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Draft Technical Amendments
Subdivision Ordinance, Zoning Ordinance, Conservation Ordinance

Subdivision Ordinance

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

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

(c) Performance Guarantee.

2. Amount. The Performance Guarantee amount shall be based on a detailed estimate prepared by the applicant, broken down by unit cost and quantity, and reviewed by the Town Engineer. Costs included in the estimate shall include, but not be limited to, completion of all roads, sewer, water, drainage, open space, landscaping, lighting and other required improvements shown on the approved plans. The cost estimate shall also include a contingency amount equal to ten (10) percent of the Performance Guarantee estimate. When the Performance Guarantee estimate exceeds two hundred fifty thousand (\$250,000) dollars, the contingency amount shall be calculated at a rate of five (5) percent for that portion of the portion of the Performance Guarantee estimate in excess of two-hundred fifty thousand (\$250,000) dollars.

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

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

13
14 **Sec. 16-2-7. Construction Administration**

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

24
25 (g) **Completion and Acceptance.** Upon completion of the subdivision infrastructure, the
26 subdivider may shall request that the Town Council accept proposed public improvements.
27 The request shall include confirmation from the Town Manager that the improvements have
28 been constructed consistent with the approved plans and town construction standards and that
29 any applicable deeds have been submitted in a form acceptable to the Town Attorney and
30 signed by the subdivider. The applicant shall be required to maintain all improvements and to
31 provide for snow removal on roads and sidewalks, until their acceptance by the Town or the
32 assumption of those responsibilities under such other approved arrangements. Any applicable
33 Storm water Maintenance Plan shall also be recorded in the Cumberland County Registry of
34 Deeds.

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

37
38 **A. Road Design**

39
40 **7. Road Trees.**

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

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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.

1 | Repeal and Replace Appendix C with a new Appendix C

**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.

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

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2 **APPENDIX C**
3 **Road Tree List**
4

5 **Introduction**
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7 The selection of tree species to plant along roadsides, sidewalks and parking lots, including in
8 islands and esplanades, is governed by the Town’s commitment to maintaining a sustainable
9 forest canopy. Sustainability requires managing for diversity at the genus level, and to the extent
10 possible, selecting tree species from genera that are considered less susceptible to exotic tree
11 pathogens. The Town’s goal is to work toward a forest canopy in which no more than 5% of
12 trees are from the same genus.

13
14 **Prohibited Species**
15

16 At the present time, trees species from the following genera are not approved for planting: Acer
17 (Maples), Betula (Birches), Fraxinus (Ashes), Quercus (Oaks), Populus (Aspens), and Tsuga
18 (Hemlocks).

19
20 **Priority Species**
21

22 The following tree species are from monotypic genera (ie. each genus has only one species), and
23 are thus considered highly resistant to exotic tree pests. These trees may not be appropriate for
24 many locations, but they should receive priority consideration when site characteristics are
25 appropriate. These tree species are recommended for planting to meet the road tree
26 requirements, subject to final approval by the Tree Warden based on site characteristics. The list
27 includes the scientific and common tree name, whether the tree is native to Maine, expected
28 height at maturity, and comments when applicable. All trees must be planted with a minimum
29 caliper of 2 inches.

30
31 **Scientific** **Common** **Native** **Height**
32 **Comments**

<u>Cercidiphyllum japonicum</u>	<u>Katsuratree</u>	<u>N</u>	<u>60’</u>	
<u>Eucommia ulmoides</u>	<u>Hardy Rubber Tree</u>	<u>N</u>		
<u>Ginkgo biloba</u>	<u>Maidenhair Tree</u>	<u>N</u>	<u>60’</u>	<u>Male trees only</u>
<u>Gymnocladus dioicus</u>	<u>Kentucky Coffeetree</u>	<u>N</u>		
<u>Maackia amurensis</u>	<u>Amur Maackia</u>	<u>N</u>	<u>40’</u>	
<u>Maclura pomifera</u>	<u>Osage Orange</u>	<u>N</u>		
<u>Ptelea trifoliata</u>	<u>Hoptree</u>	<u>N</u>	<u>20’</u>	

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42 **Acceptable Species**
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44 The tree species listed below are acceptable for planting to meet the road tree requirements,
45 subject to final approval by the Tree Warden based on site characteristics. The list includes the
46 scientific and common tree name, whether the tree is native to Maine, expected height at

maturity, and comments when applicable. All trees must be planted with a minimum caliper of 2 inches.

<u>Scientific</u>	<u>Common</u>	<u>Native</u>	<u>Height</u>	<u>Comments</u>
<u>Aesculus hippocastanum</u>	Horsechestnut	N	70'	
<u>Aesculus x carnea</u>	Red Horsechestnut	N	40'	
<u>Carpinus betulus</u>	American Hornbeam	Y	30'	
<u>Carpinus caroliniana</u>	European Hornbeam	N	40'	
<u>Carya ovata</u>	Shagbark Hickory	Y	80'	
<u>Cladrastus kentuckea</u>	Yellowwood	N	60'	
<u>Corylus columnna</u>	Turkish Filbert	N	50'	
<u>Gleditsia triancanthos</u>	Honey Locust	N	40	Var. <u>inermis</u>
<u>Juglans nigra</u>	Black Walnut	N	70'	
<u>Koelreuteria paniculata</u>	Paniced Goldenraintree	N	30'	
<u>Liriodendron tulipifera</u>	Tuliptree	N	70'	
<u>Liquidambar styraciflua</u>	Sweetgum	N	60'	Spiny seed pods
<u>Magnolia spp.</u>	Magnolia	N	Various	
<u>Nyssa sylvatica</u>	Tupelo	Y	60'	
<u>Ornamental spp.</u>	Pears, Crabapples, Dogwoods, Cherries, tree form of Hydrangea & Hibiscus, etc.	Y/N	Various	As approved by Tree Warden
<u>Ostrya virginiana</u>	Eastern Hophornbeam	Y	30'	
<u>Oxydendrum arboreum</u>	Sourwood	N	30'	
<u>Platanus x acerfolia</u>	London Plane	N	75'	
<u>Platanus occidentalis</u>	American Sycamore	Y	75'	
<u>Sorbus alnifolia</u>	Korean Mountain Ash	N	35'	
<u>Stewartia pseudocamelia</u>	Japanese Stewartia	N	30'	

