



Town of Falmouth
Long-range Planning Advisory Committee
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Memorandum

Date: October 15, 2009
To: Community Development Committee
From: Long-range Planning Advisory Committee
Cc: Nathan A. Poore, Town Manager
Re: Report regarding Natural Resource Protection

The Long-range Planning Advisory Committee (LPAC) is pleased to present the enclosed report on the recommended amendments to the Zoning and Site Plan Review Ordinance and the Subdivision Ordinance regarding natural resource protection. This work is based on the charge given to LPAC by the Council to implement the Wetlands and Vernal Pools Policy adopted by the Town Council on May 27, 2008. The materials provided include:

1. Executive Summary
2. Wetlands and Vernal Pools Policy, adopted May 27, 2008
3. LPAC's Deviations from the Adopted Policy
4. Summary of Changes in Regulatory Stringency
5. Proposed Ordinance Language
6. Ordinance Language Comparison of Recommended and Current Language
7. Vernal Pools – Regulatory Comparison Matrix, October 15, 2009
8. Wetlands – Regulatory Comparison Matrix, October 15, 2009

Regards,

Hugh Smith, Chair
David Chase
Hugh Coxe
Karen Farber
Kurt Klebe
Lissa Robinson
Jim Thibodeau

Report to the Falmouth Town Council
Recommended ordinance amendments for natural resource protection
October 15, 2009

Executive Summary

After nearly two years of work, the Long-Range Planning Advisory Committee recommends making a number of amendments to the town's current regulatory provisions governing the protection of certain natural resources, primarily wetlands and vernal pools. The Council Adopted Policy - May 2008, was used as the basis for drafting ordinance language. During this process the committee deviated from the policy where they found there was a different approach that would better implement the policy objectives or where the policy was too difficult or too burdensome to translate into regulation. The resulting recommended amendments are both administrative and substantive in nature.

Substantive Recommendations

The substantive recommendations, which would require amendments to the Zoning and Site Plan Review Ordinance and the Subdivision Ordinance, are as follows. These changes are intended to improve protection of the most valuable and fragile vernal pools and wetlands. The current language does not adequately protect natural resources that are vital to maintain water quality as well as healthy and diverse wildlife and wildlife habitat.

During their deliberations, committee members carefully weighed the protection supported by scientific research on vernal pools and wetlands in conjunction with the goal of minimizing impacts on property owners. They reviewed state and federal laws that regulate these resources and found that each agency regulates differently and at times those agencies' provisions are more or less restrictive than the proposed provisions. Both the state and federal regulatory processes allow a great deal of discretion to the permitting staff that cannot be easily transferred to the local level due to legal and practical considerations. The provisions are drafted to give clearer definitions and set design parameters to provide the permitting authority more flexibility to make informed decisions within the confines of the ordinance.

1. **Exemptions, residential.** Legally existing residential lots will be exempt from the new provisions for either the establishment of a residential use or the expansion of use on a currently developed lot. Lots approved by the Planning Board, applications in review by the Planning Board at the time of adoptions and all other lots that have been lawfully created under the subdivision exemption will be exempt. For example, a deck or garage could be added to a home near a vernal pool. A building permit would be required. Vacant lots developed for residential lots would also be exempt. State permits may still be required.
2. **Exemptions, commercial.** All lots in commercial districts that have been approved by the Planning Board are exempt. All other lots would be required to meet the provisions but compensation would be required only for the resource if altered.
3. **Vernal Pool Restrictions** - Buffers around vernal pools will increase, especially for significant vernal pools. Currently, the ordinance requires a buffer of 50 feet and a building setback of 75 feet for any vernal pool. This will increase to a buffer of 100 feet for all vernal pools and a restriction of up to 25% disturbance for the area within 250 feet of significant vernal pools. The restrictions for significant vernal pools

- mirror the state requirements. Current town regulation applies to all vernal pools; the state regulates only significant vernal pools.
4. **Wetland Restrictions** - Similar to state regulation, alteration of freshwater wetlands up to 4,300 square feet is permitted without town approval. With a change in definitions of types of wetlands to be consistent with the state, restrictions for building near less significant wetlands will be diminished. Wetlands of special significance will be regulated more stringently, requiring protection of associated upland habitat.
 5. **Area of Concern** – The amendment adds the concept of area of concern. This is the area around a resource that provides important upland habitat and includes the buffer area. The area of concern is typically larger than the required buffer and requires that the applicant use best development practices for alteration within the area of concern that is not otherwise regulated.
 6. **Alteration Allowed** - The Planning Board conceivably may approve alteration of any resource and its area of concern beyond the maximum allowances in accordance with specified criteria. If alteration is approved, the applicant must compensate by preservation of other resources or by monetary compensation.
 7. **Development Design Process** - With the introduction of flexibility to allow resources to be altered, the amendment calls for a process of site design, the Development Design Process, that requires property be designed to first avoid resources when possible, secondly to minimize impacts if avoidance is not possible, and thirdly to compensate when resources are altered. This Development Design Process will replace the Four Step Process currently required for development within the Resource Conservation Overlay District and will be applicable for all property where resources occur.
 8. **Compensation** – Compensation is required for alteration of resources and their buffer areas and may be provided either through preservation of property not part of the site development area or by monetary compensation. Preservation ratios are set at 8:1 for wetlands and 20:1 for vernal pools. Preservation areas may include resources and their associated uplands.

Administrative Recommendations

The administrative changes are intended to make the town's regulations more consistent, readable and aligned with state and federal regulations where feasible. Terminology has been updated, sections of the ordinance have been reorganized to provide clarity and minimize repetition in the ordinance and administrative processes have been amended to reflect current practices.

1. **Definitions** – Many definitions have been updated based on current science and state terminology. Others have been added to clarify terms or been moved out of the body of the ordinance and into the definitions section.

2. **Section 3.13, Resource Conservation Zoning** – Staff redrafted this section to consolidate standards and clarify requirements as well as incorporate the new provisions for natural resources.
3. **Section 4, Development Design Process** – This section has been added to the Zoning Ordinance and the Four Step Process removed from the Subdivision Ordinance.
4. **Section 5.34, Fill Material** – This section was updated and moved to a subsection of Natural Resources, 5.38
5. **Other Sections** – other sections were modified to reference the new Natural Resources section.

Background

The Community Development Committee was charged by the Council in 2007 to work with the then Comprehensive Plan Advisory Committee (now the Long-range Planning Advisory Committee) to develop a process for reviewing our natural resources provisions within the Zoning and Site Plan Review Ordinance. CDC and CPAC with staff retained the services of Jeff Simmons, wetlands scientist at Normandeau Associates and Beth Della Valle, AICP, professional planner.

The process for review was designed to be a transparent and systematic process and guided by four principles: (1) start with scientific principles and best management practices, (2) be informed about state, federal and local regulations, (3) maximize protection of resources while minimizing impacts on land owners, and (4) strive to be consistent with smart growth principles.

The goal of the project was to review the existing provisions protecting natural resources and to determine whether changes, if any, were warranted based on the four principles. Committee members agreed to move through the process with no assumption that changes were required. The process resulted in a great deal of dynamic discussion with a series of debates and resulting compromises ultimately with members finding middle ground.

Conclusions that emerged from this process include:

1. Our current vernal pool regulations are ineffective in protecting the resource as the critical upland habitat is not protected, and the significant migration distances of amphibians are not addressed. Current science research supports protection of all vernal pools and their associated upland habitat. State regulation, although an improvement over the Town's ordinance, fails to completely protect the critical 100 foot area around the vernal pool.
2. Our current wetlands regulations distinguish between "high value and low value wetlands," but do not focus the attention of the ordinance on wetlands that are significant from both a water quality perspective and a wildlife perspective. The Committee found that the NRPA definition of wetlands of special significance was more appropriately focused, but still found that the state did not go far enough in

protecting the critical upland areas around these wetlands. The preservation of a 100 foot area around these wetlands would be effective in preserving both the wildlife habitat and water quality.

To balance this enhanced protection of wetlands of special significance, the committee lessened the protection of freshwater wetlands by permitting the filling of 4,300 square feet of these wetlands, and by recommending that these wetlands be protected by a structural setback, limiting where buildings can be placed, as opposed to a buffer which prohibits disturbance to natural vegetation.

3. By using a development design process, the proposed amendment will protect the resources to a greater extent than State regulations and will do so in a manner which also minimizes the impact of the regulation on the land owner. The amendment provides for the process used to create conservation developments to be applied to all development where wetlands or vernal pools are present.

In summary, LPAC and the CDC worked diligently to maintain a balanced approach during the review of the current provisions and the development of the policy. Following that method, LPAC members have produced a set of final recommendations that we believe adhere to the guiding principles and the charge of the Town Council.

**Town of Falmouth Town Council
Wetlands and Vernal Pools Policy
as adopted at the May 27 2008 Town Council Workshop**

The Community Development and Comprehensive Plan Advisory committees have prepared the following draft policies for consideration by the Town. The committees used the following principles to guide their recommendations.

Guiding Principles –

- **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**

Vernal pools are a specific type of wetlands and are particularly important because they provide critical breeding habitat for several native amphibian species that, in turn, sustain many other forms of woodland wildlife. These amphibian species are rapidly vanishing as the pools and habitat they rely upon is developed or otherwise compromised. As the number and variety of vernal pools are compromised or destroyed, the number and variety of amphibians declines as do the animals that prey on them. With the disappearance of species of animals and plants, we unravel that very fabric which also sustains us, and the abundance and diversity of wildlife in the forest is diminished.¹

In order to provide the appropriate level of protection for wetlands and vernal pools and to build in flexibility to minimize undue impacts on land owners, the following draft policies were prepared based on scientific principles and with reference to state and federal requirements and best management practices. In doing so, these draft policies focus on protecting the functions and values provided by Falmouth's wetlands, vernal pools, and the adjacent associated upland habitats. The proposed policies are intended to protect wetlands and associated surface waters, and to support breeding populations of amphibian species that utilize vernal pool habitats in town.

As proposed ordinance language is prepared to implement these proposed policies, it is the group's intention to consider and include, where appropriate, incentives² to encourage protection of the resources, particularly in cases where a flexible approach is proposed in the following draft policies.

To aid you in reviewing this summary, please note that the general approach is laid out first, followed by the exceptions, which are generally small projects.

¹ Taken from the Falmouth Conservation Commission's "Falmouth Vernal Pools: A Heritage to Protect and Preserve". April 2005.

² Possibly including density bonuses and/or relaxation of standards like minimum structural setbacks, maximum road lengths, building envelope, etc.

I. WETLANDS

A. Wetlands Definitions

The committees' recommendations seek to bring key definitions more in line with state definitions in the Natural Resource Protections Act.

1. Wetlands of Special Significance: replace current definition of *wetlands* in Zoning and Site Plan Review ordinances with definition of *wetlands of special significance* in state's Natural Resource Protections Act as follows: "all coastal wetlands and great ponds are considered wetlands of special significance. In addition, certain freshwater wetlands are considered wetlands of special significance. A *freshwater wetland of special significance (FWSS)* has one or more of the following characteristics.
 - a. *Critically imperiled or imperiled community*. The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the [state's] Natural Areas Program.
 - b. *Significant wildlife habitat*. The freshwater wetland contains significant wildlife habitat as defined by 38 MRSA §§ 480-B(10).
 - c. *Location near coastal wetland*. The freshwater wetland area is located within 250 feet of a coastal wetland.
 - d. *Location near [a] GPA³ great pond*. The freshwater wetland is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 §§ MRSA 465-A.
 - e. *Aquatic vegetation, emergent marsh vegetation, or open water*. The freshwater wetland contains, under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation, or open water, unless the 20,000 or more square foot area is the result of an artificial pond or impoundment.
 - f. *Wetlands subject to flooding*. The freshwater wetland area is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency (FEMA) or other site- specific information.
 - g. *Peatlands*. The freshwater wetland is or contains peatlands, except that the department may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.
 - h. *River, stream, or brook*. The freshwater wetland area is located within 25 feet of a river, stream, or brook."

2. Coastal Wetlands: replace current definition of *wetlands* in Zoning and Site Plan Review ordinances with definition of *coastal wetlands* in state's Natural Resource Protection Act as follows: "all tidal and subtidal lands; all areas below any identifiable debris line left by tidal action; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous lowland which is subject to tidal action during the maximum spring tide level as identified in tide tables, published by the National Ocean Service. *Coastal wetlands* may include portions of coastal sand dunes."

³ A great pond of high water quality is also known as a GPA.

3. Freshwater Wetlands: replace current definition of *wetlands* in Zoning and Site Plan Review ordinances with definition of *freshwater wetlands* in state's Natural Resource Protections Act as follows: "freshwater swamps, marshes, bogs and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and [are] not considered part of a great pond, coastal wetland, river, stream, or brook."
4. Alteration: create a new definition of *natural resource alteration* in Zoning and Site Plan Review Ordinance beyond current, exclusive focus on modification of structures to include disturbance of site and land cover, similar to the definition of alteration that is included in the state's Natural Resource Protections Act, including but not limited to dredging; bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering; and filling.
5. Alternatives analysis: an analysis and report completed by a qualified professional, such as a wetland scientist or ecologist, to assess anticipated impacts to wetlands, vernal pools, and/or their *areas of concern* that assesses whether there is a less environmentally damaging alternative to the proposed alteration, which meets the project purpose.

B. Wetlands Regulatory Changes

1. Wetlands of Special Significance and Coastal Wetlands: Generally, no alterations will be permitted to a delineated *wetland of special significance* or a *coastal wetland* (the "*resource*") itself, and the area within 100 feet from these wetlands are to be left unaltered. Alterations will be allowed between 100 and 250 feet from the wetland, but developers must (1) obtain any required state Natural Resource Protections Act and federal permits and (2) follow guidelines intended to minimize the impacts of alterations on the wetland. (See definition of alternatives analysis).

The State provides a higher level of review and regulation for wetlands of special significance, including coastal wetlands. Currently, Falmouth's ordinances protect "high value" wetlands, which include some features of freshwater wetlands of special significance, but do not provide for protection of important resources within wetlands recognized by the State's permitting program, such as rare plants/communities, significant wildlife habitat, or peatlands. Falmouth's existing ordinance requires a 50 foot buffer from high value wetlands, and a 75 foot setback for structures.

2. Freshwater Wetlands: other than *wetlands of special significance* and *coastal wetlands*. Generally, no alteration will be permitted to a delineated *freshwater wetland* itself, there will be a setback of 50 feet for all structures and developers must follow guidelines intended to minimize the impacts of alterations within the 75 foot *area of concern*. (See definition of alternatives analysis.) Ordinances that implement this policy shall be drafted so that the permitting authority⁴ will require greater protection of wetlands that are of higher value.

⁴ Falmouth Planning Board, Planning staff, Code Enforcement Officer, etc.

Currently, the State regulates activities within freshwater wetlands, and areas within 75 feet of the wetland edge. Falmouth's ordinances currently protect "low value wetlands" with a 50 foot setback for structures for those wetlands greater than 4,000 square feet in total area.

3. Permit By Rule: The Town will require developers of projects, which qualify for a state permit by rule, to submit a copy of their permit by rule application and permit⁵. The Town will follow its own standards of approval in permitting the project.
4. Temporary Alterations: The permitting authority may allow the applicant to temporarily alter an *area of concern* if the proposed alteration is not "frivolous" (for example, the proposed alteration is necessary to the design of the project), alterations do not impact resources that cannot be readily replaced (for example, a 100-year old tree), guidelines intended to minimize the impacts of alterations on the wetland are followed, and the area is returned to a condition with the same drainage patterns and the same, or improved, cover type that existed prior to the alteration.
5. Finger wetlands: a colloquial phrase that generally refers to non-natural swales or channels that meet the technical criteria to be considered a wetland. For those wetland areas that are not wetlands of special significance and that primarily function as drainage swales in upland areas, developers generally must only follow guidelines intended to minimize the impacts of alterations on the wetland. (See definition of alternatives analysis). No compensation will be required for alteration of *finger wetlands*.

Current state and federal regulations do not define "finger wetlands", and do not differentiate these wetland types from others.⁶ Falmouth's current ordinance provides that low value wetlands, averaging 30 feet or less in width as determined by measuring the width of five evenly spaced sections and that function primarily as drainage swales in upland areas are exempt from regulation.

⁵ Activities adjacent to natural resources; intake pipes and water monitoring devices; replacement of structures; movement of rocks or vegetation; outfall pipes; shoreline stabilization; crossings (utilities, pipes, cables); stream crossings (bridges, culverts, fords); state transportation facilities; restoration of natural areas; habitat creation or enhancement and water quality improvement projects; public boat launches; activities in coastal sand dunes; transfer and permit extensions; maintenance dredging permit renewal; activities in, on, or over high or moderate value inland water fowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.

⁶ Note that both the state and federal regulators may elect not to assert jurisdiction over areas that meet the technical criteria to be a jurisdictional wetland (i.e., dominance by a wetland plant community, presence of hydric soils, and positive indicators of wetland hydrology), but that are not naturally occurring, and are located in uplands. Thus, some "finger wetlands" are not regulated as wetlands under existing state and federal regulations and procedures. Because Falmouth is utilizing the same technical criteria in determining jurisdiction, it is anticipated that the areas that do not qualify for state and federal regulatory jurisdiction, would also not be regulated by the Falmouth.

Wetlands on Abutting Properties

If there is reason to believe that a *wetland of special significance* is on a property abutting a proposed development, the developer shall seek permission from the abutter to allow a qualified professional, such as a wetland scientist or ecologist, to conduct an assessment of the wetland. If it is verified to be a *wetland of special significance*, then the standards to protect the *resource* and *area of concern* outlined above apply to the proposed development. If the abutter(s) refuses to allow the developer's qualified professional on the property to conduct the assessment, the permitting authority shall not regulate the potential *area of concern* on the developer's property.

The permitting authority shall seek to ensure that proposed developed areas are contiguous to existing nearby developed areas to minimize fragmentation of important habitat.

C. Mitigation/Compensation for Alteration of Wetlands

Assuming that the developer first attempts to avoid and minimize project-related wetland impacts, the permitting authority may permit alteration of wetlands and required buffers that exceed certain thresholds if wetlands impacts are compensated.

1. **Mitigation Process:** Generally, compensation shall be located first, on the same parcel, second, somewhere in Falmouth within the same watershed where impacts occur, third, somewhere within the same watershed, and four, elsewhere. When possible, compensation shall be directed to *wetlands of special significance*.
2. **Threshold for impacts to wetlands:** If a developer impacts wetlands beyond the following thresholds and/or impacts to required buffers, s/he will be required to compensate for those impacts as follows:
 - a. In Highland Lake – compensation shall be required if alterations impact more than 1,000 square feet of wetlands.
 - b. In all other areas – compensation shall be required if alterations impact between 4,300 and 15,000 square feet of wetlands.
 - c. If impacts of alterations are greater than 15,000 square feet of wetlands, compensation shall be coordinated with the Maine Department of Environmental Protection.
3. **Impact/Compensation Ratios:** Falmouth shall use the same ratios of impact to compensation as those specified in the state Natural Resource Protections Act.
4. **Selection of Compensation Sites:** The permitting authority is encouraged to identify sites consistent with appropriate studies (i.e., Falmouth Open Space Plan, Mitigation Properties Available in the Town of Falmouth, among others) and investigations of individuals/groups like the Town Ombudsmen, Conservation Commission, Falmouth Conservation Trust, and others.

D. Stormwater Management Facilities Near Wetlands

No stormwater facilities will be permitted within the 100 foot no alteration area, with the following exceptions:

1. Existing stormwater management facilities
2. In the case of demonstrated need (and consideration of developers ability to avoid, minimize, and compensate), new stormwater treatment facilities may be permitted to provide for improved stormwater quality if best management practices are followed.

Falmouth's existing ordinance exempts stormwater management facilities from buffer and setback requirements

Note: it is not the intent of these recommendations to regulate existing roadside ditches or small non-natural areas that are part of a broader drainage system.

E. Exceptions to Wetlands Policies

Uses, special circumstances, and conditions where the general rules explained above would not apply include the following:

1. Agriculture and timber harvesting⁷: Non-natural swales, ditches and impoundments associated with farming
2. Small alterations, including filling, that cumulatively impact less the 4,300 square feet of wetlands that are not of special significance.
3. Crossing and alteration of wetlands when necessary to provide access to proposed development (continue to use recently adopted standards in §5.38.5B). State regulation of *wetlands of special significance* will continue to apply.
4. In Commercial Zones (BP, SB1, Exit 10, VMU, MUC), as they may be expanded or adjusted from time to time: developers shall avoid, minimize, follow guidelines intended to minimize the impacts of alterations, and compensate for impacts to wetlands. (See definition of alternatives analysis). State regulation of *wetlands of special significance* shall continue to apply.
5. Existing Developed Properties: When a land owner seeks a building permit for proposed accessory buildings or uses, expansions, septic system replacements or upgrades, tear down and replacement of existing structures, or disturbance or alteration of land cover on properties where development has already occurred, the land owner will be apprised of potential impacts on wetlands and will be asked to minimize impacts on the *resources* and

⁷ This exception is intended for active agriculture and timber harvesting, not for abandoned farms and timber harvesting activities.

areas of concern. Land owners must obtain any required state Natural Resource Protections Act and federal permits. Compensation of impacts will not be required.

