

**Town of Falmouth - Proposed Vernal Pool Amendment - Regulatory Comparison Matrix, October 15, 2009**

| <b>Proposed Amendment Definitions</b>   | <b>Current Town Regulations</b>  | <b>State Regulations/Rules</b>   | <b>Federal Regulations</b>  | <b>Rationale for Proposed Amendments</b>  |
|---|--|--|---|---|
| <p><b>Significant vernal pool</b> - definition is similar to state definition, focusing on amphibian abundance &amp; rarity criteria. Basic definition also focuses on lack of predatory fish as primary factor. Definition includes changes recently approved by state legislature which allow for exclusion of pools with short hydroperiods &amp; recognizes several new rare species as indicators.</p> | <p>Existing town ordinance language does not include a definition for significant vernal pool, provides a definition for vernal pool.</p>  | <p>Requires a significant vernal pool to be natural and excludes pools with permanently flowing inlet or outlet.</p> | <p>Does not provide definition for significant vernal pools, but does not require a vernal pool to be natural and does not exclude pools that have inlet or outlet.</p> | <p>Proposed definition is based on science and function of the pool, regardless of how created.</p> |
| <p><b>Vernal pool</b> - must show evidence of breeding activity</p>   | <p>Existing town definition does not strictly require presence of indicators of amphibian breeding to be a vernal pool. Definition also requires that pool be mapped by government agency.</p> | <p>Does not regulate vernal pools.</p>   | <p>Definition for vernal pools does not require pool to be natural and does not exclude pools that have inlet or outlet.</p>  | <p>Based on science and recognizes that current mapping and inventory is not exhaustive.</p>        |

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| <b>Exemptions</b>   |  |   |                            |  |
|---|--|---|----------------------------|--|
| <b>Proposed Amendment</b>   | <b>Current Town Regulations</b>  | <b>State Regulations/Rules</b>                                | <b>Federal Regulations</b> | <b>Rationale for Proposed Amendments</b>   |
| <ol style="list-style-type: none"> <li>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 (add date)</li> <li>2. Lots approved by the Planning Board and recorded at the Registry of Deeds prior to the effective date of this ordinance (ADD DATE);</li> <li>3. Lots lawfully existing, 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.</li> <li>4. Lots, including further divisions, in West Falmouth Crossing Master Planned Development District, Oceanview Retirement Community Overlay District, Tidewater Master Planned Development District, and Open Space Residential District.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ol> | <ol style="list-style-type: none"> <li>1. Site plan, subdivision, and private way applications that have had at least one (1) substantive review, as determined by the Planning Board,</li> <li>2. stormwater management facilities</li> <li>3. any development other than new single-family development, roads,</li> <li>4. Low value wetlands that function primarily as drainage swales (finger wetlands)</li> <li>5. Docks, boat ramps and other water access structures</li> <li>6. Pre-existing artificial water impoundments</li> </ol> | No specific exemptions under Natural Resources Protection Act | No specific exemptions     | <ul style="list-style-type: none"> <li>• Provides flexibility for applicants, while also considering protection of resource.</li> <li>• Recognizes need to access property.</li> <li>• Recognizes value of maintaining farming &amp; timber harvesting activities</li> </ul> |

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| <b>Limited Alterations</b>  |   |  |   |   |
|---|---|--|---|---|
| <b>Proposed Amendment</b>   | <b>Current Town Regulations</b>   | <b>State Regulations/Rules</b>   | <b>Federal Regulations</b>  | <b>Rationale for Proposed Amendments</b>  |
| <p>Applicable to projects that require Planning Board approval, or are an integral aspect of a project that requires Planning Board approval. Alteration may be allowed for the following uses provided the applicant demonstrates to the Planning Board that:</p> <p>(a) the proposed alteration is designed in accordance with the Development Design Process and;</p> <p>(b) provides compensation under Section 5.38.8, Compensation.</p> <ol style="list-style-type: none"> <li>1. the installation of utilities, road crossings, bridges, and culverts that are necessary to access the site,</li> <li>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</li> <li>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.</li> </ol> | <p>Ordinance allows for road crossings if follow design &amp; location requirements in ordinance.<br/>Ordinance requires development be:</p> <ul style="list-style-type: none"> <li>• Integrated with natural topography &amp; minimize need for cuts &amp; fills;</li> <li>• Minimize impacts on protected resources &amp; their buffers &amp; setbacks;</li> <li>• Incorporate accepted best management practices;</li> <li>• Be determined by Planning Board to be best alternative</li> </ul> | <p>Full (Tier 3) Natural Resources Protection Act permit would likely be required for direct impacts to a significant vernal pool &amp; compensation likely to be required.<br/>Natural Resources Protection Act permit may also be required for vernal pools or potential vernal pools if qualify as jurisdictional wetlands.</p> | <p>Impacts on significant vernal pool or vernal pool may require Individual permit &amp; compensation.<br/>Impacts on potential vernal pool may require permit if area qualifies as a jurisdictional wetland.</p> | <ul style="list-style-type: none"> <li>• Permits current practice of allowing road crossings for site access. with compensation</li> <li>• Provides flexibility for development in areas planned for commercial development.</li> </ul> |

