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Draft Technical Amendments
Subdivision Ordinance, Zoning Ordinance, Conservation Ordinance

Subdivision Ordinance

Sec. 16-2-6. Post Approval Requirements.

(c) Performance Guarantee.

2. Amount. The Performance Guarantee amount shall be based on a detailed estimate prepared by the applicant, broken down by unit cost and quantity, and reviewed by the Town Engineer. Costs included in the estimate shall include, but not be limited to, completion of all roads, sewer, water, drainage, open space, landscaping, lighting and other required improvements shown on the approved plans. The cost estimate shall also include a contingency amount equal to ten (10) percent of the Performance Guarantee estimate for performance guarantees in the amount of five hundred thousand dollars (\$500,000) or less, and a five (5) percent contingency amount for performance guarantees in an amount exceeding five hundred thousand (\$500,000) dollars.

(d) Inspection Fee. In addition to the Performance Guarantee, the applicant shall pay an inspection fee. When the Performance Guarantee equals five hundred thousand dollars (\$500,000) or less, the inspection fee amount shall be five percent (5%) of the amount of the total performance guarantee, except that the minimum inspection fee amount shall be one-thousand five hundred dollars (\$1,500). When the Performance Guarantee exceeds five hundred thousand dollars (\$500,000), the inspection fee amount shall be two and one-half percent (2.5%) of the cost of the total Performance Guarantee. The fee shall be payable ~~by certified check~~ to the Town of Cape Elizabeth. The inspection fee shall be held by the Town to defray the Town's cost for inspection by the Town Engineer and Town staff. Any funds not disbursed for this purpose shall be returned to the applicant upon release of the Performance Guarantee. If the costs for inspection exceed the amount of the inspection fee, the applicant shall pay an additional fee to the Town, which shall be recommended by the Town Engineer and approved by the Town Manager based on the status of the development.

(f) Record drawings. Upon completion of construction, the subdivider or, when a private road is built, the owner shall present to the Town one (1) set of reproducible mylar, one (1) hard copy, and one (1) electronic file of record drawings indicating facilities as constructed. The record drawings shall be based on the field logs of the construction monitor and of a quality acceptable to the Town. The record drawings shall include an engineer's seal, distances, angles and bearings for complete and accurate determinations of locations on the ground, right-of-way monuments and as set, as-built profiles of the centerlines of traveled ways, ledge elevations encountered during construction and information on the locations, size, materials and elevations of storm drains, sanitary sewers and other underground utility lines, including but not limited to water, electric, telephone, natural gas, cable television.

1
2 | **Chapter 18**
3 | **Conservation Ordinance**

4 | **Article II and IV repealed in entirety and readopted as Chapter 25, Stormwater**

5 |
6 | **Article II. ~~Storm Water and Non-Storm Water Control Ordinance~~**
7 | **Reserved.**

8 |
9 | **Article IV. ~~Post-Construction Stormwater Management Ordinance~~**
10 | **Reserved.**

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4 **Zoning Ordinance**

5
6 **SEC. 19-1-3. DEFINITIONS**

7 For the purposes of this Ordinance, the following terms, words, and phrases shall have the
8 meanings given herein. All words not defined herein shall carry their customary and usual
9 meanings. Words used in the present tense shall include the future tense. Words used in the
10 singular shall include the plural. Where so indicated by the text, these definitions also include
11 substantive regulations. Where reference is made to Town or State laws, ordinances, or
12 regulations, each reference to a particular law, regulation, or section shall include all
13 amendments and successor sections.

14 **Accessory Building or Structure:** A detached, subordinate building, the use of which is clearly
15 incidental and related to that of the principal building or use of the land, and which is located on
16 the same lot as the principal building or use. Any accessory building or structure that has
17 plumbing shall not be used for overnight accommodations. For residential uses, accessory
18 buildings and structures shall include, but not be limited to, the following:

- 19
20 1. garage
21 2. gazebo
22 3. greenhouse
23 4. home workshop, as defined below
24 5. recreational facilities for the use of occupants of the residence, such as a
25 swimming pool or a tennis court, and related structures
26 6. Agricultural or aquacultural buildings or other structures **(Effective June 10,**
27 **2010)**
28 7. wharf, dock, landing, or boathouse
29

30 **Dwelling Unit:** A room or group of rooms designed and equipped exclusively for use as
31 permanent, seasonal, or temporary living quarters for only one (1) family at a time, and
32 containing cooking, sleeping, and toilet facilities. An area configured for food preparation may
33 be considered cooking facilities even if appliances are not present. The term shall include mobile
34 homes and rental units that contain cooking, sleeping and toilet facilities regardless of the time-
35 period rented. Recreational vehicles are not residential dwelling units.
36

37 **Moderate Income:** Family income which is between eighty percent (80%) and one hundred
38 twentyfifty percent (150%)-(120%) of median family income for the Portland Metropolitan
39 Statistical Area as established by the State Planning Office or the Greater Portland Council of
40 Governments.
41

42 **Structure:** Anything built for the support, shelter or enclosure of persons, animals, goods or
43 property of any kind, together with anything constructed or erected with a fixed location on or in
44 the ground, exclusive of fences, stone walls, retaining walls, and roof overhangs not exceeding
45 two (2) feet from the vertical face of the structure siding. The term includes structures
46 temporarily or permanently located, such as decks and satellite dishes.
47

1
2
3 **SEC. 19-4-3. NONCONFORMANCE WITH ALL ZONING DISTRICTS**
4 **EXCEPT THE OUTSIDE OF SHORELAND AND RESOURCE**
5 **PROTECTION DISTRICTS**
6

7 The following provisions shall govern the use and modification of nonconforming lots,
8 structures, and uses in all areas of the Town that do not comply with Zoning District
9 requirements are not located within a, except for the Shoreland Performance Overlay District or
10 a Resource Protection District. Nonconformities within the Shoreland Performance Overlay
11 District shall be governed by the provisions of Sec. 19-4-4, Nonconformance Within the
12 Shoreland Protection Overlay District, and nonconformities in the Resource Protection Districts
13 (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F) shall be governed by the provisions
14 of Sec. 19-4-5, Nonconformance Within the Resource Protection Districts.
15

16 **SEC. 19-4-4. NONCONFORMANCE WITHIN THE SHORELAND**
17 **PERFORMANCE OVERLAY DISTRICT**
18



19 The following provisions shall govern nonconformance with provisions of within the Shoreland
20 Performance Overlay District. Nonconforming conditions in existence before the effective date
21 of this district, or amendments thereto, shall be allowed to continue, subject to the requirements
22 set forth in this section.
23

24 **A. Nonconforming Lots**
25

26 The following provisions shall govern the development of lots that are nonconforming because
27 they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage,
28 or similar requirement of the district within which they are located.
29
30

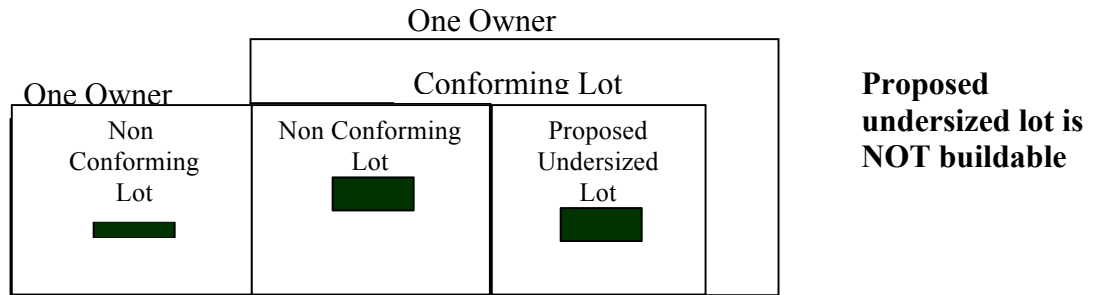
31 **1. Vacant Nonconforming Lots**
32

- 33 **a. Buildability.** Vacant nonconforming lots may be built upon in conformance with the
34 provisions of the district in which they are located even though the lots do not meet
35 the minimum lot area, net lot area per dwelling unit, street frontage, or similar
36 requirements as long as the requirements of the chart below are met. **(Effective**
37 **August 11, 1999 and revised effective July 4, 2001)**
38
39
40

One Owner	One Owner	One Owner
Non Conforming Lot	Non Conforming Lot	Non Conforming Lot
		

**Individual Lots
May Be
built On**

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b. Space and Bulk Standards. The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: **(Effective August 11, 1999)**

	RA District	RC District	TC District
Front setback for principal structure			
- local roads	25'	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
- other roads	As required by Sec. 19-6-1.E	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
Side setback	25'	10'	As required by Sec. 19-6-4.D
Rear setback	20'	15'	As required by Sec. 19-6-4.D
Minimum lot area - with public sewerage - with on-site sewage disposal	10,000 sq.ft. 20,000 sq.ft.*	10,000 sq.ft. 20,000 sq.ft.*	As required by Sec. 19-6-4.D
Maximum building coverage - with public sewerage - with on-site sewage disposal	25% 20%	25% 20%	NA NA

21
22
23
24

*Or otherwise meet the requirements of Chapter 15, Sewer Ordinance, the State Subsurface Wastewater Disposal Rules and have received a waiver of the state minimum lot size requirement pursuant to 12 M.S.R.A. Section 4807-B. The

1 issuance of a minimum lot size waiver by the Department of Human Services in
2 connection with a lot created prior to January 1, 1970, shall be deemed valid.
3 Provided however, in no event shall a building permit issue for a lot which
4 contains less than 10,000 sq. ft. **(Effective July 4, 2001)**

5
6 c. Variance. If a principal structure cannot be sited on a lot in conformance with these
7 setback requirements, the owner may seek a variance from the setback requirements
8 from the Zoning Board of Appeals (see Sec. 19-5-2.B, Variances).
9

10 **B. Nonconforming Buildings and Structures**

11 **3. Reconstruction or Replacement**

12
13
14 Any nonconforming structure which is located closer than the required setback from the
15 property line and which is removed, or damaged or destroyed may be reconstructed or
16 replaced provided that a permit is obtained within one (1) year of the date of said
17 damage, destruction, or removal, and the building or structure will be located within the
18 original building footprint, will not increase the number of square feet of floor area, and
19 will not create or expand any nonconformities. Reconstruction of a nonconforming
20 structure not in compliance with these limitations may be permitted provided that such
21 reconstruction is in compliance with the setback requirement to the greatest practical
22 extent as determined by the Zoning Board of Appeals in accordance with the purposes of
23 this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase
24 its nonconformity.
25

26 In determining whether the building reconstruction or replacement meets the setback to
27 the greatest practical extent, the Zoning Board of Appeals shall consider the physical
28 condition and type of foundation present, if any, in addition to the criteria in Sec. 19-4-
29 3.B.23, Relocation.
30

31 **4. Enlargement**

32
33 Any nonconforming structure which is located closer than the required setback from the
34 property line may be enlarged as long as the area being enlarged meets the setback
35 requirements, and will not create or expand any nonconformities. Enlargement of a
36 nonconforming structure not in compliance with these limitations may be permitted
37 provided that such enlargement is in compliance with the setback requirement to the
38 greatest practical extent as determined by the Zoning Board of Appeals in accordance
39 with the purposes of this Ordinance. In no case shall a structure be enlarged so as to
40 increase its nonconformity.
41

42 In determining whether the building reconstruction or replacement meets the setback to
43 the greatest practical extent, the Zoning Board of Appeals shall consider the physical
44 condition and type of foundation present, if any, in addition to the criteria in Sec. 19-4-
45 3.B.2, Relocation.
46

1 **SEC. 19-6-1. RESIDENCE A DISTRICT (RA)**

2
3 **F. Site Plan Review**

4
5 The following uses and activities shall be subject to site plan review by the Planning Board,
6 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
7 plumbing permit, or other permit:
8

- 9 1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex
10 housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective
11 November 14, 2015)
- 12 2. Nonresidential uses listed in Sec. 19-6-1.B.3, except home day cares, wind energy
13 systems, short term rentals and day camps, which shall not require site plan review
14 (Effective August 11, 1999)
- 15 3. Nonresidential uses listed Sec. 19-6-1.C.2
- 16 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review
17

18 **SEC. 19-6-2. RESIDENCE B DISTRICT (RB)**

19
20 **F. Site Plan Review**

21
22 The following uses and activities shall be subject to site plan review by the Planning Board,
23 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
24 plumbing permit, or other permit:
25