6. Development of Lots That Do Not Require Planning Board Approval: When a land owner seeks a building permit to develop a lot⁸, created prior to the adoption of ordinance revisions that implement these recommendations, which does not require planning board approval, the land owner will be apprised of potential impacts on wetlands and will be asked to minimize impacts on *the resources* and *areas of concern*. Land owners must obtain any required state Natural Resource Protections Act and federal permits. Compensation of impacts will not be required.
7. Lots Previously Approved by the Planning Board and Recorded at the Registry of Deeds: Developers will be apprised of potential impacts on wetlands and asked to minimize impacts on the *resources* and *areas of concern*. Compensation of impacts will not be required.
8. Negotiated Districts: Tidewater and West Falmouth.

II. VERNAL POOLS

A. Vernal Pools Definitions

The recommendations seek to bring key definitions more in line with state definitions in the Natural Resource Protection Act.

1. Significant Vernal Pool:
 - a. Create a new definition of *significant vernal pool* in Zoning and Site Plan Review ordinances as follows: a natural, temporary or permanent, body of water which may have a permanent inlet or outlet, and which meets the following criteria, as documented by a qualified professional at the appropriate time of year⁹, and an abundance of either of the following:
 - i. Fairy Shrimp – mere presence, or
 - ii. Blue Spotted salamanders – 10 or more egg masses, or
 - iii. Spotted Salamanders – 20 or more egg masses, or
 - iv. Wood frogs – 40 or more egg masses or
 - v. Presence of other State listed rare, endangered or threatened species that commonly require a vernal pool such as spotted turtles, Blandings turtles, bog haunter dragonflies, ribbon snakes, wood turtles, or swamp darner or comet darner dragonflies.

⁸ Including lots splits and frontage splits.

⁹ It is the committees' intention to reflect state regulations and guidelines about the required timing and number of field investigations.

- b. The permitting authority may determine that the vernal pool habitat is not a *significant vernal pool*, if, based on winter, spring and early summer precipitation, the vernal pool dries out after spring filling before July 15th.¹⁰

2. Vernal Pool:

- a. Replace current definition of *vernal pool* in Zoning and Site Plan Review ordinances as follows: a natural, temporary or permanent, body of water which may have a permanent inlet or outlet, and which meets the following criteria, as documented by a qualified professional at the appropriate time of year, and an abundance of either of the following:
 - i. Blue Spotted salamanders – at least one, but less than ten egg masses, or
 - ii. Spotted Salamanders – at least one, but less than 20 egg masses, or
 - iii. Wood frogs – at least one but less than 40 egg masses; and
- b. The permitting authority may determine that the vernal pool habitat is not a *vernal pool*, if, based on winter, spring and early summer precipitation, the vernal pool dries out after spring filling before July 15th.

3. Potential Vernal Pool: create a new definition of potential vernal pool in Zoning and Site Plan Review ordinances as follows: a natural body of water which meets criteria for a vernal pool, except that it is devoid of the above mentioned evidence of wildlife breeding activity or use.

B. Vernal Pools Regulatory Changes

1. Significant Vernal Pools: Generally, no alterations will be permitted to a *significant vernal pool* itself, and the area within 100 feet of the pool. In the area between 100 and 250 feet from the pool, up to 25% of the area may be altered. In the area between 250 and 750 feet from the pool:
- a. Alterations will be permitted, but developers must follow guidelines intended to minimize the impacts of alterations on the habitat. (See definition of alternatives analysis.)
 - b. The 25% area includes pre-existing alterations anywhere within the area between the pool and 250 feet from the high water mark of the pool, including stormwater facilities.
 - c. The permitting authority may allow more than 25% alteration of the area between 100 and 250 feet of the pool, if the developer restores previously altered areas between the pool and 750 feet in a manner that protects the pool and the *area of concern*

The State regulates activities within 250 feet of naturally occurring significant vernal pools. The State may allow alteration of up to 25% of the area within 250 feet of a significant pool. Falmouth's current ordinances require a 50 foot buffer and prohibit locating a structure within 75 feet of a "mapped" vernal pool.

Note: Recently published Best Development Practices, titled *Best Development Practices: Conserving Pool Breeding Amphibians and Commercial Developments in the Northeastern United States* (Calhoun and Klemens 2002) recommend protection of habitat within 100 feet of a vernal pool.

¹⁰ It is the committees' intention to reflect state regulations and guidelines about evaluating winter, spring, and summer precipitation and drying out of pools.

2. **Vernal Pools:** Generally, no alterations will be permitted to a *vernal pool* itself, and the area within 100 feet of the pool. In the area between 100 and 750 feet from the pool, alterations will be permitted, but developers must follow guidelines intended to minimize the impacts of alterations on the habitat. (See definition of alternatives analysis.)

The State does not regulate these pools as significant wildlife habitat under the Natural Resource Protection Act. Falmouth currently prohibits locating structures within 75 feet of a "mapped" vernal pool. Note that many of these vernal pools qualify as wetlands, and therefore do receive some level of protection, but not the same as a significant vernal pool.

3. **Potential Vernal Pools:** If located within the *area of concern* of a *significant vernal pool* or a *vernal pool*, alterations will be permitted, but developers must follow guidelines intended to minimize the impacts of alterations on the pool. (See definition of alternatives analysis.)
4. **Temporary Alterations:** The permitting authority may allow the applicant to temporarily alter an *area of concern* if the proposed alteration is not "frivolous" (for example, the proposed alteration is necessary to the design of the project), alterations do not impact resources that cannot be readily replaced (for example, an 100-year old tree), guidelines intended to minimize the impacts of alterations on the pool are followed, and the area is returned to a condition with the same drainage patterns and the same, or improved, cover type that existed prior to the alteration.

C. **Significant Vernal Pools on Nearby Properties**

If there is reason to believe that a *significant vernal pool* is on property near a proposed development, the developer shall seek permission from the abutter to allow a qualified professional, such as a wetlands scientist or ecologist, to conduct an assessment of the pool. If it is verified to be a *significant vernal pool*, then the standards to protect the *resource* and *area of concern* outlined above apply to the proposed development. If the abutter(s) refuses to allow the developer's qualified professional on the property to conduct the assessment, the permitting authority shall not regulate the potential *area of concern* on the developer's property.

The permitting authority shall seek to ensure that proposed developed areas are contiguous to existing nearby developed areas to minimize fragmentation of important habitat.

D. **Mitigation/Compensation for Alteration of Vernal Pools**

Assuming that the developer first attempts to avoid and minimize project-related alteration of *significant vernal pools*, *vernal pools*, and their *areas of concern*, the permitting authority may permit alterations that exceed certain thresholds in commercial zones (BP, SB1, Exit 10, VMU, MUC) and places where conservation zoning is allowed, if alterations are compensated.

1. **Mitigation Process:** Generally, compensation shall be located first, on the same parcel, second, somewhere in Falmouth within the same watershed where the alteration occurs,

third, somewhere within the same watershed, and four, elsewhere. When possible, compensation shall be directed to *significant vernal pools*.

Though the permitting authority may accept compensation in alternative locations, to the greatest extent possible, alterations of *significant vernal pools*, *vernal pools*, and their *areas of concern* shall be compensated with like areas as follows:

- a. if altering a pool, compensate with a pool,
 - b. if altering within 100 feet of a pool, compensate within 100 feet of a pool,
 - c. if altering within 100 to 250 feet of a pool, compensate within 100 to 250 feet of a pool.
2. **Threshold for impacts to vernal pools:** If a developer impacts a *significant vernal pool*, a *vernal pool*, or their *areas of concern* beyond the following thresholds, s/he will be required to compensate for those impacts as follows:
- a. In conservation zoning – compensation shall be required if more than 2000 square feet is altered.
 - b. In commercial zones (BP, SB1, Exit 10, VMU, MUC) – compensation shall be required if more than ___ square feet is altered (the threshold shall be higher than in areas of conservation zoning).
 - c. If impacts of alterations are greater than ___ square feet of *significant vernal pools*, *vernal pools*, or their *areas of concern*, compensation shall be coordinated with the Maine Department of Environmental Protection.
3. **Impact/Compensation Ratios:** Alterations of *significant vernal pools*, *vernal pools*, and within 100 feet of a pool shall require a higher ratio of compensation than alterations within 100 to 250 feet of a pool.
4. **Selection of Compensation Sites:** The permitting authority is encouraged to identify sites consistent with appropriate studies (i.e., Falmouth Open Space Plan, Mitigation Properties Available in the Town of Falmouth, among others) and investigations of individuals/groups like the Town Ombudsmen, Conservation Commission, Falmouth Conservation Trust, and others.

E. **Stormwater Management Facilities Near Vernal Pools**

No stormwater facilities will be permitted within the 100 foot no alteration area, with the following exceptions:

1. Existing stormwater management facilities
2. In the case of demonstrated need (and consideration of developers ability to avoid, minimize, and compensate), new stormwater treatment facilities may be permitted to provide for improved stormwater quality, if best management practices are followed.

F. Exceptions to Vernal Pools Policies

Uses, special circumstances, and conditions where the general rules explained above would not apply include the following:

1. Crossing and alteration of significant vernal pools, vernal pools, and areas of concern when necessary to provide access to proposed development (continue to use recently adopted standards in §5.38.5B). State regulation of *significant vernal pools* will continue to apply.
2. In conservation zoning: Developers shall avoid, minimize, follow guidelines intended to minimize the impacts of alterations and continue to use recently adopted standards in §5.38.5B. State regulation of *significant vernal pools* will continue to apply.
3. In Commercial Zones (BP, SB1, Exit 10, VMU, MUC), as they may be expanded or adjusted from time to time: Generally, alteration of significant vernal pools, vernal pools, and their *areas of concern* will be permitted, but developers shall avoid, minimize, follow guidelines intended to minimize alterations of the pools and habitat, and compensate for alterations. (See definition of alternatives analysis). State regulation of *significant vernal pools* shall continue to apply.
4. Existing Developed Properties: Proposed accessory buildings or uses, expansions, septic system replacements or upgrades, tear down and replacement of existing structures, or disturbance or alteration of land cover on properties where development has already occurred if a delineated *significant vernal pool, vernal pools* and 100 feet from these pools are left unaltered. Alterations will be allowed beyond 100 feet from the pool, but developers must obtain any required state Natural Resource Protection Act and federal permits. Projects that cannot meet this standard shall be designated as a conditional use to allow for review by the Zoning Board of Appeals to minimize impacts on the *resources* and *areas of concern*. Compensation of impacts will not be required.

Falmouth's current ordinance exempts those buildings in existence before the effective date of that ordinance. Lots created before the effective date of Falmouth's current ordinance, and private ways, are currently exempt.

5. Development of Lots That Do Not Require Planning Board Approval: When a land owner seeks a building permit to develop a lot¹¹, created prior to the adoption of ordinance revisions that implement these recommendations, which does not require planning board approval, a delineated *significant vernal pool, vernal pool*, and 100 feet from these pools shall be left unaltered. Alterations will be allowed beyond 100 feet from the pool, but developers must obtain required state and federal permits. Projects that cannot meet this standard shall either be delegated to staff or designated as a conditional use to allow for review to minimize impacts on the *resources* and *areas of concern*. Compensation of impacts will not be required.

¹¹ Including lots splits and frontage splits.

Falmouth's current ordinance exempts lots created before the effective date of, that ordinance. Private ways are also currently exempt.

6. Lots Previously Approved by the Planning Board and Recorded at the Registry of Deeds: Developers will be apprised of potential impacts on vernal pools and asked to minimize impacts on the *resources* and *areas of concern*. Compensation of impacts will not be required.
7. Negotiated Districts: Tidewater and West Falmouth.

LPAC's Recommended Policy Changes To the Town Council's Adopted Policy Decisions, May 27, 2008

These changes were implemented for several reasons, including a provision was too difficult to translate to regulation, a better process was determined to meet the goal more efficiently, or the provision was determined to be too onerous.

△ Changes under I. Wetlands

- 1) Page 3 – Alternatives Analysis – this process was replaced with the Development Design Process which incorporates the goal of avoidance and minimization of alteration of resources in all projects.
- 2) Page 4 – Temporary Alterations – This concept was not used. The monitoring of restoration is too onerous on both the applicant and the administration.
- 3) Page 4 – Finger wetlands – This term is not used. Wetlands that were originally designed as drainage facilities are exempt and all other freshwater wetlands are regulated after the initial 4,300 square feet of alteration.
- 4) Page 5 – Mitigation Process – Mitigation (compensation) is limited to preservation of like resources and their upland habitats or through monetary compensation. Applicants are guided to town documents and personnel knowledgeable about open space preservation for preservation.
- 5) Page 5 – Selection of Compensation Sites – The process for selection of sites begins with the applicant rather than staff.
- 6) Page 6 – Stormwater Management Facilities – Maintenance of existing facilities is exempt. Establishment of new facilities is allowed with documentation that the overall system is improved and compensation is provided.
- 7) Page 6 – Exception to Wetlands Policies – The term exception is changed to exemption.
 - a. Item 1 - Agriculture and timber harvesting is expanded to include facilities associated with approved site plans and subdivisions, farming and forestry practices.
 - b. Item 4 – Commercial Zones – Exit 10 is exempt and Development Design Process must be followed. Alterations permitted with compensation of resource only.
 - c. Items 5, 6, 7 & 8 – Existing Developed Properties- approach changed to exempt all legally pre-existing residential lots, all lots or further divisions in the special districts, and any project which has completed substantive review in the Planning Board approval process.
- 8) As to all exemptions, the requirement that the permitting authority apprise applicants of potential impacts and ask them to minimize impact on natural resources and their areas of concern. Although this may add some protection to the resource, it adds another layer of complexity without much resulting protection.

△ Changes under II. Vernal Pools

- 1) Page 8 Item 3 – Potential Vernal Pool – removed any protection, identification is too difficult.
- 2) Page 8 Item B.1 - Significant Vernal Pools: removed reference to pre-existing alterations, as this adds a significant layer of complexity to the administration of the ordinance. Staff would need to evaluate the alleged alteration, determine that it is in fact a preexisting alteration, and make calculations accordingly.
- 3) Page 9 Item 3 – Potential Vernal Pool – remove all references
- 4) Page 9 Item 4 – Temporary Alterations - as with wetlands, remove opportunities for temporary alterations.
- 5) Page 9/10 – Mitigation – process is simplified to allow preservation of like resources and their upland habitats as approved by the permitting authority.
- 6) Page 10 Item 2 – Threshold impacts to vernal pools – compensation required in all instances where an impact occurs, rationale is that allowing partial alterations can be expected to degrade the entire resource.
- 7) Page 10 Item 3 – Impact/Compensation Ratios – 20:1 ratio applied for preservation mitigation for vernal pools and upland habitat within 100 feet. All other resources required an 8:1 preservation ratio. Monetary compensation is calculated using formula in use by the DEP.
- 8) Page 10 Item 4 – Selection of Compensation Sites – applicant initiates this process rather than staff.
- 9) Page 11 F.2. – In conservation zoning – exceptions are not treated any differently than any other development.
- 10) Page 11 Items 4, 5, 6 & 7 – Existing Developed Properties - approach changed to exempt all legally pre-existing residential lots, all lots or further divisions in the special districts, and any project which has completed substantive review in the Planning Board approval process.

Natural Resource Protection Amendments
Summary of Regulatory Stringency compared to Current Local Regulations
October 15, 2009

△ Relaxation provided in proposed amendments:

- 2) Permitting authority may allow alteration if certain standards are met.
- 3) Exemptions of 4,300 square feet for freshwater wetlands is allowed except in the Highland Lake Overlay District
- 4) All alterations on pre-approved legally existing residential lots are exempt.
- 5) Change from low and high value of wetlands to state definition will likely result in less regulation overall for freshwater wetlands.
- 6) Buffers no longer required for freshwater wetlands (formally high-value wetlands), structural setback only. Exemptions have been broadened to include wetlands or vernal pools that are established in pre-designed and maintained stormwater management facilities and for agricultural or forestry practices.

△ Areas where proposed amendments are more stringent:

- 1) Town must issue an approval for any alteration of a wetland or vernal pool except for stated exemptions.
- 2) Alterations to the areas of concern associated with resources require approval by the permitting authority through the Development Design process.
- 3) All properties, excluding those exempted shall be developed using the Development Design Process.
- 4) Compensation, either through preservation of other resources or monetary contribution, is required in certain instances.
- 5) Specific buffers and setbacks are increased for vernal pools.
- 6) Specific buffers and setbacks are increased for wetlands of special significance.
- 7) Invasive species are discouraged from use in any landscaping or restoration work.
- 8) Buffers for resources on abutting properties may be required if an abutting land owner grants permission to have the resource mapped.

TOWN of FALMOUTH, MAINE
ZONING and SITE PLAN REVIEW ORDINANCE
Amendments recommended the Long-range Planning Advisory Committee
October 15, 2009

Language in italics is explanatory only.

Amendment to Planning Fee Schedule

Compensation Calculations for Alteration of Resources under Section 5.38 of the Zoning and Site Plan Review Ordinance

a. Factors

- 1) The value of land in Cumberland County per square foot (LV) as determined by the Municipal Revenue Service each assessment year. *[current amount is \$0.53]*
- 2) Resource multiplier
 - a) A multiplier of two (2) shall be used for wetlands and their areas of concern as referenced in Section 5.38.6
 - b) A multiplier of four (4) shall be used for vernal pools and their areas of concern as referenced in Section 5.38.6
- 3) Wetland creation cost per square foot (WCC) as determined by the DEP In Lieu Fee Compensation Program Rates *[current amount is \$3.28/s.f.]*

b. Calculation of Fees – per square foot (sf)

1) Wetland Compensation Formula:

Wetland compensation fee = (wetland impact area square footage x (WCC + LV) + (wetland buffer impact area square footage x LV) x (2)

2) Vernal Pool Compensation Formula:

Vernal pool compensation fee = (direct vernal pool alteration square footage) x (WCC. + LV)) + (vernal pool area of concern alteration/s.f. x LV) x (4)

Amendments to the Zoning and Site Plan Review Ordinance

SECTION 2. DEFINITIONS

All definitions will be renumbered after the amendment is approved. The following definitions will either replace existing definitions or be added to this section as noted.

Alteration [replacement]:

1. A change, addition, or modification, requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes; or
2. Any construction, change, addition, or modification of any permanent structure; or
3. Dredging; bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering; filling; or
4. The construction, change, addition, or modification of any combination of materials covering ten (10) square feet or less constructed or erected above or below or upon the surface of the ground or water with minimal impact.

Buffer, Screening [new]: Naturally occurring or planted landscaping, fences, berms, and mounds and other site changes used to minimize adverse impacts year-round on a resource or site or adjacent properties year-round.

Buffer, Resource Protection [new]: A vegetated area within a property or site, generally adjacent to a natural resource, either consisting of natural existing vegetation or created through the planting of trees and shrubs, which is designed to minimize the negative impact of alterations on natural resources.

Code Enforcement Officer [replacement]: The appointed authority by the Town to interpret and enforce the provisions of this ordinance, also referred to as the Building Inspector.

Compensation [new]: Replacement of a lost or degraded function of a wetland or vernal pool and its buffers with a function of equal or greater value.

Disturbed Area [new]: For the purposes of Section 5.39, Erosion and Sedimentation, that part of the land surface on which fill material has been placed or from which soil, vegetation, pavement, or structures have been removed, exposing soil.

Fill [new]: To put into or upon the land or allowing fill material

Fill Material [new]: Any, soil, rock, sand, silt, clay, peat, brick, cured concrete, or debris which is not mixed with other solid or liquid waste, and which is not derived from an ore mining activity.

Floodplain [replacement]: Land subject to inundation by storm or flood water caused by overflow from the normal high water mark of any coastal or inland waters, or as defined or identified by the U.S. Federal Emergency Management Administration's Flood Boundary Maps of the Town.