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2	<u>Syringa reticulata</u>	Japanese Tree Lilac	N	30'	
3					
4	<u>Tilia americana</u>	American Basswood	Y	70'	
5	<u>Tilia cordata</u>	Littleleaf Linden	N	60'	Cultivars only
6	<u>Tilia tomentosa</u>	Silver Linden	N	60'	
7					
8	<u>Ulmus hybrids</u>	Accolade, Triumph	N	50'	
9	<u>Ulmus parvifolia</u>	Chinese Elm	N	50'	
10					
11	<u>Zelkova serrata</u>	Zelkova	N	50'	
12					
13	<u>Other species</u>	E.g., Conifer spp.	Y/N	Various	As approved by
14					Tree Warden

15 Cultivars and Hybrids

16
 17 Cultivars and hybrids of the tree species listed above, unless specifically identified above,
 18 require approval of the Tree Warden.

19
 20 Esplanade and Islands

21
 22 The key to planting sustainable trees in esplanades and islands is to ensure there is sufficient soil
 23 volume available to support the expected size of maturity for the tree species selected.
 24 Accordingly, any plan to plant trees species from the lists above in an esplanade or island must
 25 be accompanied by an analysis of available soil volume, and reference to a soil volume table or
 26 other guide showing the soil volume available is sufficient to support the tree selected.

27
 28 Site and Tree Characteristics

29
 30 Tree species vary in their environmental needs and response to site characteristics. Just because
 31 a tree species is listed above doesn't mean it is the right tree for a particular location. Site
 32 characteristics such as moisture, presence of roadside or aerial salts, soil pH, and sun exposure
 33 must all be considered in selecting the right tree for the right location. Tree characteristics such
 34 as expected height and crown spread at maturity, fruit dropping, and presence of thorns, must
 35 also be considered for particular sites. Tree Warden approval is required to help ensure that site
 36 and tree characteristics are appropriate for a desired planting location.

Chapter 18
Conservation Ordinance

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

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

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

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4 **Zoning Ordinance**

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8 **SEC. 19-1-3. DEFINITIONS**

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

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

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

36
37 **Impervious Area:** The total area of a parcel that consists of buildings and associated constructed
38 facilities or areas, such as asphalt or concrete, and areas such as gravel roads and unpaved
39 parking areas that will be compacted through design or use to reduce their permeability.
40 Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways,
41 parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials,
42 and macadam or other surfaces which similarly impede the natural infiltration of storm water. A
43 natural or man-made waterbody is not considered an impervious area, but is treated as an
44 immediate runoff surface in curve number calculations.

45
46 **Moderate Income:** Family income which is between eighty percent (80%) and one hundred
47 twenty~~five~~ percent ~~(150%)~~~~(120%)~~ of median family income for the Portland Metropolitan

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

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

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

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

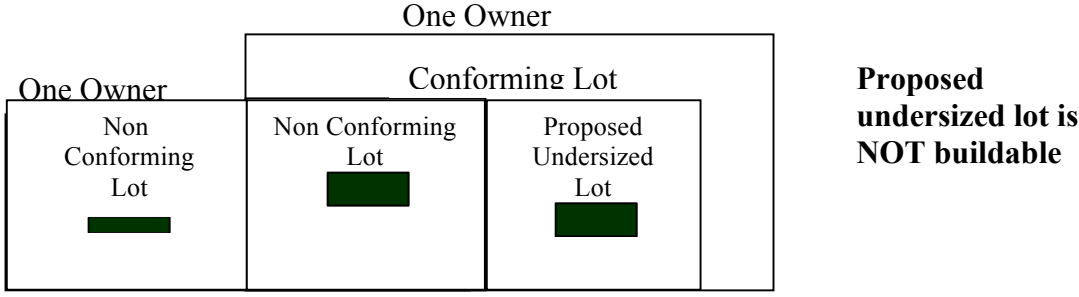
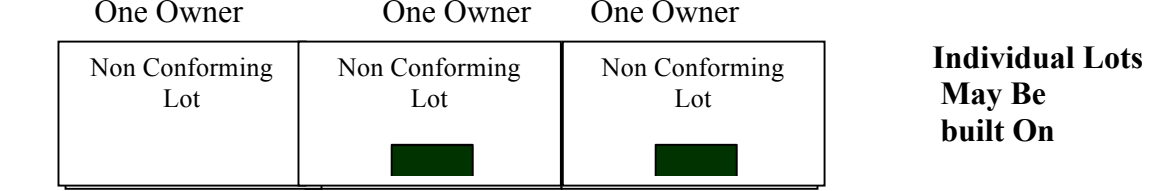
25 **A. Nonconforming Lots**

26
27 The following provisions shall govern the development of lots that are nonconforming because
28 they do not meet the minimum lot area, net lot area per dwelling unit, minimum street frontage,
29 or similar requirement of the district within which they are located. Lots that do not meet the
30 minimum street frontage requirement shall also comply with Sec. 19-7-9, Private Access
31 Provisions, before a building permit can be issued. (Effective November 14, 2015)
32

33 **1. *Vacant Nonconforming Lots***

- 34
35 **a. Buildability.** Vacant nonconforming lots may be built upon in conformance with the
36 provisions of the district in which they are located even though the lots do not meet
37 the minimum lot area, net lot area per dwelling unit, street frontage, or similar
38 requirements as long as the requirements of the chart below are met. **(Effective**
39 **August 11, 1999 and revised effective July 4, 2001)**
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b. Space and Bulk Standards. The Code Enforcement Officer may issue a building permit and related permits and approvals for a principal structure and related accessory buildings and structures that do not comply with the setbacks and other Space and Bulk Standards that would otherwise be required in the district in which it is located as long as the following standards are met: **(Effective August 11, 1999)**

	RA District	RC District	TC District
Front setback for principal structure			
- local roads	25'	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
- other roads	As required by Sec. 19-6-1.E	As required by Sec. 19-6-3.E	As required by Sec. 19-6-4.D
Side setback	25'	10'	As required by Sec. 19-6-4.D
Rear setback	20'	15'	As required by Sec. 19-6-4.D
Minimum lot area - with public sewerage - 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

