

1 | ~~is built, the owner~~ shall present to the Town one (1) set of reproducible mylar, one (1) hard
2 | copy, and digital files in a format used by the project engineer during project design or other
3 | format approved by the Public Works Director suitable for import into the Town Geographic
4 | Information System (GIS) ~~one (1) electronic file of record drawings indicating facilities as~~
5 | ~~constructed~~. The record drawings shall be based on the field logs of the construction monitor
6 | and of a quality acceptable to the Town. The record drawings shall include an engineer's seal,
7 | distances, angles and bearings for complete and accurate determinations of locations on the
8 | ground, right-of-way monuments and as set, as-built profiles of the centerlines of traveled
9 | ways, ledge elevations encountered during construction and information on the locations,
10 | size, materials and elevations of storm drains, sanitary sewers and other underground utility
11 | lines, including but not limited to water, electric, telephone, natural gas, cable television.

12 |
13 | **Sec. 16-2-7. Construction Administration**

14 |
15 | **(a) Commencement of Construction.** At least ten (10) days prior to commencing construction
16 | of required improvements, the subdivider shall request a pre-construction meeting with the
17 | Town Manager. At the meeting, the subdivider shall submit plans for construction of the
18 | subdivision and notify the Town Manager when construction of such improvements will
19 | commence. Any applicable Stormwater Maintenance Plan should also be recorded in the
20 | Cumberland County Registry of Deeds. The subdivider is also responsible for
21 | communicating ongoing progress of construction so that the Town can cause inspections and
22 | so that requirements shall be met during construction and to assure satisfactory completion of
23 | all improvements and utilities required by the Planning Board. [Revised eff. 11/11/83;
24 | Revised eff. 6/13/90]

25 |
26 | **(g) Completion and Acceptance.** Upon completion of the subdivision infrastructure, the
27 | subdivider may request that the Town Council accept proposed public improvements. The
28 | request shall include confirmation from the Town Manager that the improvements have been
29 | constructed consistent with the approved plans and town construction standards and that any
30 | applicable deeds have been submitted in a form acceptable to the Town Attorney and signed
31 | by the subdivider. The applicant shall be required to maintain all improvements and to
32 | provide for snow removal on roads and sidewalks, until their acceptance by the Town or the
33 | assumption of those responsibilities under such other approved arrangements.

34 |
35 | **Sec. 16-3-2. Road Design and Construction Standards**

36 |
37 | **A. Road Design**

38 |
39 | 7. Road Trees.

40 |
41 | **a. Adjacent to Road.** Each road shall be designed to include, within the right-of-way, at
42 | least one (1) tree for every ~~forty (40) fifty (50)~~ feet of each side of road frontage, but
43 | ~~not less than two (2) trees per lot. Up to twenty (20) percent of road trees may be~~
44 | ~~ornamental trees.~~ All trees shall comply with tree species and size standards approved
45 | by the Town Tree Warden. Existing trees within the right-of-way which have been
46 | preserved may be counted toward this requirement if the species, size, preservation
47 | measures, and post-construction condition of the trees are approved by the Tree

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Warden. Where an esplanade is included in the road design, road trees required on that side of the street shall be planted in the esplanade. The esplanade shall be filled with soil, such as common borrow, suitable for growing trees. Where the esplanade provides insufficient soil volume to support a road tree, structural soils may be used underneath the sidewalk to expand the tree growth area. See also Appendix C, Road Tree List.

Appendix C Road Tree List

The following trees are recommended for planting to meet the road tree requirements. Alternative species may also be acceptable upon approval of the Tree Warden, unless specified by the Planning Board. The list includes the scientific and common tree name, minimum required caliper at the time of planting, expected height at maturity and comments. The comments refer to tree characteristics of water and salt tolerance. **Tree species selection should balance the goals of diversifying the community forest while still providing some continuity of landscape design along roads.**

Scientific	Common	Size	Height	Comments*
<i>Acer campestre</i>	Hedge Maple	2"	45'	D,M
<i>Acer saccharum</i>	Sugar Maple	2"	80'	WD
<i>Acer pseudoplatanus</i>	Planetree maple	2"	60'	WD,H
<i>Acer rubrum</i>	Red Maple Cultivars	2"	60'	W,M
<i>Betula alleghaniensis</i>	Yellow Birch	2"	50'	W
	Shagbark Hickory	2"	50'	
<i>Carpinus caroliniana</i>	American Hornbeam	2"	30'	W
<i>Cercidiphyllum japonicum</i>	Katsura	2"	60'	W
<i>Cladrastus kentuckea</i>	Yellowwood	2"	60'	W
<i>Corylus columna</i>	Turkish Filbert	2"	50'	D
<i>Ginkgo biloba</i>	Maidenhair Tree Cultivars	2"	60'	D,M
<i>Maackia amurensis</i>	Maackia	2"	40'	W
<i>Nyssa sylvatica</i>	Tupelo	2"	60'	W
<i>Platanus acerfolia</i>	London Plane	2"	75'	W
<i>Quercus bicolor</i>	Swamp White oak	2"	55'	W
<i>Quercus rubra</i>	Red Oak	2"	75'	D
<i>Quercus spp</i>	Other oak species as approved by Tree Warden	2"		
<i>Sorbus alnifolia</i>	Korean Mountain Ash	2"	35'	D,M
<i>Syringa reticulata</i>	Japanese Tree Lilac	2"	30'	D,M
<i>Zelkova serrata</i>	Zelkova	2"	50'	W
Native species	as approved by Tree Warden	2"		

* W= Wet, D=Dry, WD=Well Drained, M=Moderate Salt Tolerance and H= High Salt Tolerance

All trees shall be planted in accordance with the Planting Specifications of the Cape Elizabeth Comprehensive Street Tree Plan.

Chapter 18
Conservation Ordinance

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

Article II. ~~Storm Water and Non-Storm Water Control Ordinance~~
Reserved.

Article IV. ~~Post-Construction Stormwater Management Ordinance~~
Reserved.

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Zoning Ordinance

SEC. 19-1-3. DEFINITIONS

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

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

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

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

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

Moderate Income: Family income which is between eighty percent (80%) and one hundred twenty~~thirty~~ percent ~~(150%)-(120%)~~ of median family income for the Portland Metropolitan

1 Statistical Area as established by the State Planning Office or the Greater Portland Council of
2 Governments.

3
4 **Structure:** Anything built for the support, shelter or enclosure of persons, animals, goods or
5 property of any kind, together with anything constructed or erected with a fixed location on or in
6 the ground, exclusive of fences, stone walls, retaining walls, and roof overhangs not exceeding
7 two (2) feet from the vertical face of the structure siding. The term includes structures
8 temporarily or permanently located, such as decks and satellite dishes.
9

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11
12 **SEC. 19-4-3. NONCONFORMANCE WITH ALL ZONING DISTRICTS**
13 **EXCEPT THE OUTSIDE OF SHORELAND AND RESOURCE**
14 **PROTECTION DISTRICTS**

15
16 The following provisions shall govern the use and modification of nonconforming lots,
17 structures, and uses in all areas of the Town that do not comply with Zoning District
18 requirements are not located within a, except for the Shoreland Performance Overlay District or
19 a Resource Protection District. Nonconformities within the Shoreland Performance Overlay
20 District shall be governed by the provisions of Sec. 19-4-4, Nonconformance Within the
21 Shoreland Protection Overlay District, and nonconformities in the Resource Protection Districts
22 (RP1-CW, RP1-CW Buffer Overlay, RP2-WP, and RP3-F) shall be governed by the provisions
23 of Sec. 19-4-5, Nonconformance Within the Resource Protection Districts.
24

25 **SEC. 19-4-4. NONCONFORMANCE WITHIN THE SHORELAND**
26 **PERFORMANCE OVERLAY DISTRICT**

27
28 The following provisions shall govern nonconformance with provisions of within the Shoreland
29 Performance Overlay District. Nonconforming conditions in existence before the effective date
30 of this district, or amendments thereto, shall be allowed to continue, subject to the requirements
31 set forth in this section.
32

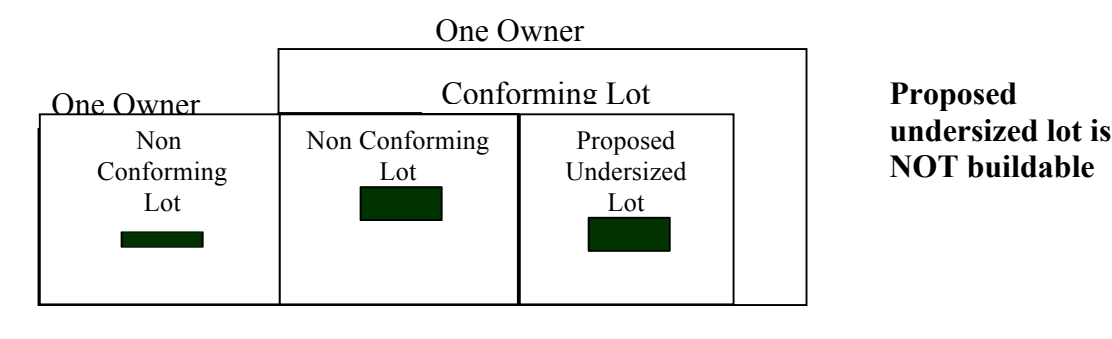
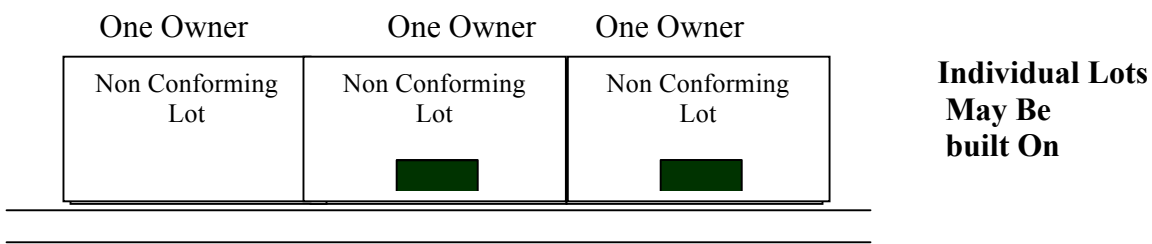
33 **A. Nonconforming Lots**

34
35 The following provisions shall govern the development of lots that are nonconforming because
36 they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage,
37 or similar requirement of the district within which they are located.
38

39
40 **1. Vacant Nonconforming Lots**

- 41
42 **a. Buildability.** Vacant nonconforming lots may be built upon in conformance with the
43 provisions of the district in which they are located even though the lots do not meet
44 the minimum lot area, net lot area per dwelling unit, street frontage, or similar
45 requirements as long as the requirements of the chart below are met. **(Effective**
46 **August 11, 1999 and revised effective July 4, 2001)**

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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	10,000 sq.ft.	10,000 sq.ft.	As required by

- with on-site sewage disposal	20,000 sq.ft.*	20,000 sq.ft.*	Sec. 19-6-4.D
Maximum building coverage			
- with public sewerage	25%	25%	NA
- with on-site sewage disposal	20%	20%	NA

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

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

B. Nonconforming Buildings and Structures

3. Reconstruction or Replacement

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

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

4. Enlargement

Any nonconforming structure which is located closer than the required setback from the property line may be enlarged as long as the area being enlarged meets the setback requirements, and will not create or expand any nonconformities. Enlargement of a nonconforming structure not in compliance with these limitations may be permitted provided that such enlargement is in compliance with the setback requirement to the

1 greatest practical extent as determined by the Zoning Board of Appeals in accordance
2 with the purposes of this Ordinance. In no case shall a structure be enlarged so as to
3 increase its nonconformity.

