

Chapter 25
Stormwater Amendments
(12-19-2022)

Article I. Stormwater Development Review

Article II. Post Construction Stormwater Maintenance

Article III. Non-Stormwater Discharges

Article IV. Erosion and Sedimentation Control

Article I. Stormwater Development Review ~~Storm water and Non-storm water Control~~

Sec. 25-1-1. Purpose and Authority.

Purpose. The purpose of this Ordinance is to require the ~~disposal control, treatment and management~~ of storm-water on the land at the site of development through the ~~wise~~ use of the natural features of the site. ~~and to regulate storm water and non-storm water Discharges to the Town Storm Water Runoff System as required by federal and state law. Storm water and non-storm water shall be disposed of in a manner so that it does not pose dangers of flooding, soil erosion, pollution of receiving waters, or otherwise constitute a threat to public health, safety or welfare.~~

~~A.—~~Authority. The Town enacts these stormwater regulations ~~incorporating Low Impact Development Strategy provisions pursuant to Maine Constitution Art. VIII, Part Second, §1 and 30-A M.R.S. §§3001 et seq. (municipal home rule authority), 38 M.R.S. §413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency's regulations governing the National Pollution Discharge Elimination System (NPDES)).~~ The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) has listed the Municipality as having a Regulated Small MS4; under this General Permit, listing as a Regulated Small MS4 necessitates enactment of elements of this Ordinance as part of the Town's Stormwater management program in order to satisfy the minimum control measures for Post Construction Stormwater Management in New Development and Redevelopment.

Sec. 25-1-2. Applicability.

This Article shall be applicable to:

1. Any development involving 43,560 sq. ft. or more of disturbed area which requires Site Plan (Chapter 19, Zoning Ordinance); and
2. Any development involving 43,560 sq. ft. or more of disturbed area which

requires Subdivision Review (Chapter 16, Subdivision Ordinance) by the Planning Board.

The provisions of this chapter shall apply to:

- a. ~~any Disturbed Area, as defined in Sec. 25-1-3. Any proposed activity subject to Planning Board review and involving 43,560 square feet or more of added impervious surface, paving, clearing, or vegetative alterations, or any development requiring Subdivision Review (Chapter 16, Subdivision Ordinance)~~
- b. ~~Any Discharge of storm water or non-storm water from any premises into the Town Storm Water Runoff System.~~
- c. ~~All extensions of the storm water runoff system must be constructed to comply with minimum standards developed by the Enforcement Authority.~~

Sec. 25-1-3. Definitions.

For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

Adverse Impact: Any undue deleterious effect due to erosion from Construction Activity on waters of the State, wetlands, the municipal storm drain system, or off-site property including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses. Such deleterious effect is or may be potentially harmful or injurious to human health, welfare, safety, or property, to biological productivity, diversity or stability, or which unreasonably interferes with the enjoyment of life or property, including outdoor recreation.

Applicant: Any Person with requisite right, title, or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post- Construction Storm Water Management Plan under this Ordinance.

Best Management Practices ("BMPs"): Any schedule of activities, prohibitions of practices, maintenance procedures, and other methods, techniques, designs or management practices to prevent or reduce the pollution of waters of the State of Maine including impacts from erosion and sedimentation. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

CFR: Code of Federal Regulations.

Chapter 500: Chapter 500 of the Maine Department of Environmental Protection's Rules ("Stormwater Management Rules").

Chapter 502: Chapter 502 of the Maine Department of Environmental Protection’s Rules (“Direct Watersheds of Lakes Most at Risk from New Development, and Urban Impaired Streams”).

Common Plan of Development or Sale: A Major Subdivision or Minor Subdivision as defined in the Subdivision Ordinance (Chapter 16).

Construction Activity –any activity on a Site that results in Disturbed Area.

Developed ~~A~~area. "Disturbed ~~A~~area" excluding area that within one calendar year of being disturbed is returned to a condition with the same drainage pattern that existed prior to the disturbance and is revegetated, provided the area is not mowed more than ~~twice~~once per year.

Direct Discharge: Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, rolling stock, container, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged. (Also known as Point Source.)

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to Waters of the State, other than groundwater.

Disturbed ~~A~~area. All land areas of a site that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." "Disturbed ~~A~~area" does not include routine maintenance, but does include re-development and new impervious areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove while maintaining the original line and grade, and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same facility is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." A disturbed area continues to be considered as a "disturbed area" if it meet the definition of "developed area" or impervious area" following final stabilization.

Drainageway – Means the same as “Drainageway” defined in Chapter 500.

Enforcement Authority: The Town of Cape Elizabeth Public Works Director or his/her designee.

General Permit: Means the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4) approved October 15, 2020 and modified November 23, 2021 and any amendment or renewal thereof.

Impervious Area: The total area of a Parcel site covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common Impervious Areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and under drained artificial turf fields are all considered impervious.

Surface: The total area of a parcel that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of storm water. A natural or man-made waterbody is not considered an impervious area, but is treated as an immediate runoff surface in curve number calculations.

Industrial Activity: Activity subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Lot: A lot as it is defined in the Zoning Ordinance.

Low Impact Development (LID): A broad approach to site planning that preserves natural resources, processes, and habitat, defines what portions of the Site are suitable for development and then utilizes Stormwater Treatment Measures to manage Runoff from the proposed developed impervious areas. LID Stormwater Treatment Measures using natural processes such as vegetated buffers are given preference over constructed treatment Stormwater Treatment Measures. The goals of LID are to minimize the environmental impacts of the development.

Municipal Separate Storm Sewer Systems (MS4): A conveyance or system of conveyances designed or used for collecting or conveying Stormwater (other than a publicly owned treatment works (POTW), as defined at 40 CFR 122.2, or a combined sewer), including, but not limited to, roads with drainage systems, municipal roads, catch basins, curbs, gutters, ditches, human-made channels or storm drains owned or operated by any municipality, sewer or sewage district, Maine Department of Transportation (MDOT), Maine Turnpike Authority (MTA), State agency or Federal agency or other public entity that Discharges to Waters of the State other than groundwater.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by the United States Environmental Protection Agency (EPA) or by the Maine Department of Environmental Protection (DEP) that authorizes the Discharge of pollutants to waters of the United States.

New Development: “New Development or Construction” as defined in the General Permit.

Non-Storm Water Discharge: Any Discharge to the Town Storm Water Runoff System that is not composed entirely of Storm Water.

Parcel : The same as "Tract or parcel of land" as defined at 30 M.R.S. §4401.6 *et seq*

Person: Any individual, firm, corporation, municipality, quasi-municipal corporation, State or Federal agency or other legal entity.

Permitting Authority: The Code Enforcement Officer, Building Inspector, Planning Board, or other official or body authorized by State law or the Municipality's ordinances to approve Development or Redevelopment of Sites.

Pollutant: Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials, and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Storm Water Management Plan: BMPs and associated inspection and maintenance procedures for the Storm Water Runoff System employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Town's Permitting Authority.

Premises: All or any part of a building, lot, parcel of land, whether improved or unimproved, including adjacent sidewalks and parking areas from which Discharges into the Town Storm Water Runoff System that is created, initiated, originated or maintained.

Project: Construction Activity undertaken for Major Development, Minor Development or Subdivisions, both as defined in the General Permit, located on a Site that will Discharge Stormwater to a Small MS4.

Qualified Post-Construction Storm Water Inspector: A person who conducts post construction inspections of Storm Water Runoff Systems and meets the following qualifications:

a. The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and

b. The Inspector shall also meet the following criteria as approved by the Town's Enforcement Authority:

1. Someone who has received the appropriate training for such inspection from DEP and holds a valid certificate from DEP for such inspection or;
2. Have a working knowledge of the most current Maine DEP Storm Water Management Laws including but not limited to Chapter 500 and Chapter 502 Rules, Storm Water Management Rules and Maine's Storm Water BMP Manual, have a college degree in environmental science, civil engineering, or comparable expertise, or any combination of experience and training; have a demonstrated practical working knowledge of Storm Water hydrology and Storm Water

management techniques, including the maintenance requirements for Storm Water Runoff Systems; and have the ability to determine if Storm Water Runoff Systems are performing as intended;

Qualified Erosion and Sedimentation Control Professional: A person who either has been certified by Enviro-Cert International in erosion and sediment control practices or has been certified by completing the Maine Department of Environmental Protection Erosion and Sediment Control Practices Workshop, or is a Maine Professional Engineer with at least two years' experience in designing erosion and sediment control BMPs.

Redevelopment: Same as "Redevelopment" defined in Chapter 500.

Regulated Small MS4: Any Small MS4 authorized by the most recent, in-force General Permit or the general permits for the Discharge of Stormwater from MDOT and MTA Small MS4s or state or federally owned or operated Small MS4s including all those located partially or entirely within the Urbanized Area.

Runoff: The part of precipitation from rain or melting ice and snow that flows across a surface as sheet flow, shallow concentrated flow or in Drainageways.

Small MS4: Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state, or federally owned systems, such as colleges, universities, prisons, military bases and facilities, and transportation entities such as MDOT and MTA road systems and facilities. See also 40 CFR 122.26(b)(16).

Site: The portion of a Lot, Parcel, or Common Plan of Development which is proposed for Construction Activity, including open space, Stormwater Treatment Measures, and Disturbed Area, subject to this Ordinance.

Stormw-Water: ~~The part of precipitation including rRunoff resulting from snowmelt, rain or melting ice that flows across the surface as sheet flow, shallow concentrated flow, or in Drainageways. "Stormwater" has the same meaning as "stormwater.", precipitation or groundwater on the ground.~~

Stormw-Water Maintenance agreement. An agreement describing maintenance of storm water runoff system for development reviewed by the Planning Board. All privately owned facilities shall be included in the maintenance agreement. A maintenance agreement must include, at a minimum, the party responsible for maintenance, a list of the storm-water runoff system components that require maintenance, inspection frequency, maintenance requirements, and submission of an annual report to the Town. Storm-water runoff system components that will be privately owned until such time they are conveyed to the Town require a maintenance agreement until they are conveyed.

Stormw-Water Runoff System: An element or array of elements that convey water from or across land, including but not limited to natural elements.

1 **Tidal Waters:** Waters contiguous to the Atlantic Ocean where the surface rises and falls due to
2 gravitational pull.

3
4 **Time of Concentration:** The same as “Time of concentration” defined in Chapter 500.

5
6 **Town:** The Town of Cape Elizabeth.

7
8 **Town Permitting Authority:** The Town official or body that has jurisdiction over the land use
9 approval or permit required for a New Development or Redevelopment.

10
11 **Uncontaminated:** Free of Pollutants.

12
13 **Urbanized Area:** The area of the Town of Cape Elizabeth so defined by the inclusive sum of
14 the 2000 decennial census, and the 2010 decennial census by the U.S. Census Bureau, and
15 any subsequent updates provided by the U.S. Census Bureau.