Floodway, regulatory [replacement]:

1. The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot, and
2. When not designated on the community's flood insurance rate map or flood boundary and floodway map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half (1/2) the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

Invasive plant species [new]: Plant species that do not naturally occur in Maine and whose introduction and proliferation causes or is likely to cause harm to the environment, economy,

human health, natural resources, and outcompete native species. For the purposes of this ordinance the following plant species are considered invasive:

Asiatic Bittersweet (<i>Celastrus orbiculata</i>)	Japanese Knotweed (<i>Fallopia japonica</i>)
Autumn olive <i>Elaeagnus umbellata</i>	Japanese stiltgrass (<i>Microstegium vimineum</i>)
Bishop’s weed <i>Aegopodium podagraria</i>	Lesser celandine
Black locust	Mile-a-minute vine (<i>Polygonum perfoliatum</i>)
Black swallowwort	Morrow and Tartarian Honeysuckle (<i>Lonicera morrowii</i> and <i>Lonicera tartarica</i>)
Blunt-leaved privet (<i>Ligustrum obtusifolium</i>)	Multiflora or Rambler Rose (<i>Rosa multiflora</i>)
	Non-native honeysuckles
Burning bush (<i>Euonymus alatus</i>)	Norway maple (<i>Acer platanoides</i>)
Common and Glossy Buckthorn (<i>Rhamnus cathartica</i> and <i>Frangula alnus</i>)	Porcelainberry
Common Reed (<i>Phragmites australis</i>)	Purple Loosestrife (<i>Lythrum salicaria</i>)
European alder	Rugosa rose
Garlic mustard (<i>Alliaria petiolata</i>)	Small-flowered tickle-grass
Himalayan jewelweed <i>Impatiens glandulifera</i>	Swallow-worts (<i>Cynanchum louiseae</i> and <i>C. rossicum</i>)
Japanese Barberry (<i>Berberis thunbergii</i>)	Water chestnut (<i>Trapa natans</i>)
Japanese Honeysuckle (<i>Lonicera japonica</i>)	Yellow flag iris (<i>Iris pseudacorus</i>)

Municipal Officers [new]: Falmouth Town Council.

Permitting Authority [new]: The Planning Board or Code Enforcement Officer where designated.

Planning Board [replacement]: The Planning Board of the Town.

Pond [replacement]: Any naturally occurring inland body of water.

Primary Conservation Area [replacement]: The portion of a site containing the following resources:

1. floodplain, or coastal high hazard area;
2. areas unsuitable for development in its natural state, including but not limited to 1) steep slopes in excess of twenty-five (25) percent, or 2) unstable soils subject to slumping, mass movement, or accelerated erosion;
3. wetland including coastal wetland,
4. one hundred (100) feet from the upland edge of a wetland of special significance,
5. fifty (50) feet from the upland edge of a freshwater wetland;
6. area located within the Resource Protection District;
7. pond or great pond;

8. river, stream, or brook;
9. vernal pool or significant vernal pool and the area one hundred (100) feet from their upland edges; and

Qualified Professional [new]: A specialist who is educated and experienced with delineating vernal pool and wetland boundaries in accordance with methodologies and standards for identification as adopted by the Town of Falmouth, Maine Department of Environmental Protection or the U.S. Army Corps of Engineers.

Retirement Community [new]: A development that offers a continuum of a variety of levels of care and range of services to elderly and/or disabled residents; is designed to provide a sense of a unified development with a common design character; and includes housing for at least one hundred fifty (150) residents in a range of accommodations.

Secondary Conservation Area – [delete]

Significant Wildlife Habitat [new]: Environments that provide living, feeding, staging, critical spawning, nursery areas, and travel corridors for species appearing on the official state or federal list of endangered or threatened animal species, including but not limited to high and moderate value deer wintering areas, seabird nesting islands, significant vernal pools and their areas of concern, high and moderate value waterfowl and wading bird habitat, shorebird habitat and Designated Population Segment area for Atlantic salmon as defined by the Department of Inland Fisheries and Wildlife and Atlantic Salmon Commission.

Steep Slope [new]: Areas containing at least five thousand (5,000) contiguous square feet with slopes equal to fifteen (15) percent or greater.

Stormwater Management Facility [new]: Various improvements, such as stormwater treatment structures, swales, curbs, catch basins, collector sewers, detention basins, and retention basins, which are components of a system that accommodates and controls stormwater runoff.

Upland Edge [replacement]: The boundary between upland and wetland, pond, vernal pool, or significant vernal pool. (applies to Section 7 Shoreland Zoning) [Adopted, 5/27/92]

Vernal Pool [replacement]: A temporary to permanent, body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools lack viable populations of predatory fish and provide the primary breeding habitat for wood frogs, spotted salamanders, blue spotted salamanders, and fairy shrimp. Evidence of breeding activity by these species, developed through the completion of a field survey by a qualified professional, is required to define an area as a vernal pool.

Vernal Pool, Significant [new]: A vernal pool which, as documented by a qualified professional at the appropriate time of year, meets or exceeds State criteria for identification of a significant vernal pool, specifically demonstrating one (1) or more of the following biological conditions:

- a. fairy shrimp in any life stage;
- b. ten (10) or more blue spotted salamander egg masses;
- c. twenty (20) or more spotted salamander egg masses;
- d. forty (40) or more wood frog egg masses; or
- e. the presence of State listed rare, endangered, or threatened species that commonly require a vernal pool.

SECTION 3. ESTABLISHMENT OF DISTRICTS

Classify districts so that the term “residential district” is defined. Replace the current section 3.1 in its entirety with the following:

3.1 Districts

The Town is hereby divided into the following classes of districts as shown on the Zoning Map:

1. Residential Districts
 - a. Farm and Forest District - "F"
 - b. Residential District - "RA"
 - c. Residential District - "RB"
 - d. Residential District - "RC"

2. Other Districts
 - a. Route One Business District - "SB-1"
 - b. Mixed Use Cluster District - "MUC"
 - c. Village Mixed Use District - "VMU"
 - d. Business and Professional District - "BP"
 - e. Route 100 Corridor Overlay District - "CO" [Adopted, 1/25/88]
 - f. Village Center Overlay District [Adopted, 8/31/98]
 - g. Retirement Community Overlay District [Adopted, 11/23/98]
 - h. Highland Lake Conservation Overlay District [Adopted, 11/27/00]
 - i. Resource Conservation Zoning Overlay District – “RCZO” [Adopted, 12/22/05]
 - j. Resource Protection District
 - k. Limited Residential District
 - l. Limited Commercial District [Adopted, 5/27/92]
 - m. Stream Protection District [Adopted, 5/27/92]
 - n. Open Space Residential District - "OSRD" [Adopted, 3/27/89] [Repealed 6/19/06]
 - o. West Falmouth Crossing Master Planned Development District [Adopted, 1/26/98; Amended, 12/22/05]
 - p. Tidewater Master Planned Development District [Adopted, 4/4/05]
 - q. Middle Road Special District - “MRSD”, [adopted 11/24/09]

Replace the current section 3.13 with the following language (italics excluded – explanatory notes only)

3.13 “RCZO” -- Resource Conservation Zoning Overlay District

This Section establishes standards that require a significant portion of the development site to be set aside as permanently protected common open space restricted from significant development or intensive use while allowing homes to be clustered on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The development, including the location of the common open space, lots, and streets, shall be laid out in accordance with the Development Design Process set forth in Section 4, General Provisions. These provisions are designed to ensure that the development:

1. preserves those areas of the site that have the highest natural resource value for conservation purposes;
2. Preserves identified historic, archeological, and cultural features located on the site;
3. Locates the buildings, structures, roads, and parking areas on those portions of the site that are most appropriate for development;
4. Creates continuous open spaces or “greenways” by linking the common open spaces within the development and to adjoining developments wherever possible; and,
5. Minimizes the impact of residential development on the Town, neighboring properties, and the natural environment.

Amended to be more specific regarding uses allowed and applicability

3.13.1 Applicability

The provisions of this District shall only apply to:

1. those areas shown on the RCZO District Map, and
2. lot divisions for new single-family residential development which require Planning Board approval.

3.13.2 Coordination with the Underlying District

Where the specific provisions of this District vary from the requirements of other provisions in this ordinance or the Land Subdivision Ordinance, these provisions shall govern.

3.13.3 Allowed Development Patterns

The development of land within the RCZO District may occur in accordance with any one or a combination of the following development patterns:

- A. Exempt Lot
- B. Conservation Private Ways
- C. Country Estate Lots That Are Not Part of a Subdivision
- D. Country Estate Subdivisions
- E. Conservation Subdivisions

3.13.4 Exempt Lot

Any lot of record as of April 1, 2005 may be divided to create one additional building lot under the provisions of the underlying district whether or not such division is a subdivision, provided that all of the following conditions are met:

1. The lot of record shall be held in separate ownership from any abutting property.
2. Both of the lots created by the division shall meet the minimum lot size requirements for the underlying district including minimum lot size, minimum lot width, and minimum street frontage and the minimum suitable building area per lot requirement of Section 5.31.2 a.

3.13.5. General Standards

A. **Plan Recording** – All plans approved by the Planning Board under this section shall be recorded at the Cumberland County Registry of Deeds within ninety (90) days of the date of approval. If the plan is not recorded within this time period it is null and void.

B. **Buffer** - Buffers as required in this section shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions. The treatment of the buffer shall be subject to approval by the Planning Board. Native shade trees are encouraged to be used in all landscape plans. Invasive plant species are especially discouraged.

1. **Streetscape Buffer** - A landscaped buffer shall be maintained or established along any public street existing as of April 1, 2005 that is adjacent to a Conservation Subdivision to preserve the existing street character and minimize the visual impact of the Conservation Subdivision on the streetscape.

For Conservation Subdivisions and Private Ways the depth of the buffer shall be at least one hundred (100) feet. For Country Estate Subdivisions or Private Ways the depth of the buffer may be reduced to fifty (50) feet. This provision may be reduced to twenty-five (25) feet for new and existing residential lots that front on public streets. The following alterations may occur within the buffer with Planning Board approval:

- (a) trails
- (b) accessory structures such as signs, landscaping elements, underground utility structures, and drainage facilities
- (c) driveways and roads that run essentially perpendicular to the street

2. **Perimeter Buffers** - A landscaped buffer shall be maintained along the external perimeter of the development site or the property line of the subdivision with the exception of property lines along public streets. The width of the buffer shall be at least fifty (50) feet.

The following alterations may occur within the buffer with Planning Board approval:

- (a) trails;
- (b) docks, boat ramps, and other water-dependent structures;
- (c) accessory structures such as signs, landscaping elements, underground utility structures, and drainage facilities; and

- (d) roads may be located in the perimeter buffer strip where the Planning Board determines through the Development Design Process that the resulting road location and subdivision design best achieves the purposes of a conservation development.

C. Conceptual Long Range Development Plan

When a development under this section will not utilize the entire parcel and there is potential for future development of the remaining land, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the development potential of the remaining land.

This plan shall show the relationship of the proposed development area to the balance of the parcel and adjacent land. The applicant may rely on existing published data to develop the plan and to analyze the conservation and development potential of the remaining area. The plan shall show a potential street network, common open space areas, and development areas in a manner that demonstrates that both the proposed and future development may occur so that it preserves natural resources and conservation values of the parcel.

3.13.6 Conservation Private Way

Divisions of lots on private ways which are not eligible under 3.14, Exempt Lots and which are exempt from subdivision review shall meet the provisions of 3.13.7, Conservation Subdivision in addition to the provisions of Section 5.27, Private Ways. They shall be exempt from the requirements of the Land Subdivision Ordinance except for those provisions that provide for submittal requirements and procedures to the Planning Board.

3.13.7 Conservation Subdivision

A. **Required Common Open Space** – Common open space shall be designated as prescribed below:

1. Minimum Acreage Amount Required – The acreage of common open space provided within the subdivision shall be equal to or greater than the sum of the following (rounded up to the nearest tenth of an acre):
 - a. fifty percent (50%) of the calculated Net Residential Area; plus,
 - b. an area equal to the total acreage deducted from the gross area of the site to determine the Net Residential Area under Section 5.31.
2. Dimensional Requirements – The following dimensional requirements may be reduced or increased as determined by the Planning Board through the Development Design Process.
 - a. At least seventy-five (75) percent of the common open space shall be contiguous to another common open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within one hundred (100) feet of each other and there are no impediments to access between the areas.
 - b. No area of common open space shall be less than fifty (50) feet in its smallest dimension and less than ten thousand (10,000) square feet in area. Open space not meeting this standard is allowed as an added project enhancement, but shall not be counted toward the required project common open space.

- c. The boundaries of common open spaces should be marked by natural features wherever present, such as hedgerows, stone walls, woodland edges, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, to distinguish where the common open space ends and private lot areas begin. Where structural demarcations, such as fences are used, they shall be the minimum needed to accomplish this objective.
- d. Building sites should generally be located at least one-hundred (100) feet from Primary Conservation Areas, and at least fifty (50) feet from Secondary Conservation Areas, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for residences and other uses.

B. **Priorities for Land Included in Common Open Space** – The land set aside for common open space shall be proposed by the applicant based upon the following priorities. Final selection of the land to be set aside as common open space shall be determined by the Planning Board based on its assessments of the importance of the types of conservation areas in the context of the project's location and configuration and the project design as developed under the Development Design Process.

Priority 1 - Primary Conservation Areas

Priority 2 - Secondary Conservation Areas that consist of any of the following and not included in Primary Conservation Areas:

1. the habitat of rare, significant, or endangered species;
2. areas between one hundred (100) and two hundred and fifty (250) feet of the upland edge of wetlands of special significance,
3. areas between fifty (50) and seventy-five (75) feet of freshwater wetlands that are not of special significance,
4. areas between one hundred (100) and seven hundred fifty (750) feet of vernal pools and significant vernal pools,
5. steep slopes between fifteen (15) and twenty-five (25) percent
6. archeological or historic sites,
7. stonewalls, or
8. cemeteries.

Priority 3 - Secondary Conservation Areas that provide for the continuation of resource systems into or through the site.

1. the land area equal twice the resource buffer width as may required under this Ordinance.
2. wildlife travel corridors three hundred (300) feet
3. existing trails and twenty-five (25) feet on either side of the trail, and
4. unfragmented habitat blocks.

Priority 4 – Secondary Conservation Areas that are adjacent to other protected open space.

Priority 5 - Secondary Conservation Areas that maintain the rural character of roadsides.

Priority 6 - Secondary Conservation Areas that include identified scenic resources including viewsheds and agricultural fields along with the forested margin adjacent to these resources.

Priority 7 - Secondary Conservation Areas including fields, aquifer recharge areas, deer yards, and other identified habitat.

C. Use of the Common Open Space

1. The common open space in a Conservation Subdivision or Private Way shall be used only for the following purposes as approved by the Planning Board and determined to be compatible with the overall scale and character of the development. Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established as part of the approval of the project in accordance with the Land Subdivision Ordinance. Placement of improvements shall be located in accordance with the Development Design Process.
 - a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, and identified cultural or historic features such as stone walls, cemeteries, and similar identified features or resources.
 - b. Outdoor recreation uses provided that no more than twenty-five (25) percent or a maximum of three (3) acres, whichever is less, of the common open space is altered or developed for the use.
 - c. Buildings and Structures - Indoor recreational facilities, accessory structures for outdoor recreation and other buildings that are needed for the operation of the project or serve residents of the subdivision. No more than a total combined gross floor area of two thousand (2,000) square feet is permitted.
 - d. Forest management and agricultural uses including animal husbandry.
 - e. Support facilities necessary for the project including individual or community wells, stormwater management facilities, underground utility lines, individual or group subsurface wastewater disposal systems, or parts thereof, and related facilities such as sewer pump stations.
 - f. Other uses compatible with the overall scale and character of the project.
2. Stewardship Requirements - Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Land Subdivision Ordinance, subject to approval by the Planning Board.
3. Common open space shall not be included in residential lots. [Adopted 5/29/07]

D. Standards for Individual Residential Lots - Where the Planning Board has discretion on dimensional requirements their approval shall be based upon a finding that the lots will allow for the creation of a high quality living environment for the residents of the development and provide adequate access to the residences and other facilities.

1. Minimum Lot Size -- The size of the individual lots shall be subject to Planning Board approval with the following minimum requirements.
 - a. lots served by a subsurface wastewater disposal system - twenty thousand (20,000) square feet in area
 - b. lots served by the Town public sewer system - ten thousand (10,000) square feet in area
2. Minimum Lot Width – one hundred twenty-five (125) feet - The Planning Board may reduce

the minimum lot width by up to fifty (50) percent provided that the project is developed according to an proposed master development plan where each individual lot is subject to design review of the lot layout and building design according to parameters and guidelines submitted by the applicant and approved by the Planning Board.

Said design parameters shall include maximum lot coverage, floor area ratio, and major building axis line relationship to the street line (parallel or perpendicular) for each lot to ensure that each lot will be developed in a way that coordinates with adjacent lots, prevents building crowding, and provides adequate yard spaces and privacy screening, while avoiding a repetitive pattern of housing orientation, and design throughout the project.

3. Minimum Street Frontage – one hundred twenty-five (125) feet.

The applicant may reduce frontage to fifty (50) feet for lots that front on a cul-de-sac or hammerhead.

For all other lots, the Planning Board may allow the reduction of street frontage to fifty (50) feet provided a master development plan is submitted and approved as referenced in subsection 2, Minimum Lot Width.

4. Minimum Front Setback – The minimum front setback for each lot may vary between fifteen (15) and twenty-five (25) feet as approved by the Planning Board.

5. Minimum Side/Year Setbacks –

- a. From internal lot lines - setbacks shall be as approved by the Planning Board with the finding that there is adequate privacy for each unit based upon the character and proposed landscaping of the lot.
- b. From the external property lines of the subdivision – minimum setbacks shall be as required for the underlying district.

3.13.8 Country Estate Lot Standards

- A. Minimum Lot Size–three hundred fifty thousand (350,000) square feet
- B. Minimum Net Residential Area per Unit–two hundred fifty thousand (250,000) square feet of net residential area per dwelling unit
- C. Minimum Lot Width–distance between side lot lines measured through the principal building site - three hundred (300) feet
- D. Minimum Property Line Setback
 - 1. Principal buildings and accessory structures with a footprint of two hundred square feet or more - a minimum of seventy-five (75) feet from any property line.
 - 2. Accessory buildings and structures with less than two hundred (200) square feet of footprint area minimum of fifty (50) feet from any property line.
- E. Minimum Lot Access Requirements –Frontage shall be established on a public street, private way, or private access drive. A Country Estate lot shall have the following minimum frontage based upon the type of road:

a public street in existence as of April, 1, 2005	400 ft
a public street created after April 1, 2005	200 ft
private way	100 ft
private access drive	25 ft

1. Country Estate Lots served by private access drives may be approved by the Planning Board in accordance with the following provisions:
2. A private access drive shall meet provisions of Section 5.27, Private Ways with the following exceptions:
 - a. A private access drive may be used to provide access to not more than three (3) Country Estate lots.
 - b. The right-of-way or easement may be reduced to a width of not less than twenty-five (25) feet.

Section 3.16 Retirement Community Overlay District [Adopted, 11/23/98]

Delete subsection 3.16.2, Definition of Retirement Community Overlay District [moved to definitions]

SECTION 4. GENERAL PROVISIONS

New Section 4.8 to replace Appendix 9 of the Subdivision Ordinance

Repeal Appendix 9 of the Subdivision Ordinance and replace all references with Section 4.8 of the ZSPRO.

4.8 Development Design Process

1. Purpose and Process Statement

Natural resources are important to the health, safety, and welfare of present and future residents, providing environmental, scenic, recreational, cultural, and historic value. The cumulative effect of the alteration and disturbance of natural resources pose a substantial threat to the Town's environment, economy, and quality of life. The purpose of this section is to ensure that development on sites that contain resources regulated in Section 5.38., Natural Resources or in Section 3.13, Resource Conservation Overlay District is designed in a manner that:

- a. first seeks to avoid the alteration of resources;
- b. second seeks to minimize alteration of resources where avoidance is not feasible; and
- c. where required under Section 5.38, Natural Resources, compensates either through resource preservation or monetary compensation where avoidance is not possible.

2. Applicability

- a. Individual lots as specified in Section 5.38.4.E., Exemptions
- b. Site Plan Review applications
- c. Subdivision applications
- d. Private way applications
- e. Alteration of Terrain applications and permits
- f. Shoreland approvals and permits

3. Design Steps for Individual Lots

- a. Where applicants are required under Section 5.38, Natural Resources, to utilize this process when altering individual lots, the following steps shall apply:
 - 1) Inventory the following resources through the use of existing resource maps and documents. These may include but are not limited to the Town's GIS system, USGS quadrangle maps, Beginning with Habitat maps, Maine IF&W wildlife and habitat maps:
 - a) Wetlands and their areas of concern
 - b) Vernal pools and their areas of concern
 - c) Steep slopes
 - d) Streams and rivers
 - e) Ponds and great ponds
 - 2) Locate improvements in such a way that best meets the purpose and process listed above.
 - 3) Review the plan with the Code Enforcement Office to assure the submittal for a permit will be accepted.

