

1 **Draft Technical Amendments**
2 **Subdivision Ordinance, Zoning Ordinance, Conservation Ordinance**

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3
4 **Subdivision Ordinance**

5
6 **Sec. 16-2-6. Post Approval Requirements.**
7

8 **(b) Plan Recording.** Once the plans are determined to be in compliance with the Planning Board
9 approval, the recording plan shall be properly signed by a majority of the Planning Board,
10 and shall be recorded by the subdivider in the Cumberland County Registry of Deeds. If the
11 subdivision approval includes phasing of the subdivision, the recording plan shall depict all
12 phases of the subdivision. Any final plans not so recorded within ninety (90) days following
13 the date of Planning Board Decision shall become null and void. The applicant may request,
14 prior to the expiration date, that the Planning Board grant an extension due to particular
15 circumstances of the applicant which extension shall not exceed an additional period of
16 ninety (90) days. Once recorded, the subdivider shall provide the Planner with three (3) paper
17 copies of the subdivision plat with the Planning Board signatures and the book and page
18 recording information from the Registry of Deeds.
19

20 **(c) Performance Guarantee.**
21

22 2. Amount. The Performance Guarantee amount shall be based on a detailed estimate
23 prepared by the applicant, broken down by unit cost and quantity, and reviewed by
24 the Town Engineer. Costs included in the estimate shall include, but not be limited
25 to, completion of all roads, sewer, water, drainage, open space, landscaping, lighting
26 and other required improvements shown on the approved plans. The cost estimate
27 shall also include a contingency amount equal to ten (10) percent of the
28 Performance Guarantee estimate. **When the performance guarantee estimate
29 exceeds two hundred fifty thousand (\$250,000) dollars, the contingency
30 amount shall be calculated at a rate of five (5) percent for that portion of the
31 portion of the performance guarantee estimate in excess of two-hundred fifty
32 thousand (\$250,000) dollars.**
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35 **(d) Inspection Fee.** In addition to the Performance Guarantee, the applicant shall pay an
36 inspection fee. When the Performance Guarantee equals five hundred thousand dollars
37 (\$500,000) or less, the inspection fee amount shall be five percent (5%) of the amount
38 of the total performance guarantee, **except that the minimum inspection fee amount
39 shall be one-thousand five hundred dollars (\$1,500).** When the Performance Guarantee
40 exceeds five hundred thousand dollars (\$500,000), the inspection fee amount shall be
41 two and one-half percent (2.5%) of the cost of the total Performance Guarantee. The fee
42 shall be payable ~~by certified check~~ to the Town of Cape Elizabeth. The inspection fee
43 shall be held by the Town to defray the Town's cost for inspection by the Town
44 Engineer and Town staff. Any funds not disbursed for this purpose shall be returned to
45 the applicant upon release of the Performance Guarantee. If the costs for inspection
46 exceed the amount of the inspection fee, the applicant shall pay an additional fee to the

1 Town, which shall be recommended by the Town Engineer and approved by the Town
2 Manager based on the status of the development.

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

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17 18 **Sec. 16-2-7. Construction Administration**

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

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

40 41 **Sec. 16-3-2. Road Design and Construction Standards**

42 43 **A. Road Design**

44 45 **7. Road Trees.**

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

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

1

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.

1
2 **Zoning Ordinance**
3

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

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

14 **Accessory Building or Structure:** A detached, subordinate building, the use of which is
15 clearly incidental and related to that of the principal building or use of the land, and which
16 is located on the same lot as the principal building or use. **Any accessory building or
17 structure that has plumbing shall not be used for overnight accommodations.** For
18 residential uses, accessory buildings and structures shall include, but not be limited to, the
19 following:
20

- 21 1. garage
- 22 2. gazebo
- 23 3. greenhouse
- 24 4. home workshop, as defined below
- 25 5. recreational facilities for the use of occupants of the residence, such as a
26 swimming pool or a tennis court, and related structures
- 27 6. Agricultural or aquacultural buildings or other structures **(Effective June 10,
28 2010)**
- 29 7. wharf, dock, landing, or boathouse
30

31 **Dwelling Unit:** A room or group of rooms designed and equipped exclusively for use as
32 permanent, seasonal, or temporary living quarters for only one (1) family at a time, and
33 containing cooking, sleeping, and toilet facilities. **An area configured for food preparation
34 may be considered cooking facilities even if appliances are not present.** The term shall
35 include mobile homes and rental units that contain cooking, sleeping and toilet facilities
36 regardless of the time-period rented. Recreational vehicles are not residential dwelling
37 units.
38

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

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1 immediate runoff surface in curve number calculations.

2
3 **Moderate Income:** Family income which is between eighty percent (80%) and one
4 hundred ~~twenty~~^{fifty} percent ~~(150%)~~-(120%) of median family income for the Portland
5 Metropolitan Statistical Area as established by the State Planning Office or the Greater
6 Portland Council of Governments.

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

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16 **SEC. 19-4-3. NONCONFORMANCE WITH ALL ZONING DISTRICTS EXCEPT**
17 **~~THE OUTSIDE OF~~ SHORELAND AND RESOURCE PROTECTION DISTRICTS**

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

28
29 **SEC. 19-4-4. NONCONFORMANCE WITHIN THE SHORELAND**
30 **PERFORMANCE OVERLAY DISTRICT**

31
32 The following provisions shall govern nonconformance ~~with provisions of~~^{within} the
33 Shoreland Performance Overlay District. Nonconforming conditions in existence before the
34 effective date of this district, or amendments thereto, shall be allowed to continue, subject
35 to the requirements set forth in this section.

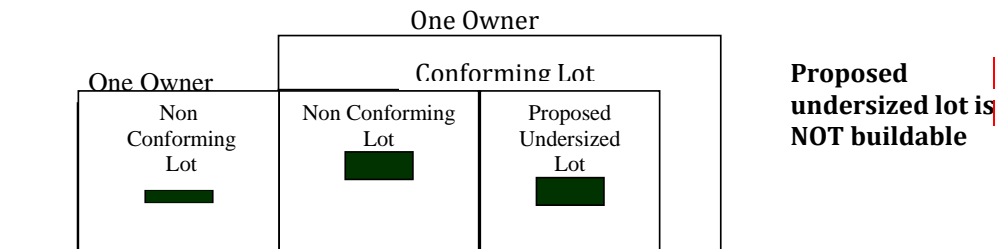
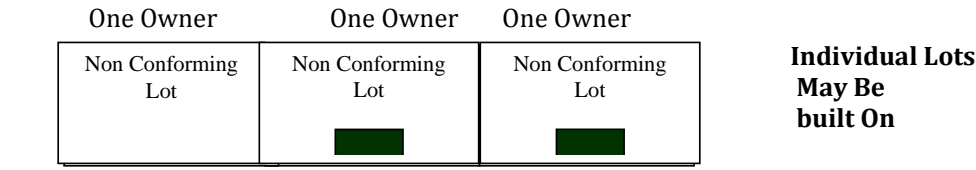
36
37 **A. Nonconforming Lots**

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

42
43
44 **1. Vacant Nonconforming Lots**

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



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

	RA District	RC District	TC District
Front setback for principal structure			
- local roads	25'	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
- other roads	As required by Sec. 19-6-1.E	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D

Side setback	25'	10'	As required by Sec. 19-6-4.D
Rear setback	20'	15'	As required by Sec. 19-6-4.D
Minimum lot area - with public sewerage - with on-site sewage disposal	10,000 sq.ft. 20,000 sq.ft.*	10,000 sq.ft. 20,000 sq.ft.*	As required by Sec. 19-6-4.D
Maximum building coverage - with public sewerage - with on-site sewage disposal	25% 20%	25% 20%	NA NA

*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).