16
17 **Waters of the State:** Any and all surface and subsurface waters that are contained within, flow
18 through, or under or border upon the State of Maine or any portion of the State of Maine,
19 including the marginal and high seas, except such waters as are confined and retained completely
20 upon the property of one person and do not drain into or connect with any other waters of the
21 State of Maine, but not excluding waters susceptible to use in interstate or foreign commerce, or
22 whose use, degradation or destruction would affect interstate or foreign commerce. (See also 38
23 M.R.S. Sec.361-A (7)).

24 25 26 **~~Sec. 25-1-4. Storm Water Runoff System Design.~~**

27
28 ~~a. Applicability. This section shall be applicable to the following development:~~

29
30 ~~1. Any development involving 43,560 sq. ft. or more of impervious surface and which~~
31 ~~requires Site Plan (Chapter 19, Zoning Ordinance); and~~

32
33 ~~2. Any development requiring Subdivision Review (Chapter 16, Subdivision Ordinance) by~~
34 ~~the Planning Board.~~

35 36 37 **Sec. 25-1-45. Stormwater Runoff System Design**

38
39 **A.b. Submission Requirements.** In addition to the submission requirements identified in 19-9-
40 4-C, F, the following information shall be submitted to the Planning Board.

- 41
42 1. Professional Engineer. The stormwater runoff system plan shall be prepared by a
43 professional engineer licensed in the State of Maine. Designation Information
44 shall include contact information (i.e. name, company if applicable, phone
45 number physical address and email address) of a Maine professional engineer,
46 licensed in the State of Maine who will design, sign and stamp the storm-water

runoff system.

2. Base information. The existing site information required for subdivision or site plan review, including but not limited to standard boundary survey, topographic contours and limits of disturbed area for all phases.
~~location of water bodies and water courses, shall be used as the base for the storm water runoff system plan.~~
3. Impervious surface. On the storm-water runoff system plan and in the written materials, the calculated square footage of existing impervious surface and proposed impervious surface.
4. Pre- and post-construction calculations. Storm-water runoff calculations based on the 2- and 25-year, 24-hour storm frequency for the property. Rainfall amounts will be taken from the Maine DEP Chapter 500 Basic Performance Standards "Appendix H - 24-hour duration rainfalls for various return periods".
5. Existing system. On the storm-water runoff system plan and in the written materials, show and describe the existing storm-water runoff system, including but not limited to storm-water infrastructure, drainage channels, culverts and other conveyances, and deficiencies that result in storm-water surcharge or flooding on the property.
6. Proposed improvements. On the storm-water runoff system plan and in the written materials, show and describe the proposed storm-water runoff plan, including but not limited to a listing of LID (where applicable) and Stormwater Treatment Measures that will be in use, stating which will be maintained privately and which will be offered to the Municipality for acceptance and operation, how they have prioritized protection of the sensitive areas from disturbance as required in Section 25-1-4.B and a rationale for any waivers from performance standards in Section 25-1-4.B, location of snow storage areas~~proposed storm water runoff system components, showing and~~ design of all facilities and conveyances. The storm-water runoff system plan and written materials shall include information describing the overall approach to stormwater management at the project site, the difference in the pre and post-development flows, infiltration on the site, storm-water runoff discharge downstream impacts, accommodation of upstream flows, and include all necessary design details and components.
7. Easements. When storm-water runoff plan components are not located in the public right-of-way, executable easement deeds providing the Town with access and maintenance rights.
8. Maintenance. Provide a Post Construction Maintenance Plan showing how the stormwater runoff system will be maintained after construction in accordance with Article II of this Ordinance. When all or part of the storm-water runoff system infrastructure will not be conveyed to the Town, provide a draft

1 maintenance agreement and include the following note on the plans: The site
2 requires (a) a Maintenance Agreement for the storm-water runoff system to be
3 executed with the Enforcement Authority and filed with the Cumberland County
4 Registry of Deeds, and (b) after construction is complete, provide annually a
5 certification to the Enforcement Authority that the storm-water runoff system has
6 been inspected and maintained in accordance with the Post Construction storm
7 water runoff system management plan approved for this site.
8

- 9 9. Record drawings. On the storm-water runoff plan a note that "a reproducible set of
10 record drawings, as well as digital files, both Adobe pdf and in a format used by
11 the project engineer during project design or other format approved by the Public
12 Works Director suitable for import into the Town Geographic Information System
13 (GIS), indicating the storm-water runoff work constructed and how the record
14 drawings were compiled shall be provided to the Enforcement Authority upon
15 completion of construction."
16

17
18 Be. Review Standards. The stormwater management plan for the development shall comply
19 with the following Design and Performance Standards.
20

21 1. Design Standards
22

23 a. 2-year, and 25-year storms. The stormwater runoff system shall be
24 designed for a storm of intensity equal to, or less than, the 2-, and 25-year,
25 24-hour storm event. No non-storm water structures shall be permitted in
26 areas of the site that flood or surcharge during the 2-, and 25-year storm.
27 Where state or federal is more restrictive, such provisions shall supersede
28 this section.
29

30 b. Infiltration. The storm water runoff system shall maximize to the greatest
31 extent practical the amount of storm water infiltrating on the site during
32 storm events, except that development located in the Town Center District
33 shall design a storm water plan that is consistent with the Town Center
34 Storm water Management Plan, updated September 2015 or most recent
35 version.
36

37 bc. Downstream impacts. The stormwater runoff system shall provide for the
38 discharge of stormwater from the site without damage to streets and storm
39 water infrastructure, adjacent properties, downstream properties, soils and
40 vegetation. When post-development flows exceed pre-development flows,
41 the development shall demonstrate that either (1) stormwater runoff will
42 be stored on-site and released at a rate not to exceed pre-development
43 flows or (2) that the stormwater runoff system has sufficient capacity to
44 carry the increased flow without adverse impacts. Direct discharge to tidal
45 waters shall be considered sufficient capacity to carry increased flow.
46

47 ed. Upstream flows. The stormwater runoff system shall be designed to

1 accommodate all existing up stream flows that pass through the site.

2
3 de. System components. The stormwater runoff system shall be completely
4 designed and include built structures and natural channels, technical
5 specifications and design details. Where components of the stormwater
6 runoff system are located outside of public right-of-way, easements shall
7 be provided to the town for access and maintenance.

8
9 ef. Maintenance. A Post Construction Stormwater Maintenance plan shall be
10 prepared for the stormwater runoff system. The note requiring
11 maintenance of the stormwater runoff system is on the plan.

12
13 fg. Record Drawings. The stormwater runoff system plans shall include a note
14 that, upon completion of the stormwater runoff system installation, a
15 reproducible set of record drawings indicating the stormwater runoff
16 system work accomplished and how the record drawings were compiled
17 will be submitted to the Enforcement Authority.

18
19 ~~1. Professional Engineer. The storm water runoff system shall be prepared by a~~
20 ~~professional engineer licensed in the State of Maine.~~

21
22 ~~2. 2 and 25 year storm. The storm water runoff system shall be designed for a storm~~
23 ~~of intensity equal to the 2 and 25 year storm. No non storm water structures shall~~
24 ~~be permitted in areas of the site that flood or surcharge during the 2 and 25 year~~
25 ~~storm. Where state or federal law is more restrictive, such provisions shall~~
26 ~~supersede this section.~~

27
28 ~~3. Infiltration. The storm water runoff system shall maximize to the greatest extent~~
29 ~~practical the amount of storm water infiltrating on the site during storm events,~~
30 ~~except that development located in the Town Center District shall design a storm~~
31 ~~water plan that is consistent with the Town Center Storm water Management~~
32 ~~Plan, updated September 2015 or most recent version.~~

33
34 ~~4. Downstream impacts. The storm water runoff system shall provide for the~~
35 ~~discharge of storm water from the site without damage to streets and storm water~~
36 ~~infrastructure, adjacent properties, downstream properties, soils and vegetation.~~
37 ~~When post development flows exceed pre development flows, the development~~
38 ~~shall demonstrate that either (1) storm water runoff will be stored on site and~~
39 ~~released at a rate not to exceed pre development flows or (2) that the storm water~~
40 ~~runoff system has sufficient capacity to carry the increased flow without adverse~~
41 ~~impacts. Direct discharge to tidally influenced areas shall be considered sufficient~~
42 ~~capacity to carry increased flow.~~

43
44 ~~5. Upstream flows. The storm water runoff system shall be designed to~~
45 ~~accommodate all existing up stream flows that pass through the site.~~

46
47 ~~6. System components. The storm water runoff system shall be completely designed~~

and include built structures and natural channels, technical specifications and design details. Where components of the storm water runoff system are located outside of public right of way, easements shall be provided to the town for access and maintenance.

7. ~~Maintenance.~~ A permanent routine maintenance plan shall be prepared for the storm water runoff system. The note requiring maintenance of the storm water runoff system is on the plan.

8. ~~Record Drawings.~~ The storm water runoff system plans shall include a note that, upon completion of the storm water runoff system installation, a reproducible set of record drawings indicating the storm water runoff system work accomplished and how the record drawings were compiled will be submitted to the Enforcement Authority.

Sec. 25-1-~~565~~. System Responsibility.

The developer shall maintain all components of the Storm~~w~~-Water Runoff System until they are formally accepted by the Town or transferred to a property ~~owners~~ owner and/or property association whose charter and powers for financing and maintaining the Storm~~w~~-Water Runoff System shall be approved by the Town Attorney. Storm~~w~~-Water Runoff System components within proposed public ways shall become Town property upon formal acceptance. Storm~~w~~-Water Runoff System components outside of public ways may be accepted by the Town but shall otherwise be deeded to a property owners association, as required by the Planning Board or as agreed by the Town and the developer prior to project approval. In all cases the Town shall have the right, but not the obligation, to access and enter the Storm~~w~~-Water Runoff system to conduct emergency maintenance, as it deems necessary.

~~Sec. 25-1-6 Non Planning Board reviewed storm water runoff~~

~~Any Discharge of storm water or non-storm water into the Town Storm Water Runoff System for which the Planning Board has not conducted a storm water runoff system review shall be subject to Best Management Practices for Erosion and Sedimentation control. The Enforcement Authority may direct additional erosion control measures to be taken if there is a reasonable expectation that storm water runoff will cause erosion and sediment to leave the development site.~~

Sec. 25-1-~~67~~. Tidal Design Adjustment.

The Planning Board may waive any filing or design requirements unnecessary for full consideration of any proposed Storm~~w~~-Water Runoff System, such as data relating to site features and runoff rates downstream of the entrance to a piped Discharge directly to tidal waters. The Planning Board may also reduce or waive any requirements of this Ordinance where it finds from the basic site data furnished under Section 25-1-~~5 (A)4.b~~ that the estimated costs of construction and long-term maintenance resulting from compliance with the design requirements in any instance clearly outweigh the downstream benefits to be achieved by compliance.

