* Boathouse/ boat canopy discussion

Selectman Kidder said as long as it is noticed, any zoning amendment can be put on the warrant.

Ms. McEnrue suggested the Sheehans draft the language they would like to see and then submit it to the Planning Board for review.

Boathouse Discussion

Mr. Sheehan said he also wanted to discuss another issue having to do with boathouses and the difference between a closed and partially enclosed structure. There is a question of whether a canopy is enclosed or partially enclosed.

Selectman Kidder said she believes a canopy over a boat is the same as putting a canvas cover over a boat. She did not see a canopy as being a boat house. Ms. Kidder noted that the boat canopy issue at 179 South Cove Road, was discussed at the recent Board of Selectmen meeting, and a memo was prepared by Kim Hallquist dated June 28, 2015 on this issue. Ms. Kidder said she stand by her decision that this is not a boathouse.

Mr. Sheehan commented that the two persons who introduced the proposed change to the definition of boathouse which was amended in May 2014 were quite certain that the canopy over a boat should be considered a boathouse.

Chair Helm suggested that they may want to consider offering some draft language to amend the definition of boathouse, if they believe it needs further clarification.

Overlay Districts

Ms. Andrews said she would like to be notified when the Planning Board is talking about the overlay districts. Chair Helm said everything is posted online but they would let her know when they would plan to discuss the overlay districts.

Code Enforcement

Mr. Gorman said it didn't appear that enforcement is being done through the Selectmen. Chair Helm opined that lately the Selectmen have been dealing quite a lot with enforcement. Selectman Kidder noted that when an issue is brought forth to the Town, Ms. Hallquist and/or Ms. St. John go out to the property immediately. Ms. Kidder explained that they cannot, however, go onto the property without permission from the landowner.

Mr. Gorman felt that there should be a regular process of follow-up for decisions made by the Selectmen and they shouldn't wait for people to notify the town that something is happening that shouldn't be.

Selectman Kidder said if that was the case, another individual would need to be hired. They would need to have an engineering background, have experience with surveys, etc. She felt it was a valuable idea but noted that Ms. St. John simply does not have the time to do this. It would

* Boat canopy

town will likely have only one choice for insurance, Primex, as the largest other municipal insurance carrier. She noted that the town uses Primex currently for Worker's Comp insurance, but found their rates for property-liability rates significantly higher than PLT. She noted that having more competition is better for the town, and recommended the Board support PLT's request. A copy of a draft letter was distributed.

MOTION WAS MADE (Peter Bianchi) AND SECONDED (Janet Kidder) to draft a letter of support to Property-Liability Trust requesting that the company remain as viable as possible in order to continue serving the public sector.

There was brief discussion. The only concern raised was that it might sound as if the town just did not like Primex. Ms. Hallquist responded that the town uses Primex for other insurance and is very pleased with their service, this is about having competition and the best possible price for the town. Chair Rollins clarified that the issue has to do with risk pools and the current insurance environment; the Board is just sending a letter of support to allow them to continue to write insurance. Selectman Bianchi commented that competition is a good thing. Chair Rollins agreed, and recommended that the letter express that sentiment

THE MOTION WAS APPROVED UNANIMOUSLY.

Discuss potential zoning violation at 179 South Cove Road - canopy over boat

There was no one present at the meeting to represent the residents of 179 South Cove Road. Ms. Hallquist explained that the potential violation - a canopy placed over a boat - was reported to the Town and a letter was sent to the property owner seeking additional information. The property owners, Tyler & Kimberly Woolson, submitted a picture of the structure. The property owners received State DES permits and did not believe that town permits were needed. Ms. Hallquist noted that the property owners have reviewed the zoning ordinance and do not believe their boat canopy meets the definition of boathouse because it is not "enclosed or partially enclosed, as it has no sides, only a roof.

