

CHAPTER 25

STORMWATER ORDINANCE

TOWN OF CAPE ELIZABETH, MAINE

Effective June 8, 2023

CHAPTER 25
STORMWATER
TABLE OF CONTENTS

Article I. Stormwater Development Review	4
Sec. 25-1-1. Purpose and Authority.	4
Sec. 25-1-2. Applicability.	4
Sec. 25-1-3. Definitions.	4
Sec. 25-1-4. Stormwater Runoff System Design	9
Sec. 25-1-5. System Responsibility.	12
Sec. 25-1-6. Tidal Design Adjustment.	12
Sec. 25-1-7. Severability.	12
Sec. 25-1-8. Enforcement.	13
Article II. Post Construction Stormwater Maintenance	14
Sec. 25-2-1. Purpose and Authority.	14
Sec. 25-2-2. Applicability.	15
Sec. 25-2-3. Definitions.	15
Sec. 25-2-4. Post-Construction Stormwater Management Plan.	15
Sec. 25-2-5. Post-Construction Stormwater Management Plan Compliance.	17
Sec. 25-2-6. Enforcement.	18
Sec. 25-2-7. Notice of Violation.	18
Sec. 25-2-8. Penalties/Fines/Injunctive Relief.	19
Sec. 25-2-9. Consent Agreement.	19
Sec. 25-2-10. Appeal of Notice of Violation.	19
Sec. 25-2-11. Enforcement Measures.	19
Sec. 25-2-12. Severability.	20
Article III. Non-Stormwater Discharges	20
Sec. 25-3-1. Purpose and Authority.	20
Sec. 25-3-2. Applicability	20
Sec. 25-3-3. Definitions	20
Sec. 25-3-4. General Prohibition	20
Sec. 25-3-5. Allowed Non-Stormwater Discharges	21
Sec. 25-3-6. Suspension of Access to the Town Stormwater Runoff	21
Sec. 25-3-7. Monitoring of Discharges.	22
Sec. 25-3-8. Enforcement.	22
Sec. 25-3-9. Severability.	24

Article IV. Erosion and Sedimentation Control	24
Sec. 25-4-1. Purpose and Authority	24
Sec. 25-4-2. Definitions	24
Sec. 25-4-3. Applicability	24
Sec. 25-4-4. Procedure	25
Sec. 25-4-5. Submission Requirements	25
Sec. 25-4-6. Requirements and Standards.	26
Sec. 25-4-7. Inspection	27
Sec. 25-4-8. Enforcement	28
Sec. 25-4-9. Severability and Conflicts	30
Sec. 25-4-10. Waivers	30
Appendix 1 – Erosion and Sedimentation Control Performance Standards	31

Article I. Stormwater Development Review

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

- A. Purpose.** The purpose of this Article is to require the control, treatment and management of stormwater on the land at the site of development through the use of the natural features of the site. (Effective June 8, 2023)
- B. Authority.** The Town enacts these stormwater regulations pursuant to Maine Constitution Art. VII. 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. (Effective June 8, 2023)

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 Review (Chapter 19, Zoning Ordinance); and/or
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. (Effective June 8, 2023)

Sec. 25-1-3. Definitions.

For the purposes of this ordinance, the following terms, words, and phrases shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future tense. Words used in the singular shall include the plural. Where so indicated by the text, these definitions also include substantive regulations. Where reference is made to town or state laws, ordinances, or regulations, each reference to a particular law, regulation or section shall include all amendments and successor sections. (Effective June 8, 2023)

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. (Effective June 8, 2023)

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 stormwater 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. (Effective June 8, 2023)

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"). (Effective June 8, 2023)

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"). (Effective June 8, 2023)

Common Plan of Development or Sale: A major subdivision or minor subdivision as defined in the Subdivision Ordinance (Chapter 16). (Effective June 8, 2023)

Construction Activity: any activity on a site that results in disturbed area. (Effective June 8, 2023)

Developed Area: "Disturbed 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 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.) (Effective June 8, 2023)

Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to waters of the state, other than groundwater. (Effective June 8, 2023)

Disturbed 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 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 the original line and grade, and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered disturbed area. (Effective June 8, 2023)

Drainageway. – Means the same as “Drainageway” defined in Chapter 500. (Effective June 8, 2023)

Enforcement Authority: The Town of Cape Elizabeth Public Works Director or their designee.

General Permit: 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. (Effective June 8, 2023)

Impervious Area: The total area of a 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. (Effective June 8, 2023)

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. (Effective June 8, 2023)

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 development 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. (Effective June 8, 2023)

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 DFR 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. (Effective June 8, 2023)

National Pollutant Discharge Elimination System (NPDES) Stormwater 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 of Construction” as defined in the General Permit.

Non-Storm Water Discharge: Any discharge to the Town stormwater runoff system that is not composed entirely of stormwater.

Parcel: The same as “Tract or parcel of land” as defined at 30 M.R.S. §4401.6 *et seq.* (Effective June 8, 2023)

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. (Effective June 8, 2023)

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 Stormwater Management Plan: BMPs and associated inspection and maintenance procedures for the stormwater runoff system employed by a new development or redevelopment to meet the standards of this ordinance and approved by the Town’s permitting authority. (Effective June 8, 2023)

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. (Effective June 8, 2023)

Qualified Post-Construction Stormwater Inspector: A person who conducts post construction inspections of stormwater 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, Stormwater Management Rules, and Maine's Stormwater 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 stormwater hydrology and stormwater management techniques, including the maintenance requirements for stormwater runoff systems; and have the ability to determine if stormwater runoff systems are performing as intended. (Effective June 8, 2023)

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. (Effective June 8, 2023)

Redevelopment: Same as "Redevelopment" defined in Chapter 500. (Effective June 8, 2023)

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. (Effective June 8, 2023)

Runoff: The part of precipitation from rain or melting ice and snow that flows across a surface as sheet flow, shallow concentrated flow, or flow in drainageways. (Effective June 8, 2023)

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). (Effective June 8, 2023)

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. (Effective June 8, 2023)

Stormwater: The part of precipitation including runoff from 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." (Effective June 8, 2023)

Stormwater Maintenance agreement. An agreement describing maintenance of a stormwater 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 stormwater runoff system components that require maintenance, inspection frequency, maintenance requirements, and submission of an annual report to the Town. Stormwater 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.