- 26 1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex
27 housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective
28 November 14, 2015)
- 29 2. Nonresidential uses listed in Sec. 19-6-2.B.3, except home day cares, wind energy
30 systems, short term rentals and day camps, which shall not require site plan review
31 (Effective August 11, 1999)
- 32 3. Nonresidential uses listed Sec. 19-6-2.C.2
- 33 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review
34

35 **SEC. 19-6-3. RESIDENCE C DISTRICT (RC)**

36
37 **F. Site Plan Review**

38
39 The following uses and activities shall be subject to site plan review by the Planning Board,
40 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
41 plumbing permit, or other permit:
42

- 43 1. Multiplex housing, eldercare facilities, and boarding care facilities. As part of Site Plan
44 Review for multiplex housing, Sec. 19-7-2 (E), Multiplex Housing Standards shall also
45 apply. (Effective November 14, 2015)

2. Nonresidential uses listed in Sec. 19-6-3.B.3, except home day cares, wind energy systems, short term rentals and day camps, which shall not require site plan review
3. Nonresidential uses listed in Sec. 19-6-3.C.2
4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review

SEC. 19-7-9. PRIVATE ACCESS PROVISIONS

D. Private Accessway Procedures

5. *Post Approval Procedures*

- a. Inspection: The applicant shall be responsible for demonstrating that the construction of the private accessway meets the standards of this section. The private accessway shall be inspected under the direction of a registered professional engineer. Prior to the issuance of any building permits for the lot served by a private accessway, (1) the engineer shall certify to the Code Enforcement Officer that the private accessway has been constructed in accordance with this section or (2) a performance guarantee shall be posted in compliance with the provisions of Sec. 16-2-6 (c) of the Subdivision Ordinance-

ARTICLE IX. SITE PLAN REVIEW

SEC. 19-9-1. PURPOSE

The site plan review provisions set forth in this section are intended to protect the public health and safety, promote the general welfare of the community, preserve the environment, and minimize improvements that must be paid for by the Town's taxpayers by assuring that nonresidential, multiplex residential, eldercare, and similar facilities are designed and developed in a manner which assures that adequate provisions are made for: traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosion, and sedimentation; protection of the groundwater; protection of the environment; minimizing the adverse impact on adjacent properties; and fitting the project harmoniously into the fabric of the community.

SEC. 19-9-2. APPLICABILITY

A. Activities Requiring Site Plan Review

The owner of a parcel of land shall obtain site plan approval prior to undertaking any alteration or improvement of the site including grubbing or grading, obtaining a building or plumbing permit for the activities, or commencing any of the following activities on the parcel:

1. The construction of any nonresidential building or building addition
2. Any nonresidential expansion or change in use except that changes of use within the Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan

1 Review and uses within the Business A District shall be governed by the provisions of
2 Sec. 19-6-5. F. Site Plan Review. **(Effective June 10, 2010)**

- 3
4 3. Multiplex housing and eldercare facilities
5
6 4. Any other activity or use requiring Planning Board review in the Zoning Ordinance
7 5. New construction involving more than ten thousand (10,000) square feet of impervious
8 surface, paving, clearing, or vegetative alteration, or any combination thereof. (The
9 Planning Board shall review the proposal for control of stormwater runoff under the
10 terms of Chapter 18, Article II, Stormwater Control Ordinance.)
11
12

13 **B. Activities Not Requiring Site Plan Review**

14
15 The following activities shall **not** require site plan approval (certain of these activities may,
16 however, require the owner to obtain a building permit, plumbing permit, or other State and local
17 approvals):
18

- 19 1. The construction, alteration or enlargement of a single family or two-family dwelling
20 unit, including accessory buildings and structures, except as required in the Town Center
21 Core Subdistrict. **(Effective June 10, 2010)**
22
23 2. The placement of manufactured housing or mobile home on individual lots
24
25 3. Agricultural buildings as follows: **(Effective June 10, 2010)**
26
27 a. Any temporary agricultural building, where temporary shall mean that the
28 structure remains in place no more than 3 months in any 12 month period.
29
30 b. If sales shall be conducted from the building, the structure must be a
31 temporary structure and sales shall not be conducted from the building for
32 more than 3 months in any 12 month period.
33
34 c. Any barn, greenhouse, or storage shed with a building footprint that does
35 not exceed 2,000 sq. ft. in size.
36
37 d. Any structure that shall provide housing, other than a single family home,
38 shall require Site Plan Review under Sec. 19-2-2(A)(4) above.
39
40 e. Any structure which does not comply with subparagraphs a, b, and c
41 above shall require Site Plan Review.
42
43 4. Temporary structures such as construction trailers or equipment storage sheds
44

45 **SEC. 19-9-3. REVIEW AND APPROVAL AUTHORITY**

1 The Planning Board is authorized to review and act on all site plans for development requiring
2 site plan review as defined above. In each instance where the Planning Board is required to
3 review the site plan for a proposed use, it shall approve, deny, or conditionally approve the
4 application based on its compliance with the standards in Sec. 19-9-5, Approval Standards,
5 which action shall be binding upon the applicant. Where a proposed use is subject to approval of
6 the Zoning Board of Appeals, such approval shall be obtained before the Planning Board
7 considers the site plan for the proposed use.
8

9 **SEC. 19-9-4. REVIEW PROCEDURES**

10 The Planning Board shall use the following procedures in reviewing applications for site plan
11 review.
12

13 **A. Workshop**

14 Prior to submitting a formal application, the applicant shall schedule a preapplication workshop
15 with the Planning Board. The preapplication workshop shall be informal and informational in
16 nature. There shall be no fee for a preapplication review, and such review shall not cause the
17 plan to be a pending application. No decision on the substance of the plan shall be made at the
18 preapplication workshop. The applicant is encouraged to meet informally with the Town Planner
19 prior to the workshop.
20
21

22 **1. Purpose**

23 The purposes of the preapplication workshop are to:
24

- 25 a. Allow the Planning Board to understand the nature of the proposed use and the
26 issues involved in the proposal
- 27 b. Allow the applicant to understand the development review process and required
28 submissions
- 29 c. Identify issues that need to be addressed in future submissions
30
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34 **2. Information Required**

35 There are no formal submission requirements for a pre-application workshop. However,
36 the applicant should be prepared to discuss the following with the Planning Board:
37

- 38 a. The proposed site, including its location, size, and general characteristics
39
- 40 b. The natural characteristics of the site that may limit its use and development
41
- 42 c. The nature of the proposed use and potential development, including a conceptual
43 site plan
44
45
46

- d. Any issues or questions about existing municipal regulations and their applicability to the project
- e. Any requests for waivers from the submission requirements

3. ***Planning Board Workshop***

The Planning Board workshop shall be informational and shall not result in any formal action. The Planning Board shall identify any issues or constraints which need to be addressed in the formal site plan application.

B. **Application Review Procedures**

- 1. **Completeness.** After an application has been submitted with the requisite fees, including establishment of a Review Escrow Account under the terms of Sec. 16-2-1 (c) of the Subdivision Ordinance, and after any required Zoning Board of Appeals approval has been obtained, the Town Planner shall accept and date an application for Planning Board review~~issue a dated receipt to the applicant~~. In consultation with the Planning Board Chair or Vice Chair, the Town Planner shall review the site plan application and accompanying materials to determine whether the application is complete or incomplete. If the application is preliminarily determined to be incomplete, the Town Planner shall notify the applicant in writing and shall list in the written determination the materials that must be submitted in order to make the application complete. If the applicant fails to submit a complete application within four (4) months of the written determination of incompleteness~~issued receipt date~~, the application shall be deemed withdrawn. When the Town Planner makes the preliminary determination that an application is complete, the application shall be scheduled for consideration at the next available Planning Board meeting. The Planning Board may require other information in addition to that required in Sec. 19-9-4.C, Submission Requirements. The Planning Board may also request an evaluation of specific aspects of the site plan from the Conservation Commission, the Town Engineer, or others. In the event that the Planning Board requires additional information or evaluation, it may deem the application incomplete~~defer making its decision until its next regular meeting~~.

No action taken by the Town Planner, either alone or in consultation with the Planning Board Chair or Vice Chair, with respect to reviewing a site plan application, shall result in an application being deemed pending for the purposes of 1 M.R.S.A. §302. The Town Planner, either alone or in consultation with the Planning Board Chair or Vice Chair, shall have no authority to review the substance of a site plan application to determine whether it complies with the site plan review criteria.

- 2. **Public Hearing.** Upon certification by the Planning Board that an application is complete, the Planning Board, at its discretion, may hold a public hearing. If the Planning Board determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days

1 of the date that the application is deemed complete and shall provide public notice in
2 accordance with Sec. 16-2-1 (b) of the Subdivision Ordinance.

3
4 The Planning Board shall conduct the hearing as to assure full, but not repetitive, public
5 participation. The applicant shall be prepared to respond fully to questioning by the
6 public and the Planning Board. The Planning Board may, upon its own motion, extend
7 the hearing once for a period not exceeding thirty (30) days and to a date that shall be
8 announced.

9
10 3. Planning Board Decision. The Planning Board shall vote to approve, approve with
11 conditions, or disapprove the Site Plan upon the conclusion of review of the
12 development's compliance with Sec. 19-9-5, Approval Standards. The Planning Board
13 decision shall include written findings of fact and shall be provided to the applicant
14 within seven (7) days of the Planning Board vote.

15
16 4-3. Performance Guarantee. The Planning Board, at its discretion, may require that a
17 performance guarantee be established with the Town for the cost of site improvements.
18 Each performance guarantee shall comply with Sec. 16-2-6(c) of the Subdivision
19 Ordinance. An inspection fee shall be paid in accordance with Sec. 16-2-6 (d).

20
21
22 54. Approval Expiration. Site plan approval shall be valid for a period of one (1) year from
23 the date of the Planning Board vote. Prior to the expiration of the site plan approval, the
24 applicant may request an extension of up to one year from the Planning Board for cause
25 shown. Site plan approval shall remain valid if a building permit has been issued for the
26 project prior to the expiration date. Expiration of the building permit prior to completion
27 of the project shall render the site plan approval null and void. Failure to comply with
28 conditions placed upon site plan approval, to post any necessary performance guarantees,
29 to comply with any other permitting processes or to address any other issues of site
30 development, except pending litigation challenging the site plan approval, shall render
31 the approval null and void unless an extension is granted by the Planning Board for good
32 cause.

33 34 **C. Submission Requirements**

35 36 1. General Submission parameters.

37
38 The applicant shall submit ~~fourteen~~ thirteen (13) copies of building and site plans and
39 supporting information drawn to a scale of not less than one inch equals fifty feet (1" =
40 50'). The size of plan sheets submitted to the Planning Board shall be no larger than
41 twenty-four (24) by thirty-six (36) inches, but a smaller size may be used with the
42 permission of the Planning Board. A digital copy of the complete application shall also
43 be made available upon request.

44 45 2. List of Submission items.

46

1 The application for approval of a Site Plan shall include all the following information,
2 unless waived by the Planning Board as described below. Information that must be shown
3 on a plan is in **bold type**. Submission information shall be shown on the number of plans
4 needed to depict the information in a readable format and each plan shall be individually
5 labeled with a title generally based on the information depicted on the plan, with one plan
6 titled "Site Plan."