Selectboard members debated the definition of a "canopy" and questioned how it might apply to the zoning ordinance. Ms. Hallquist commented that if the canopy in question was permanent, the state would consider it a boathouse; however, the state allows temporary structures, with or without sides. The structure does not violate state rules because it is temporary. Ms. Hallquist noted that in contrast, the town definition does not differentiate between temporary or permanent. She referred the Board to the town's zoning definition at Article III section 23:

> *"An enclosed or partially enclosed accessory structure located in or over a body of water or located over a dredged inlet and designed for the use and storage of private watercraft and/or marine-related equipment."*

She noted that the Board must decide whether the structure in question meets the definition of boathouse. She noted that she looked into the definition of "enclosed" and it appears to mean a structure with sides, that a structure with just a roof would not be considered to be enclosed or partially enclosed. Selectman Bianchi asked how many sides a canopy had to have to consider it enclosed and Ms. Hallquist responded that she thought it had to have at least one side to deem it "partially enclosed." Selectman Bianchi stated that the Board has to go with what is on the books. Selectman Kidder commented that she thought a canopy was just an awning over a boat. Ms. Hallquist responded that if it was a canvas awning with sides on it, it would meet the definition of boathouse for the New London zoning ordinance and would not be allowed, even if it was a temporary structure, as the town does not distinguish between temporary or permanent.

Ms. Hallquist explained that for the Board to see the structure as a violation, it would have to find that "enclosed or partially enclosed" is met with a roof only structure. She noted that she did not believe the structure met the town's definition because it has no sides, and thus is not "enclosed or partially enclosed". Chair Rollins asked if the canopy was obstructing any neighbors and the answer was no. Selectman Kidder noted it was not a zoning violation in her opinion. Selectman Bianchi disagreed and thought it might be as it was against the intent of the ordinance; he observed that this structure was exactly the type of thing the town didn't want to see popped up all over the lake. Chair Rollins feels the Board needs to look at the zoning ordinances and make sure they are clear. She said one of the differences with the state regulations is the factor of permanency.

MOTION WAS MADE (Janet Kidder) AND SECONDED (Peter Bianchi) that no violation has occurred at 179 South Cove Road because the structure in question is not "enclosed" or "partially enclosed".

MOTION PASSED, with Janet Kidder and Nancy Rollins voting yes; Peter Bianchi voted no.

Selectmen Kidder said she would mention this discussion to the Planning Board at their next meeting.

Zoning violation at 91 Herrick Cove/Kozlowski Property

Peter Schiess, of Landforms, Ltd., the landscaping company performing the work at 91 Herrick Cove, was present at the meeting to discuss the cease and desist order issued against the property. The contractor said that if anything at that site was done incorrectly, the homeowners had nothing to do with it; the responsibility was his. He noted that every permit submitted was approved by the State of New Hampshire. Selectman Kidder asked him if he had looked at the New London Zoning Ordinance before beginning the work. Mr. Schiess replied that he had received permission to build a walkway. The deck, which was previously made of impervious material, was renovated as a patio that is now pervious, which will help to contain water.

Mr. Schiess noted that the only thing he can think of that might be a problem was that the company did use equipment to put in a walkway down at the water. He maintained that the State allows a 12-foot section of land to be disturbed to do this type of work as long as it will be replanted at the end of the project. His company plans to replant the entire area, with either bark mulch or lawn, but this area is outside the 50-foot buffer limit. The walkways are within required limits. He noted that he did cut a tree without a town permit and he would take care of that by seeking a permit, but stressed that there are plenty of points already so the reduction of one tree does not bring them under the limit.

Selectman Bianchi explained that Mr. Schiess should have obtained a permit from the Town of New London as well. Mr. Schiess responded that he was not aware of that fact. Selectman Bianchi noted that town regulations are often different from state regulations. Mr. Schiess said he had gotten a Shore land PBN (permit by notification), tree cutting plan, erosion, square footages, and the state was more than happy to say go ahead because the homeowners were changing from impervious structures to pervious. He really is not sure what the complaint is. He noted his crew is now finishing up with the trees.

