

BE IT HEREBY ORDAINED, by the Town Council of the Town of Scarborough, Maine, in Town Council assembled, that the following changes to Chapter 405 Zoning Ordinance of the Town of Scarborough, Maine, be and hereby is amended, as follows (additions are in underlined in red; deletions are struck through):

## CHAPTER 405 TOWN OF SCARBOROUGH ZONING ORDINANCE

### SECTION X.A WETLAND SETBACKS AND VEGETATED BUFFERS

#### A. Applicability

Wetland setback requirements shall apply to all new development requiring site plan or subdivision approval. Redevelopment projects shall maintain the minimum wetland setbacks under this Ordinance or that which was previously permitted at the property.

This ordinance shall not apply to wetlands addressed in Chapter 405C Town of Scarborough Shoreland Zoning Ordinance.

This ordinance does not preclude wetland fill permitting at the State and Federal level. If a wetland is approved to be filled in its entirety, no wetland setback or buffer is required. If a wetland is approved for partial impact, the wetland setback and buffer requirements will be based on the new wetland boundary.

This ordinance shall not apply to properties in receipt of or in process of receipt of approval for wetland fill as of the date of adoption of this ordinance.

#### B. Definitions

**Coastal Wetlands:** Coastal Wetland means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest astronomical in which an activity is proposed. Coastal wetlands may include portions of coastal sand dunes.

**Forested Wetland:** Forested wetland means a freshwater wetland dominated by woody vegetation that is 6 meters tall, or taller.

**Fresh Water Wetland:** Freshwater wetland means freshwater swamps, marshes, bogs, and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and not considered part of a great pond, coastal wetland, river, stream, or brook.

**Vegetated Buffer:** A vegetated buffer is part of the wetland setback area that maintains or enhances the natural vegetation cover from the natural resource for a specified distance. Limited activity may take place in the vegetated buffer.

**Wetland Setback:** A wetland setback is a defined distance between a coastal wetland, freshwater wetland or forested wetland, and any upland development. The wetland setback also includes a vegetated buffer.

**C. Wetland Setback and Vegetated Buffer Required**

The following setback and minimum vegetated buffer width standards apply:

<u>Environmental Resource Type</u>	<u>Vegetated Buffer</u>	<u>Wetland Setback (includes vegetated buffer)</u>
<u>Wetlands</u>	<u>15'</u>	<u>25'</u>

\*Where any provision of this Section conflicts with a State or Federal law or regulation, another section of this Site Plan Ordinance, Zoning Ordinance, or another local ordinance or regulation, the more restrictive provision shall apply.

The required minimum vegetated buffer is a portion of the wetland setback area directly adjacent to the wetland and maintains or enhances the natural vegetation cover from the wetland for a specified distance.

All wetland setbacks and vegetated buffers shall be marked with permanent pins every 50-100' and signage along the 15 foot buffer line as determined by the Planning Board. All required boundary markers shall be installed by a qualified professional before project construction commences.

Wetland Setbacks are not subject to variance procedures.

The Planning Board may consider crossing wetland setbacks through the subdivision and site plan approval process if the following applies:

- 1) The crossing must be located at the narrowest span of wetlands; and
- 2) The crossing must be designed to move flow between the segregated wetlands; and
- 3) Minimum footprint of the roadway or utility crossing must be demonstrated to reduce wetland impacts; and
- 4) Open bottom culverts shall be included every 50 feet; and
- 5) It is demonstrated that no other alternative route is feasible

**D. Permitted Activities**

Activities that do not involve the erection or construction of any structure or impervious surface, will not alter the natural surface configuration by the addition of fill or by excavation, will not

result in site alterations, and is otherwise permitted by the Zoning Ordinance are permitted as shown in the following table. Uses not specifically identified shall be prohibited.

Standards and Permitted Activity use table abbreviations are as follows:

P – Permitted by Right

NO – Not a Permitted Activity

<u>Permitted Activity</u>	<u>Setback Area – Inside of Vegetated Buffer</u>	<u>Setback Area - Outside of Vegetated Buffer</u>
<u>Pesticides Permitted</u>	<u>NO</u>	<u>NO</u>
<u>Fertilizer Permitted<sup>A</sup></u>	<u>NO</u>	<u>P</u>
<u>Tree Cutting or Vegetation Removal</u>	<u>NO</u>	<u>P</u>
<u>Invasive Species Control<sup>B</sup></u>	<u>P</u>	<u>P</u>
<u>Planting/establishment of Non-invasive species<sup>C</sup></u>	<u>P</u>	<u>P</u>
<u>Lawns</u>	<u>NO</u>	<u>P</u>
<u>Forest Management Activities<sup>D</sup></u>	<u>NO</u>	<u>P</u>
<u>Outdoor Lighting</u>	<u>NO</u>	<u>P</u>
<u>Fences<sup>F</sup></u>	<u>NO</u>	<u>P</u>
<u>Stormwater Retention or Detention Basin</u>	<u>NO</u>	<u>NO</u>
<u>Stormwater Conveyance Structures</u>	<u>NO</u>	<u>P</u>
<u>Sewage Disposal Facilities</u>	<u>NO</u>	<u>NO</u>
<u>Soil Erosion and Sediment Control Measures<sup>G</sup></u>	<u>NO</u>	<u>P</u>
<u>Shoreline Stabilization</u>	<u>NO</u>	<u>NO</u>
<u>Living Shorelines</u>	<u>P</u>	<u>P</u>
<u>Maintenance to existing structures and improvements within existing footprint<sup>E</sup></u>	<u>P</u>	<u>P</u>
<u>Repair, maintenance and improvements of existing roadways, utilities and sidewalks</u>	<u>P</u>	<u>P</u>
<u>Installation of piers or docks, provided that all required local, state, and federal approvals have been granted</u>	<u>P</u>	<u>P</u>
<u>Wildlife refuges, passive recreation, conservation nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations</u>	<u>P</u>	<u>P</u>
<u>Trailhead Parking</u>	<u>NO</u>	<u>NO</u>
<u>Grading, Fill or Excavation Activities</u>	<u>NO</u>	<u>Only for permitted activities listed above</u>

<sup>A</sup>Permitted fertilizers must be low phosphate slow release in areas of fresh water impact and slow release nitrogen in areas of coastal water impacts, both at a rate recommended from a soil test.

<sup>B</sup>Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional.

<sup>C</sup>Depending on the buffer type, revegetation of buffers must use appropriate native plants.

<sup>D</sup>When forest management activities are permitted, harvesting up to 20% of the total volume of each acre of trees 4.5 inches DBH or greater in any 10-year period is allowed.

<sup>E</sup>Reconstruction and modifications of existing structures is permitted; however, footprint expansion must move landward to the greatest extent practical.

<sup>F</sup>Fences may be constructed along the vegetated buffer line; however, they must have no footings and no ground disturbance within five (5) feet of the vegetated buffer.

<sup>G</sup>Construction disturbance limit is 15 feet from the wetland. When silt fence is required, it shall be placed outside of the 15 feet vegetated buffer line.