1
2 **Article III. Non-Stormwater Discharges Stormwater System Discharge**
3 **Compliance**
4

5 **Sec. 25-31-18. Purpose and Authority. Non-Storm Water Regulation.**
6

7 ~~—A. Purpose: The purpose of this article is to a.~~ **Objectives.** ~~The objectives of this section~~
8 ~~are:~~

- 9
10 1. ~~To regulate Non-Storm Water Discharges to the Town Storm~~w~~-Water Runoff System; and~~
11 2. ~~To set forth the legal authority and procedures to carry out all inspection, monitoring and~~
12 ~~enforcement activities necessary to ensure compliance with this Ordinance. Stormwater shall~~
13 ~~be disposed of in a manner so that it does not pose dangers of flooding, soil erosion, pollution~~
14 ~~of receiving waters, or otherwise constitute a threat to public health, safety or welfare.~~
15

16 **B. Authority.** The Town enacts these stormwater regulations incorporating prohibitions
17 on discharges into the storm drain system pursuant to Maine Constitution Art. VIII, Part
18 Second, §1 and 30-A M.R.S. §§3001 et seq. (municipal home rule authority), 38 M.R.S.
19 §413 (the Wastewater Discharge Law), 33 USC §§1251 et seq. (the Clean Water Act),
20 and 40 CFR Part 122 (US Environmental Protection Agency's regulations governing the
21 National Pollution Discharge Elimination System (NPDES)). The Maine Department of
22 Environmental Protection, through its promulgation of the General Permit for the
23 Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has
24 listed the Municipality as having a Regulated Small MS4; under this General Permit,
25 listing as a Regulated Small MS4 necessitates enactment of elements of this Ordinance
26 as part of the Town's Stormwater management program in order to satisfy the
27 minimum control measures for Illicit Discharge Detection and Elimination.
28
29

30 **Sec. 25-3-2. Applicability**
31

32 This Ordinance shall apply to any Discharge of stormwater or non-stormwater from any
33 premises into the Town Stormwater Runoff System.
34

35 **Sec. 25-3-3. Definitions**
36

37 The definitions in Sec. 25-1-3 shall apply.
38
39

40 **Sec. 25-3-4. General Prohibition**
41

42 **b. —General Prohibition.** Except as allowed in this Section, no Person shall create, initiate,
43 originate or maintain a Non-Storm Water Discharge to the Town Storm~~w~~-Water Runoff System.
44 Such Non-Storm~~w~~-Water Discharges are prohibited notwithstanding the fact that the Town may
45 have approved the connections, drains or conveyances by which a Person discharges unallowed

Non-Storm~~w~~-Water Discharges to the Town Storm~~w~~-Water Runoff System.

Sec. 25-3-5.e. Allowed Non-Storm~~w~~-Water Discharges.

The creation, initiation, origination and maintenance of the following Non-Storm~~w~~-Water Discharges to the Town Storm~~w~~-Water Runoff System are allowed:

1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); dechlorinated hydrant flushing discharges and firefighting activity runoff; water line flushing and discharges from potable water sources that have less than 0.05 milligrams per liter total residual chlorine; individual residential car washing; lawn watering runoff, and dechlorinated swimming pool discharges (i.e., those that have less than 0.05 milligrams per liter total residual chlorine).
2. At construction sites: Discharges from firefighting activity; Hydrant flushing if dechlorinated to 0.05 mg/l or less, Vehicle wash water if detergents are not used and washing is limited to the exterior of vehicles (engine, undercarriage and transmission washing is prohibited); Dust control runoff if it does not cause erosion, Routine external building washdown, not including surface paint removal, that does not involve detergents; Pavement wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material had been removed) if detergents are not used; Uncontaminated air conditioning or compressor condensate, Uncontaminated groundwater or spring water, Foundation or footer drain-water where flows are not contaminated, Uncontaminated excavation dewatering, Potable water including waterline flushings that have less than 0.05 milligrams per liter total residual chlorine, Landscape irrigation;
- ~~32.~~ Discharges authorized by the Enforcement Authority as being necessary to protect public health and safety; and
- ~~43.~~ Dye testing, with authorization from the Enforcement Authority prior to the time of the test.

Sec. 25-3-6. d. Suspension of Access to the Town Storm~~w~~-Water Runoff System.

The Enforcement Authority may, without prior notice, physically suspend Discharge access to

1 the Town Storm~~w~~-Water Runoff System when such suspension is necessary to stop an actual or
2 threatened Non-Storm~~w~~-Water Discharge to the Town Storm~~w~~-Water Runoff System that
3 presents or may present imminent and substantial danger to the environment, or to the health or
4 welfare of persons, or to the Town Storm~~w~~-Water Runoff System, or that may cause the Town to
5 violate the terms of its environmental permits. Such suspension may include, but is not limited
6 to, blocking pipes, constructing dams or taking other measures, on public ways or public
7 property, to physically block the Discharge to prevent or minimize a Non-Storm~~w~~-Water
8 Discharge to the Town Storm~~w~~-Water Runoff System. The Enforcement Authority may take
9 such steps as deemed necessary to prevent or minimize damage to the Town Storm~~w~~-Water
10 Runoff System, or to minimize danger to persons, provided, however, that in taking such steps
11 the Enforcement Authority may enter upon the Premises that are the source of the actual or
12 threatened Non-Storm~~w~~-Water Discharge to the Town Storm~~w~~-Water Runoff System only with
13 the consent of the Premises' owner, occupant or agent, except in an emergency when consent
14 shall not be required.

16 **Sec. 25-3-7.e.**—— **Monitoring of Discharges.**

18 In order to determine compliance with this Ordinance, the Enforcement Authority may enter
19 upon and inspect Premises subject to this Ordinance at reasonable hours with the consent of the
20 Premises' owner, occupant or agent, to inspect the Premises and connections thereon to the
21 Town Storm~~w~~-Water Runoff System; and to conduct monitoring, sampling and testing of the
22 Discharge to the Town Storm~~w~~-Water Runoff System.

24 **Sec. 25-3-81-9.** **Enforcement.**

26 It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the
27 requirements of this Ordinance.

29 a. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has
30 violated this Ordinance, the Enforcement Authority may order compliance with this
31 Ordinance by written Notice of Violation to that Person indicating the nature of the
32 violation and ordering the action necessary to correct it, including, without limitation:

- 34 1. The elimination of Non-Storm~~w~~-Water Discharges to the Storm~~w~~-Water Runoff
35 System, including, but not limited to, disconnection of the Premises from the
36 Storm~~w~~-Water Runoff System within 60 days of identification of the source
37 unless it is impractical to eliminate the source within 60 days, whereupon the
38 Person violating the Ordinance shall inform the Enforcement Authority of the
39 reason for the delay and develop an alternate expeditious schedule for elimination
40 which must be reviewed and if acceptable, approved by the Enforcement
41 Authority;
- 42 2. The cessation of Discharges, practices, or operations in violation of this
43 Ordinance;
- 44 3. At the Person's expense, the abatement or remediation in accordance with best
45 management practices in DEP rules and regulations of Non-Storm~~w~~-Water
46 Discharges to the Storm~~w~~-Water Runoff System and the restoration of any

1 affected property; and/or
2 4. The payment of fines, of the Enforcement Authority's remediation costs and of
3 the Enforcement Authority's reasonable administrative costs and attorneys' fees
4 and costs, in accordance with 30-A M.R.S.A Sec. 4452. If abatement of a
5 violation and/or restoration of affected property is required, the notice shall set
6 forth a deadline within which such abatement or restoration must be completed.
7

8 b. **Penalties/Fines/Injunctive Relief.** Any Person who violates this Ordinance shall be
9 subject to fines, penalties and orders for injunctive relief and shall be responsible for the
10 Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day
11 such violation continues shall constitute a separate violation. Moreover, any Person who
12 violates this Ordinance also shall be responsible for any and all fines, penalties, damages
13 and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for
14 violation of Federal and State environmental laws and regulations caused by or related to
15 that Person's violation of this Ordinance; this responsibility shall be in addition to other
16 penalties, fines or injunctive relief imposed under this Section.
17

18 c. **Consent Agreement.** The Enforcement Authority may, with the approval of the
19 municipal officers, enter into a written consent agreement with the violator to address
20 timely abatement of the violation(s) of this Ordinance for the purposes of eliminating
21 violations of this Ordinance and of recovering fines, costs and fees without court action.
22

23 d. **Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension
24 notice may appeal the determination of the Town to the Zoning Board of Appeals. The
25 notice of appeal must be received within 30 days from the date of receipt of the Notice of
26 Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30
27 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm,
28 reverse or modify the Notice of Violation. A suspension under Section 18-2-8(d) of this
29 Ordinance shall remain in place unless or until lifted by the Board of Appeals or by a
30 reviewing court. A party aggrieved by the decision of the Zoning Board of Appeals may
31 appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning
32 Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
33

34 e. **Enforcement Measures.** If the violation has not been corrected pursuant to the
35 requirements set forth in the Notice of Violation, or, in the event of an appeal to the
36 Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the
37 Enforcement Authority's decision, then the Enforcement Authority may file an
38 enforcement action in a Maine court of competent jurisdiction under Rule 80K of the
39 Maine Rules of Civil Procedure.
40

41 f. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are
42 minimum standards. Compliance with this Ordinance does not ensure that a Person will
43 not have contaminated, polluted or unlawfully discharged Pollutants into waters of the
44 U.S. This Ordinance shall not create liability on the part of the Town, or any officer,
45 agent or employee thereof for any damages that result from a Person's reliance on or
46 compliance with this Ordinance or any administrative decision lawfully made under this
47 Ordinance.

1
2 **Sec. 25-~~3-9.1-10~~ Severability.**
3

4 If any part or parts, section or subsection, sentence, clause or phrase of this Ordinance or the
5 rules and regulations promulgated thereunder is for any reason declared to be unconstitutional or
6 invalid, such declaration shall not affect the validity or constitutionality of the remaining portions
7 of this Ordinance or the rules and regulations promulgated thereunder.
8

9 **Article II. Post Construction Storm-water ~~Management~~Maintenance**
10

11 **Sec. 25-2-1. Purpose and Authority.**
12

13 A. Purpose: The purpose of this "~~Post-Construction Stormw-Water Management Ordinance~~
14 ~~(the "Ordinance")~~Ordinance is to provide for health, safety, and general welfare of the citizens of
15 the Town of Cape Elizabeth through review and approval of postconstruction storm-water
16 management plans and monitoring and enforcement of compliance with such plans as required
17 by Federal and State law.
18

19 B. Authority: This Ordinance establishes methods for post-construction storm-water
20 management in order to comply with minimum control measure requirements of the Federal
21 Clean Water Act, of federal regulations, of Maine's Small Municipal Separate Storm Sewer
22 Systems General Permit, and the Town's Storm~~w-W~~ater Program Management Plan. The Town
23 of Cape Elizabeth enacts this Post-Construction Storm~~w-W~~ater ~~Maintenance~~Management
24 ~~Control~~ Ordinance (the "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule
25 ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et*
26 *seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's
27 regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The
28 Maine Department of Environmental Protection, through its promulgation of the "General Permit
29 for the Discharge of Storm~~w-W~~ater from Small Municipal Separate Storm Sewer Systems," has
30 listed the Town of Cape Elizabeth as having a Regulated Small Municipal Separate Storm Sewer
31 System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates
32 enactment of this Ordinance as part of the Town's Storm~~w-W~~ater Management Program in order
33 to satisfy the minimum control measures required by ~~Part IV D-5 ("minimum control measure~~
34 ~~Post-construction storm-water management in new development and redevelopment")~~.
35

36 **Sec. 25-2-2. Objectives.**
37

38 ~~The objectives of this Ordinance are:~~
39

40 a. ~~To reduce the impact of post construction discharge of storm water on receiving waters;~~
41 ~~and~~
42

43 b. ~~To reduce storm water runoff rates and volumes, soil erosion and nonpoint source~~
44 ~~pollution, wherever possible, through use of Best Management Practices as promulgated~~
45 ~~by the Maine Department of Environmental Protection pursuant to its most current rules~~
46 ~~as may be updated or amended including its Chapters 500 and 502 Rules, and ensure that~~

~~these management controls are properly maintained and pose no threat to public safety.~~

Sec. 25-2-~~32~~. Applicability.

