

## Chapter 263. RULES AND REGULATIONS FOR THE DOVER WETLANDS PROTECTION BYLAW

**[HISTORY: Adopted by the Conservation Commission of the Town of Dover 6-15-1994; amended in its entirety 5-8-2013 and 12-09-20, corrections made 4/24/24. Subsequent Amendments noted where applicable.]**

### **GENERAL REFERENCES**

Groundwater Protection Districts — See Ch. **116**.

Licenses and permits — See Ch. **5**, Art. **II**.

Water — See Ch. **177**.

Wetlands — See Ch. **181**.

Zoning — See Ch. **185**.

Manure — See Ch. **213**.

Sewage disposal — See Ch. **217**.

Underground storage tanks — See Ch. **230**.

Wells — See Ch. **233**.

Subdivision of land — See Ch. **248**.

### § 263-1. Statutory authority; distinction from state regulations.

This chapter has been promulgated by the Dover Conservation Commission (hereinafter the Commission) in accordance with the provisions of the Dover Wetlands Protection Bylaw (hereinafter, the Bylaw)[1] This chapter is distinct from the Massachusetts Wetlands Protection Regulations (310 CMR 10.00).

[1] *Editor's Note: See Ch. **181**, Wetlands.*

### § 263-2. Applicability; exceptions.

#### A. Areas subject to protection under the Bylaw.

(1) Unless a Permit or negative Determination of Applicability under the Bylaw and regulations is first obtained from the Commission, no person shall remove, fill, dredge, alter or build upon or within 100' of any area subject to protection under the Bylaw within the Town of Dover. Said areas include:

(a) Vegetated wetland (bordering or isolated).

(b) Bank.

(c) Beach.

(d) Lake or pond.

(e) River or stream (either perennial or intermittent).

(f) Land Subject to Flooding (by surface water or groundwater).

(g) Vernal pool.

(2) These areas subject to protection under the Bylaw are defined in § **263-6** of this chapter. This includes, in part, reference to the Massachusetts Wetlands Regulations at 310CMR 10.04 (as amended) for definitions not provided herein.

B. Exceptions. The only exceptions to Subsection **A** of this subsection are for the following activities, when conducted in accordance with the provisions of § **181-3** of the Bylaw and the conditions outlined below:

(1) Maintenance, repair or replacement of an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, telephone or other telecommunication services, provided that:

(a) Surface contours, vegetation, soils and other natural features are maintained or restored to existing conditions before the work.

(b) Best available measures to minimize erosion and other potential environmental impacts are employed. These measures shall include, but are not limited to:

[1] Properly installed erosion control barriers to be maintained until all disturbed soils are adequately revegetated to prevent erosion.

[2] Removal of all excess soil and cut vegetation from wetlands and buffer zones.

[3] Maintenance of all existing drainage patterns and drainageways.

[4] Installation of clay dams or other barriers to groundwater movement for all new or substantially modified utility trenches within any Wetland Resource Areas and within trenches through the Buffer Zone for portions of such trenches which are located below estimated mean annual high groundwater elevation.

(c) Notification, including plans, specifications, anticipated work schedule, utility and contractor contact person's name, address and telephone number, is

provided to the Commission at least 21 days and not more than 60 days prior to the commencement of work.

(2) Emergency projects carried out by an agency of the Commonwealth or subdivision thereof which are necessary for the protection of the health or safety of the public, provided that the conditions stated in § **181-3** of the Bylaw, as well as the following conditions, are met:

(a) Prior to the commencement of work, or within 48 hours in the event that prior submission is not feasible, the agency of the Commonwealth or subdivision thereof which proposes an emergency project shall submit to the Commission notification regarding the nature of the emergency and the nature of the work proposed to abate said emergency. The Commission shall, at its earliest possible meeting, make a determination as to whether an emergency situation exists and shall issue its determination as soon as possible. A determination by the Commission or duly authorized agent of the Commission that the proposed and/or completed work does not qualify for an emergency exemption under this chapter shall constitute a cease and desist order enforceable under the Bylaw and this chapter.

(b) Only work necessary for the protection of public health and safety is eligible for an emergency exemption under this chapter.

(c) No work permitted under an emergency exemption shall continue for more than 30 days.

(d) Within 21 days of the commencement of work under an emergency exemption, a complete Application as required under this chapter shall be submitted to the Conservation Commission.

(3) Land in Agricultural Use is defined in the Bylaw at § **181-10**, provided that:

(a) No change in the surface contours or overall drainage pattern occurs;

(b) No discharge of sediment or other pollutants to water bodies or waterways either on- or off-site is allowed to occur;

(c) No other off-site impacts occur or are reasonably likely to occur.

(d) The maximum amount of Vegetated Wetland which may be altered by the above activities is:

[a] Five thousand square feet for reconstruction of an existing dike;

[b] Ten thousand square feet for expansion of an existing pond or reservoir;

[c] Ten thousand square feet for construction of a tailwater recovery pond;  
and

[d] Five thousand square feet for construction of a bypass canal/channel.

(4) Overriding public purpose. The Commission may, at its discretion, waive or modify one or more of the provisions of this chapter in the event that the Commission determines that such waiver or modification will contribute to an overriding public purpose. The Commission shall, in such case, identify the overriding public purpose which is the basis for any such determination.

§ 263-3. Application and permit procedures.

A. Relationship to Wetlands Protection Act. Hearings, notices, correspondence, approvals, denials or other procedural, clerical or administrative actions related to an Application, Request for Determination or Enforcement Order may be combined with similar actions conducted under the Massachusetts Wetlands Protection Act (MGL c. 131 § 40) and regulations (310 CMR 10.00) whenever joint jurisdiction is present. Generally, the Notice of Intent or Request for Determination forms of the Wetlands Protection Act may be utilized for filings under the Bylaw. Applicants should note, however, that supporting information required under the Bylaw may be different and more extensive than that required under the Wetlands Protection Act and that certain definitions, jurisdictional boundaries and other aspects of the Bylaw and this chapter are different from those in the Massachusetts Wetlands Protection Regulations.

B. Request for Determination. Any person desiring to know whether or not a particular area or proposed work is subject to the Bylaw may submit a Request for Determination to the Commission. The appropriate form is available from the Commission.

(1) Circulation of forms:

(a) Any person submitting a Request for Determination shall provide, by hand delivery or certified mail, return receipt requested, copies of the request and all supporting information *three weeks prior to the desired hearing date* to the following:

[1] The Commission - *electronic filing and three paper copies with appropriate size plans* based on the scope of the project are required.

[2] The owner, if not the person making the request (one copy).

