

Town of Falmouth - Proposed Wetlands Amendments – Regulatory Comparison Matrix – October 15, 2009

Proposed Amendment	Current Town Regulations	State Regulations/Rules	Federal Regulations	Rationale for Proposed Amendment
<p>Guiding principals:</p> <ul style="list-style-type: none"> •start with scientific principles and best management practices •inform ourselves about state, federal, and local regulations •maximize protection of resources while minimizing impacts on land owners •strive to be consistent with smart growth principles 				<ul style="list-style-type: none"> •Home rule grants authority for town to protect its resources at the local lever •Wanted science not politics to guide protection
<p>All projects will use the Development Design Process when wetlands are present.</p>	<p>Four-Step process applies to projects under Section 3.13, Resource Conservation Zoning Overlay</p>	<p>Generally consistent with state requirements.</p>	<p>Generally consistent with federal requirements.</p>	<p>Promotes smart growth principles and supports the avoidance, minimization and mitigation philosophy of the state and federal programs to all development types if the resource is present.</p>
<p>Replace current definition of wetlands with state’s definitions of wetlands of special significance, coastal wetlands, & freshwater wetlands.</p>	<p>Current town ordinance defines wetlands as either “high value” or “low value”. “High value” wetlands include: ponds, vernal pools, floodplains, very poorly drained soils, areas where more than 50% of the dominant plants in all strata are facultative wetland or obligate wetland plants.</p>	<p>Proposed change is consistent with state definitions.</p>	<p>Army Corps does not provide definition for ‘high value’ or “low value” wetlands.</p>	<p>Proposed definitions add clarity to terms & provide greater consistency with State rules. Current definitions are not consistent with functional assessment methods required by state & federal regulatory process.</p>

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Proposed Amendment - Exemptions	Current Town Regulations	State Regulations/Rules	Federal Regulations	Rationale for Proposed Amendment
<ul style="list-style-type: none"> • Site plan, subdivision, and private way applications that have had at least one (1) substantive review, as determined by the Planning Board, before the effective date of the ordinance. • Lots approved by the Planning Board and recorded at the Registry of Deeds prior to the effective date of the ordinance • Lots that lawfully existed prior to the effective date of this ordinance did not require Planning Board approval to be established, and where the existing or proposed primary use is residential. • Lots, including further divisions, in West Falmouth Crossing Master Planned Development District, Oceanview Retirement Community Overlay District, Tidewater Master Planned Development District, and Open Space Residential District. • Alterations of non-natural swales, ditches, impoundments or other man-made drainage improvements designed and maintained for stormwater management and which are associated with approved site plans or subdivisions, agriculture, farming, timber harvesting or forestry practices. • Cumulative alterations from the effective date of this ordinance that impact less than four thousand three hundred (4,300) square feet of freshwater wetlands that do not meet the criteria for wetlands of special significance. • Cumulative alterations from the effective date of this ordinance within the Highland Lake Overlay District that impact less than one-thousand (1,000) square feet of freshwater wetlands that do not meet the criteria for wetlands of special significance. 	<ul style="list-style-type: none"> • Ordinance allows for road crossings and utilities required for access to property • current exemptions are commercial uses, duplexes and multiplexes, • alteration & enlargements of single family dwellings & their accessory buildings in existence prior to date of ordinance (12/01) 	<ul style="list-style-type: none"> • Natural Resources Protection Act provides an exemption for agriculture & timber harvesting if meet specific standards. • Natural Resources Protection Act provides for alterations of wetlands, not of special significance, of up to 4,300 sq ft. 	<ul style="list-style-type: none"> • Small alterations meeting specific criteria can qualify for Programmatic General Permit. Must follow standard conditions of permit 	<ul style="list-style-type: none"> • Provides flexibility for applicants, while also considering protection of resource. • Recognizes need to access property. • Recognizes value of maintaining farming & timber harvesting activities