4. Design Steps for all other applications

a. Inventory Resources

- 1) delineate all regulated natural resources in Section 5
- 2) for applications under Section 3.13, Resource Conservation Overlay District, identify all resources as required in Section 3.13
- 3) delineate steep slopes
- 4) delineate resource buffer and setback areas
- 5) delineate areas of concerns for wetlands and vernal pools

b. Location of Existing Developed Areas

- 1) Roads and related stormwater management structures
- 2) Buildings and structures, including septic systems, wells
- 3) Utilities, overhead and underground
- 4) Trails
- 5) Lot Boundaries

c. Location of Proposed Development Areas

d. Access, alignment of Streets and Ways and Creation of a Trail System

- 1) Based upon the existing and proposed development sites, a circulation plan shall be designed to provide vehicular and pedestrian access to and within the site. The access and street layout shall bear a logical relationship to topographic conditions. The circulation plan shall generally be designed to minimize deadend conditions and to facilitate access to and from uses in different parts of the site.
- 2) For development under Section 3.13, a trail system should incorporate existing trail systems and connections where feasible and should generally be located within the common open space, streetscape buffers or perimeter buffers to provide access from the homes to the open space network created by the subdivision and provide connections to adjacent trail systems or open space.

e. Drawing in Lot Lines

- 1) Lot lines shall be drawn as required to delineate the boundaries of individual lots.
- 2) Building envelopes shall be designated and shall exclude natural resources designated for preservation.

5. Alteration of Natural Resources –The Planning Board or Code Enforcement Officer may allow the alteration of natural resources or their associated buffers and areas of concern, as defined in Section 5.38 Natural Resources provided that the following standards have been met. The permitting authority may consider the necessary impacts to other resources on the site to minimize impact of natural resources protected under Section 5.38, the context of the project's location and configuration, and the project design when determining if impacts have been minimized.

- a. the design is integrated with the natural topographic conditions and minimizes the need for cuts and fills;

- b. the impacts to resources have been minimized;
- c. the design and function of the improvements incorporate accepted best management practices; and
- d. the applicant provides compensation for impacts to natural resources where required in Section 5.38.

SECTION 5. SPECIFIC REQUIREMENTS

Section 5.27 Private Ways – *amend by adding the following language to the introductory paragraph.*

“The private way may be created as a right-of-way or easement.”

Amend Paragraph k. as follows:

- k. If the private way will serve two (2) or more Country Estate lots in the Resource Conservation Zoning Overlay District, the applicant shall submit a Site Inventory and Analysis Plan and documentation of the Development Design Process for the site as provided for this ordinance. [Adopted 12/22/05]

Replace Section 5.33 with the following language:

5.33 Transmission Towers [Adopted, 4/23/90]

4. In lieu of the foregoing, the Board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Board may require the applicant to provide a visual impact analysis by a professional qualified in such analysis.

5.4 Buffers - rename Screening Buffers

5.34 Placement or Removal of Fill Material [Adopted 7/22/91] [Amended 9/22/03] – *delete in its entirety*

5.37 Preservation, Planting, Maintenance, and Inspection of Plant Materials [Adopted 7/23/01]

- *Substitute “permitting authority” for “Town” throughout*
- *clarify and correct references to other sections of the ordinance*
- *replace ‘owner’ with ‘applicant’ throughout*

Replace 5.37.1 with the following:

5.37.1 Purpose

The purpose of this provision is to ensure that existing and new plant materials that are incorporated into new development:

1. achieve optimal growth, overall health, and their intended environmental and aesthetic function in spite of the often harsh conditions created by development;
2. discourage the planting of invasive plant species; and
3. encourage the planting of native species, especially shade trees

Replace 5.37.2 with the following:

5.37.2 Applicability

The requirements of this section apply to plant materials regulated under the following provisions:

1. Zoning Ordinance
 - a. Section 3.13 (Resource Conservation Overlay District)
 - b. Section 3.10.6 (Landscaped Border Strips)
 - c. Section 3.17.4 (Highland Lake Conservation Overlay District)
 - d. Section 7.10 (Shoreland Zoning)
 - e. Section 9 Site Plan Review
2. Section H of Appendix 1 of the Subdivision Ordinance (Landscape Requirements)

The current Section 5.38 shall be repealed and replaced in its entirety with the following language:

5.38 Natural Resources

5.38.1 Purpose

The purpose of these requirements is to protect the following natural resources within the Town, and, to protect private and public property from flooding, poor drainage conditions, and slope or soil instability caused by locating buildings in or close to these areas. The permitting authority shall seek to ensure that proposed developed areas are contiguous to existing nearby developed areas to minimize fragmentation of significant wildlife habitat.

- A. wetlands,
- B. vernal pools,
- C. natural plant communities, and
- D. river, streams, brooks and ponds.

5.38.2 Applicability

The requirements of this section apply to all activities where natural resources as listed above are located on the development parcel. Refer to Section 7, Shoreland Zoning, for additional provisions for property located in a Shoreland Zone.

5.38.3 Conflict with Other Laws or Sections of This Ordinance and Severability

Where this section imposes a greater restriction in any respect than is imposed by other law or sections of this Ordinance, the provisions of this section shall control, except where specific exemptions are specified.

5.38.4 General Standards

- A. Determination of Boundaries - Areas of concern, buffers and setbacks shall be measured as follows:
 1. Rivers, streams and brooks: from the upland edge of the stream channel.
 2. Floodplains: as defined by the 100 year floodplain on FEMA maps or amendments thereto.
 3. Ponds and Great Ponds: from the high water mark, or from the upland edge of the pond.
 4. Wetlands and vernal pools: from the upland edge of the wetland or vernal pool as delineated by a qualified professional.

Where uncertainty exists as to the precise boundaries of natural resources for the purposes of establishing areas of concern, buffers or setbacks, the permitting authority shall be the final authority.

B. Timing of Surveys for Vernal Pools

Surveys of vernal pools shall typically occur during the optimal time periods identified in Maine Department of Environmental Protection rules. In cases where a survey of a vernal pool is not conducted within this time frame and evidence exists that a vernal pool may potentially exist, the potential vernal pool shall be regulated as a significant vernal pool unless the permitting authority determines that the area is not a vernal pool using the following information provided by a qualified professional:

1. If in non-drought years, documentation based on data for winter, spring, and early summer precipitation, which concludes that the vernal pool has dried out after spring filling and before July 15th; or
2. Evidence is submitted concluding that the vernal pool does not support breeding populations of the species identified in the definition of vernal pool in Section 2, Definitions.

C. Projects Reviewed Under NRPA Chapter 305 Permit-By-Rule

Town applicants, who qualify for and submit applications to the State DEP for a Permit-By-Rule, must provide the Town permitting authority with a copy of its Permit-By-Rule application in conjunction with any Town application submittal.

D. Development Design Process

All properties, on which the alteration of natural resources or their areas of concern as regulated by this section are proposed, shall be developed utilizing the Development Design Process as described in Section 4 of this ordinance unless otherwise exempted.

E. Exemptions – The following are exempt from all provisions of this section. In instances where cumulative impacts exceed the thresholds in paragraphs 6 & 7, regardless of the transfer of ownership of property or whether or not the accumulation is a result of multiple alterations to the property, the property will be subject to the provisions of this section. Lots as referenced in paragraphs 2, 3 and 4 that have had adjustments to boundaries that conform to this ordinance are exempt.

1. 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 this ordinance;
2. Lots approved by the Planning Board and recorded at the Registry of Deeds prior to the effective date of this ordinance;
3. Lots that lawfully existed prior to the effective date of this ordinance that did not require Planning Board approval to be established, and where the existing or proposed primary use is residential.
4. Lots, including further divisions, in the West Falmouth Crossing Master Planned Development District, Oceanview Retirement Community Overlay District, Tidewater Master Planned Development District, and Open Space Residential District.

5. 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.
 6. 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.
 7. 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.
- F. Limited Alterations - This section is applicable to projects that require Planning Board approval, and are otherwise not exempted in paragraph E. above. Alteration may be allowed for the following uses 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.
1. the installation of utilities, road crossings, bridges, and culverts that are necessary to access the site,
 2. 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
 3. Stormwater Management Facilities within one hundred (100) feet from the upland edge of a wetland of special significance or a significant vernal pool if the applicant demonstrates that the proposed alterations provide for overall improved stormwater quality.

5.38.5 Wetlands of Special Significance or Significant Vernal Pools on Abutting Properties

Applicants shall utilize existing published information on natural resources and identify any potential wetland of special significance within 250 feet of the proposed development and any potential significant vernal pool on property within 750 feet of the proposed development.

If potential resources are identified, the applicant shall seek permission from the abutting property owner to allow a qualified professional to conduct an assessment of the wetland or vernal pool. The request shall be made in writing to the current owner and address in the Assessor's records and be sent by first-class mail with a copy submitted concurrently to the Community Development Department. Documentation of the request for permission shall be submitted to the permitting authority. If it is verified to be a wetland of special significance or significant vernal pool, then the standards in Section 5.38.6, Natural Resource Standards shall apply.

If the abutter(s) refuses to allow the applicant's qualified professional on the property to conduct the assessment or a response from the abutter is not received within ten (10) days, the provisions of this section shall not apply.

5.38.6 Natural Resource Standards

The following standards are required to be met unless compensation is approved by the permitting authority and is provided as stated in Section 5.38.8. A., unless otherwise exempt from compensation under Section 5.38.4 above. The property shall be designed using the

Development Design Process with particular attention given to the preservation of the resources as regulated below. The permitting authority may grant or deny proposed alterations as a result of the evaluation of the design relative to the Development Design Process.

Buffers required under this section shall meet the requirements of Section 5.38.9.

For purposes of this section area of concern shall mean land within:

1. seventy five (75) feet from the upland edge of a freshwater wetland;
2. two hundred fifty (250) feet from the upland edge of a wetland of special significance;
and
3. seven hundred fifty (750) feet from the upland edge of a vernal pool or from the upland edge of a significant vernal pool.

5.38.6.1 Specific Requirements for Wetlands

A. Freshwater Wetlands, which are not Wetlands of Special Significance, and their Areas of Concern

1. The resource shall be preserved.
2. A setback of fifty (50) feet from the upland edge of the wetland shall be maintained for all structures.
3. The area of concern may be altered only with approval of the permitting authority.

B. Wetlands of Special Significance and their Areas of Concern

1. The resource shall be preserved.
2. A buffer shall be preserved or restored within the entire area between the upland edge of the resource and one hundred (100) feet of the upland edge of the wetland.
3. The portion of the area of concern between one hundred (100) and two hundred fifty (250) feet from the upland edge of the wetland may be altered with approval of the permitting authority.

5.38.6.2 Specific Requirements for Vernal Pools

A. Vernal Pools and Their Areas of Concern

1. The resource shall be preserved.
2. A buffer shall be preserved or restored within the entire area between the upland edge of the resource and one hundred (100) feet of the upland edge of the resource.
3. A setback of one hundred (100) feet from the upland edge of the resource must be maintained for all structures.
4. The portion of the area of concern between one hundred (100) and seven hundred fifty (750) feet from the upland edge of the resource may be altered with approval of the permitting authority.

B. Significant Vernal Pools and Their Areas of Concern

1. The resource shall be preserved.
2. A buffer shall be preserved or restored within the entire area between the upland edge of the resource and one hundred (100) feet of the upland edge of the resource.
3. A buffer shall be preserved and/or restored in the entire area between one hundred (100) and two hundred fifty (250) feet from the upland edge of the resource.
4. Alteration up to twenty-five (25) percent of the area between one hundred (100) and two hundred fifty (250) feet from the upland edge of the resource with approval by the permitted authority. Alteration shall include previously disturbed areas.
5. Alteration in excess of twenty-five (25) percent in the area between one hundred (100) and two hundred fifty (250) feet from the upland edge of the resource, provided that the permitting authority determines that it will best meet the goals and objectives of this section.
6. The portion of the area of concern between one two hundred fifty feet (250) and seven hundred fifty (750) feet from the upland edge of the resource may be altered with approval of the permitting authority.

5.38.7 Rivers, streams, brooks, ponds, and floodplains - Buffers and Setbacks Required

1. A buffer, not less than fifty (50) feet wide and in conformance with Section 5.38.9 below, shall be left undisturbed or created if non-existent adjacent to rivers, streams, brooks, floodplains, ponds, and great ponds.
2. No structure shall be located closer than seventy-five (75) feet from rivers, streams, brooks, floodplains, great ponds and ponds.

5.38.8 Compensation Standards – Unless otherwise specifically exempted, the following standards shall apply to the alteration of natural resources regulated by this section.

- A. Compensation Required – Compensation for alteration of natural resources as regulated by this section shall be provided for the area of:
1. Impact of one thousand (1,000) square feet or greater of wetlands that are not of special significance in the Highland Lake Overlay District.
 2. Impact of forty-three hundred (4,300) square feet or greater of wetlands that are not of special significance in all other zoning districts.
 3. 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.
 4. Impact of vernal pools and their required buffers within one hundred (100) feet of the upland edge of the pool in any district.
- B. Types of Compensation
1. Land and Resource Preservation – Preservation may be provided through protection of existing wetlands or vernal pools either by deed or easement, including uplands of wetlands or vernal pools, where the site to be preserved provides significant natural resource functions. Where resources are preserved to provide compensation they shall not be included in the calculation for Common Open Space under Section 3.13 of this ordinance. Where preservation of resources is also required by the State DEP or the

Army Corps of Engineers, the permitting authority may determine that the preservation under that permit is adequate to meet the ordinance requirement.

2. Monetary Compensation– Where the permitting authority determines that monetary compensation will provide an equal or greater value to the Town in the protection of priority resources, the applicant may contribute to a special account for the purposes of Town purchase of natural resources in lieu of preservation.

C. Nature of Compensation

1. Land and Resource Preservation

- a. General - Alterations of natural resources and their areas of concern shall be compensated with like land resources or resources of higher value. Alteration may be compensated by the permanent preservation of natural resources and other land resources and shall be directed to higher value natural resources, such as wetlands of special significance in the case of wetlands or significant vernal pools in the case of vernal pools.
- b. Location of Preserved Land Resources - Generally preservation shall be located on or close to the project site to off-set direct impacts to the natural resource system. The permitting authority may approve an alternative location if it is determined that the location identified is a natural resource priority for the Town or will protect higher natural resources values. Alternative locations will be considered in the following order:
 - 1) somewhere in Town within the same watershed where the impacts of alteration occur to achieve an equal or higher net benefit for the natural resource system
 - 2) somewhere within the same watershed
 - 3) elsewhere
- c. Location off-site - If preservation is provided off-site, natural resource priorities established by the Town should be considered in devising a plan. The applicant is encouraged to identify sites consistent with appropriate studies including but not limited to the published reports of the Town of Falmouth that specify priorities for resource preservation and through discussions with individuals and groups including but not limited to the Town Ombudsman, Conservation Commission, Falmouth Conservation Trust, and others.
- d. Land Area Required for Preservation
 - 1) Alterations of significant vernal pools, vernal pools, and the land area within one hundred (100) feet of a vernal pool shall meet or exceed a ratio of 20:1.
 - 2) All other regulated natural resources requiring compensation shall meet or exceed a ratio of eight to one (8:1).
- e. Restriction of Future Use. Any property accepted for preservation must be conveyed to a third party with restrictions from development or alteration in perpetuity. Transfer of development rights may occur through fee or easement so long as the requirements of this section are met.

2. Monetary Compensation

- a. Fees shall be calculated in accordance with the Planning Fee Schedule as approved by the Town Council.
- b. Fees required by Multiple Agencies – Where compensation fees are due to another agency the Town shall accept a compensation amount equal to the other agency fee minus the Town fee. Where this amount is less than zero, no fee shall be required.
- c. Use of Compensation Fees - Compensation fees collected by the Town shall be deposited in the Open Space Fund.

5.38.9 Buffers

A. Purpose

Natural, planted and otherwise created buffers shall be used to physically separate, shield, protect, or screen proposed land uses from:

1. natural resources and/or
2. Other land uses on or off the development site.

B. Natural Resource Protection Buffers – Any area designated as a natural resource protection buffer shall remain in its natural state unless a restoration or improvement plan is approved by the permitting authority.

1. Non-forested Buffers - Buffers that consist of fields, orchards, shrubs, altered land, or natural succession areas shall comply with the requirements of this section by allowing the area designated as a buffer to regenerate to forest cover naturally. The Town may, however, require that the area designated as a buffer be replanted and the site stabilized if the soils on the site are exposed or eroding. If the area designated as a buffer is to be replanted, no invasive plant species are specifically discouraged. Native shade trees are encouraged to be used in all restoration.
2. Forested Buffers - Buffers shall remain undisturbed, except for:
 - a. the removal of trees that are diseased or pose a safety hazard;
 - b. the removal of invasive plant species, if part of a management plan approved by the permitting authority;
 - c. stormwater runoff which enters the buffer as sheet flow unless specifically permitted under this section; or
 - d. tree cutting or clearing of vegetation with prior approval of the permitting authority.

5.38.10 Alteration of Terrain -Placement or Removal of Fill Material

The purpose of this provision is to control erosion, protect natural resources, minimize storm water runoff, and minimize other nuisances associated with filling and other earth moving activities. This section does not include activities defined as Extractive Industries.

- A. The following shall govern the placement or removal of fill material in all districts.
Permits Required.
1. Activity associated with a building permit or an approval by the Planning Board - no permit required
 2. Up to fifteen (15) cubic yards - no permit required
 3. Between and including sixteen (16) and one thousand (1,000) cubic yards - permit required by the Code Enforcement Officer
 4. Over one thousand (1,000) cubic yards - Planning Board approval required, permit required from Code Enforcement Officer
- B. All activities regulated under this section shall implement erosion and sedimentation control measures as required in Section 5.38.12. [Amended 9/22/03]
- C. Roadways and other public areas shall be kept clean of mud, dirt, debris or other material that may constitute a hazard or nuisance to the public.
- D. Adequate traffic control shall be provided on public roadways to ensure safe access and passage during construction activities.
- E. The permitting authority may require any and all submittal items and apply any standards under Section 9.0, Site Plan review as it deems appropriate to determine if the proposal meets the purpose of this section.

delete 5.42 **Private Access Drives For Country Estates Lots** [Adopted 12/22/05] *and move to Section 3.13*

amend SECTION 9. PLANNING BOARD SITE PLAN REVIEW

9.7 General Site Plan Review Standards

The following standards shall be utilized by the Planning Board in reviewing proposed site plans including all accessory buildings, structures, signs, and other site features.

- a. Preservation of the Landscape: the landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. If a buffer is required to be planted, invasive plant species are specifically discouraged. If a naturally vegetated buffer is proposed to be restored, native species shall be required. Native shade trees are encouraged to be used in all landscape plans.

9.24 General Buffer Standards

- a. Evergreens can be used as a screening buffer, provided they are planted properly. An evergreen screen requires six (6) to eight (8) foot evergreen trees planted in an alternate pattern, five (5) feet on center.
- b. Buffers shall be considered in or for the following areas and purposes:
add a new section:
 - (6) To protect natural resources from negative impacts of alterations.
- c. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and incompatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer; other kinds of buffers shall be considered.

9.28 Other Landscaping Requirements

- a. Required Plant Types. All plantings required under this Ordinance shall be of a type and species appropriate for the soil types and climatic conditions in Falmouth as determined by the permitting authority. Invasive plant species are specifically discouraged from use. Native shade trees are encouraged to be used in the restoration.

Amend Section 10 by adding the following section as Section 10.11 and deleting current Section 5.38.8.

10.11 Enforcement of Buffers

1. For building permits where a buffer is required, a written notice that the property contains a buffer shall be filed at the Cumberland County Registry of Deeds prior to the start of construction or within ten (10) days of plan approval, whichever is sooner. A copy of the notice filed at the Registry shall be submitted to the Code Enforcement Office within the same time period as proof of the filing.
2. On subdivision plans, the location of buffers and setbacks shall be shown using bold lines, shading, and other techniques to ensure that the buffers and the setbacks stand out clearly from background information. The buffers and setbacks shall be labeled and text shall indicate that the buffers are not to be disturbed.
3. The boundaries of buffer shall be marked on site with snow fencing or equivalent measures and approved by the Code Enforcement Officer or their designee prior to site clearing.