This Ordinance applies to all New Development and Redevelopment within the Town that discharges storm-water to the Town's Municipal Separate Storm Sewer System (MS4) and to associated storm-water management facilities, which are considered to be an element or array of elements that convey water from or across land, including, but not limited to, natural elements, roads, parking areas, catch basins, drainage swales, detention basins and ponds, pipes, conduits, and related structures that are part of the Post-Construction Storm~~w~~-Water Management Plan for a New Development or Redevelopment. This ordinance does not apply to any development which has obtained subdivision approval and begun construction prior to the date this ordinance became effective (April 8, 2010). Construction shall mean (1) posting of a performance guarantee, (2) disturbance of soil, and (3) inspection by a town official.

Sec. 25-2-~~34~~. Definitions.

The definitions in Sec. 25-1-3 shall apply.

~~For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.~~

~~**Applicant:** Any Person with requisite right, title, or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Storm Water Management Plan under this Ordinance.~~

~~**Best Management Practices ("BMP"):** Any schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State of Maine. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.~~

~~**Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.~~

~~**Construction Activity:** Any Construction Activity including one acre or more of Disturbed Area. Construction Activity also includes activity with less than one acre of total land Disturbed Area if that area is part of a subdivision that will ultimately disturb an area equal to or greater than one acre.~~

~~**Discharge:** Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other addition of Pollutants to Waters of the State.~~

~~**Direct Discharge:** Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged (Also known as Point Source).~~

Disturbed Area: Any clearing, grading, and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "Disturbed Area." "Disturbed Area" does not include routine maintenance but does include Redevelopment. "Routine Maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Enforcement Authority: The Town Manager or his/her designee who is the person(s) or department authorized by the Town to administer and enforce this Ordinance.

Town: The Town of Cape Elizabeth.

Town Permitting Authority: The Town official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.

Municipal Separate Storm Sewer System, or MS4: Conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or federal agency or other public entity that discharges directly to Waters of the State.

National Pollutant Discharge Elimination Systems (NPDES) Storm Water Discharge Permit: A permit issued by the United States Environmental Protection Agency ("EPA") or by the Maine Department of Environmental Protection ("DEP") that authorizes the Discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

New Development: Any Construction Activity on unimproved Premises and for purposes of this ordinance includes "Redevelopment" defined below.

Person: Any individual, firm, corporation, municipality, town, quasi-municipal Corporation, State or Federal agency, or other legal entity.

Pollutant: Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, solid waste, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by products, heat, wrecked or discarded equipment, aggregate materials, and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Storm Water Management Plan: BMPs and associated inspection and maintenance procedures for the Storm Water Runoff System employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Town's Permitting Authority.

Premises: Any building, lot, parcel of land, or portion of land, whether improved or

unimproved, including adjacent sidewalks and parking strips, located within the Town from which Discharges into the Town Storm Water Runoff System are or may be created, initiated, originated, or maintained.

Qualified Post-Construction Storm Water Inspector: A person who conducts postconstruction inspections of Storm Water Runoff Systems and meets the following qualification:

a. The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and

b. The Inspector shall also meet the following criteria as approved by the Town's Enforcement Authority:

1. Someone who has received the appropriate training for such inspection from DEP and holds a valid certificate from DEP for such inspection or;
2. Have a working knowledge of the most current Maine DEP Storm Water Management Laws including but not limited to Chapter 500 and Chapter 502 Rules, Storm Water Management Rules and Maine's Storm Water BMP Manual, have a college degree in environmental science, civil engineering, or comparable expertise, or any combination of experience and training; have a demonstrated practical working knowledge of Storm Water hydrology and Storm Water management techniques, including the maintenance requirements for Storm Water Runoff Systems; and have the ability to determine if Storm Water Runoff Systems are performing as intended;

Redevelopment: Any Construction Activity on Premises already improved with buildings, structures, or activities or uses, but does not include such activities as exterior remodeling of structures.

Regulated Small MS4: Any Small MS4 regulated by the State of Maine "General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems" ("General Permit"), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

Small Municipal Separate Storm Sewer System, or Small MS4: Any MS4 that is not already covered by the Phase I MS4 Storm Water program including municipally owned or operated storm sewer systems, State or federally owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Storm Water: Runoff resulting from snowmelt, rain, precipitation, groundwater on the ground and drainage.

~~Storm Water Runoff System: An element or array of elements that convey water from or across land, including, but not limited to, natural elements.~~

~~Urbanized Area ("UA") means the areas of the State of Maine as defined by the latest decennial census by the U.S. Bureau of the Census.~~

Sec. 25-2-~~45~~. Post-Construction Storm~~w~~-Water Management Plan.

a. General Requirement

1. Except as provided in Sec. 25-2-~~3-b~~2. above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Town Permitting Authority for that New Development also determines that the Applicant's Post- Construction Storm~~w~~-Water Management Plan for the New Development meets the requirements of this Ordinance.
2. At the time of application, the Applicant shall notify the Town Permitting Authority if its Post-Construction Storm~~w~~-Water Management Plan includes any BMP(s) that will discharge to the Town's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

b. Performance Standards

1. DEP Chapter 500 Quality and Quantity Standards apply. The Applicant shall make adequate provisions for the management of the quantity and quality of all storm-water generated by a New Development or Redevelopment through a Post-Construction Storm~~w~~-Water Management Plan. This Post-Construction Storm~~w~~-Water Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection's most current rules as may be updated or amended including its Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Storm Water Management for Maine*, published by Maine Department of Environmental Protection, latest edition, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
2. Use of Onsite or Offsite Treatment Facilities. The Applicant shall meet the quantity and quality standards above either onsite or off-site. Where off-site facilities are used, the Applicant must submit to the Town documentation, approved as to legal sufficiency by the Town's attorney, that the Applicant has a sufficient property interest in the property where the off-site facilities are located – by easement, covenant or other appropriate legal instrument – to ensure that the facilities will be able to provide post-construction storm-water management for the New Development or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.

- 1 3. Maintenance Agreement Required. Where the Applicant proposes to retain
2 ownership of the Storm~~w~~-Water Management Facilities shown in its Post-
3 Construction Storm~~w~~-Water Management Plan, the Applicant shall submit to the
4 Town documentation, approved as to the legal sufficiency the Town's attorney
5 that the Applicant, it successor, heirs and assigns shall have the legal obligation
6 and the resources available to operate, repair, maintain and replace the Storm~~w~~
7 Water Management Facilities. Applications for New Development or
8 Redevelopment requiring Storm~~w~~-Water Management Facilities that will not be
9 dedicated to the Town shall enter into a Maintenance Agreement with the Town.
10 A sample of this Maintenance Agreement is available from the Town.
11
12 4. Easements and Access. Whenever elements of the Storm~~w~~-Water Runoff System
13 are not within the right-of-way of a public street and the facilities will not be
14 offered to the Town for acceptance as public facilities, the Town Permitting
15 Authority may require that perpetual easements conforming substantially with the
16 lines of existing natural drainage, and providing adequate access for maintenance
17 in a form acceptable to the Town's attorney, shall be provided to the Town
18 allowing access for maintenance, repair, replacement and improvement of the
19 Storm~~w~~-Water Runoff System. When an offer of dedication is required by the
20 Town Permitting Authority, the Applicant shall be responsible for the
21 maintenance of these Storm~~w~~-Water Runoff Systems under this Ordinance until
22 such time (if ever) as they are accepted by the Town.
23
24 5. Other Standards and Conflicts. In addition to any other applicable requirements of
25 this Ordinance and the Town's Municipal Code, any New Development or
26 Redevelopment which also requires a storm-water management permit from the
27 Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D
28 shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the
29 same may be amended from time to time, and the Applicant shall document such
30 compliance to the Town Permitting Authority. Where the standards or other
31 provisions of such storm-water rules conflict with Town ordinances, the stricter
32 (more protective) standard shall apply.
33

34 **Sec. 25-2-~~65~~. Post-Construction Storm~~w~~-Water Management Plan**
35 **Compliance.**

- 36
37 a. **General Requirements.** Any Person owning, operating, leasing or having control over
38 Storm~~w~~-Water Runoff Systems required by a Post-Construction Storm~~w~~-Water
39 Management Plan approved under this Ordinance shall demonstrate compliance with that
40 Plan as follows:
41
42 1. Annual Inspection. A Qualified Post-Construction Storm~~w~~-Water Inspector, shall,
43 at least annually, inspect the Storm~~w~~-Water Runoff Systems, including but not
44 limited to any roads, parking areas, catch basins, drainage swales, detention
45 basins and ponds, pipes, conduits, and related structures, in accordance with all
46 Town and State inspection, cleaning and maintenance requirements of the

approved Post-Construction Storm~~w~~-Water Management Plan.

2. Corrective Actions. If the Storm~~w~~-Water Runoff Systems require maintenance to function as intended by the approved Post-Construction Storm~~w~~-Water Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies within 60 days of identification. If it is not possible to correct the deficiency within 60 days of identification, that Person shall provide notice in writing to the Enforcement Authority a reason why corrective action cannot be taken and will propose and expeditious schedule for correction, which must be reviewed and if acceptable, approved by the Enforcement Authority.
 3. Annual Reporting to Town. A Qualified Post-Construction Storm~~w~~-Water Inspector shall provide, on or by August 1 of each year, a copy of their annual inspection report and a completed and signed certification to the Town Enforcement Authority in a form prescribed by the Town or in a similar form approved by the Town Enforcement Authority, certifying that the Storm~~w~~-Water Runoff Systems have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Storm~~w~~-Water Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Storm~~w~~-Water Runoff Systems. If the Storm~~w~~-Water Runoff Systems require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Storm~~w~~-Water Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken in accordance with 25-2-5.a.2.
 4. Fee. In addition, any persons required to file an annual certification under this Sec. 25-2-~~56~~ of this Ordinance shall include with the annual certification a fee established by the Town Council in accordance with the Town Fee Schedule. The purpose of this fee is to pay the administrative and technical costs of review of the annual certification.
- b. **Right of Entry.** In order to determine compliance with this Ordinance and with the Post-Construction Storm~~w~~-Water Management Plan, the Town Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Storm~~w~~-Water Runoff Systems.
- c. **Annual Report.** Each year the Town shall include the following in its Annual Report to the Maine Department of Environmental Protection:
1. The cumulative number of sites that have Storm~~w~~-Water Runoff Systems discharging into their MS4;
 2. A summary of the number of sites that have Storm~~w~~-Water Runoff Systems discharging into their MS4 that were reported to the Town;
 3. The number of sites with documented functioning Storm~~w~~-Water Runoff Systems; and
 4. The number of sites that required routine maintenance or remedial action to

ensure that Storm~~w~~-Water Runoff Systems are functioning as intended.