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

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

Time of Concentration: The same as “Time of concentration” defined in Chapter 500. (Effective June 8, 2023)

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. (Effective June 8, 2023)

Uncontaminated: Free of pollutants.

Urbanized Area: The area of the Town of Cape Elizabeth so defined by the inclusive sum of the 2000 decennial census, the 2010 decennial census and any subsequent updates provided by the U.S. Census Bureau. (Effective June 8, 2023)

Waters of the State: Any and all surface and subsurface waters that are contained within, flow through, or under or border upon the State of Maine or any portion of the State of Maine, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State of Maine, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce. (See also 38 M.R.S. Sec.361-A(7)). (Effective June 8, 2023)

Uncontaminated: Free of Pollutants.

Sec. 25-1-4. Stormwater Runoff System Design

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

1. Professional Engineer. The stormwater runoff system plan shall be prepared by a professional engineer licensed in the State of Maine. Information shall include contact information (i.e. name, company if applicable, phone number, physical

address, and email address) of a Maine professional engineer, who will design, sign and stamp the storm water runoff system. (Effective June 8, 2023)

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. (Effective June 8, 2023)
3. Impervious surface. On the stormwater runoff system plan and in the written materials, the calculated square footage of existing impervious surface and proposed impervious surface. (Effective June 8, 2023)
4. Pre- and post-construction calculations. Stormwater 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”. (Effective June 8, 2023)
5. Existing system. On the stormwater runoff system plan and in the written materials, show and describe the existing stormwater runoff system, including but not limited to stormwater infrastructure, drainage channels, culverts and other conveyances, and deficiencies that result in storm water surcharge or flooding on the property. (Effective June 8, 2023)
6. Proposed improvements. On the stormwater runoff system plan and in the written materials, show and describe the proposed stormwater 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 and design of all facilities and conveyances. The stormwater 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, stormwater runoff discharge downstream impacts, accommodation of upstream flows, and include all necessary design details and components. (Effective June 8, 2023)
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 stormwater runoff system infrastructure will not be conveyed to the Town, provide a draft maintenance agreement and include the following note on the plans: The site

requires (a) a maintenance agreement for the stormwater runoff system to be executed with the enforcement authority and filed with the Cumberland County Registry of Deeds, and (b) after construction is complete, provide annually a certification to the enforcement authority that the stormwater runoff system has been inspected and maintained in accordance with the post construction storm water runoff system management plan approved for this site. (Effective June 8, 2023)

9. Record drawings. On the stormwater runoff plan, include a note that "a reproducible set of record drawings, as well as digital files, both Adobe pdf and in a format used by the project engineer during project design or other format approved by the Public Works Director suitable for import into the Town Geographic Information System (GIS), indicating the stormwater runoff work constructed and how the record drawings were compiled shall be provided to the enforcement authority upon completion of construction." (Effective June 8, 2023)

B. Review Standards. The stormwater management plan for the development shall comply with the following design and performance standards. (Effective June 8, 2023)

1. Design Standards

- a. 2-year and 25-year storms. The stormwater runoff system shall be designed for a storm of intensity equal to the 2-, and 25-year, 24-hour storm event. No non-storm water structures shall be permitted in areas of the site that flood or surcharge during the 2-, and 25-year storm. Where state or federal law is more restrictive, such provisions shall supersede this section.
- b. Infiltration. The stormwater runoff system shall maximize to the greatest extent practical the amount of stormwater infiltrating on the site during storm events except that development located in the Town Center District shall design a stormwater plan that is consistent with the Town Center Stormwater Management Plan, updated September 2015 or most recent version.
- c. Downstream impacts. The stormwater runoff system shall provide for the discharge of stormwater from the site without damage to streets and stormwater infrastructure, adjacent properties, downstream properties, soils and vegetation. When post-development flows exceed pre-development flows, the development shall demonstrate that either (1) stormwater runoff will be stored on-site and released at a rate not to exceed pre-development flows or (2) that the stormwater runoff system has sufficient capacity to carry the increased flow without adverse impacts. Direct discharge to tidal waters shall be considered sufficient capacity to carry increased flow.
- d. Upstream flows. The stormwater runoff system shall be designed to accommodate all existing up stream flows that pass through the site.

- e. System components. The stormwater runoff system shall be completely designed and include built structures and natural channels, technical specifications and design details. Where components of the stormwater runoff system are located outside of public right-of-way, easements shall be provided to the town for access and maintenance.
- f. Maintenance. A post-construction stormwater maintenance plan shall be prepared for the stormwater runoff system. The note requiring maintenance of the stormwater runoff system shall be included on the plan.
- g. Record Drawings. The stormwater runoff system plans shall include a note that, upon completion of the stormwater runoff system installation, a reproducible set of record drawings indicating the stormwater runoff system work accomplished and how the record drawings were compiled will be submitted to the enforcement authority. (Effective June 8, 2023)

Sec. 25-1-5. System Responsibility.