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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

1 the physical condition and type of foundation present, if any, in addition to the
2 criteria in Sec. 19-4-3.B.23, Relocation.

3
4 **4. Enlargement**

5
6 Any nonconforming structure which is located closer than the required setback
7 from the property line may be enlarged as long as the area being enlarged meets the
8 setback requirements, and will not create or expand any nonconformities.
9 Enlargement of a nonconforming structure not in compliance with these limitations
10 may be permitted provided that such enlargement is in compliance with the setback
11 requirement to the greatest practical extent as determined by the Zoning Board of
12 Appeals in accordance with the purposes of this Ordinance. In no case shall a
13 structure be enlarged so as to increase its nonconformity.

14
15 In determining whether the building reconstruction or replacement meets the
16 setback to the greatest practical extent, the Zoning Board of Appeals shall consider
17 the physical condition and type of foundation present, if any, in addition to the
18 criteria in Sec. 19-4-3.B.2, Relocation.

19
20 **ARTICLE V. ZONING BOARD OF APPEALS**

21
22 **SEC. 19-5-2. POWERS AND DUTIES**

23
24 The Board shall have the following exclusive powers and duties to be exercised only upon
25 written appeal by a party aggrieved by a decision of the Code Enforcement Officer or other
26 municipal official or board:

27
28 **A. Administrative Appeals**

29
30 To determine whether the decision of the Code Enforcement Officer is in conformity with the
31 provisions of this Ordinance, to modify such decision to conform with such provisions, and to
32 interpret the meaning of the Ordinance in all cases of uncertainty. **The Zoning Board shall**
33 **conduct an appellate/de novo review.**

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34
35 **SEC. 19-6-1. RESIDENCE A DISTRICT (RA)**

36
37 **F. Site Plan Review**

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

- 42
43 1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex
44 housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective
45 November 14, 2015)

- 1 2. Nonresidential uses listed in Sec. 19-6-1.B.3, except home day cares, [wind energy](#)
2 [systems, short term rentals and day camps](#), which shall not require site plan review
3 (Effective August 11, 1999)
- 4 3. Nonresidential uses listed Sec. 19-6-1.C.2
- 5 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan
6 review

7 8 **SEC. 19-6-2. RESIDENCE B DISTRICT (RB)**

9 10 **F. Site Plan Review**

11
12 The following uses and activities shall be subject to site plan review by the Planning Board,
13 according to the terms of Article IX, Site Plan Review, prior to issuance of any building
14 permit, plumbing permit, or other permit:

- 15
16 1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex
17 housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective
18 November 14, 2015)
- 19 2. Nonresidential uses listed in Sec. 19-6-2.B.3, except home day cares, [wind energy](#)
20 [systems, short term rentals and day camps](#), which shall not require site plan review
21 (Effective August 11, 1999)
- 22 3. Nonresidential uses listed Sec. 19-6-2.C.2
- 23 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review
24

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

26 27 **F. Site Plan Review**

28
29 The following uses and activities shall be subject to site plan review by the Planning Board,
30 according to the terms of Article IX, Site Plan Review, prior to issuance of any building
31 permit, plumbing permit, or other permit:

- 32
33 1. Multiplex housing, eldercare facilities, and boarding care facilities. As part of Site
34 Plan Review for multiplex housing, Sec. 19-7-2 (E), Multiplex Housing Standards
35 shall also apply. (Effective November 14, 2015)
- 36 2. Nonresidential uses listed in Sec. 19-6-3.B.3, except home day cares, [wind energy](#)
37 [systems, short term rentals and day camps](#), which shall not require site plan review
- 38 3. Nonresidential uses listed in Sec. 19-6-3.C.2
- 39 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan
40 review

41 42 **SEC. 19-7-9. PRIVATE ACCESS PROVISIONS**

43 44 **D. Private Accessway Procedures**

45

1 **5. Post Approval Procedures**

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

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13 **ARTICLE IX. SITE PLAN REVIEW**

14

15 **SEC. 19-9-1. PURPOSE**

16

17 The site plan review provisions set forth in this section are intended to protect the public

18 health and safety, promote the general welfare of the community, preserve the

19 environment, and minimize improvements that must be paid for by the Town's taxpayers

20 by assuring that nonresidential, multiplex residential, eldercare, and similar facilities are

21 designed and developed in a manner which assures that adequate provisions are made for:

22 traffic safety and access; emergency access; water supply; sewage disposal; management of

23 stormwater, erosion, and sedimentation; protection of the groundwater; protection of the

24 environment; minimizing the adverse impact on adjacent properties; and fitting the project

25 harmoniously into the fabric of the community.

26

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

28

29 **A. Activities Requiring Site Plan Review**

30

31 The owner of a parcel of land shall obtain site plan approval prior to undertaking any

32 alteration or improvement of the site including grubbing or grading, obtaining a building or

33 plumbing permit for the activities, or commencing any of the following activities on the

34 parcel:

- 35
- 36 **1.** The construction of any nonresidential building or building addition
- 37
- 38 **2.** Any nonresidential expansion or change in use except that changes of use within the
- 39 Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan
- 40 Review and uses within the Business A District shall be governed by the provisions
- 41 of Sec. 19-6-5. F. Site Plan Review. **(Effective June 10, 2010)**
- 42
- 43 **3.** Multiplex housing and eldercare facilities
- 44
- 45 **4.** Any other activity or use requiring Planning Board review in the Zoning Ordinance

- 1 **5.** New construction involving more than ten thousand (10,000) square feet of
2 impervious surface, paving, clearing, or vegetative alteration, or any combination
3 thereof. (The Planning Board shall review the proposal for control of stormwater
4 runoff under the terms of Chapter 18, Article II, Stormwater Control Ordinance.)
5
6

7 **B. Activities Not Requiring Site Plan Review**
8

9 The following activities shall **not** require site plan approval (certain of these activities may,
10 however, require the owner to obtain a building permit, plumbing permit, or other State
11 and local approvals):
12

- 13 **1.** The construction, alteration or enlargement of a single family or two-family
14 dwelling unit, including accessory buildings and structures, except as required in
15 the Town Center Core Subdistrict. **(Effective June 10, 2010)**
16
17 **2.** The placement of manufactured housing or mobile home on individual lots
18
19 **3.** Agricultural buildings as follows: **(Effective June 10, 2010)**
20
21 a. Any temporary agricultural building, where temporary shall mean
22 that the structure remains in place no more than 3 months in any 12
23 month period.
24
25 b. If sales shall be conducted from the building, the structure must be a
26 temporary structure and sales shall not be conducted from the
27 building for more than 3 months in any 12 month period.
28
29 c. Any barn, greenhouse, or storage shed with a building footprint that
30 does not exceed 2,000 sq. ft. in size.
31
32 d. Any structure that shall provide housing, other than a single family
33 home, shall require Site Plan Review under Sec. 19-2-2(A)(4) above.
34
35 e. Any structure which does not comply with subparagraphs a, b, and c
36 above shall require Site Plan Review.
37
38 **4.** Temporary structures such as construction trailers or equipment storage sheds
39

40 **SEC. 19-9-3. REVIEW AND APPROVAL AUTHORITY**
41

42 The Planning Board is authorized to review and act on all site plans for development
43 requiring site plan review as defined above. In each instance where the Planning Board is
44 required to review the site plan for a proposed use, it shall approve, deny, or conditionally
45 approve the application based on its compliance with the standards in Sec. 19-9-5,