4
5 In determining whether the building reconstruction or replacement meets the setback to
6 the greatest practical extent, the Zoning Board of Appeals shall consider the physical
7 condition and type of foundation present, if any, in addition to the criteria in Sec. 19-4-
8 3.B.2, Relocation.
9

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

11
12 **F. Site Plan Review**

13
14 The following uses and activities shall be subject to site plan review by the Planning Board,
15 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
16 plumbing permit, or other permit:
17

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

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

28
29 **F. Site Plan Review**

30
31 The following uses and activities shall be subject to site plan review by the Planning Board,
32 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
33 plumbing permit, or other permit:
34

- 35 1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex
36 housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective
37 November 14, 2015)
- 38 2. Nonresidential uses listed in Sec. 19-6-2.B.3, except home day cares, wind energy
39 systems, short term rentals and day camps, which shall not require site plan review
40 (Effective August 11, 1999)
- 41 3. Nonresidential uses listed Sec. 19-6-2.C.2
- 42 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review
43

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

45
46 **F. Site Plan Review**

1
2 The following uses and activities shall be subject to site plan review by the Planning Board,
3 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
4 plumbing permit, or other permit:
5

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

13 14 **SEC. 19-7-9. PRIVATE ACCESS PROVISIONS**

15 16 **D. Private Accessway Procedures**

17 18 **5. *Post Approval Procedures***

- 19
20 a. Inspection: The applicant shall be responsible for demonstrating that the
21 construction of the private accessway meets the standards of this section. The
22 private accessway shall be inspected under the direction of a registered
23 professional engineer. Prior to the issuance of any building permits for the lot
24 served by a private accessway, (1) the engineer shall certify to the Code
25 Enforcement Officer that the private accessway has been constructed in
26 accordance with this section or (2) a performance guarantee shall be posted in
27 compliance with the provisions of Sec. 16-2-6 (c) of the Subdivision Ordinance.
28

29 ~~**SEC. 19-8-1. BUFFERING OF NONRESIDENTIAL USES RESERVED**~~

- 30
31 ~~1. The required side and rear yards of nonresidential uses, except agriculture that are located~~
32 ~~within residential districts or that are on lots that abut a residential district shall be~~
33 ~~retained in their natural vegetated state to the maximum extent possible to provide a~~
34 ~~visual screen between different uses. (Effective June 10, 2010)~~
- 35
36 ~~2. Where natural buffering does not exist, or is not possible to be retained, or is not~~
37 ~~sufficient to achieve an effective visual screen, the required side and rear yards shall be~~
38 ~~landscaped to provide a visual screen between different uses. The buffer shall be a~~
39 ~~minimum of twenty-five (25) feet wide and located between any building and the~~
40 ~~abutting property line and a minimum of ten (10) feet wide between any parking area or~~
41 ~~driveway and the abutting property line, and may be interrupted only by a single~~
42 ~~pedestrian pathway at each abutting property line no more than five (5) feet wide. The~~
43 ~~buffer shall include, for each one hundred (100) feet of length (or, if less than one~~
44 ~~hundred [100] feet, the fraction thereof), a minimum of two (2) canopy or evergreen~~
45 ~~trees, four (4) understory trees, and six (6) shrubs, plus such other plantings as a licensed~~
46 ~~landscape architect certifies in writing will achieve seventy-five percent (75%) opacity to~~

1 ~~a height of at least six (6) feet on a year-round basis within three (3) years of planting, or,~~
2 ~~if solid fencing also is installed in the buffer area, fifty percent (50%) opacity to a height~~
3 ~~of at least six (6) feet within three (3) years of planting.~~

4
5 ~~For every mature canopy or evergreen tree existing prior to the development and retained~~
6 ~~within the buffer area, the required number of new trees may be reduced by two (2). In~~
7 ~~this case, an amount of money sufficient to provide for replacement as provided for~~
8 ~~below and approved by the Planning Board, shall be deposited by the owner into an~~
9 ~~interest bearing escrow account established and controlled by the Town. If any such~~
10 ~~retained tree dies within five (5) years of the date of the building permit issued for the~~
11 ~~development, it shall be replaced with two (2) canopy trees meeting the standard of this~~
12 ~~Ordinance. The escrow fund balance including any unexpended interest shall be released~~
13 ~~to the owner upon the expiration of the five (5) year~~

14
15 ~~period provided that the buffering requirement is met. The Town may use the escrow~~
16 ~~fund at any time during the five (5) years to replace dead plant stock if, after written~~
17 ~~notice to the owner, the owner fails to do so in a timely manner.~~

18
19
20 **ARTICLE IX. SITE PLAN REVIEW**

21
22 **SEC. 19-9-1. PURPOSE**

23
24 The site plan review provisions set forth in this section are intended to protect the public health
25 and safety, promote the general welfare of the community, preserve the environment, and
26 minimize improvements that must be paid for by the Town's taxpayers by assuring that
27 nonresidential, multiplex residential, eldercare, and similar facilities are designed and developed
28 in a manner which assures that adequate provisions are made for: traffic safety and access;
29 emergency access; water supply; sewage disposal; management of stormwater, erosion, and
30 sedimentation; protection of the groundwater; protection of the environment; minimizing the
31 adverse impact on adjacent properties; and fitting the project harmoniously into the fabric of the
32 community.
33

34 **SEC. 19-9-2. APPLICABILITY**

35
36 **A. Activities Requiring Site Plan Review**

37
38 The owner of a parcel of land shall obtain site plan approval prior to undertaking any alteration
39 or improvement of the site including grubbing or grading, obtaining a building or plumbing
40 permit for the activities, or commencing any of the following activities on the parcel:

- 41
42 *1.* The construction of any nonresidential building or building addition
43
44 *2.* Any nonresidential expansion or change in use except that changes of use within the
45 Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan
46 Review and uses within the Business A District shall be governed by the provisions of
47 Sec. 19-6-5. F. Site Plan Review. **(Effective June 10, 2010)**

- 1
- 2 3. Multiplex housing and eldercare facilities
- 3
- 4 4. Any other activity or use requiring Planning Board review in the Zoning Ordinance
- 5 5. New construction involving more than ten thousand (10,000) square feet of impervious
- 6 surface, paving, clearing, or vegetative alteration, or any combination thereof. (The
- 7 Planning Board shall review the proposal for control of stormwater runoff under the
- 8 terms of Chapter 18, Article II, Stormwater Control Ordinance.)
- 9

10

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

12

13 The following activities shall **not** require site plan approval (certain of these activities may,

14 however, require the owner to obtain a building permit, plumbing permit, or other State and local

15 approvals):

16

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

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

44

45 The Planning Board is authorized to review and act on all site plans for development requiring

46 site plan review as defined above. In each instance where the Planning Board is required to

1 review the site plan for a proposed use, it shall approve, deny, or conditionally approve the
2 application based on its compliance with the standards in Sec. 19-9-5, Approval Standards,
3 which action shall be binding upon the applicant. Where a proposed use is subject to approval of
4 the Zoning Board of Appeals, such approval shall be obtained before the Planning Board
5 considers the site plan for the proposed use.
6

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

8

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

12 **A. Workshop**

13

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 **1. Purpose**

22

23 The purposes of the preapplication workshop are to:

- 25 a. Allow the Planning Board to understand the nature of the proposed use and the
26 issues involved in the proposal
 - 28 b. Allow the applicant to understand the development review process and required
29 submissions
 - 31 c. Identify issues that need to be addressed in future submissions
- 32

33 **2. Information Required**

34

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:

- 38 a. The proposed site, including its location, size, and general characteristics
- 40 b. The natural characteristics of the site that may limit its use and development
- 42 c. The nature of the proposed use and potential development, including a conceptual
43 site plan
- 45 d. Any issues or questions about existing municipal regulations and their
46 applicability to the project

1
2 e. Any requests for waivers from the submission requirements
3

4 **3. *Planning Board Workshop***
5

6 The Planning Board workshop shall be informational and shall not result in any formal
7 action. The Planning Board shall identify any issues or constraints which need to be
8 addressed in the formal site plan application.
9

10 **B. *Application Review Procedures***
11

- 12 **1. *Completeness.*** After an application has been submitted with the requisite fees, including
13 establishment of a Review Escrow Account under the terms of Sec. 16-2-1 (c) of the
14 Subdivision Ordinance, and after any required Zoning Board of Appeals approval has
15 been obtained, the Town Planner shall accept and date an application for Planning Board
16 review~~issue a dated receipt to the applicant~~. In consultation with the Planning Board
17 Chair or Vice Chair, the Town Planner shall review the site plan application and
18 accompanying materials to determine whether the application is complete or incomplete.
19 If the application is preliminarily determined to be incomplete, the Town Planner shall
20 notify the applicant in writing and shall list in the written determination the materials that
21 must be submitted in order to make the application complete. If the applicant fails to
22 submit a complete application within four (4) months of the written determination of
23 incompleteness~~issued receipt date~~, the application shall be deemed withdrawn. When the
24 Town Planner makes the preliminary determination that an application is complete, the
25 application shall be scheduled for consideration at the next available Planning Board
26 meeting. The Planning Board may require other information in addition to that required
27 in Sec. 19-9-4.C, Submission Requirements. The Planning Board may also request an
28 evaluation of specific aspects of the site plan from the Conservation Commission, the
29 Town Engineer, or others. In the event that the Planning Board requires additional
30 information or evaluation, it may deem the application incomplete~~defer making its~~
31 ~~decision until its next regular meeting~~.
32

33 No action taken by the Town Planner, either alone or in consultation with the Planning
34 Board Chair or Vice Chair, with respect to reviewing a site plan application, shall result
35 in an application being deemed pending for the purposes of 1 M.R.S.A. §302. The Town
36 Planner, either alone or in consultation with the Planning Board Chair or Vice Chair,
37 shall have no authority to review the substance of a site plan application to determine
38 whether it complies with the site plan review criteria.
39

- 40 **2. *Public Hearing.*** Upon certification by the Planning Board that an application is complete,
41 the Planning Board, at its discretion, may hold a public hearing. If the Planning Board
42 determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days
43 of the date that the application is deemed complete and shall provide public notice in
44 accordance with Sec. 16-2-1 (b) of the Subdivision Ordinance.
45

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

6
7 3. Planning Board Decision. The Planning Board shall vote to approve, approve with
8 conditions, or disapprove the Site Plan upon the conclusion of review of the
9 development's compliance with Sec. 19-9-5, Approval Standards. The Planning Board
10 decision shall include written findings of fact and shall be provided to the applicant
11 within seven (7) days of the Planning Board vote.

12
13 4-3. Performance Guarantee. The Planning Board, at its discretion, may require that a
14 performance guarantee be established with the Town for the cost of site improvements.
15 Each performance guarantee shall comply with Sec. 16-2-6(c) of the Subdivision
16 Ordinance. An inspection fee shall be paid in accordance with Sec. 16-2-6 (d).
17

18 [Do you want to make other post-approval requirements in the Subdivision Ordinance
19 applicable?]
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 1. General Submission parameters.