1
2 *Or otherwise meet the requirements of Chapter 15, Sewer Ordinance, the State
3 Subsurface Wastewater Disposal Rules and have received a waiver of the state
4 minimum lot size requirement pursuant to 12 M.S.R.A. Section 4807-B. The
5 issuance of a minimum lot size waiver by the Department of Human Services in
6 connection with a lot created prior to January 1, 1970, shall be deemed valid.
7 Provided however, in no event shall a building permit issue for a lot which
8 contains less than 10,000 sq. ft. **(Effective July 4, 2001)**
9

10 c. Variance. If a principal structure cannot be sited on a lot in conformance with these
11 setback requirements, the owner may seek a variance from the setback requirements
12 from the Zoning Board of Appeals (see Sec. 19-5-2.B, Variances).
13

14 **B. Nonconforming Buildings and Structures**

15
16 **3. *Reconstruction or Replacement***

17
18 Any nonconforming structure which is located closer than the required setback from the
19 property line and which is or is proposed to be, removed, or damaged or destroyed may
20 be reconstructed or replaced provided that a permit is obtained within one (1) year of the
21 date of said damage, destruction, or removal, and the building or structure will be located
22 within the original building footprint, will not increase the number of square feet of floor
23 area, and will not create or expand any nonconformities. Reconstruction of a
24 nonconforming structure not in compliance with these limitations may be permitted
25 provided that such reconstruction is in compliance with the setback requirement to the
26 greatest practical extent as determined by the Zoning Board of Appeals in accordance
27 with the purposes of this Ordinance. In no case shall a structure be reconstructed or
28 replaced so as to increase its nonconformity.
29

30 In determining whether the building reconstruction or replacement meets the setback to
31 the greatest practical extent, the Zoning Board of Appeals shall consider the physical
32 condition and type of foundation present, if any, in addition to the criteria in Sec. 19-4-
33 3.B.23, Relocation.
34

35 **4. Enlargement**

36
37 Any nonconforming structure which is located closer than the required setback from the
38 property line may be enlarged as long as the area being enlarged meets the setback
39 requirements, and will not create or expand any nonconformities. Enlargement of a
40 nonconforming structure not in compliance with these limitations may be permitted
41 provided that such enlargement is in compliance with the setback requirement to the
42 greatest practical extent as determined by the Zoning Board of Appeals in accordance
43 with the purposes of this Ordinance. In no case shall a structure be enlarged so as to
44 increase its nonconformity.
45

46 In determining whether the building reconstruction or replacement meets the setback to
47 the greatest practical extent, the Zoning Board of Appeals shall consider the physical

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

3
4 **SEC. 19-4-4. NONCONFORMANCE WITHIN THE SHORELAND**
5 **PERFORMANCE OVERLAY DISTRICT**

6
7 The following provisions shall govern nonconformance with provisions of~~within~~ the
8 Shoreland Performance Overlay District. Nonconforming conditions in existence before
9 the effective date of this district, or amendments thereto, shall be allowed to continue,
10 subject to the requirements set forth in this section.
11

12 **ARTICLE V. ZONING BOARD OF APPEALS**

13
14 **SEC. 19-5-2. POWERS AND DUTIES**

15
16 The Board shall have the following exclusive powers and duties to be exercised only upon
17 written appeal by a party aggrieved by a decision of the Code Enforcement Officer or other
18 municipal official or board:
19

20 **A. Administrative Appeals**

21
22 To determine whether the decision of the Code Enforcement Officer is in conformity with the
23 provisions of this Ordinance, to modify such decision to conform with such provisions, and to
24 interpret the meaning of the Ordinance in all cases of uncertainty. The Zoning Board shall
25 conduct an appellate review, where the board may consider additional evidence and may base its
26 decision on the original record and/or new evidence.~~-REVISION FROM TOWN ATTORNEY~~
27 PENDING.
28

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

30
31 **F. Site Plan Review**

32
33 The following uses and activities shall be subject to site plan review by the Planning Board,
34 according to the terms of Article IX, Site Plan Review, prior to issuance of any building permit,
35 plumbing permit, or other permit:
36

- 37 1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex
38 housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective
39 November 14, 2015)
- 40 2. Nonresidential uses listed in Sec. 19-6-1.B.3, except home day cares, wind energy
41 systems, short term rentals and day camps, which shall not require site plan review
42 (Effective August 11, 1999)
- 43 3. Nonresidential uses listed Sec. 19-6-1.C.2
- 44 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review
45

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

2
3 **F. Site Plan Review**

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

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

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

19
20 **F. Site Plan Review**

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

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

34 **SEC. 19-7-9. PRIVATE ACCESS PROVISIONS**

35
36 **D. Private Accessway Procedures**

37
38 **5. Post Approval Procedures**

- 39
40 a. Inspection: The applicant shall be responsible for demonstrating that the
41 construction of the private accessway meets the standards of this section. The
42 private accessway shall be inspected under the direction of a registered
43 professional engineer. Prior to the issuance of any building permits for the lot
44 served by a private accessway, (1) the engineer shall certify to the Code
45 Enforcement Officer that the private accessway has been constructed in

1 accordance with this section or (2) a performance guarantee shall be posted in
2 compliance with the provisions of Sec. 16-2-6 (c) of the Subdivision Ordinance-
3

4 **SEC. 18-8-1. BUFFERING OF NONRESIDENTIAL USES RESERVED**

5
6 ~~1. The required side and rear yards of nonresidential uses, except agriculture that are located~~
7 ~~within residential districts or that are on lots that abut a residential district shall be~~
8 ~~retained in their natural vegetated state to the maximum extent possible to provide a~~
9 ~~visual screen between different uses. (Effective June 10, 2010)~~