1 Approval Standards, which action shall be binding upon the applicant. Where a proposed
2 use is subject to approval of the Zoning Board of Appeals, such approval shall be obtained
3 before the Planning Board considers the site plan for the proposed use.
4

5 **SEC. 19-9-4. REVIEW PROCEDURES**
6

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

10 **A. Workshop**
11

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

19 **1. Purpose**
20

21 The purposes of the preapplication workshop are to:
22

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

29 **2. Information Required**
30

31 There are no formal submission requirements for a pre-application workshop.
32 However, the applicant should be prepared to discuss the following with the
33 Planning Board:
34

- 35 a. The proposed site, including its location, size, and general characteristics
36
- 37 b. The natural characteristics of the site that may limit its use and development
38
- 39 c. The nature of the proposed use and potential development, including a
40 conceptual site plan
- 41 d. Any issues or questions about existing municipal regulations and their
42 applicability to the project
43
- 44
- 45

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
7 formal action. The Planning Board shall identify any issues or constraints which
8 need to be 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,
13 including establishment of a Review Escrow Account under the terms of Sec. 16-2-1
14 (c) of the Subdivision Ordinance, and after any required Zoning Board of Appeals
15 approval has been obtained, the Town Planner shall **accept and date an application**
16 **for Planning Board review**~~issue a dated receipt to the applicant.~~ In consultation
17 with the Planning Board Chair or Vice Chair, the Town Planner shall review the site
18 plan application and accompanying materials to determine whether the application
19 is complete or incomplete. If, **in consultation with the Planning Board Chair or Vice**
20 **Chair,** the application is preliminarily determined to be incomplete, the Town
21 Planner shall notify the applicant in writing and shall list in the written
22 determination the materials that must be submitted in order to make the
23 application complete. If the applicant fails to submit a complete application within
24 four (4) months of the **written determination of incompleteness**~~issued receipt date,~~
25 the application shall be deemed withdrawn. When the Town Planner makes the
26 preliminary determination that an application is complete, the application shall be
27 scheduled for consideration at the next available Planning Board meeting. The
28 Planning Board may require other information in addition to that required in Sec.
29 19-9-4.C, Submission Requirements. The Planning Board may also request an
30 evaluation of specific aspects of the site plan from the Conservation Commission, the
31 Town Engineer, or others. In the event that the Planning Board requires additional
32 information or evaluation, it may **deem the application incomplete**~~defer making its~~
33 ~~decision until its next regular meeting.~~
34

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35 No action taken by the Town Planner, either alone or in consultation with the
36 Planning Board Chair or Vice Chair, with respect to reviewing a site plan application,
37 shall result in an application being deemed pending for the purposes of 1 M.R.S.A.
38 §302. The Town Planner, either alone or in consultation with the Planning Board
39 Chair or Vice Chair, shall have no authority to review the substance of a site plan
40 application to determine whether it complies with the site plan review criteria.
41

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

1 provide public notice in accordance with Sec. 16-2-1 (b) of the Subdivision
2 Ordinance.

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

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

15
16 ~~4.3.~~ Performance Guarantee/Post Approval. The Planning Board, at its discretion, may
17 require that a performance guarantee be established with the Town for the cost of
18 site improvements. Each performance guarantee shall comply with Sec. 16-2-6(c) of
19 the Subdivision Ordinance. An inspection fee shall be paid in accordance with Sec.
20 16-2-6 (d). **When a project includes a performance guarantee, the applicant**
21 **shall schedule a pre-construction meeting in accordance with Sec. 16-2-7(a) of**
22 **the Subdivision Ordinance. Upon completion of construction, record drawings**
23 **shall be submitted to the Town in accordance with Sec. 16-2-7(f) if any**
24 **infrastructure has been installed in the public right-of-way or easement**
25 **conveyed to the Town.**

26
27
28 **5.4.** Approval Expiration. Site plan approval shall be valid for a period of one (1) year
29 from the date of the Planning Board vote. Prior to the expiration of the site plan
30 approval, the applicant may request an extension of up to one year from the
31 Planning Board for cause shown. Site plan approval shall remain valid if a building
32 permit has been issued for the project prior to the expiration date. Expiration of the
33 building permit prior to completion of the project shall render the site plan approval
34 null and void. Failure to comply with conditions placed upon site plan approval, to
35 post any necessary performance guarantees, to comply with any other permitting
36 processes or to address any other issues of site development, except pending
37 litigation challenging the site plan approval, shall render the approval null and void
38 unless an extension is granted by the Planning Board for good cause.

40 C. Submission Requirements

41 1. General Submission parameters.

42
43
44 The applicant shall submit ~~fourteen~~ thirteen (13 ~~delete 4~~) copies of building and
45 site plans and supporting information drawn to a scale of not less than one inch
46 equals fifty feet (1" = 50'). The size of plan sheets submitted to the Planning Board

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1 shall be no larger than twenty-four (24) by thirty-six (36) inches, but a smaller size
2 may be used with the permission of the Planning Board. A digital copy of the
3 complete application shall also be made available upon request.

4
5 **2. List of Submission items.**
6

7 The application for approval of a Site Plan shall include all the following
8 information, unless waived by the Planning Board as described below. Information
9 that must be shown on a plan is in **bold type**. Submission information shall be
10 shown on the number of plans needed to depict the information in a readable
11 format and each plan shall be individually labeled with a title generally based on the
12 information depicted on the plan, with one plan titled "Site Plan."
13

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14 ~~The building plans shall show at a minimum the first floor plan and all elevations,~~
15 ~~and indicate the proposed construction materials. The site plan and supporting~~
16 ~~submissions shall include the following information:~~
17

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18 ~~a.1. Right, Title or Interest, Evidence of right, title, and interest in the site of the~~
19 ~~proposed project.~~
20

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21 ~~b. Written description, **Written description of the proposed project including**~~
22 ~~**proposed uses quantified by square footage, number of seats, number of**~~
23 ~~**units or beds or number of students, and how development has been**~~
24 ~~**placed on the portions of the site most suited for development;**~~
25 ~~**application form; identification of the zoning district in which the**~~
26 ~~**property is located and the location of any zoning district boundary that**~~
27 ~~**bisects or abuts the property.**~~
28 ~~2. A key map of the site with reference to~~
29 ~~surrounding areas and existing street locations~~
30

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31
32 ~~c.3 Name of Project/Applicant, **Proposed name of the project;**~~
33 ~~**The name and**~~
34 ~~**address of record**~~
35 ~~**the owner and site plan applicant, together with the**~~
36 ~~**names of the adjoining property owners; date of submission; north point;**~~
37 ~~**graphic map scale.**~~
38 ~~of all contiguous land and or property directly across the~~
39 ~~street and within two hundred (200) feet of the property, as shown by the~~
40 ~~most recent tax records of all municipalities in which such properties shall lie~~
41

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

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

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

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

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h. Traffic Access and Parking. Location and width of the nearest public road, and if the project will have access to a private road or driveway, the location and width of the private road or driveway; location of existing and proposed driveways, parking areas and other circulation improvements; site distances for all access points onto public roads; location of parking, loading and unloading areas, which shall include dimensions, traffic patterns, access aisles, parking space dimensions and curb radii; calculation of parking required in conformance with Sec. 19-7-8, Off-Street Parking; existing and proposed pedestrian facilities including the location, dimension and surface treatment of sidewalks and paths, and description of high-demand pedestrian destinations within 1/4 mile of the development; improvements shall include design details, cross sections and dimensions as needed. Proposed location and dimensions of proposed buildings and structures, roads, driveways, parking areas and other improvements Estimated number of trips to be generated based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers or equivalent quality information; For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, a traffic study shall be submitted measuring current traffic, estimating traffic generated by the new development and assessing impacts on adjacent roadways and nearby

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1 intersections. Where the development may have a substantial traffic impact,
2 the traffic study shall also include recommended mitigation; information on
3 proposed, funded road improvements and town evaluation of road
4 improvements.