36
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.1. **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.** ~~2. — A key map of the site with~~
21 ~~reference to surrounding areas and existing street locations~~

22
23
24
25 c.3 **Name of Project/Applicant. Proposed name of the project;**The name and
26 address of **record**the owner and **site plan** applicant, ~~together with the names of~~
27 **the adjoining property owners; date of submission; north point; graphic map**
28 **scale.** ~~of all contiguous land and or property directly across the street and within~~
29 ~~two hundred (200) feet of the property, as shown by the most recent tax records of~~
30 ~~all municipalities in which such properties shall lie~~

31
32 d.4 **Survey.** **A standard boundary survey of the site, giving complete descriptive**
33 **data by bearings and distances, Lot line dimensions made and certified by a**
34 **licensed land surveyor in the State of Maine;** a copy of the deed for the property
35 to be developed, as well as copies of any easements, restrictions or covenants;
36 **location map, showing the relative location of the proposed project in relation**
37 **to surrounding neighborhoods or areas of Town.**

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

1 Resource Protection 1, Resource Protection 1 Buffer or Resource Protection 2
2 District.

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

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

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

41
42 ~~7. Building setback, side line, and rear yard distance~~

43
44 ~~8. All existing physical features on the site and within two hundred (200) feet thereof,~~
45 ~~including streams, watercourses, existing woodlands, and existing trees at least~~
46 ~~eight (8) inches in diameter as measured four and one-half (4 1/2) feet above grade.~~

1 Soil conditions as reflected by a medium intensity survey (such as wetlands, rock
2 ledge, and areas of high water table) shall also be shown. The Planning Board may
3 require a high intensity soils survey where it deems necessary.
4

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

11
12 ~~10.~~ Parking, loading, and unloading areas shall be indicated with dimensions, traffic
13 patterns, access aisles, and curb radii
14

15 ~~11.~~ Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with
16 cross sections, design details and dimensions
17

18 ~~i.12.~~ Stormwater Location and design of existing and proposed stormwater systems
19 Calculation of existing and proposed impervious surface; A stormwater
20 management plan, with flow arrows, profiles, cross sections, and invert
21 elevations prepared, showing existing and design of all facilities and
22 conveyances, LID methods, and identification and location of known existing
23 deficiencies that result in stormwater surcharge or flooding; location of
24 proposed drainage easements; narrative description of how stormwater will be
25 managed; description of any Low Impact Development (LID) methods incorporated
26 into the plan; Note on plan for maintenance of private stormwater
27 infrastructure; stormwater maintenance plan that lists infrastructure that needs to
28 be maintained, inspection frequency, and maintenance requirements. Where the
29 property is located within the Great Pond Watershed, a description of how the Great
30 Pond Watershed Overlay District provisions will be met.
31

32 When the project increases impervious surface by an area of ten thousand (10,000)
33 sq. ft. but less than 1 acre (43,560 sq. ft.), the stormwater management plan must be
34 prepared, signed and stamped by a professional engineer licensed in the State of
35 Maine, pre- and post development calculations for the 2 and 25 year storm must be
36 provided, and time of concentration path segments shown.
37

38 j. Erosion Control. An erosion control plan including details of erosion control
39 methods used; written erosion control plan with notes.
40

41 k. Utilities.
42

43 i. Water: Ability to serve letter from the Portland Water District; , sanitary
44 waste disposal systems location and size of any existing and proposed
45 water mains on the property, as well as details showing proposed
46 connections to water systems; where public water is not to be provided,

1 an alternative means of a clean and adequate water supply shall be
2 shown, with supporting written documentation; nearest hydrant. and
3 potable water supply;
4

5 ii. Sewage Disposal. When the project will be served by public sewage, an
6 ability to serve letter from the Town of Cape Elizabeth Sewer
7 Superintendent; All existing and proposed public or shared sewage
8 facilities and connection to the public sewage system; when not served by
9 public sewer, evidence to demonstrate suitability of soils for subsurface
10 wastewater disposal; the location of the subsurface wastewater system;
11 all designs, specifications and details for a clustered private or public
12 sewage system.
13

14 iii. Other utilities. Ability to serve letter from Central Maine Power; Location
15 of existing and proposed above and below ground electrical lines, other
16 utility conduits and location of gas storage tanks and fuel lines;
17

18 iv. Solid/ Other Waste Disposal. Description of how solid waste will be stored
19 and removed from the site; location and details of solid waste and
20 recycling storage containers and screening; Identification of chemicals,
21 chemical wastes, hazardous, special or radioactive materials to be handled
22 and/or stored onsite.
23

24 and methods of solid waste storage and disposal
25

26 l.13. Landscaping. Location and description of existing vegetation to be preserved;
27 methods of preserving vegetation to be used during construction; Landscaping and
28 buffering plan showing what will remain and what will be planted, indicating
29 botanical and common names of plants and trees, identification as native, non-
30 native or invasive, and size at time of planting; fencing location, type, material
31 and size. dimensions, approximate time of planting and maintenance plans
32
33

34 m.14. Lighting. Location and type of lighting to be installed; lighting fixture details
35 indicating type of standards, location, wattage and mounting height; A
36 photometric study showing the footcandle lighting level at the property line
37 when new lights shall be installed, radius of light and intensity in footcandles
38
39

40 n.15. Signs. Location, dimensions, materials, and details of signs.
41

42 o. Noise. Written description of the sounds generated from the site that will exceed 45,
43 55, 60, 65 and 70 dB(a) at the property line.
44

45 p. Exterior storage. Location of outside storage or display areas; screening.
46

1 q.16. Financial and Technical Capability. Demonstration of technical and financial
2 capability to complete the project. If the applicant concludes that public disclosure
3 of confidential financial information may be detrimental to the success of the
4 project, the applicant may disclose such financial information to the Town
5 Manager, who shall explore with due diligence, the applicant's financial capability
6 to complete the project as proposed in a timely fashion and make a recommendation
7 to the Planning Board.
8

9 3.17. Waiver of Submission items.

10
11 ~~Waiver of information.~~—Where the Planning Board finds that ~~due to special~~
12 ~~circumstances of a particular plan,~~ the submission of any information listed in
13 Sec. 19-9-4.C, Submission Requirements, is not required in the interest of public
14 health, safety, and general welfare, ~~or is inappropriate because of the nature of the~~
15 ~~proposed development,~~ the Planning Board may waive such requirements,
16 ~~subject to appropriate conditions.~~ Without limitation, the following circumstances
17 may support a waiver of certain submission requirements.
18

19 a. Existing conditions. When no change to existing site conditions for that
20 submission item is proposed, the Planning Board may designate a
21 submission item as not applicable.
22

23 b. Substitution. Alternative information has been submitted more suited to
24 the scope of the project.
25

26 c. Small project. The limited nature of the project allows the Planning Board
27 to apply the Approval Standards and safeguard public health, safety and
28 general welfare without submission of additional information.
29

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

31
32 The following criteria shall be used by the Planning Board in reviewing applications for site plan
33 review and shall serve as minimum requirements for approval of the application. The
34 application shall be approved unless the Planning Board determines that the applicant has failed
35 to meet one or more of these standards. In each instance, the burden of proof shall be on the
36 applicant to produce evidence sufficient to warrant a finding that all applicable criteria have been
37 met.
38

39 1.A. Utilization of the Site

40
41 The plan for the development will reflect the natural capabilities of the site to support
42 development. Buildings, lots, and support facilities will be clustered in those portions of
43 the site that have the most suitable conditions for development. Environmentally
44 sensitive areas such as wetlands, steep slopes, flood plains, and unique natural features
45 will also be maintained and preserved to the maximum extent feasible. Natural drainage
46 areas will also be preserved to the maximum extent feasible.

1 |
2 | [note: pairs with submission items b-g]
3 |

4 | **2B. Traffic Access and Parking**
5 |

6 | **a1. Adequacy of Road System**
7 |

8 | Vehicular access to the site will be on roads which have adequate capacity to
9 | accommodate the additional traffic generated by the development. For developments
10 | which generate one hundred (100) or more peak hour trips based on the latest edition of
11 | the Trip Generation Manual of the Institute of Transportation Traffic Engineers,
12 | intersections on major access routes to the site within one (1) mile of any entrance road
13 | which are functioning at a Level of Service C or better prior to the development will
14 | function at a minimum at Level of Service C after development. If any such intersection
15 | is functioning at a Level of Service D or lower prior to the development, the project will
16 | not reduce the current level of service. A development not meeting this requirement may
17 | be approved if the applicant demonstrates that:
18 |

19 | **ia. Public improvement.** A public agency has committed funds to construct the
20 | improvements necessary to bring the level of access to this standard,
21 |

22 | **iib. Private improvement.** The applicant will assume financial responsibility for the
23 | improvements necessary to bring the level of service to this standard and will
24 | assure the completion of the improvements with a financial guarantee acceptable
25 | to the municipality, or
26 |

27 | **iiie. Status quo.** Town policy does not support the construction improvements.
28 |

29 | **b2. Access into the Site**
30 |

31 | Vehicular access to and from the development shall be safe and convenient.
32 |

33 | **ia. Safety.** All entrance and exit driveways are located to afford maximum safety to
34 | traffic, provide for safe and convenient ingress and egress to and from the site and
35 | to minimize conflict with the flow of traffic.
36 |

37 | **iib. Sight Distance.** Any exit driveway or driveway lane is so designated in profile and
38 | grading and so located as to provide the maximum possible sight distance
39 | measured in each direction. The sight distance available shall be consistent with
40 | the standards of the Subdivision Ordinance.
41 |

42 | **iiie. Corner.** Where a site occupies a corner of two (2) intersecting roads, no driveway
43 | entrance or exit is located within fifty (50) feet of the point of tangency of the
44 | existing or proposed curb radius of that site.
45 |
46 |

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

5
6 ve. Angle. Driveways intersect the road at an angle as near ninety degrees (90°) as
7 site conditions will permit.

8
9 vif. Construction. Road, driveway, and parking lot construction comply with the
10 construction and design standards in Sec. 16-3-2 of the Subdivision Ordinance.

11
12 c3. Internal Vehicular Circulation

13
14 The layout of the site shall provide for the safe movement of passenger, service, and
15 emergency vehicles through the site.

16
17 ia. Deliveries. Nonresidential projects that will be served by delivery vehicles will
18 provide a clear route for such vehicles with appropriate geometric design to allow
19 turning and backing for a minimum of vehicles.

20
21 iib. Emergency vehicles. Clear routes of access shall be provided and maintained for
22 emergency vehicles to and around buildings and shall be posted with appropriate
23 signage (fire lane - no parking).

24
25 iiie. Circulation. The layout and design of parking areas shall provide for safe and
26 convenient circulation of vehicles throughout the lot.

27
28 ivd. Topography. All roadways shall be designed to harmonize with the topographic
29 and natural features of the site. The road network shall provide for vehicular,
30 pedestrian, and cyclist safety, all season emergency access, snow storage, and
31 delivery and collection services.

32
33 d4. Parking Layout and Design

34
35 Off-street parking shall conform to Sec. 19-7-8, Off Street Parking and the following
36 standards:

37
38 ia. Street. Parking areas with more than two (2) parking spaces shall be arranged so
39 that vehicles do not need to back into the street.

40
41 iib. Property lines. All parking spaces, access drives, and impervious surfaces shall be
42 located at least five (5) feet from any side or rear lot line, except where standards
43 for buffer yards require a greater distance. No parking spaces or asphalt type
44 surface shall be located within five (5) feet of the front property line. Parking lots
45 on adjoining lots may be connected by accessways not exceeding twenty-four
46 (24) feet in width.