10
11 ~~2. Where natural buffering does not exist, or is not possible to be retained, or is not~~
12 ~~sufficient to achieve an effective visual screen, the required side and rear yards shall be~~
13 ~~landscaped to provide a visual screen between different uses. The buffer shall be a~~
14 ~~minimum of twenty five (25) feet wide and located between any building and the~~
15 ~~abutting property line and a minimum of ten (10) feet wide between any parking area or~~
16 ~~driveway and the abutting property line, and may be interrupted only by a single~~
17 ~~pedestrian pathway at each abutting property line no more than five (5) feet wide. The~~
18 ~~buffer shall include, for each one hundred (100) feet of length (or, if less than one~~
19 ~~hundred [100] feet, the fraction thereof), a minimum of two (2) canopy or evergreen~~
20 ~~trees, four (4) understory trees, and six (6) shrubs, plus such other plantings as a licensed~~
21 ~~landscape architect certifies in writing will achieve seventy five percent (75%) opacity to~~
22 ~~a height of at least six (6) feet on a year round basis within three (3) years of planting, or,~~
23 ~~if solid fencing also is installed in the buffer area, fifty percent (50%) opacity to a height~~
24 ~~of at least six (6) feet within three (3) years of planting.~~

25
26 ~~For every mature canopy or evergreen tree existing prior to the development and retained~~
27 ~~within the buffer area, the required number of new trees may be reduced by two (2). In~~
28 ~~this case, an amount of money sufficient to provide for replacement as provided for~~
29 ~~below and approved by the Planning Board, shall be deposited by the owner into an~~
30 ~~interest bearing escrow account established and controlled by the Town. If any such~~
31 ~~retained tree dies within five (5) years of the date of the building permit issued for the~~
32 ~~development, it shall be replaced with two (2) canopy trees meeting the standard of this~~
33 ~~Ordinance. The escrow fund balance including any unexpended interest shall be released~~
34 ~~to the owner upon the expiration of the five (5) year~~

35
36 ~~period provided that the buffering requirement is met. The Town may use the escrow~~
37 ~~fund at any time during the five (5) years to replace dead plant stock if, after written~~
38 ~~notice to the owner, the owner fails to do so in a timely manner.~~

39 40 **SEC. 19-8-12. TOWER AND ANTENNA PERFORMANCE STANDARDS**

41 **1. Procedure**

42
43
44 b. Submission Requirements. In addition to the Submission requirements of Sec. 19-
45 9, Site Plan Review, or Sec. 19-3-3, Building Permits, as applicable, the applicant
46 shall be required to submit all information necessary to demonstrate compliance

1 with the Performance Standards in Sec. 19-8-2 (2), below. The applicant shall
2 also provide a map showing existing telecommunication coverage and anticipated
3 coverage with the installation of the proposed telecommunications.
4

5 **ARTICLE IX. SITE PLAN REVIEW**

6 7 **SEC. 19-9-1. PURPOSE**

8
9 The site plan review provisions set forth in this section are intended to protect the public health
10 and safety, promote the general welfare of the community, preserve the environment, and
11 minimize improvements that must be paid for by the Town's taxpayers by assuring that
12 nonresidential, multiplex residential, eldercare, and similar facilities are designed and developed
13 in a manner which assures that adequate provisions are made for: traffic safety and access;
14 emergency access; water supply; sewage disposal; management of ~~stormwater~~storm water,
15 erosion, and sedimentation; protection of the groundwater; protection of the environment;
16 minimizing the adverse impact on adjacent properties; and fitting the project harmoniously into
17 the fabric of the community.
18

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

20 21 **A. Activities Requiring Site Plan Review**

22
23 The owner of a parcel of land shall obtain site plan approval prior to undertaking any alteration
24 or improvement of the site including grubbing or grading, obtaining a building or plumbing
25 permit for the activities, or commencing any of the following activities on the parcel:
26

- 27 1. The construction of any nonresidential building or building addition
- 28
- 29 2. Any nonresidential expansion or change in use except that changes of use within the
30 Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan
31 Review and uses within the Business A District shall be governed by the provisions of
32 Sec. 19-6-5. F. Site Plan Review. **(Effective June 10, 2010)**
- 33
- 34 3. Multiplex housing and eldercare facilities
- 35
- 36 4. Any other activity or use requiring Planning Board review in the Zoning Ordinance
- 37 5. New construction involving more than ten thousand (10,000) square feet of impervious
38 surface, paving, clearing, or vegetative alteration, or any combination thereof. (The
39 Planning Board shall review the proposal for control of ~~stormwater~~storm water runoff
40 under the terms of Chapter 18, Article II, ~~Stormwater~~Storm water Control Ordinance.)
41
42

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

44
45 The following activities shall **not** require site plan approval (certain of these activities may,
46 however, require the owner to obtain a building permit, plumbing permit, or other State and local
47 approvals):

- 1
- 2 **1.** The construction, alteration or enlargement of a single family or two-family dwelling
- 3 unit, including accessory buildings and structures, except as required in the Town Center
- 4 Core Subdistrict. **(Effective June 10, 2010)**
- 5
- 6 **2.** The placement of manufactured housing or mobile home on individual lots
- 7
- 8 **3.** Agricultural buildings as follows: **(Effective June 10, 2010)**
- 9
- 10 a. Any temporary agricultural building, where temporary shall mean that the
- 11 structure remains in place no more than 3 months in any 12 month period.
- 12
- 13 b. If sales shall be conducted from the building, the structure must be a
- 14 temporary structure and sales shall not be conducted from the building for
- 15 more than 3 months in any 12 month period.
- 16
- 17 c. Any barn, greenhouse, or storage shed with a building footprint that does
- 18 not exceed 2,000 sq. ft. in size.
- 19
- 20 d. Any structure that shall provide housing, other than a single family home,
- 21 shall require Site Plan Review under Sec. 19-2-2(A)(4) above.
- 22
- 23 e. Any structure which does not comply with subparagraphs a, b, and c
- 24 above shall require Site Plan Review.
- 25
- 26 **4.** Temporary structures such as construction trailers or equipment storage sheds
- 27

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

29
 30 The Planning Board is authorized to review and act on all site plans for development requiring
 31 site plan review as defined above. In each instance where the Planning Board is required to
 32 review the site plan for a proposed use, it shall approve, deny, or conditionally approve the
 33 application based on its compliance with the standards in Sec. 19-9-5, Approval Standards,
 34 which action shall be binding upon the applicant. Where a proposed use is subject to approval of
 35 the Zoning Board of Appeals, such approval shall be obtained before the Planning Board
 36 considers the site plan for the proposed use.

