

Tidal Wetlands Guidance Document
Residential Catwalks and Docks

DFW 6- Residential Catwalks and Docks

I. Summary:

This document provides guidance on the issuance of permits for residential open pile catwalks/docks and floating docks in the Tidal Waters of the Marine and Coastal District.

II. Purpose:

The purpose of this guidance is to promote a consistent and streamlined approach for permit evaluation while recognizing the need to minimize construction related impacts.

III. Background:

As with other coastal activities, the construction and use of private residential docks can create a range of impacts. There is evidence that docks reduce light penetration, alter patterns of water flow, introduce chemicals into the marine environment, and impact public access and navigation. The vessels using docks also affect natural resources and human uses to varying degrees.

A substantial percentage of the Tidal Wetland regulatory workload is devoted to applications to construct or reconstruct docks, catwalks and or piers. Coastal developmental pressures, boat usage, limited public docking facilities, public perceptions that that private docks are a “normal “ part of the coastal landscape and also increase property values are among some of the factors underlying the large number of applications the Department receives.

To assess potential impacts and regulatory status of catwalks docks and or piers, the Department has developed a set of guidelines that when assessed favorably will indicate that a project will likely meet the necessary standards for permit issuance. Development of these guidelines will help to avoid and minimize undue adverse impact on wetland resources, facilitate public access and navigation where appropriate and provide a more consistent approach to permit decision making with respect to these structures.

IV. Guidance:

This guidance applies to the following: The construction of open pile docks in all wetland areas. (6 NYCRR 661.5(b)(14))

Installing a floating docks less than 200 square feet if located in Coastal Fresh Marsh (FM), Intertidal Marsh (IM) and High Marsh or salt Meadow (HM).(6 NYCRR 661.(b)(16))

Installing a floating dock totaling 200 square feet or more in area in FM, IM and HM wetland areas. 6 NYCRR 661.5(b)(17)

Constructing one open pile catwalk/dock no greater than 4’ in width in all wetland area categories is considered a generally compatible use which requires a permit (GCP).

Constructing floating docks greater than 200 square feet in all areas with the exception of vegetated wetland categories is also GCP. A generally compatible use is one that is generally consistent with the particular type of wetland area and with the preservation, protection and enhancement of the present and potential value of tidal wetlands if undertaken in that area. The compatibility of a particular use depends on the particular location, design and probable impact of the proposed use. (6 NYCRR 661.5(a)(2)). Although deemed compatible, activities of this type must also meet the applicable standards for permit issuance. A permit will be issued if the proposed activity is compatible with preserving and protecting tidal wetlands in that the regulated activity will not have undue adverse impact on the wetlands values, is compatible with public health and welfare, is reasonable and necessary taking into account alternatives, water dependent use and whether or not the activity complies with use guidelines and developmental restrictions. (6 NYCRR 661.9(b))

Constructing floating docks greater than 200 square feet in vegetated wetlands is a presumptively incompatible use (PIP). A PIP use is one that shall be presumed not to be compatible with that type of area and with the preservation, protection and enhancement of the present and potential values of tidal wetlands if undertaken in that area. Activities of this type are also subject to the applicable standards for permit issuance as discussed in the paragraph above.

Generally, granting of a permit for a dock/catwalk ramp and float should take into account the overall conditions of the site in which the structure is proposed. Piers, docks and catwalks, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions, critical area resources such as eelgrass beds and fish habitats, processes such as currents and littoral drift and human and other use of the area. This document provides a set of guidelines which can assist staff in the evaluating the compatibility of a project with on-site conditions and facilitate consistency with meeting the standards for permit issuance.

Water depth- Generally, floats or fixed structures where boats will be moored should be located in a minimum water depth of -2.5 feet at Mean Lower Low Water (MLLW). . The method to ascertain water depth is defined below.

Water depth method- Depending on lot frontage, at least 3 depth profiles should be surveyed running roughly perpendicular to the shoreline. One should run generally along the proposed dock and the remaining two no more than 50' apart as measured from the first line along the proposed dock t. Existing depth in this area should be taken at a minimum of 10' apart along these lines with additional depth provided near the corners of all floats, piles etc and extend at least 30' beyond any part of that structure (floats, piles , etc).

The existing conditions survey shall also indicate lines of high and low water, edge of marsh and must bear the surveyors seal with date time, equipment used and any survey reference data (MLLW tidal benchmark data) used to determine site elevations.