The developer shall maintain all components of the stormwater runoff system until they are formally accepted by the Town or transferred to a property owner and/or property owners association whose charter and powers for financing and maintaining the stormwater runoff system shall be approved by the town attorney. Stormwater runoff system components within proposed public ways shall become Town property upon formal acceptance. Stormwater runoff system components outside of public ways may be accepted by the Town but shall otherwise be deeded to a property owner/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 stormwater runoff system to conduct emergency maintenance, as it deems necessary. (Effective June 8, 2023)

Sec. 25-1-6. Tidal Design Adjustment.

The Planning Board may waive any filing or design requirements unnecessary for full consideration of any proposed stormwater 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) 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. (Effective June 8, 2023)

Sec. 25-1-7. Severability.

If any part or parts, section or subsection, sentence, clause or phrase of this ordinance or the rules and regulations promulgated thereunder is for any reason declared to be unconstitutional or

invalid, such declaration shall not affect the validity or constitutionality of the remaining portions of this ordinance or the rules and regulations promulgated thereunder. (Effective June 8, 2023)

Sec. 25-1-8. 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.

A. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this

Ordinance 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:

1. The elimination of Non-Storm Water Discharges to the Storm Water Runoff System, including, but not limited to, disconnection of the Premises from the Storm Water Runoff System;
2. The cessation of Discharges, practices, or operations in violation of this Ordinance;
3. At the Person's expense, the abatement or remediation in accordance with best management practices in DEP rules and regulations of Non-Storm Water Discharges to the Storm Water Runoff System and the restoration of any affected property; and/or
4. The payment of fines, of the Enforcement Authority's remediation costs and of the Enforcement Authority's reasonable administrative costs and attorneys' fees and costs, in accordance with 30-A M.R.S.A Sec. 4452. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

B. **Penalties/Fines/Injunctive Relief.** Any Person who violates this Ordinance 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 such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance 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; this responsibility shall be in addition to other penalties, fines or injunctive relief imposed under this Section.

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

D. **Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Town to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of

Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the Notice of Violation. A suspension under Section 18-2-8(d) of this Ordinance shall remain in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Zoning Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

- E. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- F. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are minimum standards. Compliance with this Ordinance does not ensure that a Person will not have contaminated, polluted or unlawfully discharged Pollutants into waters of the U.S. This Ordinance shall not create liability on the part of the Town, or any officer, agent or employee thereof for any damages that result from a Person's reliance on or compliance with this Ordinance or any administrative decision lawfully made under this Ordinance.

Article II. Post Construction Stormwater Maintenance

Sec. 25-2-1. Purpose and Authority.

(Effective June 8, 2023)

- A. **Purpose:** The purpose of this article is to provide for health, safety, and general welfare of the citizens of the Town of Cape Elizabeth through review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plans as required by federal and state law. (Effective June 8, 2023)
- B. **Authority:** This article establishes methods for post-construction stormwater management in order to comply with minimum control measure requirements of the federal Clean Water Act, of federal regulations, of Maine's Small Municipal Separate Storm Sewer Systems General Permit, and the Town's stormwater program management plan. The Town of Cape Elizabeth enacts this Post-Construction Stormwater Maintenance Ordinance (the "ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant 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 municipal separate storm sewer system ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates

enactment of this ordinance as part of the Town's stormwater management program in order to satisfy the minimum control measures required by minimum control measure post-construction stormwater management in new development and redevelopment. (Effective June 8, 2023)

Sec. 25-2-2. Applicability.

This ordinance applies to all new development and redevelopment within the Town that discharges stormwater to the Town's municipal separate storm sewer system (MS4) which disturbs one or more acres of land across all phases or otherwise is required by the Planning Board to perform maintenance and to associated stormwater 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 stormwater 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. (Effective June 8, 2023)

Sec. 25-2-3. Definitions.

The definitions in Sec. 25-1-3 shall apply. (Effective June 8, 2023)

Sec. 25-2-4. Post-Construction Stormwater Management Plan.

A. General Requirement

1. Except as provided in Sec. 25-2-2. 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 stormwater management plan for the new development meets the requirements of this ordinance. (Effective June 8, 2023)
2. At the time of application, the applicant shall notify the Town permitting authority if its post-construction stormwater 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. (Effective June 8, 2023)

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

stormwater generated by a new development or redevelopment through a post-construction stormwater management plan. This post-construction stormwater 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. (Effective June 8, 2023)

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 stormwater 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. (Effective June 8, 2023)
3. Maintenance Agreement Required. Where the applicant proposes to retain ownership of the stormwater management facilities shown in its post-construction stormwater management plan, the applicant shall submit to the Town documentation, approved as to the legal sufficiency by the Town's attorney that the applicant, their successor, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for new development or redevelopment requiring stormwater management facilities that will not be dedicated to the Town shall enter into a maintenance agreement with the Town. A sample of this Maintenance Agreement is available from the Town. (Effective June 8, 2023)
4. Easements and Access. Whenever elements of the stormwater runoff system are not within the right-of-way of a public street and the facilities will not be offered to the Town for acceptance as public facilities, the Town permitting authority may require that perpetual easements conforming substantially with the lines of existing natural drainage, and providing adequate access for maintenance in a form acceptable to the Town's attorney, shall be provided to the Town allowing access for maintenance, repair, replacement and improvement of the stormwater runoff system. When an offer of dedication is required by the Town permitting authority, the applicant shall be responsible for the maintenance of these stormwater runoff systems under this ordinance until such time (if ever) as they are accepted by the Town. (Effective June 8, 2023)
5. Other Standards and Conflicts. In addition to any other applicable requirements of this ordinance and the Town's municipal code, any new development or redevelopment which also requires a stormwater management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D

shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Town permitting authority. Where the standards or other provisions of such stormwater rules conflict with Town ordinances, the stricter (more protective) standard shall apply. (Effective June 8, 2023)

Sec. 25-2-5. Post-Construction Stormwater Management Plan Compliance.