- (b) Any person submitting a Request for Determination shall, on the same date or no less than 7 business days prior to hearing date, complete a DEP Notification to Abutters Form available from the Conservation Commission page of the Dover website and circulate said form to the abutters described in subsections [1], [2], and [3] below. Delivery shall be made by hand delivery, certified mail return receipt requested, certificate of mailing or other generally recognized method that provides proof of mailing and actual or attempted delivery. Appropriate documentation verifying mailing shall be provided to the Commission upon opening of the public hearing. For hand delivery, a signed affidavit shall be provided. The affidavit and/or proof of mailing shall be filed with a sample notice and list of recipients. Notice shall be made to the following:
- [1] All abutters at their mailing addresses shown on the most recent applicable tax list of the assessors.
  - [2] Owners of land directly opposite on any public or private street or way.
  - [3] Abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.
- (c) Prior to the opening of the public meeting, the person submitting the Request for Determination shall submit a completed Filing Notification Form certifying that all persons noted above have been properly notified. A public notice circulation list that complies with the above and is certified by the Town of Dover Assessor's Office shall be deemed sufficient in satisfying the requirement to open the public hearing. If errors or omissions in such list are found, the Commission may require additional notification by the applicant, or may make such notification, to correct the error or omission.
- (2) Information required. The person submitting the Request for Determination shall provide, on the Request or in supporting documents, sufficient information describing the site and work proposed (if any) to allow the Commission to adequately identify and evaluate the site and/or proposed work. The information required will vary, based upon the complexity of the site and the work proposed. At a minimum, this information should include a locus map, site plan, or sketch sufficient to allow the Commission to find and view the site and the area of proposed work. For proposed work, the information submitted should provide the Commission with an adequate understanding of the full extent of the work proposed. Required information shall include the date on which the subject lot was created, to establish the applicability of section 5-M of these Regulations.
- (3) Determination of Applicability. The Commission shall issue a Determination of Applicability, either positive or negative. A negative Determination of

Applicability may be subject to conditions deemed appropriate by the Commission. If a positive Determination of Applicability is issued, no work may proceed without a Permit issued by the Commission under this chapter.

**C. Permit Application (NOI, ANRAD, Amendment, etc.)**

Unless a negative Determination of Applicability under the Bylaw has been issued by the Commission, any person proposing work which will alter any Wetland Resource Area or land within the 100' Buffer Zone, as defined under the Bylaw and regulations, must file an Application with the Dover Conservation Commission and receive a valid Permit prior to commencing work. For an Application to be considered complete, the following conditions must be met:

(1) Circulation of forms:

(a) A completed Application must be submitted to the Commission *three weeks prior to desired hearing date*. The person filing an Application shall provide, by hand delivery or certified mail, return receipt requested, copies of the Application and all supporting information to the following:

(1) The Commission - *electronic filing and three paper copies with full size plans are required*.

(2) The owner, if not the person filing the Application (one copy).

(b) Any person submitting an Application shall *mail at least 7 days prior to the hearing date*, a DEP Notification to Abutters Form and circulate said form, by hand delivery, certified mail return receipt, certificate of mailing or other generally recognized method that provides proof of mailing and actual or attempted delivery shall be provided to the Commission upon opening of the public hearing. For hand delivery, a signed affidavit shall be provided. The affidavit and/or proof of mailing shall be filed with a sample notice and list of recipients, return receipt requested, to the following:

[1] All abutters at their mailing addresses shown on the most recent applicable tax list of the assessors.

[2] Owners of land directly opposite on any public or private street or way.

[3] Abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.

- (c) Prior to the opening of the public meeting, the person submitting the Application shall submit a completed Filing Notification Form certifying that all persons noted above have been properly notified. A public notice circulation list that complies with the above and is certified by the Town of Dover Assessor's Office shall be deemed sufficient in satisfying the requirement to open the public hearing. If errors or omissions in such list are found, the Commission may require additional notification by the applicant, or may make such notification, to correct the error or omission.

(2) Information Required:

- (a) The following supporting information, sufficient to allow the Commission to adequately evaluate the proposed work, must be provided on the Application, in supporting materials or on plans, as outlined below:

- [1] Site locus map, with sufficient identification of ground features to allow the Commission or its agents to find, identify the extent of and inspect the property.
- [2] Names of the applicant and the owner, with street addresses, email addresses and telephone numbers.
- [3] Existing Conditions Site Plan(s), to be stamped by a professional engineer or land surveyor registered in Massachusetts (for any project which normally requires this degree of professional expertise in the judgment of the Commission), which includes, at a minimum, the following items:
- [a] Property lines; easements; rights-of-way.
- [b] Existing structures, including buildings, pavement, boundary markers, walls, septic systems, wells and drainage structures.
- [c] Percolation or other test locations.
- [d] Wetland Resource Areas and Buffer Zones, with all wetland boundary points consecutively numbered and shown.
- [e] Existing topography, generally at two-foot contours, with one-foot contours and/or spot elevations shown for extensive flat areas, particularly as necessary to define Land Subject to Flooding boundaries.
- [f] All trees which are located within the proposed work area and have a diameter of four (4) inches or greater at four feet above ground level.

- [g] Stream setbacks (Town of Dover Zoning Bylaws *Editor's Note: See Ch. 185, Zoning.*).
  - [h] Locations of major vegetation changes (-e.g., field, woodland, etc.)
  - [i] North arrow.
  - [j] Delineation and labeling of Groundwater Protection Districts.
  - [k] The date on which the subject lot was created, to establish the applicability of subsection 5-M of these Regulations.
- [4] Proposed work plan(s), which, for projects involving the construction of buildings or substantial earth movement, must be stamped by a registered professional engineer or land surveyor. The work plan must include, at a minimum, in addition to existing conditions noted above:
- [a] Proposed structures, including buildings, drainage structures, septic systems, impervious surfaces.
  - [b] Proposed grading.
  - [c] Proposed wetland alterations, including square footage.
  - [d] Proposed wetland replication areas.
  - [e] Proposed compensatory flood storage areas.
- [5] Narrative description of Wetland Resource Areas, DEP Wetland Delineation Forms, including vegetation types and the resource area designations, as defined under the Bylaw and this chapter, delineation methodologies and names and credentials of the persons conducting the delineations.
- [6] Detailed description of any proposed wetland replication areas, including construction protocol, planting specifications (including planting layout, specimen sizes and monitoring plan).
- [7] Wetland wildlife habitat evaluation, including methodology and credentials of persons conducting the assessment, in accordance with 310 CMR 10.00.
- (b) The Commission may, depending upon the complexity of the project and other factors deemed appropriate, waive one or more of the above information requirements or require additional information it deems necessary.



(4) The appropriate application fee, as outlined in Subsection H of this section, must be paid.

(5) A Permit approving work shall not be valid until it has been recorded in the chain of title for the property at the Registry of Deeds.

D. Public notice. After receipt of a completed Request for Determination of Applicability or Application, the Commission shall, at the expense of the applicant, publish notice of the time and place of a scheduled public hearing in a newspaper of general circulation within the Town of Dover, at least five days prior to the date of the scheduled hearing, and by mailing notice to the applicant. Legal notice fees are described in Table 1, below.