37 38 **SEC. 19-9-4. REVIEW PROCEDURES**

39
 40 The Planning Board shall use the following procedures in reviewing applications for site plan
 41 review.

42 43 **A. Workshop**

44
 45 Prior to submitting a formal application, the applicant shall schedule a preapplication workshop
 46 with the Planning Board. The preapplication workshop shall be informal and informational in

1 nature. There shall be no fee for a preapplication review, and such review shall not cause the
2 plan to be a pending application. No decision on the substance of the plan shall be made at the
3 preapplication workshop. The applicant is encouraged to meet informally with the Town Planner
4 prior to the workshop.

5
6 **1. Purpose**

7
8 The purposes of the preapplication workshop are to:

- 9
10 a. Allow the Planning Board to understand the nature of the proposed use and the
11 issues involved in the proposal
12
13 b. Allow the applicant to understand the development review process and required
14 submissions
15
16 c. Identify issues that need to be addressed in future submissions
17

18 **2. Information Required**

19
20 There are no formal submission requirements for a pre-application workshop. However,
21 the applicant should be prepared to discuss the following with the Planning Board:

- 22
23 a. The proposed site, including its location, size, and general characteristics
24
25 b. The natural characteristics of the site that may limit its use and development
26
27 c. The nature of the proposed use and potential development, including a conceptual
28 site plan
29
30 d. Any issues or questions about existing municipal regulations and their
31 applicability to the project
32
33 e. Any requests for waivers from the submission requirements
34

35 **3. Planning Board Workshop**

36
37 The Planning Board workshop shall be informational and shall not result in any formal
38 action. The Planning Board shall identify any issues or constraints which need to be
39 addressed in the formal site plan application.
40

41 **B. Application Review Procedures**

- 42
43 **1. Completeness.** After an application has been submitted with the requisite fees, including
44 establishment of a Review Escrow Account under the terms of Sec. 16-2-1 (c) of the
45 Subdivision Ordinance, and after any required Zoning Board of Appeals approval has
46 been obtained, the Town Planner shall accept and date an application for Planning Board

1 ~~review issue a dated receipt to the applicant.~~ In consultation with the Planning Board
2 Chair or Vice Chair, the Town Planner shall review the site plan application and
3 accompanying materials to determine whether the application is complete or incomplete.
4 ~~If, in consultation with the Planning Board Chair or Vice Chair,~~ the application is
5 preliminarily determined to be incomplete, the Town Planner shall notify the applicant in
6 writing and shall list in the written determination the materials that must be submitted in
7 order to make the application complete. If the applicant fails to submit a complete
8 application within four (4) months of the ~~written determination of incompleteness issued~~
9 ~~receipt date,~~ the application shall be deemed withdrawn. When the Town Planner makes
10 the preliminary determination that an application is complete, the application shall be
11 scheduled for consideration at the next available Planning Board meeting. The Planning
12 Board may require other information in addition to that required in Sec. 19-9-4.C,
13 Submission Requirements. The Planning Board may also request an evaluation of
14 specific aspects of the site plan from the Conservation Commission, the Town Engineer,
15 or others. In the event that the Planning Board requires additional information or
16 evaluation, it may ~~deem the application incomplete, defer making its decision until its~~
17 ~~next regular meeting.~~

18
19 No action taken by the Town Planner, either alone or in consultation with the Planning
20 Board Chair or Vice Chair, with respect to reviewing a site plan application, shall result
21 in an application being deemed pending for the purposes of 1 M.R.S.A. §302. The Town
22 Planner, either alone or in consultation with the Planning Board Chair or Vice Chair,
23 shall have no authority to review the substance of a site plan application to determine
24 whether it complies with the site plan review criteria.

- 25
26 2. Public Hearing. Upon certification by the Planning Board that an application is complete,
27 the Planning Board, at its discretion, may hold a public hearing. If the Planning Board
28 determines to hold a public hearing, it shall hold the hearing within thirty-five (35) days
29 of the date that the application is deemed complete and shall provide public notice in
30 accordance with Sec. 16-2-1 (b) of the Subdivision Ordinance.

31
32 ~~The Planning Board shall conduct the hearing as to assure full, but not repetitive, public~~
33 ~~participation. The applicant shall be prepared to respond fully to questions from the~~
34 ~~Planning Board or issues raised by the public which the Planning Board deems~~
35 ~~significant. The Planning Board may, upon its own motion, extend the hearing once for a~~
36 ~~period not exceeding thirty (30) days and to a date that shall be announced.~~

- 37
38 3. Planning Board Decision. ~~The Planning Board shall vote to approve, approve with~~
39 ~~conditions, or disapprove the Site Plan upon the conclusion of review of the~~
40 ~~development's compliance with Sec. 19-9-5, Approval Standards. The Planning Board~~
41 ~~decision shall include written findings of fact and shall be provided to the applicant~~
42 ~~within seven (7) days of the Planning Board vote.~~

- 43
44 ~~4-3.~~ Performance Guarantee/Post Approval. The Planning Board, at its discretion, may require
45 that a performance guarantee be established with the Town for the cost of site
46 improvements. Each performance guarantee shall comply with Sec. 16-2-6(c) of the

1 Subdivision Ordinance. An inspection fee shall be paid in accordance with Sec. 16-2-6
2 (d). When a project includes a performance guarantee, the applicant shall schedule a pre-
3 construction meeting in accordance with Sec. 16-2-7(a) of the Subdivision Ordinance.
4 Upon completion of construction, record drawings shall be submitted to the Town in
5 accordance with Sec. 16-2-7(f) if any infrastructure has been installed in the public right-
6 of-way or easement conveyed to the Town.
7
8

9 **54. Approval Expiration.** Site plan approval shall be valid for a period of one (1) year from
10 the date of the Planning Board vote. Prior to the expiration of the site plan approval, the
11 applicant may request an extension of up to one year from the Planning Board for cause
12 shown. Site plan approval shall remain valid if a building permit has been issued for the
13 project prior to the expiration date. Expiration of the building permit prior to completion
14 of the project shall render the site plan approval null and void. Failure to comply with
15 conditions placed upon site plan approval, to post any necessary performance guarantees,
16 to comply with any other permitting processes or to address any other issues of site
17 development, except pending litigation challenging the site plan approval, shall render
18 the approval null and void unless an extension is granted by the Planning Board for good
19 cause.
20

21 C. Submission Requirements

22 1. General Submission parameters.