- A. **General Requirements.** Any person owning, operating, leasing or having control over stormwater runoff systems required by a post-construction stormwater management plan approved under this ordinance shall demonstrate compliance with that plan as follows:
1. Annual Inspection. A qualified post-construction stormwater inspector shall, at least annually, inspect the stormwater runoff systems, including but not limited to any roads, parking areas, catch basins, drainage swales, detention basins and ponds, pipes, conduits, and related structures, in accordance with all Town and State inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan. (Effective June 8, 2023)
 2. Corrective Actions. If the stormwater runoff systems require maintenance to function as intended by the approved post-construction stormwater 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 take and will propose an expeditious schedule for correction, which must be reviewed and if acceptable, approved by the enforcement authority. (Effective June 8, 2023)
 3. Annual Reporting to Town. A qualified post-construction stormwater 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 stormwater runoff systems have been inspected, and that they are adequately maintained and functioning as intended by the approved post-construction stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater runoff systems. If the stormwater runoff systems require maintenance or repair of deficiencies in order to function as intended by the approved post-construction stormwater management plan, the person shall provide a record of the required maintenance or deficiency and corrective action(s) taken in accordance with Sec. 25-2-5.a.2 of this ordinance. (Effective June 8,

2023)

4. Fee. In addition, any persons required to file an annual certification under this Sec. 25-2-5 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. (Effective June 8, 2023)

B. **Right of Entry.** In order to determine compliance with this ordinance and with the post-construction stormwater 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 stormwater runoff systems. (Effective June 8, 2023)

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 stormwater runoff systems discharging into their MS4;
2. A summary of the number of sites that have stormwater runoff systems discharging into their MS4 that were reported to the Town;
3. The number of sites with documented functioning stormwater runoff systems; and
4. The number of sites that required routine maintenance or remedial action to ensure that stormwater runoff systems are functioning as intended. (Effective June 8, 2023)

Sec. 25-2-6. 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 stormwater management plan. Whenever the enforcement authority believes that a person has violated this ordinance or the post-construction stormwater management plan, the enforcement authority may enforce this ordinance in accordance with 30-A M.R.S.A. § 4452. (Effective June 8, 2023)

Sec. 25-2-7. Notice of Violation.

Whenever the enforcement authority believes that a person has violated this ordinance or the post-construction stormwater management plan, the enforcement authority may order compliance with this ordinance or with the post-construction storm 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 stormwater 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 stormwater 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 stormwater 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. (Effective June 8, 2023)

Sec. 25-2-8. Penalties/Fines/Injunctive Relief.

Any person who violates this ordinance of the post-construction stormwater management plan shall be subject to fines, penalties and/or 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 stormwater 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 stormwater management plan; this responsibility shall be in addition to any penalties, fines and/or injunctive relief imposed under this Section. (Effective June 8, 2023)

Sec. 25-2-9. Consent Agreement.

The enforcement authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this ordinance or of the post-construction stormwater management plan for the purposes of eliminating violations of this ordinance or of the post-construction stormwater management plan and of recovering fines, costs and fees without court action. (Effective June 8, 2023)

Sec. 25-2-10. Appeal of Notice of Violation.

Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the enforcement authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure. (Effective June 8, 2023)

Sec. 25-2-11. Enforcement Measures.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or modifying the enforcement authority's decision, then the enforcement authority may recommend to the municipal officers that the Town's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure. (Effective June 8, 2023)

Sec. 25-2-12. Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, §clauses, sentences, or paragraphs or application of this ordinance. (Effective June 8, 2023)

Article III. Non-Stormwater Discharges

Sec. 25-3-1. Purpose and Authority.

- A. **Purpose:** The purpose of this article is to regulate non-stormwater discharges to the Town stormwater runoff system and to set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this ordinance. Stormwater 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. (Effective June 8, 2023)

- B. **Authority:** The Town enacts these stormwater regulations incorporating prohibition on discharges into the storm drain system 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, though its promulgation of the General Permit for the discharge of stormwater from small municipal separate storm sewer systems 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 illicit discharge detection and elimination. (Effective June 8, 2023)

Sec. 25-3-2. Applicability

This ordinance shall apply to any discharge of stormwater or non-stormwater from any premises into the Town stormwater runoff system. (Effective June 8, 2023)

Sec. 25-3-3. Definitions

The definitions in Sec. 25-1-3 shall apply. (Effective June 8, 2023)

Sec. 25-3-4. General Prohibition

Except as allowed in this section, no person shall create, initiate, originate or maintain a non-stormwater discharge to the Town’s stormwater runoff system. Such non-stormwater discharges are prohibited notwithstanding the fact that the Town may have approved the connections, drains

or conveyances by which a person discharges unallowed non-stormwater discharges to the Town's stormwater runoff system. (Effective June 8, 2023)

Sec. 25-3-5. Allowed Non-Stormwater Discharges

The creation, initiation, origination and maintenance of the following non-stormwater discharges to the Town's stormwater runoff system are allowed:

- A. 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). (Effective June 8, 2023)
- B. 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. (Effective June 8, 2023)
- C. Discharges authorized by the enforcement authority as being necessary to protect public health and safety; and
- D. Dye testing, with authorization from the enforcement authority prior to the time of the test. (Effective June 8, 2023)

Sec. 25-3-6. Suspension of Access to the Town Stormwater Runoff

The enforcement authority may, without prior notice, physically suspend discharge access to the Town's stormwater runoff system when such suspension is necessary to stop an actual or threatened non-stormwater discharge to the Town's stormwater runoff system that presents or

may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the stormwater runoff system, or that may cause the Town to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-stormwater discharge to the stormwater runoff system. The enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the stormwater runoff system, or to minimize danger to persons, provided, however, that in taking such steps the enforcement authority may enter upon the premises that are the source of the actual or threatened non-stormwater discharge to the Town's stormwater runoff system only with the consent of the premises' owner, occupant or agent, except in an emergency when consent shall not be required. (Effective June 8, 2023)

Sec. 25-3-7. Monitoring of Discharges.