E. Public hearings.

(1) Except for filings only under the Bylaw, the Commission will normally combine the hearing for a project or property under the Bylaw with the hearing under the Massachusetts Wetlands Protection Act (MGL c. 131, § 40).

(2) The Commission may, at the applicant's request, continue the public hearing to a date, time and place announced at the public hearing, for the purpose of reviewing information provided by the applicant, providing the applicant the opportunity to submit additional or revised information or other reason deemed appropriate by the Commission. *Any new information or plan revisions must be received in the office one week ahead of the scheduled continuance date.* In the event that the applicant chooses not to request a continuance, the Commission shall close the public hearing and issue or deny a Permit or Determination based upon the information available. Failure of the applicant or person seeking a Determination to provide the information deemed necessary by the Commission shall be grounds for the Commission to deny a Permit or issue a positive Determination.

(3) The Commission may schedule a site visit for the purpose of inspecting the subject property, at a time and place to be announced at the public hearing. Members of the public will be allowed to inspect the property with the Commission during the site inspection, with the owner's permission.

(4) After the close of the public hearing, the Commission shall either issue a Permit approving the work proposed in an Application or shall issue a denial for the proposed work. For approvals, the Commission shall impose such conditions as it deems necessary to protect the interests protected by this chapter.

F. Burden of proof. The applicant shall have the burden of proving by a preponderance of credible evidence in a timely manner that the work proposed in

the Application will not harm the interests protected by this chapter. Failure to provide adequate evidence to the Commission which would support a finding that the proposed work will not harm the interests protected by this chapter shall be sufficient cause for the Commission either to deny a Permit or to grant a Permit with conditions.

G. Certificate of Compliance.

- (1) After completion of any work for which a Permit was issued under this chapter, the Permit recipient shall submit a request for Certificate of Compliance to the Commission. The request for Certificate of Compliance shall state that the work has been completed in accordance with the Permit and any conditions or shall state the nature and extent of any deviation from the approved plans and specifications. Any certifications, as-built plans or other documentation described in the Permit conditions shall be submitted with a request for Certificate of Compliance.
- (2) Within 21 days of receipt of a request for Certificate of Compliance and all supporting documents as specified in the Order of Conditions and the close of any associated public hearing, the Commission shall issue a Certificate of Compliance or shall notify the applicant in writing of the reasons for the denial of such.
- (3) The Commission may, at its discretion, hold a public hearing on a request for Certificate of Compliance.

H. Filing fees. No Application, Request for Determination of Applicability or Request for Certificate of Compliance will be considered complete until the appropriate filing fee is paid. Filing fees are determined by the type of filing and the nature of the work and/or wetland alterations proposed. Project categories are identified below and filing fees presented in Table 1.

(1) Project Categories and Fees

**Category Activities and Fees**

**Category 1** (Fee for each activity is **\$200**):

- a.) work on single-family lot; addition, pool, etc.;
- b.) site work without a house;
- c.) control vegetation;
- d.) resource improvement;
- e.) work on septic system separate from house;

- f.) monitoring well activities minus roadway;
- g.) new agricultural or aquaculture projects.

**Category 2** (Fee for each activity is **\$500**)

- a.) construction of single-family house;
- b.) parking lot;
- c.) beach nourishment;
- d.) coastal limited projects;
- e.) inland limited projects minus road crossings and agriculture;
- f.) each crossing for driveway to single family house;
- g.) each project source (storm drain) discharge;
- h.) control vegetation in development;
- i.) water level variations;
- j.) any other activity not in Category 1, 3, 4, 5 or 6;
- k.) water supply exploration.

**Category 3** (Fee for each activity is **\$1,050**)

- a.) site preparation (for development) beyond Notice of Intent scope;
- b.) each building (for development) including site;
- c.) road construction not crossing or driveway;
- d.) hazardous cleanup;
- e.) water supply development.

**Category 4** (Fee for each activity is **\$1,450**):

- a.) each crossing for development or commercial road;
- b.) dam, sluiceway, tidegate (safety) work;
- c.) landfills operation/closures;
- d.) sand and gravel operations;
- e.) railroad line construction;
- f.) bridge;
- g.) hazardous waste alterations to resource areas;
- h.) dredging;
- i.) package treatment plant and discharge;
- j.) airport tree clearing;
- k.) oil and/or hazardous material release response actions.

**Category 5** (Fee is **\$4 per linear foot**; total fee not less than \$100 or more than \$2,000):

- a.) work on docks, piers, revetments, dikes, etc. (coastal or inland).

**Category 6 (Fee is \$2 per linear foot for each resource area): For each resource area delineation, the fee shall not exceed \$200 for activities associated with a single-family house or the State maximum delineation fee, maximum shall be in line with State maximums for other filings.**

**Table 1: Filing, Legal Notice and Recording Fees**

Legal Notice fee may be found on the Dover Town website [www.doverma.org](http://www.doverma.org)

<b>Filing Type</b>	<b>Legal Notice Fee</b>	<b>Filing Fee</b>
Request for Determination of Applicability	Yes	\$150
NOI / Application; Category (1)(a-g)	Yes	\$200 for each activity plus current fee payable to Norfolk County Registry of Deeds
NOI / Application; Category (2)(a-k)	Yes	\$500 for each activity plus current fee payable to Norfolk County Registry of Deeds
NOI / Application; Category (3)(a-e)	Yes	\$1,050 for each activity plus current fee payable to Norfolk County Registry of Deeds
NOI / Application; Category (4)(a-k)	Yes	\$1,450 for each activity plus current fee payable to Norfolk County Registry of Deeds
NOI / Application; Category (5)(a)	Yes	Total fee not less than \$100 or more than \$2,000
NOI / Application; Category (6)	Yes	Total fee shall not exceed \$200 for activities associated with s.f.h.
NOI / Application; Category (Other)	Yes	\$TBD based on review plus current fee payable to Norfolk County Registry of Deeds
Request for Certificate of Compliance	No	\$200 plus current fee payable to Norfolk County Registry of Deeds
Request for Amendment of OOC	Yes	\$150 plus current fee payable to Norfolk County Registry of Deeds

Request for Extension of OOC	No	\$150 plus current fee payable to Norfolk County Registry of Deeds
Minor Project Change	No	\$100 each
Bylaw Waiver Requests	No	\$500 each per request separate from other activities/fees

I. Enforcement Orders. The Commission, any individual member or any duly authorized agent of the Commission may issue an Enforcement Order regulating any unauthorized work. *The Commission may issue fines for non-compliance as specified in Ch. 181-12.E.*

J. Consultant Fees.

(1) The Commission shall retain the services of the Agent Consultant to provide technical review of any NOI Application, Request for Determination of Applicability or request for Certificate of Compliance or other permit enforcement related matters, including all supporting information submitted to the Commission. Additionally, the Commission may retain the services of an additional Wetland Scientist Peer Review Consultant depending on the complexity of the project.

