

TOWN of FALMOUTH, MAINE
ZONING and SITE PLAN REVIEW ORDINANCE
Draft amendments introduction by the Community Development Committee
March 8, 2010

Language in italics is explanatory only. Language submitted by LPAC is shown in green.
Modifications to the language by the CDC are shown in red and blue.

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~~ buffers as referenced in Section 5.38.6
 - b) A multiplier of four (4) shall be used for vernal pools and their ~~areas of concern~~ buffers 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.]*
- 4) WI – Wetland impact square footage
- 5) WB – Wetland buffer impact square footage
- 6) VPI – Vernal pool impact square footage
- 7) VPB – Vernal pool buffer impact square footage

b. **Calculation of Fees** – *this section has been redrafted but no changes made to the formula*

1) Wetland Compensation Formula:

$$2 [WI(WCC + LV) + (WB \times LV)]$$

2) Vernal Pool Compensation Formula:

$$4 [VPI(WCC + LV) + (VPB \times LV)]$$

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 to and procedures of 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,~~
2. steep slopes between fifteen (15) and twenty-five (25) percent
3. archeological or historic sites,
4. stonewalls, or
5. 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 and 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:

1. ~~the following natural resources~~ wetlands, vernal pools, natural plant communities, rivers, streams, brooks and ponds within the Town, and
2. water quality, aquatic life, wildlife habitat, and
3. ~~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.

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, b~~ 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 required setbacks or buffers ~~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.
8. Development of lots in the BP, SB-1, MUC, VMU, CO, and Village Center Overlay districts.

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.~~

5.38.5 Natural Resource Standards

The following standards are required to be met unless alteration and is approved by the permitting authority and compensation 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.~~

5.38.5.1 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.

~~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.~~

5.38.5.2 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.~~
3. Alteration may be permitted 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. The twenty-five (25) percent allowed ~~Alteration~~ shall include previously disturbed areas.
4. 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.~~

5.38.6 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.

5.38.7 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.

Exemptions - When compensation is required by another permitting authority for a regulated resource or its associated buffers, no compensation shall be required for the alteration that is also regulated by the Town. Those resources and their buffers that are afforded protection to a greater extent by the Town shall be compensated for that area of alteration.

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.

5.38.8 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.

5.38.9 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.