In order to determine compliance with this ordinance, the enforcement authority may enter upon and inspect premises subject to this ordinance at reasonable hours with the consent of the premises' owner, occupant or agent, to inspect the premises and connections thereon to the Town's stormwater runoff system; and to conduct monitoring, sampling and testing of the discharge to the Town's stormwater runoff system. (Effective June 8, 2023)

Sec. 25-3-8. 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.

- A. **Notice of Violation.** Whenever the enforcement authority believes that a person has violated this ordinance, the enforcement authority may order compliance with this ordinance 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:
1. The elimination of non-stormwater discharges to the stormwater runoff system, including, but not limited to disconnection of the premises from the stormwater runoff system within 60 days of identification of the source unless it is impractical to eliminate the source within 60 days, whereupon the person violating the ordinance shall inform the enforcement authority of the reason for the delay and develop an alternate expeditious schedule for elimination which must be reviewed and if acceptable, approved by the enforcement authority;
 2. Thee cessation of discharges, practices, or operations in violation of this ordinance;
 3. At the person's expense, the abatement or remediation in accordance with best management practices in DEP rules and regulations of non-stormwater discharges to the stormwater runoff system and the restoration of any affected property; and/or
 4. The payment of fines, of the enforcement authority's remediation costs and of the

enforcement authority's reasonable administrative costs and attorney's fees and costs, in accordance with 30-A M.R.S.A Sec 4452. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed. (Effective June 8, 2023)

- B. **Penalties/Fines/Injunctive Relief.** Any person who violates this ordinance 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 such violation continues shall constitute a separate violation. Moreover, any person who violates this ordinance also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorney's 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; this responsibility shall be in addition to other penalties, fines or injunctive relief imposed under this section. (Effective June 8, 2023)
- C. **Consent Agreement.** The enforcement authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this ordinance for the purposes of eliminating violations of this ordinance and of recovering fines, costs and fees without court action. (Effective June 8, 2023)
- D. **Appeal of Notice of Violation.** Any person receiving a notice of violation or suspension notice may appeal the determination of the Town to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the notice of violation. A suspension under Section 18-2-8(d) of this ordinance shall remain in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Zoning Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure. (Effective June 8, 2023)
- E. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, on the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the enforcement authority's decision, then the enforcement authority may file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure. (Effective June 8, 2023)
- F. **Ultimate Responsibility of Discharger.** The standards set forth in this ordinance are minimum standards. Compliance with this ordinance does not ensure that a person will not have contaminated, polluted or unlawfully discharged pollutants into waters of the U.S. This ordinance shall not create liability on the part of the Town, or any officer, agent or employee thereof for any damages that result from a person's reliance on or

compliance with this ordinance or any administrative decision lawfully made under this ordinance. (Effective June 8, 2023)

Sec. 25-3-9. Severability.

If any part or parts, section or subsection, sentence, clause or phrase of this ordinance or the rules and regulations promulgated thereunder is for any reason declared to be unconstitutional or invalid, such declaration shall not affect the validity or constitutionality of the remaining portions of this ordinance or the rules and regulations promulgated thereunder. (Effective June 8, 2023)

Article IV. Erosion and Sedimentation Control

Sec. 25-4-1. Purpose and Authority

- A. **Purpose:** The purpose of this article 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. (Effective June 8, 2023)
- 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 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. (Effective June 8, 2023)

Sec. 25-4-2. Definitions

The definitions in Sec. 25-1-3 shall apply. (Effective June 8, 2023)

Sec. 25-4-3. Applicability

This ordinance applies to construction activity commencing after June 7, 2023 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. (Effective June 8, 2023)

Sec. 25-4-4. Procedure

- A. **Erosion And Sedimentation Control Plan Required.** No person shall commence construction activity subject to the Applicability Section of this ordinance without first preparing and obtaining approval for an Erosion and Sedimentation Control Plan in accordance with this ordinance. (Effective June 8, 2023)

- B. **Submission:** When construction activity is subject to subdivision, site plan, or other review which includes a review for erosion and sediment control, an erosion and sedimentation control plan meeting these requirements shall be submitted concurrently with that review. When a concurrent review is not otherwise required, an erosion and sedimentation control plan shall be submitted to the enforcement authority. (Effective June 8, 2023)

- C. **Review.** The erosion and sedimentation control plan shall be reviewed by the enforcement authority or incorporated into the municipal review of a subdivision, site plan or other review, in accordance with subsection B above. The enforcement authority will review the erosion and sedimentation control plan for compliance with the standards of Section 5, Section 6 and Appendix 1 and may provide comments where standards have not been met. Once an applicant has submitted an erosion and sedimentation control plan that the enforcement authority finds is in compliance with the standards of Section 5, Section 6 and Appendix 1, the enforcement authority shall provide written confirmation to the applicant. (Effective June 8, 2023)

- D. **Pre-Construction Meeting.** At least ten (10) days prior to commencing construction activity, the applicant shall request a pre-construction meeting with the enforcement authority. At a minimum, attendance at the meeting is required by the enforcement authority and the applicant or their representative in charge of construction. Meeting minutes must be prepared by the municipal representative and distributed to all attendees and the municipal planner. (Effective June 8, 2023)

- E. **Compliance with Requirements:** The applicant shall implement and maintain the erosion and sedimentation control plan as approved throughout all phases of construction. (Effective June 8, 2023)

- F. **Notice of Permanent Stabilization.** The applicant shall provide notice to the enforcement authority when permanent stabilization of the site has been achieved to allow for final inspection per Section 25-4-7 of this ordinance. (Effective June 8, 2023)