7
8 ~~The building plans shall show at a minimum the first floor plan and all elevations, and~~
9 ~~indicate the proposed construction materials. The site plan and supporting submissions~~
10 ~~shall include the following information:~~

11
12 ~~a. Right, Title or Interest. Evidence of right, title, and interest in the site of the~~
13 ~~proposed project.~~

14
15 ~~b. Written description. Written description of the proposed project including proposed~~
16 ~~uses quantified by square footage, number of seats, number of units or beds or~~
17 ~~number of students, and how development has been placed on the portions of the~~
18 ~~site most suited for development; application form; identification of the zoning~~
19 ~~district in which the property is located and **the location of any zoning district**~~
20 ~~**boundary that bisects or abuts the property.**— A key map of the site with~~
21 ~~reference to surrounding areas and existing street locations~~

22
23 ~~c. Name of Project/Applicant. **Proposed name of the project;**The name and
24 **address of recordthe owner and site plan applicant, together with the names of**
25 **the adjoining property owners; date of submission; north point; graphic map**
26 **scale.** ~~of all contiguous land and or property directly across the street and within~~
27 ~~two hundred (200) feet of the property, as shown by the most recent tax records of~~
28 ~~all municipalities in which such properties shall lie~~~~

29
30 ~~d. Survey. **A standard boundary survey of the site, giving complete descriptive**~~
31 ~~**data by bearings and distances, Lot line dimensions made and certified by a**~~
32 ~~**licensed land surveyor;** a copy of the deed for the property to be developed, as~~
33 ~~well as copies of any easements, restrictions or covenants; **location map, showing**~~
34 ~~**the relative location of the proposed project in relation to surrounding**~~
35 ~~**neighborhoods or areas of Town.**~~

36
37 ~~e. Existing Conditions. **All existing physical features on the site including streams,**~~
38 ~~**watercourses, watershed areas, existing woodlands and existing trees at least**~~
39 ~~**eight (8) inches in diameter as measured four and one-half (4 ½) feet above**~~
40 ~~**grade, and other significant vegetation; soil boundaries and names in wetland**~~
41 ~~**locations and where subsurface wastewater disposal systems are proposed;**~~
42 ~~**when applicable, any portion of the property located in the floodplain, within**~~
43 ~~**two hundred and fifty (250) feet of the Normal High Water Line, or in a**~~
44 ~~**Resource Protection 1, Resource Protection 1 Buffer or Resource Protection 2**~~
45 ~~**District.**~~

1 f. Topography. Contour lines, existing and proposed, at intervals of two (2) feet or
2 at such intervals as the Planning Board may require, based on United States
3 Geological Survey datum, referenced to mean sea level.

4
5 g.5. Buildings. Location of all existing and proposed buildings and structures with
6 the distance from the nearest property lines labeled; streets, easements,
7 driveways, entrances, and exits on the site and within one hundred (100) feet
8 ~~thereof~~ elevations of each vertical side of a new building with dimensions,
9 location of doors and windows, exterior materials and roof pitch labeled;
10 elevations of each side of an existing building proposed to be altered with
11 dimensions, location of doors and windows, exterior materials and roof pitch
12 labeled; floor plans; building footprints located on adjacent properties.

13
14 h.6. Traffic Access and Parking. Location and width of the nearest public road, and
15 if the project will have access to a private road or driveway, the location and
16 width of the private road or driveway; location of existing and proposed
17 driveways, parking areas and other circulation improvements; site distances for
18 all access points onto public roads; location of parking, loading and unloading
19 areas, which shall include dimensions, traffic patterns, access aisles, parking
20 space dimensions and curb radii; calculation of parking required in
21 conformance with Sec. 19-7-8, Off-Street Parking; existing and proposed
22 pedestrian facilities including the location, dimension and surface treatment of
23 sidewalks and paths, and description of high-demand pedestrian destinations
24 within 1/4 mile of the development; improvements shall include design details,
25 cross sections and dimensions as needed. Proposed location and dimensions of
26 proposed buildings and structures, roads, driveways, parking areas and other
27 improvements Estimated number of trips to be generated based on the latest edition
28 of the Trip Generation Manual of the Institute of Traffic Engineers or equivalent
29 quality information; For developments which generate one hundred (100) or more
30 peak hour trips based on the latest edition of the Trip Generation Manual of the
31 Institute of Traffic Engineers, a traffic study shall be submitted measuring current
32 traffic, estimating traffic generated by the new development and assessing impacts
33 on adjacent roadways and nearby intersections. Where the development may have a
34 substantial traffic impact, the traffic study shall also include recommended
35 mitigation; information on proposed, funded road improvements and town
36 evaluation of road improvements.

37
38 ~~7. Building setback, side line, and rear yard distance~~

39
40 ~~8. All existing physical features on the site and within two hundred (200) feet thereof,~~
41 ~~including streams, watercourses, existing woodlands, and existing trees at least~~
42 ~~eight (8) inches in diameter as measured four and one-half (4 ½) feet above grade.~~
43 ~~Soil conditions as reflected by a medium intensity survey (such as wetlands, rock~~
44 ~~ledge, and areas of high water table) shall also be shown. The Planning Board may~~
45 ~~require a high intensity soils survey where it deems necessary.~~

1 ~~9. Topography showing existing and proposed contours at five (5) foot intervals for~~
2 ~~slopes averaging five percent (5%) or greater and at two (2) foot intervals for land~~
3 ~~of lesser slope. A reference benchmark shall be clearly designated. Where~~
4 ~~variations in the topography may affect the layout of buildings and roads, the~~
5 ~~Planning Board may require that the topographic maps be based on an on-site~~
6 ~~survey.~~

7
8 ~~10. Parking, loading, and unloading areas shall be indicated with dimensions, traffic~~
9 ~~patterns, access aisles, and curb radii~~

10
11 ~~11. Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with~~
12 ~~cross sections, design details and dimensions~~

13
14 ~~i.12. Stormwater. Location and design of existing and proposed stormwater systems A~~
15 ~~surface drainage plan or stormwater management plan, with profiles, cross~~
16 ~~sections, and invert elevations drawn by a professional engineer, registered in~~
17 ~~the State of Maine, showing design of all facilities and conveyances; location of~~
18 ~~proposed drainage easements; narrative description of how stormwater will be~~
19 ~~managed; description of any Low Impact Development (LID) methods incorporated~~
20 ~~into the plan. Where the property is located within the Great Pond Watershed, a~~
21 ~~description of how the Great Pond Watershed Overlay District provisions will be~~
22 ~~met.~~

23
24 ~~j. Erosion Control. An erosion control plan including details of erosion control~~
25 ~~methods used; written erosion control plan with notes.~~

26
27 ~~k. Utilities.~~

28
29 ~~i. Water: Ability to serve letter from the Portland Water District; , sanitary~~
30 ~~waste disposal systems location and size of any existing and proposed~~
31 ~~water mains on the property, as well as details showing proposed~~
32 ~~connections to water systems; where public water is not to be provided,~~
33 ~~an alternative means of a clean and adequate water supply shall be~~
34 ~~shown, with supporting written documentation; nearest hydrant. and~~
35 ~~potable water supply,~~

36
37 ~~ii. Sewage Disposal. When the project will be served by public sewage, an~~
38 ~~ability to serve letter from the Town of Cape Elizabeth Sewer~~
39 ~~Superintendent; All existing and proposed public or shared sewage~~
40 ~~facilities and connection to the public sewage system; when not served by~~
41 ~~public sewer, evidence to demonstrate suitability of soils for subsurface~~
42 ~~wastewater disposal; the location of the subsurface wastewater system;~~
43 ~~all designs, specifications and details for a clustered private or public~~
44 ~~sewage system.~~

1 iii. Other utilities. Ability to serve letter from Central Maine Power; **Location**
2 **of existing and proposed above and below ground electrical lines, other**
3 **utility conduits and location of gas storage tanks and fuel lines;**
4

5 iv. Solid/ Other Waste Disposal. Description of how solid waste will be stored
6 **and removed from the site; location and details of solid waste and**
7 **recycling storage containers and screening;** Identification of chemicals,
8 chemical wastes, hazardous, special or radioactive materials to be handled
9 and/or stored onsite.

10 ~~and methods of solid waste storage and disposal~~

11
12
13 **l.13. Landscaping. Location and description of existing vegetation to be preserved;**
14 **methods of preserving vegetation to be used during construction; Landscaping and**
15 **buffering plan showing ~~what will remain and~~ what will be planted, indicating**
16 **botanical and common names of plants and trees, and size at time of planting;**
17 **fencing location, type, material and size.**~~dimensions, approximate time of~~
18 ~~planting and maintenance plans~~

19
20 **m.14. Lighting. Location and type of lighting to be installed; lighting fixture details**
21 **indicating type of standards and , location, wattage; A photometric study**
22 **showing the footcandle lighting level at the property line when new lights shall**
23 **be installed,**~~radius of light and intensity in footcandles~~

24
25 **n.15. Signs. Location, dimensions, materials, and details of signs.**

26
27 **o. Noise. Written description of the sounds generated from the site that will exceed 45,**
28 **55, 60, 65 and 70 dB(a) at the property line.**

29
30 **p. Exterior storage. Location of outside storage or display areas; screening.**

31
32 **q.16. Financial and Technical Capability.** Demonstration of technical and financial
33 capability to complete the project. If the applicant concludes that public disclosure
34 of confidential financial information may be detrimental to the success of the
35 project, the applicant may disclose such financial information to the Town
36 Manager, who shall explore with due diligence, the applicant's financial capability
37 to complete the project as proposed in a timely fashion and make a recommendation
38 to the Planning Board.

39
40 **3.17. Waiver of Submission items.**

41
42 ~~Waiver of information.~~—Where the Planning Board finds that ~~due to special~~
43 ~~circumstances of a particular plan,~~ the submission of any information listed in
44 Sec. 19-9-4.C, Submission Requirements, is not required in the interest of public
45 health, safety, and general welfare, ~~or is inappropriate because of the nature of the~~
46 ~~proposed development,~~ the Planning Board may waive such requirements.

1 subject to appropriate conditions. Without limitation, the following circumstances
2 may support a waiver of certain submission requirements.

3
4 a. Existing conditions. When no change to existing site conditions for that
5 submission item is proposed, the Planning Board may designate a
6 submission item as not applicable.

7
8 b. Substitution. Alternative information has been submitted more suited to
9 the scope of the project.

10
11 c. Small project. The limited nature of the project allows the Planning Board
12 to apply the Approval Standards and safeguard public health, safety and
13 general welfare without submission of additional information.
14

15 **SEC. 19-9-5. APPROVAL STANDARDS**

16
17 The following criteria shall be used by the Planning Board in reviewing applications for site plan
18 review and shall serve as minimum requirements for approval of the application. The
19 application shall be approved unless the Planning Board determines that the applicant has failed
20 to meet one or more of these standards. In each instance, the burden of proof shall be on the
21 applicant to produce evidence sufficient to warrant a finding that all applicable criteria have been
22 met.

23
24 **1.A. Utilization of the Site**

25
26 The plan for the development will reflect the natural capabilities of the site to support
27 development. Buildings, lots, and support facilities will be clustered in those portions of
28 the site that have the most suitable conditions for development. Environmentally
29 sensitive areas such as wetlands, steep slopes, flood plains, and unique natural features
30 will also be maintained and preserved to the maximum extent feasible. Natural drainage
31 areas will also be preserved to the maximum extent feasible.

32
33 [note: pairs with submission items b-g]

34
35 **2.B. Traffic Access and Parking**

36
37 **a+. Adequacy of Road System**

38
39 Vehicular access to the site will be on roads which have adequate capacity to
40 accommodate the additional traffic generated by the development. For developments
41 which generate one hundred (100) or more peak hour trips based on the latest edition of
42 the Trip Generation Manual of the Institute of Transportation Traffic Engineers,
43 intersections on major access routes to the site within one (1) mile of any entrance road
44 which are functioning at a Level of Service C or better prior to the development will
45 function at a minimum at Level of Service C after development. If any such intersection
46 is functioning at a Level of Service D or lower prior to the development, the project will

1 not reduce the current level of service. A development not meeting this requirement may
2 be approved if the applicant demonstrates that:

3
4 | ia. Public improvement. A public agency has committed funds to construct the
5 improvements necessary to bring the level of access to this standard,

6
7 | iib. Private improvement. The applicant will assume financial responsibility for the
8 improvements necessary to bring the level of service to this standard and will
9 assure the completion of the improvements with a financial guarantee acceptable
10 to the municipality, or

11
12 | iiie. Status quo. Town policy does not support the construction improvements.

13
14 | b-2. Access into the Site

15
16 Vehicular access to and from the development shall be safe and convenient.

17
18 | ia. Safety. All entrance and exit driveways are located to afford maximum safety to
19 traffic, provide for safe and convenient ingress and egress to and from the site and
20 to minimize conflict with the flow of traffic.

21
22 | iib. Sight Distance. Any exit driveway or driveway lane is so designated in profile and
23 grading and so located as to provide the maximum possible sight distance
24 measured in each direction. The sight distance available shall be consistent with
25 the standards of the Subdivision Ordinance.

26
27 | iiie. Corner. Where a site occupies a corner of two (2) intersecting roads, no driveway
28 entrance or exit is located within fifty (50) feet of the point of tangency of the
29 existing or proposed curb radius of that site.

