

# **Town of Falmouth Resource Buffers and Setbacks Ordinance**

## **Town of Falmouth Zoning Ordinance**

### **5.38 Buffers and Setbacks Adjacent to Streams, Ponds and Wetlands**

#### **5.38.1 Purpose**

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.

*[Explanatory Note: The Town of Falmouth has used specific criteria to define what it considers a “high value” wetland. All wetlands provide some combination of functions and values regardless of their size or type. Each community should consider what functions and values or combination thereof should be considered locally significant when crafting protections. Beginning with Habitat Map 7: Wetlands Characterization depicts the results of a wetland characterization model intended to summarize the key functions and values of larger wetlands within town boundaries. It is important to note that this effort does not include all wetlands on the landscape. Review and consideration of this map and the analysis process used may be a good starting point to determine the best approach to additional wetland protections in your community.]*

#### **5.38.2 Applicability**

A. The requirements of this section 5.38 apply only to the construction of:

- 1) new single family dwellings and their accessory structures and lawns, when constructed upon lots created after the effective date of this section, whether by subdivision or otherwise;
- 2) private ways which are subject to review under section 5.27.

For purposes of this subsection, 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.

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.

*[Explanatory Note: This provision is simply to clarify that the more restrictive standard applies where this ordinance and the local shoreland zoning ordinance overlap.]*

### **5.38.3 Protected Resources**

A. **Stream.** A “river, stream, or brook” as defined by the Maine Natural Resources Protection Act.

*[Explanatory Note: The Department of Environmental Protection (DEP) Natural Resources Protection Act (NRPA) definition of a stream (Title.38, Chapter 3, §480-B. Definitions) is: **River, stream or brook.** "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.*

*A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map. [1995, c. 92, §2 (new).]*

*B. It contains or is known to contain flowing water continuously for a period of at least 3 months of the year in most years. [1995, c. 92, §2 (new).]*

*C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water. [1995, c. 92, §2 (new).]*

*D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed. [1995, c. 92, §2 (new).]*

*E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation. [1995, c. 92, §2 (new).]*

*"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.]*

B. **Pond.** A naturally occurring inland body of water, but not including great ponds as defined by the Maine Natural Resources Protection Act.

C. **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.

*[Explanatory Note: In 2002, the Town of Falmouth commissioned a local vernal pool inventory using recent infra-red aerial photographs. The results of the aerial photo analysis was then field checked by biologists and local volunteers. The final results of this mapping effort are used for the purposes of this ordinance. An alternative approach would be for a municipality to adopt a vernal pool definition based on physical criteria rather than referencing a map. The State of Maine recently adopted a definition of "Significant Vernal Pools" that could be adopted with modifications to meet local objectives.]*

**D. 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.

**E. High Value Wetland.** A freshwater wetland, as defined by the Maine Natural Resources Protection Act, which meets one or more of the following criteria:

1. Contains a pond or a vernal pool;
2. Lies within the floodplain of a stream or a pond;
3. The soils are very poorly drained as defined by the USDA Natural Resources Conservation Service;
4. More than 50% of the dominant species in the shrub and herb all strata of the vegetation consist of facultative wetland (FACW) or obligate wetland (OBL) plant species, as listed in the National List of Plant Species that Occur in Wetlands, by the U.S. Fish and Wildlife Service, latest edition.

*[Explanatory Note: Standard wetland delineation practices require an assessment of soil type and percent dominance of wetland plant species including the wetland indicator status referenced above. Neither provision 3 or 4 require any additional field effort than would be expected as part of the standard development planning process.]*

**F. Low Value Wetland.** A freshwater wetland, as defined by the Maine Natural Resources Protection Act, which does not meet the criteria of a high value wetland.

### **5.38.4 Buffers and Setbacks Required**

A. A buffer consisting of natural forestland not less than 50 feet wide shall be left *undisturbed* between streams, floodplains, ponds, vernal pools, and high value wetlands and all areas cleared for development, including, but not limited to, lawns, gardens, landscaped plant beds, driveways, parking lots, buildings, and other structures.

*[Explanatory Note: Under NRPA, the DEP already regulates activities within 75 feet of many of these resources and requires some level of permitting for activities within the 75-foot zone. Expanding the required buffer to 75 feet for higher value resources such as streams, floodplains and high value wetlands may be worth considering to avoid confusion for the applicant. Additionally, the recent incorporation of "Significant Vernal Pools" into DEP's Significant*

*Wildlife Habitat standards (a change that happened after the adoption of this ordinance) may require additional buffer requirements for vernal pools meeting the state definition.]*

B. No structure shall be located closer than 75 feet from streams, floodplains, ponds, vernal pools, and high value wetlands.

C. No structure shall be located closer than 50 feet from low value wetlands greater than 4,000 square feet in total area.

D. Buffers and setbacks shall be measured as follows:

1. Streams: from the edge of the stream channel, or from the edge of the floodplain adjacent to the stream if one is present;
2. Floodplains: from the limit of the area inundated by floodwater;
3. Ponds and vernal pools: from the high water mark, or from the upland edge of the wetland adjacent to the pond or pool if one is present;
4. Wetlands: from the upland edge of the wetland.
5. 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.

### **5.38.5 Exemptions**

A. Buffers and setbacks are not required adjacent to the following areas:

1. Swales, ditches, and impoundments created for drainage purposes;
2. Artificial impoundments of streams constructed prior to the enactment of this amendment;

*[Explanatory Note: The DEP typically considers impoundments in streams as being part of the stream especially if the impoundment has a defined stream channel flowing into it and out of it. This provision may conflict with DEP setback requirements.]*

1. 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.

B. Buffers and setbacks do not apply to the following projects:

1. Stormwater management facilities;

*[Explanatory Note: The DEP does regulate activities within 75 feet of certain higher value wetlands, streams, floodplains, and vernal pools as discussed above. Exempting stormwater management facilities from setback requirements at the local level may conflict with DEP standards for soil disturbance adjacent to protected resources. Careful consideration should be given to this provision if being considered for adoption.]*

2. Road crossings, bridges, culverts, and the installation of utilities needed to access property on the other side of wetlands and waterbodies;
3. Docks, boat ramps, and other structures necessary for direct access to waterbodies.

#### **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.

#### **5.38.7 Maintenance of Forested Buffers**

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.

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.

C. Stormwater runoff shall enter the buffer area as sheet flow only. Channeling stormwater runoff through the buffer area is not permitted.

#### **5.38.8 Enforcement of Buffers**

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.

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.

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.