1
2 | iiie. Flow. In lots utilizing diagonal parking, the direction of proper traffic flow shall
3 be indicated by signs, pavement markings or other permanent indications.
4

5 | ivd. Stacked spaces. Parking areas for nonresidential uses shall be designed to permit
6 each motor vehicle to proceed to and from the parking space provided for it
7 without requiring the moving of any other motor vehicles. “Stacked” parking
8 may be permitted for resident parking in conjunction with residential uses if both
9 spaces in the stack are assigned to the occupants of the same dwelling unit.
10

11 | ve. Bumpers. The “overhang” of parked vehicles shall be restricted when it might
12 restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle
13 movement on adjacent walkways, or damage landscape materials.
14

15 | [note: pairs with submission item h]
16

17 | **3C. Pedestrian Circulation**
18

19 The site plan shall provide for a system of pedestrian ways within the development
20 appropriate to the type and scale of development. This system shall connect the major
21 building entrances/exits with parking areas and with existing or planned sidewalks in the
22 vicinity of the project. The pedestrian network may be located either in the street
23 right-of-way or outside of the right-of-way in open space or recreation areas. The system
24 shall be designed to link the project with residential, recreational, and commercial
25 facilities, schools, bus stops, and sidewalks in the neighborhood.
26

27 | [note: pairs with submission item h]
28

29 | **4D. Stormwater Management**
30

31 ~~Adequate provisions will be made for the collection and disposal of all stormwater that runs off~~
32 ~~proposed streets, parking areas, roofs, and other surfaces during a twenty-five (25) year, twenty-~~
33 ~~four (24) hour storm, through a stormwater drainage system and maintenance plan, which will~~
34 ~~not have adverse impacts on abutting or downstream properties.~~
35

36 ~~The stormwater management provisions shall be consistent with Chapter 18, Article II,~~
37 ~~Stormwater Control Ordinance, and the following:~~

38 Stormwater is managed on and off-site without damage to streets, adjacent properties,
39 downstream properties, soils and vegetation. 4.—To the extent possible practical, the plan will
40 retain stormwater on the site using the natural features of the site, except that in the Town Center
41 District, stormwater management shall be consistent with the Town Center Stormwater
42 Management Plan, updated September 2015 or most recent revision. A Low Impact
43 Development (LID) method has been incorporated into the stormwater management plan. The
44 plan includes a note requiring a post-construction maintenance plan for private stormwater
45 infrastructure and a maintenance plan has been submitted.
46

1 When the project increases impervious surface by ten thousand (10,000) sq. ft in area but less
2 than 1 acre (43,560), the stormwater management plan has been prepared, signed and stamped by
3 a professional engineer licensed in the State of Maine. Post-development peak flows do not
4 exceed pre-development flows for the 2 and 25 year storm. LID measures have been used to treat
5 a calculated volume (referred to as Calculated Treatment Volume, or CTV) such that it is not less
6 than one-half (1/2) inches multiplied by the net proposed new impervious surface area. The CTV
7 may be achieved by treating one-half (1/2) inches multiplied by the new onsite impervious
8 surface areas, or an equal existing on-site untreated impervious surface area, or of an equivalent
9 combination thereof of previously or proposed untreated area.

10 ~~—2. For major developments, stormwater runoff systems will detain or retain water such that~~
11 ~~the rate of flow from the site does not exceed the predevelopment rate, unless the system~~
12 ~~discharges directly to the Atlantic Ocean.~~

13
14 ~~—3. The applicant will demonstrate that on and off site downstream channel or system~~
15 ~~capacity is sufficient to carry the flow without adverse effects, or that he/she will be~~
16 ~~responsible for whatever improvements are needed to provide the required increase in~~
17 ~~capacity.~~

18
19 ~~—4. All natural drainage ways will be preserved at their natural gradients and will not be~~
20 ~~filled or converted to a closed system unless specifically approved.~~

21
22
23 ~~—5. The design of the stormwater drainage system shall provide for the disposal of~~
24 ~~stormwater without damage to streets, adjacent properties, downstream properties, soils,~~
25 ~~and vegetation.~~

26 ~~—6. The design of the storm drainage systems will be fully cognizant of upstream runoff~~
27 ~~which must pass over or through the site to be developed.~~

28
29 ~~—7. The biological and chemical properties of the receiving waters will not be degraded by~~
30 ~~the stormwater runoff from the development site. The use of oil and grease traps in~~
31 ~~manholes, the use of on site vegetated waterways, and vegetated buffer strips along~~
32 ~~waterways and drainage swales, and the reduction in use of deicing salts and fertilizers~~
33 ~~may be required, especially where the development stormwater discharges into a gravel~~
34 ~~aquifer area or other water supply source.~~

35
36 [note: pairs with submission item i]

37
38 **5E. Erosion Control**

39
40 All building, site, and roadway designs and layouts will harmonize with existing
41 topography and conserve desirable natural surroundings to the fullest extent possible.
42 Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on
43 sloped sites will be terraced to avoid undue cut and fill, and/or the need for retaining
44 walls. Natural vegetation will be preserved and protected wherever possible.

1 During construction, soil erosion and sedimentation of watercourses and water bodies
2 will be minimized by an active program meeting the requirements of the Maine Erosion
3 and Sediment Control Best Management Practices (BMP'S) as prepared by the Bureau of
4 Land and Water Quality of the Maine Department of Environmental Protection, March
5 2003 or most recent edition. ~~Cumberland County Soil and Water Conservation District's~~
6 ~~Best Management Practices.~~

7
8 [note: pairs with new submission item j]
9

10 **6F. Utilities** ~~*Water Supply*~~

11
12 a. Water Supply. The development will be provided with a system of water supply that
13 is adequate in quantity and quality to the proposed use. An adequate supply of water
14 for fire protection purposes shall also be demonstrated. [Do you want to encourage
15 public water supply/] ~~provides each use with an adequate supply of drinking water. If~~
16 ~~the project is proposed to be served by a public water supply, the applicant shall~~
17 ~~secure and submit a written statement from the supplier that the proposed water~~
18 ~~supply system conforms with its design and construction standards, will not result in~~
19 ~~an undue burden on the source or distribution system, and will be installed in a~~
20 ~~manner adequate to provide needed domestic and fire protection flows.~~

21
22 bG. Sewage Disposal. The development will be provided with a method of disposing of
23 sewage which is in compliance with Chapter 15, Sewer Ordinance.

24
25 i1. Public Sewage System. All sanitary sewage from new or expanded uses
26 shall be discharged into a public sewage collection and treatment system when
27 such facilities are currently available or can reasonably be made available at the
28 lot line and have adequate capacity to handle the projected waste generation.

29
30 ii2. Private Sewage System. If the public system cannot serve or be extended
31 to serve a new or expanded use, the sewage shall be disposed of by an on-site
32 sewage disposal system meeting the requirements of the State Wastewater
33 Disposal Rules and Chapter 15, Article II, Private Sewage Disposal Ordinance.

34
35 iii-3. Common ownership. When two or more lots or buildings in different
36 ownership share the use of a common subsurface disposal system, the system
37 shall be owned and maintained in common by an owners' association and shall
38 conform to the provisions of Chapter 15, Article III, Management of Cluster
39 Disposal Systems. Covenants in the deeds for each lot shall require mandatory
40 membership in the association and provide for adequate funding of the
41 association to assure proper maintenance of the system.

42
43 ~~—4. Industrial or commercial waste waters may be discharged to public sewers in~~
44 ~~such quantities and/or of such quality as to be compatible with sewage treatment~~
45 ~~operations. Such wastes may require pretreatment at the industrial or~~
46 ~~commercial site in order to render them amenable to public treatment processes.~~

1 ~~Pretreatment includes, but is not limited to, screening, grinding, sedimentation,~~
2 ~~pH adjustment, surface skimming, chemical oxidation and reduction and~~
3 ~~dilution.~~

4
5 **H. Utilities**

6
7 c. Other utilities. The development will be provided with electrical, ~~telephone, and~~
8 ~~telecommunication~~ service adequate to meet the anticipated use of the project.
9 New utility lines and facilities shall be screened from view to the extent feasible.
10 If the service in the street or on adjoining lots is underground, the new service
11 shall be placed underground. Except for propane tanks, no flammable or
12 explosive liquids or solids shall be stored in bulk above ground unless they are
13 located at least seventy-five (75) feet from any lot line, or forty (40) feet in the
14 case of underground storage. Propane tanks less than 500 gallons in size shall be
15 set back a minimum of ten (10) feet from the property line and tanks of 500
16 gallons or more in size shall be set back twenty-five (25) feet from the property
17 line. All materials shall be stored in a manner and location that is in compliance
18 with appropriate rules and regulations of the Maine Department of Public Safety
19 and other appropriate federal, state, and local regulations.

20
21
22 d. Solid Waste. The proposed development will provide for adequate storage and
23 disposal of solid wastes.

24
25 i. Screening. Any solid waste stored on the property prior to removal to an
26 authorized facility shall be secured and screened from public view.

27
28 ii. Liquid/semi-solid wastes. All storage facilities for fuel, chemicals, chemical
29 or industrial wastes, and biodegradable raw materials, shall meet the standards
30 of the State Department of Environmental Protection and the State Fire
31 Marshall's Office.

32
33 iii. Hazardous Materials. The handling, storage, and use of all materials identified
34 by the standards of a federal or state agency as hazardous, special or
35 radioactive shall be done in accordance with the standards of these agencies.
36 Any waste produced which is classified as a hazardous, special or radioactive
37 waste by either federal or state standards shall be disposed of at a licensed
38 disposal facility appropriate for the type of waste and done in accordance with
39 applicable state and federal regulations.

40
41 [note: pairs with submission item k]

42
43 **I. Water Quality Protection**

44
45 All aspects of the project shall be designed so that:

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

8
9 ~~2. All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable~~
10 ~~raw materials, shall meet the standards of the State Department of Environmental~~
11 ~~Protection and the State Fire Marshall's Office.~~

12
13 [Added to solid waste standard]

14
15 **J. ~~Wastes~~**

16
17 ~~The handling, storage, and use of all materials identified by the standards of a federal or state~~
18 ~~agency as hazardous, special or radioactive shall be done in accordance with the standards of~~
19 ~~these agencies.~~

20
21 ~~Any waste produced which is classified as a hazardous, special or radioactive waste by either~~
22 ~~federal or state standards shall be disposed of at a licensed disposal facility appropriate for the~~
23 ~~type of waste and done in accordance with applicable state and federal regulations.~~

24
25 [added to Solid Waste standard]

26
27 ~~No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless~~
28 ~~they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of~~
29 ~~underground storage. All materials shall be stored in a manner and location which is in~~
30 ~~compliance with appropriate rules and regulations of the Maine Department of Public Safety and~~
31 ~~other appropriate federal, state, and local regulations.~~

32
33 ~~The proposed development will also provide for adequate disposal of solid wastes. All solid~~
34 ~~waste will be disposed of at a licensed disposal facility having adequate capacity to accept the~~
35 ~~project's wastes.~~

36
37 Moved to #6, Utilities]

38 **7K. Shoreland Relationship**

39
40 The development will not adversely affect the water quality or shoreline of any adjacent
41 water body. The development plan will provide for access to abutting navigable water
42 bodies for the use of the occupants of the development if appropriate.

43
44 [note: pairs with submission item e]

45
46 **8. Landscaping and Buffering**

1
2 a. Preservation. The landscape will be preserved in its natural state insofar as
3 practical by minimizing tree removal, disturbance and compaction of soil, and by
4 retaining existing vegetation insofar as practical during construction. Extensive
5 grading and filling will be avoided as far as possible. Areas of vegetation to be
6 retained shall be designated on a preservation plan. Within the drip line of trees
7 to be preserved, activity and disturbance shall be prohibited and a physical barrier
8 shall be provided to separate these areas from the construction area.

9
10 b. Landscaping Plan. The development plan will provide for landscaping that
11 defines street edges, breaks up parking areas, softens the appearance of the
12 development and protects abutting properties from any adverse impacts of the
13 development. Landscaping materials shall be chosen for their ability to thrive at
14 the planting site and to promote diversity of the community forest.

15
16 c. Screening. The development shall provide for screening of service and storage
17 areas.

18
19 d. [Recommend this be deleted] Parking screening. Required parking and loading
20 spaces for nonresidential uses and multiplex housing, where not enclosed within a
21 building, shall be effectively screened from view by a continuous landscaped area
22 not less than eight (8) feet in width containing evergreen shrubs, trees, fences,
23 walls, berms, or any combination thereof forming a visual barrier not less than six
24 (6) feet in height along exterior lot lines adjoining all residential properties,
25 except that driveways shall be kept open to provide visibility for vehicles entering
26 and leaving. This requirement may be reduced or waived when it is determined
27 that such buffering is not necessary or desirable. Parking lots shall be designed to
28 include landscaped islands required in the Town Center and Business A Zoning
29 Districts.

30
31 [pairs to submission item l]

32 [Sec. d. needs review]

33 **L. — Technical and Financial Capacity**

34
35 ~~The applicant has demonstrated the financial and technical capacity to carry out the project in a~~
36 ~~timely fashion in accordance with this ordinance and the approved plan.~~

37
38 [Moved to # below]

39 **2M. Exterior Lighting**

40
41 1. Safety. The proposed development shall provide for adequate exterior lighting to
42 provide for the safe use of the development in nighttime hours, if such use is
43 contemplated, without excessive illumination. Lighting may be used which serves
44 security, safety and operational needs but which does not directly or indirectly
45 produce deleterious effects on abutting properties or which would impair the
46 vision of a vehicle operator on adjacent roadways.