(2) The applicant shall be responsible for payment of all reasonable Peer Review Consultants' fees and expenses accrued during the review of applicant's materials. Any expenses incurred by the Commission in the hiring of Peer Review Consultants shall be ***paid by the applicant.***

K. *Winter Delineation Policy. Resource area boundary delineations, however requested, shall be reviewed only between April 1 and December 1 of each year, unless the Conservation Commission grants a waiver. Delineations may be reviewed at the sole discretion of the Conservation Commission or its Agent Consultants between December 2 and March 31, and shall be reviewed only when site conditions are such that the Conservation Commission or its Agent Consultants believe they can adequately review and field verify the relevant resource area indicators.*

*An exception to this policy may be granted at the discretion of the Conservation Commission upon receipt of a written request stating the reasons for the exception sought. Each request shall be evaluated on its own merits, on a case by case basis. Grant of an exception on any given property or for any particular application, when warranted, shall be for that one instance or application only.*

*If an applicant does not agree to a meeting or hearing continuance in order to complete an adequate field review of the wetland resource area boundaries, in the opinion of the Commission or its Agent Consultants, the Commission shall close the hearing and make a determination based on the information available.*

*Potential Vernal Pool delineations or suspected PVP delineations will only be field reviewed during the Vernal Pool season.*

- L. Snow delay: If the land which is the subject of an Application, Request, Enforcement Order or other pending action by the Commission, is snow covered on the date of a scheduled inspection to an extent which prevents adequate inspection in the judgment of the Commission, the action required by the Commission may be postponed until such time as the ground is sufficiently free of snow to allow adequate evaluation *in the opinion of the Agent Consultant or Commission*, and new inspection(s) can be scheduled and completed. Accordingly, the public hearing on the matter may be continued, at the request of the applicant, as necessary in such an instance.

#### § 263-4. Presumptions of significance.

This chapter presumes that the resource areas are significant to some or all of the Wetland Interests protected by the Bylaw and Regulations. The presumptions of significance for each resource area are outlined in Table 2 on the following page. This presumption is rebuttable and may be overcome by a finding of the Commission, in its judgment, that there is a preponderance of credible evidence to the contrary.

**Table 2**  
**Resource Areas and Applicable Interests:**  
**Presumptions of Significance**

<b>Interests</b>	<b>VW</b>	<b>Bank</b>	<b>Beach</b>	<b>LUW</b>	<b>BLSF</b>	<b>ILSF</b>
Public and private water supply	X	X	X	X		X
Groundwater	X	X	X	X		X
Flood control	X	X	X	X	X	X
Erosion and sedimentation control	X	X		X	X	
Storm damage prevention	X	X		X	X	X
Plant life	X	X		X		
Water pollution	X	X		X		
Fish and fisheries	X	X		X		
Wildlife habitat	X	X		X		X
Recreation	X	X	X	X		
Aesthetics	X	X	X	X		
Agriculture and aquaculture	X	X		X		X

VW = Vegetated wetland (both bordering and isolated)

LUW = Land under water body or waterway

BLSF = Bordering Land Subject to Flooding

ILSF = Isolated Land Subject to Flooding

**§ 263-5. Performance standards.**

- A.** General. Any proposed work subject to this chapter must serve to protect the interests of the Bylaw and must have no adverse effect on those interests or on the ability of the Wetland Resource Areas to function to protect those interests.



Avoidance of impacts must be maintained for both the short- and long-term, both on- and off-site.

- (1) Point Source Discharge. All Point Source Discharges, including stormwater discharge pipes, must be designed to include the following:
  - (a) Discharge pipes set back a minimum of 50 feet from the edge of any resource area, unless no reasonable alternative exists and alternative measures to prevent erosion and sediment deposition are employed.
  - (b) Rip-rap or other flow-velocity-reducing measures.
  - (c) Vegetated retention or detention basins or swales to maximize the uptake of nutrients, infiltration of runoff and deposition of sediment.
- (2) Upland water flow. For Buffer Zone areas, overland and groundwater flows which contribute to the persistence of any Wetland Resource Area must not be altered so as to adversely affect any wetland.

B. Bordering Vegetated Wetland.

- (1) In general, no alteration of Bordering Vegetated Wetland is permitted.
- (2) In the event that inability to alter an area of Bordering Vegetated Wetland would result in a hardship, alteration of Bordering Vegetated Wetland may be permitted, at the discretion of the Commission, provided that the following conditions are met:
  - (a) A detailed alternatives analysis identifying the nature and extent of the hardship must be provided to the Commission. This analysis should include an evaluation of all reasonable alternatives, including the no-alteration alternative. The analysis must be based on a thorough understanding of and documentation of wetlands jurisdiction and other constraints on the property. The analysis shall include sketch plans of the alternatives, where applicable. Alternatives shall consider modifications to project location, scale and design.
  - (b) In the event that alteration of Bordering Vegetated Wetland is permitted, replication of the wetland at a minimum of 1.5:1 must be provided.
  - (c) Replication areas must provide for the protection of the interests of the Bylaw, to the extent possible, in a manner similar to the original wetland. The soils, vegetation and hydrology of the original wetland must be replicated as closely as possible to the original wetland.

- (d) The replication area should be designed to provide 75% coverage with indigenous plant species within two growing seasons.
    - (e) A detailed replication plan, which includes the following, must be provided to the Commission:
      - [1] Elevations (existing and proposed) of the replication area and area to be filled.
      - [2] Planting layout, including species composition, density, arrangement, specimen size and specimen origin (must be from regionally local nursery). The Commission reserves the right to set site specific standards for the species composition and density, as well as plant minimum size for replication areas.
      - [3] Construction protocol, including equipment specifications, procedures and timing.
      - [4] Identity or minimum credentials of the person(s) responsible for conducting and supervising the replication process.
      - [5] Monitoring plan, including identity or minimum credentials of the monitor.
      - [6] Procedures for replanting or otherwise repairing, correcting or modifying the replication area in the event that the soils, hydrology and/or vegetation are determined to be inadequate.
      - [7] North arrow.
    - (f) A bond or other means of ensuring the availability of funds sufficient to complete or restore the wetland or replication area may be required.
  - C. Isolated Vegetated Wetland. Wetlands in areas with high permeability soils are more closely linked to groundwater, which is the source of all drinking water within the Town of Dover. Therefore, Isolated Vegetated Wetlands are divided into two categories: those areas with highly permeable soils located within the Town of Dover Groundwater Protection Districts GW-1 or WP and those with less permeable soils located within Groundwater Protection District GW-2. The boundaries of the Groundwater Protection District are those which are shown on the most recent version of the Town of Dover Groundwater Protection District Map. The performance standards for Isolated Vegetated Wetlands are different for each of these areas.

(1) Isolated Vegetated Wetlands within GW-1 or WP: the performance standards for Bordering Vegetated Wetland, as outlined in Subsection **263-5-B** apply.

(2) Isolated Vegetated Wetlands within GW-2:

(a) Alterations within these Isolated Vegetated Wetlands should generally be avoided.