23
24 The applicant shall submit ~~fourteen~~ thirteen (13 ~~delete 4~~) copies of building and site
25 plans and supporting information drawn to a scale of not less than one inch equals fifty
26 feet (1" = 50'). The size of plan sheets submitted to the Planning Board shall be no larger
27 than twenty-four (24) by thirty-six (36) inches, but a smaller size may be used with the
28 permission of the Planning Board. A digital copy of the complete application shall also
29 be made available upon request.
30

31 2. List of Submission items.

32
33 The application for approval of a Site Plan shall include all the following information,
34 unless waived by the Planning Board as described below. Information that must be shown
35 on a plan is in **bold type**. Submission information shall be shown on the number of plans
36 needed to depict the information in a readable format and each plan shall be individually
37 labeled with a title generally based on the information depicted on the plan, with one plan
38 titled "Site Plan."
39

40
41 ~~The building plans shall show at a minimum the first floor plan and all elevations, and~~
42 ~~indicate the proposed construction materials. The site plan and supporting submissions~~
43 ~~shall include the following information:~~
44

45 **a1. Right, Title or Interest.** Evidence of right, title, and interest in the site of the
46 proposed project.

- 1
2 b. Written description. Written description of the proposed project including proposed
3 uses quantified by square footage, number of seats, number of units or beds or
4 number of students, and how development has been placed on the portions of the
5 site most suited for development; application form; identification of the zoning
6 district in which the property is located and **the location of any zoning district**
7 **boundary that bisects or abuts the property.**— A key map of the site with
8 reference to surrounding areas and existing street locations
9
- 10
11
12 c.3 Name of Project/Applicant. **Proposed name of the project;The name and**
13 **address of ~~record~~the owner and ~~site plan~~ applicant, together with the names of**
14 **the adjoining property owners; date of submission; north point; graphic map**
15 **scale.**—of all contiguous land and or property directly across the street and within
16 two hundred (200) feet of the property, as shown by the most recent tax records of
17 all municipalities in which such properties shall lie
18
- 19 d.4 Survey. **A standard boundary survey of the site, giving complete descriptive**
20 **data by bearings and distances, ~~Lot line dimensions~~ made and certified by a**
21 **licensed land surveyor in the State of Maine;** a copy of the deed for the property
22 to be developed, as well as copies of any easements, restrictions or covenants;
23 **location map, showing the relative location of the proposed project in relation**
24 **to surrounding neighborhoods or areas of Town.**
25
- 26 e. Existing Conditions. **All significant existing physical features on the site**
27 **including streams, watercourses, watershed areas, existing woodlands and**
28 **existing trees at least eight (8) inches in diameter as measured four and one-**
29 **half (4 ½) feet above grade, and other significant vegetation; soil boundaries**
30 **and names in wetland locations and where subsurface wastewater disposal**
31 **systems are proposed; when applicable, any portion of the property located in**
32 **the floodplain, within two hundred and fifty (250) feet of the Normal High**
33 **Water Line, or in a Resource Protection 1, Resource Protection 1 Buffer or**
34 **Resource Protection 2 District.**
35
- 36 f. Topography. **Contour lines, existing and proposed, at intervals of two (2) feet or**
37 **at such intervals as the Planning Board may require, based on United States**
38 **Geological Survey datum, referenced to mean sea level.**
39
- 40 g.5- **Buildings. Location of all existing and proposed buildings and structures with**
41 **the distance from the nearest property lines labeled;** Size in square feet of
42 existing and proposed building footprints and total size of building;—streets,
43 easements, driveways, entrances, and exits on the site and within one hundred (100)
44 feet ~~thereof~~ **elevations of each vertical side of a new building with dimensions,**
45 **location of doors and windows, exterior materials and roof pitch labeled;**
46 **elevations of each side of an existing building proposed to be altered with**

1 dimensions, location of doors and windows, exterior materials and roof pitch
2 labeled; floor plans; building footprints located on adjacent properties within
3 fifty (50) feet of the project property line.
4

5
6 h.6- Traffic Access and Parking. Location and width of the nearest public road, and
7 if the project will have access to a private road or driveway, the location and
8 width of the private road or driveway; location of existing and proposed
9 driveways, parking areas and other circulation improvements; site distances for
10 all access points onto public roads; location of parking, loading and unloading
11 areas, which shall include dimensions, traffic patterns, access aisles, parking
12 space dimensions and curb radii; calculation of parking required in
13 conformance with Sec. 19-7-8, Off-Street Parking; existing and proposed
14 pedestrian facilities including the location, dimension and surface treatment of
15 sidewalks and paths, and description of high-demand pedestrian destinations
16 within 1/4 mile of the development; improvements shall include design details,
17 cross sections and dimensions as needed. Proposed location and dimensions of
18 proposed buildings and structures, roads, driveways, parking areas and other
19 improvements Estimated number of trips to be generated based on the latest edition
20 of the Trip Generation Manual of the Institute of Traffic Engineers or equivalent
21 quality information; For developments which generate one hundred (100) or more
22 peak hour trips based on the latest edition of the Trip Generation Manual of the
23 Institute of Traffic Engineers, a traffic study shall be submitted measuring current
24 traffic, estimating traffic generated by the new development and assessing impacts
25 on adjacent roadways and nearby intersections. Where the development may have a
26 substantial traffic impact, the traffic study shall also include recommended
27 mitigation; information on proposed, funded road improvements and town
28 evaluation of road improvements.
29