Sec. 25-4-5. Submission Requirements

- A. **Project Contacts and Qualifications.** The applicant shall provide contact information (i.e. name, company if applicable, phone number, physical address and email address) as

described below:

1. Applicant,
2. Qualified erosion and sedimentation control professional, and
3. Contractor (if applicable). (Effective June 8, 2023)

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

1. Property boundaries;
2. Locations of protected natural resources;
3. Locations of all potential sources of authorized and unauthorized non-stormwater discharges;
4. Locations of all erosion and sedimentation control BMPs to be used;
5. Topography for site pre- and post-construction conditions as 2-foot elevation contours;
6. Details for all erosion and sedimentation control BMPs to be used;
7. Details and timing associated with phasing of disturbed areas at the site, and phasing of installation and stabilization of BMPs (if applicable);
8. Erosion and sedimentation control notes with construction standards;
9. A narrative description of the time, inspections and BMPs to be used;
10. Example inspection form;
11. Dewatering plan if necessary; and
12. Locations of areas not to be disturbed by construction including trees, vegetation and areas intended for infiltration.

The erosion and sedimentation control plan shall also include documentation of any variances or release provided by Maine Department of Environmental Protection for Chapter 500 performance standards. (Effective June 8, 2023)

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

The enforcement authority shall determine if the following standards are met, in accordance with Appendix 1.

- A. Qualified Erosion and Sedimentation Control Professional.** The erosion and sedimentation control plan has been prepared by a qualified erosion and sedimentation control professional. (Effective June 8, 2023)
- B. Timing of Installation and Maintenance.** The erosion and sedimentation control plan requires that erosion and sedimentation control measures shall be in place before construction begins, additional measures phased in if phasing is used and shall be maintained until permanent stabilization is achieved. (Effective June 8, 2023)

- C. **Inspection.** The erosion and sedimentation control plan provides for inspection of the site to confirm that erosion and sedimentation control measures are in place and functioning. The erosion and sedimentation control plan also provides for corrective action if erosion is occurring or there is a discharge of sediment or turbid water from the construction site. (Effective June 8, 2023)
- D. **Spill Prevention.** The erosion and sedimentation control plan includes measures that prevent construction site pollution and spills from entering stormwater. (Effective June 8, 2023)
- E. **Groundwater Protection.** The erosion and sedimentation control plan restricts the storage or handling of liquid petroleum products and other hazardous materials that may drain to an “infiltration area”. (Effective June 8, 2023)
- F. **Fugitive sediment and dust.** The erosion and sedimentation control plan includes provisions to prevent erosion of soils, tracking or migration of soils into the right of way, discharge of sediment from the site, and fugitive dust emissions during or after construction. (Effective June 8, 2023)
- G. **Debris.** The erosion and sedimentation control plan includes provisions to minimize the exposure of construction materials and waste to stormwater and runoff and prevent them from migrating off-site. (Effective June 8, 2023)
- H. **Excavation dewatering.** The erosion and sedimentation control plan must include provisions to remove or properly disperse of the collected water in a manner that avoids sediment from entering stormwater. (Effective June 8, 2023)
- I. **Non-stormwater discharges.** The erosion and sedimentation control plan minimizes non-stormwater discharges and, if non-stormwater discharges are allowed, they are identified in the erosion and sedimentation control plan with appropriate pollution measures for discharge. (Effective June 8, 2023)

Sec. 25-4-7. Inspection

The enforcement authority will inspect the site as follows at a minimum.

- A. Once before any disturbance begins and after all sedimentation control BMPs specified in the erosion and sedimentation control plan are in place;
- B. Three times during the active earth moving phase of construction; and
- C. Once at project completion to ensure the site has reached permanent stabilization and all temporary erosion and sedimentation controls have been removed.

Additional inspection requirements to be completed by the applicant during construction are contained in Appendix 1. (Effective June 8, 2023)

Sec. 25-4-8. 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 erosion and sedimentation control plan. Whenever the enforcement authority believes that a person has violated this ordinance or the erosion and sedimentation control plan, the enforcement authority may enforce this ordinance in accordance with 30-A M.R.S § 4452 and this section. (Effective June 8, 2023)

- A. **Right of Entry.** In order to determine compliance with this ordinance and with the erosion and sedimentation control plan, the municipality enforcement authority may enter upon property at reasonable hours with the consent of the owner or contractor. (Effective June 8, 2023)
- B. **Notice of Violation.** Whenever the enforcement authority finds that a person has violated this ordinance or the erosion and sedimentation control plan, the enforcement authority may order compliance with this ordinance or with the erosion and sedimentation control 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:
1. The abatement of violations, and the cessation of practices, or operations in violation this ordinance or the erosion and sedimentation control plan;
 2. At the person's expense, compliance with or repair of the BMPs required as a condition of approval of the erosion and sedimentation control plan, and/or the restoration of any affected property; and/or
 3. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation, compliance with BMPs, repair of BMPs, 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. (Effective June 8, 2023)
- C. **Stop Work Notice.** The enforcement authority may issue a stop work notice whenever:
1. A person has not acted on a notice of violation issued pursuant to this ordinance within the time set forth in the notice; and/or
 2. A person subject to the applicability section of this ordinance undertakes construction activity without first submitting and obtaining approval for an erosion and sedimentation control plan. (Effective June 8, 2023)

The enforcement authority will attempt to deliver the stop work notice to the applicant, the person performing the construction activity, or the owner of the

property, as appropriate, by any means reasonable calculated to effectuate delivery. Once the stop work notice has been delivered, no further construction activity may proceed other than as is necessary to correct the non-compliance. Construction activity may resume only when the enforcement authority provides written notice. (Effective June 8, 2023)