1
2 2. Maximum level. Lighting fixtures shall be shielded or hooded so that the lighting
3 elements are not exposed to normal view by motorists, pedestrians, or from
4 adjacent dwellings and so that they do not unnecessarily light the night sky.
5 Direct or indirect illumination shall not exceed 0.5 footcandles at the lot line or
6 upon abutting residential properties. Lighting fixtures shall be shielded or hooded
7 so that the lighting elements are not exposed to normal view by motorists,
8 pedestrians, or from adjacent dwellings and so that they do not unnecessarily light
9 the night sky. All exterior lighting, except security lighting, shall be turned off
10 between 11 P.M. and 6 A.M. unless located on the site of a commercial or
11 industrial use which is open for business during that period.

12
13 [note: pairs to submission item m]

14 **N. Landscaping and Buffering**

15
16 ~~The landscape will be preserved in its natural state insofar as practical by minimizing tree~~
17 ~~removal, disturbance and compaction of soil, and by retaining existing vegetation insofar as~~
18 ~~practical during construction. Extensive grading and filling will be avoided as far as possible.~~
19 ~~Areas of vegetation to be retained shall be designated on a preservation plan. Within the drip~~
20 ~~line of trees to be preserved, activity and disturbance shall be prohibited and a physical barrier~~
21 ~~shall be provided to separate these areas from the construction area.~~

22
23
24 ~~The development plan will provide for landscaping that defines street edges, breaks up parking~~
25 ~~areas, softens the appearance of the development and protects abutting properties from any~~
26 ~~adverse impacts of the development.~~

27
28 ~~The development shall also provide for the buffering of adjacent uses where there is a transition~~
29 ~~from one type of use to another use and for screening of service and storage areas.~~

30
31 ~~Required parking and loading spaces for nonresidential uses and multiplex housing, where not~~
32 ~~enclosed within a building, shall be effectively screened from view by a continuous landscaped~~
33 ~~area not less than eight (8) feet in width containing evergreen shrubs, trees, fences, walls, berms,~~
34 ~~or any combination thereof forming a visual barrier not less than six (6) feet in height along~~
35 ~~exterior lot lines adjoining all residential properties, except that driveways shall be kept open to~~
36 ~~provide visibility for vehicles entering and leaving. This requirement may be reduced or waived~~
37 ~~when it is determined that such buffering is not necessary or desirable.~~

38
39 [Relocated to #8 above]

40
41 **10. Signs.**

42
43 Signs shall meet the standards of the Sign Ordinance. Sign materials and lighting shall be
44 of high quality and compatible with the character of the development.

45
46 [note: pairs with submission item n]

1
2 **11Q. Noise**

3
4 **a1. Maximum level.** The maximum permissible sound pressure level of any continuous,
5 regular or frequent or intermittent source of sound produced by any activity on the site
6 shall be limited by the time period and by the abutting land use as listed below. Sound
7 levels shall be measured at least four (4) feet above ground at the property boundary of
8 the source.
9

10
11 Sound Pressure Level Limits Using the Sound Equivalent Level of
12 One Minute (leq 1) (Measured in dB(a) Scale)

13
14

<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

22

23 **b2. Measurement.** Noise shall be measured by a meter set on the A-weighted response scale,
24 fast response. The meter shall meet the American National Standards Institute (ANSI S1
25 4-1961) “American Standards Specification for General Purpose Sound Level Meters.”
26

27 **c3. Construction.** No person shall engage in construction activities, on a site abutting any
28 residential use between the hours of 10 p.m. and 7 a.m.
29

30 [note: pairs with submission item o]

31
32 **12P. Storage of Materials**

33
34 **a. Outside Storage.** Exposed nonresidential storage areas, exposed machinery, and
35 areas used for the storage or collection of discarded automobiles, auto parts,
36 metals or other articles of salvage or refuse shall have sufficient setbacks and
37 buffers (such as a stockade fence or a dense evergreen hedge) to minimize their
38 impact on abutting residential uses and users of public streets.
39

40 **b. Receptacles.** All dumpsters or similar large collection receptacles for trash or
41 other wastes shall be located on level surfaces which are paved or graveled.
42 Dumpsters or receptacles located in a yard which abuts a residential or
43 institutional use or a public street shall be screened by fencing or landscaping.
44

1 | c. Secure from minors. All sites potentially hazardous to children shall require
2 | physical screening sufficient to deter small children from entering the premises.
3 | This screening shall be maintained in good condition.

4 |
5 | [note: pairs with submission item p]

6 |
7 | **L. Technical and Financial Capacity**

8 |
9 | The applicant has demonstrated the financial and technical capacity to carry out the project in a
10 | timely fashion in accordance with this ordinance and the approved plan.

11 |
12 | [note: pairs with submission item q]

13 |
14 | **SEC. 19-9-6. AMENDMENTS**

15 |
16 | Any alteration to a site which is inconsistent with the approved site plan shall require an
17 | amendment to the site plan. Planning Board approval must be obtained prior to the alteration.

18 |
19 | **A. De Minimus Change.** ~~De minimus changes to an approved site plan may be~~
20 | ~~placed on the Planning Board Consent Agenda at the discretion of the Town~~
21 | ~~Planner. The intent of this section is to process minor deviations from the~~
22 | ~~approved plan that typically arise as a project moves from conception to~~
23 | ~~completion of construction.~~ De minimus changes shall not include (1) a change to
24 | a public or private right-of-way or easement, (2) a decrease in proposed buffering
25 | or landscaping, ~~or~~ (3) any issue involving a condition placed on the site plan
26 | approval, or (4) any change in a building footprint greater than five (5) feet in any
27 | direction. Site plan changes which do not receive de minimus approval shall be
28 | submitted to the Planning Board under Sec. 19-9-6.B.

29 |
30 | 1. Review. The applicant shall meet with the Town Planner and provide a
31 | written description of the proposed amendments and all applicable plans
32 | impacted by the amendments. The Town Planner shall review the
33 | submission with the applicant and consult with appropriate town staff. The
34 | Town Planner will make a preliminary determination that the proposed
35 | changes do comply with the approval standards, do not comply with the
36 | approval standards, or that the nature of the amendments merit review by
37 | the Planning Board.

38 |
39 | 2. Decision. The Town Planner shall forward the De Minimus Change
40 | application and a recommendation to the Planning Board Chair.
41 | Notwithstanding Sec. 19-9-4(B)(1), the Planning Board Chair shall make
42 | the final determination to approve a de minimus change or to forward the
43 | site plan amendment to the Planning Board for review.

44 |
45 | **B. Amendment.** Any change to a plan approved by the Planning Board must be
46 | submitted to the Planning Board for review and approval, unless the amendment

1 ~~is a De Minimus Change. The Planning Board shall review the amendments in~~
2 ~~accordance with the Review Procedures, Sec. 19-9-4. Submission requirements~~
3 ~~may be limited to the information related to the proposed amendments. Any~~
4 ~~Planning Board Decision to approve amendments to a previously approved Site~~
5 ~~Plan shall incorporate the original Site Plan Approval, except as specifically~~
6 ~~amended. Prior to placement on the Consent Agenda, the applicant shall meet~~
7 ~~with the Town Planner to review the proposed changes and shall provide eight (8)~~
8 ~~copies of the revised site plan to the Town Planner at least eighteen (18) days~~
9 ~~prior to the next regular Planning Board meeting. The decision of the Town~~
10 ~~Planner not to place an item on the Consent Agenda may be appealed to the~~
11 ~~Planning Board upon submission of fourteen (14) copies of the proposed change~~
12 ~~to the Town Planner eighteen (18) days prior to the next regular meeting of the~~
13 ~~Planning Board.~~

14
15
16 **SEC. 19-9-7. APPEALS OF PLANNING BOARD ACTIONS**

17
18 Appeal of an action taken by the Planning Board regarding site plan review shall be to the
19 Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.
20

1 CHAPTER 25

2 STORMWATER

3 Article I. Stormwater and Non-Stormwater Control

4

5

6

7 Sec. 25-1-1 Purpose 25-1

8 Sec. 25-1-2 Approval Required 25-1

9 Sec. 25-1-3 Definition 25-2

10 Sec. 25-1-4 Storm Water Runoff System Design 25-3

11 Sec. 25-1-5 System Responsibility 25-5

12 Sec. 25-1-6 [delete Storm Water Runoff System Plan Requirements and replace

13 with Non Planning Board reviewed storm water runoff] 25-5

14 Sec. 25-1-7 Design Adjustment 25-6

15 Sec. 25-1-8 Non-Storm Water Regulation 25-6

16 Sec. 25-1-9 Enforcement 25-8

17 Sec. 25-1-10 Severability 25-9

18

19 Article II. Post Construction Stormwater Management

20

21 Sec. 25-2-1 Purpose 25-9

22 Sec. 25-2-2 Objectives 25-10

23 Sec. 25-2-3 Applicability 25-10

24 Sec. 25-2-4 Definitions 25-10

25 Sec. 25-2-5 Post-Const. Storm Water Management Plan 25-13

26 Sec. 25-2-6 Post-Const. Storm Water Management Plan Compliance 25-14

27 Sec. 25-2-7 Enforcement 25-15

28 Sec. 25-2-8 Notice of Violation 25-15

29 Sec. 25-2-9 Penalties/Fines/Injunctive Relief 25-16

30 Sec. 25-2-10 Consent Agreement 25-16

31 Sec. 25-2-11 Appeal of Notice of Violation 25-16

32 Sec. 25-2-12 Enforcement Measures 25-17

33 Sec. 25-2-13 Severability 25-17

34

35 Article I. Stormwater and Non-stormwater Control

36

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

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

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

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

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

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

43 welfare.

44

45 Sec. 25-1-2. Applicability. The provisions of this chapter shall apply to:

- 46
- 47 a. Any proposed activity subject to Planning Board review and involving more than 43,560

1 square feet of added impervious surface, paving, clearing, or vegetative alterations, or
2 any development requiring Subdivision Review (Chapter 16, Subdivision Ordinance)

3
4 [Recommend delete the following with the above replacement text:

5
6 except for the construction of a single family home and related landscaping. Planning Board
7 approval shall be required as provided hereunder.]

8
9 b. Any Discharge of storm water or non-storm water from any premises into the Town
10 Storm Water Runoff System.

11
12 c. All extensions of the storm water runoff system must be constructed to comply with
13 minimum standards developed by the Enforcement Authority.

14
15 Sec. 25-1-3. Definitions. For the purposes of this Ordinance, the following terms shall
16 have the meanings given herein. All words not defined herein shall carry their customary
17 and usual meanings.

18
19 Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also
20 known as the “Clean Water Act”), and any subsequent amendments thereto.

21
22 CFR: Code of Federal Regulations.

23
24 Developed area. "Disturbed area" excluding area that within one calendar year of being
25 disturbed is returned to a condition with the same drainage pattern that existed prior to the
26 disturbance and is revegetated, provided the area is not mowed more than once per year.

27
28 Discharge: Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other
29 addition of Pollutants to Waters of the State.

30
31 Disturbed area. All land areas that are stripped, graded, grubbed, filled, or excavated at any
32 time during the site preparation or removing vegetation for, or construction of, a project.
33 "Disturbed area" does not include routine maintenance, but does include re-development and
34 new impervious areas. "Routine maintenance" is maintenance performed to maintain the original
35 line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel
36 surfaces while maintaining the original line and grade, hydraulic capacity and original purpose of
37 the facility is considered routine maintenance. Cutting of trees, without grubbing, stump
38 removal, disturbance or exposure of soil is not considered "disturbed area." A disturbed area
39 continues to be considered as a "disturbed area" if it meet the definition of "developed area" or
40 impervious area" following final stabilization.