Chair Rollins inquired again as to whether Mr. Schiess had submitted any paperwork on this project to the New London Planning Board. Mr. Schiess noted that he was not aware that he should go to the Planning Board. Selectman Kidder clarified that homeowners or their representative should go before the Planning Board and let them ask questions about the work being proposed. The Zoning Administrator is always available by phone or in person, in case there might be conditions that have to be met.

MEMO

To: Selectmen
From: Kim Hallquist, Town Administrator
Date: June 28, 2015
RE: Boat canopy at 179 South Cove Road

The Town was alerted to a potential zoning violation at 179 South Cove Road: a structure was installed that might be considered to be a boathouse, which are not allowed. A letter was sent to the property owners who responded in a timely manner. Property owner Tyler Woolson stated that he was surprised to receive the town's letter as he felt that his boat canopy was properly permitted, having gone through extensive permitting with DES. I explained to him that in addition to DES permits, there are also town zoning regulations that must be followed.

You were previously provided with the picture as submitted by the property owners as well as the letter of zoning violation.

The Zoning regulation at issue here is the definition of boathouse, found at Article III, Section 23:

> **"An enclosed or partially enclosed accessory structure located in or over a body of water or located over a dredged inlet and designed for the use and storage of private watercraft and/or marine-related equipment."**

Mr. Woolson stated that he felt that his canopy did not meet this definition as it is not enclosed or partially enclosed. As stated more fully below, I agree with his interpretation and thus recommend that the Selectmen find that it is not a boathouse in violation of the zoning ordinance.

Although this canopy is clearly "located in or over a body of water" and is "designed for the use and storage of a private watercraft", there are two other elements that must be present in order to be considered a boathouse: whether it is (1) "an enclosed or partially enclosed" accessory structure and (2) an accessory structure.

1. **Is it an enclosed or partially enclosed structure?**

<u>One interpretation is that to be enclosed or partially enclosed, a structure must have more than just a roof, it must have sides.</u>

The on-line *Merriam-Webster Dictionary* defines enclose as: to surround (something); to put something around (something); to include (something) with a letter or in a package; to close in: surround; to fence off (common land) for individual use; to hold in: confine.

On-line *Dictionary.com* defines enclosed as: to shut or hem in; close in on all sides; to surround, as with a fence or wall; to insert in the same envelope, package, or the like; to hold or contain.

Blacks Law Dictionary defines enclose: to surround or encompass; to fence or hem in on all sides; to place (something) in a parcel or envelope.

It is reasonable to conclude that in order for a structure to be enclosed, or partially enclosed, it must have sides.

Another interpretation is that a roof, with no sides, could be considered to be a structure that is enclosed or partially enclosed.

A roof-only structure could be considered to "enclose or partially enclose" if the element of surrounding something is not necessary to meet the definition, or, alternatively, that a roof encloses (surrounds) the top, but not the sides and thus meets the element of "partially encloses".

The on-line *Merriam-Webster Dictionary* defines roof as: the cover or top of a building, vehicle, etc.; the top of the inside of a tunnel, cave, etc.; the top of the inside of your mouth.

I could not locate any sources that suggest that "enclose or partially enclosed" could be met with only a roof; definitions found suggest that it means to surround, as in to keep things from moving horizontally without regard to whether those things could move in a vertical direction (note, I would not consider my search as exhaustive).

Given these definitions, it is unlikely that a structure containing only a roof could be considered to be a structure that is enclosed or partially enclosed.

State Definition of boathouse:

The State definition of boathouse is:

> *"Boathouse" means a docking facility which has a permanent roof with or without sides covering the boat slip or slips. (see Env-Wt 101.09)*

The State definition recognizes that sides are a consideration when thinking about boathouses, and the State definition makes clear that a boathouse can have sides or not; to be considered a boathouse it must be: (1) a docking facility (2) with a permanent roof. If the structure in question was permanent (ie: remained in place year-round) then it would be considered to be a boathouse under the state definition. However, since the New London definition requires a structure to be "enclosed or partially enclosed" (arguably, this means with sides of some sort) then it is reasonable to conclude that the structure in question does not meet New London's definition, even if it was a permanent structure[1].