5
6 ~~7. Building setback, side line, and rear yard distance~~

7
8 ~~8. All existing physical features on the site and within two hundred (200) feet~~
9 ~~thereof, including streams, watercourses, existing woodlands, and existing~~
10 ~~trees at least eight (8) inches in diameter as measured four and one half (4 1/2)~~
11 ~~feet above grade. Soil conditions as reflected by a medium intensity survey~~
12 ~~(such as wetlands, rock ledge, and areas of high water table) shall also be~~
13 ~~shown. The Planning Board may require a high intensity soils survey where it~~
14 ~~deems necessary.~~

15
16 ~~9. Topography showing existing and proposed contours at five (5) foot intervals~~
17 ~~for slopes averaging five percent (5%) or greater and at two (2) foot intervals~~
18 ~~for land of lesser slope. A reference benchmark shall be clearly designated.~~
19 ~~Where variations in the topography may affect the layout of buildings and~~
20 ~~roads, the Planning Board may require that the topographic maps be based on~~
21 ~~an on-site survey.~~

22
23 ~~10. Parking, loading, and unloading areas shall be indicated with dimensions,~~
24 ~~traffic patterns, access aisles, and curb radii~~

25
26 ~~11. Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated~~
27 ~~with cross sections, design details and dimensions~~

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

43
44 When the project increases impervious surface by an area of ten thousand
45 (10,000) sq. ft. **or more**, the stormwater management plan must be prepared,
46 signed and stamped by a professional engineer licensed in the State of Maine,

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pre- and post development calculations for the 2 and 25 year storm must be provided, **and time of concentration path segments shown.**

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When a project increases impervious surface by one (1) acre or more, information shall be submitted as described in Sec. 25-1-4(b), Stormwater Ordinance.

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

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j. Erosion Control, **An erosion control plan including details of erosion control methods used; written erosion control plan with notes.**

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k. Utilities.

i. Water: Ability to serve letter from the Portland Water District; ~~sanitary waste disposal systems~~, **location and size of any existing and**

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1 proposed water mains on the property, as well as details showing
2 proposed connections to water systems; where public water is not
3 to be provided, an alternative means of a clean and adequate water
4 supply shall be shown, with supporting written documentation;
5 nearest hydrant. ~~and potable water supply.~~

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

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

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

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26
27 ~~and methods of solid waste storage and disposal~~

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

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

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44
45 n.15. Signs. ~~Location, dimensions, materials, and details of signs.~~

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

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

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

14 3.17. Waiver of Submission items.

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

25 a. ~~Existing conditions.~~ **When no change to existing site conditions for**
26 **that submission item is proposed, the Planning Board may designate a**
27 **submission item as not applicable.**

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29 b. ~~Substitution.~~ Alternative information has been submitted more
30 suited to the scope of the project.

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32 c. ~~Small project.~~ The limited nature of the project allows the Planning
33 Board to apply the Approval Standards and safeguard public health,
34 safety and general welfare without submission of additional
35 information.

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37 SEC. 19-9-5. APPROVAL STANDARDS

38
39 The following criteria shall be used by the Planning Board in reviewing applications for site
40 plan review and shall serve as minimum requirements for approval of the application. The
41 application shall be approved unless the Planning Board determines that the applicant has
42 failed to meet one or more of these standards. In each instance, the burden of proof shall
43 be on the applicant to produce evidence sufficient to warrant a finding that all applicable
44 criteria have been met.
45

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

2
3 The plan for the development will reflect the natural capabilities of the site to
4 support development. Buildings, lots, and support facilities will be clustered in
5 those portions of the site that have the most suitable conditions for development.
6 Environmentally sensitive areas such as wetlands, steep slopes, flood plains, and
7 unique natural features will also be maintained and preserved to the maximum
8 extent feasible. Natural drainage areas will also be preserved to the maximum
9 extent feasible.

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10
11 [note: pairs with submission items b-g]

12 **2.B. Traffic Access and Parking**

13 **a.1. Adequacy of Road System**

14
15
16 Vehicular access to the site will be on roads which have adequate capacity to
17 accommodate the additional traffic generated by the development. For
18 developments which generate one hundred (100) or more peak hour trips based on
19 the latest edition of the Trip Generation Manual of the Institute of **Transportation**
20 **Traffic** Engineers, intersections on major access routes to the site within one (1)
21 mile of any entrance road which are functioning at a Level of Service C or better
22 prior to the development will function at a minimum at Level of Service C after
23 development. If any such intersection is functioning at a Level of Service D or lower
24 prior to the development, the project will not reduce the current level of service. A
25 development not meeting this requirement may be approved if the applicant
26 demonstrates that:
27

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28
29 **ia.** Public improvement. A public agency has committed funds to construct the
30 improvements necessary to bring the level of access to this standard,

31
32 **iib.** Private improvement. The applicant will assume financial responsibility for
33 the improvements necessary to bring the level of service to this standard and
34 will assure the completion of the improvements with a financial guarantee
35 acceptable to the municipality, or

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36
37 **iiie.** Status quo. Town policy does not support the construction improvements.

38
39 **b.2. Access into the Site**

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

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42
43 **ia.** Safety. All entrance and exit driveways are located to afford maximum safety
44 to traffic, provide for safe and convenient ingress and egress to and from the
45 site and to minimize conflict with the flow of traffic.

1 **ii**. Sight Distance. Any exit driveway or driveway lane is so designated in profile
2 and grading and so located as to provide the maximum possible sight
3 distance measured in each direction. The sight distance available shall be
4 consistent with the standards of the Subdivision Ordinance.

5
6 **iii**. Corner. Where a site occupies a corner of two (2) intersecting roads, no
7 driveway entrance or exit is located within fifty (50) feet of the point of
8 tangency of the existing or proposed curb radius of that site.

9
10
11 **iv**. Side property line. No part of any driveway shall be located within a
12 minimum of ten (10) feet of a side property line. However, the Planning
13 Board may permit a driveway serving two (2) or more adjacent sites to be
14 located on or within ten (10) feet of a side property line dividing the adjacent
15 sites.

16
17 **v**. Angle. Driveways intersect the road at an angle as near ninety degrees (90°)
18 as site conditions will permit.

19
20 **vi**. Construction. Road, driveway, and parking lot construction comply with the
21 construction and design standards in Sec. 16-3-2 of the Subdivision
22 Ordinance.

23
24 **c3. Internal Vehicular Circulation**

25
26 The layout of the site shall provide for the safe movement of passenger, service, and
27 emergency vehicles through the site.

28
29 **ia**. Deliveries. Nonresidential projects that will be served by delivery vehicles
30 will provide a clear route for such vehicles with appropriate geometric
31 design to allow turning and backing for a minimum of vehicles.

32
33 **iib**. Emergency vehicles. Clear routes of access shall be provided and maintained
34 for emergency vehicles to and around buildings and shall be posted with
35 appropriate signage (fire lane - no parking).