Natural Resource Amendments comparison of proposed language with current language October 15, 2009

TOWN of FALMOUTH, MAINE	
Amendments Prepared September 30, 2009 by A. Stearns	
<i>Amendment to Planning Fee Schedule</i>	
Compensation Calculations for Alteration of Resources under Section 5.38 of the Zoning and Site Plan Review Ordinance	
c. Factors	
4) The value of land in Cumberland County per square foot (LV) as determined by the Municipal Revenue Service each assessment year. <i>[current amount is \$0.53]</i>	
5) Resource multiplier	
c) A multiplier of two (2) shall be used for wetlands and their areas of concern as referenced in Section 5.38.6	
d) A multiplier of four (4) shall be used for vernal pools and their areas of concern as referenced in Section 5.38.6	
6) Wetland creation cost per square foot (WCC) as determined by the DEP In Lieu Fee Compensation Program Rates <i>[current amount is \$3.28/s.f.]</i>	
d. Calculation of Fees – per square foot (sf)	
1) Wetland Compensation Formula:	
Wetland compensation fee = (wetland impact area square footage x (WCC + LV) + (wetland buffer impact area square footage x LV) x (2)	
2) Vernal Pool Compensation Formula:	
Vernal pool compensation fee = (direct vernal pool alteration square footage) x (WCC. + LV)) + (vernal pool area of concern alteration/s.f. x LV) x (4)	
Proposed Amendments	Current Ordinance
SECTION 2. <u>DEFINITIONS</u>	
<i>All definitions will be renumbered after the amendment is approved. The following definitions will either replace existing definitions or be added to this section as noted.</i>	
Alteration [replacement]:	Alteration:
5. A change, addition, or modification, requiring construction, including any change in the location of structural members of	A change, addition, or modification, requiring construction, including any change in the location of structural members of buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative

buildings such as bearing walls, columns, beams, or girders, but not including cosmetic or decorative changes; or	changes.
6. Any construction, change, addition, or modification of any permanent structure; or	
7. Dredging; bulldozing; removing or displacing soil, sand, vegetation or other materials; draining or dewatering; filling; or	
8. The construction, change, addition, or modification of any combination of materials covering ten (10) square feet or less constructed or erected above or below or upon the surface of the ground or water with minimal impact.	
Buffer, Screening [new]: Naturally occurring or planted landscaping, fences, berms, and mounds and other site changes used to minimize adverse impacts year-round on a resource or site or adjacent properties year-round.	
Buffer, Resource Protection [new]: A vegetated area within a property or site, generally adjacent to a natural resource, either consisting of natural existing vegetation or created through the planting of trees and shrubs, which is designed to minimize the negative impact of alterations on natural resources.	
Code Enforcement Officer [replacement]: The appointed authority by the Town to interpret and enforce the provisions of this ordinance, also referred to as the Building Inspector.	Code Enforcement Officer: Code Enforcement Officer of the Town of Falmouth, also referred to as the Building Inspector
Compensation [new]: Replacement of a lost or degraded function of a wetland or vernal pool and its buffers with a function of equal or greater value.	
Disturbed Area [new]: For the purposes of Section 5.39, Erosion and Sedimentation, that part of the land surface on which fill material has been placed or from which soil, vegetation, pavement, or structures have been removed, exposing soil.	
Fill [new]: To put into or upon the land or allowing fill material	
Fill Material [new]: Any, soil, rock, sand, silt, clay, peat, brick, cured concrete, or debris which is not mixed with other solid or liquid waste, and which is not derived from an ore mining activity.	Definition of Fill Material: Fill material shall mean clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.
Floodplain [replacement]: Land subject to inundation by storm or flood water caused by overflow from the normal high water mark of any coastal or inland waters, or as defined or identified by the U.S. Federal	Flood Plain: Land subject to inundation by storm or flood water caused by overflow from the normal high water mark of any coastal or inland waters, or as defined or identified by the Flood Boundary Maps of the

<p>Emergency Management Administration's Flood Boundary Maps of the Town.</p>	<p>Town of Falmouth. Floodplain. The area adjacent to a stream or pond that is inundated during a 100-year flood event, as indicated on flood insurance maps of the Federal Emergency Management Agency, or by field indicators such as alluvial deposits, scoured soils, silt-covered leaves and vegetation, water-borne debris, topography, and other site-specific evidence, or by a flood elevation analysis of a qualified professional.</p>
<p>Floodway, regulatory [replacement]:</p>	<p>Floodway:</p>
<p>3. The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot, and</p>	<p>The portion of the 100-year floodplain that must remain open and undeveloped and that is identified as a floodway on the most recent version of the FEMA floodplain maps for Falmouth. [Adopted 12/22/05]</p>
<p>4. When not designated on the community's flood insurance rate map or flood boundary and floodway map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half (1/2) the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.</p>	
<p>Invasive plant species [new]: Plant species that do not naturally occur in Maine and whose introduction and proliferation causes or is likely to cause harm to the environment, economy, human health, natural resources, and outcompete native species. For the purposes of this ordinance the following plant species are considered invasive:</p>	
<p>Asiatic Bittersweet (<i>Celastrus orbiculata</i>)</p>	<p>Japanese Knotweed (<i>Fallopia japonica</i>)</p>
<p>Autumn olive <i>Elaeagnus umbellata</i></p>	<p>Japanese stiltgrass (<i>Microstegium vimineum</i>)</p>
<p>Bishop's weed <i>Aegopodium podagraria</i></p>	<p>Lesser celandine</p>
<p>Black locust</p>	<p>Mile-a-minute vine (<i>Polygonum perfoliatum</i>)</p>
<p>Black swallowwort</p>	<p>Morrow and Tartarian Honeysuckle (<i>Lonicera morrowii</i> and <i>Lonicera tartarica</i>)</p>
<p>Blunt-leaved privet (<i>Ligustrum obtusifolium</i>)</p>	<p>Multiflora or Rambler Rose (<i>Rosa multiflora</i>) Non-native honeysuckles</p>

Burning bush (<i>Euonymus alatus</i>)	Norway maple (<i>Acer platanoides</i>)	
Common and Glossy Buckthorn (<i>Rhamnus cathartica</i> and <i>Frangula alnus</i>)	Porcelainberry	
Common Reed (<i>Phragmites australis</i>)	Purple Loosestrife (<i>Lythrum salicaria</i>)	
European alder	Rugosa rose	
Garlic mustard (<i>Alliaria petiolata</i>)	Small-flowered tickle-grass	
Himalayan jewelweed <i>Impatiens glandulifera</i>	Swallow-worts (<i>Cynanchum louiseae</i> and <i>C. rossicum</i>)	
Japanese Barberry (<i>Berberis thunbergii</i>)	Water chestnut (<i>Trapa natans</i>)	
Japanese Honeysuckle (<i>Lonicera japonica</i>)	Yellow flag iris (<i>Iris pseudacorus</i>)	
Municipal Officers [new]: Falmouth Town Council.		
Permitting Authority [new]: The Planning Board or Code Enforcement Officer where designated.		
Planning Board [replacement]: The Planning Board of the Town.		Planning Board: The Planning Board of the Town of Falmouth.
Pond [replacement]: Any naturally occurring inland body of water.		Pond: Any inland body of water, except a man-made body of water, completely surrounded by land held by a single owner. Pond. A naturally occurring inland body of water, but not including great ponds as defined by the Maine Natural Resources Protection Act.
Primary Conservation Area [replacement]: The portion of a site containing the following resources:		Primary Conservation Area: The portion of a site containing:
10. floodplain, or coastal high hazard area;		1) land that meets the descriptions in subsections 5.31.1, Net Residential Area, c, d or f;
11. areas unsuitable for development in its natural state, including but not limited to 1) steep slopes in excess of twenty-five (25) percent, or 2) unstable soils subject to slumping, mass movement, or accelerated erosion;		2) a protected natural resource as defined in subsection 5.38.3, Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands; or
12. wetland including coastal wetland,		3) land within a buffer or setback required by subsection 5.38.4. [Adopted 12/22/05] [Amended 12/17/07]
13. one hundred (100) feet from the upland edge of a wetland of special significance,		

14. fifty (50) feet from the upland edge of a freshwater wetland;	
15. area located within the Resource Protection District;	
16. pond or great pond;	
17. river, stream, or brook;	
18. vernal pool or significant vernal pool and the area one hundred (100) feet from their upland edges; and	
Qualified Professional [new]: A specialist who is educated and experienced with delineating vernal pool and wetland boundaries in accordance with methodologies and standards for identification as adopted by the Town of Falmouth, Maine Department of Environmental Protection or the U.S. Army Corps of Engineers.	
Retirement Community [new]: A development that offers a continuum of a variety of levels of care and range of services to elderly and/or disabled residents; is designed to provide a sense of a unified development with a common design character; and includes housing for at least one hundred fifty (150) residents in a range of accommodations.	
Secondary Conservation Area – [delete]	Secondary Conservation Area: The portion of a site that has open space, recreational, natural resource, scenic, cultural, historic, or archeological value and should be considered for inclusion within the common open space of a conservation subdivision but is not within the Primary Conservation Area. [Adopted 12/22/05]
Significant Wildlife Habitat [new]: Environments that provide living, feeding, staging, critical spawning, nursery areas, and travel corridors for species appearing on the official state or federal list of endangered or threatened animal species, including but not limited to high and moderate value deer wintering areas, seabird nesting islands, significant vernal pools and their areas of concern, high and moderate value waterfowl and wading bird habitat, shorebird habitat and Designated Population Segment area for Atlantic salmon as defined by the Department of Inland Fisheries and Wildlife and Atlantic Salmon Commission.	
Steep Slope [new]: Areas containing at least five thousand (5,000) contiguous square feet with slopes equal to fifteen (15) percent or greater.	
Stormwater Management Facility [new]: Various improvements, such as stormwater treatment structures, swales, curbs, catch basins, collector	

<p>sewers, detention basins, and retention basins, which are components of a system that accommodates and controls stormwater runoff.</p>	
<p>Upland Edge [replacement]: The boundary between upland and wetland, pond, vernal pool, or significant vernal pool. (applies to Section 7 Shoreland Zoning) [Adopted, 5/27/92]</p>	<p>Upland Edge: The boundary between upland and wetland (applies to Shoreland Zoning, Section 7). [Adopted, 5/27/92]</p>
<p>Vernal Pool [replacement]: A temporary to permanent, body of water occurring in a shallow depression that typically fills during the spring or fall and may dry during the summer. Vernal pools lack viable populations of predatory fish and provide the primary breeding habitat for wood frogs, spotted salamanders, blue spotted salamanders, and fairy shrimp. Evidence of breeding activity by these species, developed through the completion of a field survey by a qualified professional, is required to define an area as a vernal pool.</p>	<p>Vernal Pool. A naturally occurring temporary to permanent inland body of water that forms in a shallow depression and typically fills during the spring or fall and may dry during the summer. The vernal pool contains no viable populations of predatory fish, and it provides the primary breeding habitat for wood frogs, spotted salamanders, blue-spotted salamanders and fairy shrimp. The presence of any one or more of these species is usually conclusive evidence of a vernal pool. Only vernal pools that have been mapped or identified by a governmental agency prior to project approval shall be considered as being within this definition.</p>
<p>Vernal Pool, Significant [new]: A vernal pool which, as documented by a qualified professional at the appropriate time of year, meets or exceeds State criteria for identification of a significant vernal pool, specifically demonstrating one (1) or more of the following biological conditions:</p>	
<p>f. fairy shrimp in any life stage;</p>	
<p>g. ten (10) or more blue spotted salamander egg masses;</p>	
<p>h. twenty (20) or more spotted salamander egg masses;</p>	
<p>i. forty (40) or more wood frog egg masses; or</p>	
<p>j. the presence of State listed rare, endangered, or threatened species that commonly require a vernal pool.</p>	
<p>SECTION 3. ESTABLISHMENT OF DISTRICTS</p>	
<p><i>Classify districts so that the term “residential district” is defined. Replace the current section 3.1 in its entirety with the following:</i></p>	

3.1 Districts

The Town is hereby divided into the following classes of districts as shown on the Zoning Map:

3. Residential Districts

- a. Farm and Forest District - "F"
- b. Residential District - "RA"
- c. Residential District - "RB"
- d. Residential District - "RC"

4. Other Districts

- a. Route One Business District - "SB-1"
- b. Mixed Use Cluster District - "MUC"
- c. Village Mixed Use District - "VMU"
- d. Business and Professional District - "BP"
- e. Route 100 Corridor Overlay District - "CO" [Adopted, 1/25/88]
- f. Village Center Overlay District [Adopted, 8/31/98]
- g. Retirement Community Overlay District [Adopted, 11/23/98]
- h. Highland Lake Conservation Overlay District [Adopted, 11/27/00]
- i. Resource Conservation Zoning Overlay District - "RCZO" [Adopted, 12/22/05]
- j. Resource Protection District
- k. Limited Residential District
- l. Limited Commercial District [Adopted, 5/27/92]
- m. Stream Protection District [Adopted, 5/27/92]
- n. Open Space Residential District - "OSRD" [Adopted, 3/27/89] [Repealed 6/19/06]
- o. West Falmouth Crossing Master Planned Development District [Adopted, 1/26/98; Amended, 12/22/05]
- p. Tidewater Master Planned Development District [Adopted, 4/4/05]
- q. Middle Road Special District - "MRSD", [adopted 11/24/09]

3.1 Districts

The Town of Falmouth is hereby divided into the following classes of districts as shown on the Zoning Map:

- 1. Farm and Forest District - "F"
- 2. Residential District - "RA"
- 3. Residential District - "RB"
- 4. Residential District - "RC"
- 5. Route One Business District - "SB-1"
- 6. Mixed Use Cluster District - "MUC"
- 7. Village Mixed Use District - "VMU"
- 8. Route 100 Corridor Overlay District - "CO" [Adopted, 1/25/88]
- 9. Business and Professional District - "BP"
- 10. Shoreland Zone:
- 11. Resource Protection District
- 12. Limited Residential District
- 13. Limited Commercial [Adopted, 5/27/92]
- 14. Stream Protection [Adopted, 5/27/92]
- 15. Open Space Residential District - "OSRD" [Adopted, 3/27/89] [Repealed 6/19/06]
- 16. West Falmouth Crossing Master Planned Development District [Adopted, 1/26/98; Amended, 12/22/05]
- 17. Amended, 12/22/05]
- 18. Village Center Overlay District [Adopted, 8/31/98]
- 19. Retirement Community Overlay District [Adopted, 11/23/98]
- 20. Highland Lake Conservation Overlay District [Adopted, 11/27/00]
- 21. Tidewater Master Planned Development District [Adopted, 4/4/05]
- 22. Resource Conservation Zoning Overlay District - "RCZO" [Adopted, 12/22/05]

<i>Replace the current section 3.13 with the following language (italics excluded – explanatory notes only)</i>	
3.13 “RCZO” -- Resource Conservation Zoning Overlay District	
This Section establishes standards that require a significant portion of the development site to be set aside as permanently protected common open space restricted from significant development or intensive use while allowing homes to be clustered on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The development, including the location of the common open space, lots, and streets, shall be laid out in accordance with the Development Design Process set forth in Section 4, General Provisions. These provisions are designed to ensure that the development:	The preferred form of development within the Resource Conservation Zoning Overlay (RCZO) District is conservation subdivisions. This section establishes standards for conservation subdivisions that set aside a significant portion of the site as common open space that is permanently protected while allowing the homes to be clustered on smaller lots on the portions of the site that have the least natural, cultural, or historical resource value for conservation purposes. The standards are intended to ensure that those areas of the site that are not developable or that have natural resource value are included in the common open space. These provisions are designed to ensure that conservation subdivisions developed in the Town of Falmouth:
1. preserves those areas of the site that have the highest natural resource value for conservation purposes;	1. Preserve those areas of the site that have the highest natural resource value for conservation purposes;
2. Preserves identified historic, archeological, and cultural features located on the site;	2. Preserve identified historic, archeological, and cultural features located on the site;
3. Locates the buildings, structures, roads, and parking areas on those portions of the site that are most appropriate for development;	3. Locate the buildings and structures on those portions of the site that are most appropriate for development,
4. Creates continuous open spaces or “greenways” by linking the common open spaces within the development and to adjoining developments wherever possible; and,	4. Create continuous open spaces or “greenways” by linking the common open spaces in adjoining subdivisions wherever possible; and,
5. Minimizes the impact of residential development on the Town, neighboring properties, and the natural environment.	
<i>Amended to be more specific regarding uses allowed and applicability</i>	
3.13.1 Applicability	
The provisions of this District shall only apply to: 3. those areas shown on the RCZO District Map, and 4. lot divisions for new single-family residential development which require Planning Board approval.	The provisions of the Resource Conservation Zoning Overlay (RCZO) District shall apply to those areas shown on the Resource Conservation Overlay and Resource Conservation Zoning Overlay Districts Map. The provisions of the RCZO District shall apply only to lots created after April 1, 2005. Any lot created prior to that date shall not be subject to these provisions and may be used and built upon without compliance with these requirements. Such pre-existing lots shall not be deemed to be nonconforming.

3.13.2 Coordination with the Underlying District	
Where the specific provisions of this District vary from the requirements of other provisions in this ordinance or the Land Subdivision Ordinance, these provisions shall govern.	The RCZO District is an overlay district. The provisions of this district supplement the provisions of the underlying zoning district. Where the specific provisions of the RCZO District vary from the requirements of the underlying zone, these provisions shall govern. In general, the requirements of the RCZO overlay district apply to all new single-family residential development that requires review and approval by the Falmouth Planning Board, including legal subdivisions and private ways. It does not apply to house lots created prior to enactment of the overlay district or to individual house lots that can be created without Planning Board approval. It also does not apply to multiplex (condo or apartment) development, residential planned developments, or special zoning districts approved by the Town Council.
3.13.3 Allowed Development Patterns	
The development of land within the RCZO District may occur in accordance with any one or a combination of the following development patterns:	The development of land within the RCZO District may occur in accordance with any one or a combination of the following development patterns:
F. Exempt Lot	Exempt Lots – A single residential lot may be created from an existing lot of record in accordance with the provisions of Sub-Section 3.13.8, Exempt Lots.
G. Conservation Private Ways	
H. Country Estate Lots That Are Not Part of a Subdivision	Country Estate Lots That Are Not Part of a Subdivision – Individual lots that are not part of a subdivision may be created in accordance with the provisions of Sub-Section 3.13.7, Country Estate Developments Not Involving a Legal Subdivision of Land.
I. Country Estate Subdivisions	Country Estate Subdivisions – A parcel of land may be subdivided into lots in accordance with the provisions of Sub-Section 3.13.6, Standards for Subdivision Development Using Country Estate Lots.
J. Conservation Subdivisions	Conservation Subdivisions – A parcel of land may be subdivided into lots in accordance with the provisions of Sub-Section 3.13.5, Standards for Conservation Subdivisions.
3.13.4 Exempt Lot	
Any lot of record as of April 1, 2005 may be divided to create one additional building lot under the provisions of the underlying district whether or not such division is a subdivision, provided that all of the following conditions are met:	Any lot of record as of April 1, 2005 may be divided to create one additional exempt lot whether or not such division is a subdivision, provided that all of the following conditions are met:
1. The lot of record shall be held in separate ownership from any	The lot of record shall be held in separate ownership from any abutting

<p>abutting property.</p>	<p>property.</p>
<p>2. Both of the lots created by the division shall meet the minimum lot size requirements for the underlying district including minimum lot size, minimum lot width, and minimum street frontage and the minimum suitable building area per lot requirement of Section 5.31.2 a.</p>	<p>Both of the lots created by the division shall meet the minimum lot size requirements for the underlying district including minimum lot size, minimum lot width, and minimum street frontage and the minimum suitable building area per lot requirement of Section 5.31.2 a.</p>
	<p>If the division is a subdivision as defined by this ordinance or the Land Subdivision Ordinance, the division shall be subject to review and approval by the Planning Board in accordance with the subdivision regulations.</p>
<p>3.13.6. General Standards</p>	
<p>D. Plan Recording – All plans approved by the Planning Board under this section shall be recorded at the Cumberland County Registry of Deeds within ninety (90) days of the date of approval. If the plan is not recorded within this time period it is null and void.</p>	
<p>E. Buffer - Buffers as required in this section shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions. The treatment of the buffer shall be subject to approval by the Planning Board. Native shade trees are encouraged to be used in all landscape plans. Invasive plant species are especially discouraged.</p>	<p>The buffer strip shall be naturally vegetated or landscaped in a manner appropriate to the existing site conditions and the secondary conservation value of the strip. The treatment of the buffer strip shall be subject to approval by the Planning Board as part of the approval of the subdivision.</p>
<p>I. Streetscape Buffer - A landscaped buffer shall be maintained or established along any public street existing as of April 1, 2005 that is adjacent to a Conservation Subdivision to preserve the existing street character and minimize the visual impact of the Conservation Subdivision on the streetscape.</p>	<p>F. Streetscape Buffers Adjacent to Existing Public Streets -- A vegetated buffer strip shall be maintained along any public street existing as of April 1, 2005 that is adjacent to a Conservation Subdivision to minimize the visual impact of the Conservation Subdivision on the streetscape. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board as part of the approval of the subdivision, to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]</p>
<p>For Conservation Subdivisions and Private Ways the depth of the buffer shall be at least one hundred (100) feet. For Country Estate Subdivisions or Private Ways the depth of the buffer may be reduced to fifty (50) feet. This provision may be reduced to twenty-five (25) feet for new and existing residential lots that front on public streets. The following alterations may occur within the buffer with Planning Board approval:</p>	<p>The depth of the buffer strip shall be at least one hundred (100) feet. This provision shall be reduced to twenty-five (25) feet for individual residential lots that front on public streets that existed as of April 1, 2005.</p>