2. Is it an accessory structure for purposes of the zoning ordinance definition

Building permits are required for "structures" as defined at Article III Section 149.
Even if the structure is not a boathouse, and thus is allowed under the zoning ordinance, it may require a building permit pursuant to Article XXVII Section 3,a. That provision requires a building permit before a structure is erected or relocated.

A. If the structure is NOT a boathouse, does it require a building permit?
Maybe not. A structure is defined as something that is "*constructed, placed or erected on the ground, or attached to something already existing on the ground...*" It is not clear whether this structure in question is attached to only the lakebed, or if it is attached to the dock. Additionally, it is not clear whether the dock itself is "on the ground". If the structure is attached only to the lakebed (if we agree that the lakebed is not the ground), it is reasonable to conclude that being in the water, attached to the lakebed, does not meet the definition of "erected on the ground".

If it is found that the structure is attached to the ground or attached to something already on the ground, then a building would be required unless otherwise exempted. The definition of structure includes, among other things: "*walls, decks, decks or platforms, concrete pads, or*

[1] The New London Zoning ordinance definition of boathouse does not differentiate between permanent and temporary.

*slabs, **temporary carports**, sheds over 40 square feet, ...* " (emphasis added). The structure could be argued to be like a "temporary carport" and thus if it meets the requirement for being on the ground, or attached to something on the ground, it would be reasonable to say a building permit is required. The closest possible argument that the structure is exempted from the building permit requirement would be to say the structure is a : *tent[s] used for....and temporary functions and gatherings.* It is more likely that the structure in question should be classified as like a carport and not like a tent.

B. If the structure IS a boathouse, would it need a building permit?
If the structure is a boathouse, then whether it is attached to the ground is moot given that the definition of boathouse provides that the structure is in the water, so it would appear that the definition of "structure" is expanded under the definition of "boathouse" and being attached to the ground is not required, instead, it need only be in the water.

Summary

As discussed above, I believe New London's zoning ordinance definition of boathouse requires, among other things, that there be sides of some sort – so as to satisfy the requirement of "enclosed or partially enclosed" and that a roof-only (canopy) at issue here does not meet the definition of "boathouse" and thus is not in violation of the zoning ordinance.

I note that I asked John Wilson, who was instrumental in crafting the definition of boathouse at issue here (it was approved by voters in May 2014) if he felt that the structure in question constituted a boathouse for purposes of the New London Zoning Ordinance and he said that in his opinion, the structure does fall under the definition of boathouse, and thus is not allowed by Article XVI Section C (1).

The issue of whether a building permit is required is not entirely clear, as to be a structure (and thus require a building permit) the item must be "on the ground" or attached to something that is on the ground.[2]

I have informed Mr. Woolson that this issue will be brought before the Selectmen on Monday evening. If the Board decides that a roof satisfies the requirement of "enclosed or partially enclosed" and is thus a boathouse, then Mr. Woolson will be informed that he is in violation of the Zoning Ordinance and must remove the structure. If he disagrees with that decision, he will be able to appeal it to the Zoning Board of Adjustment.

cc: Lucy St. John, Planning & Zoning Administrator

[2] Unless it is determined to be a boathouse, in which case the issue of being attached to the ground is moot because a boathouse is defined as something in [or over] the water. Attachment to the ground is presumably not required if something is in the water.

TOWN OF
NEW LONDON, NEW HAMPSHIRE
375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

June 15, 2015

Tyler & Kimberly Woolson
23 Ball Creek Hill
Atlanta, GA 30350

Re: Zoning violation at 179 South Cove Road

Dear Mr. & Mrs. Woolson:

It has been brought to the town's attention that a seasonal boathouse has been constructed at your 179 South Cove Road property. If so, we would like to make you aware that we have no record of issuing any permits for the structure and thus the placement of it on your property would be in violation of the New London Zoning Ordinance.