30
31 | ivd. Side property line. No part of any driveway shall be located within a minimum of
32 ten (10) feet of a side property line. However, the Planning Board may permit a
33 driveway serving two (2) or more adjacent sites to be located on or within ten (10)
34 feet of a side property line dividing the adjacent sites.

35
36 | ve. Angle. Driveways intersect the road at an angle as near ninety degrees (90°) as
37 site conditions will permit.

38
39 | vif. Construction. Road, driveway, and parking lot construction comply with the
40 construction and design standards in Sec. 16-3-2 of the Subdivision Ordinance.

41
42 | c3. Internal Vehicular Circulation

43
44 The layout of the site shall provide for the safe movement of passenger, service, and
45 emergency vehicles through the site.

1 ia. Deliveries. Nonresidential projects that will be served by delivery vehicles will
2 provide a clear route for such vehicles with appropriate geometric design to allow
3 turning and backing for a minimum of vehicles.
4

5 ii.b. Emergency vehicles. Clear routes of access shall be provided and maintained for
6 emergency vehicles to and around buildings and shall be posted with appropriate
7 signage (fire lane - no parking).
8

9 ii.e. Circulation. The layout and design of parking areas shall provide for safe and
10 convenient circulation of vehicles throughout the lot.
11

12 iv.d. Topography. All roadways shall be designed to harmonize with the topographic
13 and natural features of the site. The road network shall provide for vehicular,
14 pedestrian, and cyclist safety, all season emergency access, snow storage, and
15 delivery and collection services.
16

17 d4. Parking Layout and Design

18
19 Off-street parking shall conform to Sec. 19-7-8, Off Street Parking and the following
20 standards:
21

22 ia. Street. Parking areas with more than two (2) parking spaces shall be arranged so
23 that vehicles do not need to back into the street.
24

25 ii.b. Property lines. All parking spaces, access drives, and impervious surfaces shall be
26 located at least five (5) feet from any side or rear lot line, except where standards
27 for buffer yards require a greater distance. No parking spaces or asphalt type
28 surface shall be located within five (5) feet of the front property line. Parking lots
29 on adjoining lots may be connected by accessways not exceeding twenty-four
30 (24) feet in width.
31

32 ii.e. Flow. In lots utilizing diagonal parking, the direction of proper traffic flow shall
33 be indicated by signs, pavement markings or other permanent indications.
34

35 iv.d. Stacked spaces. Parking areas for nonresidential uses shall be designed to permit
36 each motor vehicle to proceed to and from the parking space provided for it
37 without requiring the moving of any other motor vehicles. “Stacked” parking
38 may be permitted for resident parking in conjunction with residential uses if both
39 spaces in the stack are assigned to the occupants of the same dwelling unit.
40

41 ve. Bumpers. The “overhang” of parked vehicles shall be restricted when it might
42 restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle
43 movement on adjacent walkways, or damage landscape materials.
44

45 [note: pairs with submission item h]
46

1 | **3C. Pedestrian Circulation**

2
3 The site plan shall provide for a system of pedestrian ways within the development
4 appropriate to the type and scale of development. This system shall connect the major
5 building entrances/exits with parking areas and with existing or planned sidewalks in the
6 vicinity of the project. The pedestrian network may be located either in the street
7 right-of-way or outside of the right-of-way in open space or recreation areas. The system
8 shall be designed to link the project with residential, recreational, and commercial
9 facilities, schools, bus stops, and sidewalks in the neighborhood.

10
11 [note: pairs with submission item h]

12
13 | **4D. Stormwater Management**

14
15 ~~Adequate provisions will be made for the collection and disposal of all stormwater that runs off~~
16 ~~proposed streets, parking areas, roofs, and other surfaces during a twenty-five (25) year, twenty-~~
17 ~~four (24) hour storm, through a stormwater drainage system and maintenance plan, which will~~
18 ~~not have adverse impacts on abutting or downstream properties.~~

19
20 | 1. Stormwater Control Ordinance. The stormwater management provisions shall be
21 consistent with Chapter 18, Article II, Stormwater Control Ordinance. ~~and the following:~~

22
23 | ~~2.~~ Pre-Post development flows. To the extent possible, the plan will retain stormwater on
24 the site using the natural features of the site, except that in the Town Center District,
25 stormwater management shall be consistent with the Town Center Stormwater Plan-

26 | ~~2.~~ For major developments, stormwater runoff systems will detain or retain water such that
27 the peak rate of flow from the site does not exceed the predevelopment rate, unless the
28 system discharges directly to the Atlantic Ocean.

29
30 | 3. Downstream impacts. The applicant will demonstrate that on- and off-site downstream
31 channel or system capacity is sufficient to carry the flow without adverse effects, or that
32 he/she will be responsible for whatever improvements are needed to provide the required
33 increase in capacity. The design of the stormwater drainage system shall provide for the
34 disposal of stormwater without damage to streets, adjacent properties, downstream
35 properties, soils, and vegetation.

36
37 | 4. ~~LID. All natural drainage ways will be preserved at their natural gradients and will not be~~
38 ~~filled or converted to a closed system unless specifically approved.~~ Low Impact
39 Development Techniques shall be incorporated into the stormwater management plan
40 where appropriate.

41
42
43 | ~~5.~~ ~~The design of the stormwater drainage system shall provide for the disposal of~~
44 ~~stormwater without damage to streets, adjacent properties, downstream properties, soils,~~
45 ~~and vegetation.~~

1 56. Upstream volume. The design of the storm drainage systems will be fully cognizant of
2 upstream runoff which must pass over or through the site to be developed.

3
4 67. Water Quality. The biological and chemical properties of the receiving waters will not be
5 degraded by the stormwater runoff from the development site. The use of oil and grease
6 traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips
7 along waterways and drainage swales, ~~and the reduction in use of deicing salts and~~
8 ~~fertilizers~~ may be required, ~~especially where the development stormwater discharges into~~
9 ~~a gravel aquifer area or other water supply source.~~

10
11 [note: pairs with submission item i]

12
13 5E. Erosion Control

14
15 All building, site, and roadway designs and layouts will harmonize with existing
16 topography and conserve desirable natural surroundings to the fullest extent possible.
17 Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on
18 sloped sites will be terraced to avoid undue cut and fill, and/or the need for retaining
19 walls. Natural vegetation will be preserved and protected wherever possible.

20
21 During construction, soil erosion and sedimentation of watercourses and water bodies
22 will be minimized by an active program meeting the requirements of the Cumberland
23 County Soil and Water Conservation District's Best Management Practices.

24
25 [note: pairs with new submission item j]

26
27 6F. Utilities ~~Water Supply~~

28
29 a. Water Supply. The development will be provided with a system of water supply that
30 is adequate in quantity and quality to the proposed use. An adequate supply of water
31 for fire protection purposes shall also be demonstrated. ~~provides each use with an~~
32 ~~adequate supply of drinking water. If the project is proposed to be served by a public~~
33 ~~water supply, the applicant shall secure and submit a written statement from the~~
34 ~~supplier that the proposed water supply system conforms with its design and~~
35 ~~construction standards, will not result in an undue burden on the source or distribution~~
36 ~~system, and will be installed in a manner adequate to provide needed domestic and~~
37 ~~fire protection flows.~~

38
39 bG. Sewage Disposal. -The development will be provided with a method of disposing of
40 sewage which is in compliance with Chapter 15, Sewer Ordinance.

41
42 i4. Public Sewage System. All sanitary sewage from new or expanded uses
43 shall be discharged into a public sewage collection and treatment system when
44 such facilities are currently available or can reasonably be made available at the
45 lot line and have adequate capacity to handle the projected waste generation.
46

1 | ii.2. Private Sewage System. If the public system cannot serve or be extended
2 | to serve a new or expanded use, the sewage shall be disposed of by an on-site
3 | sewage disposal system meeting the requirements of the State Wastewater
4 | Disposal Rules and Chapter 15, Article II, Private Sewage Disposal Ordinance.
5 |

6 | iii.3. Common ownership. When two or more lots or buildings in different
7 | ownership share the use of a common subsurface disposal system, the system
8 | shall be owned and maintained in common by an owners' association and shall
9 | conform to the provisions of Chapter 15, Article III, Management of Cluster
10 | Disposal Systems. Covenants in the deeds for each lot shall require mandatory
11 | membership in the association and provide for adequate funding of the
12 | association to assure proper maintenance of the system.
13 |

14 | ~~4. Industrial or commercial waste waters may be discharged to public sewers in~~
15 | ~~such quantities and/or of such quality as to be compatible with sewage treatment~~
16 | ~~operations. Such wastes may require pretreatment at the industrial or~~
17 | ~~commercial site in order to render them amenable to public treatment processes.~~
18 | ~~Pretreatment includes, but is not limited to, screening, grinding, sedimentation,~~
19 | ~~pH adjustment, surface skimming, chemical oxidation and reduction and~~
20 | ~~dilution.~~
21 |

22 | ~~H. Utilities~~

23 |
24 | c. Other utilities. The development will be provided with electrical, ~~telephone, and~~
25 | ~~telecommunication~~ service adequate to meet the anticipated use of the project.
26 | New utility lines and facilities shall be screened from view to the extent feasible.
27 | If the service in the street or on adjoining lots is underground, the new service
28 | shall be placed underground. Except for propane tanks, no flammable or
29 | explosive liquids or solids shall be stored in bulk above ground unless they are
30 | located at least seventy-five (75) feet from any lot line, or forty (40) feet in the
31 | case of underground storage. Propane tanks less than 500 gallons in size shall be
32 | set back a minimum of ten (10) feet from the property line and tanks of 500
33 | gallons or more in size shall be set back twenty-five (25) feet from the property
34 | line. All materials shall be stored in a manner and location that is in compliance
35 | with appropriate rules and regulations of the Maine Department of Public Safety
36 | and other appropriate federal, state, and local regulations.
37 |

38 |
39 | d. Solid Waste. The proposed development will provide for adequate storage and
40 | disposal of solid wastes.
41 |

42 | i. Screening. Any solid waste stored on the property prior to removal to an
43 | authorized facility shall be secured and screened from public view.
44 |

45 | ii. Liquid/semi-solid wastes. All storage facilities for fuel, chemicals, chemical
46 | or industrial wastes, and biodegradable raw materials, shall meet the standards

1 of the State Department of Environmental Protection and the State Fire
2 Marshall's Office.

3
4 iii. Hazardous Materials. The handling, storage, and use of all materials identified
5 by the standards of a federal or state agency as hazardous, special or
6 radioactive shall be done in accordance with the standards of these agencies.
7 Any waste produced which is classified as a hazardous, special or radioactive
8 waste by either federal or state standards shall be disposed of at a licensed
9 disposal facility appropriate for the type of waste and done in accordance with
10 applicable state and federal regulations.

11
12 [note: pairs with submission item k]

13
14 **I. — Water Quality Protection**

15
16 All aspects of the project shall be designed so that:

17
18 ~~1. No person shall locate, store, discharge, or permit the discharge of any treated, untreated,~~
19 ~~or inadequately treated liquid, gaseous, or solid materials of such nature, quantity,~~
20 ~~obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into~~
21 ~~surface or groundwaters so as to contaminate, pollute, or harm such waters or cause~~
22 ~~nuisances, such as objectionable shore deposits, floating or submerged debris, oil or~~
23 ~~seum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or~~
24 ~~aquatic life.~~

25 [Should be covered already as part of the stormwater ordinance]

26
27 ~~2. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable~~
28 ~~raw materials, shall meet the standards of the State Department of Environmental~~
29 ~~Protection and the State Fire Marshall's Office.~~

30
31 [Added to solid waste standard]

32
33 **J. — Wastes**

34
35 ~~The handling, storage, and use of all materials identified by the standards of a federal or state~~
36 ~~agency as hazardous, special or radioactive shall be done in accordance with the standards of~~
37 ~~these agencies.~~

38
39 ~~Any waste produced which is classified as a hazardous, special or radioactive waste by either~~
40 ~~federal or state standards shall be disposed of at a licensed disposal facility appropriate for the~~
41 ~~type of waste and done in accordance with applicable state and federal regulations.~~

42
43 [added to Solid Waste standard]

44
45 ~~No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless~~
46 ~~they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of~~

1 ~~underground storage. All materials shall be stored in a manner and location which is in~~
2 ~~compliance with appropriate rules and regulations of the Maine Department of Public Safety and~~
3 ~~other appropriate federal, state, and local regulations.~~

4
5 ~~The proposed development will also provide for adequate disposal of solid wastes. All solid~~
6 ~~waste will be disposed of at a licensed disposal facility having adequate capacity to accept the~~
7 ~~project's wastes.~~

8
9 Moved to #6, Utilities]

10 **7K. Shoreland Relationship**

11
12 The development will not adversely affect the water quality or shoreline of any adjacent
13 water body. The development plan will provide for access to abutting navigable water
14 bodies for the use of the occupants of the development if appropriate.