All depths must be prepared and certified by a NYS licensed Land Surveyor, using either method:

- (1) standard bathymetric survey methods to depict depth contours. Depth must be referenced to the MLLW vertical datum as defined by NOAA, Center for Operational Oceanographic Products and Services. NOAA benchmarks that reference the MLLW vertical datum can be found at: http://tidesandcurrents.noaa.gov/station_retrieve.shtml. Depths shall be depicted on a signed sealed survey including date and time measurements were taken.
- (2) Measurements taken at MLWW with a sounding pole or survey rod. Depth can be taken at the date and time of MLLW (0.0) or at **non-** MLLW (0.0) days as defined by NOAA, Center for Operational Oceanographic Products and Services. NOAA daily tide predictions can be found at: http://tidesandcurrents.noaa.gov/tide_predictions.shtml?gid=62 . Tide chart used shall be included in submissions to the Department. If soundings are taken at **non-**MLLW (0.0) days the resulting depth values need to be clearly referenced to MLLW (0.0). Depths and verifiable tidal elevations for the date and time measurement were taken shall be depicted on a signed sealed survey.

Any measurements taken with a sounding pole or survey rod. The pole shall not be weighted and must have a disc (6" diameter) on the bottom to prevent any penetration into soft substrate.

Navigation- Generally, for navigation purposes, docks should minimize impacts to navigation and encompass no more than 25% of the width of the waterway.

Proper siting- Avoid placing structure over vegetated wetlands; try to use more disturbed areas of the property and a north/south orientation if possible. Structures should not be sited over submerged aquatic vegetation (SAV) beds. Provisions should be made for avoiding the docking or mooring of boats over SAV beds; placement and design should also minimize boat travel through the bed to minimize propeller impacts such as leaf shearing and sediment scouring.

Property lines- Docks and associated structures should not extend beyond property lines. Generally, 10' shall remain between the structure and the property line.

Dock, Catwalk Size- Generally, docks or catwalks for residential properties should not exceed 4 feet in width.

Structure Use- Docks and associated structures are water dependent structures to aid in attaining access to the water and for safe ingress/egress to vessels. Generally, the proposed use of these structures is not for dry storage of additional vessels or for other non water dependent uses.

Open grate decking- Open grate decking should be considered necessary when structures will traverse vegetated wetland areas (IM, HM and SAV beds). Open grate

decking should maximize light penetration, have at least 50% open space and be constructed a minimum of 4' above marsh grade. Decking for proposed docks adjacent to or near SAV beds should also be 5' above MHW elevation to minimize impacts.

Piling size- Typical piling sizes from 4"-10" in circumference should be considered for residential docks in any tidal wetland area (FM, IM, HM, SM and LZ). To minimize impacts to vegetated tidal wetlands, driving of piles or jetting so as not to disturb wetland areas should be used to install pilings.

Seasonal structures- Seasonal dock structures (those that may be removed during winter months and stored in the upland) can be considered. The applicant may, if they so choose remove the structures (docks, ramps and floats) to prevent ice damage, etc and store them in the upland. Permission to do so should be requested in the application. Seasonal dock structure storage shall not be stored in a tidal wetland area and reinstallation shall occur so as to minimize damage to tidal wetlands.

New dredging- New dredging, excavating or other alteration of the shoreline or underwater areas are generally not compatible with installation of docks. Maintenance dredging can be considered. Maintenance dredging is defined in the regulations as: "Excavation to restore the depths of underwater lands to elevations which are demonstrated to the reasonable satisfaction of the Department to have been lawfully in existence within 20 years preceding the date of application". (6 NYCRR 661.4 (r))

Treated Wood- The use of wood treated with pentachlorophenol or other wood treatment not specifically approved by the Department for use in wetlands and/or marine waters, is strictly prohibited in the construction of structures that will be in contact with tidal waters. Creosote or products containing creosote shall not be manufactured, sold or used in this state (Article 27, 27-2503). Pressure treated wood used for construction of in-water structures must have been treated with a preservative and must have undergone a treatment process approved (stamped or otherwise marked as certified) by the American Wood Preservative Association.

Short term construction impact mitigation- Generally, all projects should be required to have appropriate construction impact minimization, including but not limited to, appropriate upland or barge storage of equipment, limited impact to marsh by driving of pilings, low pressure jetting of pilings and no storage of floats in any wetland area.

Consistent with the surrounding area- When evaluating the totality of the proposal, consideration should be given to the surrounding area. If other docks are common within the surrounding area (adjacent and or nearby the proposed structure) and the proposed structure is consistent with other factors described in this guidance, the proposal would be generally compatible.

Public access- The public is entitled to unrestricted access along the shore water ward of the mean high water line ("Public Trust Doctrine"). Therefore, the Department will evaluate a proposed dock structure in these areas being mindful and protective of the public's rights while balancing the interests of access to the water by adjacent private

landowners. An applicant should consider public access when designing a proposed dock structure and ways in which it's impacts to public use and access can be avoided. Some examples considering public access include but are not limited to: siting in areas not restricting use and access below mean high water, allowance of public passage underneath and over structures.