36
37 **iiie**. Circulation. The layout and design of parking areas shall provide for safe and
38 convenient circulation of vehicles throughout the lot.

39
40 **iv**. Topography. All roadways shall be designed to harmonize with the
41 topographic and natural features of the site. The road network shall provide
42 for vehicular, pedestrian, and cyclist safety, all season emergency access,
43 snow storage, and delivery and collection services.

44
45 **d4. Parking Layout and Design**

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

3
4 **ia.** Street. Parking areas with more than two (2) parking spaces shall be
5 arranged so that vehicles do not need to back into the street.

6
7 **iib.** Property lines. All parking spaces, access drives, and impervious surfaces
8 shall be located at least five (5) feet from any side or rear lot line, except
9 where standards for buffer yards require a greater distance. No parking
10 spaces or asphalt type surface shall be located within five (5) feet of the front
11 property line. Parking lots on adjoining lots may be connected by
12 accessways not exceeding twenty-four (24) feet in width.

13
14 **iiie.** Flow. In lots utilizing diagonal parking, the direction of proper traffic flow
15 shall be indicated by signs, pavement markings or other permanent
16 indications.

17
18 **ived.** Stacked spaces. Parking areas for nonresidential uses shall be designed to
19 permit each motor vehicle to proceed to and from the parking space
20 provided for it without requiring the moving of any other motor vehicles.
21 "Stacked" parking may be permitted for resident parking in conjunction with
22 residential uses if both spaces in the stack are assigned to the occupants of
23 the same dwelling unit.

24
25 **ve.** Bumpers. The "overhang" of parked vehicles shall be restricted when it might
26 restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle
27 movement on adjacent walkways, or damage landscape materials.

28
29 [note: pairs with submission item h]

30
31 **3C. Pedestrian Circulation**

32
33 The site plan shall provide for a system of pedestrian ways within the development
34 appropriate to the type and scale of development. This system shall connect the
35 major building entrances/exits with parking areas and with existing or planned
36 sidewalks in the vicinity of the project. The pedestrian network may be located
37 either in the street right-of-way or outside of the right-of-way in open space or
38 recreation areas. The system shall be designed to link the project with residential,
39 recreational, and commercial facilities, schools, bus stops, and sidewalks in the
40 neighborhood.

41
42 [note: pairs with submission item h]

43
44 **4D. Stormwater Management**

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

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

Stormwater is managed on and off-site without damage to streets, adjacent properties, downstream properties, soils and vegetation. ~~1.~~ To the extent possible **practical**, the plan will retain stormwater on the site using the natural features of the site, except that in the Town Center District, stormwater management shall be consistent with the Town Center Stormwater Management Plan, **updated September 2015 or most recent revision**. A Low Impact Development (LID) method has been incorporated into the stormwater management plan. The plan includes a note requiring a post-construction maintenance plan for private stormwater infrastructure and a maintenance plan has been submitted.

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

When the project increases impervious surface by one (1) acre or more, stormwater shall be reviewed for compliance with Sec. 25-1-4(c), Stormwater Ordinance.

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

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

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

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

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

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

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10
11 [note: pairs with submission item i]

12
13 ~~5E. Erosion Control~~

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

21
22 During construction, soil erosion and sedimentation of watercourses and water
23 bodies will be minimized by an active program meeting the requirements of the
24 Maine Erosion and Sediment Control Best Management Practices (BMP'S) as
25 prepared by the Bureau of Land and Water Quality of the Maine Department of
26 Environmental Protection, March 2003 or most recent edition. ~~Cumberland County~~
27 ~~Soil and Water Conservation District's Best Management Practices.~~

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28
29 [note: pairs with new submission item j]

30
31 ~~6F. Utilities~~ ~~Water Supply~~

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

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43
44 ~~bG. Sewage Disposal.~~ The development will be provided with a method of
45 disposing of sewage which is in compliance with Chapter 15, Sewer Ordinance.

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

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6
7 ii2. Private Sewage System. If the public system cannot serve or be
8 extended to serve a new or expanded use, the sewage shall be disposed of
9 by an on-site sewage disposal system meeting the requirements of the State
10 Wastewater Disposal Rules and Chapter 15, Article II, Private Sewage
11 Disposal Ordinance.

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12
13 iii3. Common ownership. When two or more lots or buildings in different
14 ownership share the use of a common subsurface disposal system, the
15 system shall be owned and maintained in common by an owners'
16 association and shall conform to the provisions of Chapter 15, Article III,
17 Management of Cluster Disposal Systems. Covenants in the deeds for each
18 lot shall require mandatory membership in the association and provide for
19 adequate funding of the association to assure proper maintenance of the
20 system.

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21
22 ~~4. Industrial or commercial waste waters may be discharged to public sewers~~
23 ~~in such quantities and/or of such quality as to be compatible with sewage~~
24 ~~treatment operations. Such wastes may require pretreatment at the~~
25 ~~industrial or commercial site in order to render them amenable to public~~
26 ~~treatment processes. Pretreatment includes, but is not limited to,~~
27 ~~screening, grinding, sedimentation, pH adjustment, surface skimming,~~
28 ~~chemical oxidation and reduction and dilution.~~

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30 **H. Utilities**

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

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- 1
2 d. Solid Waste. The proposed development will provide for adequate storage
3 and disposal of solid wastes.
4
5 i. Screening. Any solid waste stored on the property prior to removal to an
6 authorized facility shall be secured and screened from public view.
7
8 ii. Liquid/semi-solid wastes. All storage facilities for fuel, chemicals,
9 chemical or industrial wastes, and biodegradable raw materials, shall
10 meet the standards of the State Department of Environmental Protection
11 and the State Fire Marshall's Office.
12
13 iii. Hazardous Materials. The handling, storage, and use of all materials
14 identified by the standards of a federal or state agency as hazardous,
15 special or radioactive shall be done in accordance with the standards of
16 these agencies. Any waste produced which is classified as a hazardous,
17 special or radioactive waste by either federal or state standards shall be
18 disposed of at a licensed disposal facility appropriate for the type of
19 waste and done in accordance with applicable state and federal
20 regulations.

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21
22 [note: pairs with submission item k]

23 24 **I. Water Quality Protection**

25
26 All aspects of the project shall be designed so that:

- 27
28 ~~1. No person shall locate, store, discharge, or permit the discharge of any treated,~~
29 ~~untreated, or inadequately treated liquid, gaseous, or solid materials of such nature,~~
30 ~~quantity, obnoxiousness, toxicity, or temperature that may run off, seep, percolate,~~
31 ~~or wash into surface or groundwaters so as to contaminate, pollute, or harm such~~
32 ~~waters or cause nuisances, such as objectionable shore deposits, floating or~~
33 ~~submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to~~
34 ~~human, animal, plant, or aquatic life.~~
35
36 ~~2. All storage facilities for fuel, chemicals, chemical or industrial wastes, and~~
37 ~~biodegradable raw materials, shall meet the standards of the State Department of~~
38 ~~Environmental Protection and the State Fire Marshall's Office.~~

39
40 [Added to solid waste standard]

41 42 **J. Wastes**

43
44 ~~The handling, storage, and use of all materials identified by the standards of a federal or~~
45 ~~state agency as hazardous, special or radioactive shall be done in accordance with the~~
46 ~~standards of these agencies.~~

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

[added to Solid Waste standard]

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

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

Moved to #6, Utilities]

7K. Shoreland Relationship

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

[note: pairs with submission item e]

8. Landscaping and Buffering

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

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

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1 c. Screening. The development shall provide for screening of service and
2 storage areas.