Sec. 25-2-~~67~~. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Storm~~w~~-Water Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Storm~~w~~-Water Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

Sec. 25-2-~~78~~. Notice of Violation.

Whenever the Enforcement Authority believes that a Person has violated this Ordinance of the Post-Construction Storm~~w~~-Water Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Storm~~w~~-Water Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- a. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Storm~~w~~-Water Management Plan;
- b. At the Person's expense, compliance with BMPs required as a condition of approval of the New Development or Redevelopment, the repair of Storm~~w~~-Water Runoff Systems and/or the restoration of any affected property; and/or
- c. The payment of fines, of the Town's remediation costs and of the Town's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation, compliance with BMPs, repair of Storm~~w~~-Water Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

Sec. 25-2-~~89~~. Penalties/Fines/Injunctive Relief.

Any Person who violates this Ordinance of the Post-Construction Storm~~w~~-Water Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day that such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance or the Post-Construction Storm~~w~~-Water Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance or of the Post-Construction Storm~~w~~-Water Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

Sec. 25-2-~~910~~. Consent Agreement.

1 The Enforcement Authority may, with the approval of the municipal officers, enter into a written
2 consent agreement with the violator to address timely abatement of the violation(s) of this
3 Ordinance or of the Post-Construction Storm~~w~~-Water Management Plan for the purposes of
4 eliminating violations of this Ordinance or of the Post-Construction Storm~~w~~-Water Management
5 Plan and of recovering fines, costs and fees without court action.
6

7 **Sec. 25-2-1~~0~~1. Appeal of Notice of Violation.**

8

9 Any Person receiving a Notice of Violation or suspension notice may appeal the determination of
10 the Enforcement Authority to the Zoning Board of Appeals. The notice of appeal must be
11 received within 30 days from the date of receipt of the Notice of Violation. The Board of
12 Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the
13 notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the
14 Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal
15 that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals
16 decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
17

18 **Sec. 25-2-1~~1~~2. Enforcement Measures.**

19

20 If the violation has not been corrected pursuant to the requirements set forth in the Notice of
21 Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of
22 the Board of Appeals affirming or modifying the Enforcement Authority's decision, then the
23 Enforcement Authority may recommend to the municipal officers that the Town's attorney file an
24 enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine
25 Rules of Civil Procedure.
26

27 **Sec. 25-2-1~~2~~3. Severability.**

28

29 The provisions of this Ordinance are hereby declared to be severable. If any provision, clause,
30 sentence, or paragraph of this Ordinance or the application thereof to any person, establishment,
31 or circumstances shall be held invalid, such invalidity shall not affect the other provisions,
32 clauses, sentences, or paragraphs or application of this Ordinance.
33
34
35

Article IV. Erosion and Sedimentation Control

Sec. 25-4-1 Purpose and Authority

A. Purpose The purpose of this Ordinance is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control erosion at construction sites and prevent migration of sediment from construction sites so that it does not adversely impact off-site natural resources, properties, or municipal infrastructure.

B. Authority The municipality enacts this Erosion and Sedimentation Control Ordinance pursuant to 30-A M.R.S. 3001 (municipal home rule ordinance authority, 38 M.R.S. 413 (the Wastewater Discharge Law), 33 USC SS 1251 et seq. (the Clean Water Act), and 40 CFR Part 122 (US Environmental Protection Agency's regulations governing the National Pollution Discharge Elimination System (NPDES)). The Maine Department of Environmental Protection, through its promulgation of the General permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems has listed the Town of Cape Elizabeth as having a regulated small MS4; under this general permit, listing as a regulated small MS4 necessitates enactment of elements of this ordinance as part of the municipality's stormwater management program in order to satisfy the minimum control measures for Construction Site Stormwater Runoff Control.

Sec. 25-4-2 Definitions

The definitions in Sec. 25-1-3 shall apply.

Sec. 25-4-3. Applicability

This Ordinance applies to Construction Activity commencing after [the effective date of this Ordinance] with stormwater discharges to the MS4 within the municipality that results in:

A. Disturbed Area of one (43,560 sq. ft) or more acres, of land: or

B. Disturbed Area that is less than one acre (43,560 sq. ft.) of land if the Construction Activity creating Disturbed Area less than one acre of land is part of a larger common plan of development or sale that would create Disturbed Area of an acre or more over the duration of its construction.

Sec. 25-4-4. Procedure

A. Erosion And Sediment Control Plan Required. No person shall commence construction activity subject to the Applicability Section of this ordinance without first preparing and

1 obtaining approval for an Erosion and Sediment Control Plan in accordance with this
2 Ordinance.

3
4 B. Submission. When Construction Activity is subject to subdivision, site plan, or other
5 review which includes a review for erosion and sediment control, an Erosion and
6 Sediment Control Plan meeting these requirements shall be submitted concurrently
7 with that review. When a concurrent review is not otherwise required, an Erosion
8 and Sediment Control Plan shall be submitted to the Enforcement Authority.

9
10 C. Review. The Erosion and Sediment Control Plan shall be reviewed by the
11 Enforcement Authority or incorporated into the municipal review of a subdivision,
12 site plan or other review, in accordance with subsection B above. The Enforcement
13 Authority will review the Erosion and Sediment Control Plan for compliance with
14 the standards of Section 5, Section 6 and Appendix 1 and may provide comments
15 where standards have not been met. Once an applicant has submitted an Erosion
16 and Sediment Control Plan that the Enforcement Authority finds is in compliance
17 with the standards of Section 5, Section 6 and Appendix 1, the Enforcement
18 Authority shall provide written confirmation to the applicant.

19
20 D. Pre-Construction Meeting. At least ten (10) days prior to commencing construction
21 activity, the applicant shall request a pre-construction meeting with the
22 Enforcement Authority. At a minimum, attendance at the meeting is required by the
23 Enforcement Authority and the applicant or their representative in charge of
24 construction. Meeting minutes must be prepared by the municipal representative
25 and distributed to all attendees and the municipal planner.

26
27 E. Compliance with Requirements. The applicant shall implement and maintain the
28 Erosion and Sediment Control Plan as approved throughout all phases of
29 construction.

30
31 F. Notice of Permanent Stabilization. The applicant shall provide notice to the
32 Enforcement Authority when permanent stabilization of the site has been achieved
33 to allow for final inspection per Section 7 of this ordinance.

34 35 **Sec. 25-4-5 Submission Requirements**

36
37 A. Project Contacts and Qualifications. The applicant shall provide contact information
38 (i.e., name, company if applicable, phone number, physical address and email
39 address) as described below:

40
41 1. Applicant,

42 2. Qualified Erosion and Sedimentation Control Professional, and

43 3. Contractor (if applicable)
44

1 B. Erosion and Sedimentation Control Plan Content. The Erosion and Sedimentation
2 Control Plan shall be prepared in accordance with the performance standards contained
3 in Appendix 1. The Erosion and Sedimentation Control Plan shall consist of a graphic
4 representation of the site at a scale no smaller than 1 inch = 100 feet showing:

- 5
- 6 1. Property boundaries;
- 7 2. Locations of Protected Natural Resources;
- 8 3. Locations of all potential sources of authorized and unauthorized non-
9 stormwater discharges;
- 10 4. Locations of all Erosion and Sedimentation Control BMPs to be used;
- 11 5. Topography for site pre- and post-construction conditions as 2-foot elevation
12 contours;
- 13 6. Details for all Erosion and Sedimentation Control BMPs to be used;
- 14 7. Details and timing associated with phasing of disturbed areas at the site, and
15 phasing of installation and stabilization of BMPs (if applicable);
- 16 8. Erosion and Sedimentation Control Notes with construction standards;
- 17 9. A narrative description of the time, inspections and BMPs to be used;
- 18 10. Example inspection form;
- 19 11. Dewatering plan if necessary; and
- 20 12. Locations of areas not to be disturbed by construction, including trees,
21 vegetation and areas intended for infiltration.
- 22

23 The Erosion and Sedimentation Control Plan shall also include documentation of
24 any variances or release provided by Maine Department of Environmental
25 Protection for Chapter 500 performance standards.

26 **Sec. 25-4-6 Requirements and Standards**

27

28

29 The Enforcement Authority shall determine if the following standards are met, in
30 accordance with Appendix 1.

31

32 A. Qualified Erosion and Sedimentation Control Professional. The Erosion and
33 Sedimentation Control Plan has been prepared by a Qualified Erosion and
34 Sedimentation Control Professional.

35

36 B. Timing of Installation and Maintenance. The Erosion and Sedimentation Control
37 Plan requires that erosion and sedimentation control measures shall be in place
38 before construction begins, additional measures phased in if phasing is used, and
39 shall be maintained until permanent stabilization is achieved.

40

41 C. Inspection. The Erosion and Sedimentation Control Plan provides for inspection of
42 the site to confirm that erosion and sedimentation control measures are in place and
43 functioning. The Erosion and Sedimentation Control Plan also provides for

1 corrective action if erosion is occurring or there is a discharge of sediment or turbid
2 water from the construction site.

3
4 D. Spill Prevention. The Erosion and Sedimentation Control Plan includes measures
5 that prevent construction site pollution and spills from entering stormwater.

6
7 E. Groundwater Protection. The Erosion and Sedimentation Control Plan restricts the
8 storage or handling of liquid petroleum products and other hazardous materials
9 that may drain to an “infiltration area.”

10
11 F. Fugitive sediment and dust. The Erosion and Sedimentation Control Plan includes
12 provisions to prevent erosion of soils, tracking or migration of soils into the right of
13 way, discharge of sediment from the site, and fugitive dust emissions during or after
14 construction.

15
16 G. Debris. The Erosion and Sedimentation Control Plan includes provisions to
17 minimize the exposure of construction materials and waste to stormwater and
18 runoff and prevent them from migrating off-site.

19
20 H. Excavation dewatering. The Erosion and Sedimentation Control Plan must include
21 provisions to remove or properly disperse of the collected water in a manner that
22 avoids sediment from entering stormwater.

23
24 I. Non-stormwater discharges. The Erosion and Sedimentation Control Plan minimizes
25 non-stormwater discharges and, if non-stormwater discharges are allowed, they are
26 identified in the Erosion and Sedimentation Control Plan with appropriate pollution
27 measures for discharge.

28 29 **Sec. 25-4-7 Inspection.**

30
31 The Enforcement Authority will inspect the site as follows at a minimum:

32
33 A. Once before any disturbance begins and after all Sedimentation control BMPs
34 specified in the Erosion and Sedimentation Control Plan are in place;

35
36 B. Three times during the active earth moving phase of construction; and

37
38 C. Once at project completion to ensure the site has reached permanent stabilization
39 and all temporary erosion and Sedimentation controls have been removed.

40
41 Additional inspection requirements to be completed by the applicant during construction
42 are contained in Appendix 1.