41
42 Direct Discharge: Any discernible, confined and discrete conveyance, including, but not
43 limited to, any pipe, ditch, channel, tunnel, conduit, well, container, concentrated animal
44 feeding operation or vessel or other floating craft, from which Pollutants are or may be
45 discharged. (Also known as Point Source.)

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

3
4 **Impervious Surface:** The total area of a parcel that consists of buildings and associated
5 constructed facilities or areas that will be covered with a low-permeability material, such as
6 asphalt or concrete, and areas such as gravel roads and unpaved parking areas that will be
7 compacted through design or use to reduce their permeability. Common impervious areas
8 include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage
9 areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other
10 surfaces which similarly impede the natural infiltration of storm water. A natural or man-made
11 waterbody is not considered an impervious area, but is treated as an immediate runoff surface in
12 curve number calculations.

13
14 **Industrial Activity:** Activity subject to NPDES Industrial Permits as defined in 40 CFR,
15 Section 122.26 (b)(14).

16
17 **National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge**
18 **Permit:** A permit issued by the United States Environmental Protection Agency (EPA) or
19 by the Maine Department of Environmental Protection (DEP) that authorizes the Discharge
20 of pollutants to waters of the United States.

21
22 **Non-Storm Water Discharge:** Any Discharge to the Town Storm Water Runoff System
23 that is not composed entirely of Storm Water.

24
25 **Person:** Any individual, firm, corporation, municipality, quasi-municipal corporation, State
26 or Federal agency or other legal entity.

27
28 **Pollutant:** Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse,
29 effluent, sewage sludge, munitions, chemicals, biological or radiological materials, oil,
30 petroleum products or by-products, heat, wrecked or discarded equipment, aggregate
31 materials, and industrial, municipal, domestic, commercial or agricultural wastes of any
32 kind.

33
34 **Premises:** All or any part of a building, lot, parcel of land, whether improved or
35 unimproved, including adjacent sidewalks and parking areas from which Discharges into the
36 Town Storm Water Runoff System that is created, initiated, originated or maintained.

37
38 **Storm Water:** Runoff resulting from snowmelt, rain, precipitation or groundwater on the
39 ground.

40
41 **Storm water Maintenance agreement.** An agreement describing maintenance of storm water
42 runoff system for development reviewed by the Planning Board. All privately owned facilities
43 shall be included in the maintenance agreement. A maintenance agreement must include, at a
44 minimum, the party responsible for maintenance, a list of the storm water runoff system
45 components that requires maintenance, inspection frequency, maintenance requirements, and
46 submission of an annual report to the Town. Storm water runoff system components that will be

1 privately owned until such time they are conveyed to the Town require a maintenance agreement
2 until they are conveyed.

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

9
10 **Town:** The Town of Cape Elizabeth.

11
12 **Waters of the State:** Any and all surface and subsurface waters that are contained within,
13 flow through, or under or border upon the State of Maine or any portion of the State of
14 Maine, including the marginal and high seas, except such waters as are confined and retained
15 completely upon the property of one person and do not drain into or connect with any other
16 waters of the State of Maine, but not excluding waters susceptible to use in interstate or
17 foreign commerce, or whose use, degradation or destruction would affect interstate or
18 foreign commerce.

19
20 **Uncontaminated:** Free of Pollutants.

21
22 **Sec. 25-1-4. Storm Water Runoff System Design.**

23
24 a. **Applicability.** This section shall be applicable to the following development:

25
26 1. Any development involving more than replace 10,000 sq. ft. with one acre | 1
27 acre (43,560 sq. ft). of impervious surface [delete to be consistent with Chapter
28 500 threshold for review, paving, clearing, or vegetative alterations, and which
29 requires Site Plan (Chapter 19, Zoning Ordinance); and

30
31 2. Any development requiring Subdivision Review (Chapter 16, Subdivision
32 Ordinance) by the Planning Board.

33
34 b. **Submission Requirements.** The following information shall be submitted to the Planning
35 Board.

36
37 1. **Professional Engineer.** Designation of a professional engineer licensed in the
38 State of Maine who will design, sign and stamp the storm water runoff system.

39
40 2. **Base information.** The existing site information required for subdivision or site
41 plan review, including but not limited to standard boundary survey, topographic
42 contours, location of water bodies and water courses, shall be used as the base for
43 the storm water runoff system plan.

44
45 3. **Impervious surface.** On the storm water runoff plan and in the written materials,
46 the calculated square footage of existing impervious surface and proposed
47 impervious surface.

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43
4. Pre- and post construction calculations. Storm water runoff calculations based on the 2- and 25-year storm for the property.
 5. Existing system. On the storm water runoff plan and in the written materials, show and describe the existing storm water runoff system, including but not limited to storm water infrastructure, drainage channels, culverts and other conveyances, and deficiencies that result in storm water surcharge or flooding on the property.
 6. Proposed improvements. On the storm water runoff plan and in the written materials, show and describe the proposed storm water runoff plan, including but not limited to proposed storm water runoff system components, showing design of all facilities and conveyances. The storm water runoff plan and written materials shall include information describing the difference in the pre and post-development flows, infiltration on the site, storm water runoff discharge downstream impacts, accommodation of upstream flows, and include all necessary design details and components.
 7. Easements. When storm water runoff plan components are not located in the public right-of-way, executable easement deeds providing the Town with access and maintenance rights.
 8. Maintenance. When all or part of the storm water runoff system infrastructure will not be conveyed to the Town, provide a draft maintenance agreement and include the following note on the plans: The site requires (a) a Maintenance Agreement for the storm water runoff system to be executed with the Enforcement Authority and filed with the Cumberland County Registry of Deeds, and (b) after construction is complete, provide annually a certification to the Enforcement Authority that the storm water runoff system has been inspected and maintained in accordance with the Post Construction storm water runoff system management plan approved for this site.
 9. Record drawings. On the storm water runoff plan a note that "a reproducible set of record drawings, as well as digital files in a format used by the project engineer during project design or other format approved by the Public Works Director suitable for import into the Town Geographic Information System (GIS), indicating the storm water runoff work constructed and how the record drawings were compiled shall be provided to the Enforcement Authority upon completion of construction."

44 c. Review Standards.

- 45
46
1. Professional Engineer. The storm water runoff system shall be prepared by a

1 professional engineer licensed in the State of Maine.

2
3 2. 2 and 25 year storm. The storm water runoff system shall be designed for a storm
4 of intensity equal to the 2 and 25-year storm.

5
6 3. Infiltration. The storm water runoff system shall maximize to the greatest extent
7 practical the amount of storm water infiltrating on the site during storm events,
8 except that development located in the Town Center District shall design a
9 stormwater plan that is consistent with the Town Center Stormwater Management
10 Plan, updated September 2015 or most recent version.

11
12 4. Downstream impacts. The storm water runoff system shall provide for the
13 discharge of storm water from the site without damage to streets and storm water
14 infrastructure, adjacent properties, downstream properties, soils and vegetation.
15 When post-development flows exceed pre-development flows, the development
16 shall demonstrate that either (1) storm water runoff will be stored on-site and
17 released at a rate not to exceed pre-development flows or (2) that the storm water
18 runoff system has sufficient capacity to carry the increased flow without adverse
19 impacts. Direct discharge to tidally influenced areas shall be considered sufficient
20 capacity to carry increased flow.

21
22 5. Upstream flows. The storm water runoff system shall be designed to
23 accommodate all existing up stream flows that pass through the site. No non-
24 storm water structures shall be permitted in areas of the site that flood or
25 surcharge during the 2 and 25-year storm. Where state or federal law is more
26 restrictive, such provisions shall supersede this section.

27
28 6. System components. The storm water runoff system shall be completely designed
29 and include built structures and natural channels, technical specifications and
30 design details. Where components of the storm water runoff system are located
31 outside of public right-of-way, easements shall be provided to the town for access
32 and maintenance.

33
34 7. Maintenance. A permanent routine maintenance plan shall be prepared for the
35 storm water runoff system. The note requiring maintenance of the storm water
36 runoff system is on the plan.

37
38 8. Record Drawings. The storm water runoff system plans shall include a note that,
39 upon completion of the storm water runoff system installation, a reproducible set
40 of record drawings indicating the storm water runoff system work accomplished
41 and how the record drawings were compiled will be submitted to the Enforcement
42 Authority.

43
44 [Recommend delete all the following, because it has been replaced with the Review standards
45 above

- 1 a. Professional Engineer. The technical design, sizing of components and hydraulic analyses
2 and computations for any storm water runoff system shall be performed or approved in
3 writing by a professional engineer registered in Maine. The storm water runoff systems
4 for developments requiring site plan review or subdivision approval by the Planning
5 Board shall be designed with the objective of infiltrating, detaining or retaining water
6 falling on or flowing to the site during a storm of intensity equal to the 2 and 25-year
7 storm in such a manner that, to the maximum extent practicable, (1) the rate of flow of
8 such water from the site shall not exceed that which would occur in its undeveloped state
9 or will discharge directly to a tidally influenced area, and (2) the physical, chemical and
10 biological properties of the techniques or structures to accomplish either objective shall
11 be the responsibility of the developer, subject to review and approval by the Planning
12 Board.
- 13
- 14 b. Outflow Rate. The design of Storm Water Runoff Systems shall include consideration of
15 permanent and temporary ponding or storage within the development to control and
16 minimize outflow rates. The designer of the Storm Water Runoff System shall evaluate
17 the effectiveness of various methods and shall develop the hydraulic computations based
18 on accepted engineering principles to demonstrate the expected rate of outflow after
19 development compared with the rate of outflow prior to development.
- 20
- 21 c. Downstream impact. If it is not practicable to reduce the outflow rate from the developed
22 area for the 2 and 25-year storm to that from the undeveloped site, considering the
23 construction and maintenance costs of the Storm Water Runoff System and the
24 downstream benefits to be obtained, the developer shall demonstrate by hydraulic
25 analysis that downstream channel or system capacity is sufficient to carry the flow
26 without adverse effects. Computations and analysis made pursuant to this section shall be
27 made available for review by the Planning Board or its designees.
- 28
- 29 d. Upstream flow. Designers of Storm Water Runoff Systems shall be fully cognizant of
30 upstream runoff, which must pass over or through the development site. The Storm Water
31 Runoff System shall be designed to pass through the proposed development all upstream
32 flows generated by the 2 and 25-year storm from the upstream watershed as fully
33 developed, without surcharging the Storm Water Runoff System or flooding areas not
34 specifically planned for flooding.
- 35
- 36 e. Related components. Storm Water Runoff Systems shall be designed with both major and
37 minor components, which will serve specific access convenience objectives, erosion
38 control objectives, water quality objectives and pollution control objectives.
- 39
- 40 f. 25-year Surcharge. The design of piped or open channel Storm Water Runoff Systems
41 shall be based on a 25-year storm without surcharge or flooding beyond channel limits,
42 unless such surcharge is specifically planned to assist in meeting the objectives of
43 subsection (g). The areas expected to be flooded by a runoff of a 25-year storm shall be
44 designated, and no structures shall be permitted within such areas. Where state or federal
45 law is more restrictive, such provisions shall supersede the provisions of this section.
- 46

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

6
7 h. Easements. Easements shall be conveyed for all components of the Storm Water Runoff
8 System lying outside of public ways. Such rights of ways shall be offered to the Town of
9 Cape Elizabeth for public ownership.

10
11 i. Record Drawings. Upon completion of Storm Water Runoff System installation, and
12 before any section thereof is accepted by the Town or deeded to an association, the
13 developer shall submit a reproducible set of record drawings indicating the work
14 accomplished, and shall designate how the data for such drawings were compiled. The
15 Enforcement Authority reserves the right to field check the drawings, and the Storm
16 Water Runoff System shall not be accepted or deeded until the Town is satisfied that the
17 installed work is consistent with approved design plans, and that the record drawings
18 reasonably reflect the work installed.]

