

Town of Falmouth - Proposed Natural Resource Amendments –Comparison Matrix, April 12, 2010

Definitions – Section 2			
Current Town Regulations	LPAC Recommendation	Proposed CDC Amendment	State Regulations/Rules
<p>Significant Vernal Pool - Existing town ordinance language does not include a definition for significant vernal pool, provides a definition for vernal pool.</p>	<p>definition is similar to state definition, focusing on amphibian abundance & 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 & recognizes several new rare species as indicators.</p>	<p>same</p>	<p>State requires a significant vernal pool to be natural and excludes pools with permanently flowing inlet or outlet.</p>
<p>Vernal Pool - 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>must show evidence of breeding activity</p>	<p>same</p>	<p>State does not regulate vernal pools.</p>
<p>Wetland - Current town ordinance defines wetlands as either “high value” or “low value”. “High value” wetlands include: ponds, vernal pools, floodplains, very poorly drained soils, areas where more than 50% of the dominant plants in all strata are facultative wetland or obligate wetland plants.</p>	<p>Replace current definition of wetlands with state’s definitions of wetlands of special significance, coastal wetlands, & freshwater wetlands.</p>	<p>same</p>	<p>State definition is the basis for the town definition.</p>

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Exemptions			
Current Town Regulations Section 5.38	LPAC Recommendation	Proposed CDC Amendment Section 5.38	State Regulations/Rules
<ol style="list-style-type: none"> 1. Site plan, subdivision, and private way applications that have had at least one (1) substantive review, as determined by the Planning Board, 2. stormwater management facilities 3. any development other than new single-family development, roads, 4. Low value wetlands that function primarily as drainage swales (finger wetlands) 5. Docks, boat ramps and other water access structures 6. Pre-existing artificial water impoundments 	<ol style="list-style-type: none"> 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) 2. Lots approved by the Planning Board and recorded at the Registry of Deeds prior to the effective date of this ordinance (ADD DATE); 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. 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. 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. 	<p>Add the following exemption</p> <ol style="list-style-type: none"> 8. Development of lots in the BP, SB-1, MUC, VMU, CO, and Village Center Overlay districts. 	<p>No specific exemptions under Natural Resources Protection Act for vernal pools.</p> <p>For wetlands:</p> <ul style="list-style-type: none"> ◆ Natural Resources Protection Act provides an exemption for agriculture & timber harvesting if they meet specific standards. ◆ Natural Resources Protection Act provides for alterations of wetlands, not of special significance, of up to 4,300 sq ft.

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Limited Alterations	LPAC Amendment		
Current Town Regulations	LPAC Amendment	Proposed CDC Amendment	State Regulations/Rules
<p>Ordinance allows for road crossings if follow design & location requirements in ordinance. Ordinance requires development be:</p> <ol style="list-style-type: none"> 1. Integrated with natural topography & minimize need for cuts & fills; 2. Minimize impacts on protected resources & their buffers & setbacks; 3. Incorporate accepted best management practices; 4. Be determined by Planning Board to be best alternative 	<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> <ol style="list-style-type: none"> (a) the proposed alteration is designed in accordance with the Development Design Process and; (b) provides compensation under Section 5.38.8, Compensation. <ol style="list-style-type: none"> 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. 	<p>Item 2 has been deleted and added to Exemptions, see page 2.</p>	<p>Full (Tier 3) Natural Resources Protection Act permit would likely be required for direct impacts to a significant vernal pool & compensation likely to be required. Natural Resources Protection Act permit may also be required for vernal pools or potential vernal pools if qualify as jurisdictional wetlands.</p> <p>May qualify for permit by rule if it can meet standards for road crossings. No specific requirements under Natural Resources Protection Act, but generally strive for at least 25 ft vegetated filter between stormwater outfall & resource.</p>