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Proposed Amendment - Limited Alterations	Current Town Regulations	State Regulations	Federal Regulations	Rationale for Proposed Amendment
<p>Alteration may be allowed for the following uses that provided the applicant demonstrates to the Planning Board that: (1) the proposed alteration is designed in accordance with the Development Design Process and; (2) provides compensation under Section 5.38.8, Compensation.</p> <ul style="list-style-type: none"> • the installation of utilities, road crossings, bridges, and culverts that are necessary to access the site, • development of lots in the BP, SB-1, MUC, VMU, CO, and Village Center Overlay districts, with compensation being required only for the area of the resource altered , or • Stormwater Management Facilities within one hundred (100) feet from the upland edge of a wetland of special significance if the applicant demonstrates that the proposed alterations provide for overall improved stormwater quality. 	<ul style="list-style-type: none"> • Ordinance allows for road crossings if follow design & location requirements in ordinance. Must be: • Integrated with natural topography & minimize need for cuts & fills; • Minimize impacts on protected resources & their buffers & setbacks; • Incorporate accepted best management practices; • Be determined by Planning Board to be best alternative 	<ul style="list-style-type: none"> • May qualify for permit by rule if can meet standards for road crossings. • No specific requirements under Natural Resources Protection Act, but generally strive for at least 25 ft vegetated filter between stormwater outfall & resource. 		<p>Permits current practice of allowing road crossings for site access. with compensation Provides flexibility for development in areas planned for commercial development.</p>

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<p>Wetlands of special significance & their areas of concern:</p> <ul style="list-style-type: none"> • no alteration of wetlands of special significance or areas within 100 ft of resource; • preservation or restoration of buffer required within 100 feet of wetland • alterations between 100 & 250 ft allowed with permitting authority approval 	<ul style="list-style-type: none"> • minimum 50 ft vegetated buffer from streams, floodplains, ponds, vernal pools, & high value wetlands; • minimum 75 ft structure setback from streams, floodplains, ponds, vernal pools, & high value wetlands. 	<ul style="list-style-type: none"> • Regulates most impacts to wetlands of special significance, generally requires more thorough review process, & may require compensation. Also up to 75 ft from certain wetlands of special significance including: • Rules allow for obtaining permit by rule if meet standards. • State regulates activities within 100 ft of shorebird roosting & feeding areas (mapped coastal areas). Allows activities if qualify for permit by rule • State regulates activities within 250 ft of other significant wildlife habitats including: • Mapped inland wading bird & waterfowl habitat. • State allows for activities if meet standards established for specific applicable permit by rule. 	<ul style="list-style-type: none"> • Army Corps regulates resource impacts through Section 401/404 of Clean Water Act & Section 10 of Rivers & Harbors Act. • Permitting in state conducted through Maine Programmatic General Permit & Individual Permit Programs. • Authority generally does not extend into uplands adjacent to resource, except for specific cases (i.e., vernal pools – see separate table). 	<ul style="list-style-type: none"> • science supports the most important protection being the resource and upland within 100 feet of the resource for water quality. • 250 foot area of concern established for wildlife habitat, science supports broader protection of habitat • Balances resource protection & development interests by offering opportunities to develop beyond 100 foot area of concern as long as measures to minimize impacts to resource are followed. • balances property use and resource protection by allowing alteration and compensation when Development Design Process supports the alteration

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<p>Freshwater wetlands & adjacent areas as follows:</p> <ul style="list-style-type: none"> • no alteration of resource • structural setback of 50 ft from resource; • alterations permitted within 75 feet from resource if impacts are minimized 	<ul style="list-style-type: none"> • Requires minimum 50 ft buffer for high value wetlands • requires 75 foot setback for structures from high value wetlands • requires 50 foot setback for structures from low value wetlands greater than 4,000 square feet in area 	<ul style="list-style-type: none"> • State regulates most impacts to freshwater wetlands. • Allows for some exempt activities & provides for exemption from permitting for impacts on wetlands not of special significance if total impacts are less than 4,300 sq ft, and can meet standards. 	<ul style="list-style-type: none"> • Army Corps regulates resource impacts under Maine Programmatic General Permit & Individual Permitting. • Authority generally does not extend into uplands adjacent to resource, except for specific cases (i.e., vernal pools – see separate table). 	<ul style="list-style-type: none"> • clarifies protection of resource and decreases buffer and setback requirements • science indicates that resource should be protected and is consistent with the state. • regulation of area of concern based on secondary value of area • Introduces flexibility to property owners through compensation • Provides for minimal measures to protect freshwater wetland functions & values.
<p>Proposed amendment requires that applicants provide copy of permit by rule application & permit materials</p>	<p>Does not reference other permits.</p>	<p>State recognizes 17 separate permits by rule for specific activities.</p>	<p>Army Corps' Maine Program recognizes specific permits by rule.</p>	<p>Allows the permitting authority to have all information to make informed decisions.</p>
<p>If wetlands of special significance are suspected on abutting property, applicant must seek landowner permission to assess resource. If access allowed & can verify resource - protect resource & area of concern as proposed above. If access is denied, no regulation.</p>	<p>Not applicable.</p>	<p>Do not specifically refer to this issue for wetlands. However, generally state would request mapping if there is a potential for resource buffers on project site from adjacent property.</p>	<p>Regulations do not specifically refer to this issue except in instance of vernal pools (see separate table).</p>	<p>Provisions recognize that resources extend beyond property boundaries while also respects property ownership.</p>

