

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Maureen O’Meara, Town Planner
Jay Reynolds, Public Works Director
Kristie Rabasca, Integrated Environmental Engineering
DATE: January 12, 2023
SUBJECT: Stormwater Ordinance Amendments
Related amendments to the Subdivision Ordinance, Zoning Ordinance

Introduction

At the August 8, 2022 meeting, the Cape Elizabeth Town Council referred to the Ordinance Committee development of Stormwater Ordinance Amendments required by the General Permit for Stormwater Discharges (2022 MS4 General Permit). Following a recommendation from the Ordinance Committee, the Town Council will review the amendments at the January 18, 2023 workshop.

Municipal Review Process

The amendments have been developed with reference to the Maine Model Ordinance for Erosion and Sediment Control at Construction Sites. Kristie Rabasca, Integrated Environmental Engineering, is the Town’s contracted stormwater consultant who has provided expert guidance. Amendments have also been reviewed by Jay Reynolds, Public Works Director, Steve Harding, Town Engineer and Maureen O’Meara, Town Planner. The Ordinance Committee discussed stormwater amendments at the September 14th, October 17th and November 28, 2022 meetings. The Town Council received the Ordinance Committee recommendation at the December 12, 2022 meeting and tabled it to a future workshop. The Town Council also referred Zoning and Subdivision amendments to the Planning Board.

Why revise Chapter 25?

The 2022 MS4 General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems became effective July 1, 2022 and requires ordinance amendments associated with four topics.

1. Erosion and Sedimentation Control (ESC) standards must be adopted by 6/30/2023 as described in the MS4 General Permit (these standards are the same as the Maine DEP standards in Appendices A, B and C of Chapter 500).
2. Low Impact Development (LID) Standards must be adopted by 6/30/2024.

3. Illicit Discharges must be removed from the storm drain system within 60 days of identification of their source.
4. Post Construction maintenance on private stormwater quality systems must be conducted within 60 days of identification of the need for the maintenance.

Three of the topics are being addressed in this round of amendments. Low Impact Development amendments do not need to be adopted until 2024, and the Maine DEP has just announced they are updating Chapter 500 to address LID. For this reason, staff recommends that LID amendments be put on hold until more definitive information is provided by DEP.

The road map below shows how the existing stormwater regulations, Chapter 25, Article I and II, will be reorganized into Articles I, II, III, and IV to meet the 2022 General Permit requirements.

Stormwater Ordinance Changes Road Map

<u>Existing Regulations</u>	<u>Proposed Amendments</u>
Chapter 25 Stormwater	Chapter 25 Stormwater
Article I. Stormwater and Non-Storm	Article I. Stormwater Development Review
Article II. Post Construction Storm Water Management	Article II. Post Construction Stormwater Maintenance
	Article III. Non-stormwater Discharges
	Article IV. Erosion and Sedimentation Control. New

Summary of most recent amendments

The Ordinance Committee draft (dated 12-2-2022) has been revised as follows to respond to comments provided by the Town Council Chair and final staff recommendations. Changes are shaded in blue.

<i>Page/line</i>	<i>Description</i>
2/24	A missing comma has been added.

- 9/44 The term “tidally influenced areas” has been replaced with “tidal waters,” which is a defined term.
- 17/6 The applicability section clarifies that this ordinance only applies to development that disturbs 1 or more acres of land. A second provision referencing the Planning Board is also suggested in the event the Planning Board expands stormwater maintenance to other development as part of the development approval. In this way, Article II can serve as a handy “how-to” reference for stormwater maintenance plans.

Additional Information

Below are responses to requested information:

•*Question:* Should the town reconsider stormwater discharges into tidal areas in light of the Friends of Scarborough Marsh Phragmites Salinity Study (2018)?

Response: The existing ordinance includes a provision that stormwater does not have to be detained *to control volume* when is it discharging to tidal waters. All other provisions relating to stormwater quality and treatment and erosion control still apply. The origin of this provision was to allow village style development in the town center without the creation of onsite detention basins. Instead, commercial development connects to the town stormwater system which discharges at the rear of the school campus into the marsh.

In reviewing the Friends of Scarborough Marsh Phragmites Salinity Study (2018), marsh invasives thrive in low salt conditions, which tend to be located near stormwater discharge sites. The report recommends:

“...moving existing and future sources of stormwater discharge away from the marsh plain directly into the marsh creeks and rivers (e.g., using pipes or small ditches [runnels] cut into the marsh surface) may help limit the spread of large Phragmites stands beyond their current footprints.” (p. 29)

The study also recommends additional analysis. It will take significant additional work with the Maine DEP to adjust current standards to allow direct discharge into creeks and rivers, especially considering the potential impact of winter discharges which are high in salt content. Consequently, staff is not recommending further changes to the model ordinance-based amendments at this time.

•*Question:* How many licensed stormwater systems do we have in town?

Response: We will have 6 private, post-construction sites reporting on their maintenance in 2023. Overall, the Town inspects about 5-10 development projects for erosion and sedimentation control during construction each year.

•*Question:* How many projects trigger review in a typical year?

Response: About 5-10 sites that trigger the disturbance of one or more acres of land undergo Planning Board review each year.

•*Question:* How do we anticipate these revisions to impact staff workload? Development costs?

Response: Impacts because of ESC revisions: These revisions should not impact staff workload because the town passes its review to a third-party engineer, whose fees are paid by the developer. Then, the third-party reviewer also inspects the sites as required by the MS4 General Permit. The inspection fees are also paid for by the developer. The review and inspection fees should not increase because the Town is obligated to review the development proposals and conduct the construction inspections on the sites triggering these requirements. We also do not expect any impact on development costs because developers are already required to meet these standards under the State Chapter 500 regulations.

Impacts because of Post Construction revisions and Non-Stormwater revisions: Requiring individuals to correct issues within 60-days should not impact staff workload or development costs. Some provisions for individuals that cannot correct issues within 60-days are included.

•*Question:* How well does this ordinance align with stormwater standards in neighboring communities?

Response: All 30 MS4 communities must adopt the same minimum standards, so neighboring communities will be the same. Additionally, we are adopting state Erosion and Sedimentation Control standards, with which developers already have to comply.

•*Question:* Do we as the town ever accept ownership of licensed stormwater systems installed by developers? If so, is that governed by standards similar to our road acceptance standards?

Response: The Town Council has accepted systems that handle water from town infrastructure, such as public roads. Ocean Commons and Maxwell Woods are two examples. Though the standards are not quite the same, both privately maintained systems and systems that will be turned over to the town are getting much more scrutiny during review now. In particular the maintenance plans must be clear and concise for both private and town systems.

Next Steps

The Stormwater amendments package includes amendments to Chapter 25, Stormwater, and related amendments to the Zoning and Subdivision Ordinances, referencing Chapter 25 requirements. The Town Council referred Zoning and Subdivision Ordinance amendments to the Planning Board at the December 12, 2022 meeting.

The Town Council may want to hold the Chapter 25 amendments until you receive a recommendation from the Planning Board. Once the Planning Board recommendation is received, the Town Council can schedule a public hearing for the complete Stormwater Amendments package.