(d) trails	Trails required under Appendix 1(N) of the Subdivision Ordinance may be located within the buffer strip. [Adopted 5/29/07]
(e) accessory structures such as signs, landscaping elements, underground utility structures, and drainage facilities	No parking, buildings, structures, or recreational facilities, with the exception of trails required under Appendix 1(N) of the Subdivision Ordinance, shall be permitted within this buffer strip but accessory structures such as signs, walls, underground utility structures, and drainage facilities may be located within this buffer.
(f) driveways and roads that run essentially perpendicular to the street	The buffer strip may be crossed by driveways or access drives that run essentially perpendicular to the street.
2. Perimeter Buffers - A landscaped buffer shall be maintained along the external perimeter of the development site or the property line of the subdivision with the exception of property lines along public streets. The width of the buffer shall be at least fifty (50) feet.	G. Perimeter Buffers -- A vegetated buffer strip shall be maintained along the external perimeter or property line of the Conservation Subdivision, with the exception of property lines along public streets, to minimize the impact of the Conservation Subdivision on abutting properties. The width of the buffer strip shall be at least fifty (50) feet. If the buffer strip abuts a water body or wetland, the width and treatment of the buffer strip shall be expanded to comply with the most restrictive requirements of Section 7, Shoreland Zoning and Section 5.38, where applicable. The buffer strip shall be naturally vegetated or landscaped and the treatment shall be subject to approval by the Planning Board as part of the approval of the subdivision. Appropriate legal mechanisms shall be established by the subdivider, subject to approval by the Planning Board, to assure that the buffer strip will be permanently protected and maintained. [Amended 5/29/07]
The following alterations may occur within the buffer with Planning Board approval:	
(e) trails;	Trails required under Appendix 1(N) of the Subdivision Ordinance and street right of ways for future street connections may be located within the buffer strip. [Adopted 5/29/07]
(f) docks, boat ramps, and other water-dependent structures;	
(g) accessory structures such as signs, landscaping elements, underground utility structures, and drainage facilities; and	No parking, buildings, structures, or recreational facilities, with the exception of trails required under Appendix 1(N) of the Subdivision Ordinance, shall be permitted within this buffer strip but accessory structures such as walls, underground utility structures, and drainage facilities may be located within this buffer.
(h) roads may be located in the perimeter buffer strip where the Planning Board determines through the Development Design Process that the resulting road location and subdivision design	Access roads may be located in the buffer strip where the Planning Board determines through the 4-Step Design Process that the resulting road location and subdivision design best achieves the

<p>best achieves the purposes of a conservation development.</p>	<p>purposes of a conservation subdivision as listed in Section 3.13.5.A.1-5. [Adopted 5/29/07]</p>
<p>F. Conceptual Long Range Development Plan</p>	<p>H. Conceptual Long Range Development Plan</p>
<p>When a development under this section will not utilize the entire parcel and there is potential for future development of the remaining land, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the development potential of the remaining land.</p>	<p>When a Conservation Subdivision will not utilize the entire parcel and there is potential for future subdivision or development of the parcel or any of the lots being created, the application for subdivision approval shall include a Conceptual Long Range Development Plan showing the potential utilization of the lots and the balance of the parcel not being subdivided. The Long Range Plan is intended to be conceptual in nature, to rely on published data about natural resources relevant to the parcel and the built environment, and to demonstrate that the current subdivision proposal will not compromise important conservation values or the long term development of the parcel as a Conservation Subdivision.</p>
<p>3.13.6 Conservation Private Way</p>	
<p>Divisions of lots on private ways which are not eligible under 3.14, Exempt Lots and which are exempt from subdivision review shall meet the provisions of 3.13.7, Conservation Subdivision in addition to the provisions of Section 5.27, Private Ways. They shall be exempt from the requirements of the Land Subdivision Ordinance except for those provisions that provide for submittal requirements and procedures to the Planning Board.</p>	
<p>3.13.7 Conservation Subdivision</p>	
<p>C. Required Common Open Space – Common open space shall be designated as prescribed below:</p>	<p>C. Required Common Open Space – Common open space shall be designated as prescribed below: [Amended 12-17-07]</p>
<p>3. <u>Minimum Acreage Amount Required</u> – The acreage of common open space provided within the subdivision shall be equal to or greater than the sum of the following (rounded up to the nearest tenth of an acre):</p>	<p>1. <u>Minimum Acreage Amount Required</u> – The acreage amount of common open space provided within the subdivision shall be equal to or greater than the sum of the following (rounded up to the nearest tenth of an acre):</p>
<p>a. fifty percent (50%) of the calculated Net Residential Area; plus,</p>	<p>a. fifty percent (50%) of the calculated Net Residential Area; plus,</p>
<p>b. an area equal to the total acreage deducted from the gross area of the site to determine the Net Residential Area under Section 5.31.</p>	<p>b. the area equal to the total number of acres of unsuitable area that were deducted from the unsuitable area of the parcel that is deducted from the gross area of the site to determine the Net Residential Area under section 5.31.</p>
<p>4. <u>Dimensional Requirements</u> – The following dimensional requirements may be reduced or increased as determined by the Planning Board through the Development Design Process.</p>	<p>Step 1B. Design of Common Open Space</p>

<p>e. At least seventy-five (75) percent of the common open space shall be contiguous to another common open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within one hundred (100) feet of each other and there are no impediments to access between the areas.</p>	<ol style="list-style-type: none"> 1. All open space areas shall be part of a larger continuous and integrated open space system within the parcel being developed. At least 75 percent of the common open space shall be contiguous to another common open space area. For the purposes of this subsection, areas shall be considered contiguous if they are within 100 feet of each other and there are no impediments to access between the areas. 2. Common open space shall, to the greatest extent possible, protect site features identified in the Existing Resources and Site Analysis Plan. 3. Natural features shall generally be maintained in their natural condition, but may be modified to improve their appearance, or to restore their overall condition and natural processes, as recommended by natural resource professionals and in compliance with an approved Common Open Space Ownership and Stewardship Plan as provided in Appendix 3 for major subdivision submissions and Appendix 4 for minor subdivision submissions. 6. Common open space shall include lands located along existing public streets in order to preserve existing rural landscape character as seen from these streets, and shall, in no case, contain less than the required buffer, setback area, or separation distance.
<p>f. No area of common open space shall be less than fifty (50) feet in its smallest dimension and less than ten thousand (10,000) square feet in area. Open space not meeting this standard is allowed as an added project enhancement, but shall not be counted toward the required project common open space.</p>	<ol style="list-style-type: none"> 4. No area of common open space shall be less than 50 feet in its smallest dimension and less than 10,000 square feet in area. Open space not meeting this standard is allowed as an added project enhancement, but shall not be counted toward the required project common open space.
<p>g. The boundaries of common open spaces should be marked by natural features wherever present, such as hedgerows, stone walls, woodland edges, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, to distinguish where the common open space ends and private lot areas begin. Where structural demarcations, such as fences are used, they shall be the minimum needed to accomplish this objective.</p>	<ol style="list-style-type: none"> 5. The boundaries of common open spaces shall be marked by natural features wherever possible, such as hedgerows, stone walls, edges of woodlands, streams, or individual large trees. Where no such existing demarcations are present, additional plantings, fences, or other landscape features shall be added to enable residents or the public, if applicable, to distinguish where the common open space ends and private lot areas begin. Where structural demarcations, such as fences are used, they shall be the minimum needed to accomplish this objective.
<p>h. Building sites should generally be located at least one-hundred (100) feet from Primary Conservation Areas, and at least fifty (50) feet from Secondary Conservation Areas, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive</p>	<p>Building sites should generally be located at least 100 feet from Primary Conservation Areas and at least 50 feet from Secondary Conservation Areas, taking into consideration the potential negative impacts of development on such areas as well as the potential positive benefits of such locations to provide attractive views and visual settings for</p>

views and visual settings for residences and other uses.	residences and other uses.
D. Priorities for Land Included in Common Open Space – The land set aside for common open space shall be proposed by the applicant based upon the following priorities. Final selection of the land to be set aside as common open space shall be determined by the Planning Board based on its assessments of the importance of the types of conservation areas in the context of the project’s location and configuration and the project design as developed under the Development Design Process.	2. Priorities for Land Included in Open Space – The land set aside in the common open space shall be proposed by the applicant based upon the following priorities. Final selection of the land to be set aside as common open space shall be determined by the Planning Board based on its assessments of the importance of the types of conservation areas in the context of the project’s location and configuration. [Amended 12-17-07]
Priority 1 - Primary Conservation Areas	Priority 1 - Primary Conservation Areas as defined in section 2.0. [Amended 12-17-07]
Priority 2 - Secondary Conservation Areas that consist of any of the following and not included in Primary Conservation Areas:	Priority 2 - Secondary Conservation Areas that provide protection for unique or irreplaceable resources including
9. the habitat of rare, significant, or endangered species;	the habitat of rare, significant, or endangered species,
10. areas between one hundred (100) and two hundred and fifty (250) feet of the upland edge of wetlands of special significance,	
11. areas between fifty (50) and seventy-five (75) feet of freshwater wetlands that are not of special significance,	
12. areas between one hundred (100) and seven hundred fifty (750) feet of vernal pools and significant vernal pools,	the upland habitat of vernal pools mapped by the Town,
13. steep slopes between fifteen (15) and twenty-five (25) percent	
14. archeological or historic sites,	archeological or historic sites,
15. stonewalls, or	
16. cemeteries.	landmarks, and cemeteries.
Priority 3 - Secondary Conservation Areas that provide for the continuation of resource systems into or through the site.	Priority 3 - Secondary Conservation Areas that provide for the continuation of resource systems into or through the site such as shorelands, river or stream corridors, wildlife travel corridors, trails, and unfragmented habitat blocks. The width of such corridors shall be as follows: [Amended 12-17-07] Shorelands, river or stream corridors - 100% of the width of any required vegetative buffer in addition to the required buffer
5. Shorelands, river or stream corridors - the land area twice the resource buffer width as may be required under this Ordinance.	
6. wildlife travel corridors three hundred (300) feet	7. Wildlife travel corridors – 300 feet
8. existing trails and twenty-five (25) feet on either side of the trail, and	9. Trail Corridors – 25 feet on either side of the trail

10. unfragmented habitat blocks.	
Priority 4 – Secondary Conservation Areas that are adjacent to other protected open space.	Priority 4 - Secondary Conservation Areas that are adjacent to other protected open space.
Priority 5 - Secondary Conservation Areas that maintain the rural character of roadsides.	Priority 5 - Secondary Conservation Areas that maintain the rural character of roadsides.
Priority 6 - Secondary Conservation Areas that include identified scenic resources including viewsheds and agricultural fields along with the forested margin adjacent to these resources.	Priority 6 - Secondary Conservation Areas that include identified scenic resources including viewsheds and agricultural fields along with the forested margin adjacent to these resources.
Priority 7 - Secondary Conservation Areas including fields, aquifer recharge areas, deer yards, and other identified habitat.	Priority 7 - Secondary Conservation Areas that encompass groups of small wetlands not included in #1, streams or ponds in a continuously forested area.
	Priority 8 - Other Secondary Conservation Areas including fields, aquifer recharge areas, deer yards, and other identified habitat.
C. Use of the Common Open Space	3. Use of the Common Open Space --
4. The common open space in a Conservation Subdivision or Private Way shall be used only for the following purposes as approved by the Planning Board and determined to be compatible with the overall scale and character of the development. Permanent provisions for the use, ownership, and maintenance of the common open space including provisions for screening and buffering shall be established as part of the approval of the project in accordance with the Land Subdivision Ordinance. Placement of improvements shall be located in accordance with the Development Design Process.	The common open space in a Conservation Subdivision shall not be used as the location for dwelling units or other nonresidential buildings or parking except as provided for below and shall only be used for the following purposes:
a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, and identified cultural or historic features such as stone walls, cemeteries, and similar identified features or resources.	a. The conservation and protection of natural resource areas, wildlife habitats, scenic features or views, and identified cultural or historic features such as stone walls, cemeteries, and similar identified features or resources;
b. Outdoor recreation uses provided that no more than twenty-five (25) percent or a maximum of three (3) acres, whichever is less, of the common open space is altered or developed for the use.	b. Outdoor recreation uses and facilities including related accessory structures and buildings that are compatible with the overall scale and character of the subdivision provided that no more than 25% and a maximum of 3 acres of the common open space is altered or developed for recreational facilities and that any building shall have a gross floor area of less than two hundred (200) square feet and the total gross floor areas of all such buildings shall be less than one thousand (1,000) square feet;
c. Buildings and Structures - Indoor recreational facilities, accessory structures for outdoor recreation and other buildings	c. Indoor community or recreational facilities that primarily serve residents of the subdivision, having a total gross floor area for all such

<p>that are needed for the operation of the project or serve residents of the subdivision. No more than a total combined gross floor area of two thousand (2,000) square feet is permitted.</p>	<p>facilities of less than two thousand (2,000) square feet and that are compatible with the overall scale and character of the subdivision</p>
<p>d. Forest management and agricultural uses including animal husbandry.</p>	<p>d. Forest management and agricultural uses including animal husbandry that are specifically approved by the Planning Board as part of the subdivision approval.</p>
<p>e. Support facilities necessary for the project including individual or community wells, stormwater management facilities, underground utility lines, individual or group subsurface wastewater disposal systems, or parts thereof, and related facilities such as sewer pump stations.</p>	<p>f. Individual or group subsurface wastewater disposal systems or parts thereof, provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities;</p>
<p>f. Other uses compatible with the overall scale and character of the project.</p>	<p>g. Other appropriate uses that are compatible with the overall scale and character of the subdivision and that are specifically approved by the Planning Board.</p>
<p>5. Stewardship Requirements - Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Land Subdivision Ordinance, subject to approval by the Planning Board.</p>	<p>Stewardship Requirements -- Appropriate legal mechanisms for the on-going maintenance and stewardship of the common open space shall be established, including the creation of a stewardship account or payment to the Town's Stewardship Fund as set forth in the Land Subdivision Ordinance, subject to approval by the Planning Board as part of the approval of the subdivision in accordance with the Land Subdivision Ordinance.</p>
<p>6. Common open space shall not be included in residential lots. [Adopted 5/29/07]</p>	<p>Common open space shall not be included in residential lots. [Adopted 5/29/07]</p>
<p>D. Standards for Individual Residential Lots - Where the Planning Board has discretion on dimensional requirements their approval shall be based upon a finding that the lots will allow for the creation of a high quality living environment for the residents of the development and provide adequate access to the residences and other facilities.</p>	<p>D. Standards for Individual Residential Lots -- Lots that are created for residential development as part of a conservation subdivision, and the subsequent development of those lots, shall conform to the following standards:</p>
<p>6. <u>Minimum Lot Size</u> -- The size of the individual lots shall be subject to Planning Board approval with the following minimum requirements. (1) lots served by a subsurface wastewater disposal system - twenty thousand (20,000) square feet in area (2) lots served by the Town public sewer system - ten thousand (10,000) square feet in area</p>	<p>1. Minimum Lot Size -- Individual lots that are created as part of a Conservation Subdivision may be smaller than the required minimum lot size for the district in which it is located. The size of the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot sizes will allow for the creation of a high quality living environment for the residents of the subdivision and provide for adequate sewage disposal. In no case shall any lot served by a subsurface wastewater disposal system be less than twenty thousand (20,000) square feet in area nor</p>

	any lot served by the public sewer system be less than ten thousand (10,000) square feet in area.
7. <u>Minimum Lot Width</u> – one hundred twenty-five (125) feet - The Planning Board may reduce the minimum lot width by up to fifty (50) percent provided that the project is developed according to an proposed master development plan where each individual lot is subject to design review of the lot layout and building design according to parameters and guidelines submitted by the applicant and approved by the Planning Board.	2. Minimum Lot Width – The minimum lot width for lots in a conservation subdivision shall be one hundred twenty-five (125) feet. The Planning Board may reduce the minimum lot width by up to fifty (50%) percent provided that the project is developed according to an approved master development plan where each individual lot is subject to design review of the lot layout and building design according to parameters and guidelines submitted by the developer and approved by the Planning Board.
Said design parameters shall include maximum lot coverage, floor area ratio, and major building axis line relationship to the street line (parallel or perpendicular) for each lot to ensure that each lot will be developed in a way that coordinates with adjacent lots, prevents building crowding, and provides adequate yard spaces and privacy screening, while avoiding a repetitive pattern of housing orientation, and design throughout the project.	Said design parameters shall include maximum lot coverage, floor area ratio, and major building axis line relationship to street line (parallel or perpendicular) for each lot to ensure that each lot will be developed in a way that coordinates with adjacent lots, prevents building crowding, and provides adequate yard spaces and privacy screening, while avoiding a repetitive pattern of housing orientation and design throughout the project.
8. <u>Minimum Street Frontage</u> – one hundred twenty-five (125) feet.	3. Minimum Street Frontage – The minimum street frontage for lots in a conservation subdivision may be reduced to not less than one hundred twenty-five (125) feet unless a master development plan is submitted per subsection 2 above. The amount of frontage for the individual lots shall be shown on the subdivision plan and shall be subject to Planning Board approval based upon its finding that the lot frontages will allow for the creation of a high quality living environment for the residents of the subdivision and provide adequate access to the residences and other facilities,
The applicant may reduce frontage to fifty (50) feet for lots that front on a cul-de-sac or hammerhead.	Lots that have their required street frontage on a turning circle may have less street frontage than the required minimum, but in no case shall any lot have less than fifty (50) feet of street frontage.
For all other lots, the Planning Board may allow the reduction of street frontage to fifty (50) feet provided a master development plan is submitted and approved as referenced in subsection 2, Minimum Lot Width.	
9. <u>Minimum Front Setback</u> – The minimum front setback for each lot may vary between fifteen (15) and twenty-five (25) feet as approved by the Planning Board.	4. Minimum Front Setback – The minimum front setback for lots in a conservation subdivision shall be between fifteen (15) and twenty-five (25) feet. The Planning Board shall approve the minimum front setback for each lot as part of the subdivision approval. The size of the minimum front setback for each lot shall be shown on the subdivision

	<p>plan and may vary from lot to lot or in different areas of the subdivision. In approving the minimum setbacks, the Planning Board shall find that the setbacks will: 1) allow the principal building to be sited in accordance with the Four Step Design Process, 2) allow for the creation of a high quality living environment for the residents of the subdivision, 3) allow for the preservation of significant natural resources, and 4) provide for adequate privacy for each unit based upon the character of the lot and proposed landscaping of the lot.</p>
<p>10. <u>Minimum Side/Year Setbacks –</u></p>	<p>5. Minimum Building Separation/Setbacks –The size of the minimum setbacks for each lot shall be shown on the subdivision plan and may vary from lot to lot or in different areas of the subdivision. In approving the minimum setbacks, the Planning Board shall find that the setbacks will: 1) allow the principal building to be sited in accordance with the Four Step Design Process, 2) allow for the creation of a high quality living environment for the residents of the subdivision, 3) allow for the preservation of significant natural resources, and 4) provide for adequate privacy for each unit based upon the character of the lot and proposed landscaping of the lot. In all cases, the separation distance between principal buildings within the subdivision, whether on the same lot or on different lots, shall conform to the requirements of the Town’s building code and the NFPA fire protection codes based upon the type of construction and the use of the buildings.</p>
<p>c. From internal lot lines - setbacks shall be as approved by the Planning Board with the finding that there is adequate privacy for each unit based upon the character and proposed landscaping of the lot.</p>	<p>The minimum side and rear yard setbacks from internal property lines within a Conservation Subdivision shall be determined by the Planning Board as part of the subdivision approval and may be less than the required setbacks established by the district regulations.</p>
<p>d. From the external property lines of the subdivision – minimum setbacks shall be as required for the underlying district.</p>	<p>When a side or rear yard of a lot containing a residence or other building abuts the external perimeter or property line of a Conservation Subdivision, the minimum side and rear yard setbacks shall be the required minimum setback for the underlying district in which the subdivision is located.</p>
<p>3.13.8 Country Estate Lot Standards</p>	<p>3.13.6 Standards for Subdivision Development Using Country Estate Lots</p> <p>A. Purpose – The alternative form of development within the Resource Conservation Zoning Overlay (RCZO) District is the use of Country Estate lots either as part of a subdivision or as individual lots that do not constitute a subdivision. This section establishes standards for a</p>