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

31
32 ~~8. All existing physical features on the site and within two hundred (200) feet thereof,~~
33 ~~including streams, watercourses, existing woodlands, and existing trees at least~~
34 ~~eight (8) inches in diameter as measured four and one-half (4 ½) feet above grade.~~
35 ~~Soil conditions as reflected by a medium intensity survey (such as wetlands, rock~~
36 ~~ledge, and areas of high water table) shall also be shown. The Planning Board may~~
37 ~~require a high intensity soils survey where it deems necessary.~~
38

39 ~~9. Topography showing existing and proposed contours at five (5) foot intervals for~~
40 ~~slopes averaging five percent (5%) or greater and at two (2) foot intervals for land~~
41 ~~of lesser slope. A reference benchmark shall be clearly designated. Where~~
42 ~~variations in the topography may affect the layout of buildings and roads, the~~
43 ~~Planning Board may require that the topographic maps be based on an on-site~~
44 ~~survey.~~
45

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

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

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

~~When the project increases impervious surface by an area of ten thousand (10,000) sq. ft. or more, the storm water management plan must be prepared, signed and stamped by a professional engineer licensed in the State of Maine, pre- and post development calculations for the 2 and 25 year storm must be provided, **and time of concentration path segments shown.**~~

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

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

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

k. Utilities.

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

ii. Sewage Disposal. When the project will be served by public sewage, an ability to serve letter from the Town of Cape Elizabeth Sewer

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1 Superintendent; All existing and proposed public or shared sewage
2 facilities and connection to the public sewage system; when not served by
3 public sewer, evidence to demonstrate suitability of soils for subsurface
4 wastewater disposal; the location of the subsurface wastewater system;
5 all designs, specifications and details for a clustered private or public
6 sewage system.

7
8 iii. Other utilities. Ability to serve letter from Central Maine Power; Location
9 of existing and proposed above and below ground electrical lines, other
10 utility conduits and location of gas storage tanks and fuel lines;

11
12 iv. Solid/ Other Waste Disposal. Description of how solid waste will be stored
13 and removed from the site; location and details of solid waste and
14 recycling storage containers and screening; Identification of chemicals,
15 chemical wastes, hazardous, special or radioactive materials to be handled
16 and/or stored onsite.

17 and methods of solid waste storage and disposal

18
19
20 l.13. Landscaping. Location and description of existing vegetation to be preserved;
21 methods of preserving vegetation to be used during construction; Landscaping and
22 buffering plan showing what will remain and what will be planted, indicating
23 botanical and common names of plants and trees, fencing location, type,
24 material and size, dimensions, approximate time of planting and maintenance plans

25
26 m.14. Lighting. Location and type of lighting to be installed; lighting fixture details
27 indicating type of standards, location, wattage and mounting height; A
28 photometric study showing the footcandle lighting level at the property line
29 when new lights shall be installed, radius of light and intensity in footcandles

30
31
32 n.15. Signs. Location, dimensions, materials, and details of signs.

33
34 o. Noise. Statement of the typical activities, structures and equipment proposed on the
35 site that will generate exterior noise, and then identify the unique activities,
36 structures and equipment that are not generally occurring on abutting or
37 neighborhood properties; for the unique noises, provide the decibel (dBA) level at
38 the property line (decibel level source information may be provided from equipment
39 specifications, standard noise tables or other sources); characterize the unique noise
40 as recurring, intermittent, or constant; the time of day the unique noise will occur.

41
42 p. Exterior storage. Location of outside storage or display areas; screening.

43
44 q.16. Financial and Technical Capability. Demonstration of technical and financial
45 capability to complete the project. If the applicant concludes that public disclosure
46 of confidential financial information may be detrimental to the success of the

1 project, the applicant may disclose such financial information to the Town
2 Manager, who shall explore with due diligence, the applicant’s financial capability
3 to complete the project as proposed in a timely fashion and make a recommendation
4 to the Planning Board.

5
6 **3.17. Waiver of Submission items.**

7
8 ~~Waiver of information.~~—Where the Planning Board finds that ~~due to special~~
9 ~~circumstances of a particular plan,~~ the submission of any information listed in
10 Sec. 19-9-4.C, Submission Requirements, is not required in the interest of public
11 health, safety, and general welfare, ~~or is inappropriate because of the nature of the~~
12 ~~proposed development,~~ the Planning Board may waive such requirements,
13 ~~subject to appropriate conditions.~~ Without limitation, the following circumstances
14 may support a waiver of certain submission requirements.

15
16 a. Existing conditions. When no change to existing site conditions for that
17 submission item is proposed, the Planning Board may designate a
18 submission item as not applicable.

19
20 b. Substitution. Alternative information has been submitted more suited to
21 the scope of the project.

22
23 c. Small project. The limited nature of the project allows the Planning Board
24 to apply the Approval Standards and safeguard public health, safety and
25 general welfare without submission of additional information.

26
27 **SEC. 19-9-5. APPROVAL STANDARDS**

28
29 The following criteria shall be used by the Planning Board in reviewing applications for site plan
30 review and shall serve as minimum requirements for approval of the application. The
31 application shall be approved unless the Planning Board determines that the applicant has failed
32 to meet one or more of these standards. In each instance, the burden of proof shall be on the
33 applicant to produce evidence sufficient to warrant a finding that all applicable criteria have been
34 met.

35
36 **1.A. Utilization of the Site**

37
38 The plan for the development will reflect the natural capabilities of the site to support
39 development. Buildings, lots, and support facilities will be clustered in those portions of
40 the site that have the most suitable conditions for development. Environmentally
41 sensitive areas such as wetlands, steep slopes, flood plains, and unique natural features
42 will also be maintained and preserved to the maximum extent feasible. Natural drainage
43 areas will also be preserved to the maximum extent feasible.

