effect, size, quantity, etc. by successive additions; increasing in severity by repetition of activity or by other various activities affecting the interests protected under the Bylaw. The Commission may require a plan indicating the completed project in order to determine the cumulative effect of said project.

**DATE OF RECEIPT** means the date of delivery to an office, home or usual place of business by mail or hand delivery. In the case of an Application for Permit, an application is not deemed submitted if it does not comply with the requirements as outlined in the Procedures Section of these regulations. Upon determination by the Conservation Commission or its agent that the application is complete and in compliance with the requirements of Section 1.05.(6) of these Regulations, the Conservation Commission or its agent shall stamp it received.

**DEPARTMENT** means the Massachusetts Department of Environmental Protection (DEP).

**DUNE** means any natural hill, mound or ridge of sediment landward of a coastal beach deposited by wind action or storm overwash. Coastal dune also means sediment deposited by artificial means and serving the purpose of storm damage prevention or flood control.

**EROSION CONTROL** means the prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice, and/or gravity.

**EXISTING** means begun or completed prior to the date of the plan or prior to any activity on the site.

**FISHERIES** means all species of fresh and saltwater finfish and shellfish, including the nutrient sources and the habitat in which they live all or part of their life cycle.

**FLOODPLAIN** means any Land Subject to Coastal Storm Flowage or Land Subject to Flooding

**HYDROLOGIC ANALYSIS** means the process of determining the effects on water, through its pattern or directional flow, quality or quantity, recharge or discharge, and/or temperature, as pertaining to surface, or sub-surface water.

**INTERESTS PROTECTED BY THE BYLAW** means the wetland values either singly or collectively specified in Section One of the Bylaw.

**LAKE** means the same as pond.

**LAND SUBJECT TO COASTAL STORM FLOWAGE** means land subject to any inundation caused by coastal storms up to and including that caused by the 100-year storm, surge of record, or storm of record, whichever is greater.

**LAND SUBJECT TO FLOODING** means any Bordering Land Subject to Flooding or Land Subject to Flooding as defined by 310 CMR 10.57, or any depression or basin which on the average at least once every five years (based on a design rainfall of 4.4 inches) confines standing water over an area of at least 1,000 square feet. The boundary of Land Subject to Flooding lateral extent of the flooding, which shall be based on the 100-year storm event (design rainfall of 7.1 inches)

**PERMIT** means the document issued by the Commission containing conditions which regulate or prohibit an activity under the Bylaw.

**PLAN OF RECORD** means the final plan reviewed by the Commission, including any revisions, which is referred to in the Order of Conditions issued under the Wetlands Protection Act (M.G.L. c.131, sec.40) and Permit or Determination issued under the Dartmouth Wetlands Protection Bylaw.

**POLLUTION** means contamination of land or surface- or ground-water with materials not naturally present, or with elevated levels of naturally occurring materials, including a change in the physical or chemical characteristics of the same.

**PUBLIC INTEREST** means something of benefit to the health, welfare or safety of the Dartmouth community at large as opposed to one individual, organization or applicant(s).

**PUBLIC WATER SUPPLY** means any source or volume of surface or ground water demonstrated to be in public use for drinking water or fire protection, or approved for water supply pursuant to M.G.L. c.111, s.160 by the Division of Water Supply of the DEP or demonstrated to the Commission's satisfaction to have a potential for public use as a drinking water supply or for fire protection.

**RECREATION** means non-commercial activities of individuals done for relaxation carried out in resource areas of this Bylaw, which include but are not limited to swimming, picnicking, walking, hunting, fishing, and boating.

**REMOVE** means to take away any type of material including vegetation, or thereby changing an elevation, either temporarily or permanently.

**RENEWAL PERMIT** means a written extension of time within which the authorized activity shall be completed, as permitted by Section 7 of the Bylaw.

**RIVER** means the same as stream.

**SETBACK** means an area adjacent to a resource area that will be left undisturbed in order to protect the interests stated in the Bylaw.

**SIGNIFICANT** means plays a role. A resource area is significant to an interest identified in the Bylaw when it plays a role in the provision or protection, as appropriate, of the interest.

**STREAM** means a body of running water, and the land under the water, including brooks, creeks, and man-made water courses, which moves in a definite channel in the ground due to hydraulic gradient. A portion of a stream may flow through a culvert, pipe or beneath a bridge. A stream may be intermittent (i.e., does not flow throughout the year).

**VERNAL POND, or VERNAL POOL HABITAT**, means a confined basin depression, as well as the area within 100 feet of the mean annual boundaries of such depressions, to the extent that such habitat is within an area subject to protection under this bylaw which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, or are areas that vernal pool species use for breeding, as evidenced by breeding adults, eggs, tadpoles, or transforming adults. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding seasons as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species.