- D. **Penalties/Fines/Injunctive Relief.** Any person who violates this ordinance or the erosion and sedimentation control plan shall be subject to fines, penalties, and/or orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S. § 4452. Each day that such violation continues shall constitute a separate violation. Moreover, any person who violates this ordinance or the erosion and sedimentation control 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 municipality 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 erosion and sedimentation control plan; this responsibility shall be in addition to any penalties, fines and/or injunctive relief imposed under this section. (Effective June 8, 2023)
- E. **Consent Agreement.** The enforcement authority or its designee may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this ordinance or of the erosion and sedimentation control plan for the purposes of eliminating violations of this ordinance or of the erosion and sedimentation control plan and of recovering fines, costs and fees without court action. (Effective June 8, 2023)
- F. **Appeal of Notice of Violation.** Any person receiving a notice of violation or stop work notice may appeal the determination of the enforcement authority to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the enforcement authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure. (Effective June 8, 2023)
- G. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or modifying the enforcement authority's decision, then the enforcement authority may recommend to the municipal officers that the municipality's attorney file and enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure. (Effective June 8, 2023)

Sec. 25-4-9. Severability and Conflicts

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this ordinance.
(Effective June 8, 2023)

Sec. 25-4-10. Waivers

Where the Planning Board finds that there are special circumstances of a particular plan that make a particular submission requirement or standard inapplicable, a waiver may be granted, provided that such waiver will not have the effect of nullifying the intent and purpose of this ordinance. The applicant shall submit in writing, the reason for the requested waiver. In granting waivers or modification, the Planning Board may require such conditions that will substantially secure the objectives of the standards so waived or modified. (Effective June 8, 2023)

Chapter 25

Appendix 1 – Erosion and Sedimentation 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 downgraded 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.

3. Stabilized construction entrance: Prior to construction, properly install a stabilized construction entrance (SCE) at all points of egress from the site. The SCE is typically a stabilized pad of aggregate underlain by a geotextile filter fabric, or an acceptable engineered track out control mat used to prevent traffic from tacking material away from the site onto public ROWs. Maintain the SCE until all disturbed areas are stabilized. If an alternate SCE has been approved by Maine DEP, provide proof of this with the plan or application.
4. Temporary stabilization:
 - a. Within 7 days of the cessation of construction activities in an area that will not be worked for more than 7 days, stabilize any exposed soil with mulch, or other non-erodible cover.
 - b. Stabilize areas within 75 feet of a wetland or waterbody within 48 hours of the initial disturbance of the soil or prior to any storm event, whichever comes first.
5. Removal of temporary measures: Remove any temporary control measures, such as silt fence, within 30 days after permanent stabilization is attained. Remove any accumulated sediments and stabilize.
6. Permanent Stabilization: If the area will not be worked for more than one year or has been brought to final grade, then permanently stabilize the area within 7 days by planting vegetation, seeding, sod, or through the use of permanent mulch, or riprap, or road sub-base. If using vegetation for stabilization, select the proper vegetation for the light, moisture, and soil conditions; amend areas of disturbed subsoils with topsoil, compost, or fertilizers; protect seeded areas with mulch or, if necessary, erosion control blankets; and schedule sodding, planting and seeding so to avoid die-off from summer drought and fall frosts. Newly seeded or sodded areas must be protected from vehicle traffic, excessive pedestrian traffic, and concentrated runoff until the vegetation is well-established with 90% cover by healthy vegetation. If necessary, areas must be reworked and restabilized if germination is sparse, plant coverage is spotty, or topsoil erosion is evident. Permanent stabilization definitions are as follows:
 - a. Seeded areas. For seeded areas, permanent stabilization means a 90% cover of the disturbed area with mature, healthy plants with no evidence of washing or rilling of the topsoil.
 - b. Sodded areas. For sodded areas, permanent stabilization means the complete binding of the sod roots into the underlying soil with no slumping of the sod or die-off.
 - c. Permanent mulch. For mulched areas, permanent mulching means total coverage of the exposed area with an approved mulch material. Erosion control mix may be

used as mulch for permanent stabilization according to the approved application rates and limitations.

- d. Riprap. For areas stabilized with riprap, permanent stabilization means that slopes stabilized with riprap have an appropriate backing of a well-graded gravel or approved geotextile to prevent soil movement from behind the riprap. Stone must be sized appropriately. It is recommended that angular stone be used.
 - e. Paved areas. For paved areas, permanent stabilization means the placement of the compacted gravel subbase is completed, provided it is free of fine materials that may runoff with a rain event.
 - f. Ditches, channels, and swales. For open channels, permanent stabilization means the channel is stabilized with 90% cover of healthy vegetation, with a well-graded riprap lining, turf reinforcement mat, or with another non-erosive lining such as concrete or asphalt pavement. There must be no evidence of slumping of the channel lining, undercutting of the channel banks, or down-cutting of the channel.
7. Winter construction: “Winter construction” is construction activity performed during the period from November 1 through April 15. If disturbed areas are not stabilized with permanent measures by November 1 or new soil disturbance occurs after November 1, but before April 15, then these areas must be protected and runoff from them must be controlled by additional measures and restrictions.
- a. Site stabilization: For winter stabilization, hay mulch is applied at twice the standard temporary stabilization rate. At the end of each construction day, areas that have been brought to final grade must be stabilized. Mulch may not be spread on top of snow.
 - b. Sediment barriers: All areas within 75 feet of a protected natural resource must be protected with a double row of sediment barriers.
 - c. Ditch: All vegetated ditch lines that have not been stabilized by November 1, or will be worked during the winter construction period, must be stabilized with an appropriate stone lining backed by an appropriate gravel bed or geotextile unless specifically released from this standard by the Maine DEP. If release from Maine DEP has been granted, provide proof of this with the Plan or application.
 - d. Slopes: Mulch netting must be used to anchor mulch on all slopes greater than 8% unless erosion control blankets or erosion control mix is being used on these slopes.
8. Stormwater channels: Each channel shall be constructed in sections so that the section’s grading, shaping, and installation of the permanent lining can be completed the same day. If a channel’s final grading or lining installation must be delayed, then diversion berms must be used to divert stormwater away from the channel, properly-spaced check dams must be installed in the channel to slow the water velocity, and a temporary lining installed along the channel to prevent scouring.
9. Sediment basins: Sediment basins that will be used to control sediment during construction activities must be designed to provide storage for either the calculated runoff from a 2-year, 24-hour storm or provide for 3,600 cubic feet of capacity per acre draining to the basin. Outlet structures must discharge water from the surface of the basin