43 44 **Sec. 25-4-8. Enforcement**

1 It shall be unlawful for any person to violate any provision of or to fail to comply with any
2 of the requirements of this Ordinance or of the Erosion and Sedimentation Control Plan.
3 Whenever the Enforcement Authority believes that a person has violated this Ordinance or
4 the Erosion and Sedimentation Control Plan, the Enforcement Authority may enforce this
5 Ordinance in accordance with 30-A M.R.S. § 4452 and this Section.
6

7 A. Right of Entry. In order to determine compliance with this Ordinance and with the
8 Erosion and Sedimentation Control Plan, the municipality Enforcement Authority
9 may enter upon property at reasonable hours with the consent of the owner or
10 contractor.
11

12 B. Notice of Violation. Whenever the Enforcement Authority finds that a person has
13 violated this Ordinance or the Erosion and Sedimentation Control Plan, the
14 Enforcement Authority may order compliance with this Ordinance or with the
15 Erosion and Sedimentation Control Plan by written notice of violation to that person
16 indicating the nature of the violation and ordering the action necessary to correct it,
17 including, without limitation:
18

19 1. The abatement of violations, and the cessation of practices, or operations in
20 violation of this Ordinance or the Erosion and Sedimentation Control Plan;
21

22 2. At the person's expense, compliance with or repair of the BMPs required as a
23 condition of approval of the Erosion and Sedimentation Control Plan, and/or
24 the restoration of any affected property; and/or
25

26 3. The payment of fines, of the municipality's remediation costs and of the
27 municipality's reasonable administrative costs and attorneys' fees and costs.
28 If abatement of a violation, compliance with BMPs, repair of BMPs, and/or
29 restoration of affected property is required, the notice shall set forth a
30 deadline within which such abatement, compliance, repair and/or
31 restoration must be completed.
32

33 C. Stop Work Notice. The Enforcement Authority may issue a Stop Work Notice
34 whenever:
35

36 1. A person has not acted on a notice of violation issued pursuant to this
37 ordinance within the time set forth in the notice.
38

39 2. A person subject to the applicability section of this ordinance undertakes
40 construction activity without first submitting and obtaining approval for an
41 Erosion and Sedimentation Control Plan.
42

43 The Enforcement Authority will attempt to deliver the Stop Work Notice to the
44 applicant, the person performing the construction activity, or the owner of the
45 property, as appropriate, by any means reasonable calculated to effectuate delivery.
46 Once the Stop Work Notice has been delivered, no further construction activity may

1 proceed other than as is necessary to correct the non-compliance. Construction
2 activity may resume only when the Enforcement Authority provides written notice.
3

4 D. Penalties/Fines/Injunctive Relief. Any person who violates this Ordinance or the
5 Erosion and Sedimentation Control Plan shall be subject to fines, penalties and
6 orders for injunctive relief and shall be responsible for the municipality's attorney's
7 fees and costs, all in accordance with 30-A M.R.S. § 4452. Each day that such
8 violation continues shall constitute a separate violation. Moreover, any person who
9 violates this Ordinance or the Erosion and Sedimentation Control Plan also shall be
10 responsible for any and all fines, penalties, damages and costs, including, but not
11 limited to attorneys' fees and costs, incurred by the municipality for violation of
12 federal and State environmental laws and regulations caused by or related to that
13 person's violation of this Ordinance or of the Erosion and Sedimentation Control
14 Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief
15 imposed under this Section.
16

17 E. Consent Agreement. The Enforcement Authority or its designee may, with the
18 approval of the municipal officers, enter into a written consent agreement with the
19 violation to address timely abatement of the violation(s) of this Ordinance or of the
20 Erosion and Sedimentation Control Plan for the purposes of eliminating violations of
21 this Ordinance or of the Erosion and Sedimentation Control Plan and of recovering
22 fines, costs and fees without court action.
23

24 F. Appeal of Notice of Violation. Any person receiving a Notice of Violation or Stop
25 Work Notice may appeal the determination of the Enforcement Authority to the
26 Zoning Board of Appeals. The notice of appeal must be received within 30 days from
27 the date of receipt of the Notice of Violation. The Board of Appeals shall hold a de
28 novo hearing on the appeal within 30 days from the date of receipt of the notice of
29 appeal. The Board of Appeals may affirm, reverse or modify the decision of the
30 Enforcement Authority. A party aggrieved by the decision of the Board of Appeals
31 may appeal that decision to the Maine Superior Court within 45 days of that date of
32 the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil
33 Procedure.
34

35 G. Enforcement Measures. If the violation has not been corrected pursuant to the
36 requirements set forth in the Notice of Violation, or, in the event of an appeal to the
37 Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or
38 modifying the Enforcement Authority's decision, then the Enforcement Authority
39 may recommend to the municipal officers that the municipality's attorney file an
40 enforcement action in a Maine court of competent jurisdiction under Rule 80K of the
41 Maine Rules of Civil Procedure.
42

43 **Sec. 25-4-9 Severability and Conflicts** 44

1 The provisions of this Ordinance are hereby declared to be severable. If any provision,
2 clause, sentence, or paragraph of this Ordinance or the application thereof to any person,
3 establishment, or circumstances shall be held invalid, such invalidity shall not affect the
4 other provisions, clauses, sentences, or paragraphs or application of this Ordinance.
5

6 **Sec. 25-4-10 Waivers**

7

8 Where the Planning Board finds that there are special circumstances of a particular plan
9 that make a particular submission requirement or standard inapplicable, a waiver may be
10 granted, provided that such waiver will not have the effect of nullifying the intent and
11 purpose of this Ordinance. The applicant shall submit, in writing, the reason for the
12 requested waiver. In granting waivers or modifications, the Planning Board may require
13 such conditions that will substantially secure the objectives of the standards so waived or
14 modified.
15
16
17

Chapter 25

Appendix 1 - Erosion and SedimentSedimentation Control Performance Standards

The following are the mandatory minimum standards for Construction Activity subject to this Ordinance. The Erosion and Sedimentation Control Plan shall be prepared and implemented to include these mandatory minimum standards.

Design Standards

Where not otherwise specified in this Appendix, the BMPs shall be designed using Performance Standards specified in the Maine Erosion and Sedimentation Control BMPs Manual for Designers and Engineers developed by the Maine Department of Environmental Protection (October 2016 or most current version). BMPs that require design to accommodate specific storm events shall be designed using precipitation data from either the Northeast Regional Climate Center (<http://precip.eas.cornell.edu>), Extreme Precipitation Tables or the NOAA Atlas 14 precipitation data (https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html).

General Timing of Installation and Maintenance until Permanent Stabilization

Sedimentation control measures must be in place before construction activity begins.

- Additional erosion control measures must be phased in as appropriate.
 - Measures must remain in place and functional until the site is permanently stabilized.
 - Adequate and timely maintenance of erosion and sedimentation control measures must be conducted until permanent stabilization is achieved.
- 1. Pollution Prevention: Minimize disturbed areas and protect natural downgradient buffer areas, and any areas where stormwater may flow off-site to the extent practicable. Control stormwater volume and velocity within the site to minimize soil erosion. Minimize the disturbance of steep slopes. Control stormwater discharges, including both peak flow rates and volume, to minimize erosion at outlets. The discharge shall not result in erosion of any open drainage channels, swales, stream channels or stream banks, upland, or coastal or freshwater wetlands off the project site.
 - a. Whenever practicable, no disturbance activities shall take place within 50 feet of any Protected Natural Resource.
 - b. If it is not practicable to maintain the 50-foot buffer of no disturbance, the Erosion and Sedimentation Control Plan must include redundant (at least two) perimeter control measures that are appropriate for the soil and slope.
- 2. Sediment barriers: Prior to construction, properly install sediment barriers at the downgradient edge of any area to be disturbed and adjacent to any drainage channels within the disturbed area. Sediment barriers shall be installed downgradient of soil or sediment stockpiles and stormwater must be prevented from running onto the stockpile. Maintain the sediment barriers by removing accumulated sediment, or removing and replacing the barrier, until the disturbed area is permanently stabilized. Where a discharge to a storm drain inlet occurs, you must install and maintain protection measures that remove sediment from the discharge. Storm drain inlet protection must include effective curb inlet or "back throat" protection, where applicable.

- 1 3. Stabilized construction entrance: Prior to construction, properly install a stabilized construction
2 entrance (SCE) at all points of egress from the site. The SCE is typically a stabilized pad of
3 aggregate, underlain by a geotextile filter fabric, or an acceptable engineered track out control
4 mat used to prevent traffic from tracking material away from the site onto public ROWs.
5 Maintain the SCE until all disturbed areas are stabilized. If an alternate SCE has been approved
6 by Maine DEP, provide proof of this with the Plan or application.
- 7 4. Temporary stabilization:
- 8 a. Within 7 days of the cessation of construction activities in an area that will not be
9 worked for more than 7 days, stabilize any exposed soil with mulch, or other non-
10 erodible cover.
- 11 b. Stabilize areas within 75 feet of a wetland or waterbody within 48 hours of the initial
12 disturbance of the soil or prior to any storm event, whichever comes first.
- 13 5. Removal of temporary measures: Remove any temporary control measures, such as silt fence,
14 within 30 days after permanent stabilization is attained. Remove any accumulated sediments
15 and stabilize.
- 16 6. Permanent Stabilization: If the area will not be worked for more than one year or has been
17 brought to final grade, then permanently stabilize the area within 7 days by planting vegetation,
18 seeding, sod, or through the use of permanent mulch, or riprap, or road sub-base. If using
19 vegetation for stabilization, select the proper vegetation for the light, moisture, and soil
20 conditions; amend areas of disturbed subsoils with topsoil, compost, or fertilizers; protect
21 seeded areas with mulch or, if necessary, erosion control blankets; and schedule sodding,
22 planting, and seeding so to avoid die-off from summer drought and fall frosts. Newly seeded or
23 sodded areas must be protected from vehicle traffic, excessive pedestrian traffic, and
24 concentrated runoff until the vegetation is well-established with 90% cover by healthy
25 vegetation. If necessary, areas must be reworked and restabilized if germination is sparse, plant
26 coverage is spotty, or topsoil erosion is evident. Permanent Stabilization Definitions are as
27 follows:
- 28 a. Seeded areas. For seeded areas, permanent stabilization means a 90% cover of the
29 disturbed area with mature, healthy plants with no evidence of washing or rilling of the
30 topsoil.
- 31 b. Sodded areas. For sodded areas, permanent stabilization means the complete binding of
32 the sod roots into the underlying soil with no slumping of the sod or die-off.
- 33 c. Permanent mulch. For mulched areas, permanent mulching means total coverage of the
34 exposed area with an approved mulch material. Erosion Control Mix may be used as
35 mulch for permanent stabilization according to the approved application rates and
36 limitations.
- 37 d. Riprap. For areas stabilized with riprap, permanent stabilization means that slopes
38 stabilized with riprap have an appropriate backing of a well-graded gravel or approved
39 geotextile to prevent soil movement from behind the riprap. Stone must be sized
40 appropriately. It is recommended that angular stone be used.
- 41 e. Paved areas. For paved areas, permanent stabilization means the placement of the
42 compacted gravel subbase is completed, provided it is free of fine materials that may
43 runoff with a rain event.