**VERNAL POOL SPECIES** means wood frogs (*Rana sylvatica*), green frogs (*Rana clamitans*), mole salamanders (*Ambystoma*, spp.), four-toed salamanders (*Hemidactylium scutatum*), Fowler's toads (*Bufo woodhousii fowleri*), American toads (*Bufo americanus*), spring peepers (*Hyla crucifer*), and grey tree frogs (*Hyla versicolor*).

**WATER DEPENDENT PROJECTS OR USES** means projects which require direct wetlands access for their intended use and therefore cannot be located out of an Area Subject to Protection Under the Bylaw. Examples include but are not limited to: docks, piers, boat landings, boathouses, marinas, stairs to beaches, and boardwalks over wetland vegetation. Projects which benefit from wetlands access but which do not require it are not water dependent uses. Examples include restaurants, dwellings, and commercial enterprises servicing marine-related uses such as fish markets, repair facilities, and ships' chandleries.

**WETLAND SITE INSPECTION FORM** means an application for wetland delineation or verification.

**WILDLIFE** means living animals that are neither human nor domesticated.

## **1.05. Procedures**

### **(1) Written Requests**

Where the Bylaw states that the Commission is to receive a request or Application for Permit, such request shall be given in writing to the Commission office, or in the case of an emergency, the request can be made directly to the Commission's Chairperson [refer to Section 1.05.(2)].

### **(2) Emergencies**

A. Any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the public and what agency of the Commonwealth or subdivision thereof is to perform the project or order it to be performed.

B. The request may be written or oral, but if oral must be confirmed by written notice within 24 hours of work commenced.

C. A majority of the Commission, or its agent, must certify the work as an emergency project to be performed only for the time and place certified by the Commission for the limited purpose of abating the emergency.

D. Within 21 days of commencement of an emergency project, a Permit Application shall be filed with the Commission for review as provided in the Bylaw and in these regulations.

E. An emergency certification shall be issued only for the protection of public health or safety.

### **(3) Requests for a Wetland Site Inspection (WSI)**

A. Prior to the Request for Determination or Application for Permit, a Wetland Site Inspection Form may be filed with the Conservation Commission for the purpose of informally identifying the resource areas on a site. Such informal identification shall not be binding upon the Commission or on the Town until the Commission has issued a Determination of Applicability or Permit for the subject site. Application for a WSI may be made by the owner of said property or by any person authorized by the owner.

B. The Wetland Site Inspection Form shall be submitted to the Conservation Office showing locus, street name where work is proposed and the owner's name and mailing address if not the same as the applicant. Copies of the Wetland Site Inspection Form shall be available in the Conservation Commission office.

C. Applications for two (2) - five (5) or more acres must have a botanist or other qualified wetlands scientist flag the wetlands prior to submitting the Wetland Site Inspection Form. All flags must be numbered and located on a plan adequate for the inspector to locate wetland flags in the field, they may also be prepared by a registered engineer, a registered land surveyor or a qualified Wetland Scientist.

D. At the time of filing an Wetland Site Inspection Form, the applicant shall pay the appropriate filing fee established pursuant to Section 1.05 (6) E.

E. The Wetland Site Inspection shall expire three years from the date of issuance on the completed Form.

### **(4) Request for Determination**

A. Any person who desires a determination as to whether the Bylaw applies to an area, or work to be performed on said area, shall submit a completed Request for Determination form, plus an additional five (5) copies to the Dartmouth Conservation Commission. Sufficient information shall

be submitted to enable the Commission to evaluate the potential effects of the proposed activity on areas subject to protection under the Bylaw.

B. A Request for Determination shall be sent by certified mail or hand delivered to the Commission. The Commission may require that additional information be submitted to aid in the evaluation of the request. The Commission may require that Notice of a request for determination be sent by certified mail or hand delivered to all abutters. Such Notice shall be required to be given to the owner of the property, if other than the applicant, prior to the determination by the Commission. Proof of said notices must be submitted to the Commission.

### C. Appeal

1. Determinations issued pursuant to the Bylaw, where there is no Determination of Applicability (310 CMR 10.99, Form 2) issued pursuant to the Wetlands Protection Act, or where a Determination of Applicability is issued, but is not identical to the Determination issued pursuant to the Bylaw, the Determination may be appealed according to the provisions of section 1.08 A.

2. Determinations issued concurrently with, and identical to, Determinations of Applicability, issued pursuant to the Massachusetts Wetlands Protection Act, may be appealed according to the provisions of section 1.08 B.

3. When the Commission issues Determinations with conditions authorized solely by the Bylaw, the Commission shall place those Conditions under the heading "Conditions pursuant to the Dartmouth Wetlands Protection Bylaw."

## **(5) Application for Permit**

A. Any person who desires a permit for activity in an area subject to protection under the Bylaw shall submit a complete written application for permit, plus six (6) copies to the Dartmouth Conservation Commission on the Application for Permit Form as outlined in Section 1.05.(6) of these regulations. Copies of the Permit Application Forms are available in the Conservation Office.