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| <b>Regulations</b>  | <b>Current Town Regulations</b>  | <b>State Regulations/Rules Natural Resources Protection Act (NRPA)</b>  | <b>Federal Regulations</b>   | <b>Rationale for Amendments</b>   |
|---|--|---|--|---|
| <p><b>Proposed Amendment – all projects are required to use Development Design Process to minimize impacts</b></p> <p><b>Significant Vernal Pool:</b></p> <ul style="list-style-type: none"> <li>•no alteration of pool</li> <li>•buffer required within 100 ft of upland edge</li> <li>•100 to 250 ft from pool, allow up to 25% of area to be altered;</li> <li>•area between 250 &amp; 750 ft from pool, alterations permitted with approval</li> <li>•More than 25% development of area between 100 &amp; 250 ft from pool allowed with conditions.</li> <li>•All alteration of pool or buffer requires compensation</li> </ul> | <ul style="list-style-type: none"> <li>•Current town ordinance does not protect resource but provides for:</li> <li>•minimum 50 ft vegetated buffer from vernal pools;</li> <li>•min. 75 ft structural setback from vernal pools.</li> </ul> | <ul style="list-style-type: none"> <li>•regulates areas within 250 ft under NRPA &amp; requires analysis of impacts up to 500 ft from pool if Site Location Permit required;</li> <li>•allows for development of up to 25% of area between pool &amp; 250 ft from the pool;</li> <li>•Impacts exceeding 25% of area or not meeting other standards under Permit by Rule 19 require full NRPA permit.</li> </ul> | <ul style="list-style-type: none"> <li>•If Army Corps has jurisdiction over any part of project, Maine Programmatic General Permit requires minimization of disturbance within 500 ft of pool;</li> <li>•As part of Individual permit process, Army Corps can require minimization of impacts out to 750 ft from pool for more sensitive vernal pool resources.</li> </ul> | <p>Blends science with current practice of other agencies and balances resource protection with development potential.</p> <ul style="list-style-type: none"> <li>•Science and other agencies support protection of the pool</li> <li>•Immediate area of pool most crucial for upland protection.</li> <li>•Alteration must meet tests of Development Design Process</li> <li>•Adopts State process for compensation</li> </ul> |
| <p><b>Vernal Pools:</b></p> <ul style="list-style-type: none"> <li>•no alteration of pool itself</li> <li>•Buffer required within 100 ft of the upland edge</li> <li>•100 to 750 ft – minimize impacts</li> <li>•All alteration of pool or buffer requires compensation</li> </ul>  | <p>Current town ordinance does not protect resource but provides for:</p> <ul style="list-style-type: none"> <li>•minimum 50 ft vegetated buffer from vernal pools</li> <li>•min. 75 ft structural setback from vernal pools.</li> </ul>     | <p>Not regulated specifically as a vernal pool, but regulated as a wetland if meets the jurisdictional criteria.</p>  | <ul style="list-style-type: none"> <li>•If Army Corps has jurisdiction over any part of project, Maine Programmatic General Permit requires minimization of disturbance within 500 ft of pool;</li> <li>•Army Corps can require minimization of impacts out to 750 ft from pool for more sensitive vernal pool resources.</li> </ul>                                       | <ul style="list-style-type: none"> <li>•Science supports protection of all vernal pools.</li> <li>•Allows for development in upland areas with impact minimized</li> </ul>  |