Article III, section 23 of the New London Zoning Ordinance defines boathouses as:

> An enclosed or partially enclosed accessory structure located in or over a body of water or located over a dredged inlet and designed for the use and storage of private watercraft and/or marine-related equipment.

Article XVI, section C, 1 prohibits the construction of new boathouses. Maintenance or replacement of existing boathouses which will not increase the use, size or footprint of the structure is permitted subject to required state permits, standards, and regulations.

Please be in touch with me at your earliest convenience to discuss this matter further. I can be reached by telephone at 603-526-4821 ext. 13 or by e-mail: townadmin@nl-nh.com. If you plan to be in town, I would also be happy to meet with you.

Sincerely,

Kimberly A. Hallquist
Town Administrator

cc: Board of Selectmen
Lucy St. John, Planning & Zoning Administrator

TOWN OF
NEW LONDON, NEW HAMPSHIRE
375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

July 1, 2015

Tyler & Kimberly Woolson
23 Ball Creek Hill
Atlanta, GA 30350

Re: Finding of no zoning violation at 179 South Cove Road

Dear Mr. & Mrs. Woolson:

The Board of Selectmen discussed the boat canopy at your 179 South Cove Road at their meeting on June 29, 2015. The Board determined that the structure as shown in the picture you provided to the Town does not meet the definition of boathouse found at Article III section 23 in that it does not have any sides, and thus is not "enclosed or partially enclosed."

Any person with standing may appeal this decision to the Zoning Board of Adjustment if they disagree with the Board's interpretation. Any such appeal must be filed within 20 days of the Board's decision. If such an appeal is filed, you will be contacted.

Your quick attention to our request for information in this matter was very much appreciated as it allowed the Town to complete its investigation of the potential zoning violation in a timely manner.

Sincerely,

Kimberly A. Hallquist
Town Administrator

cc: Board of Selectmen
Lucy St. John, Planning & Zoning Administrator

Boathouses

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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Env-Wt 101.07 "Bank" means the transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope, or, for a wetland, where a line delineated in accordance with Env-Wt 301.01 indicates a change from wetland to upland.

Source. (See Revision Notes #2 and #3 at chapter heading for Env-Wt 100) *#8340, eff 4-25-05*; renumbered by #9713 (from Env-Wt 101.06 to Env-Wt 101.07)

Env-Wt 101.08 "Beach" means a sloping shore of a surface water body consisting of sand, gravel, or cobble extending from adjacent upland/wetland to or in a surface water body.

Source. (See Revision Notes #2 and #3 at chapter heading for Env-Wt 100) *#8340, eff 4-25-05*; renumbered by #9713 (from Env-Wt 101.07 to Env-Wt 101.08)

Env-Wt 101.09 "Boathouse" means a docking facility which has a permanent roof with or without sides covering the boat slip or slips.

Source. (See Revision Notes #2 and #3 at chapter heading for Env-Wt 100) *#8340, eff 4-25-05*; renumbered by #9713 (from Env-Wt 101.08 to Env-Wt 101.09)

Env-Wt 101.10 "Boat slip" means "boat slip" as defined by RSA 482-A:2,VIII, namely:

"(a) On water bodies over 10,000 acres, means a volume of water 25 feet long, 8 feet wide, and 3 feet deep as measured at normal high water and located adjacent to a structure to which a watercraft may be secured.

(b) On water bodies of 10,000 acres or less, a volume of water 20 feet long, 6 feet wide, and 3 feet deep as measured at normal high water mark and located adjacent to a structure to which a watercraft may be secured."