An application is not deemed submitted if it does not comply with the requirements of Section 1.05.(6) of these regulations, and therefore it shall be returned to the applicant. Upon determination by the Conservation Commission or its agent that the application is complete and in compliance with the requirements of Section 1.05.(6) of these regulations, the application shall be stamped received.

B. An Application for Permit shall be sent by certified mail or hand delivered to the Commission. The Commission may require that additional information be submitted to aid in the evaluation of the application. The applicant shall hand deliver or send by certified mail a Notice of Application for Permit to the owner of the property, if other than the applicant, prior to the Commission taking action. The Commission may require that Notice of Application for Permit be sent by certified mail or hand delivered to all abutters. Proof of said notice must be submitted to the

Commission.

Notice of the time and place of the public hearing at which the application will be reviewed shall be given by the Commission, at the expense of the applicant, not less than five days prior to said meeting, by publication in a newspaper of general circulation in Dartmouth, and by mailing a notice to the person filing the application for permit and to the owner.

C. The Application for Permit may be filed concurrently with a Notice of Intent under the Massachusetts Wetlands Protection Act, M.G.L. c.131, s.40.

D. The Commission shall give an Application for Permit the same file number as DEP gives to the accompanying Notice of Intent.

E. When the Commission issues a Permit concurrently with an Order of Conditions (310 CMR 10.99, Form 5) containing Conditions authorized solely by the Bylaw, the Commission shall place those Conditions under the heading "Conditions pursuant to the Dartmouth Wetlands Protection Bylaw."

F. The decision of the Commission may be appealed according to the provisions of the Massachusetts General Laws.

G. When a person filing an Application for Permit is not the owner, notice of the time and place of a hearing shall be given to the owner by the Commission, at the address supplied to the Commission by the Applicant.

#### **(6) Submittal Requirements**

**A. FORMAT:** In addition to the requirements of 310 CMR 10.99 (General Instructions), Plans shall include

1. All revisions shall be demarcated by clouding and copies of such changes shall be given by the applicant to all other Boards

**B. INFORMATION:** Plans shall contain the following information which shall be identified and referenced in a legend:

1. North Arrow.

2. Locus at 1" = 1,000'.

3. Existing contour lines (the contour interval shall be no greater than two feet) up to the abutters' property lines.

4. Proposed contour lines (the contour interval shall be no greater than two feet) up to the to the abutters' property lines.
5. Wetland line (indicating type of resource, numbered and flagged), shall be delineated by color on the plans to be presented at any public hearing.
6. Edge of wetlands, flood plains, and 100-foot buffer to all resource areas shall be clearly identified by lines of different colors on the plans to be presented at any public hearing.
7. Water bodies, including vernal ponds, shall be clearly identified by color on the plans to be presented at any public hearing.
8. Resource areas to be altered in any way shall be clearly identified.
9. Replication areas shall be identified clearly, including a cross-section of the existing and proposed wetland areas.
10. Include location and elevation benchmark used for survey.
11. Include locations, inverts, sizes and slopes of existing and proposed culverts and pipes.
12. Include invert elevations on catch basins.
13. Include proposed on-site pollution control devices, such as oil absorption pillows, hooded catch basins, flow dissipators, detention/retention basins and vegetative buffers.
14. Indicate locations and details of erosion and sedimentation control devices.
15. Calendar dates and locations of samplings and measurements including but not limited to groundwater tests, soil borings, habitat evaluations and water testing.
16. Indicate soil characteristics in representative parts of property as identified in the Bristol County Soil Conservation Survey and/or as field identified.
17. The following NOTE should be included on plans submitted to the Conservation Commission: "Attention: The work proposed on

this plan is allowed by an Order of Conditions and Wetland Permit issued by the Dartmouth Conservation Commission which includes strict conditions and requirements. No work is to proceed until the contractor has reviewed the Order of Conditions and agreed to abide by all conditions therein, and verified that the Plan revision dates specified on the Order of Conditions match the drawings supplied to the contractor for construction."

**C. ABUTTER NOTIFICATION:** The Applicant shall provide for notification of all property owners located within 100-feet of the property line of the parcel on which the Application for Permit has been filed. The Application for permit shall include the following.

1. A copy of the Dartmouth Assessors map(s) showing the entire parcel upon which work is proposed.
2. The map shall show a 100-foot perimeter drawn from the property line of the project site. All owners of properties within the 100-foot perimeter are considered abutters, and shall be notified of the time and place of the Public Hearing by certified mail or hand delivery prior to the Public Hearing regarding the Notice of Intent.
3. This map shall have a maximum sheet size of 8.5"x 11".
4. A separate 8.5" x 11" sheet shall be included indicating the Plat and Lot numbers of all Abutters and their mailing addresses obtained from Assessors records.

A Public Hearing will not proceed until proof of receipt by all abutters (return receipt of certified mail or proof of hand delivery) is received by the Commission.