15
16 [note: pairs with submission item e]

17
18 **8. Landscaping and Buffering**

19
20 a. Preservation. The landscape will be preserved in its natural state insofar as
21 practical by minimizing tree removal, disturbance and compaction of soil, and by
22 retaining existing vegetation insofar as practical during construction. Extensive
23 grading and filling will be avoided as far as possible. Areas of vegetation to be
24 retained shall be designated on a preservation plan. Within the drip line of trees
25 to be preserved, activity and disturbance shall be prohibited and a physical barrier
26 shall be provided to separate these areas from the construction area.

27
28 b. Landscaping Plan. The development plan will provide for landscaping that
29 defines street edges, breaks up parking areas, softens the appearance of the
30 development and protects abutting properties from any adverse impacts of the
31 development.

32
33 c. Buffering. The development shall also provide for the buffering of adjacent uses
34 where there is a transition from one type of use to another use and for screening of
35 service and storage areas.

36
37 d. Parking screening. Required parking and loading spaces for nonresidential uses
38 and multiplex housing, where not enclosed within a building, shall be effectively
39 screened from view by a continuous landscaped area not less than eight (8) feet in
40 width containing evergreen shrubs, trees, fences, walls, berms, or any
41 combination thereof forming a visual barrier not less than six (6) feet in height
42 along exterior lot lines adjoining all residential properties, except that driveways
43 shall be kept open to provide visibility for vehicles entering and leaving. This
44 requirement may be reduced or waived when it is determined that such buffering
45 is not necessary or desirable. Parking lots shall be designed to include landscaped
46 islands required in the Town Center and Business A Zoning Districts.

1
2 ~~[pairs to submission item l]~~

3 ~~[Sec. d. needs review]~~

4 ~~**L. — Technical and Financial Capacity**~~

5
6 ~~The applicant has demonstrated the financial and technical capacity to carry out the project in a~~
7 ~~timely fashion in accordance with this ordinance and the approved plan.~~

8
9 ~~[Moved to # below]~~

10 ~~**2M. Exterior Lighting**~~

11
12 ~~1. Safety. The proposed development shall provide for adequate exterior lighting to~~
13 ~~provide for the safe use of the development in nighttime hours, if such use is~~
14 ~~contemplated, without excessive illumination. Lighting may be used which serves~~
15 ~~security, safety and operational needs but which does not directly or indirectly~~
16 ~~produce deleterious effects on abutting properties or which would impair the~~
17 ~~vision of a vehicle operator on adjacent roadways.~~

18
19 ~~2. Maximum level. Lighting fixtures shall be shielded or hooded so that the lighting~~
20 ~~elements are not exposed to normal view by motorists, pedestrians, or from~~
21 ~~adjacent dwellings and so that they do not unnecessarily light the night sky.~~
22 ~~Direct or indirect illumination shall not exceed 0.5 footcandles at the lot line or~~
23 ~~upon abutting residential properties. Lighting fixtures shall be shielded or hooded~~
24 ~~so that the lighting elements are not exposed to normal view by motorists,~~
25 ~~pedestrians, or from adjacent dwellings and so that they do not unnecessarily light~~
26 ~~the night sky. All exterior lighting, except security lighting, shall be turned off~~
27 ~~between 11 P.M. and 6 A.M. unless located on the site of a commercial or~~
28 ~~industrial use which is open for business during that period.~~

29
30 ~~[note: pairs to submission item m]~~

31 ~~**N. — Landscaping and Buffering**~~

32
33 ~~The landscape will be preserved in its natural state insofar as practical by minimizing tree~~
34 ~~removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as~~
35 ~~practical during construction. Extensive grading and filling will be avoided as far as possible.~~
36 ~~Areas of vegetation to be retained shall be designated on a preservation plan. Within the drip~~
37 ~~line of trees to be preserved, activity and disturbance shall be prohibited and a physical barrier~~
38 ~~shall be provided to separate these areas from the construction area.~~

39
40
41 ~~The development plan will provide for landscaping that defines street edges, breaks up parking~~
42 ~~areas, softens the appearance of the development and protects abutting properties from any~~
43 ~~adverse impacts of the development.~~

44
45 ~~The development shall also provide for the buffering of adjacent uses where there is a transition~~
46 ~~from one type of use to another use and for screening of service and storage areas.~~

~~Required parking and loading spaces for nonresidential uses and multiplex housing, where not enclosed within a building, shall be effectively screened from view by a continuous landscaped area not less than eight (8) feet in width containing evergreen shrubs, trees, fences, walls, berms, or any combination thereof forming a visual barrier not less than six (6) feet in height along exterior lot lines adjoining all residential properties, except that driveways shall be kept open to provide visibility for vehicles entering and leaving. This requirement may be reduced or waived when it is determined that such buffering is not necessary or desirable.~~

[Relocated to #8 above]

10. Signs.

Signs shall meet the standards of the Sign Ordinance. Sign materials and lighting shall be of high quality and compatible with the character of the development.

[note: pairs with submission item n]

11. Noise

a1. Maximum level. The maximum permissible sound pressure level of any continuous, regular or frequent or intermittent source of sound produced by any activity on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall be measured at least four (4) feet above ground at the property boundary of the source.

Sound Pressure Level Limits Using the Sound Equivalent Level of One Minute (leq 1) (Measured in dB(a) Scale)

<u>Abutting Use</u>	<u>10 p.m.</u>	<u>7 a.m.</u>
Residential	55	45
Residential located in a commercial-industrial district	65	55
Public, semipublic and institutional	60	55
Vacant or rural	60	55
Commercial	65	55
Industrial	70	60

b2. Measurement. Noise shall be measured by a meter set on the A-weighted response scale, fast response. The meter shall meet the American National Standards Institute (ANSI S1 4-1961) “American Standards Specification for General Purpose Sound Level Meters.”

c3. Construction. No person shall engage in construction activities, on a site abutting any residential use between the hours of 10 p.m. and 7 a.m.

1 [note: pairs with submission item o]

2
3 **12P. Storage of Materials**

4
5 a. Outside Storage. Exposed nonresidential storage areas, exposed machinery, and
6 areas used for the storage or collection of discarded automobiles, auto parts,
7 metals or other articles of salvage or refuse shall have sufficient setbacks and
8 buffers (such as a stockade fence or a dense evergreen hedge) to minimize their
9 impact on abutting residential uses and users of public streets.

10
11 b. Receptacles. All dumpsters or similar large collection receptacles for trash or
12 other wastes shall be located on level surfaces which are paved or graveled.
13 Dumpsters or receptacles located in a yard which abuts a residential or
14 institutional use or a public street shall be screened by fencing or landscaping.

15
16 c. Secure from minors. All sites potentially hazardous to children shall require
17 physical screening sufficient to deter small children from entering the premises.
18 This screening shall be maintained in good condition.

19
20 [note: pairs with submission item p]

21
22 **L. Technical and Financial Capacity**

23
24 The applicant has demonstrated the financial and technical capacity to carry out the project in a
25 timely fashion in accordance with this ordinance and the approved plan.

26
27 [note: pairs with submission item q]

28
29 **SEC. 19-9-6. AMENDMENTS**

30
31 Any alteration to a site which is inconsistent with the approved site plan shall require an
32 amendment to the site plan. Planning Board approval must be obtained prior to the alteration.

33
34 A. De Minimus Changes. ~~De minimus changes to an approved site plan may be~~
35 ~~placed on the Planning Board Consent Agenda at the discretion of the Town~~
36 ~~Planner. The intent of this section is to process minor deviations from the~~
37 ~~approved plan that typically arise as a project moves from conception to~~
38 ~~completion of construction.~~ De minimus changes shall not include (1) a change to
39 a public or private right-of-way or easement, (2) a decrease in proposed buffering
40 or landscaping, ~~or~~ (3) any issue involving a condition placed on the site plan
41 approval, or (4) any change in a building footprint greater than five (5) feet in any
42 direction. Site plan changes which do not receive de minimus approval shall be
43 submitted to the Planning Board under Sec. 19-9-6.B.

44
45 1. Review. The applicant shall meet with the Town Planner and provide a
46 written description of the proposed amendments and all applicable plans

1 impacted by the amendments. The Town Planner shall review the
2 submission with the applicant and consult with appropriate town staff. The
3 Town Planner will make a preliminary determination that the proposed
4 changes do comply with the approval standards, do not comply with the
5 approval standards, or that the nature of the amendments merit review by
6 the Planning Board.

7
8 2. Decision. The Town Planner shall forward the De Minimus Change
9 application and a recommendation to the Planning Board Chair The
10 Planning Board Chair shall make the final determination to approve the
11 proposed amendments or to forward the amendments to the Planning
12 Board for review.

13
14 **B. Amendments.** Any change to a plan approved by the Planning Board must be
15 submitted to the Planning Board for review and approval, unless the amendment
16 is a De Minimus Change. The Planning Board shall review the amendments in
17 accordance with the Review Procedures, Sec. 19-9-4. Submission requirements
18 may be limited to the information related to the proposed amendments. Any
19 Planning Board Decision to approve amendments to a previously approved Site
20 Plan shall incorporate the original Site Plan Approval, except as specifically
21 amended. ~~Prior to placement on the Consent Agenda, the applicant shall meet~~
22 ~~with the Town Planner to review the proposed changes and shall provide eight (8)~~
23 ~~copies of the revised site plan to the Town Planner at least eighteen (18) days~~
24 ~~prior to the next regular Planning Board meeting. The decision of the Town~~
25 ~~Planner not to place an item on the Consent Agenda may be appealed to the~~
26 ~~Planning Board upon submission of fourteen (14) copies of the proposed change~~
27 ~~to the Town Planner eighteen (18) days prior to the next regular meeting of the~~
28 ~~Planning Board.~~

29
30
31 **SEC. 19-9-7. APPEALS OF PLANNING BOARD ACTIONS**

32
33 Appeal of an action taken by the Planning Board regarding site plan review shall be to the
34 Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.
35

1 **CHAPTER 25**

2 **STORMWATER**

3 **Article I. Stormwater and Non-Stormwater Control**

4

5	<u>Sec. 25-2-1 Purpose</u>	<u>25-1</u>
6	<u>Sec. 25-2-2 Approval Required</u>	<u>25-1</u>
7	<u>Sec. 25-2-3 Definition</u>	<u>25-1</u>
8	<u>Sec. 25-2-4 Storm Water Runoff System Design</u>	<u>25-1</u>
9	<u>Sec. 25-2-5 System Responsibility</u>	<u>25-1</u>
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11	<u>Sec. 25-2-7 Design Adjustment</u>	<u>25-1</u>
12	<u>Sec. 25-2-8 Non-Storm Water Regulation</u>	<u>25-1</u>
13	<u>Sec. 25-2-9 Enforcement</u>	<u>25-1</u>
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15

16

17

18 **Article II. Post Construction Stormwater Management**

19

20	<u>Sec. 18-4-1 Purpose</u>	<u>25-10</u>
21	<u>Sec. 18-4-2 Objectives</u>	<u>25-10</u>
22	<u>Sec. 18-4-3 Applicability</u>	<u>25-10</u>
23	<u>Sec. 18-4-4 Definitions</u>	<u>25-10</u>
24	<u>Sec. 18-4-5 Post-Const. Storm Water Management Plan</u>	<u>25-10</u>
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26	<u>Sec. 18-4-7 Enforcement</u>	<u>25-10</u>
27	<u>Sec. 18-4-8 Notice of Violation</u>	<u>25-10</u>
28	<u>Sec. 18-4-9 Penalties/Fines/Injunctive Relief</u>	<u>25-10</u>
29	<u>Sec. 18-4-10 Consent Agreement</u>	<u>25-10</u>
30	<u>Sec. 18-4-11 Appeal of Notice of Violation</u>	<u>25-10</u>
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33

34 **Article I. Stormwater and Non-stormwater Control**

35

36 **Sec. 25-2-1. Purpose.** The purpose of this Ordinance is to require the disposal of storm

37 water on the land at the site of development through the wise use of the natural features of

38 the site and to regulate storm water and non-storm water Discharges to the Town Storm

39 Water Runoff System as required by federal and state law. Storm water and non-storm water

40 shall be deposited in a manner so that it does not pose dangers of flooding, soil erosion,

41 pollution of receiving waters, or otherwise constitute a threat to public health, safety or

42 welfare.