	<p>subdivision using Country Estate lots. The standards are intended to assure that the layout of the lots respects those areas of the site that have natural resource value, protects the rural character of the RCZO District, and provides reasonable access to lots for public safety purposes.</p> <p>B. Standards for Individual Lots – Country Estate lots shall conform to the following standards:</p>																
<p>F. Minimum Lot Size–three hundred fifty thousand (350,000) square feet</p>	<p>1. Minimum Lot Size – The minimum lot size for a Country Estate lot is three hundred fifty thousand (350,000) square feet</p>																
<p>G. Minimum Net Residential Area per Unit–two hundred fifty thousand (250,000) square feet of net residential area per dwelling unit</p>	<p>2. Minimum Net Residential Area Per Unit – The maximum density for a Country Estate subdivision is two hundred fifty thousand (250,000) square feet of net residential area per dwelling unit</p>																
<p>H. Minimum Lot Width–distance between side lot lines measured through the principal building site - three hundred (300) feet</p>	<p>3. Minimum Lot Width – The distance between the opposing lot lines measured through the principal building on the lot shall be three hundred (300) feet</p>																
<p>I. Minimum Property Line Setback</p> <p>3. Principal buildings and accessory structures with a footprint of two hundred square feet or more - a minimum of seventy-five (75) feet from any property line.</p> <p>4. Accessory buildings and structures with less than two hundred (200) square feet of footprint area minimum of fifty (50) feet from any property line.</p>	<p>5. Minimum Property Line Setback –</p> <p>All principal buildings shall be setback a minimum of seventy-five (75) feet from any property line.</p> <p>Accessory buildings and structures with less than two hundred (200) square feet of footprint area shall be set back a minimum of fifty (50) feet from any property line. Any other accessory buildings and structures shall be setback a minimum of seventy-five (75) feet from any property line.</p>																
<p>J. Minimum Lot Access Requirements –Frontage shall be established on a public street, private way, or private access drive. A Country Estate lot shall have the following minimum frontage based upon the type of road:</p>	<p>4. Minimum Lot Access Requirements – A Country Estate lot shall have frontage on a public street, approved private way, or an approved private access drive meeting the provisions of Section 5.42. A Country Estate lot shall have the following minimum street frontage based upon the type of street:</p>																
<table border="1"> <tr> <td>a public street in existence as of April 1, 2005</td> <td>400 ft</td> </tr> <tr> <td>a public street created after April 1, 2005</td> <td>200 ft</td> </tr> <tr> <td>private way</td> <td>100 ft</td> </tr> <tr> <td>private access drive</td> <td>25 ft</td> </tr> </table>	a public street in existence as of April 1, 2005	400 ft	a public street created after April 1, 2005	200 ft	private way	100 ft	private access drive	25 ft	<table border="1"> <tr> <td>- a public street in existence as of April 1, 2005</td> <td>400 ft</td> </tr> <tr> <td>- a public street created after April 1, 2005</td> <td>200 ft</td> </tr> <tr> <td>- an approved private way</td> <td>100 ft</td> </tr> <tr> <td>- an approved private drive for country estates</td> <td>25 ft</td> </tr> </table>	- a public street in existence as of April 1, 2005	400 ft	- a public street created after April 1, 2005	200 ft	- an approved private way	100 ft	- an approved private drive for country estates	25 ft
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- an approved private way	100 ft																
- an approved private drive for country estates	25 ft																
<p>3. Country Estate Lots served by private access drives may be approved by the Planning Board in accordance with the following provisions:</p>	<p>5.42 Private Access Drives For Country Estates Lots [Adopted 12/22/05] The Planning Board may approve the use of a private access drive to provide access to Country Estate lots in the Resource Conservation Zoning Overlay District in accordance with the following provisions:</p>																

<p>4. A private access drive shall meet provisions of Section 5.27, Private Ways with the following exceptions:</p>	<p>c. The private access drive shall meet the design and construction requirements for private ways set forth in Section 5.27, except that private access drives serving Country Estate lots shall not be subject to the dead end length limitations and no sewer easement will be required by the Town. The width of the right of way shall be as indicated in subsection b. above.</p>
<p>a. A private access drive may be used to provide access to not more than three (3) Country Estate lots.</p>	<p>a. A private access drive may be used to provide access to not more than three (3) Country Estate lots in the Resource Conservation Zoning Overlay District.</p>
<p>b. The right-of-way or easement may be reduced to a width of not less than twenty-five (25) feet.</p>	<p>b. The private access drive shall be located in a deeded right-of-way or easement with a width of not less than twenty-five (25) feet. The right-of-way or easement may be part of one or more of the lots but the area within the right-of-way or easement shall not be counted toward meeting the minimum lot area or minimum net residential area requirement for the lot(s).</p>
<p>3.16 Retirement Community Overlay District</p>	
<p>3.16.2 Definition of a Retirement Community</p> <p>For the purposes of this section, a project must meet all of the following to be considered a retirement community:</p> <ol style="list-style-type: none"> 1. The community will provide a continuum of care that offers a variety of levels of care and a range of services to elderly and/or disabled residents. 2. The community will be designed to provide a sense of a unified development with a common design character. 	<p><i>Placed in definitions</i></p>
<p>SECTION 4. GENERAL PROVISIONS</p>	
<p><i>Repeal Appendix 9 of the Subdivision Ordinance and replace all references with Section 4.8 of the ZSPRO. New Section 4.8 to replace Appendix 9 of the Subdivision Ordinance</i></p>	<p>APPENDIX 9 [Adopted 12/22/05] Step 1: Delineation and Design of Common Open Space Step 1A. Delineation of Common Open Space The area to be designated as common open space or otherwise preserved as part of the development shall be delineated based upon the Primary and Secondary Conservation Areas as defined by the Zoning and Site Plan Review Ordinance. The proposed common open space in conservation subdivisions shall be identified in accordance with the following: [Amended 12-17-07]:</p> <ol style="list-style-type: none"> 1. The minimum percentage and acreage of required common open space

	<p>shall be calculated by the applicant and submitted in accordance with the provisions of this ordinance and of the Zoning Ordinance.</p> <ol style="list-style-type: none"> 2. The proposed common open space shall be designated using the Site Analysis Sketch Plan as a base. 3. The Primary Conservation Areas on the site shall be delineated and shall be incorporated into the common open space in accordance with Section 3.13 of the Zoning and Site Plan Review Ordinance. 4. The Secondary Conservation Areas on the site shall then be delineated. In delineating Secondary Conservation Areas, the applicant shall prioritize natural and cultural resources on the tract in terms of their highest to lowest suitability for inclusion in the proposed common open space based upon the priorities set forth in the Zoning and Site Plan Review Ordinance 5. On the basis of those priorities and practical considerations related to the tract's configuration, its context in relation to resource areas on adjoining and neighboring properties, and the applicant's subdivision objectives, sufficient Secondary Conservation Areas shall be identified to be included in the common open space to meet at least the minimum area percentage requirement for common open space. This delineation shall clearly indicate the boundaries as well as the types of resources included within them.
<p>6. Purpose and Process Statement Natural resources are important to the health, safety, and welfare of present and future residents, providing environmental, scenic, recreational, cultural, and historic value. The cumulative effect of the alteration and disturbance of natural resources pose a substantial threat to the Town's environment, economy, and quality of life. The purpose of this section is to ensure that development on sites that contain resources regulated in Section 5.38., Natural Resources or in Section 3.13, Resource Conservation Overlay District is designed in a manner that:</p>	<p>All subdivisions shall be designed in accordance with the following four step process. The submission for the preliminary plan of a major subdivision or the final plan of a minor subdivision (if required by the Planning Board) shall include documentation of the four-step design process for determining the layout of the subdivision including proposed conservation lands, house sites, streets, and lot lines in accordance with the following process. Applicants shall submit four separate sketch maps indicating the findings of each step of the design process, if so requested by the Planning Board.</p>
<p>a. first seeks to avoid the alteration of resources;</p>	
<p>b. second seeks to minimize alteration of resources where avoidance is not feasible; and</p>	
<p>c. where required under Section 5.38, Natural Resources, compensates either through resource preservation or monetary compensation where avoidance is not possible.</p>	

7. <u>Applicability</u>	
a. Individual lots as specified in Section 5.38.4.E., Exemptions	
b. Site Plan Review applications	
c. Subdivision applications	
d. Private way applications	
e. Alteration of Terrain applications and permits	
f. Shoreland approvals and permits	
8. <u>Design Steps for Individual Lots</u>	
a. Where applicants are required under Section 5.38, Natural Resources, to utilize this process when altering individual lots, the following steps shall apply:	
1) Inventory the following resources through the use of existing resource maps and documents. These may include but are not limited to the Town's GIS system, USGS quadrangle maps, Beginning with Habitat maps, Maine IF&W wildlife and habitat maps:	
a) Wetlands and their areas of concern	
b) Vernal pools and their areas of concern	
c) Steep slopes	
d) Streams and rivers	
e) Ponds and great ponds	
2) Locate improvements in such a way that best meets the purpose and process listed above.	
3) Review the plan with the Code Enforcement Office to assure the submittal for a permit will be accepted.	
9. <u>Design Steps for all other applications</u>	
a. <u>Inventory Resources</u>	
6) delineate all regulated natural resources in Section 5	
7) for applications under Section 3.13, Resource Conservation Overlay District, identify all resources as required in Section 3.13	
8) delineate steep slopes	
9) delineate resource buffer and setback areas	
10) delineate areas of concerns for wetlands and vernal pools	
b. <u>Location of Existing Developed Areas</u>	
6) Roads and related stormwater management structures	
7) Buildings and structures, including septic systems, wells	

8) Utilities, overhead and underground	
9) Trails	
10) Lot Boundaries	
c. <u>Location of Proposed Development Areas</u>	Step 2: Location of Building Sites Potential building sites shall be tentatively located taking into consideration the proposed common open space and/or the Primary and Secondary Conservation Areas identified in Step 1 as well as other relevant data from the Site Inventory Plan and Site Analysis Sketch Plan, such as topography and soils.
d. <u>Access, alignment of Streets and Ways and Creation of a Trail System</u>	Step 3: Alignment of Streets and Ways and Creation of a Trail System
3) Based upon the existing and proposed development sites, a circulation plan shall be designed to provide vehicular and pedestrian access to and within the site. The access and street layout shall bear a logical relationship to topographic conditions. The circulation plan shall generally be designed to minimize deadend conditions and to facilitate access to and from uses in different parts of the site.	Based upon the designated building sites, a circulation plan shall be designed to provide vehicular and pedestrian access to each site. The street layout shall bear a logical relationship to topographic conditions. Impacts of the street plan on proposed Conservation Lands as defined in this Ordinance, Primary Conservation Areas, and Secondary Conservation Areas as defined in the Zoning and Site Review Ordinance shall be minimized, in accordance with Section 3.13 of the Zoning and Site Plan Review Ordinance. Street connections shall generally be encouraged to minimize the number of new cul-de-sacs and to facilitate access to and from buildings in different parts of the subdivision.
4) For development under Section 3.13, a trail system should incorporate existing trail systems and connections where feasible and should generally be located within the common open space, streetscape buffers or perimeter buffers to provide access from the homes to the open space network created by the subdivision and provide connections to adjacent trail systems or open space.	A trail system shall be created within the common open space to provide access from the subdivision homes to the open space network created by the subdivision. [Amended 12-17-07]
e. <u>Drawing in Lot Lines</u>	Step 4: Drawing in the Lot Line
3) Lot lines shall be drawn as required to delineate the boundaries of individual lots.	Upon completion of the preceding three steps, lot lines shall be drawn as required to delineate the boundaries of individual lots.
4) Building envelopes shall be designated and shall exclude natural resources designated for preservation.	Lots shall be designed in keeping with the standards for individual lots found in Section 3.13.5 D. of the Zoning and Site Plan Review Ordinance and shall be further designed to provide each residence with a clear delineation of its property bounds and with useable yard spaces.
10. <u>Alteration of Natural Resources</u> –The Planning Board or Code Enforcement Officer may allow the alteration of natural resources or their associated buffers and areas of concern, as defined in	Alteration of Natural Resources – [Adopted 12-17-07] The Planning Board may allow the alteration of only those protected resources and their associated buffers and setbacks, as defined in Section 5. 38, for those

<p>Section 5.38 Natural Resources provided that the following standards have been met. The permitting authority may consider the necessary impacts to other resources on the site to minimize impact of natural resources protected under Section 5.38, the context of the project's location and configuration, and the project design when determining if impacts have been minimized.</p>	<p>improvements listed in Section 5.38.5. B. with a finding that: 1) the resulting subdivision design best achieves the purposes of a conservation subdivision as listed in Section 3.13.5.A.1-5. and as determined through the 4-Step Design Process (see Land Subdivision Ordinance, Appendix 9);</p>
<p>A. the design is integrated with the natural topographic conditions and minimizes the need for cuts and fills;</p>	<p>2) the design is integrated with the natural topographic conditions and minimizes the need for cuts and fills;</p>
<p>B. the impacts have been minimized;</p>	<p>3) that the impacts on the resource(s) and their respective buffers and setbacks as defined in Section 5.38 have been minimized; and</p>
<p>C. the design and function of the improvements incorporate accepted best management practices; and</p>	<p>4) the design and function of the improvements incorporate accepted best management practices.</p>
<p>D. the applicant provides compensation for impacts to natural resources where required in Section 5.38.</p>	
<p>SECTION 5. SPECIFIC REQUIREMENTS</p>	
<p>Section 5.27 Private Ways – amend by adding the following language to the introductory paragraph</p>	
<p>“The private way may be created as a right-of-way or easement.”</p>	<p>The Planning Board may approve the use of a fifty (50) foot private way to provide frontage and access to individual lots of land in accordance with the following provisions:</p>
<p><i>Amend Paragraph k. as follows:</i></p>	
<p>k. If the private way will serve two (2) or more Country Estate lots in the Resource Conservation Zoning Overlay District, the applicant shall submit a Site Inventory and Analysis Plan and documentation of the Development Design Process for the site as provided for this ordinance. [Adopted 12/22/05]</p>	<p>k. If the private way will serve two (2) or more Country Estate lots in the Resource Conservation Zoning Overlay District, the applicant shall submit a Site Inventory and Analysis Plan and documentation of the Four Step Design Process for the site as provided for in the Land Subdivision Ordinance. [Adopted 12/22/05]</p>
<p><i>Replace Section 5.33 with the following language:</i></p>	
<p>5.33 Transmission Towers [Adopted, 4/23/90]</p>	
<p>4. In lieu of the foregoing, the Board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Board may require the applicant to provide a visual impact analysis by a professional qualified in such analysis.</p>	<p>4. In lieu of the foregoing, the Board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Board may require the applicant to provide a visual impact analysis by a qualified professional.</p>
<p>5.4 Buffers - rename Screening Buffers</p>	
<p>5.34 Placement or Removal of Fill Material [Adopted 7/22/91] [Amended 9/22/03] – <i>delete in its entirety</i></p>	<p>Moved to 5.38</p>

5.37 Preservation, Planting, Maintenance, and Inspection of Plant Materials [Adopted 7/23/01]	
<ul style="list-style-type: none"> • <i>Substitute “permitting authority” for “Town” throughout</i> 	
<ul style="list-style-type: none"> • <i>clarify and correct references to other sections of the ordinance</i> 	
<ul style="list-style-type: none"> • <i>replace ‘owner’ with ‘applicant’ throughout</i> 	
Replace 5.37.1 with the following:	
5.37.1 Purpose	5.37.1 Purpose
The purpose of this provision is to ensure that existing and new plant materials that are incorporated into new development:	The purpose of these requirements is to ensure that existing and new plant materials that are incorporated into new development
4. achieve optimal growth, overall health, and their intended environmental and aesthetic function in spite of the often harsh conditions created by development;	achieve optimal growth, overall health, and their intended environmental and aesthetic function in spite of the often harsh conditions created by development.
5. discourage the planting of invasive plant species; and	
6. encourage the planting of native species, especially shade trees	
Replace 5.37.2 with the following:	
5.37.2 Applicability	5.37.2 Applicability
The requirements of this section apply to plant materials regulated under the following provisions:	The requirements of this section apply to plant materials regulated by Shoreland Zoning Permits, Phosphorus Control Permits, Site Plans, and Subdivision Plans prepared in accordance with the following Town ordinances:
3. Zoning Ordinance	Section III, Landscape Design (Village Center Design Guidelines) Section IV, Landscape Design (Exit 10 Design Guidelines)
f. Section 3.13 (Resource Conservation Overlay District)	Buffers in Section 3.13 (Resource Conservation Overlay District)
g. Section 3.10(6) (Landscaped Border Strips)	Section 3.10(6) (Landscaped Border Strips)
h. Section 3.17.4 (Highland Lake Conservation Overlay District)	Phosphorus control buffers in Section 3.17.4 (Highland Lake Conservation Overlay District)
i. Section 7.10 (Shoreland Zoning)	Clearing of Vegetation for Approved Construction and Other Uses in Section 7.10 (Shoreland Zoning)
j. Section 9 Site Plan Review	Section 9.24 (General Buffer Standards) Section 9.25 (Special Landscape and Buffer Requirements in the BP District) Section 9.26 (Special Landscape and Buffer Requirements in the SB

	District) Section 9.27 (Special Landscape and Buffer Requirements in the CO District) Section 9.28 (Other Landscaping Requirements)
k. Section H of Appendix I of the Subdivision Ordinance (Landscape Requirements)	Section H of Appendix I of the Subdivision Ordinance (Landscape Requirements)
5.38 Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands [Adopted 12/18/01] – <i>delete in its entirety</i>	
<i>The current Section 5.38 shall be repealed and replaced in its entirety with the following language:</i>	
5.38 Natural Resources	5.38 Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands [Adopted 12/18/01]
5.38.1 Purpose	5.38.1 Purpose
The purpose of these requirements is to protect the following natural resources within the Town, and, to protect private and public property from flooding, poor drainage conditions, and slope or soil instability caused by locating buildings in or close to these areas. The permitting authority shall seek to ensure that proposed developed areas are contiguous to existing nearby developed areas to minimize fragmentation of significant wildlife habitat.	The purpose of these requirements is to protect water quality, aquatic life, and wildlife habitat in and adjacent to streams, ponds and wetlands town-wide, and, to protect private and public property from flooding and poor drainage conditions caused by locating buildings in or close to these areas. The regulations are intended to protect natural resource areas that are not currently covered by Shoreland Zoning and the Highland Lake Conservation Overlay District. The regulations distinguish between high and low value wetlands. High value wetlands generally have surface water for a prolonged period during the growing season, or, they are located in close proximity to other wetlands, ponds and streams. These are the two most important factors in determining how well a wetland functions in terms of providing benefits to the community. Although the absence of surface water or their location makes low value wetlands less beneficial, the Town is interested in these areas because their poor drainage conditions pose a hazard for development.
E. wetlands,	
F. vernal pools,	
G. natural plant communities, and	
H. river, streams, brooks and ponds.	
5.38.2 Applicability	5.38.2 Applicability
The requirements of this section apply to all activities where natural resources as listed above are located on the development parcel. Refer to	A. The requirements of this section 5.38 apply only to the construction of: 1) new single family dwellings and their accessory structures and