#### **D. STORMWATER MANAGEMENT GUIDELINES & REQUIREMENTS**

Because stormwater discharges are likely to cause permanent or cumulative damage to the functioning of wetlands and the quality of receiving water and are a significant source of pollution, the following requirements shall apply to roadways, parking plans, and industrial and commercial projects:

1. The recommended methods for developing stormwater runoff hydrographs and estimating peak discharges are included in the Soil Conservation Service (SCS) publication, "Urban Hydrology for Small Watersheds", Technical Release 55 (TR-55). This manual was first issued in January, 1975 and was revised in June, 1986.
  - a) The use of the rational formula ( $Q=CIA$ ) is normally not appropriate for the comparative evaluation of pre- and post- development discharge rates. This is especially true if any natural

or proposed attenuation facilities are included in the analysis or if catchment boundaries or flow paths are modified by development.

b) If the rational formula, or a modification thereof, is considered acceptable to the Commission, C values must be increased significantly from typical published values when estimating runoff for rainfall events greater than a five to ten year frequency storm.

c) Due to the required comparative nature of the evaluation, the same methodology must be used for both pre- and post-development conditions for 10 and 100 year frequency storms.

d) The use of either TR-55 or the Rational method generates conservative estimates of runoff rates. Normal practice in storm drainage design encourages the overestimation of runoff rates leading to conservative systems. Similar conservative estimation of existing runoff rates may result in an understatement of the impact of development which can result in the omission or under sizing of attenuation facilities. It can also result in an increase in real discharge rates even though the analyses indicate that adequate attenuation has been provided. It is desirable, therefore, that existing condition flow rates be deliberately underestimated or that attenuation facilities accomplish at least a moderate reduction from the estimated existing flow rates in order to achieve a real "zero increase".

2. The major factors influencing runoff determination in the SCS -TR55 methodology are catchment area, soil complex - cover number(CN) and time of concentration (Tc).

a) Any hydrologic analysis must include all parts of the project which may be modified by construction activities and any up-gradient areas on or offsite. Modifications include, in addition to buildings and pavement, all clearing, grading and similar activities which may modify runoff characteristics.

b) Any analysis must be accompanied by a plan or plans of the total tributary area indicating catchment and sub-catchment boundaries, hydrologic soils classifications, and cover types for both pre- and post-development conditions. If offsite areas are included in the analysis, and detailed topography is not available, they may be indicated with site boundaries on a copy of the appropriate USGS quadrangle sheet.

c) Primary catchment delineation should be based on specific point or area of discharge from the area of analysis.

d) Although catchment and subcatchment boundaries within the area of analysis may be realigned due to development, the total area and perimeter of the analysis must be the same for pre- and post-development conditions. Any modification of catchment boundaries which is to be accomplished by regrading in order satisfy

attenuation requirements must be supported by proposed grading plans or other appropriate documentation.

- e) The determination of catchment time of concentration must include an accurate estimate and evaluation of the various forms of flow -- sheet, shallow concentrated, and open channel. Assumptions of sheet flow distances in excess of 300 feet should be substantiated.
  - f) Peak flow rates and lag time can be substantially impacted by natural or man-made ponding areas along the flow route. A culvert or bridge can delay flow and reduce peak rates if there is any significant storage area available behind it. In such cases detailed storage routing procedures should be used.
3. Storm drainage conduits are not always installed coincident with surface flow paths. In some cases conduits may actually cross surface drainage divides. Drain inlets and conduits typically lack sufficient hydraulic capacity to handle major rainfall events. Therefore, the drainage analyses and resultant stormwater management system design must account for all runoff in excess of storm drain capacity.
- 4.a) The determination of storm runoff by any methodology cannot be considered exact. The hydraulic capacity of any system component, however accurately determined, may be compromised by blockage. Therefore, stormwater storage facilities proposed for the attenuation of peak flow rates should incorporate adequate freeboard and/or overflow capacity to minimize risk of failure in the event that outlet capacity is reduced or if actual inflow exceeds design flows.
- b) The Commission may require that the design of attenuation facilities take into account the potential development of the entire tributary watershed, including offsite areas. Even though facilities may be provided to attenuate the rate of discharge from up-slope development, it will still cause an increase in the volume of runoff.
5. Since some runoff can be expected from all but the most permeable soils during significant rainfall, storage basin discharge due to infiltration during the storm normally cannot be substantiated. If such infiltration losses are to be assumed in design, they must be supported by appropriate data including, but not limited to, groundwater elevation, existing and proposed soil profile and permeability evaluation of the involved surface and subsoils.
6. In order to facilitate the review, all calculations, hydro graphs, details and similar supporting data should be included with the submittal. The submittal should also include a tabular comparison of pre- and post-development catchment areas, cover-complex numbers (CN), time of concentration (Tc) and maximum runoff rates.
7. In order to prevent the pollution of groundwater resources, the Commission requires that the bottom elevation of any attenuation facility be located above the recorded ground water level as determined by the Board of Health or a registered professional engineer.