(b) The Commission may, at its discretion, permit the alteration of such an area, up to a maximum of 2,500 square feet, provided that the area is replicated in accordance with the provisions of Subsection **263-5-B**.

(c) The Commission may permit the alteration of more than 2,500 square feet of such an Isolated Vegetated Wetland, in the event that a hardship is found to exist. If so, replication which meets the provisions for replication of Bordering Vegetated Wetland (Subsection **263-5-B**) must be provided.

(3) For both types of Isolated Vegetated Wetland, work shall not impair the important wetlands wildlife habitat functions of the resource area.

**D.** *Riverfront Area. The Commission accepts and adopts the definitions, requirements, and performance standards for Riverfront Area as specified in the Massachusetts Department of Environmental Protection's Wetlands Regulations in 310 CMR 10.58*

**E.** Bank. Any work on a Bank must not:

(1) Adversely impact ground- or surface water quality.

(2) Impair the water-carrying capacity of the Bank.

(3) Result in an increase in erosion, either on- or off-site.

(4) Adversely impact the wildlife habitat value of the Bank.

**F.** Land Under Water. The only alteration which may be permitted within Land Under Water is work directly associated with a permitted wetland crossing or Water Dependent Use, as defined in § **263-6** of this chapter. Any work within Land Under Water must not:

(1) Adversely impact ground- or surface water quality.

(2) Impair the water-carrying capacity of the Land Under Water.

(3) Result in an increase in erosion, either on- or off-site.

(4) Adversely impact the wildlife habitat value of the Land Under Water.

**G.** Beach. The only alteration which may be permitted within a Beach is work directly associated with a water dependent use, as defined in § **263-6** of this chapter. Any work within a Beach must not:

(1) Adversely impact ground- or surface water quality;

(2) Impair the water-carrying capacity of the Beach;

(3) Result in an increase in erosion, either on or off site;

(4) Adversely impact the wildlife habitat value of the Beach.

**H.** Bordering Land Subject to Flooding. Any work within Bordering Land Subject to Flooding must meet the following performance standards:

(1) Compensatory flood storage at equal elevations and adjacent to the same water body shall be provided for all flood storage lost by work within Bordering Land Subject to Flooding.

(2) Work shall not restrict flows or cause an increase in flood stage or velocity.

(3) Work shall not cause an increase in erosion or other adverse impacts, either on- or off-site.

(4) Work shall not adversely impact important wildlife habitat functions of the area.

**I.** Isolated Land Subject to Flooding. Where an area of Isolated Land Subject to Flooding is vegetated, it may also qualify as the Resource Area Vegetated Wetland, under this chapter. In such a case, the performance standards of both Resource Areas apply. The performance standards for Isolated Lands Subject to Flooding are dependent upon whether the area is underlain by Pervious or Impervious Soils:

(1) Impervious Soils. No work in an Isolated Land Subject to Flooding which is underlain by Impervious Soils shall adversely impact any property by displacing floodwaters which are normally contained within said area.

(2) Pervious Soils. Any project which involves work in an Isolated Land Subject to Flooding which is underlain by Pervious Soils shall:

- (a) Prevent impacts to any property from the displacement of floodwaters.
  - (b) Maintain the annual infiltration of surface water over the portion of the site which constitutes the drainage basin for the Isolated Land Subject to Flooding.
  - (c) Maintain the quality of the water which infiltrates into the ground within the contributing drainage basin to the Isolated Land Subject to Flooding.
- (3) For both types of Isolated Land Subject to Flooding, work shall not impair the important wetlands wildlife habitat functions of the resource area.
- J. Vernal Pools. Any work within 100 feet of a Vernal Pool must not impair its capacity to function as a Vernal Pool. This chapter presumes that any work within a Vernal Pool or within undeveloped and unimproved areas within 100 feet thereof will impair the capacity of such Vernal Pool to so function.

100-foot Adjacent Upland Resource Area: No Disturb Zone. No activity shall be permitted within 100 feet of the delineated edge of a Vernal Pool. Prohibited activities include, but are not limited to, grading, landscaping, vegetation control, pruning, cutting, filling, excavation, roadway construction and/or driveway construction.

*All applicants shall certify to the existence and location or nonexistence of any Vernal Pools on the project site. Any area which any credible evidence suggests may be a Vernal Pool shall be presumed to be a Vernal Pool and afforded all the protections thereto, unless and until the Commission explicitly finds that such area is not a Vernal Pool based on field examination(s) in the spring vernal pool season by the Commission or its Agent, or a detailed written analysis by an independent appropriately qualified wetlands professional based on a documented field examination in the spring during vernal pool season. The credible evidence referred to in this provision may include sworn testimony of or affidavit provided under pains and penalties of perjury from one or more abutters or persons familiar with the site.*
- K. Buffer Zone. Natural vegetation within wetland Buffer Zones contributes to the protection of wetland interests within the adjacent resource areas by providing soil stabilization, wildlife habitat cover, shading and other measures. In order to prevent impacts to Wetland Resource Areas and associated loss of value of those wetlands from proposed projects within the Buffer Zone, the following restrictions shall apply to work in the Buffer Zone.

*Permanent markers - all lines beyond which no disturbance will be permitted within the project site and shall be shown on a plan to be recorded and shall be*

*marked on location by permanent markers as specified by the Conservation Commission and such bound markers as specified by the Commission.*

(1) Tree Filter Zone. In no case shall more than 50% of the tree cover be removed for any *one-hundred foot section of* Buffer Zone, except in cases of hardship where the applicant can demonstrate that no reasonable alternative exists. Tree cover is measured for purposes of this section as the basal area of trees with a four-inch or greater diameter four feet off the ground.

(2) Setbacks. This chapter presumes that work in close proximity to a Vegetated Wetland, Bank or Vernal Pool has a high likelihood of causing direct or indirect alterations to those resource areas. Therefore, any project proposing work in the Buffer Zone must maintain certain setbacks from the resource areas. These setbacks, summarized in Table 3, include both structure setbacks and disturbance setbacks. In the event that the applicant can demonstrate that no reasonable alternative exists and proposes to take all necessary measures to prevent both short- and long-term impacts to the wetland, the Commission may, at its discretion, modify or waive this provision. The terms "structure" and "disturbance" are defined within § **263-6** of this chapter and summarized below.

- a. "Structure" is defined as: Any building, foundation, road, driveway, wall, fence or other man-made article placed either permanently or semi-permanently in or on the ground.
- b. "Disturbance" is defined as the placement or excavation of soil, grading, passage of heavy equipment, cutting or removal of vegetation or other activity which might result in the loosening of surface soils. Disturbance includes the application or discharge of any pesticide, herbicide, fertilizer, or chemical agent of any kind. Activities conducted by work parties working on foot and with hand tools only, associated with normal surveying practices or the installation and maintenance of erosion control fencing and haybales within a Buffer Zone, shall not be considered a "disturbance."
- c. Dumping is defined as disturbance by the placement of debris including but not limited to leaves, grass clippings, and wood chips.