“Exceptions to the General rule”- Some site specific circumstances may call for further evaluation of the factors and guidance discussed above. Below are typical examples of such circumstances.

Consideration of depth requirement (Large tidal range)

In certain bays with a large tidal range (7-9') (e.g. Northport area) the minimum recommended water depth may not be achievable without constructing a very long dock, resulting in significant intrusion into the embayment, significant ice damage that affect the structure and adjacent habitats. In such instances, provided the totality of site specific circumstances otherwise fit within the guidance factors discussed above, staff may consider minor alterations of the depth requirement in exchange for shorter structure. If depth of -2.5' MLLW is nearly attained, chocking of floats may be considered a mitigation alternative for achieving less than -2.5' MLLW depth. If possible, however, afixed pier with no float is a preferred method when minimum depths are not achievable as it alleviates any impacts associated with floating docks resting on or near the bottom. attainable.

Catwalks over fringing marsh to ladders

Often in areas of extreme low water (i.e. no water at low tide), applicants propose catwalks over the marsh for dinghy, canoe or kayak access only, but not for docking of boats. In such instances, provided the totality of site specific circumstances otherwise fit within the guidance factors discussed above, the minimum recommended depth requirement may be modified. Catwalks of this type are generally constructed as access over the marsh and not necessarily to the low water line. They do not have associated floats and as stated above, are not for the docking of motor boats, motorized personal watercraft and sail boats with deep drafts.

Compliance with local municipality requirements

Where local government entities have concurrent jurisdiction over proposed structures, staff must give primary consideration to DEC regulatory requirements, while cooperating with other involved agencies as much as is practicable. The applicant must seek a variance/permit or other relief (such as relief from the described guidance factors) from other involved agencies before, or concurrent with, submitting an application to DEC. The applicant should provide documentation to DEC (local application number, copy of local submission, etc. that such a local application/request is under review. Staff is encouraged to confer or otherwise coordinate with the representatives of other involved agencies to facilitate the development of a project which can be approved by all agencies. In most situations in which a project requires relief from more than one agency's

requirements (i.e. guidance standards or dock regulations as an example) compromise should be reached in which all of the involved agencies grant partial relief from their respective guidance standards or regulation. If the local municipality denies the variance or request for relief from standards, the applicant must provide documentation of the other agency's decision to support their request for the Department's approval. It is the applicant's responsibility to ensure that:

- All involved agencies have all the information necessary to make a decision on their respective applications / variance requests.
- Each involved agency is aware of the status of the project's application/ variance request at the other involved agencies.

When valuable habitat, special site designations and inconsistencies with guidance factors may result in denial of permit

Some of the estuaries surrounding Long Island have estuary management plans or other official habitat designations that recommend management actions and implementation of projects in support of protecting and restoring significant habitats threatened by pollution development and or overuse. When these supportive management plan positions/site designations are coupled with: site specific information such as the existence of valuable habitat; special site characteristics concerning the guidance factors discussed above indicate placement and usage would have adverse impact to the area (e.g., inappropriate water depth); inconsistency with the nature of the nearby area and the bisection of valuable habitats such as expansive marsh or SAV beds) the standards for permit issuance may not necessarily be attainable. An application with the following description is an example of a situation where a dock/catwalk might not be approvable. The application proposes to construct an open grate catwalk 4 x 120' long to mudflats, the seaward most 50-75' of the area to be traversed is high quality high marsh, with a band of fringing intertidal marsh and extensive shoal and mudflats. Staff observed birds and other wildlife utilizing the area, the marsh can be easily traversed by foot, traditional use of mooring is present in the area, the embayment is designated a significant fish and wildlife habitat, these habitats have been designated as significant under a NYS estuary management plan and the surrounding area generally contains very few docks.

IV. Responsibility:

The Regional Marine Habitat Protection Units and the Division of Environmental Permits are responsible for implementing this guidance document and the DFWMR Marine Habitat Section is responsible for maintaining the document.

V. Procedure:

The regional Marine Habitat Protection Units will implement the guidance. Division of Environmental Permits will make any Uniform Procedure Act determination that is required through the use of this guidance.

VI. References:

Environmental Conservation Law, Article 25
Environmental Conservation Law, Article 27, 27-2503

Tidal Wetland Land Use Regulations 6NYCRR Part 661

Kelty, R. and Bliven, S. 2003 *Ocean Program Decision Analysis Series No. 22*

Environmental and Aesthetic Impacts of Small Docks and Piers Workshop Report:
Developing a Science-Based Decision Support Tool for Small Dock Management, Phase 1: Status of the Science.