## **E. FEES:**

1. At the time of submission of an Application for Permit, Request for Wetland Site Inspection, Request for Determination, Request for Amending a Permit, Request for Renewal of Permit, Request for Certificate of Compliance, Request for a duplicate Permit or Continued Public Hearing, the applicant shall pay filing fees as specified on the current fee schedule. These filing fees have been determined by the Commission to be commensurate with the expense of providing these review services to applicants. They may be amended as necessary by majority vote of the Commission at any public meeting.

2. If the Commission or its staff determines that an incorrect fee amount has been paid and has notified the applicant the filing is deemed incomplete. Once the correct fee amount has been paid and filing is deemed complete, the 21-day time period for action will begin.

3. The Wetland filing rates are available on-line or maybe obtained at the Dartmouth Conservation Office. The fee schedule shall apply and shall be used to calculate all fees (exclusive of design review fees by expert engineers and consultants) and shall be paid at the time that an application.

\*A separate check payable to the local newspaper to cover the cost of legal advertisement is required at the time of application. Amount based on current rates for legal advertisement.

The fees were adopted as a regulation of the Dartmouth Conservation Commission by a unanimous vote of the Commission, upon motion duly made and seconded at a regular meeting of the Commission on January 6, 2009. They are in addition to any required by the Wetlands Protection Act, M.G.L. c.131, s.40.

4. The Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request. The expert consultant's fee monies shall be deposited, and the Conservation Commission may draw upon that account to pay for the services of the expert consultant hired by it, as per Section 4 of the Bylaw.

### **(7) Access to Private Property**

A. In the ordinary conduct of business the Commission or its agents will, prior to entering upon the applicant's property, arrange for a mutually acceptable time to meet at the site for the necessary field work. If the applicant does not wish to be represented at the site, then the site visit will be made at the Commission's convenience.

B. In the ordinary conduct of business the Commission may employ outside experts to assist the Commission in its duties, and in such case the site visit procedure outlined in section 1.05 (7) will prevail.

C. When there is a possibility of activities taking place or having taken place that are in violation of the aforesaid Dartmouth Wetlands Protection Bylaw, any member or agent of the Commission may seek the services of the Police to assist them in the investigation in accordance with the laws of the Commonwealth.

#### **(8) Public Hearings by the Conservation Commission**

A. All public hearings may be conducted simultaneously under the Bylaw and under the Wetlands Protection Act (M.G.L. c.131, s.40) at a legally scheduled meeting of the Conservation Commission.

1. An agenda of the meeting will be posted at the door of the meeting room prior to the start of the meeting.
2. The meeting will be conducted in compliance with Robert's Rules of Order.
3. For the convenience of the audience a map of the Town of Dartmouth will be displayed and the location of the proposed activity will be identified.

B. Any changes in the plans or the proposed work made by the applicant during the course of the public hearings, shall be submitted in the form of a revised plan and shall be filed by the applicant with the Commission. Such changes must be filed five (5) business days prior to the next public hearing on that application. The Commission may require that all boards and agencies be allowed to review said changes prior to the closing of the public hearing. In the event of a minor change in the plan which the Commission deems should not prevent closure of the public hearing, six (6) copies of the revised plan shall be submitted to the Conservation Office within five (5) days of closure of the public hearing and before issuance of a Permit. The applicant shall send two (2) copies of the final revised plan to DEP.

#### **(9) Waiver from Rules and Regulations**

Strict compliance with these rules and regulations may be waived when, in the judgment of the Dartmouth Conservation Commission, such action is in the public interest, and is consistent with the intent and purpose of the Bylaw. Any request for a waiver must be submitted to the Commission in writing and must state the public interest involved. The Commission will act upon the request within 21 days of the date of receipt, and will then notify the applicant in writing within 21 days of said action. The Commission shall include the public interests that are protected or enhanced by issuing a waiver from these regulations.

#### **(10) Amending a Permit**

Following the issuance of a Permit, circumstances sometimes arise, such as subsurface conditions encountered upon commencement of construction or requirements of other state or local permits issued subsequent to the Permit issued by this Commission, that may require modification of

the plans approved under this Permit. The Commission recognizes that it would not be reasonable to require a complete re-filing of an Application for Permit when the changes sought are relatively minor and will have little or no impact on the interests protected by the Bylaw.

In amending a Permit, the Commission shall follow the procedures for amending an Order of Conditions pursuant to the Massachusetts Wetlands Protection Act, stated in DEP Program Policy 85-4, Procedures for Amending an Order of Conditions.