43

44 **Sec. 25-2-2. Applicability.** The provisions of this chapter shall apply to:

- 45
- 46 a. Any proposed activity involving more than 10,000 square feet of impervious surface,
- 47 paving, clearing, or vegetative alterations, except for the construction of a single family

1 home and related landscaping. Planning Board approval shall be required as provided
2 hereunder.

3
4 b. Any Discharge of storm water or non-storm water from any premises into the Town
5 Storm Water Runoff System.

6
7 **Sec. 25-2-3. Definitions.** For the purposes of this Ordinance, the following terms shall
8 have the meanings given herein. All words not defined herein shall carry their customary
9 and usual meanings.

10
11 **Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also
12 known as the “Clean Water Act”), and any subsequent amendments thereto.

13
14 **CFR:** Code of Federal Regulations.

15
16 **Discharge:** Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other
17 addition of Pollutants to Waters of the State.

18
19 **Direct Discharge:** Any discernible, confined and discrete conveyance, including, but not
20 limited to, any pipe, ditch, channel, tunnel, conduit, well, container, concentrated animal
21 feeding operation or vessel or other floating craft, from which Pollutants are or may be
22 discharged. (Also know as Point Source.)

23
24 **Enforcement Authority:** The Town of Cape Elizabeth Public Works Director or his/her
25 designee.

26
27 **Industrial Activity:** Activity subject to NPDES Industrial Permits as defined in 40 CFR,
28 Section 122.26 (b)(14).

29
30 **National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge**
31 **Permit:** A permit issued by the United States Environmental Protection Agency (EPA) or
32 by the Maine Department of Environmental Protection (DEP) that authorizes the Discharge
33 of pollutants to waters of the United States.

34
35 **Non-Storm Water Discharge:** Any Discharge to the Town Storm Water Runoff System
36 that is not composed entirely of Storm Water.

37
38 **Person:** Any individual, firm, corporation, municipality, quasi-municipal corporation, State
39 or Federal agency or other legal entity.

40
41 **Pollutant:** Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse,
42 effluent, sewage sludge, munitions, chemicals, biological or radiological materials, oil,
43 petroleum products or by-products, heat, wrecked or discarded equipment, aggregate
44 materials, and industrial, municipal, domestic, commercial or agricultural wastes of any
45 kind.

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

4
5 **Storm Water:** Runoff resulting from snowmelt, rain, precipitation or groundwater on the
6 ground.

7
8 **Storm Water Runoff System:** An element or array of elements that convey water from or
9 across land, including but not limited to natural elements.

10
11 **Tidal Waters:** Waters contiguous to the Atlantic Ocean where the surface rises and falls
12 due to gravitational pull.

13
14 **Town:** The Town of Cape Elizabeth.

15
16 **Waters of the State:** Any and all surface and subsurface waters that are contained within,
17 flow through, or under or border upon the State of Maine or any portion of the State of
18 Maine, including the marginal and high seas, except such waters as are confined and retained
19 completely upon the property of one person and do not drain into or connect with any other
20 waters of the State of Maine, but not excluding waters susceptible to use in interstate or
21 foreign commerce, or whose use, degradation or destruction would affect interstate or
22 foreign commerce.

23
24 **Uncontaminated:** Free of Pollutants.

25
26 **Sec. 25-2-4. Storm Water Runoff System Design.** Any development involving more
27 than 10,000 sq. ft. of impervious surface, paving, clearing, or vegetative alterations, and
28 which requires Site Plan (Chapter 19, Zoning Ordinance) and/or Subdivision Review
29 (Chapter 16, Subdivision Ordinance) by the Planning Board shall also submit to the Planning
30 Board plans and materials to demonstrate compliance with the following:

31
32 a. Professional Engineer. The technical design, sizing of components and hydraulic analyses
33 and computations for any storm water runoff system shall be performed or approved in
34 writing by a professional engineer registered in Maine. The storm water runoff systems
35 for developments requiring site plan review or subdivision approval by the Planning
36 Board shall be designed with the objective of infiltrating, detaining or retaining water
37 falling on or flowing to the site during a storm of intensity equal to the 2 and 25-year
38 storm in such a manner that, to the maximum extent practicable, (1) the rate of flow of
39 such water from the site shall not exceed that which would occur in its undeveloped state
40 or will discharge directly to a tidally influenced area, and (2) the physical, chemical and
41 biological properties of the techniques or structures to accomplish either objective shall
42 be the responsibility of the developer, subject to review and approval by the Planning
43 Board.

44
45 b. Outflow Rate. The design of Storm Water Runoff Systems shall include consideration of
46 permanent and temporary ponding or storage within the development to control and
47 minimize outflow rates. The designer of the Storm Water Runoff System shall evaluate

1 the effectiveness of various methods and shall develop the hydraulic computations based
2 on accepted engineering principles to demonstrate the expected rate of outflow after
3 development compared with the rate of outflow prior to development.

4
5 c. Downstream impact. If it is not practicable to reduce the outflow rate from the developed
6 area for the 2 and 25-year storm to that from the undeveloped site, considering the
7 construction and maintenance costs of the Storm Water Runoff System and the
8 downstream benefits to be obtained, the developer shall demonstrate by hydraulic
9 analysis that downstream channel or system capacity is sufficient to carry the flow
10 without adverse effects. Computations and analysis made pursuant to this section shall be
11 made available for review by the Planning Board or its designees.

12
13 d. Upstream flow. Designers of Storm Water Runoff Systems shall be fully cognizant of
14 upstream runoff, which must pass over or through the development site. The Storm Water
15 Runoff System shall be designed to pass through the proposed development all upstream
16 flows generated by the 2 and 25-year storm from the upstream watershed as fully
17 developed, without surcharging the Storm Water Runoff System or flooding areas not
18 specifically planned for flooding.

19
20 e. Related components. Storm Water Runoff Systems shall be designed with both major and
21 minor components, which will serve specific access convenience objectives, erosion
22 control objectives, water quality objectives and pollution control objectives.

23
24 f. 25-year Surcharge. The design of piped or open channel Storm Water Runoff Systems
25 shall be based on a 25-year storm without surcharge or flooding beyond channel limits,
26 unless such surcharge is specifically planned to assist in meeting the objectives of
27 subsection (g). The areas expected to be flooded by a runoff of a 25-year storm shall be
28 designated, and no structures shall be permitted within such areas. Where state or federal
29 law is more restrictive, such provisions shall supersede the provisions of this section.

30
31 g. Storage. Where embankment-type storage or retention facilities are planned, they shall be
32 designated in accordance with the appropriate sections of the Maine Department of
33 Environmental Protection Best Management Practices (MDEP BMPs). Design methods
34 and computations shall be submitted for review upon request of the Planning Board or its
35 designees.

36
37 h. Easements. Easements shall be conveyed for all components of the Storm Water Runoff
38 System lying outside of public ways. Such rights of ways shall be offered to the Town of
39 Cape Elizabeth for public ownership.

40
41 i. Record Drawings. Upon completion of Storm Water Runoff System installation, and
42 before any section thereof is accepted by the Town or deeded to an association, the
43 developer shall submit a reproducible set of record drawings indicating the work
44 accomplished, and shall designate how the data for such drawings were compiled. The
45 Enforcement Authority reserves the right to field check the drawings, and the Storm
46 Water Runoff System shall not be accepted or deeded until the Town is satisfied that the

1 installed work is consistent with approved design plans, and that the record drawings
2 reasonably reflect the work installed.

3
4 j. Maintenance. The site plan shall include a note describing required maintenance of
5 stormwater facilities when facilities will not be conveyed to the Town of Cape Elizabeth.

6
7 **Sec. 25-2-5. System Responsibility.** The developer shall maintain all components of the
8 Storm Water Runoff System until they are formally accepted by the Town or transferred to a
9 property owners association whose charter and powers for financing and maintaining the
10 Storm Water Runoff System shall be approved by the Town Attorney. Storm Water Runoff
11 System components within proposed public ways shall become Town property upon formal
12 acceptance. Storm Water Runoff System components outside of public ways may be
13 accepted by the Town but shall otherwise be deeded to a property owners association, as
14 required by the Planning Board or as agreed by the Town and the developer prior to project
15 approval. In all cases the Town shall have the right to access and enter the Storm Water
16 Runoff system to conduct emergency maintenance, as it deems necessary.

17
18 **Sec. 25-2-6. Storm Water Runoff System Plan Requirements.**

19
20 a. Basic site data upon which Storm Water Runoff Systems are planned and designed shall
21 include:

- 22
23 1. A topographic map of the entire development site utilizing a 2-foot contour
24 interval, which map shall show water bodies, wetlands, the location of all
25 permanent and intermittent streams or water courses, the location and type of
26 vegetative cover, and the soil type determined by a medium intensity soil survey;
27 2. A map of upstream areas giving sufficient information to calculate hydraulics and
28 drainage designs through the site; and
29 3. A map of downstream areas, where the outflow rate is to be increased as
30 described in Section 25-2-4 (c) giving sufficient information to calculate
31 hydraulics and drainage design demonstrating the sufficiency of downstream
32 capacity.

33
34 b. The Storm Water Runoff System shall be fully coordinated with project site plans
35 including consideration of street patterns, pedestrian ways, open space, building siting,
36 parking areas, and other utilities, especially sanitary waste water disposal systems.

37
38 c. Planning of Storm Water Runoff Systems shall encompass the entire site that may
39 ultimately be developed, and shall not be limited to an initial or limited section of the
40 development.

41
42 d. The design of the Storm Water Runoff System shall be presented to the Planning Board
43 in the form of engineering reports. A Preliminary Design concept shall be presented with
44 the initial review submissions, and a Final Design Report shall be presented with the
45 request for Final Subdivision or Site Plan approval.

1 e. The Preliminary Design concept shall include the following:

- 2
- 3 1. Plans showing basic site data as required by subsection (a);
- 4 2. Plans of the Storm Water Runoff System indicating coordination and
- 5 compatibility with the proposed site plans;
- 6 3. Computations comparing the runoff rates and characteristics of the development
- 7 before and after the proposed development; and
- 8 4. Computations illustrating the passage of upstream flow, if any, through the site.
- 9

10 f. The Final Design Report shall include the following:

- 11
- 12 1. Detailed construction plans of the proposed Storm Water Runoff System
- 13 including plans, profiles and channel sections, in such detail as necessary to
- 14 construct the Storm Water Runoff System;
- 15 2. Material and procedure specifications as necessary to construct the Storm Water
- 16 Runoff System;
- 17 3. Final design computations illustrating compliance with the intent of this
- 18 Ordinance and with any conditions upon the preliminary approval;
- 19 4. Metes and bounds surveyed plans of all rights of way proposed for public
- 20 ownership, made by a registered land surveyor, and assignment of maintenance
- 21 responsibilities for the rights of way upon completion; and
- 22 5. Installation time schedule, including sequence and scheduling of Storm Water
- 23 Runoff System installation, with particular attention to coordination with site
- 24 erosion and sedimentation control plans.
- 25

26 **Sec. 25-2-7. Design Adjustment.** The Planning Board may waive any filing or design

27 requirements unnecessary for full consideration of any proposed Storm Water Runoff

28 System, such as data relating to site features and runoff rates downstream of the entrance to

29 a piped Discharge directly to tidal waters. The Planning Board may also reduce or waive any

30 requirements of this Ordinance where it finds from the basic site data furnished under

31 Section 25-2-6 (a) that the estimated costs of construction and long-term maintenance

32 resulting from compliance with the design requirements in any instance clearly outweigh the

33 downstream benefits to be achieved by compliance.