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3
4 d. [Recommend this be deleted] Parking screening. Required parking and
5 loading spaces for nonresidential uses and multiplex housing, where not
6 enclosed within a building, shall be effectively screened from view by a
7 continuous landscaped area not less than eight (8) feet in width containing
8 evergreen shrubs, trees, fences, walls, berms, or any combination thereof
9 forming a visual barrier not less than six (6) feet in height along exterior lot
10 lines adjoining all residential properties, except that driveways shall be kept
11 open to provide visibility for vehicles entering and leaving. This requirement
12 may be reduced or waived when it is determined that such buffering is not
13 necessary or desirable. Parking lots shall be designed to include landscaped
14 islands required in the Town Center and Business A Zoning Districts.

15
16 [pairs to submission item l]

17 [Sec. d. needs review]

18 ~~L.~~ **Technical and Financial Capacity**

19
20 ~~The applicant has demonstrated the financial and technical capacity to carry out the project~~
21 ~~in a timely fashion in accordance with this ordinance and the approved plan.~~

22
23 [Moved to # below]

24 **9M. Exterior Lighting**

25
26 1. Safety. The proposed development shall provide for adequate exterior
27 lighting to provide for the safe use of the development in nighttime hours, if
28 such use is contemplated, without excessive illumination. Lighting may be
29 used which serves security, safety and operational needs but which does not
30 directly or indirectly produce deleterious effects on abutting properties or
31 which would impair the vision of a vehicle operator on adjacent roadways.

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32
33 2. Maximum level, ~~Lighting fixtures shall be shielded or hooded so that the~~
34 ~~lighting elements are not exposed to normal view by motorists, pedestrians,~~
35 ~~or from adjacent dwellings and so that they do not unnecessarily light the~~
36 ~~night sky.~~ Direct or indirect illumination shall not exceed 0.5 footcandles at
37 the lot line or upon abutting residential properties. Lighting fixtures shall be
38 shielded or hooded so that the lighting elements are not exposed to normal
39 view by motorists, pedestrians, or from adjacent dwellings and so that they
40 do not unnecessarily light the night sky. All exterior lighting, except security
41 lighting, shall be turned off between 11 P.M. and 6 A.M. unless located on the
42 site of a commercial or industrial use which is open for business during that
43 period.

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44
45 [note: pairs to submission item m]

46 ~~N.~~ **Landscaping and Buffering**

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

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

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

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

[Relocated to #8 above]

10. Signs.

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

[note: pairs with submission item n]

110. Noise

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

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

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

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

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

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[note: pairs with submission item o]

12P. Storage of Materials

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

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

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

[note: pairs with submission item p]

L. Technical and Financial Capacity

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

1
2 [note: pairs with submission item q]
3

4 **SEC. 19-9-6. AMENDMENTS**

5
6 Any alteration to a site which is inconsistent with the approved site plan shall require an
7 amendment to the site plan. Planning Board approval must be obtained prior to the
8 alteration.
9

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

22 1. Review. The applicant shall meet with the Town Planner and provide
23 a written description of the proposed amendments and all applicable
24 plans impacted by the amendments. The Town Planner shall review
25 the submission with the applicant and consult with appropriate town
26 staff. The Town Planner will make a preliminary determination that
27 the proposed changes do comply with the approval standards, do not
28 comply with the approval standards, or that the nature of the
29 amendments merit review by the Planning Board.
30

31 2. Decision. ~~The Town Planner shall forward the De Minimus Change~~
32 ~~application and a recommendation to the Planning Board Chair.~~
33 ~~Notwithstanding Sec. 19-9-4(B)(1), the Planning Board Chair~~
34 ~~shall make the final determination to approve a de minimus~~
35 ~~change or to forward the site plan amendment to the Planning~~
36 ~~Board for review.~~
37

38 **B. Amendment.** Any change to a plan approved by the Planning Board must be
39 submitted to the Planning Board for review and approval, unless the
40 amendment is a De Minimus Change. The Planning Board shall review the
41 amendments in accordance with the Review Procedures, Sec. 19-9-4.
42 Submission requirements may be limited to the information related to the
43 proposed amendments. Any Planning Board Decision to approve
44 amendments to a previously approved Site Plan shall incorporate the original
45 Site Plan Approval, except as specifically amended. ~~Prior to placement on the~~

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1 ~~Consent Agenda, the applicant shall meet with the Town Planner to review~~
2 ~~the proposed changes and shall provide eight (8) copies of the revised site~~
3 ~~plan to the Town Planner at least eighteen (18) days prior to the next regular~~
4 ~~Planning Board meeting. The decision of the Town Planner not to place an~~
5 ~~item on the Consent Agenda may be appealed to the Planning Board upon~~
6 ~~submission of fourteen (14) copies of the proposed change to the Town~~
7 ~~Planner eighteen (18) days prior to the next regular meeting of the Planning~~
8 ~~Board.~~

9
10
11 **SEC. 19-9-7. APPEALS OF PLANNING BOARD ACTIONS**

12
13 Appeal of an action taken by the Planning Board regarding site plan review shall be to the
14 Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

1 CHAPTER 25

2
3 STORMWATER

4
5 Article I. Stormwater and Non-Stormwater Control

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 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

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1 a. Any proposed activity subject to Planning Board review and involving more than 43,560
2 square feet of added impervious surface, paving, clearing, or vegetative alterations, or
3 any development requiring Subdivision Review (Chapter 16, Subdivision Ordinance)

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

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

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

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

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

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 **CFR:** Code of Federal Regulations.

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

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

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

43
44 **Direct Discharge:** Any discernible, confined and discrete conveyance, including, but not
45 limited to, any pipe, ditch, channel, tunnel, conduit, well, container, concentrated animal
46 feeding operation or vessel or other floating craft, from which Pollutants are or may be

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1 discharged. (Also known as Point Source.)

2

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

5

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

15

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

18

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

23

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

26

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

29

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

35

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

39

40 **Storm Water:** Runoff resulting from snowmelt, rain, precipitation or groundwater on the
41 ground.

42

43 **Storm water Maintenance agreement.** An agreement describing maintenance of storm water
44 runoff system for development reviewed by the Planning Board. All privately owned facilities
45 shall be included in the maintenance agreement. A maintenance agreement must include, at a
46 minimum, the party responsible for maintenance, a list of the storm water runoff system

1 components that requires maintenance, inspection frequency, maintenance requirements, and
2 submission of an annual report to the Town. Storm water runoff system components that will be
3 privately owned until such time they are conveyed to the Town require a maintenance agreement
4 until they are conveyed.

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

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

12 **Town:** The Town of Cape Elizabeth.

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

22 **Untaminated:** Free of Pollutants.

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

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

- 28 1. Any development involving more than **[replace 10,000 sq. ft. with one acre]** **1**
29 **acre (43,560 sq. ft).** of impervious surface [delete to be consistent with Chapter
30 500 threshold for review, **paving, clearing, or vegetative alterations,**]and which
31 requires Site Plan (Chapter 19, Zoning Ordinance); and
- 33 2. **Any development requiring** Subdivision Review (Chapter 16, Subdivision
34 Ordinance) by the Planning Board.

36 **b. Submission Requirements. The following information shall be submitted** to the
37 Planning Board.