19
20 **Sec. 25-1-5. System Responsibility.** The developer shall maintain all components of the
21 Storm Water Runoff System until they are formally accepted by the Town or transferred to a
22 property owners association whose charter and powers for financing and maintaining the
23 Storm Water Runoff System shall be approved by the Town Attorney. Storm Water Runoff
24 System components within proposed public ways shall become Town property upon formal
25 acceptance. Storm Water Runoff System components outside of public ways may be
26 accepted by the Town but shall otherwise be deeded to a property owners association, as
27 required by the Planning Board or as agreed by the Town and the developer prior to project
28 approval. In all cases the Town shall have the right to access and enter the Storm Water
29 Runoff system to conduct emergency maintenance, as it deems necessary.

30
31 [Recommend this section be deleted as it has been replaced with the submission
32 requirements in Sec. 25-1-4.b

33
34 **Sec. 25-1-6. Storm Water Runoff System Plan Requirements.**

35
36 a. Basic site data upon which Storm Water Runoff Systems are planned and designed shall
37 include:

- 38
39 1. A topographic map of the entire development site utilizing a 2-foot contour
40 interval, which map shall show water bodies, wetlands, the location of all
41 permanent and intermittent streams or water courses, the location and type of
42 vegetative cover, and the soil type determined by a medium intensity soil survey;
43 2. A map of upstream areas giving sufficient information to calculate hydraulics and
44 drainage designs through the site; and
45 3. A map of downstream areas, where the outflow rate is to be increased as
46 described in Section 25-2-4 (c) giving sufficient information to calculate

1 hydraulics and drainage design demonstrating the sufficiency of downstream
2 capacity.

3
4 b. The Storm Water Runoff System shall be fully coordinated with project site plans
5 including consideration of street patterns, pedestrian ways, open space, building siting,
6 parking areas, and other utilities, especially sanitary waste water disposal systems.

7
8 c. Planning of Storm Water Runoff Systems shall encompass the entire site that may
9 ultimately be developed, and shall not be limited to an initial or limited section of the
10 development.

11
12 d. The design of the Storm Water Runoff System shall be presented to the Planning Board
13 in the form of engineering reports. A Preliminary Design concept shall be presented with
14 the initial review submissions, and a Final Design Report shall be presented with the
15 request for Final Subdivision or Site Plan approval.

16
17 e. The Preliminary Design concept shall include the following:

- 18
19 1. Plans showing basic site data as required by subsection (a);
20 2. Plans of the Storm Water Runoff System indicating coordination and
21 compatibility with the proposed site plans;
22 3. Computations comparing the runoff rates and characteristics of the development
23 before and after the proposed development; and
24 4. Computations illustrating the passage of upstream flow, if any, through the site.

25
26 f. The Final Design Report shall include the following:

- 27
28 1. Detailed construction plans of the proposed Storm Water Runoff System
29 including plans, profiles and channel sections, in such detail as necessary to
30 construct the Storm Water Runoff System;
31 2. Material and procedure specifications as necessary to construct the Storm Water
32 Runoff System;
33 3. Final design computations illustrating compliance with the intent of this
34 Ordinance and with any conditions upon the preliminary approval;
35 4. Metes and bounds surveyed plans of all rights of way proposed for public
36 ownership, made by a registered land surveyor, and assignment of maintenance
37 responsibilities for the rights of way upon completion; and
38 5. Installation time schedule, including sequence and scheduling of Storm Water
39 Runoff System installation, with particular attention to coordination with site
40 erosion and sedimentation control plans.]

41
42 **Sec. 25-1-6 Non Planning Board reviewed storm water runoff**

43
44 Any Discharge of storm water or non-storm water into the Town Storm Water Runoff System for
45 which the Planning Board has not conducted a storm water runoff system review shall be subject
46 to best management practices for Erosion and Sedimentation control. The Enforcement Authority

1 may direct additional erosion control measures to be taken if there is a reasonable expectation
2 that storm water runoff will cause erosion and sediment to leave the development site.

3
4
5 **Sec. 25-1-7. Design Adjustment.** The Planning Board may waive any filing or design
6 requirements unnecessary for full consideration of any proposed Storm Water Runoff
7 System, such as data relating to site features and runoff rates downstream of the entrance to
8 a piped Discharge directly to tidal waters. The Planning Board may also reduce or waive any
9 requirements of this Ordinance where it finds from the basic site data furnished under
10 Section 25-1-4.b [Recommend replace 25-1-6 (a)] that the estimated costs of construction and
11 long-term maintenance resulting from compliance with the design requirements in any instance
12 clearly outweigh the downstream benefits to be achieved by compliance.

13
14 **Sec. 25-1-8. Non-Storm Water Regulation.**

15
16 a. **Objectives.** The objectives of this section are:

- 17
18 1. To regulate Non-Storm Water Discharges to the Storm Water Runoff System; and
19 2. To set forth the legal authority and procedures to carry out all inspection,
20 monitoring and enforcement activities necessary to ensure compliance with this
21 Ordinance.

22
23 b. **General Prohibition.** Except as allowed in this Section, no Person shall create, initiate,
24 originate or maintain a Non-Storm Water Discharge to the Storm Water Runoff System.
25 Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Town
26 may have approved the connections, drains or conveyances by which a Person discharges
27 unallowed Non-Storm Water Discharges to the Storm Water Runoff System.

28
29 c. **Allowed Non-Storm Water Discharges.** The creation, initiation, origination and
30 maintenance of the following Non-Storm Water Discharges to the Storm Water Runoff
31 System are allowed:

- 32
33 1. Landscape irrigation; diverted stream flows; rising ground waters;
34 uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
35 uncontaminated pumped ground water; uncontaminated flows from foundation
36 drains; air conditioning and compressor condensate; irrigation water; flows from
37 uncontaminated springs; uncontaminated water from crawl space pumps;
38 uncontaminated flows from footing drains; flows from riparian habitats and
39 wetlands; residual street wash water (where spills/leaks of toxic or hazardous
40 materials have not occurred, unless all spilled material has been removed and
41 detergents are not used); dechlorinated hydrant flushing discharges and
42 firefighting activity runoff; water line flushing and discharges from potable water
43 sources; individual residential car washing; lawn watering runoff, and
44 dechlorinated swimming pool discharges.

- 45
46 2. Discharges authorized by the Enforcement Authority as being necessary to protect

1 public health and safety; and

2
3 3. Dye testing, with authorization from the Enforcement Authority prior to the time
4 of the test.

5
6 d. **Suspension of Access to the Town Storm Water Runoff System.** The Enforcement
7 Authority may, without prior notice, physically suspend Discharge access to the Storm
8 Water Runoff System when such suspension is necessary to stop an actual or threatened
9 Non-Storm Water Discharge to the Storm Water Runoff System that presents or may
10 present imminent and substantial danger to the environment, or to the health or welfare of
11 persons, or to the Storm Water Runoff System, or that may cause the Town to violate the
12 terms of its environmental permits. Such suspension may include, but is not limited to,
13 blocking pipes, constructing dams or taking other measures, on public ways or public
14 property, to physically block the Discharge to prevent or minimize a Non-Storm Water
15 Discharge to the Storm Water Runoff System. The Enforcement Authority may take such
16 steps as deemed necessary to prevent or minimize damage to the Storm Water Runoff
17 System, or to minimize danger to persons, provided, however, that in taking such steps
18 the Enforcement Authority may enter upon the Premises that are the source of the actual
19 or threatened Non-Storm Water Discharge to the Storm Water Runoff System only with
20 the consent of the Premises' owner, occupant or agent, except in an emergency when
21 consent shall not be required.

22
23 e. **Monitoring of Discharges.** In order to determine compliance with this Ordinance, the
24 Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at
25 reasonable hours with the consent of the Premises' owner, occupant or agent, to inspect
26 the Premises and connections thereon to the Storm Water Runoff System; and to conduct
27 monitoring, sampling and testing of the Discharge to the Storm Water Runoff System.

28
29 **Sec. 25-1-9. Enforcement.** It shall be unlawful for any Person to violate any provision of or to
30 fail to comply with any of the requirements of this Ordinance.

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

- 36
37 1. The elimination of Non-Storm Water Discharges to the Storm Water Runoff
38 System, including, but not limited to, disconnection of the Premises from the
39 Storm Water Runoff System;
40 2. The cessation of Discharges, practices, or operations in violation of this
41 Ordinance;
42 3. At the Person's expense, the abatement or remediation in accordance with best
43 management practices in DEP rules and regulations of Non-Storm Water
44 Discharges to the Storm Water Runoff System and the restoration of any affected
45 property; and/or
46 4. The payment of fines, of the Enforcement Authority's remediation costs and of

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

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

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

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

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

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

1 Sec. 25-1-10 Severability. If any part or parts, section or subsection, sentence, clause or
2 phrase of this Ordinance or the rules and regulations promulgated thereunder is for any
3 reason declared to be unconstitutional or invalid, such declaration shall not affect the validity
4 or constitutionality of the remaining portions of this Ordinance or the rules and regulations
5 promulgated thereunder.
6

7 Article II. Post Construction Stormwater Management
8

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

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

- 31
- 32 a. To reduce the impact of post-construction discharge of storm water on receiving waters;
33 and
34
 - 35 b. To reduce storm water runoff rates and volumes, soil erosion and nonpoint source
36 pollution, wherever possible, through use of Best Management Practices as promulgated
37 by the Maine Department of Environmental Protection pursuant to its most current rules
38 as may be updated or amended including its Chapters 500 and 502 Rules, and ensure that
39 these management controls are properly maintained and pose no threat to public safety.
40

41 Sec. 25-2-3. Applicability. This Ordinance applies to all New Development and Redevelopment
42 within the Town that discharges storm water to the Town's Municipal Separate Storm Sewer
43 System (MS4) and to associated storm water management facilities, which are considered to be
44 an element or array of elements that convey water from or across land, including, but not limited
45 to, natural elements, roads, parking areas, catch basins, drainage swales, detention basins and
46 ponds, pipes, conduits, and related structures that are part of the Post-Construction Storm Water

1 Management Plan for a New Development or Redevelopment. This ordinance does not apply to
2 any development which has obtained subdivision approval and begun construction prior to the
3 date this ordinance becomes effective. Construction shall mean (1) posting of a performance
4 guarantee, (2) disturbance of soil, and (3) inspection by a town official.

5
6 **Sec. 25-2-4. Definitions.** For the purposes of this Ordinance, the following terms shall have the
7 meanings given herein. All words not defined herein shall carry their customary and usual
8 meanings.

9
10 **Applicant:** Any Person with requisite right, title, or interest or an agent for such Person who has
11 filed an application for New Development or Redevelopment that requires a Post- Construction
12 Storm Water Management Plan under this Ordinance.

13
14 **Best Management Practices ("BMP"):** Any schedule of activities, prohibitions of practices,
15 maintenance procedures, and other management practices to prevent or reduce the pollution of
16 waters of the State of Maine. BMPs also include treatment requirements, operating procedures,
17 and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage
18 from raw material storage.

19
20 **Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also
21 known as the "Clean Water Act"), and any subsequent amendments thereto.

22
23 **Construction Activity:** Any Construction Activity including one acre or more of Disturbed
24 Area. Construction Activity also includes activity with less than one acre of total land Disturbed
25 Area if that area is part of a subdivision that will ultimately disturb an area equal to or greater
26 than one acre.

27
28 **Discharge:** Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other
29 addition of Pollutants to Waters of the State.

30
31 **Direct Discharge:** Any discernible, confined and discrete conveyance, including, but not limited
32 to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
33 concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are
34 or may be discharged (Also known as Point Source).

35
36 **Disturbed Area:** Any clearing, grading, and excavation. Mere cutting of trees, without
37 grubbing, stump removal, disturbance or exposure of soil is not considered "Disturbed Area."
38 "Disturbed Area" does not include routine maintenance but does include Redevelopment.
39 "Routine Maintenance" is maintenance performed to maintain the original line and grade,
40 hydraulic capacity, and original purpose of land or improvements thereon.

41
42 **Enforcement Authority:** The Town Manager or his/her designee who is the person(s) or
43 department authorized by the Town to administer and enforce this Ordinance.