Source. (See Revision Notes #2 and #3 at chapter heading for Env-Wt 100) *#8340, eff 4-25-05*; renumbered by #9713 (from Env-Wt 101.09 to Env-Wt 101.10)

Env-Wt 101.11 "Bog" means a wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

Source. (See Revision Notes #2 and #3 at chapter heading for Env-Wt 100) *#8340, eff 4-25-05*; renumbered by #9713 (from Env-Wt 101.10 to Env-Wt 101.11)

Env-Wt 101.12 "Breakwater" means a structure extending generally perpendicular from the shore into surface waters of the state that is designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.

Source. (See Revision Notes #2 and #3 at chapter heading for Env-Wt 100) *#8340, eff 4-25-05*; renumbered by #9713 (from Env-Wt 101.11 to Env-Wt 101.12)

Env-Wt 101.13 "Bulkhead" means a vertical retaining wall built along a waterfront to contain fill.

Source. (See Revision Notes #2 and #3 at chapter heading for Env-Wt 100) *#8340, eff 4-25-05*; renumbered by #9713 (from Env-Wt 101.12 to Env-Wt 101.13)

Env-Wt 402.09 Structures Disallowed.

(a) Boathouses located in or over the waters shall not be approved.

(b) A boathouse located over a dredged inlet within the property of the applicant shall not be approved unless the applicant has shown through data supplied to the department that the following conditions have been met:

(1) The proposed construction shall not adversely impact the stability of the shoreline;

(2) The proposed construction sequence and techniques shall prevent water quality degradation;

(3) The proposed construction shall be performed in such a manner so as to prevent adverse impact to existing movements of currents or sediment along the shore;

(4) Alternative docking and storage solutions with less environmental impact do not exist; and

(5) The proposed construction shall not impact wetlands, streams or similar areas.

(c) Structures over the waters shall not be allowed for the transfer of any activities usually associated with land, including but not limited to sunbathing and picnicking.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.09) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.10 Stairways. Stairways for access to or from legally-constructed docks shall be allowed as part of the dock permitting process, provided:

(a) The stairway width does not exceed 6 feet; and

(b) Construction over the bank does not require regrading or recontouring.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.10) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 606.08 Boardwalk Criteria.

(a) Projects shall be elevated such that no area under the structure shall be completely shaded from the sun.

(b) Superstructures of projects shall be of slatted construction to allow circulation of air and water, and allow the penetration of light.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.13) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.09 Trails, Roadways, Access, and Boat Ramps.

(a) Projects shall be of the minimum size necessary to bear expected vehicular traffic.

(b) Projects shall be of the lightest construction possible and elevated on piles where possible.

(c) Access projects shall be temporary.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.14) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.10 Boathouses and Shoreline Slips. Boathouses in or over the waters and wetlands and slips dug into the shore shall not be approved.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5740, eff 11-23-93

New. #8341, eff 4-25-05 (from Env-Wt 606.15) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

PART Env-Wt 302 CRITERIA FOR EVALUATION

Env-Wt 302.01 Statement of Purpose.

(a) For tidal wetlands, need shall be demonstrated by the applicant prior to department approval of any alteration of tidal wetlands. No project shall be allowed that intrudes into a tidal wetland unless the department finds it to be for the public good as set out in RSA 482-A:1. Preserving the integrity of salt marshes and other tidal wetlands shall be given highest priority by the department, because of the high productivity and rarity of such wetlands and the difficulty in restoration of value and function for those environments.

(b) For nontidal wetlands, need shall be demonstrated by the applicant prior to department approval of any alteration of nontidal wetlands. The department shall place emphasis on preserving bogs and marshes. This priority shall be based on the rarity of those environments and the difficulty in restoration of value and function for those environments.

(c) For tidal buffer zones, need shall be demonstrated by the applicant prior to department approval of any alteration of undeveloped tidal buffer zone. The department shall place its emphasis on preserving the ability of the buffer area to enhance habitat values in the adjoining tidal wetland and to protect tidal environments from potential sources of pollution.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 302.02 Department Action. The criteria in this part shall be used to meet the purpose expressed by RSA 482-A:1 when determining whether to approve, approve with conditions, approve-in-part with conditions, or deny applications.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 302.03 Avoidance, Minimization, and Mitigation.