### **(11) Renewal (Extension) of Permit**

A. The Commission may renew a Permit as provided by the Bylaw, Section 7. Request for a Renewal shall be made in writing to the Dartmouth Conservation Commission, containing some explanation of why the Renewal is needed. The letter must include the File Number issued by DEP. The letter must be received at least 30 days prior to the expiration of the Permit. The expiration of a Permit is three (3) years from the original date of mailing, shown on the Permit. It is the applicant's responsibility to note the expiration date and to request a Renewal Permit in a timely manner.

B. In determining whether or not to issue a Renewal of the Permit, the Commission may consider the following factors as reasons to deny a renewal:

1. No work has begun on the project; unless in the opinion of the Conservation Commission the failure to begin work is due to unavoidable delay in obtaining other necessary state or municipal approvals, permits or variances, such as in the event other approvals, permits or variances are appealed;
2. New information, not available at the time the Permit was issued, indicates that in the opinion of the Conservation Commission the Permit is not adequate to protect the interests identified in the Bylaw;
3. Incomplete work is causing damage to the interests identified in the Bylaw;
4. Work has been done in violation of the Bylaw, these regulations or conditions in the Permit; or
5. The renewal request is not timely.

C. If issued, a Renewal of Permit shall be signed by a majority of the Commission, and shall be valid for up to three years from the expiration date of the Permit being renewed.

### **(12) Certificate of Compliance**

A. Upon completion of the work described in the Permit or Determination, and shown on the final Plan of Record, the applicant may request in writing that a Certificate of Compliance be issued. The letter must include the file number.

Unless otherwise voted by the Commission, the request must include a letter stamped and dated by a registered engineer or a registered land surveyor certifying that the Plan(s) of Record noted in the Permit is/are an accurate representation of the completed work.

If the completed work is found to be different than the Plan(s) of Record, an as-built plan may be requested by the Commission. The As-built plan shall be prepared and submitted to the Conservation Office indicating deviations from the approved plan. This plan shall be stamped and dated by a registered engineer or a registered land surveyor and submitted with the application for a Certificate of Compliance.

B. A request for a Certificate of Compliance shall be reviewed by the Commission within 21 days of receipt thereof. If issued by the Commission, the Certificate of Compliance shall be signed by a majority of the Commission. If a Certificate of Compliance is not issued, the Commission shall notify the applicant in writing, stating the conditions that have not been complied with.

C. Prior to the issuance of a Certificate of Compliance, the Commission or its agent may make a site visit.

#### **1.06. Severability and Invalidity**

The invalidity of any section of these regulations shall not invalidate any other section or provision, nor shall it invalidate any permit or determination which previously has been issued.

#### **1.07. Effective Date**

The effective date of these regulations shall be the date on which these regulations are approved by vote of the Conservation Commission. These regulations shall apply to all Applications for Permit and Requests for Determination filed after that date.

#### **1.08 Appeals**

A. A decision by the Commission for an area solely under the jurisdiction of the Bylaw, or conditions to a permit or Determination issued concurrently pursuant to the Massachusetts Wetlands Protection Act and the Bylaw listed as "Conditions pursuant to the Dartmouth Wetlands Protection Bylaw.," shall be reviewable in Superior Court, in accordance with MGL c. 249, §4, or as otherwise provided by Law.

B. Where concurrent filing pursuant to the Massachusetts Wetlands Protection Act and the Bylaw exist, conditions to a Permit or Determination not listed under "Conditions pursuant to the Dartmouth Wetlands Protection Bylaw." are appealable to the DEP pursuant to the Wetlands Protection Act MGL c.131 §40, and the DEP Wetland Regulations, 310 CMR 10.00 et seq., as amended.

**Effective by vote of the Conservation Commission January 20, 2009**

## **DARTMOUTH WETLAND PROTECTION BYLAW**

### Outline of Section:

#### I. PIERS, DOCKS & FLOATS

- A. PREAMBLE
- B. DEFINITIONS
- C. EXPECTED ADVERSE EFFECTS
  - 1. Physical Effects of Docks
  - 2. Cumulative Effects of Dock Use
- D. GUIDELINES
  - 1. - 6.
- E. APPLICATION PROCEDURES
  - 1. - 6.
- F. SUBMITTAL REQUIREMENTS
  - 1.- 11.
- G. PERFORMANCE STANDARDS
  - 1. - 10.
- H. ADDITIONAL REQUIREMENTS
- I. BURDEN OF PROOF

## **I. PIERS, DOCKS & FLOATS.**

A. PREAMBLE - Docks provide private access to public resources: the water, land under the water, fisheries, shell\_ fisheries. Construction, maintenance and use of private docks can have adverse effects on public resources and navigation. Further, docks destroyed by storm pose a threat to nearby properties. These adverse effects must be minimized. Any dock should serve several lots, families or a community whenever possible, thereby reducing the total number of structures along the coast.