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Compensation				
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Applies to: • Impact of one thousand (1,000) square feet or greater of wetlands that are not of special significance in the Highland Lake Overlay District. • Impact of forty-three hundred (4,300) square feet or greater of wetlands that are not of special significance in all other zoning districts. • Impact of wetlands of special significance and their required buffers within one hundred (100) feet of the upland edge of the wetland in any district.	Not applicable.	State requires: • compensation for projects with greater than 15,000 sq ft of impacts to wetlands; • Can require compensation for impacts on some wetlands of special significance for 500 sq ft of impact.	Mitigation generally required for projects with impacts of one acre or for smaller impacts on more sensitive resources.	<ul style="list-style-type: none"> • Provides consistency with state program • Offers options to applicants. • Emphasizes protection & compensation for impacts on most sensitive resources, preservation of resources advances open space plan.

Compensation				
Proposed Amendment	Current Town Regulations	State Regulations	Federal Regulations	Rationale for Proposed Amendment
Compensation permitted by preservation or monetary contribution	Not applicable	State allows restoration and creation as well as preservation or monetary compensation	Feds allow restoration and creation as well as preservation or monetary compensation	Promotes methods that assure preservation and Town is not equipped to monitor restoration and creation.
Land and Resource Preservation – Ratios: for all wetlands 8:1	Not applicable	Generally consistent with compensation approach of state. Rules require: • 8:1 for preservation for impacts in all wetlands.	Army Corps has discretionary authority to require mitigation for any impacts to vernal pools. Compensation ratios are typically higher than the state, & are determined on a project by project basis. Ratios can be 20 acres of compensation to one acre of impact or even more.	Provides consistency with state program, emphasizes protection & compensation for impacts on most sensitive resources, . Advances goals of Town's open space protection program

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Compensation				
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Applicant is encouraged to choose sites consistent with the “Falmouth Open Space Plan” & “Mitigation Properties Available in the Town of Falmouth” and consult with the Town’s Ombudsman, Conservation Commission, Falmouth Land Trust, & others as appropriate.	Not applicable	Approach is generally consistent with state.	Approach is generally consistent with Army Corps.	consistent with state & federal requirements. Provides flexibility for applicants. Advances goals of Town’s open space protection program
Monetary Compensation - Calculation				
1) The value of land in Cumberland County per square foot as determined by the Municipal Revenue Service each assessment year.[current amount is \$0.53] 2) A multiplier of two (2) shall be used for wetlands and their areas of concern as referenced in Section 5.1.8.A. 3) Wetland creation cost per square foot as determined by the DEP FACT SHEET In Lieu Fee Compensation Program [current amount is \$3.28/s.f.]	Not applicable	Consistent with the state		Proposed fee schedule is based on the State’s In Lieu of Program Utilizes formulas and values that have already been vetted.
Wetland Compensation Formula: Wetland compensation fee = (wetland impact area square footage x (wetland creation cost/sf + assessed land valuation/sf)) + (wetland buffer impact area square footage x assessed land valuation/sf) x (2)	Not applicable	Consistent with the state		Proposed fee schedule is based on the State’s In Lieu of Program Utilizes formulas and values that have already been vetted.