34

35 **Sec. 25-2-8. Non-Storm Water Regulation.**

36

37 a. Objectives. The objectives of this section are:

- 38
- 39 1. To regulate Non-Storm Water Discharges to the Storm Water Runoff System; and
- 40 2. To set forth the legal authority and procedures to carry out all inspection,
- 41 monitoring and enforcement activities necessary to ensure compliance with this
- 42 Ordinance.
- 43

44 b. General Prohibition. Except as allowed in this Section, no Person shall create, initiate,

45 originate or maintain a Non-Storm Water Discharge to the Storm Water Runoff System.

46 Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Town

1 may have approved the connections, drains or conveyances by which a Person discharges
2 unallowed Non-Storm Water Discharges to the Storm Water Runoff System.

3
4 c. **Allowed Non-Storm Water Discharges.** The creation, initiation, origination and
5 maintenance of the following Non-Storm Water Discharges to the Storm Water Runoff
6 System are allowed:

7
8 1. Landscape irrigation; diverted stream flows; rising ground waters;
9 uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
10 uncontaminated pumped ground water; uncontaminated flows from foundation
11 drains; air conditioning and compressor condensate; irrigation water; flows from
12 uncontaminated springs; uncontaminated water from crawl space pumps;
13 uncontaminated flows from footing drains; flows from riparian habitats and
14 wetlands; residual street wash water (where spills/leaks of toxic or hazardous
15 materials have not occurred, unless all spilled material has been removed and
16 detergents are not used); hydrant flushing and fire fighting activity runoff; water
17 line flushing and Discharges from potable water sources; and residential car
18 washing;

19 2. Discharges authorized by the Enforcement Authority as being necessary to protect
20 public health and safety; and

21 3. Dye testing, with authorization from the Enforcement Authority prior to the time
22 of the test.

23
24 d. **Suspension of Access to the Town Storm Water Runoff System.** The Enforcement
25 Authority may, without prior notice, physically suspend Discharge access to the Storm
26 Water Runoff System when such suspension is necessary to stop an actual or threatened
27 Non-Storm Water Discharge to the Storm Water Runoff System that presents or may
28 present imminent and substantial danger to the environment, or to the health or welfare of
29 persons, or to the Storm Water Runoff System, or that may cause the Town to violate the
30 terms of its environmental permits. Such suspension may include, but is not limited to,
31 blocking pipes, constructing dams or taking other measures, on public ways or public
32 property, to physically block the Discharge to prevent or minimize a Non-Storm Water
33 Discharge to the Storm Water Runoff System. The Enforcement Authority may take such
34 steps as deemed necessary to prevent or minimize damage to the Storm Water Runoff
35 System, or to minimize danger to persons, provided, however, that in taking such steps
36 the Enforcement Authority may enter upon the Premises that are the source of the actual
37 or threatened Non-Storm Water Discharge to the Storm Water Runoff System only with
38 the consent of the Premises' owner, occupant or agent, except in an emergency when
39 consent shall not be required.

40
41 e. **Monitoring of Discharges.** In order to determine compliance with this Ordinance, the
42 Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at
43 reasonable hours with the consent of the Premises' owner, occupant or agent, to inspect
44 the Premises and connections thereon to the Storm Water Runoff System; and to conduct
45 monitoring, sampling and testing of the Discharge to the Storm Water Runoff System.

1 **Sec. 25-2-9. Enforcement.** It shall be unlawful for any Person to violate any provision of or to
2 fail to comply with any of the requirements of this Ordinance.

3
4 a. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has
5 violated this Ordinance, the Enforcement Authority may order compliance with this
6 Ordinance by written Notice of Violation to that Person indicating the nature of the
7 violation and ordering the action necessary to correct it, including, without limitation:

- 8
9 1. The elimination of Non-Storm Water Discharges to the Storm Water Runoff
10 System, including, but not limited to, disconnection of the Premises from the
11 Storm Water Runoff System;
- 12 2. The cessation of Discharges, practices, or operations in violation of this
13 Ordinance;
- 14 3. At the Person's expense, the abatement or remediation in accordance with best
15 management practices in DEP rules and regulations of Non-Storm Water
16 Discharges to the Storm Water Runoff System and the restoration of any affected
17 property; and/or
- 18 4. The payment of fines, of the Enforcement Authority's remediation costs and of
19 the Enforcement Authority's reasonable administrative costs and attorneys' fees
20 and costs, in accordance with 30-A M.R.S.A Sec. 4452. If abatement of a
21 violation and/or restoration of affected property is required, the notice shall set
22 forth a deadline within which such abatement or restoration must be completed.

23
24 b. **Penalties/Fines/Injunctive Relief.** Any Person who violates this Ordinance shall be
25 subject to fines, penalties and orders for injunctive relief and shall be responsible for the
26 Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day
27 such violation continues shall constitute a separate violation. Moreover, any Person who
28 violates this Ordinance also shall be responsible for any and all fines, penalties, damages
29 and costs, including, but not limited to attorneys' fees and costs, incurred by the Town for
30 violation of Federal and State environmental laws and regulations caused by or related to
31 that Person's violation of this Ordinance; this responsibility shall be in addition to other
32 penalties, fines or injunctive relief imposed under this Section.

33
34 c. **Consent Agreement.** The Enforcement Authority may, with the approval of the
35 municipal officers, enter into a written consent agreement with the violator to address
36 timely abatement of the violation(s) of this Ordinance for the purposes of eliminating
37 violations of this Ordinance and of recovering fines, costs and fees without court action.

38
39 d. **Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension
40 notice may appeal the determination of the Town to the Zoning Board of Appeals. The
41 notice of appeal must be received within 30 days from the date of receipt of the Notice of
42 Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30
43 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm,
44 reverse or modify the Notice of Violation. A suspension under Section 18-2-8(d) of this
45 Ordinance shall remain in place unless or until lifted by the Board of Appeals or by a
46 reviewing court. A party aggrieved by the decision of the Zoning Board of Appeals may

1 appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning
2 Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

3
4 e. **Enforcement Measures.** If the violation has not been corrected pursuant to the
5 requirements set forth in the Notice of Violation, or, in the event of an appeal to the
6 Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the
7 Enforcement Authority's decision, then the Enforcement Authority may file an
8 enforcement action in a Maine court of competent jurisdiction under Rule 80K of the
9 Maine Rules of Civil Procedure.

10
11 f. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are
12 minimum standards. Compliance with this Ordinance does not ensure that a Person will
13 not have contaminated, polluted or unlawfully discharged Pollutants into waters of the
14 U.S. This Ordinance shall not create liability on the part of the Town, or any officer,
15 agent or employee thereof for any damages that result from a Person's reliance on or
16 compliance with this Ordinance or any administrative decision lawfully made under this
17 Ordinance.

18
19 **Sec. 25-2-10 Severability.** If any part or parts, section or subsection, sentence, clause or
20 phrase of this Ordinance or the rules and regulations promulgated thereunder is for any
21 reason declared to be unconstitutional or invalid, such declaration shall not affect the validity
22 or constitutionality of the remaining portions of this Ordinance or the rules and regulations
23 promulgated thereunder.

24
25 **Article II. Post Construction Stormwater Management**

26
27 **Sec. 25-2-1. Purpose.** The purpose of this "Post-Construction Storm Water Management
28 Ordinance" (the "Ordinance") is to provide for health, safety, and general welfare of the citizens
29 of the Town of Cape Elizabeth through review and approval of postconstruction storm water
30 management plans and monitoring and enforcement of compliance with such plans as required
31 by Federal and State law. This Ordinance establishes methods for post-construction storm water
32 management in order to comply with minimum control measure requirements of the Federal
33 Clean Water Act, of federal regulations, of Maine's Small Municipal Separate Storm Sewer
34 Systems General Permit, and the Town's Storm Water Program Management Plan. The Town of
35 Cape Elizabeth enacts this Post-Construction Storm Water Management Control Ordinance (the
36 "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38
37 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water
38 Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the
39 National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of
40 Environmental Protection, through its promulgation of the "General Permit for the Discharge of
41 Storm Water from Small Municipal Separate Storm Sewer Systems," has listed the Town of
42 Cape Elizabeth as having a Regulated Small Municipal Separate Storm Sewer System ("Small
43 MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of
44 this Ordinance as part of the Town's Storm Water Management Program in order to satisfy the
45 minimum control measures required by Part IV D 5 ("Post-construction storm water
46 management in new development and redevelopment").

1 Sec. 25-2-2. Objectives. The objectives of this Ordinance are:

2
3 a. To reduce the impact of post-construction discharge of storm water on receiving waters:
4 and

5
6 b. To reduce storm water runoff rates and volumes, soil erosion and nonpoint source
7 pollution, wherever possible, through use of Best Management Practices as promulgated
8 by the Maine Department of Environmental Protection pursuant to its most current rules
9 as may be updated or amended including its Chapters 500 and 502 Rules, and ensure that
10 these management controls are properly maintained and pose no threat to public safety.

11
12 Sec. 25-2-3. Applicability. This Ordinance applies to all New Development and Redevelopment
13 within the Town that discharges storm water to the Town's Municipal Separate Storm Sewer
14 System (MS4) and to associated storm water management facilities, which are considered to be
15 an element or array of elements that convey water from or across land, including, but not limited
16 to, natural elements, roads, parking areas, catch basins, drainage swales, detention basins and
17 ponds, pipes, conduits, and related structures that are part of the Post-Construction Storm Water
18 Management Plan for a New Development or Redevelopment. This ordinance does not apply to
19 any development which has obtained subdivision approval and begun construction prior to the
20 date this ordinance becomes effective. Construction shall mean (1) posting of a performance
21 guarantee, (2) disturbance of soil, and (3) inspection by a town official.

22
23 Sec. 25-2-4. Definitions. For the purposes of this Ordinance, the following terms shall have the
24 meanings given herein. All words not defined herein shall carry their customary and usual
25 meanings.

26
27 Applicant: Any Person with requisite right, title, or interest or an agent for such Person who has
28 filed an application for New Development or Redevelopment that requires a Post- Construction
29 Storm Water Management Plan under this Ordinance.

30
31 Best Management Practices ("BMP"): Any schedule of activities, prohibitions of practices,
32 maintenance procedures, and other management practices to prevent or reduce the pollution of
33 waters of the State of Maine. BMPs also include treatment requirements, operating procedures,
34 and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage
35 from raw material storage.

36
37 Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also
38 known as the "Clean Water Act"), and any subsequent amendments thereto.

39
40 Construction Activity: Any Construction Activity including one acre or more of Disturbed
41 Area. Construction Activity also includes activity with less than one acre of total land Disturbed
42 Area if that area is part of a subdivision that will ultimately disturb an area equal to or greater
43 than one acre.

44
45 Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other
46 addition of Pollutants to Waters of the State.

1
2 **Direct Discharge:** Any discernible, confined and discrete conveyance, including, but not limited
3 to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
4 concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are
5 or may be discharged (Also known as Point Source).
6

7 **Disturbed Area:** Any clearing, grading, and excavation. Mere cutting of trees, without
8 grubbing, stump removal, disturbance or exposure of soil is not considered "Disturbed Area."
9 "Disturbed Area" does not include routine maintenance but does include Redevelopment.
10 "Routine Maintenance" is maintenance performed to maintain the original line and grade,
11 hydraulic capacity, and original purpose of land or improvements thereon.
12

13 **Enforcement Authority:** The Town Manager or his/her designee who is the person(s) or
14 department authorized by the Town to administer and enforce this Ordinance.
15

16 **Town:** The Town of Cape Elizabeth.
17

18 **Town Permitting Authority:** The Town official or body that has jurisdiction over the land use
19 approval or permit required for a New Development or Redevelopment.
20

21 **Municipal Separate Storm Sewer System, or MS4:** Conveyances for storm water, including,
22 but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters,
23 ditches, human-made channels or storm drains (other than publicly owned treatment works and
24 combined sewers) owned or operated by any municipality, sewer or sewage district, fire district,
25 State agency or federal agency or other public entity that discharges directly to Waters of the
26 State.
27

28 **National Pollutant Discharge Elimination Systems (NPDES) Storm Water Discharge**
29 **Permit:** A permit issued by the United States Environmental Protection Agency ("EPA") or by
30 the Maine Department of Environmental Protection ("DEP") that authorizes the Discharge of
31 pollutants to waters of the United States, whether the permit is applicable on an individual,
32 group, or general area-wide basis.
33

34 **New Development:** Any Construction Activity on unimproved Premises and for purposes of this
35 ordinance includes "Redevelopment" defined below.
36

37 **Person:** Any individual, firm, corporation, municipality, town, quasi-municipal Corporation,
38 State or Federal agency, or other legal entity.
39

40 **Pollutant:** Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent,
41 solid waste, sewage sludge, munitions, chemicals, biological or radiological materials, oil,
42 petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials,
43 and industrial, municipal, domestic, commercial or agricultural wastes of any kind.
44

45 **Post-Construction Storm Water Management Plan:** BMPs and associated inspection and
46 maintenance procedures for the Storm Water Runoff System employed by a New Development

1 or Redevelopment to meet the standards of this Ordinance and approved by the Town's
2 Permitting Authority.