Turbulence and prop dredging generated by boat traffic significantly increase turbidity levels. High turbidity levels attenuate the sunlight necessary for photo synthetic processes responsible for the primary productivity and oxygen regeneration of the water. The suspended sediments settle on shellfish beds, smothering existing shellfish and altering the quality of the sand bottom essential for spat (mollusk larvae) settlement. Boat traffic generated from docks will add to this disruption and will cause erosion of banks and marshes. The expected adverse impacts to the environment from docks can be divided into the physical effects of the docks and the cumulative effects of dock use.(See Section C. EXPECTED ADVERSE EFFECTS)

### **B. DEFINITIONS:**

ALTERATION (of a pier or dock) - Any change in overall dimensions such as length, configuration, height, etc. Also, any addition of accessory structures such as floats, ramps, sheds or gazebos.

DOCK or PIER - a) Any elevated, open structure extending below the reach of mean high water used as access for boating or recreational purposes, including connecting elevated walkways, ramps and stairs across a beach or salt marsh, but not including stairs or other structures on a coastal bank;

B) Does not include: solid fill wharves, bulkheads or other filled structures used for boating access. Boardwalks not used for boating purposes shall conform to the performance standards for the resource area in which they are located.

C) Includes permanent fixed or floating piers and piers installed for seasonal use; piers in freshwater bodies and tidal areas.

FLOAT - For the purposes of these Regulations, only floating docks which are attached to a permanent dock structure are considered "floats" and will be subject to this section. Seasonal floats which are moored independently, away from the shore, are not considered subject to these Regulations.

MAINTENANCE - Repair or replacement of any part of the existing structure.

### **C. EXPECTED ADVERSE EFFECTS**

1. - Physical Effects of Docks ● Dock construction is typically the least environmentally destructive method of crossing a marsh, but it may adversely affect the physical characteristics and functional value of a marsh. Marsh plants provide the major energy flow (detritus food chain) between the autotrophic and heterotrophic levels in a marsh-estuarine system. Many species of sport and commercial fish and shellfish are dependent upon this system. Plants adapted to high ambient light intensity, such as marsh grasses, are ill-adapted to the shaded conditions created by a dock. Shading may result in the loss of vegetative biomass (decreased plant height, population density, and leaf thickness) or alteration of species composition. Reductions in plant density result in the loss of sediment normally trapped by roots and culms. Tidal washout of sediment could result in localized depressions which, through evaporation of trapped water, concentrate salt. High sediment salt levels effectively preclude re-colonization by original vegetation. Localized tidal washout may lead to further vegetative regression, erosion, and disruption of natural communities in the area.

2. Cumulative Effects of Dock Use ● Cumulative impacts of dock proliferation threaten to decrease the overall productivity of the marsh ecosystem, to reduce its ability to absorb storm wave energy, and to reduce its contribution to ground water and surface water quality.

### **D. GUIDELINES**

Due to the above-mentioned adverse impacts that docks and dock use may have on the resource areas, all applicants should use the following guidelines when designing their projects:

1. The length of a dock should be kept to a minimum. Different shapes such as "T's" and "L's" and the use of single piles set off from docks may provide more space without additional length. The use of a nearby mooring or marina shall be considered as a possible alternative for a deep-draft boat, if this would allow a shorter pier and thus reduce the impact on protected interests.

2. The Commission strongly discourages dredging. Disturbance of the bottom must be minimal at all times during both construction and use.

3. To avoid the adverse impact of too many piers located too close together, the Commission shall take into account the number, spacing, and lengths of adjacent piers.

4. In a linear waterway, **i.e.** river, narrow estuary, etc., sufficient open water shall be maintained to sustain a variety of activities not specifically related to simply transiting the area in safety, such as cruising, fishing, sail boarding, swimming, etc. These require open water, and should not be eliminated for private interest.

5. The Commission expects that the dock structure and attached floats, ramps, etc. **will** be maintained in such a way as to remain structurally sound, thus preventing storm damage caused by water-borne debris.

6. The base of the pier shall be as close as possible to the center line of the lot, and it shall project outwards at an angle as nearly perpendicular to the shoreline as possible.

#### **E. APPLICATION PROCEDURES**

1. An Application for Permit is required for any new dock, fixed or floating, permanent or seasonal. A dock is the entire structure or any part thereof including pilings, ramps, walkways, floats and/or tie-off pilings.

2. An Application for Permit is required for any change or repair which alters any dimension, shape or function of an existing dock.

3. Minor repairs involving the replacement of deck planks, cross braces or horizontal timbers do not require an Application for Permit. Repairs involving disturbance of the bottom, such as replacement of pilings, may require an Application for Permit, but at a minimum shall require the filing of a Request for Determination of Applicability.

4. Prior to a Public Hearing, notification that an Application for Permit has been made to the Conservation Commission and a copy-of the plan showing the proposed work, must be sent to:

the Shellfish Officer/Natural Resources Dept.

the Harbor Master/Waterways Committee, and

the two immediate waterfront abutters (one on each side)

The applicant shall provide evidence to the Conservation Commission that the above agencies/departments and abutters have been notified. A separate Permit may be required from Army Corps of Engineers and/or DEP, Chapter 91 Waterways License.