whenever possible. Erosion controls and velocity dissipation devices must be used if the discharging waters are likely to create erosion. Accumulated sediment must be removed as needed from the basin to maintain at least ½ of the design capacity of the basin. Clearly visible staking must be installed with marks showing the elevation of ½ design capacity for easier inspection.

The use of cationic treatment chemicals, such as polymers, flocculants, or other chemicals that contain an overall positive charge designed to deduce turbidity in stormwater may only be used if proof of approval by Maine Department of Environmental Protection is provided.

10. Phasing Plan requirements: No phasing plan is required if contractor will limit disturbance to a 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.
 - 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 s 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 of the site draining to an infiltration area. An “infiltration area” is any area of the site that by design or as a result of soils, topography and other relevant factors accumulates runoff that infiltrates into the soil. Dikes, berms, sumps, and other forms of secondary containment that prevent discharge to groundwater may be used to isolate portions of the site for the purposes of storage and handling of these materials.
3. Fugitive sediment and dust: Actions must be taken to ensure that activities do not result in noticeable erosion of soils or fugitive dust emissions during or after construction. Oil may not be used for dust control, but other water additives may be considered as needed. A stabilized construction entrance (SCE) shall be included to minimize tracking of mud and sediment. If off-site tracking occurs, public roads shall be swept immediately and no less than once a week and prior to significant storm events. Operations during dry months that experience fugitive dust problems shall wet down unpaved access roads once a week, or more frequently as needed with a water additive to suppress fugitive sediment and dust.
4. Debris and other materials: Minimize the exposure of construction debris building and landscaping materials, trash, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials to precipitation and stormwater runoff. These materials must be prevented from becoming a pollutant source. Sediment generated by concrete or mortar mixing, brick cutting & saw cutting activities must be contained (e.g.: sausage boom, straw bales, etc.) and cleaned up using dry methods (i.e.: sweeping or vacuuming) to prevent it from entering drainage structures or water resources. These activities shall be done on vegetated areas whenever possible and away from drainage structures and water resources.
5. Excavation dewatering: Excavation dewatering is the removal of water from trenches, foundations, coffer dams, ponds, and other areas within the construction area that retain water after excavation. In most cases the collected water is heavily silted and hinders correct and safe construction practices. The collected water removed from the ponded area, either through gravity or pumping, must be spread through natural wooded buffers or otherwise treated to collect the maximum amount of sediment possible, like a

cofferdam sedimentation or sediment filter bag. Avoid allowing the water to flow over disturbed areas of the site. If the Maine DEP has approved equivalent measures, provide proof of approval. Note that discharge of excavation dewater fluids from the site must be visually clear (no visible suspended or settleable solids).

6. Washout from concrete, stucco, paint, curing compounds or other construction materials: If washout/cleanout is to be completed onsite, a designated area(s) shall be established and marked on the erosion and sedimentation control plan. This area shall be a minimum of 50 feet from all drainage structures, ditches, waterbodies, and resource areas, as well as property boundaries. The area shall not have an outlet to discharge wastes or flows. No detergents shall be used or vehicles washed in this location. A leak-proof pit or container shall be established in the washout area(s), to which washing shall be directed. This area shall be used for washout containment and dewatering by evaporation only. The pit shall not allow infiltration to occur. To prevent clean water from entering the pit, the washout area shall be covered during precipitation events. Inspections of the pit shall be conducted daily to ensure no leaks are present and no discharge is occurring.
7. Authorized non-stormwater discharges: Identify and prevent contamination by non-stormwater discharges. Where allowed non-stormwater discharges exist, they must be identified, and steps shall be taken to ensure the implementation of appropriate pollution prevention measures for the non-stormwater component(s) of the discharge. Authorized non-stormwater discharges are:
 - a. Discharges from firefighting activity
 - b. Hydrant Discharges from firefighting activity flushing if dechlorinated to 0.05 mg/l or less;
 - c. Vehicle wash water if detergents are not used and washing is limited to the exterior of vehicles (engine, undercarriage and transmission washing is prohibited);
 - d. Dust control runoff if it does not cause erosion;
 - e. Routine external building washdown, not including surface paint removal, that does not involve detergents;
 - f. 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;
 - g. Uncontaminated air conditioning or compressor condensate;
 - h. Uncontaminated groundwater or spring water;
 - i. Foundation or footer drain-water where flows are not contaminated;
 - j. Uncontaminated excavation dewatering per item 5 Excavation Dewatering;
 - k. Potable water including waterline flushings; and
 - l. Landscape irrigation
8. Unauthorized non-stormwater discharges: The following discharges are prohibited:
 - a. Wastewater from the washout or cleanout of concrete, stucco, paint, form release oils, curing compounds or other construction materials;

- b. Fuels, oils or other pollutants used in vehicle and equipment operation and maintenance;
- c. Soaps, solvents, or detergents used in vehicle and equipment washing; and
- d. Toxic or hazardous substances from a spill or other release.