44
45 **Town:** The Town of Cape Elizabeth.

46

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

3
4 **Municipal Separate Storm Sewer System, or MS4:** Conveyances for storm water, including,
5 but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters,
6 ditches, human-made channels or storm drains (other than publicly owned treatment works and
7 combined sewers) owned or operated by any municipality, sewer or sewage district, fire district,
8 State agency or federal agency or other public entity that discharges directly to Waters of the
9 State.

10
11 **National Pollutant Discharge Elimination Systems (NPDES) Storm Water Discharge**
12 **Permit:** A permit issued by the United States Environmental Protection Agency ("EPA") or by
13 the Maine Department of Environmental Protection ("DEP") that authorizes the Discharge of
14 pollutants to waters of the United States, whether the permit is applicable on an individual,
15 group, or general area-wide basis.

16
17 **New Development:** Any Construction Activity on unimproved Premises and for purposes of this
18 ordinance includes "Redevelopment" defined below.

19
20 **Person:** Any individual, firm, corporation, municipality, town, quasi-municipal Corporation,
21 State or Federal agency, or other legal entity.

22
23 **Pollutant:** Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent,
24 solid waste, sewage sludge, munitions, chemicals, biological or radiological materials, oil,
25 petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials,
26 and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

27
28 **Post-Construction Storm Water Management Plan:** BMPs and associated inspection and
29 maintenance procedures for the Storm Water Runoff System employed by a New Development
30 or Redevelopment to meet the standards of this Ordinance and approved by the Town's
31 Permitting Authority.

32
33 **Premises:** Any building, lot, parcel of land, or portion of land, whether improved or
34 unimproved, including adjacent sidewalks and parking strips, located within the Town from
35 which Discharges into the Town Storm Water Runoff System are or may be created, initiated,
36 originated, or maintained.

37
38 **Qualified Post-Construction Storm Water Inspector:** A person who conducts
39 postconstruction inspections of Storm Water Runoff Systems and meets the following
40 qualification:

41
42 a. The Inspector shall not have any ownership or financial interest in the property being
43 inspected nor be an employee or partner of any entity having an ownership or financial
44 interest in the property, and

45
46 b. The Inspector shall also meet the following criteria as approved by the Town's

1 Enforcement Authority:

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

14

15 **Redevelopment:** Any Construction Activity on Premises already improved with buildings,

16 structures, or activities or uses, but does not include such activities as exterior remodeling of

17 structures.

18

19 **Regulated Small MS4:** Any Small MS4 regulated by the State of Maine "General Permit for the

20 Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems" ("General

21 Permit"), including all those located partially or entirely within an Urbanized Area (UA) and

22 those additional Small MS4s located outside a UA that as of the issuance of the General Permit

23 have been designated by the DEP as Regulated Small MS4s.

24

25 **Small Municipal Separate Storm Sewer System, or Small MS4:** Any MS4 that is not already

26 covered by the Phase I MS4 Storm Water program including municipally owned or operated

27 storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons,

28 Maine Department of Transportation and Maine Turnpike Authority road systems and facilities,

29 and military bases and facilities.

30 **Storm Water:** Runoff resulting from snowmelt, rain, precipitation, groundwater on the ground

31 and drainage.

32

33 **Storm Water Runoff System:** An element or array of elements that convey water from or

34 across land, including, but not limited to, natural elements.

35

36 **Urbanized Area ("UA")** means the areas of the State of Maine as defined by the latest

37 decennial census by the U.S. Bureau of the Census.

38

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

40

41 **a. General Requirement**

- 42
- 43 1. Except as provided in Sec. 25-2-3 b. above, no Applicant for a building permit,
- 44 subdivision approval, site plan approval or other zoning, planning or other land
- 45 use approval for New Development or Redevelopment to which this Ordinance is
- 46 applicable shall receive such permit or approval for that New Development or

1 Redevelopment unless the Town Permitting Authority for that New Development
2 also determines that the Applicant's Post- Construction Storm Water Management
3 Plan for the New Development meets the requirements of this Ordinance.

- 4
5 2. At the time of application, the Applicant shall notify the Town Permitting
6 Authority if its Post-Construction Storm Water Management Plan includes any
7 BMP(s) that will discharge to the Town's MS4 and shall include in this
8 notification a listing of which BMP(s) will so discharge.

9
10 **b. Performance Standards**

- 11
12 1. **DEP Chapter 500 Quality and Quantity Standards apply.** The Applicant shall
13 make adequate provisions for the management of the quantity and quality of all
14 storm water generated by a New Development or Redevelopment through a Post-
15 Construction Storm Water Management Plan. This Post-Construction Storm
16 Water Management Plan shall be designed to meet the standards contained in the
17 Maine Department of Environmental Protection's most current rules as may be
18 updated or amended including its Chapters 500 and 502 Rules and shall comply
19 with the practices described in the manual *Storm Water Management for Maine,*
20 published by Maine Department of Environmental Protection, latest edition,
21 which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.

- 22
23 2. **Use of Onsite or Offsite Treatment Facilities.** The Applicant shall meet the
24 quantity and quality standards above either onsite or off-site. Where off-site
25 facilities are used, the Applicant must submit to the Town documentation,
26 approved as to legal sufficiency by the Town's attorney, that the Applicant has a
27 sufficient property interest in the property where the off-site facilities are located
28 – by easement, covenant or other appropriate legal instrument – to ensure that the
29 facilities will be able to provide post-construction storm water management for
30 the New Development or Redevelopment and that the property will not be altered
31 in a way that interferes with the off-site facilities.

- 32
33 3. **Maintenance Agreement Required.** Where the Applicant proposes to retain
34 ownership of the Storm Water Management Facilities shown in its Post-
35 Construction Storm Water Management Plan, the Applicant shall submit to the
36 Town documentation, approved as to the legal sufficiency the Town's attorney
37 that the Applicant, it successor, heirs and assigns shall have the legal obligation
38 and the resources available to operate, repair, maintain and replace the Storm
39 Water Management Facilities. Applications for New Development or
40 Redevelopment requiring Storm Water Management Facilities that will not be
41 dedicated to the Town shall enter into a Maintenance Agreement with the Town.
42 A sample of this Maintenance Agreement is available from the Town.

- 43
44 4. **Easements and Access.** Whenever elements of the Storm Water Runoff System
45 are not within the right-of-way of a public street and the facilities will not be
46 offered to the Town for acceptance as public facilities, the Town Permitting

1 Authority may require that perpetual easements conforming substantially with the
2 lines of existing natural drainage, and providing adequate access for maintenance
3 in a form acceptable to the Town's attorney, shall be provided to the Town
4 allowing access for maintenance, repair, replacement and improvement of the
5 Storm Water Runoff System. When an offer of dedication is required by the Town
6 Permitting Authority, the Applicant shall be responsible for the maintenance of
7 these Storm Water Runoff Systems under this Ordinance until such time (if ever)
8 as they are accepted by the Town.

- 9
10 5. Other Standards and Conflicts. In addition to any other applicable requirements of
11 this Ordinance and the Town's Municipal Code, any New Development or
12 Redevelopment which also requires a storm water management permit from the
13 Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D
14 shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the
15 same may be amended from time to time, and the Applicant shall document such
16 compliance to the Town Permitting Authority. Where the standards or other
17 provisions of such storm water rules conflict with Town ordinances, the stricter
18 (more protective) standard shall apply.

19
20 **Sec. 25-2-6. Post-Construction Storm Water Management Plan Compliance.**

- 21
22 a. **General Requirements.** Any Person owning, operating, leasing or having control over
23 Storm Water Runoff Systems required by a Post-Construction Storm Water Management
24 Plan approved under this Ordinance shall demonstrate compliance with that Plan as
25 follows:

- 26
27 1. **Annual Inspection.** A Qualified Post-Construction Storm Water Inspector , shall,
28 at least annually, inspect the Storm Water Runoff Systems, including but not
29 limited to any roads, parking areas, catch basins, drainage swales, detention
30 basins and ponds, pipes, conduits, and related structures, in accordance with all
31 Town and State inspection, cleaning and maintenance requirements of the
32 approved Post-Construction Storm Water Management Plan.
- 33
34 2. **Corrective Actions.** If the Storm Water Runoff Systems require maintenance to
35 function as intended by the approved Post-Construction Storm Water
36 Management Plan, that Person shall take corrective action(s) to address the
37 deficiency or deficiencies.
- 38
39 3. **Annual Reporting to Town.** A Qualified Post-Construction Storm Water Inspector
40 shall provide, on or by August 1 of each year, a completed and signed
41 certification to the Town Enforcement Authority in a form prescribed by the
42 Town or in a similar form approved by the Town Enforcement Authority,
43 certifying that the Storm Water Runoff Systems have been inspected, and that
44 they are adequately maintained and functioning as intended by the approved Post-
45 Construction Storm Water Management Plan, or that they require maintenance or
46 repair, describing any required maintenance and any deficiencies found during

1 inspection of the Storm Water Runoff Systems. If the Storm Water Runoff
2 Systems require maintenance or repair of deficiencies in order to function as
3 intended by the approved Post-Construction Storm Water Management Plan, the
4 Person shall provide a record of the required maintenance or deficiency and
5 corrective action(s) taken.

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

12
13 b. **Right of Entry.** In order to determine compliance with this Ordinance and with the Post-
14 Construction Storm Water Management Plan, the Town Enforcement Authority may
15 enter upon property at reasonable hours with the consent of the owner, occupant or agent
16 to inspect the Storm Water Runoff Systems.

17
18 c. **Annual Report.** Each year the Town shall include the following in its Annual Report to
19 the Maine Department of Environmental Protection:

- 20
21 1. The cumulative number of sites that have Storm Water Runoff Systems
22 discharging into their MS4;
23 2. A summary of the number of sites that have Storm Water Runoff Systems
24 discharging into their MS4 that were reported to the Town;
25 3. The number of sites with documented functioning Storm Water Runoff Systems;
26 and
27 4. The number of sites that required routine maintenance or remedial action to
28 ensure that Storm Water Runoff Systems are functioning as intended.

29
30 **Sec. 25-2-7. Enforcement.** It shall be unlawful for any Person to violate any provision
31 of or to fail to comply with any of the requirements of this Ordinance or of the Post-
32 Construction Storm Water Management Plan. Whenever the Enforcement Authority believes
33 that a Person has violated this Ordinance or the Post-Construction Storm Water Management
34 Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A
35 M.R.S.A. § 4452.

36
37 **Sec. 25-2-8. Notice of Violation.** Whenever the Enforcement Authority believes that a
38 Person has violated this Ordinance of the Post-Construction Storm Water Management Plan,
39 the Enforcement Authority may order compliance with this Ordinance or with the Post-
40 Construction Storm Water Management Plan by written notice of violation to that Person
41 indicating the nature of the violation and ordering the action necessary to correct it,
42 including, without limitation:

43
44 a. The abatement of violations, and the cessation of practices, or operations in violation of
45 this Ordinance or of the Post-Construction Storm Water Management Plan;

1 b. At the Person's expense, compliance with BMPs required as a condition of approval of
2 the New Development or Redevelopment, the repair of Storm Water Runoff Systems
3 and/or the restoration of any affected property; and/or
4

5 c. The payment of fines, of the Town's remediation costs and of the Town's reasonable
6 administrative costs and attorneys' fees and costs. If abatement of a violation, compliance
7 with BMPs, repair of Storm Water Management Facilities and/or restoration of affected
8 property is required, the notice shall set forth a deadline within which such abatement,
9 compliance, repair and/or restoration must be completed.
10

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

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

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

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

1 |
2 | **Sec. 25-2-13. Severability.** The provisions of this Ordinance are hereby declared to be
3 | severable. If any provision, clause, sentence, or paragraph of this Ordinance or the
4 | application thereof to any person, establishment, or circumstances shall be held invalid, such
5 | invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of
6 | this Ordinance.