- 39 1. **Professional Engineer.** Designation of a professional engineer licensed in the
40 State of Maine who will design, sign and stamp the storm water runoff system.
- 42 2. **Base information.** The existing site information required for subdivision or site
43 plan review, including but not limited to standard boundary survey, topographic
44 contours, location of water bodies and water courses, shall be used as the base for
45 the storm water runoff system plan.

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3. Impervious surface. On the storm water runoff plan and in the written materials, the calculated square footage of existing impervious surface and proposed impervious surface.
4. Pre- and post construction calculations. Storm water runoff calculations based on the 2- and 25-year 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."

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c. Review Standards.

1. Professional Engineer. The storm water runoff system shall be prepared by a professional engineer licensed in the State of Maine.
2. 2 and 25 year storm. **The storm water runoff system shall be designed for a storm of intensity equal to the 2 and 25-year storm.**
3. Infiltration. The storm water runoff system shall maximize to the greatest extent practical the amount of storm water infiltrating on the site during storm events, except that development located in the Town Center District shall design a stormwater plan that is consistent with the Town Center Stormwater Management Plan, **updated September 2015 or most recent version.**
4. Downstream impacts. The storm water runoff system shall provide for the discharge of storm water from the site without damage to streets and storm water infrastructure, adjacent properties, downstream properties, soils and vegetation. When post-development flows exceed pre-development flows, the development shall demonstrate that either (1) storm water runoff will be stored on-site and released at a rate not to exceed pre-development flows or (2) that the storm water runoff system has sufficient capacity to carry the increased flow without adverse impacts. Direct discharge to tidally influenced areas shall be considered sufficient capacity to carry increased flow.
5. Upstream flows. The storm water runoff system shall be designed to accommodate all existing up stream flows that pass through the site. No non-storm water structures shall be permitted in areas of the site that flood or surcharge during the 2 and 25-year storm. Where state or federal law is more restrictive, such provisions shall supersede this section.
6. System components. The storm water runoff system shall be completely designed and include built structures and natural channels, technical specifications and design details. Where components of the storm water runoff system are located outside of public right-of-way, easements shall be provided to the town for access and maintenance.
7. Maintenance. A permanent routine maintenance plan shall be prepared for the storm water runoff system. The note requiring maintenance of the storm water runoff system is on the plan.
8. Record Drawings. The storm water runoff system plans shall include a note that, upon completion of the storm water runoff system installation, a reproducible set of record drawings indicating the storm water runoff system work accomplished and how the record drawings were compiled will be submitted to the Enforcement Authority.

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1 [Recommend delete all the following, because it has been replaced with the Review standards
2 above

3
4 a. Professional Engineer. The technical design, sizing of components and hydraulic analyses
5 and computations for any storm water runoff system shall be performed or approved in
6 writing by a professional engineer registered in Maine. The storm water runoff systems
7 for developments requiring site plan review or subdivision approval by the Planning
8 Board shall be designed with the objective of infiltrating, detaining or retaining water
9 falling on or flowing to the site during a storm of intensity equal to the 2 and 25-year
10 storm in such a manner that, to the maximum extent practicable, (1) the rate of flow of
11 such water from the site shall not exceed that which would occur in its undeveloped state
12 or will discharge directly to a tidally influenced area, and (2) the physical, chemical and
13 biological properties of the techniques or structures to accomplish either objective shall
14 be the responsibility of the developer, subject to review and approval by the Planning
15 Board.

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16
17 b. Outflow Rate. The design of Storm Water Runoff Systems shall include consideration of
18 permanent and temporary ponding or storage within the development to control and
19 minimize outflow rates. The designer of the Storm Water Runoff System shall evaluate
20 the effectiveness of various methods and shall develop the hydraulic computations based
21 on accepted engineering principles to demonstrate the expected rate of outflow after
22 development compared with the rate of outflow prior to development.

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23
24 c. Downstream impact. If it is not practicable to reduce the outflow rate from the developed
25 area for the 2 and 25-year storm to that from the undeveloped site, considering the
26 construction and maintenance costs of the Storm Water Runoff System and the
27 downstream benefits to be obtained, the developer shall demonstrate by hydraulic
28 analysis that downstream channel or system capacity is sufficient to carry the flow
29 without adverse effects. Computations and analysis made pursuant to this section shall be
30 made available for review by the Planning Board or its designees.

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

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

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42
43 f. 25-year Surcharge. The design of piped or open channel Storm Water Runoff Systems
44 shall be based on a 25-year storm without surcharge or flooding beyond channel limits,
45 unless such surcharge is specifically planned to assist in meeting the objectives of
46 subsection (g). The areas expected to be flooded by a runoff of a 25-year storm shall be

1 designated, and no structures shall be permitted within such areas. Where state or federal
2 law is more restrictive, such provisions shall supersede the provisions of this section.

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

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

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

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

33
34 **[Recommend this section be deleted as it has been replaced with the submission
35 requirements in Sec. 25-1-4.b**

36
37 **Sec. 25-1-6. Storm Water Runoff System Plan Requirements.**

38
39 a. Basic site data upon which Storm Water Runoff Systems are planned and designed shall
40 include:

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- 41
42 1. A topographic map of the entire development site utilizing a 2-foot contour
43 interval, which map shall show water bodies, wetlands, the location of all
44 permanent and intermittent streams or water courses, the location and type of
45 vegetative cover, and the soil type determined by a medium intensity soil survey;
46 2. A map of upstream areas giving sufficient information to calculate hydraulics and

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- 3. drainage designs through the site; and
A map of downstream areas, where the outflow rate is to be increased as described in Section 25-2-4 (c) giving sufficient information to calculate hydraulics and drainage design demonstrating the sufficiency of downstream capacity.
- b. The Storm Water Runoff System shall be fully coordinated with project site plans including consideration of street patterns, pedestrian ways, open space, building siting, parking areas, and other utilities, especially sanitary waste water disposal systems.
- c. Planning of Storm Water Runoff Systems shall encompass the entire site that may ultimately be developed, and shall not be limited to an initial or limited section of the development.
- d. The design of the Storm Water Runoff System shall be presented to the Planning Board in the form of engineering reports. A Preliminary Design concept shall be presented with the initial review submissions, and a Final Design Report shall be presented with the request for Final Subdivision or Site Plan approval.
- e. The Preliminary Design concept shall include the following:
 - 1. Plans showing basic site data as required by subsection (a);
 - 2. Plans of the Storm Water Runoff System indicating coordination and compatibility with the proposed site plans;
 - 3. Computations comparing the runoff rates and characteristics of the development before and after the proposed development; and
 - 4. Computations illustrating the passage of upstream flow, if any, through the site.
- f. The Final Design Report shall include the following:
 - 1. Detailed construction plans of the proposed Storm Water Runoff System including plans, profiles and channel sections, in such detail as necessary to construct the Storm Water Runoff System;
 - 2. Material and procedure specifications as necessary to construct the Storm Water Runoff System;
 - 3. Final design computations illustrating compliance with the intent of this Ordinance and with any conditions upon the preliminary approval;
 - 4. Metes and bounds surveyed plans of all rights of way proposed for public ownership, made by a registered land surveyor, and assignment of maintenance responsibilities for the rights of way upon completion; and
 - 5. Installation time schedule, including sequence and scheduling of Storm Water Runoff System installation, with particular attention to coordination with site erosion and sedimentation control plans.]

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

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

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

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16
17 **Sec. 25-1-8. Non-Storm Water Regulation.**

18
19 a. **Objectives.** The objectives of this section are:

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

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

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

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

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dechlorinated swimming pool discharges.