- 1 f. Ditches, channels, and swales. For open channels, permanent stabilization means the
2 channel is stabilized with a 90% cover of healthy vegetation, with a well-graded riprap
3 lining, turf reinforcement mat, or with another non-erosive lining such as concrete or
4 asphalt pavement. There must be no evidence of slumping of the channel lining,
5 undercutting of the channel banks, or down-cutting of the channel.
- 6 7. Winter construction: "Winter construction" is construction activity performed during the period
7 from November 1 through April 15. If disturbed areas are not stabilized with permanent
8 measures by November 1 or new soil disturbance occurs after November 1, but before April 15,
9 then these areas must be protected and runoff from them must be controlled by additional
10 measures and restrictions.
- 11 a. Site stabilization: For winter stabilization, hay mulch is applied at twice the standard
12 temporary stabilization rate. At the end of each construction day, areas that have been
13 brought to final grade must be stabilized. Mulch may not be spread on top of snow.
- 14 b. Sediment barriers: All areas within 75 feet of a protected natural resource must be
15 protected with a double row of sediment barriers.
- 16 c. Ditch: All vegetated ditch lines that have not been stabilized by November 1, or will be
17 worked during the winter construction period, must be stabilized with an appropriate
18 stone lining backed by an appropriate gravel bed or geotextile unless specifically
19 released from this standard by the Maine DEP. If release from Maine DEP has been
20 granted, provide proof of this with the Plan or application.
- 21 d. Slopes: Mulch netting must be used to anchor mulch on all slopes greater than 8%
22 unless erosion control blankets or erosion control mix is being used on these slopes.
- 23 8. Stormwater channels: Each channel shall be constructed in sections so that the section's
24 grading, shaping, and installation of the permanent lining can be completed the same day. If a
25 channel's final grading or lining installation must be delayed, then diversion berms must be used
26 to divert stormwater away from the channel, properly-spaced check dams must be installed in
27 the channel to slow the water velocity, and a temporary lining installed along the channel to
28 prevent scouring.
- 29 9. Sediment basins: Sediment basins that will be used to control sediment during construction
30 activities must be designed to provide storage for either the calculated runoff from a 2-year, 24-
31 hour storm or provide for 3,600 cubic feet of capacity per acre draining to the basin. Outlet
32 structures must discharge water from the surface of the basin whenever possible. Erosion
33 controls and velocity dissipation devices must be used if the discharging waters are likely to
34 create erosion. Accumulated sediment must be removed as needed from the basin to maintain
35 at least ½ of the design capacity of the basin. Clearly visible staking must be installed with marks
36 showing the elevation of 1/2 design capacity for easier inspection.
- 37
- 38 The use of cationic treatment chemicals, such as polymers, flocculants, or other chemicals that
39 contain an overall positive charge designed to reduce turbidity in stormwater may only be used
40 if proof of approval by Maine Department of Environmental Protection is provided.
- 41
- 42 10. Phasing Plan requirements: No phasing plan is required if contractor will limit disturbance to a
43 maximum of 5 acres of disturbance across the entire project at any time. If the Construction

Activity will result in more than 5 acres of disturbance at any one time, the contractor shall provide a phasing plan showing:

- a. the initial 5-acre area to be disturbed;
- b. which portions of the initial disturbance will be stabilized, and what temporary or permanent stabilization methods will be used;
- c. which areas will be subsequently disturbed and what temporary or permanent stabilization methods will be used; and
- d. each phase of disturbance and stabilization must clearly show the total areas in square feet or acres such that the 5-acre disturbance limit at any one time is met throughout the entire project.

Inspection and Maintenance by Applicant On-Site Personnel During Construction

1. During construction

- a. Inspection and corrective action: Disturbed and impervious areas, erosion control measures, materials storage areas that are exposed to precipitation, and locations where vehicles enter or exit the site at least once a week as well as before and within 24 hours after a storm event (rainfall), and prior to completing permanent stabilization measures. A Qualified Professional shall conduct the inspections.
- b. Maintenance: If best management practices (BMPs) need to be repaired or enhanced, the repair work shall be initiated upon discovery of the problem but no later than the end of the next workday. If additional BMPs or significant repair of BMPs are necessary, implementation must be completed prior to any storm event (rainfall) and within 7 calendar days of identification. All measures must be maintained in effective operating condition until areas are permanently stabilized.
- c. Documentation: A log (report) summarizing the inspections and any corrective action taken must be maintained by the applicant. The log must include the name(s) and qualifications of the person making the inspections, the date(s) of the inspections, and major observations about the operation and maintenance of erosion and sedimentation controls, materials storage areas, and vehicles access points to the parcel. Major observations must include BMPs that need maintenance, BMPs that failed to operate as designed or proved inadequate for a particular location, and location(s) where additional BMPs are needed. The log must document each BMP requiring maintenance, BMP needing replacement, and location needing additional BMPs, as well as the corrective action taken and when it was taken. The log shall be maintained for at least three years from the completion of permanent stabilization.

Housekeeping Requirements

1. Spill prevention: Controls must be used to prevent pollutants from construction and waste materials stored on site from entering stormwater, which includes storage practices to minimize exposure of the materials to stormwater. The site contractor or operator must develop, and implement as necessary, appropriate spill prevention, containment, and response planning measures.
2. Groundwater protection: During construction, liquid petroleum products and other hazardous materials with the potential to contaminate groundwater may not be stored or handled in areas

1 of the site draining to an infiltration area. An "infiltration area" is any area of the site that by
2 design or as a result of soils, topography and other relevant factors accumulates runoff that
3 infiltrates into the soil. Dikes, berms, sumps, and other forms of secondary containment that
4 prevent discharge to groundwater may be used to isolate portions of the site for the purposes of
5 storage and handling of these materials.

6 3. Fugitive sediment and dust: Actions must be taken to ensure that activities do not result in
7 noticeable erosion of soils or fugitive dust emissions during or after construction. Oil may not be
8 used for dust control, but other water additives may be considered as needed. A stabilized
9 construction entrance (SCE) shall be included to minimize tracking of mud and sediment. If off-
10 site tracking occurs, public roads shall be swept immediately and no less than once a week and
11 prior to significant storm events. Operations during dry months, that experience fugitive dust
12 problems, shall wet down unpaved access roads once a week or more frequently as needed with
13 a water additive to suppress fugitive sediment and dust.

14 4. Debris and other materials: Minimize the exposure of construction debris, building and
15 landscaping materials, trash, fertilizers, pesticides, herbicides, detergents, sanitary waste and
16 other materials to precipitation and stormwater runoff. These materials must be prevented
17 from becoming a pollutant source. Sediment generated by concrete or mortar mixing, brick
18 cutting & saw cutting activities must be contained (e.g.: Sausage boom, straw bales, etc.) and
19 cleaned up using dry methods (i.e.: Sweeping or vacuuming) to prevent it from entering
20 drainage structures or water resources. These activities shall be done on vegetated areas
21 whenever possible and away from drainage structures and water resources.

22 5. Excavation dewatering: Excavation de-watering is the removal of water from trenches,
23 foundations, coffer dams, ponds, and other areas within the construction area that retain water
24 after excavation. In most cases the collected water is heavily silted and hinders correct and safe
25 construction practices. The collected water removed from the ponded area, either through
26 gravity or pumping, must be spread through natural wooded buffers or otherwise treated to
27 collect the maximum amount of sediment possible, like a cofferdam sedimentation or sediment
28 filter bag. Avoid allowing the water to flow over disturbed areas of the site. If the Maine DEP has
29 approved equivalent measures, provide proof of approval. Note that discharge of excavation de-
30 water fluids from the site must be visually clear (no visible suspended or settleable solids).

31
32 6. Washout from concrete, stucco, paint, curing compounds or other construction materials: If
33 washout/cleanout is to be completed onsite, a designated area(s) shall be established and
34 marked on the Erosion and Sedimentation Control Plan. This area shall be a minimum of 50 feet
35 from all drainage structures, ditches, waterbodies, and resource areas, as well as property
36 boundaries. The area shall not have an outlet to discharge wastes or flows. No detergents shall
37 be used or vehicles washed in this location. A leak-proof pit or container shall be established in
38 the washout area(s), to which washings shall be directed. This area shall be used for washout
39 containment and dewatering by evaporation only. The pit shall not allow infiltration to occur.
40 To prevent clean water from entering the pit, the washout area shall be covered during
41 precipitation events. Inspections of the pit shall be conducted daily to ensure no leaks are
42 present and no discharge is occurring.

43 7. Authorized non-stormwater discharges: Identify and prevent contamination by non-stormwater
44 discharges. Where allowed non-stormwater discharges exist, they must be identified, and steps

1 shall be taken to ensure the implementation of appropriate pollution prevention measures for
2 the non-stormwater component(s) of the discharge. Authorized non-stormwater discharges are:

- 3 a. Discharges from firefighting activity;
- 4 b. Hydrant flushing if dechlorinated to 0.05 mg/l or less
- 5 c. Vehicle wash water if detergents are not used and washing is limited to the exterior of
6 vehicles (engine, undercarriage and transmission washing is prohibited);
- 7 d. Dust control runoff if it does not cause erosion
- 8 e. Routine external building washdown, not including surface paint removal, that does not
9 involve detergents;
- 10 f. Pavement wash water (where spills/leaks of toxic or hazardous materials have not
11 occurred, unless all spilled material had been removed) if detergents are not used;
- 12 g. Uncontaminated air conditioning or compressor condensate
- 13 h. Uncontaminated groundwater or spring water
- 14 i. Foundation or footer drain-water where flows are not contaminated
- 15 j. Uncontaminated excavation dewatering per item 5 Excavation Dewatering
- 16 k. Potable water including waterline flushings
- 17 l. Landscape irrigation
- 18 8. Unauthorized non-stormwater discharges: following discharges are prohibited
 - 19 a. Wastewater from the washout or cleanout of concrete, stucco, paint, form release oils,
20 curing compounds or other construction materials
 - 21 b. Fuels, oils or other pollutants used in vehicle and equipment operation and
22 maintenance;
 - 23 c. Soaps, solvents, or detergents used in vehicle and equipment washing; and
 - 24 d. Toxic or hazardous substances from a spill or other release.
- 25

Subdivision Ordinance

Sec. 16-2-7. Construction Administration

(h) **Completion and Acceptance.** Upon completion of the project infrastructure, the applicant shall request that the Town Council accept proposed public improvements. The request shall include confirmation from the Town Manager that the improvements have been constructed consistent with the approved plans and town construction standards and that any applicable deeds have been submitted in a form acceptable to the Town Attorney and signed by the applicant. The applicant shall be required to maintain all improvements and to provide for snow removal on roads and sidewalks, until their acceptance by the Town or the assumption of those responsibilities under such other approved arrangements. Any applicable Storm-water Maintenance Plan shall also be recorded in the Cumberland County Registry of Deeds. [Revision eff. 06-08-2022]

Sec. 16-3-1. Subdivision Review Standards

(n) Stormwater

The proposed subdivision will provide for adequate stormwater management.