(2) *Herbicides, pesticides and fertilizers.*

(a) *A permanent restriction prohibiting the use of herbicides, pesticides and fertilizers or chemical agents of any kind shall be placed upon all property within all resource area(s).*

*(b) A permanent restriction prohibiting the use of herbicides, pesticides and fertilizers or chemical agents of any kind shall be placed upon all property within the disturbance setback for all resource area(s).*

*(c) Under special circumstances, in particular for the control of invasive wetland and upland plant species, a variance may be granted by the Commission for the limited and supervised use of approved herbicides.*

*NOTE: Outside all buffer zones for lawns, a slow release nitrogen fertilizer may be applied as follows: One half pound of 80% or more slow release nitrogen fertilizer application in spring and fall for every 1,000 square foot of*

### **Minimum Setbacks from Wetland Resources Areas**

#### **Jurisdictional Setbacks**

Structure Setback (feet)	Disturbance Setback (feet)	Vernal Pool Setback (feet)
70	50	100 As Resource Area

NOTE: An exception to the structure setback may be granted, in instances where the Commission determines that a fence or wall serves to protect the Interests of the Bylaw. Where appropriate, this may include split rail fencing or loose fieldstone walls. Any proposal for an exception to the structure setbacks in Table 3 shall include detailed construction materials and methods. In evaluating whether to grant such an exception, the Commission shall consider all of the Interests of the Bylaw, and shall ensure that any proposed fence or wall that does not meet the above setback requirements serves to maintain or enhance wildlife habitat, and not substantially alter the hydrology of the area. The Commission shall also consider the potential merits of permanent demarcation that may result from the granting of such an exception.

## **L. WAIVERS**

Strict compliance with the Commission's rules and regulations may be waived when, in the judgment of the Commission:

- (a) such action would contribute to an overriding public purpose
- (b) such action is required for compliance with the Massachusetts Contingency Plan (MCP), 310 CMR 40 et al.,
- (c) strict compliance would result in severe economic hardship greater in magnitude than the public purpose to be served, or
- (d) a credible expert has demonstrated that the Resource Area does not protect the public purpose

No waiver shall be granted unless the Commission determines that:

- (a) there are no practicable alternatives to the proposed action;
- (b) alteration of the resource area has been minimized to the greatest extent practicable; and
- (c) Applicant agrees to take compensatory and/or mitigating measures to protect the public purpose in the protected Resource Area to be removed, filled, dredged, built upon, or altered. Removal of existing lawn and restoration of the 50-foot and/or 70-foot Buffer Zone to natural vegetative conditions is strongly encouraged. Compensatory and or mitigating measures may be taken at an off-site location, provided there are no available mitigation or compensation measures available on-site.

The burden of proof shall be on the Applicant to demonstrate that the proposed project meets the waiver standards defined in this Section.

## **M. Subdivisions and large lot developments.**

### **(1) Preamble.**

- (a)** The experience of the Dover Conservation Commission, as supported by the general experience of the members and consideration of situations in neighboring towns, indicates that the development of large parcels of land, whether wetland, upland or mixed, even if in technical compliance with the



- other provisions and performance standards of this chapter, has an adverse effect on neighboring resource areas. The clearing of large blocks of forested or otherwise natural undeveloped land and the substitution of house, driveway and associated and typically less diverse landscaping often renders the area unsatisfactory for wildlife habitat. A roadway itself can act as a knife, cutting one resource area from another or plunging into the center of an otherwise undeveloped resource area or buffer, in either event with extreme and irrevocable adverse impacts to interests protected under the Bylaw.
- (b) Roadway location may appear satisfactory in itself, but may force lots to be developed perilously close to resource areas with adverse impacts to those resource areas. The Commission has repeatedly been presented with instances where an area was developed, and houses built in the Buffer Zone as close to a resource area in their backyard as aggressive but allowable development practice would permit. Thereafter, the homeowner seeks to expand his backyard for a swimming pool, additional play area or other uses which appear in themselves relatively harmless, but because of the initial siting of the house, driven in part by the siting of the roadway, the backyard project, if completed, would cause adverse results to the resource area. Homeowners must understand the responsibility of living on the edge of a resource area and must obtain this understanding prior to acquiring a subject property.
- (c) The importance of forested buffers for the protection of waterways, water bodies and associated wetlands from upslope impacts has been well documented. Forested buffers act to minimize nutrient and other pollutant impacts, maintain stable ecosystems which provide wildlife corridors and other benefits, serve to shade wetland areas, thereby moderating summer temperature increases, and provide other benefits. The effectiveness of such forested buffers is generally related to their width, as well as other factors. It is therefore the intent of this chapter that, to the fullest extent possible, naturally vegetated buffers will be permanently maintained around all Wetland Resource Areas protected by the Bylaw and regulations.
- (d) It has further been the experience of the Commission that wetland replication projects are generally unsuccessful, particularly where those projects involve relatively small or narrow areas. Because one of the important functions of a resource area is to retain and filter water, mere planting of wetland species is not sufficient replication. Typically, topography, hydrology and soils must be replicated in order to improve the likelihood of success.
- (2) Applicability. This Subsection M. applies when either of the following two criteria are met:

- (a) All projects on all parcels of land resulting from the subdivision of land under the Massachusetts Subdivision Control Law *Editor's Note: See MGL c. 41, §§ 81K through 81GG.* pursuant to filings made with the Dover Planning Board or other applicable authority after the effective date of this Subsection M. (6/19/1996), which projects are otherwise subject to the jurisdiction of the Commission or the Bylaw; or
- (b) Any project on any parcel of five acres or more, if such project includes the construction of a roadway within the meaning of Subsection **M (6)** below, which project is otherwise subject to the jurisdiction of the Commission under the Bylaw.
- (3) Conceptual plans. All persons intending to file a subdivision plan with the Planning Board or intending to develop a large parcel subject to this Subsection M. are encouraged but not required to meet with the Conservation Commission as early as possible in the development stage and, prior to submission of any plan, to help the parties identify wetland issues early in the development process. All discussions and comments are not binding on either the Commission or the project proponents. Prior to the filing of a Notice of Intent or Request for Determination of Applicability or any other application, no application or filing fee is required.
- (4) Vernal Pools. All applicants shall certify to the existence and location or nonexistence of any Vernal Pools on the project site. Any area which any credible evidence suggests may be a Vernal Pool shall be presumed to be a Vernal Pool and afforded all the protections thereto, unless and until the Commission explicitly finds that such area is not a Vernal Pool based on field examination(s) in the spring *vernal pool season by the Commission or its Consultant Agent*, or a detailed written analysis by an independent appropriately qualified wetlands professional *based on a documented field examination in the spring during vernal pool season*. The credible evidence referred to in this provision may include testimony of one or more abutters or persons familiar with the site.
- (5) Setbacks. Due to increased traffic and associated pollutant load, the minimum setbacks for roadways shall be twice those set forth in Table 3 above. In the event that the applicant demonstrates that no reasonable alternative exists and proposes to take all necessary measures to prevent short- and long-term impacts on the wetlands, the Commission may, at its discretion, modify or waive this provision.
- (6) Roadways. For the purpose of this Subsection M., "roadway" means the impervious surface of any road, parking lot or other way intended for public use, *or driveway*.