5. Town agencies shall provide written comment on the project to the Commission within fifteen (15) days of receipt of the notification and accompanying plan. Failure to comment within this period shall be deemed to indicate approval.

6. No request for a Certificate of Compliance shall be granted for the project until the applicant shows written proof that all applicable permits (federal, state & local) have been obtained or applied for.

## **F. SUBMITTAL REQUIREMENTS.**

In addition to the standard Submittal Requirements Section 1.05 (6), the Application for Permit for Piers & Docks shall include:

1. A description of materials used, such as size of piling and planking, types of non-corrosive fasteners, spacing between planks, flotation substance, and expected duration of materials.
2. A description of the construction process including, but not limited to, the methods used to drive the pilings and the means by which all timbers, braces and deck planking are attached.
3. An accurate, detailed drawing showing type of construction, size (length, width & height), means for mooring if floating, exact location, mean high water line and other resource areas.
4. Soundings within 50 feet of pier.
5. Location of eel grass beds within 100 feet of pier.
6. A description of the shellfish resources and a mitigation plan for their protection.
7. Marked navigation channels within 100 feet of pier.
8. Approximate shoreward boundary of any existing mooring area within 100 feet of pier (a recent aerial photograph, taken during the summer boating season, may be used for this purpose if desired).
9. Location of existing Town, commercial or private piers and docks, and Town landings, within 300 feet of pier.
10. A description of winter storage for seasonal docks and floats.
11. The final plan shall have the official stamp of a registered Civil Engineer, and in some cases the Commission may require certification by a registered Structural Engineer.

## **G. PERFORMANCE STANDARDS**

1. Docks must not prohibit or impede public right of passage in the intertidal zone or through navigable waters. Piers shall not require the elimination of existing public or commercial moorings, nor shall they project into or impede navigation to and from mooring areas. The space required to navigate boats to and

from the pier shall be taken into account, in addition to the structure itself. The same considerations also apply to the impeding of navigation in the vicinity of Town landings and docks and commercial marinas.

2. In no case shall a dock be constructed within 25 feet of a property sideline.

3. Piers shall be constructed to minimize the blocking of sunlight to shellfish beds and grasses. Height and width of deck, space between deck planks, and direction of deck planks shall be provided on the plan.

4. Unless otherwise authorized by the Commission, all fasteners used must be screws, bolts or similar fasteners of equal or greater holding capacity, and must be hot-dipped galvanized, stainless steel, or an equivalent non-corrosive material.

Pilings shall be driven using the best available methods, following the general standard of two-thirds of the piling driven, one-third exposed above the bottom surface. The tops of the pilings shall be capped to prevent rot.

Unless otherwise authorized by the Commission, bent-section timbers shall be a minimum of 2" x 8", and cross braces shall be a minimum of 2" x 6". The Commission may require larger-size timbers and cross-braces when necessary due to the length of the dock, its exposure, or other conditions which may require more substantial construction.;

5. The landward approach to a dock must not harm vegetation on the marsh or coastal bank. A marsh must be crossed by a raised walkway, and coastal banks must be preserved by use of suitable stairs.

6. Moorings for floating docks must be anchored using cross-chains with a maximum scope of 5:1 to 1:1 to ensure stability with minimal scouring of the bottom.

7. Off-season storage of temporary/seasonal docks and floats must be in the upland areas, and must be transported thereto without causing damage to any resource area.

8. Boats at the dock must not be allowed to leak oil or other pollutants into the water.

9. Motor boats may not be run in gear while tied to the dock, since prop wash disturbs shellfish beds, stirs up sediment and causes bank erosion.

10. Any vegetation disturbed or destroyed shall be replaced as soon as possible following construction, and must be shown to have become successfully

established before a Certificate of Compliance will be issued. Any portion of rocky intertidal shore, coastal bank, salt marsh or other resource area that is disturbed by construction activities must be restored to its original condition immediately upon completion of construction.

#### **H. ADDITIONAL REQUIREMENTS**

1. The Natural Resources Department shall be given written notice by the applicant not less than ten (10) working days before the start of construction in order to arrange shellfish or plant removal, re-seeding, re-planting, monitoring, and subsequent re-planting if necessary, at the applicant's expense.

2. All construction shall proceed in strict compliance with the Plan of Record. Any proposed deviation from the approved plan shall require the Applicant to request an amended Permit from the Conservation Commission **prior to** the start of construction. The dock construction contractor must be supplied with a copy of the Order of Conditions and the Plan of Record prior to construction.

#### **I. BURDEN OF PROOF**

Under the provisions of the Dartmouth Wetlands Protection Bylaw, the burden of proof shall be upon the applicant to show that no significant adverse effects will occur as a result of construction, or later by the proposed use, of the project.

DECEMBER 2002