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| <b>Regulations</b>   |   |   |  |   |
|--|---|---|--|---|
| <b>Proposed Policy</b>   | <b>Current Town Regulations</b>                                   | <b>Comparison to State Regulations/Rules</b>  | <b>Comparison to Federal Regulations</b>   | <b>Rationale for Proposed Amendments</b>  |
| For significant vernal pools on abutting properties, applicant must seek landowner permission to assess resource. If access allowed & can verify resource - protect resource & area of concern as proposed above. If access is denied, no additional regulation. Provides consideration for off-site resource with consent of abutting property owner. | No specific requirement to investigate pools on adjacent parcels. | State requires investigation of pools on subject property only, but will regulate buffers around pools located on adjacent parcel if pool has been mapped by the Maine Department of Inland Fisheries and Wildlife. | Army Corps would not require investigation of pools on adjacent parcel unless permission granted by property owner. However, generally would encourage developer to seek access or, at least, identify potential pools visible from property line. | Provisions recognize that resources extend beyond property boundaries while also respects property ownership. |

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| <b>Compensation</b>  |                                 |  |  |  |
|--|---------------------------------|--|--|--|
| <b>Proposed Amendment</b>  | <b>Current Town Regulations</b> | <b>State Regulations/Rules</b>   | <b>Federal Regulations</b>   | <b>Rationale for Proposed Amendments</b>   |
| Compensation required for impact of vernal pools and their required buffers within one hundred (100) feet of the upland edge of the pool in any district.  | Not applicable                  | May require compensation for direct impacts on significant vernal pools of 500 sq ft. or more and impacts to critical terrestrial habitat (areas within 250 ft of pool).   | Allows for compensation for vernal pool impacts & impacts to larger critical terrestrial habitat area (areas within 750 ft of vernal pools).   | Improves consistency with state & federal requirements. Provides flexibility for developers & better environmental projects. Advances open space protection & achievement of town's overall open space plan. |
| Town will only accept preservation or monetary compensation  | Not applicable                  | Allows restoration and creation  | Allows restoration and creation  | Promotes methods that assure preservation and Town is not equipped to monitor restoration and creation.  |
| <b>Land and Resource Preservation</b> – may be provided through protection of existing natural resources either by deed or easement, including adjacent uplands of wetlands or vernal pools, where the site to be preserved provides significant natural resource functions. May not be included in the calculation for Open Space under Section 3.13 of this ordinance. Where preservation of resources is also required by other agencies, the permitting authority may determine that the preservation under that permit is adequate to meet the ordinance requirement. The ratio required is 20:1. | Not applicable                  | Compensation approach of state requires: <ul style="list-style-type: none"> <li>•2:1 for impacts on wetlands of special significance (creation, restoration, enhancement)</li> <li>•8:1 for preservation for impacts in all wetlands.</li> </ul> | Army Corps has discretionary authority to require mitigation for any impact to vernal pools. Compensation ratios are typically higher than the state, & are determined on a project by project basis. Ratios can be 20 acres to one acre of impact or even more. | Provides better consistency with state program, emphasizes protection & compensation for impacts on most sensitive resources, advances open space plan.  |

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|---|---------------------------------|-----------------------------------|-----------------------------------|---|
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| Applicant is encouraged to choose sites consistent with the Falmouth Open Space Plan & Mitigation Properties Available in the Town of Falmouth and consult with the Town's Ombudsman, Conservation Commission, Falmouth Land Trust, & others as appropriate.  | Not applicable                  | Approach is generally consistent. | Approach is generally consistent. | Better consistency with state & federal requirements. Provides flexibility for developers. Advances open space protection.    |
| <b>Monetary Compensation</b> – based on the state's formula using the following factors:  |                                 |                                   |                                   |   |
| 1) The value of land in Cumberland County per square foot as determined by the Municipal Revenue Service each year.[current is \$0.53]<br>2) Resource multiplier - A multiplier of four (4) shall be used for vernal pools and their areas of concern as referenced in Section 5.1.8.A.<br>3) Wetland creation cost per square foot as determined by the DEP In Lieu Fee Compensation Program [current amount is \$3.28/s.f.] | Not applicable                  | Consistent with the state.        |                                   | Proposed fee schedule is based on the State's In Lieu of Program Utilizes a formula and values that have already been vetted. |
| Vernal Pool Compensation Formula:<br>Vernal pool compensation fee = (direct vernal pool alteration square footage) x (wetland creation cost/s.f. + assessed land valuation/s.f.) + (vernal pool area of concern alteration/s.f. x land valuation/s.f.) x (4)  | Not applicable                  |                                   |                                   | Formula mirrors the State's formula.  |