<p>Section 7, Shoreland Zoning, for additional provisions for property located in a Shoreland Zone.</p>	<p>lawns, when constructed upon lots created after the effective date of this section, whether by subdivision or otherwise; and 2) private ways which are subject to review under section 5.27. For purposes of this subsection 5.38.2, subdivision and private way applications that have had at least one substantive review before the effective date of this section shall not be subject to the requirements of this section. Alterations and enlargements of single family dwellings and their accessory buildings existing on the effective date of this section are not subject to the requirements of this section. The requirements apply to the construction of new single family dwellings and their accessory buildings, private ways, and subdivision plans in residential districts.</p>
<p>5.38.3 Conflict with Other Laws or Sections of This Ordinance and Severability</p>	
<p>Where this section imposes a greater restriction in any respect than is imposed by other law or sections of this Ordinance, the provisions of this section shall control, except where specific exemptions are specified.</p>	<p>B. In the event that the requirements of this section overlap the requirements of Shoreland Zoning or the Highland Lake Conservation Overlay District, the requirements of Shoreland Zoning or the Highland Lake Conservation Overlay District shall apply.</p>
<p>5.38.4 General Standards</p>	
<p>C. Determination of Boundaries - Areas of concern, buffers and setbacks shall be measured as follows:</p>	<p>A. Buffers and setbacks shall be measured as follows</p>
<p>5. Rivers, streams and brooks: from the upland edge of the stream channel.</p>	<p>Streams: from the edge of the stream channel, or from the edge of the floodplain adjacent to the stream if one is present;</p>
<p>6. Floodplains: as defined by the 100 year floodplain on FEMA maps or amendments thereto.</p>	<p>Floodplains: from the limit of the area inundated by floodwater;</p>
<p>7. Ponds and Great Ponds: from the high water mark, or from the upland edge of the pond.</p>	<p>Ponds and vernal pools: from the high water mark, or from the upland edge of the wetland adjacent to the pond or pool is one is present;</p>
<p>8. Wetlands and vernal pools: from the upland edge of the wetland or vernal pool as delineated by a qualified professional.</p>	<p>Wetlands: from the upland edge of the wetland.</p>
<p>Where uncertainty exists as to the precise boundaries of natural resources for the purposes of establishing areas of concern, buffers or setbacks, the permitting authority shall be the final authority.</p>	<p>Where uncertainty exists as to the precise boundaries of protected resources for the purposes of establishing buffers and setbacks, the Planning Board shall be the final authority as to location. In making determinations, the Planning Board may require applicants to file plans drawn and approved by qualified professionals and may consider the advice of state and federal agencies and peer reviewers.</p>
<p>D. Timing of Surveys for Vernal Pools</p>	
<p>Surveys of vernal pools shall typically occur during the optimal time</p>	

<p>periods identified in Maine Department of Environmental Protection rules. In cases where a survey of a vernal pool is not conducted within this time frame and evidence exists that a vernal pool may potentially exist, the potential vernal pool shall be regulated as a significant vernal pool unless the permitting authority determines that the area is not a vernal pool using the following information provided by a qualified professional:</p>	
<p>3. If in non-drought years, documentation based on data for winter, spring, and early summer precipitation, which concludes that the vernal pool has dried out after spring filling and before July 15th; or</p>	
<p>4. Evidence is submitted concluding that the vernal pool does not support breeding populations of the species identified in the definition of vernal pool in Section 2, Definitions.</p>	
<p>C. Projects Reviewed Under NRPA Chapter 305 Permit-By-Rule</p>	
<p>Town applicants, who qualify for and submit applications to the State DEP for a Permit-By-Rule, must provide the Town permitting authority with a copy of its Permit-By-Rule application in conjunction with any Town application submittal.</p>	
<p>D. Development Design Process</p>	
<p>All properties, on which the alteration of natural resources or their areas of concern as regulated by this section are proposed, shall be developed utilizing the Development Design Process as described in Section 4 of this ordinance unless otherwise exempted.</p>	
<p>E. Exemptions – The following are exempt from all provisions of this section. In instances where cumulative impacts exceed the thresholds in paragraphs 6 & 7, regardless of the transfer of ownership of property or whether or not the accumulation is a result of multiple alterations to the property, the property will be subject to the provisions of this section. Lots as referenced in paragraphs 2, 3 and 4 that have had adjustments to boundaries that conform to this ordinance are exempt.</p>	
<p>8. 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 this ordinance;</p>	
<p>9. Lots approved by the Planning Board and recorded at the Registry of Deeds prior to the effective date of this ordinance;</p>	
<p>10. Lots that lawfully existed prior to the effective date of this ordinance</p>	

<p>that did not require Planning Board approval to be established, and where the existing or proposed primary use is residential.</p>	
<p>11. Lots, including further divisions, in the West Falmouth Crossing Master Planned Development District, Oceanview Retirement Community Overlay District, Tidewater Master Planned Development District, and Open Space Residential District.</p>	
<p>12. 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.</p>	<p>Swales, ditches, and impoundments created for drainage purposes; Artificial impoundments of streams constructed prior to the enactment of this amendment;</p>
<p>13. 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.</p>	<p>Low value wetlands, averaging thirty (30') feet or less in width, as determined by measuring the width of five (5) evenly spaced sections, that function primarily as drainage swales in upland areas.</p>
<p>14. 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.</p>	
<p>F. Limited Alterations - This section is applicable to projects that require Planning Board approval, and are otherwise not exempted in paragraph E. above. Alteration may be allowed for the following uses 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>	
<p>4. the installation of utilities, road crossings, bridges, and culverts that are necessary to access the site,</p>	<p>Stormwater management facilities; Road crossings, bridges, culverts, and the installation of utilities needed to access property on the other side of wetlands and water bodies; and Docks, boat ramps, and other structures necessary for direct access to water bodies.</p>
<p>5. 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</p>	
<p>6. Stormwater Management Facilities within one hundred (100) feet from the upland edge of a wetland of special significance or a</p>	

<p>significant vernal pool if the applicant demonstrates that the proposed alterations provide for overall improved stormwater quality.</p>	
<p>5.38.5 Wetlands of Special Significance or Significant Vernal Pools on Abutting Properties</p>	
<p>Applicants shall utilize existing published information on natural resources and identify any potential wetland of special significance within 250 feet of the proposed development and any potential significant vernal pool on property within 750 feet of the proposed development.</p>	
<p>If potential resources are identified, the applicant shall seek permission from the abutting property owner to allow a qualified professional to conduct an assessment of the wetland or vernal pool. The request shall be made in writing to the current owner and address in the Assessor's records and be sent by first-class mail with a copy submitted concurrently to the Community Development Department. Documentation of the request for permission shall be submitted to the permitting authority. If it is verified to be a wetland of special significance or significant vernal pool, then the standards in Section 5.38.6, Natural Resource Standards shall apply.</p>	
<p>If the abutter(s) refuses to allow the applicant's qualified professional on the property to conduct the assessment or a response from the abutter is not received within ten (10) days, the provisions of this section shall not apply.</p>	
<p>5.38.7 Natural Resource Standards</p>	
<p>The following standards are required to be met unless compensation is approved by the permitting authority and is provided as stated in Section 5.38.8. A., unless otherwise exempt from compensation under Section 5.38.4 above. The property shall be designed using the Development Design Process with particular attention given to the preservation of the resources as regulated below. The permitting authority may grant or deny proposed alterations as a result of the evaluation of the design relative to the Development Design Process.</p>	
<p>Buffers required under this section shall meet the requirements of Section 5.38.9.</p>	
<p>For purposes of this section area of concern shall mean land within:</p>	
<p>4. seventy five (75) feet from the upland edge of a freshwater</p>	

wetland;	
5. two hundred fifty (250) feet from the upland edge of a wetland of special significance; and	
6. seven hundred fifty (750) feet from the upland edge of a vernal pool or from the upland edge of a significant vernal pool.	
5.38.6.1 Specific Requirements for Wetlands	
A. Freshwater Wetlands, which are not Wetlands of Special Significance, and their Areas of Concern	
4. The resource shall be preserved.	
5. A setback of fifty (50) feet from the upland edge of the wetland shall be maintained for all structures.	
6. The area of concern may be altered only with approval of the permitting authority.	
B. Wetlands of Special Significance and their Areas of Concern	
4. The resource shall be preserved.	
5. A buffer shall be preserved or restored within the entire area between the upland edge of the resource and one hundred (100) feet of the upland edge of the wetland.	
6. The portion of the area of concern between one hundred (100) and two hundred fifty (250) feet from the upland edge of the wetland may be altered with approval of the permitting authority.	
5.38.6.2 Specific Requirements for Vernal Pools	
A. Vernal Pools and Their Areas of Concern	
5. The resource shall be preserved.	
6. A buffer shall be preserved or restored within the entire area between the upland edge of the resource and one hundred (100) feet of the upland edge of the resource.	
7. A setback of one hundred (100) feet from the upland edge of the resource must be maintained for all structures.	
8. The portion of the area of concern between one hundred (100) and seven hundred fifty (750) feet from the upland edge of the resource may be altered with approval of the permitting authority.	

B. Significant Vernal Pools and Their Areas of Concern	
7. The resource shall be preserved.	
8. A buffer shall be preserved or restored within the entire area between the upland edge of the resource and one hundred (100) feet of the upland edge of the resource.	
9. A buffer shall be preserved and/or restored in the entire area between one hundred (100) and two hundred fifty (250) feet from the upland edge of the resource.	
10. Alteration up to twenty-five (25) percent of the area between one hundred (100) and two hundred fifty (250) feet from the upland edge of the resource with approval by the permitted authority. Alteration shall include previously disturbed areas.	
11. Alteration in excess of twenty-five (25) percent in the area between one hundred (100) and two hundred fifty (250) feet from the upland edge of the resource, provided that the permitting authority determines that it will best meet the goals and objectives of this section.	
12. The portion of the area of concern between one two hundred fifty feet (250) and seven hundred fifty (750) feet from the upland edge of the resource may be altered with approval of the permitting authority.	
5.38.7 Rivers, streams, brooks, Ponds, and Floodplains - Buffers and Setbacks Required	
3. A buffer, not less than fifty (50) feet wide and in conformance with Section 5.38.9 below, shall be left undisturbed or created if non-existent adjacent to rivers, streams, brooks, floodplains, ponds, and great ponds.	
4. No structure shall be located closer than seventy-five (75) feet from rivers, streams, brooks, floodplains, great ponds and ponds.	
5.38.8 Compensation Standards – Unless otherwise specifically exempted, the following standards shall apply to the alteration of natural resources regulated by this section.	
D. Compensation Required – Compensation for alteration of natural resources as regulated by this section shall be provided for the area of:	
5. Impact of one thousand (1,000) square feet or greater of	

wetlands that are not of special significance in the Highland Lake Overlay District.	
6. Impact of forty-three hundred (4,300) square feet or greater of wetlands that are not of special significance in all other zoning districts.	
7. 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.	
8. Impact of vernal pools and their required buffers within one hundred (100) feet of the upland edge of the pool in any district.	
E. Types of Compensation	
3. Land and Resource Preservation – Preservation may be provided through protection of existing wetlands or vernal pools either by deed or easement, including uplands of wetlands or vernal pools, where the site to be preserved provides significant natural resource functions. Where resources are preserved to provide compensation they shall not be included in the calculation for Common Open Space under Section 3.13 of this ordinance. Where preservation of resources is also required by the State DEP or the Army Corps of Engineers, the permitting authority may determine that the preservation under that permit is adequate to meet the ordinance requirement.	
4. Monetary Compensation – Where the permitting authority determines that monetary compensation will provide an equal or greater value to the Town in the protection of priority resources, the applicant may contribute to a special account for the purposes of Town purchase of natural resources in lieu of preservation.	
F. Nature of Compensation	
3. Land and Resource Preservation	
e. General - Alterations of natural resources and their areas of concern shall be compensated with like land resources or resources of higher value. Alteration may be compensated by the permanent preservation of natural resources and other land resources and shall be directed to higher value	

<p>natural resources, such as wetlands of special significance in the case of wetlands or significant vernal pools in the case of vernal pools.</p>	
<p>f. Location of Preserved Land Resources - Generally preservation shall be located on or close to the project site to off-set direct impacts to the natural resource system. The permitting authority may approve an alternative location if it is determined that the location identified is a natural resource priority for the Town or will protect higher natural resources values. Alternative locations will be considered in the following order:</p>	
<p>4) somewhere in Town within the same watershed where the impacts of alteration occur to achieve an equal or higher net benefit for the natural resource system</p>	
<p>5) somewhere within the same watershed</p>	
<p>6) elsewhere</p>	
<p>g. Location off-site - If preservation is provided off-site, natural resource priorities established by the Town should be considered in devising a plan. The applicant is encouraged to identify sites consistent with appropriate studies including but not limited to the published reports of the Town of Falmouth that specify priorities for resource preservation and through discussions with individuals and groups including but not limited to the Town Ombudsman, Conservation Commission, Falmouth Conservation Trust, and others.</p>	
<p>h. Land Area Required for Preservation</p>	
<p>1) Alterations of significant vernal pools, vernal pools, and the land area within one hundred (100) feet of a vernal pool shall meet or exceed a ratio of 20:1.</p>	
<p>2) All other regulated natural resources requiring compensation shall meet or exceed a ratio of eight to one (8:1).</p>	
<p>i. Restriction of Future Use. Any property accepted for preservation must be conveyed to a third party with restrictions from development or alteration in perpetuity. Transfer of development rights may occur through fee or</p>	

easement so long as the requirements of this section are met.	
4. Monetary Compensation	
a. Fees shall be calculated in accordance with the Planning Fee Schedule as approved by the Town Council.	
b. Fees required by Multiple Agencies – Where compensation fees are due to another agency the Town shall accept a compensation amount equal to the other agency fee minus the Town fee. Where this amount is less than zero, no fee shall be required.	
c. Use of Compensation Fees - Compensation fees collected by the Town shall be deposited in the Open Space Fund.	
5.38.9 Buffers	
C. Purpose	
Natural, planted and otherwise created buffers shall be used to physically separate, shield, protect, or screen proposed land uses from:	
3. natural resources and/or	
4. Other land uses on or off the development site.	
D. Natural Resource Protection Buffers – Any area designated as a natural resource protection buffer shall remain in its natural state unless a restoration or improvement plan is approved by the permitting authority.	
3. Non-forested Buffers - Buffers that consist of fields, orchards, shrubs, altered land, or natural succession areas shall comply with the requirements of this section by allowing the area designated as a buffer to regenerate to forest cover naturally. The Town may, however, require that the area designated as a buffer be replanted and the site stabilized if the soils on the site are exposed or eroding. If the area designated as a buffer is to be replanted, no invasive plant species are specifically discouraged. Native shade trees are encouraged to be used in all restoration.	5.38.6 Non-forested Areas Buffer areas that consist of fields, orchards, or cutover land shall comply with the requirements of this section by allowing the buffer area to regenerate to forest cover naturally. The Town may, however, require that the buffer area be replanted and the site stabilized if the soils on the site are exposed or eroding.
4. Forested Buffers - Buffers shall remain undisturbed, except for:	5.38.7 Maintenance of Forested Buffers
e. the removal of trees that are diseased or pose a safety hazard;	A. Buffers shall remain undisturbed, except for the removal of trees that pose a safety hazard. No tree cutting or clearing of vegetation can be done within the buffer without prior approval of the Code Enforcement Officer.

<p>f. the removal of invasive plant species, if part of a management plan approved by the permitting authority;</p>	<p>B. No trash, building materials, compost piles, buildings, automobiles, equipment, machinery, car parts, gravel, rocks, soil, or debris of any kind shall be placed or stored in the buffer area.</p>
<p>g. stormwater runoff which enters the buffer as sheet flow unless specifically permitted under this section; or</p>	<p>C. Stormwater runoff shall enter the buffer area as sheet flow only. Channeling stormwater runoff through the buffer area is not permitted.</p>
<p>h. tree cutting or clearing of vegetation with prior approval of the permitting authority.</p>	
<p>5.38.10 Alteration of Terrain -Placement or Removal of Fill Material</p>	<p>5.34 Placement or Removal of Fill Material [Adopted 7/22/91] [Amended 9/22/03]</p>
<p>The purpose of this provision is to control erosion, protect natural resources, minimize storm water runoff, and minimize other nuisances associated with filling and other earth moving activities. This section does not include activities defined as Extractive Industries.</p>	<p>The purpose of this provision is to control erosion, protect wetlands, minimize storm water runoff and minimize other nuisances associated with filling and other earth moving activities. It is intended that this provision shall apply to both approved construction for which a building permit has been issued, as well as activities that do not require a building permit.</p>
<p>A. The following shall govern the placement or removal of fill material in all districts. [Amended, 5/28/96]Permits Required.</p>	<p>a. The following guidelines shall govern the placement or removal of fill material in all districts: [Amended, 5/28/96]</p>
<p>1. Activity associated with a building permit or an approval by the Planning Board - no permit required</p>	<p>1. Normal excavation or removal of fill for which a building permit has been issued, no permit required</p>
<p>2. Up to fifteen (15) cubic yards - no permit required</p>	<p>2. 0 - 15 cubic yards, no permit required</p>
<p>3. Between and including sixteen (16) and one thousand (1,000) cubic yards - permit required by the Code Enforcement Officer</p>	<p>3. 16 - 1000 cubic yards, CEO permit required</p>
<p>4. Over one thousand (1,000) cubic yards - Planning Board approval required, permit required from Code Enforcement Officer</p>	<p>4. over 1000 cubic yards, Planning Board permit required</p>
<p>B. All activities regulated under this section shall implement erosion and sedimentation control measures as required in Section 5.38.12. [Amended 9/22/03]</p>	<p>A. All activities regulated under this section shall implement erosion and sedimentation control measures as required in Section 5.39. [Amended 9/22/03]</p>
	<p>B. Fill shall not be placed within ten (10) feet of drainage ways, streams or wetland areas without approval by the Planning Board.</p>
<p>C. Roadways and other public areas shall be kept clean of mud, dirt, debris or other material that may constitute a hazard or nuisance to the public.</p>	<p>C. Roadways and other public areas shall be kept clean of mud, dirt, debris or other material that may constitute a hazard or nuisance to the public.</p>
<p>D. Adequate traffic control shall be provided on public roadways to ensure safe access and passage during construction activities.</p>	<p>D. Adequate traffic control shall be provided on public roadways to ensure safe access and passage during construction activities.</p>
<p>E. The permitting authority may require any and all submittal items and apply any standards under Section 9.0, Site Plan review as it deems</p>	

appropriate to determine if the proposal meets the purpose of this section.	
5.42 Private Access Drives For Country Estates Lots [Adopted 12/22/05] <i>and move to Section 3.13</i>	
<i>amend</i> SECTION 9. PLANNING BOARD SITE PLAN REVIEW	
9.7 General Site Plan Review Standards	
The following standards shall be utilized by the Planning Board in reviewing proposed site plans including all accessory buildings, structures, signs, and other site features.	
a. Preservation of the Landscape: the landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. If a buffer is required to be planted, invasive plant species are specifically discouraged. If a naturally vegetated buffer is proposed to be restored, native species shall be required. Native shade trees are encouraged to be used in all landscape plans.	
9.24 General Buffer Standards	
a. Evergreens can be used as a screening buffer, provided they are planted properly. An evergreen screen requires six (6) to eight (8) foot evergreen trees planted in an alternate pattern, five (5) feet on center.	
b. Buffers shall be considered in or for the following areas and purposes:	
<i>add a new section:</i>	
(6) <u>To protect natural resources from negative impacts of alterations.</u>	
c. Natural features shall be maintained wherever possible to provide a buffer between the proposed development and incompatible abutting properties and public roadways. When natural features such as topography, gullies, stands of trees, shrubbery, rock outcrops do not exist or are insufficient to provide a buffer; other kinds of buffers shall be considered.	
9.28 Other Landscaping Requirements	
b. <u>Required Plant Types.</u> All plantings required under this Ordinance shall be of a type and species appropriate for the soil types and climatic conditions in Falmouth as determined by the permitting authority. Invasive plant species are specifically discouraged from use. Native shade trees are encouraged to be used in the restoration.	

<p><i>Amend Section 10 by adding the following section as Section 10.11 and deleting current Section 5.38.8.</i></p>	
<p>10.12 Enforcement of Buffers</p>	<p>5.38.8 Enforcement of Buffers</p>
<p>4. For building permits where a buffer is required, a written notice that the property contains a buffer shall be filed at the Cumberland County Registry of Deeds prior to the start of construction or within ten (10) days of plan approval, whichever is sooner. A copy of the notice filed at the Registry shall be submitted to the Code Enforcement Office within the same time period as proof of the filing.</p>	<p>A. For building permits where a buffer is required, a written notice that the property contains a buffer shall be filed at the Cumberland County Registry of Deeds within ten days of plan approval. A copy of the notice filed at the Registry shall be submitted to the Code Enforcement Office within the same time period as proof of the filing.</p>
<p>5. On subdivision plans, the location of buffers and setbacks shall be shown using bold lines, shading, and other techniques to ensure that the buffers and the setbacks stand out clearly from background information. The buffers and setbacks shall be labeled and text shall indicate that the buffers are not to be disturbed.</p>	<p>B. On subdivision plans, the location of buffers and setbacks shall be shown using bold lines, shading, and other techniques to ensure that the buffer areas and the setbacks stand out clearly from background information. The buffers and setbacks shall be labeled and text shall indicate that the buffers are not to be disturbed.</p>
<p>6. The boundaries of buffer shall be marked on site with snow fencing or equivalent measures and approved by the Code Enforcement Officer or their designee prior to site clearing.</p>	<p>C. The boundaries of buffer areas shall be marked on site with snow fencing or equivalent measures and approved by the Code Enforcement Officer prior to site clearing.</p>

Natural Resource Amendments comparison of proposed language with current language October 15, 2009