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Vernal Pool Restrictions	LPAC Amendment	Proposed CDC Amendment	State Regulations/Rules
Current Town Regulations	LPAC Amendment	Proposed CDC Amendment	Natural Resources Protection Act (NRPA)
<p>Current town ordinance provides for:</p> <ol style="list-style-type: none"> 1. minimum 50 ft vegetated buffer from vernal pools; 2. min. 75 ft structural setback from vernal pools. <p>NOTE: This is for all vernal pools.</p>	<p>Significant Vernal Pool:</p> <ul style="list-style-type: none"> •no alteration of pool •buffer required within 100 ft of upland edge •100 to 250 ft from pool, allow up to 25% of area to be altered; •area between 250 & 750 ft from pool, alterations permitted with approval •More than 25% development of area between 100 & 250 ft from pool allowed with conditions. •All alteration of pool or buffer requires compensation 	<p>Removed the requirement to require areas between 250 to 750 feet (area of concern) to be developed under the Development Design Process</p>	<ul style="list-style-type: none"> •regulates areas within 250 ft under NRPA & requires analysis of impacts up to 500 ft from pool if Site Location Permit required; •allows for development of up to 25% of area between pool & 250 ft from the pool; •Impacts exceeding 25% of area or not meeting other standards under Permit by Rule 19 require full NRPA permit.
<p>Current town ordinance does not protect resource but provides for:</p> <ol style="list-style-type: none"> 1. minimum 50 ft vegetated buffer from vernal pools; 2. min. 75 ft structural setback from vernal pools 	<p>Vernal Pools:</p> <ul style="list-style-type: none"> •no alteration of pool itself •Buffer required within 100 ft of the upland edge •100 to 750 ft – minimize impacts •All alteration of pool or buffer requires compensation 	<p>Removed the requirement to require areas between 100 and 750 feet (area of concern) to be developed under the Development Design Process.</p>	<p>Not regulated specifically as a vernal pool, but regulated as a wetland if meets the jurisdictional criteria.</p>

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Wetlands Restrictions			
Current Town Regulations	LPAC Amendment	Proposed CDC Amendment	State Regulations
<ul style="list-style-type: none"> • minimum 50 ft vegetated buffer from streams, floodplains, ponds, vernal pools, & high value wetlands; • minimum 75 ft structure setback from streams, floodplains, ponds, vernal pools, & high value wetlands. 	<p>Wetlands of special significance & their areas of concern:</p> <ul style="list-style-type: none"> • no alteration of wetlands of special significance or areas within 100 ft of resource; • preservation or restoration of buffer required within 100 feet of wetland • alterations between 100 & 250 ft allowed with permitting authority approval 	<p>Remove the alterations regulation between 100 and 250 ft</p>	<ul style="list-style-type: none"> • Regulates most impacts to wetlands of special significance, generally requires more thorough review process, & may require compensation. Also up to 75 ft from certain wetlands of special significance including: • Rules allow for obtaining permit by rule if meet standards. • State regulates activities within 100 ft of shorebird roosting & feeding areas (mapped coastal areas). Allows activities if qualify for permit by rule • State regulates activities within 250 ft of other significant wildlife habitats including: • Mapped inland wading bird & waterfowl habitat. • State allows for activities if meet standards established for specific applicable permit by rule.

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Notification of Abutters			
Current Town Regulations	LPAC Amendments	Proposed CDC Amendment	Comparison to State Regulations/Rules
No specific requirement to investigate pools on adjacent parcels.	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.	This requirement has been removed.	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.

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Compensation			
Current Town Regulations	LPAC Amendment	Proposed CDC Amendment	State Regulations/Rules
Not applicable	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.	same	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).
Not applicable	Town will only accept preservation or monetary compensation	Added that for like regulated resources the town will accept another agency's compensation plan as compensation	Allows restoration and creation
Not applicable	Land and Resource Preservation – 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.	same	Compensation approach of state requires: <ul style="list-style-type: none"> •2:1 for impacts on wetlands of special significance (creation, restoration, enhancement) •8:1 for preservation for impacts in all wetlands.

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Compensation			
Current Town Regulations	LPAC Amendment	Proposed Amendment	State Regulations/Rules
Not applicable	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.	same	Approach is generally consistent.
	Monetary Compensation – based on the state’s formula but includes regulated buffers:		
Not applicable	1) The value of land in Cumberland County per square foot as determined by the Municipal Revenue Service each year.[current is \$0.53] 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. 3) Wetland creation cost per square foot as determined by the DEP In Lieu Fee Compensation Program [current amount is \$3.28/s.f.]	same	State formula was utilized as a basis for town formula.
Not applicable	Vernal Pool Compensation Formula: 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)	same	Proposed fee schedule is based on the State’s In Lieu of Program Utilizes formulas and values that have already been vetted
Not applicable	Wetland Compensation Formula: Wetland compensation fee = (wetland impact area square footage x (wetland creation cost/sf + assessed land valuation/sf)) + (wetland buffer impact area square footage x assessed land valuation/sf) x (2)		Proposed fee schedule is based on the State’s In Lieu of Program Utilizes formulas and values that have already been vetted