(a) The applicant shall submit a statement describing the impact of the proposed project design and provide evidence which demonstrates that, subject to (b) below:

(1) Potential impacts have been avoided to the maximum extent practicable; and

(2) Any unavoidable impacts have been minimized.

(b) For all permanent impacts that will remain after avoidance and minimization measures have been addressed, the applicant shall submit a compensatory mitigation proposal in accordance with Env-Wt 800, unless exempted by (c) below.

(c) An applicant shall not be required to submit a compensatory mitigation proposal only if:

(2) The alternative proposed by the applicant is the one with the least impact to wetlands or surface waters on site;

(3) The type and classification of the wetlands involved;

(4) The relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;

(5) The rarity of the wetland, surface water, sand dunes, or tidal buffer zone area;

(6) The surface area of the wetlands that will be impacted;

(7) The impact on plants, fish and wildlife including, but not limited to:

a. Rare, special concern species;

b. State and federally listed threatened and endangered species;

c. Species at the extremities of their ranges;

d. Migratory fish and wildlife;

e. Exemplary natural communities identified by the DRED-NHB; and

f. Vernal pools;

(8) The impact of the proposed project on public commerce, navigation and recreation;

(9) The extent to which a project interferes with the aesthetic interests of the general public. For example, where an applicant proposes the construction of a retaining wall on the bank of a lake, the applicant shall be required to indicate the type of material to be used and the effect of the construction of the wall on the view of other users of the lake;

(10) The extent to which a project interferes with or obstructs public rights of passage or access. For example, where the applicant proposes to construct a dock in a narrow channel, the applicant shall be required to document the extent to which the dock would block or interfere with the passage through this area;

(11) The impact upon abutting owners pursuant to RSA 482-A:11, II. For example, if an applicant is proposing to rip-rap a stream, the applicant shall be required to document the effect of such work on upstream and downstream abutting properties;

(12) The benefit of a project to the health, safety, and well being of the general public;

(13) The impact of a proposed project on quantity or quality of surface and ground water. For example, where an applicant proposes to fill wetlands the applicant shall be required to document the impact of the proposed fill on the amount of drainage entering the site versus the amount of drainage exiting the site and the difference in the quality of water entering and exiting the site;

(14) The potential of a proposed project to cause or increase flooding, erosion, or sedimentation;

(15) The extent to which a project that is located in surface waters reflects or redirects current or wave energy which might cause damage or hazards;

(16) The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland or wetland complex were also permitted alterations to the wetland proportional

to the extent of their property rights. For example, an applicant who owns only a portion of a wetland shall document the applicant's percentage of ownership of that wetland and the percentage of that ownership that would be impacted;

(17) The impact of the proposed project on the values and functions of the total wetland or wetland complex;

(18) The impact upon the value of the sites included in the latest published edition of the National Register of Natural Landmarks, or sites eligible for such publication;

(19) The impact upon the value of areas named in acts of congress or presidential proclamations as national rivers, national wilderness areas, national lakeshores, and such areas as may be established under federal, state, or municipal laws for similar and related purposes such as estuarine and marine sanctuaries; and

(20) The degree to which a project redirects water from one watershed to another.

(b) For all minimum impact projects, except for recreational mineral dredging activities permitted in accordance with Env-Wt 504, the applicant shall demonstrate by plan and example that the following factors have been considered in the project's design in assessing the impact of the proposed project to areas and environments under the department's jurisdiction:

(1) Type of wetland to be impacted;

(2) Surface areas of wetlands impacted;

(3) Relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;

(4) The impact upon abutting owners pursuant to RSA 482-A:11, II; and

(5) Lack of alternatives with lesser wetlands and surface water impacts.