For any subdivision involving more than ten thousand (10,000) square feet of impervious surface, paving, clearing or vegetative alteration, ~~the provisions and improvements for the control of a storm-water management plan shall be prepared in compliance with Chapter 25-1, Stormwater Development Review, runoff shall be governed by the provisions of the Town of Cape Elizabeth Storm Water and Non Storm Water Control Ordinance Chapter 18, Article II and Post Construction Stormwater Management Ordinance, Chapter 18, Article IV.~~ In the case of any subdivision involving less than ten thousand (10,000) square feet of such impervious surfaces, where a subdivision is traversed by a stream, drainage way or other watercourse, or where the Planning Board with the advice of the engineer feels that surface water drainage to be created by the subdivision should be controlled for the protection of the subdivision and owners of property abutting it, there shall be provided an easement or drainage right-of way conforming substantially with the lines of such watercourse, and culverts, catch basins or other means of channeling surface water within such subdivision and over the property of owner abutting upon it of such nature, width and location as the Planning Board with the advice of the Town Engineer, deems adequate.

Sec. 16-3-2. Infrastructure Design and Construction Standards.

A. Road Design

8. Dead-End Roads.

e. **Termination.** All dead-end roads shall end in a cul-de-sac or a T-shaped turnaround and be designed according to the dimensions shown on Appendix D. All cul-de-sacs shall be so designed that water will drain from all portions into a storm-water

1 ~~drainage-management~~ system. The interior of all cul-de-sacs shall be neat and orderly,
2 and shall either be left in its natural condition or be graded, loamed and seeded.
3 Granite monuments shall be installed by the developer at the intersection of each side
4 of the road with the cul-de-sac and at the radius point of the cul-de-sac, as shown in
5 the cul-de-sac diagrams.
6

7 **C. Storm~~water~~ and Surface Water Drainage**

8

- 9 1. Storm-water collection and transport systems shall comply with Chapter 25-1,
10 Stormwater Development Review, 25-2 Post Construction Stormwater Maintenance,
11 and 25-4 Erosion and Sedimentation Control. ~~the Town of Cape Elizabeth~~
12 ~~Stormwater and Non-Stormwater Control Ordinance, Chapter 18, Article II and the~~
13 ~~Town of Cape Elizabeth Post Construction Stormwater Management Ordinance,~~
14 ~~Chapter 18, Article IV.~~
15

16 **Appendix A**

17 ***Minor Subdivision Submission Requirements***

18

19 B. List of Submission items.

20

21 6. Erosion. A soil erosion and sediment~~ation~~ control plan prepared and certified by a
22 professional geologist or professional engineer.
23

24 **Appendix B**

25 ***Major Subdivision Submission Requirements***

26

27 B. List of submission items

28

29 6. Erosion. A soil erosion and sediment~~ation~~ control plan prepared and certified by a
30 professional geologist or professional engineer.
31

32 24. Community Impact Analysis. The Planning Board may require the applicant to conduct a
33 community impact analysis which will consist of the following demographic features.
34

- 35 a. Demographic Description. The analysis must identify the demographic market
36 the project intends to serve, including:
37

- 38 (1) type of family;
39 (2) average family size;
40 (3) number and ages of children; and
41 (4) anticipated time period to fill all units or lots.
42

43 Associated data, such as anticipated income levels, type of employment, and
44 projected housing costs may also be presented to support projections associated
45
46

1 with the above demographic description.

2
3 b. Community Impact Analysis. Utilizing the above demographic data, the
4 applicant shall conduct analyses of the following:

- 5
6 (1) Estimated impact of traffic systems, including the impact of projects trips on
7 flow characteristics and the impact of traffic on the immediate, existing road
8 structures;
9 (2) Estimated impact on the school system;
10 (3) Estimated impact on public safety providers;
11 (4) Estimated impact on the public works department, including solid waste
12 disposal;
13 (5) Estimated impact on existing storm-water management systems including
14 flow and water quality;
15

16 Final Review

17
18 B. List of submission items

- 19
20 8. Stormwater/Erosion. The preliminary plan approved by the Planning Board for
21 stormwater management and erosion and sedimentation control supplemented to
22 include final design, details, and specifications of the proposed stormwater
23 infrastructure and any connections to existing stormwater facilities.
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Zoning Ordinance

SEC. 19-8-3. RESOURCE PROTECTION PERFORMANCE STANDARDS

All activities in the Resource Protection Districts shall comply with the following performance standards as applicable:

B. Resource Protection Permit Standards

The Planning Board shall grant a Resource Protection Permit for uses, structures and activities within Resource Protection Districts if it makes a positive finding based upon the information presented that the alteration as proposed, or with specified conditions of approval:

10. will be accomplished in conformance with Chapter 25-4, Erosion and Sedimentation Control ~~the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;~~

ARTICLE IX. SITE PLAN REVIEW

SEC. 19-9-4. REVIEW PROCEDURES

C. Submission Requirements

- i. Storm-water. Calculation of existing and proposed impervious surface; total disturbed area including all phases of a phased project, a ~~storm-water management plan;~~ with flow arrows, profiles, cross sections, and invert elevations prepared, showing existing and design of all facilities and conveyances, LID (Low Impact Development) methods, and identification and location of known existing deficiencies that result in storm-water surcharge or flooding; location of proposed drainage easements; narrative description of how storm-water will be managed; description of any Low Impact Development (LID) methods incorporated into the plan; note on plan for maintenance of private storm water infrastructure; storm water maintenance plan that lists infrastructure that needs to be maintained, inspection frequency and maintenance requirements. Where the property is located within the Great Pond Watershed, a description of how the Great Pond Watershed Overlay District provisions will be met. (Effective November 5, 2016)

When the project increases impervious surface by an area of ten thousand (10,000) sq. ft. or more, the storm-water management plan must be prepared, signed and stamped by a professional engineer licensed in the State of Maine, pre- and post-development calculations for the 2₁ and 25 year storm must be provided, and time of concentration path segments shown. (Effective November 5, 2016, updated November 14, 2022)

When a project increases impervious surface by one (1) acre or more, information shall be submitted as described in Sec. 25-1-4. ~~.(b).~~ Stormw-Water Runoff System Design Ordinance. ~~(Effective November 5, 2016)~~

Summary Chart of Stormwater Submission Requirements and Review Standards (supplements ordinance provisions)		
Submission: All projects must calculate area of existing and proposed impervious surface and submit a stormwater management plan, including LID elements, identification of existing deficiencies, location of easements, note requiring maintenance of private infrastructure, and items related to the Great Pond Watershed Overlay District.		
Review Standard: All projects must manage stormwater on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation and private stormwater infrastructure must be maintained		
Pre/post Impervious Surface	Submission Information Highlights	Review Standard Highlights
Decrease to increase of less than 10,000 sq. ft.	<ul style="list-style-type: none"> •Professional Engineer not required •Pre/post calculations not required 	<ul style="list-style-type: none"> •LID method is used
Increase of 10,000 sq. ft. to less than 43,560 sq. ft.	<ul style="list-style-type: none"> •Stormwater plan must be prepared by a Professional Engineer •Pre/post calculations required •Time of concentration path segments must be shown 	<ul style="list-style-type: none"> •LID method is used to treat first 1/2 inch of stormwater from new impervious surface
Increase of 43,560 sq. ft. or more	See Chapter 25, Stormwater Ordinance	See Chapter 25, Stormwater Ordinance

Update chart as shown below

Summary Chart of Stormwater Submission Requirements and Review Standards (supplements ordinance provisions)		
Submission: All projects must calculate area of existing and proposed impervious surface and submit a stormwater management plan, including LID elements, identification of existing deficiencies, location of easements, note requiring maintenance of private infrastructure, and items related to the Great Pond Watershed Overlay District.		
Review Standard: All projects must manage stormwater on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation and private stormwater infrastructure must be maintained		
Pre/post Impervious Surface	Submission Information Highlights	Review Standard Highlights
Decrease to increase of less than 10,000 sq. ft.	<ul style="list-style-type: none"> •Professional Engineer not required •Pre/post calculations not required 	<ul style="list-style-type: none"> •LID method is used
Increase of 10,000 sq. ft. to less than 43,560 sq. ft.	<ul style="list-style-type: none"> •Stormwater plan must be prepared by a Professional Engineer •Pre/post calculations required •Time of concentration path segments must be shown 	<ul style="list-style-type: none"> •LID method is used to treat first 1/2 inch of stormwater from new impervious surface
Increase of 43,560 sq. ft. or more	See Chapter 25-1 Stormwater Development Review	See Chapter 25-1 Stormwater Development Review

j. Erosion Control. An ~~e~~Erosion ~~and Sedimentation~~ ~~e~~Control ~~p~~Plan including information in compliance with Chapter 25-4-5, Erosion and Sedimentation Control Submission requirements.~~including details of erosion control methods used; written erosion control plan with notes. (Effective November 5, 2016)~~

SEC. 19-9-5. APPROVAL STANDARDS

4. Storm~~w~~-Water Management

Storm-water is managed on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation. To the extent practical, the plan will retain

1 storm-water on the site using the natural features of the site, except that in the Town
2 Center District, storm-water management shall be consistent with the Town Center
3 Storm Water Management Plan, updated September 2015 or most recent revision. A
4 Low Impact Development (LID) method is incorporated into the stormwater management
5 plan. The plan includes a note requiring a post-construction maintenance plan for private
6 storm-water infrastructure and a maintenance plan has been submitted.

7
8 When the project increases impervious surface by ten thousand (10,000) sq. ft. in area
9 but less than 1 acre (43,560), the storm-water management plan has been prepared,
10 signed and stamped by a professional engineer licensed in the State of Maine. Post-
11 development peak flows do not substantially exceed predevelopment flows for the 2 and
12 25-year storm. LID measures have been used to treat a calculated volume (referred to as
13 Calculated Treatment Volume, (or CTV) such that it is not less than one-half (1/2) inches
14 multiplied by the net proposed new impervious surface area. The CTV may be achieved
15 by treating one-half (1/2) inches multiplied by the new onsite impervious surface areas,
16 or an equal existing on-site untreated impervious surface area, or of an equivalent
17 combination thereof of previously or proposed untreated area. When the project increases
18 impervious surface by one (1) acre or more, storm-water shall be reviewed for compliance
19 with Sec. 25-1-4.e. StormW-Water- Development Review Ordinance.

20 21 5. Erosion Control

22
23 All building, site, and roadway designs and layouts will harmonize with existing
24 topography and conserve desirable natural surroundings to the fullest extent possible.
25 Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on
26 sloped sites will be terraced to avoid undue cut and fill, and/or the need for retaining walls.
27 Natural vegetation will be preserved and protected wherever possible.

28
29 During construction, soil erosion and sedimentation of watercourses and water bodies will
30 be minimized by an active program meeting the requirements of Chapter 25-4, Erosion and
31 Sedimentation Control~~the Maine Erosion and Sediment Control Best Management~~
32 ~~Practices (BMP's) as prepared by the Bureau of Land and Water Quality of the Maine~~
33 ~~Department of Environmental Protection, March 2003 or most recent edition. (Effective~~
34 ~~November 5, 2016)~~