- 2. Discharges authorized by the Enforcement Authority as being necessary to protect public health and safety; and
- 3. Dye testing, with authorization from the Enforcement Authority prior to the time of the test.

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

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

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

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

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- 1. The elimination of Non-Storm Water Discharges to the Storm Water Runoff System, including, but not limited to, disconnection of the Premises from the Storm Water Runoff System;
- 2. The cessation of Discharges, practices, or operations in violation of this Ordinance;
- 3. At the Person's expense, the abatement or remediation in accordance with best management practices in DEP rules and regulations of Non-Storm Water

Discharges to the Storm Water Runoff System and the restoration of any affected property; and/or

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

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

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

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

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

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

1 compliance with this Ordinance or any administrative decision lawfully made under this
2 Ordinance.

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

9
10 **Article II. Post Construction Stormwater Management**

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

32
33 **Sec. 25-2-2. Objectives.** The objectives of this Ordinance are:

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

43
44 **Sec. 25-2-3. Applicability.** This Ordinance applies to all New Development and Redevelopment
45 within the Town that discharges storm water to the Town's Municipal Separate Storm Sewer
46 System (MS4) and to associated storm water management facilities, which are considered to be

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1 an element or array of elements that convey water from or across land, including, but not limited
2 to, natural elements, roads, parking areas, catch basins, drainage swales, detention basins and
3 ponds, pipes, conduits, and related structures that are part of the Post-Construction Storm Water
4 Management Plan for a New Development or Redevelopment. This ordinance does not apply to
5 any development which has obtained subdivision approval and begun construction prior to the
6 date this ordinance becomes effective. Construction shall mean (1) posting of a performance
7 guarantee, (2) disturbance of soil, and (3) inspection by a town official.

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

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

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

22
23 **Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also
24 known as the "Clean Water Act"), and any subsequent amendments thereto.

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

30
31 **Discharge:** Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other
32 addition of Pollutants to Waters of the State.

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

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

44
45 **Enforcement Authority:** The Town Manager or his/her designee who is the person(s) or
46 department authorized by the Town to administer and enforce this Ordinance.

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Town: The Town of Cape Elizabeth.

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

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

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

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

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

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

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

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

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

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

1 interest in the property, and

2
3 b. The Inspector shall also meet the following criteria as approved by the Town's
4 Enforcement Authority:

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

17
18 **Redevelopment:** Any Construction Activity on Premises already improved with buildings,
19 structures, or activities or uses, but does not include such activities as exterior remodeling of
20 structures.

21
22 **Regulated Small MS4:** Any Small MS4 regulated by the State of Maine "General Permit for the
23 Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems" ("General
24 Permit"), including all those located partially or entirely within an Urbanized Area (UA) and
25 those additional Small MS4s located outside a UA that as of the issuance of the General Permit
26 have been designated by the DEP as Regulated Small MS4s.

27
28 **Small Municipal Separate Storm Sewer System, or Small MS4:** Any MS4 that is not already
29 covered by the Phase I MS4 Storm Water program including municipally owned or operated
30 storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons,
31 Maine Department of Transportation and Maine Turnpike Authority road systems and facilities,
32 and military bases and facilities.

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

35
36 **Storm Water Runoff System:** An element or array of elements that convey water from or
37 across land, including, but not limited to, natural elements.

38
39 **Urbanized Area ("UA")** means the areas of the State of Maine as defined by the latest
40 decennial census by the U.S. Bureau of the Census.

41
42 **Sec. 25-2-5. Post-Construction Storm Water Management Plan.**

43
44 a. **General Requirement**

- 45
- 46 1. Except as provided in Sec. 25-2-3 b. above, no Applicant for a building permit,

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subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Town Permitting Authority for that New Development also determines that the Applicant's Post- Construction Storm Water Management Plan for the New Development meets the requirements of this Ordinance.

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

b. **Performance Standards**

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

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

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

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1 4. **Easements and Access.** Whenever elements of the Storm Water Runoff System
2 are not within the right-of-way of a public street and the facilities will not be
3 offered to the Town for acceptance as public facilities, the Town Permitting
4 Authority may require that perpetual easements conforming substantially with the
5 lines of existing natural drainage, and providing adequate access for maintenance
6 in a form acceptable to the Town's attorney, shall be provided to the Town
7 allowing access for maintenance, repair, replacement and improvement of the
8 Storm Water Runoff System. When an offer of dedication is required by the Town
9 Permitting Authority, the Applicant shall be responsible for the maintenance of
10 these Storm Water Runoff Systems under this Ordinance until such time (if ever)
11 as they are accepted by the Town.

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

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22 23 **Sec. 25-2-6. Post-Construction Storm Water Management Plan Compliance.**

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

29
30 1. **Annual Inspection.** A Qualified Post-Construction Storm Water Inspector , shall,
31 at least annually, inspect the Storm Water Runoff Systems, including but not
32 limited to any roads, parking areas, catch basins, drainage swales, detention
33 basins and ponds, pipes, conduits, and related structures, in accordance with all
34 Town and State inspection, cleaning and maintenance requirements of the
35 approved Post-Construction Storm Water Management Plan.

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36
37 2. **Corrective Actions.** If the Storm Water Runoff Systems require maintenance to
38 function as intended by the approved Post-Construction Storm Water
39 Management Plan, that Person shall take corrective action(s) to address the
40 deficiency or deficiencies.

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42 3. **Annual Reporting to Town.** A Qualified Post-Construction Storm Water
43 Inspector shall provide, on or by August 1 of each year, a completed and signed
44 certification to the Town Enforcement Authority in a form prescribed by the
45 Town or in a similar form approved by the Town Enforcement Authority,
46 certifying that the Storm Water Runoff Systems have been inspected, and that

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1 they are adequately maintained and functioning as intended by the approved Post-
2 Construction Storm Water Management Plan, or that they require maintenance or
3 repair, describing any required maintenance and any deficiencies found during
4 inspection of the Storm Water Runoff Systems. If the Storm Water Runoff
5 Systems require maintenance or repair of deficiencies in order to function as
6 intended by the approved Post-Construction Storm Water Management Plan, the
7 Person shall provide a record of the required maintenance or deficiency and
8 corrective action(s) taken.

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

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

20
21 c. **Annual Report.** **Each year** the Town shall include the following in its Annual Report to
22 the Maine Department of Environmental Protection:

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

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

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

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- 1 a. The abatement of violations, and the cessation of practices, or operations in violation of
2 this Ordinance or of the Post-Construction Storm Water Management Plan;
- 3
- 4 b. At the Person's expense, compliance with BMPs required as a condition of approval of
5 the New Development or Redevelopment, the repair of Storm Water Runoff Systems
6 and/or the restoration of any affected property; and/or
- 7
- 8 c. The payment of fines, of the Town's remediation costs and of the Town's reasonable
9 administrative costs and attorneys' fees and costs. If abatement of a violation, compliance
10 with BMPs, repair of Storm Water Management Facilities and/or restoration of affected
11 property is required, the notice shall set forth a deadline within which such abatement,
12 compliance, repair and/or restoration must be completed.
- 13

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

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

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

42
43 **Sec. 25-2-12. Enforcement Measures.** If the violation has not been corrected pursuant to
44 the requirements set forth in the Notice of Violation, or, in the event of an appeal to the
45 Board of Appeals, within 45 days of a decision of the Board of Appeals affirming or
46 modifying the Enforcement Authority's decision, then the Enforcement Authority may

1 recommend to the municipal officers that the Town's attorney file an enforcement action in a
2 Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil
3 Procedure.

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

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