(c) In addition to the requirements of (a) and (b), above, the applicant shall demonstrate by plan and example that the following factors have been considered in the project's design in assessing the impact of the proposed project to areas in and adjacent to tidal wetlands including the tidal buffer zone:

(1) The extent to which a project impacts beach or tidal flat sediment replenishment and movement of sediments along a shore;

(2) The impact on a tidal wetland's ability to dissipate wave energy and storm surge; and

(3) The impact of project runoff on salinity levels in tidal environments.

(d) The department shall not grant a permit if:

(1) There is a practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;

(2) The project would cause or contribute to significant degradation of waters of the state; or

(3) The project will cause random or unnecessary destruction of wetlands.

(e) Unless a waiver is granted under Env-Wt 204, the department shall not grant a permit if:

(1) The project proposes fill of a wetland to achieve septic set back from wetlands to meet department or local requirements; or

(2) The requirements of Env-Wt 302.03 are not met or the applicant has failed to document consideration of factors as required in (a), (b), and (c), above.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by INTERIM #5400, eff 5-21-92 EXPIRED: 9-18-92; amd by #5548, eff 1-5-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); amd by #9132, eff 4-19-08; ss by #10367, eff 6-26-13

Env-Wt 302.05 After-the-Fact Application. Applications received after work is completed shall be subjected to the same review as any other application. Consideration of an after-the-fact application shall not preclude or limit the department's exercise of any enforcement powers it possesses.

Source. #8341, eff 4-25-05 (formerly Env-Wt 204.06) (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

PART Env-Wt 303 CLASSIFICATION OF PROJECTS

Env-Wt 303.01 Assignment of Classification. Projects shall be classified according to the criteria of this part.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 303.02 Major Projects. A major project shall be any project that meets any one or more of the following criteria:

(a) Projects in sand dunes, tidal wetlands, or bogs, except for repair of existing structures pursuant to Env-Wt 303.04(v);

(b) Projects within 100 feet of the highest observable tide line that alter any bank, flat, wetlands, surface water, or undeveloped uplands, except for repair of existing structures pursuant to Env-Wt 303.04(v);

(c) Projects that involve alteration of nontidal wetlands, nontidal surface waters, and banks adjacent to nontidal surface waters in excess of 20,000 square feet in the aggregate;

(d) Construction or modification of major docking system defined by Env-Wt 101.56, and any dock adjacent or attached to a breakwater;

(e) Construction or modification of retaining walls lakeward of the natural shoreline and below the natural mean high water level of great ponds, or lakeward of the normal shoreline and below the artificial

(e) The construction has been modified to meet the considerations specified in Env-Wt 401.02, Env-Wt 402.12, and Env-Wt 402.13.

Source. #3075, eff 7-26-85; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.15) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.15 Commercial Use - Municipal Review.

(a) Any new docking facility or additional docking or similar improvement, excluding repairs or replacements without expansion, that has any portion under commercial use shall comply with all local land-use controls for marinas, or appropriate non-residential land-use classification.

(b) The applicant shall submit a copy of the local permit or approval, or a letter from the applicable local land use board or local governing body indicating that a permit or approval is not required under local regulations, to the department with the application or otherwise prior to the department making a decision on the application.

(c) Local regulations shall not restrict the sole and exclusive authority of the state to permit construction over, or dredge and fill in, great ponds or state-owned water bodies. If a municipality forwards a denial or does not respond to the department, the applicant may request a public hearing to waive the provisions of this section.

Source. #3075, eff 7-26-85; ss by 4038, eff 4-10-86; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.16) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.16 Marinas - Design Standards.

(a) Applicants for marina construction or expansion shall provide the department with evidence showing compliance with the following design standards:

(1) All marinas shall be designed to:

a. Minimize visual impact;

b. Avoid damage to the environment due to leakage or spills of fuels, lubricants, waste products, or other pollutants; and

c. Not represent a hazard to navigation or interfere with abutting property values; and

(2) The standard for marinas shall be one slip for every 25' of shoreline. More slips shall be permitted if the marina is enclosed by land of the applicant, or other evidence is provided to the