- (7) Tree Filter Zone. Because of the adverse effects of a large reduction in tree cover typically associated with the construction of any roadway or the development of a subdivision, the applicant shall preserve 80% of the tree cover in the entire Buffer Zone of each resource area located within the subject parcel, except where the applicant demonstrates that no reasonable alternative exists. Where a stand of relatively mature trees exists on a site, for ease of calculation, tree cover may be measured for purposes of this section as the basal area of trees with a four-inch or greater diameter four feet off the ground. Within areas where the majority of tree specimens have not reached a diameter of four inches, tree cover under the pre- and post-development conditions shall be measured as percent of canopy closure.
- (8) Structures. All houses and other structures other than drainage structures and utilities shall be kept on the upland side of any road unless the applicant demonstrates that no reasonable alternative exists.
- (9) Herbicides, pesticides and fertilizers.
- (a) A permanent restriction prohibiting the use of herbicides, pesticides and fertilizers or chemical agents of any kind shall be placed upon all property within all resource area(s).
- (b) A permanent deed restriction prohibiting the use of herbicides, pesticides and fertilizers or chemical agents of any kind shall be placed upon all property within the disturbance setback for all resource area(s) [see Table 3].
- (c) Under special circumstances, in particular for the control of invasive wetland and upland plant species, a variance may be granted by the Commission for the limited and supervised use of approved herbicides.
- (10) Restrictive Covenants. The applicant shall identify on the Definitive Subdivision Plan or other project plans a permanent No Disturbance Zone consistent with requirements of this section, reference to which shall be made in the first deed of transfer of each lot, specifically referencing and granting to the Commission such covenant restriction and any other permanent restrictions of the Order of Conditions. No Certificate of Compliance shall issue for any lot until evidence of such deed restriction satisfactory to the Commission has or will be made.
- (11) Permanent markers. All lines beyond which no disturbance will be permitted within the project site shall be shown on a plan to be recorded and shall be marked on location by permanent markers and such bound markers as the Commission may reasonably require.

(12) Replication. Replication areas, when permitted as part of a required planting plan, must be large enough and have sufficient depth and breadth to be self sustaining. It shall be presumed, subject to rebuttal by the applicant, that unless a replication area is at least three times the area of the resource area lost, a minimum of 5,000 square feet; with a general width not greater than two times its general length; surrounded by natural buffer areas or resource area; and has a hydrology that is contiguous with existing resource areas; it will not be self sustaining. A specific grading, soil establishment, and planting plan must be submitted to and approved by the Conservation Commission.

(13) Plant species. In order to curb the spread of invasive and nonindigenous plant species, planting within any Resource Area or Buffer Zone, when permitted, must not include any invasive or nonindigenous plants. Further, the Commission discourages the planting of such species in any area, whether a Resource Area, Buffer Zone or otherwise. Before any planting may take place within a Resource Area or Buffer Zone, a specific plan must be submitted to and approved by the Conservation Commission.

(14) Overlay standards. The standards of this Subsection M are in addition to and not in substitution of the other standards applicable to projects under the Bylaw and this chapter, including those relating to tree filter zones and replication.

(15) Effective date. The provisions of this Subsection M shall be effective as of June 19, 1996.

#### **§ 263-6. Definitions.**

The following definitions shall apply in the interpretation and implementation of this chapter. For terms not defined herein, the definitions of the MA Wetland Regs at 310 CMR 10.00 et seq, as amended, shall apply:

#### **ALTER**

Includes, without limitation, the following actions when undertaken within 100' of any Resource Areas subject to this chapter:

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. Modification of drainage or other disturbance of water level or water table.

D. Dumping, discharging or filling with any material which may degrade water quality or *composition*, including all pesticide or herbicide applications *and dumping of leaves, grass or wood chips*.

E. Driving of piles, erection of buildings or structures of any kind.

F. Placing of obstructions whether or not they interfere with the flow of water.

G. Destruction of plant life, including cutting of trees.

H. Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.

## **BANK**

That part of land adjoining any body of water which confines the water. The upper boundary of a Bank is the mean annual high-water level or first significant break in slope, whichever is lower. The lower boundary of a Bank is the mean annual low-water level. For perennial streams, the length of Bank which is proposed to be altered shall be measured on both sides of the stream, while for intermittent streams, the length of Bank shall be measured on one side of the stream.

## **BEACH**

An area of unvegetated unconsolidated organic or mineral soil adjacent to a Bank or Land Under Water. A Beach extends from the upper boundary of the adjacent Bank or Land Under Water to the point where the predominant surface substrate changes to bedrock or primarily vegetated soil.

## **BUFFER ZONE**

The area within 100' measured horizontally from any Beach, Bank, Vegetated Wetland (Bordering or Isolated), or Land Subject To Flooding *or Vernal Pool*.

## **COMMISSION**

The Conservation Commission of the Town of Dover.

## **DISTURBANCE**

The placement or excavation of soil, *leaves, grass, wood chips*, or grading, passage of heavy equipment, cutting or removal of vegetation or other activity which might result in the loosening of surface soils. Disturbance includes the application or discharge of any pesticide, herbicide, fertilizer, or chemical agent of any kind. Activities conducted by work parties working on foot and with hand tools only, associated with normal surveying practices or the installation and maintenance of erosion control fencing and haybales within a Buffer Zone, shall not be considered a "disturbance."

## **GROUNDWATER PROTECTION DISTRICTS**

WP, GW-1 and GW-2 are the designated Groundwater Protection Districts which are shown on the most recent map of said zoning district available from the Town of Dover.

## **LAND IN AGRICULTURAL USE**

Land in Agricultural use is defined by the Bylaw as any qualifying wetland within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, MGL c. 61A, §§ 1 through 5.

## **LAND SUBJECT TO FLOODING (BORDERING AND ISOLATED)**

**A. BORDERING LAND SUBJECT TO FLOODING** — An area which floods from a rise in a bordering water body or waterway. Bordering Land Subject to Flooding extends from the upper boundary of a Bank or Vegetated Wetland to the elevation of a one-hundred-year frequency flood. Where detailed flood studies have been completed, the flood elevation and boundaries shown on the most recent National Flood Insurance Program Flood Insurance Rate Maps shall be presumed to be correct, unless credible evidence to the contrary is presented. In the absence of such maps, the extent of Bordering Land Subject to Flooding shall be determined through appropriate calculations conducted by a registered professional engineer or other person whose qualifications are deemed appropriate by the Commission.