3
4 **Premises:** Any building, lot, parcel of land, or portion of land, whether improved or
5 unimproved, including adjacent sidewalks and parking strips, located within the Town from
6 which Discharges into the Town Storm Water Runoff System are or may be created, initiated,
7 originated, or maintained.

8
9 **Qualified Post-Construction Storm Water Inspector:** A person who conducts
10 postconstruction inspections of Storm Water Runoff Systems and meets the following
11 qualification:

12
13 a. The Inspector shall not have any ownership or financial interest in the property being
14 inspected nor be an employee or partner of any entity having an ownership or financial
15 interest in the property, and

16
17 b. The Inspector shall also meet the following criteria as approved by the Town's
18 Enforcement Authority:

19
20 1. Someone who has received the appropriate training for such inspection from DEP
21 and holds a valid certificate from DEP for such inspection or;

22 2. Have a working knowledge of the most current Maine DEP Storm Water
23 Management Laws including but not limited to Chapter 500 and Chapter 502
24 Rules, Storm Water Management Rules and Maine's Storm Water BMP Manual,
25 have a college degree in environmental science, civil engineering, or comparable
26 expertise, or any combination of experience and training; have a demonstrated
27 practical working knowledge of Storm Water hydrology and Storm Water
28 management techniques, including the maintenance requirements for Storm Water
29 Runoff Systems; and have the ability to determine if Storm Water Runoff Systems
30 are performing as intended;

31
32 **Redevelopment:** Any Construction Activity on Premises already improved with buildings,
33 structures, or activities or uses, but does not include such activities as exterior remodeling of
34 structures.

35
36 **Regulated Small MS4:** Any Small MS4 regulated by the State of Maine "General Permit for the
37 Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems" ("General
38 Permit"), including all those located partially or entirely within an Urbanized Area (UA) and
39 those additional Small MS4s located outside a UA that as of the issuance of the General Permit
40 have been designated by the DEP as Regulated Small MS4s.

41
42 **Small Municipal Separate Storm Sewer System, or Small MS4:** Any MS4 that is not already
43 covered by the Phase I MS4 Storm Water program including municipally owned or operated
44 storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons,
45 Maine Department of Transportation and Maine Turnpike Authority road systems and facilities,
46 and military bases and facilities.

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

3
4 Storm Water Runoff System: An element or array of elements that convey water from or
5 across land, including, but not limited to, natural elements.

6
7 Urbanized Area ("UA") means the areas of the State of Maine as defined by the latest
8 decennial census by the U.S. Bureau of the Census.

9
10 **Sec. 25-2-5. Post-Construction Storm Water Management Plan.**

11
12 **a. General Requirement**

- 13
14 1. Except as provided in Sec. 18-4-3 b. above, no Applicant for a building permit,
15 subdivision approval, site plan approval or other zoning, planning or other land
16 use approval for New Development or Redevelopment to which this Ordinance is
17 applicable shall receive such permit or approval for that New Development or
18 Redevelopment unless the Town Permitting Authority for that New Development
19 also determines that the Applicant's Post- Construction Storm Water Management
20 Plan for the New Development meets the requirements of this Ordinance.
21 2. At the time of application, the Applicant shall notify the Town Permitting
22 Authority if its Post-Construction Storm Water Management Plan includes any
23 BMP(s) that will discharge to the Town's MS4 and shall include in this
24 notification a listing of which BMP(s) will so discharge.

25
26 **b. Performance Standards**

- 27
28 1. The Applicant shall make adequate provisions for the management of the quantity
29 and quality of all storm water generated by a New Development or
30 Redevelopment through a Post-Construction Storm Water Management Plan. This
31 Post-Construction Storm Water Management Plan shall be designed to meet the
32 standards contained in the Maine Department of Environmental Protection's most
33 current rules as may be updated or amended including its Chapters 500 and 502
34 Rules and shall comply with the practices described in the manual *Storm Water*
35 *Management for Maine*, published by Maine Department of Environmental
36 Protection, latest edition, which hereby are incorporated by reference pursuant to
37 30-A M.R.S.A. § 3003.
38
39 2. The Applicant shall meet the quantity and quality standards above either onsite or
40 off-site. Where off-site facilities are used, the Applicant must submit to the Town
41 documentation, approved as to legal sufficiency by the Town's attorney, that the
42 Applicant has a sufficient property interest in the property where the off-site
43 facilities are located – by easement, covenant or other appropriate legal
44 instrument – to ensure that the facilities will be able to provide post-construction
45 storm water management for the New Development or Redevelopment and that
46 the property will not be altered in a way that interferes with the off-site facilities.

3. Where the Applicant proposes to retain ownership of the Storm Water Management Facilities shown in its Post-Construction Storm Water Management Plan, the Applicant shall submit to the Town documentation, approved as to the legal sufficiency the Town's attorney that the Applicant, its successor, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the Storm Water Management Facilities. Applications for New Development or Redevelopment requiring Storm Water 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.
4. Whenever elements of the Storm Water 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 Storm Water Runoff System. When an offer of dedication is required by the Town Permitting Authority, the Applicant shall be responsible for the maintenance of these Storm Water Runoff Systems under this Ordinance until such time (if ever) as they are accepted by the Town.
5. 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 storm water 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 storm water rules conflict with Town ordinances, the stricter (more protective) standard shall apply.

Sec. 25-2-6. Post-Construction Storm Water Management Plan Compliance.

- a. **General Requirements.** Any Person owning, operating, leasing or having control over Storm Water Runoff Systems required by a Post-Construction Storm Water Management Plan approved under this Ordinance shall demonstrate compliance with that Plan as follows:
 1. A Qualified Post-Construction Storm Water Inspector, shall, at least annually, inspect the Storm Water 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 Storm Water Management Plan.
 2. If the Storm Water Runoff Systems require maintenance to function as intended by the approved Post-Construction Storm Water Management Plan, that Person

1 shall take corrective action(s) to address the deficiency or deficiencies.

2 3. A Qualified Post-Construction Storm Water Inspector shall provide, on or by May
3 1 of each year, a completed and signed certification to the Town Enforcement
4 Authority in a form prescribed by the Town or in a similar form approved by the
5 Town Enforcement Authority, certifying that the Storm Water Runoff Systems
6 have been inspected, and that they are adequately maintained and functioning as
7 intended by the approved Post-Construction Storm Water Management Plan, or
8 that they require maintenance or repair, describing any required maintenance and
9 any deficiencies found during inspection of the Storm Water Runoff Systems. If
10 the Storm Water Runoff Systems require maintenance or repair of deficiencies in
11 order to function as intended by the approved Post-Construction Storm Water
12 Management Plan, the Person shall provide a record of the required maintenance
13 or deficiency and corrective action(s) taken.

14 4. In addition, any persons required to file an annual certification under this Sec. 25-
15 2-6 of this Ordinance shall include with the annual certification a fee established
16 by the Town Council in accordance with the Town Fee Schedule. The purpose of
17 this fee is to pay the administrative and technical costs of review of the annual
18 certification.

19
20 **b. Right of Entry.** In order to determine compliance with this Ordinance and with the Post-
21 Construction Storm Water Management Plan, the Town Enforcement Authority may
22 enter upon property at reasonable hours with the consent of the owner, occupant or agent
23 to inspect the Storm Water Runoff Systems.

24
25 **c. Annual Report.** Beginning July 1, 2010 and each year thereafter, the Town shall include
26 the following in its Annual Report to the Maine Department of Environmental Protection:

- 27
28 1. The cumulative number of sites that have Storm Water Runoff Systems
29 discharging into their MS4;
30 2. A summary of the number of sites that have Storm Water Runoff Systems
31 discharging into their MS4 that were reported to the Town;
32 3. The number of sites with documented functioning Storm Water Runoff Systems;
33 and
34 4. The number of sites that required routine maintenance or remedial action to
35 ensure that Storm Water Runoff Systems are functioning as intended.

36
37 **Sec. 18-4-7. Enforcement.** It shall be unlawful for any Person to violate any provision
38 of or to fail to comply with any of the requirements of this Ordinance or of the Post-
39 Construction Storm Water Management Plan. Whenever the Enforcement Authority believes
40 that a Person has violated this Ordinance or the Post-Construction Storm Water Management
41 Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A
42 M.R.S.A. § 4452.

43
44 **Sec. 18-4-8. Notice of Violation.** Whenever the Enforcement Authority believes that a
45 Person has violated this Ordinance of the Post-Construction Storm Water Management Plan,
46 the Enforcement Authority may order compliance with this Ordinance or with the Post-

1 Construction Storm Water Management Plan by written notice of violation to that Person
2 indicating the nature of the violation and ordering the action necessary to correct it,
3 including, without limitation:

4
5 a. The abatement of violations, and the cessation of practices, or operations in violation of
6 this Ordinance or of the Post-Construction Storm Water Management Plan;

7
8 b. At the Person's expense, compliance with BMPs required as a condition of approval of
9 the New Development or Redevelopment, the repair of Storm Water Runoff Systems
10 and/or the restoration of any affected property; and/or

11
12 c. The payment of fines, of the Town's remediation costs and of the Town's reasonable
13 administrative costs and attorneys' fees and costs. If abatement of a violation, compliance
14 with BMPs, repair of Storm Water Management Facilities and/or restoration of affected
15 property is required, the notice shall set forth a deadline within which such abatement,
16 compliance, repair and/or restoration must be completed.

17
18 **Sec. 25-2-9. Penalties/Fines/Injunctive Relief.** Any Person who violates this
19 Ordinance of the Post-Construction Storm Water Management Plan shall be subject to fines,
20 penalties and orders for injunctive relief and shall be responsible for the Town's attorney's
21 fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day that such violation
22 continues shall constitute a separate violation. Moreover, any Person who violates this
23 Ordinance or the Post-Construction Storm Water Management Plan also shall be responsible
24 for any and all fines, penalties, damages and costs, including, but not limited to attorneys'
25 fees and costs, incurred by the Town for violation of federal and State environmental laws
26 and regulations caused by or related to that Person's violation of this Ordinance or of the
27 Post-Construction Storm Water Management Plan; this responsibility shall be in addition to
28 any penalties, fines or injunctive relief imposed under this Section.

29
30 **Sec. 25-2-10. Consent Agreement.** The Enforcement Authority may, with the approval of
31 the municipal officers, enter into a written consent agreement with the violator to address
32 timely abatement of the violation(s) of this Ordinance or of the Post-Construction Storm
33 Water Management Plan for the purposes of eliminating violations of this Ordinance or of
34 the Post-Construction Storm Water Management Plan and of recovering fines, costs and fees
35 without court action.

36
37 **Sec. 25-2-11. Appeal of Notice of Violation.** Any Person receiving a Notice of Violation
38 or suspension notice may appeal the determination of the Enforcement Authority to the
39 Zoning Board of Appeals. The notice of appeal must be received within 30 days from the
40 date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on
41 the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals
42 may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by
43 the decision of the Board of Appeals may appeal that decision to the Maine Superior Court
44 within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine
45 Rules of Civil Procedure.

1 **Sec. 25-2-12. Enforcement Measures.** If the violation has not been corrected pursuant to
2 the requirements set forth in the Notice of Violation, or, in the event of an appeal to the
3 Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or
4 modifying the Enforcement Authority's decision, then the Enforcement Authority may
5 recommend to the municipal officers that the Town's attorney file an enforcement action in a
6 Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil
7 Procedure.

8
9 **Sec. 25-2-13. Severability.** The provisions of this Ordinance are hereby declared to be
10 severable. If any provision, clause, sentence, or paragraph of this Ordinance or the
11 application thereof to any person, establishment, or circumstances shall be held invalid, such
12 invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of
13 this Ordinance.