**B. ISOLATED LAND SUBJECT TO FLOODING** — An isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water to a volume of at least one-sixth-acre-foot and an average depth of at least six inches. The boundary of Isolated Land Subject to Flooding is the perimeter of the area which would be inundated during a 100-year frequency storm event, or the maximum extent of flooding observed or recorded in said area, whichever is larger. If drainage calculations are utilized in an effort to determine if a depression qualifies as Isolated Land Subject to Flooding, and/or to establish the boundary, said calculations shall consider groundwater as well as surface water runoff and must be performed by a registered professional engineer or other person whose qualifications are deemed acceptable by the Commission.

## **LAND UNDER WATER**

That portion of a water body or waterway which is located below the plane of mean annual low water.

## **NORMAL MAINTENANCE OR IMPROVEMENT OF LAND IN AGRICULTURAL USE**

This term is defined in the Bylaw. For further clarification, refer to 310 CMR 10.04. The term shall include:

A. Tilling practices customarily employed in the raising of crops.

B. Pasturing of animals, including such fences and protective structures as may be required.

C. Use of fertilizers, pesticides, herbicides and similar materials subject to Board of Health proceedings, including preapplication review, and other Town, state and federal regulations covering their use.

D. Grading or restoring of field ditches, subsurface drains, grass waterways, culverts, access roads and similar practices to improve drainage, prevent erosion, provide more effective use of rainfall or improve equipment operation and efficiency when conducted in order to improve conditions for the growing of crops.

## **PERSON**

Includes 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 agencies, public or quasi-public corporations or bodies, the Town of Dover and any other legal entity, its legal representatives, agents or assigns.

## **QUALIFYING WETLAND**

Inland fresh water lakes, ponds, streams, and areas which are seasonally flooded basins or flats or inland swamps, marshes or wet meadows.

## **SHALLOW SLOPE**

A slope less than 33%. For purposes of this definition, the "pitch" of a slope shall be measured as the vertical change between the average elevation of the wetland and the average elevation at the outer edge of the portion of the Buffer Zone where work is proposed, divided by the average horizontal distance between the wetland boundary and the outer edge of the proposed work zone within that area of Buffer Zone.

## **STEEP SLOPE**

A slope greater than 33%. For purposes of this definition, the "pitch" of a slope shall be measured as the vertical change between the average elevation of the wetland and the average elevation at the outer edge of the portion of the Buffer Zone where work is proposed, divided by the average horizontal distance

between the wetland boundary and the outer edge of the proposed work zone within that area of Buffer Zone.

## **STRUCTURE**

Any building, foundation, road, driveway, wall, fence or other man-made article placed either permanently or semi-permanently in or on the ground.

## **VEGETATED WETLANDS: BORDERING AND ISOLATED**

Includes swamps, marshes, bogs and wet meadows. They are areas where the soils are annually saturated by surface or ground water for a significant portion of every growing season (i.e., wetland hydrology exists) and where there is a predominance of plant species adapted to these conditions. Evidence of wetland hydrology includes but is not limited to hydric soils, oxidized rhizospheres, pore linings, drift lines, drainage patterns, and free water or saturation within 12 inches of the soil surface for a prolonged period during the growing season. The boundary of Vegetated Wetlands is defined below.

A. "Bordering Vegetated Wetlands" are those Vegetated Wetlands which border on and/or have a hydrologic outlet during a one-year frequency storm event to a stream, lake or pond. The presence of a defined channel, culvert, storm drain or other natural or man-made structure or feature which serves to channel water within or away from a Vegetated Wetland shall be deemed sufficient evidence that the area should be designated a Bordering Vegetated Wetland. In the lack of clear evidence regarding the presence of a hydrologic connection, the Commission may, at its discretion, rely on drainage calculations of the likely extent of surface water inundation, and therefore the presence of a hydrologic outlet, to determine whether a Vegetated Wetland is Bordering or Isolated. Said calculations shall consider groundwater as well as surface water runoff and must be performed by a registered professional engineer or other person whose qualifications are deemed acceptable by the Commission.

B. "Isolated Vegetated Wetlands" are those Vegetated Wetlands which do not border a stream, lake or pond. Some Isolated Vegetated Wetlands exist in a topographic depression, either natural or man-made, which prevents water from leaving the depression except by infiltration or by overflow of surface water during rainfall events of a magnitude greater than a one-year frequency storm, Other Isolated Vegetated Wetlands exist on areas that may be flat or sloping, and have wetland hydrology that is the result of shallow groundwater and/or surface water.

C. The boundary of a Vegetated Wetland is the line below which 50% or more of the vegetational community consists of wetland plant species. For purposes of this definition, all species listed as facultative or wetter on the most recent applicable United States Fish and Wildlife Service Wetland Plant List, as



amended, or individual plants which exhibit growth forms or adaptations indicative of saturated soils, are presumed to be wetland plant species. This presumption may be overcome by a clear showing to the contrary. In the event of cutting of vegetation, filling, excavation, or other disturbance to a site which makes the above boundary delineation criterion impractical, the Commission may, at its discretion, utilize or allow the use of topography, indicators of hydrology, plant community composition in nearby unaltered areas, and soil characteristics in determining the boundary of a Vegetated Wetland that likely would have existed in the absence of the disturbance.

For an area to qualify as a Vegetated Wetland, one or more indicators of wetland hydrology must be present over at least part of the area. For an Isolated (non-bordering) wetland to qualify as Isolated Vegetated Wetland, it must encompass an area of at least 400 square feet based upon the delineation criterion above. Alternatively, one or more isolated wetlands that exist in an ecologically related cluster and have an aggregate area of 1,000 square feet or greater, collectively qualify as Isolated Vegetated Wetland.

#### **VERNAL POOL**

A confined basin depression which, at least in most years, holds water for a minimum of 2 continuous months during the spring and/or summer, and which is free of adult fish populations. The Commission may rely on past, observations, engineering calculations or other factors in determining the existence or extent of a Vernal Pool. A Vernal Pool may be any size. The boundary of a Vernal Pool shall be the annual average high-water level determined from available evidence, or engineering calculations, if required in the Commission's discretion. All Vernal Pools shall be protected as part of the resource area with a 100' no disturb setback within the 100' buffer zone.

#### **WATER DEPENDENT USES**

Those uses and facilities which require direct access to, or location in, inland waters and which therefore cannot be located away from said waters, including but not limited to: marinas, public recreational uses, navigational and commercial fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an upland site, crossings over or under water bodies or waterways (but limited to railroad and public roadway bridges, tunnels, culverts, as well as railroad tracks and public roadways connecting thereto which are generally perpendicular to the water body or waterway), and any other uses and facilities as may further hereafter be defined as water-dependent in 310 CMR 9.00.

**WETLAND RESOURCE AREA**

Includes any Bank, Beach, Land Under Water, Land Subject to Flooding (Bordering or Isolated), Vegetated Wetland (Bordering or Isolated) or Vernal Pool within the Town of Dover. Definitions of the various Wetland Resource Areas are provided within this chapter, or in 310 CMR 10.00, if not provided herein.