44
45 **2.B. Traffic Access and Parking**

1 a1. Adequacy of Road System

2
3 Vehicular access to the site will be on roads which have adequate capacity to
4 accommodate the additional traffic generated by the development. For developments
5 which generate one hundred (100) or more peak hour trips based on the latest edition of
6 the Trip Generation Manual of the Institute of Transportation Traffic Engineers,
7 intersections on major access routes to the site within one (1) mile of any entrance road
8 which are functioning at a Level of Service C or better prior to the development will
9 function at a minimum at Level of Service C after development. If any such intersection
10 is functioning at a Level of Service D or lower prior to the development, the project will
11 not reduce the current level of service. A development not meeting this requirement may
12 be approved if the applicant demonstrates that:

13
14 ia. Public improvement. A public agency has committed funds to construct the
15 improvements necessary to bring the level of access to this standard,

16
17 iib. Private improvement. The applicant will assume financial responsibility for the
18 improvements necessary to bring the level of service to this standard and will
19 assure the completion of the improvements with a financial guarantee acceptable
20 to the municipality, or

21
22 iiie. Status quo. Town policy does not support the construction improvements.

23
24 b2. Access into the Site

25
26 Vehicular access to and from the development shall be safe and convenient.

27
28 ia. Safety. All entrance and exit driveways are located to afford maximum safety to
29 traffic, provide for safe and convenient ingress and egress to and from the site and
30 to minimize conflict with the flow of traffic.

31
32 iib. Sight Distance. Any exit driveway or driveway lane is so designated in profile and
33 grading and so located as to provide the maximum possible sight distance
34 measured in each direction. The sight distance available shall be consistent with
35 the standards of the Subdivision Ordinance.

36
37 iiie. Corner. Where a site occupies a corner of two (2) intersecting roads, no driveway
38 entrance or exit is located within fifty (50) feet of the point of tangency of the
39 existing or proposed curb radius of that site.

40
41
42 ivd. Side property line. No part of any driveway shall be located within a minimum of
43 ten (10) feet of a side property line. However, the Planning Board may permit a
44 driveway serving two (2) or more adjacent sites to be located on or within ten (10)
45 feet of a side property line dividing the adjacent sites.

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

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

6 |
7 | c3. Internal Vehicular Circulation

8 |
9 | The layout of the site shall provide for the safe movement of passenger, service, and
10 | emergency vehicles through the site.

11 |
12 | ia. Deliveries. Nonresidential projects that will be served by delivery vehicles will
13 | provide a clear route for such vehicles with appropriate geometric design to allow
14 | turning and backing for a minimum of vehicles.

15 |
16 | iib. Emergency vehicles. Clear routes of access shall be provided and maintained for
17 | emergency vehicles to and around buildings and shall be posted with appropriate
18 | signage (fire lane - no parking).

19 |
20 | iiie. Circulation. The layout and design of parking areas shall provide for safe and
21 | convenient circulation of vehicles throughout the lot.

22 |
23 | ivd. Topography. All roadways shall be designed to harmonize with the topographic
24 | and natural features of the site. The road network shall provide for vehicular,
25 | pedestrian, and cyclist safety, all season emergency access, snow storage, and
26 | delivery and collection services.

27 |
28 | d4. Parking Layout and Design

29 |
30 | Off-street parking shall conform to Sec. 19-7-8, Off Street Parking and the following
31 | standards:

32 |
33 | ia. Street. Parking areas with more than two (2) parking spaces shall be arranged so
34 | that vehicles do not need to back into the street.

35 |
36 | iib. Property lines. All parking spaces, access drives, and impervious surfaces shall be
37 | located at least five (5) feet from any side or rear lot line, except where standards
38 | for buffer yards require a greater distance. No parking spaces or asphalt type
39 | surface shall be located within five (5) feet of the front property line. Parking lots
40 | on adjoining lots may be connected by accessways not exceeding twenty-four
41 | (24) feet in width.

42 |
43 | iiie. Flow. In lots utilizing diagonal parking, the direction of proper traffic flow shall
44 | be indicated by signs, pavement markings or other permanent indications.

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

7 ve. Bumpers. The “overhang” of parked vehicles shall be restricted when it might
8 restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle
9 movement on adjacent walkways, or damage landscape materials.
10

11 3C. ***Pedestrian Circulation***

12
13 The site plan shall provide for a system of pedestrian ways within the development
14 appropriate to the type and scale of development. This system shall connect the major
15 building entrances/exits with parking areas and with existing or planned sidewalks in the
16 vicinity of the project. The pedestrian network may be located either in the street
17 right-of-way or outside of the right-of-way in open space or recreation areas. The system
18 shall be designed to link the project with residential, recreational, and commercial
19 facilities, schools, bus stops, and sidewalks in the neighborhood.
20

21 4D. ***~~Stormwater~~Storm water Management***

22
23 ~~Adequate provisions will be made for the collection and disposal of all stormwater that runs off~~
24 ~~proposed streets, parking areas, roofs, and other surfaces during a twenty-five (25) year, twenty-~~
25 ~~four (24) hour storm, through a stormwater drainage system and maintenance plan, which will~~
26 ~~not have adverse impacts on abutting or downstream properties.~~
27

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

30 ~~Storm water is managed on and off-site without damage to streets, adjacent properties,~~
31 ~~downstream properties, soils and vegetation. 1.—To the extent possible/practical, the plan will~~
32 ~~retain stormwater/storm water on the site using the natural features of the site, except that in the~~
33 ~~Town Center District, storm water management shall be consistent with the Town Center Storm~~
34 ~~water Management Plan, updated September 2015 or most recent revision. A Low Impact~~
35 ~~Development (LID) method is incorporated into the storm water management plan. The plan~~
36 ~~includes a note requiring a post-construction maintenance plan for private storm water~~
37 ~~infrastructure and a maintenance plan has been submitted.~~
38

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

1 surface areas, or an equal existing on-site untreated impervious surface area, or of an equivalent
2 combination thereof of previously or proposed untreated area.-

3
4 When the project increases impervious surface by one (1) acre or more, storm water shall be
5 reviewed for compliance with Sec. 25-1-4(c), Storm water Ordinance.

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

9
10 ~~— 3. The applicant will demonstrate that on and off site downstream channel or system~~
11 ~~capacity is sufficient to carry the flow without adverse effects, or that he/she will be~~
12 ~~responsible for whatever improvements are needed to provide the required increase in~~
13 ~~capacity.~~

14
15 ~~— 4. All natural drainage ways will be preserved at their natural gradients and will not be~~
16 ~~filled or converted to a closed system unless specifically approved.~~

17
18
19 ~~— 5. The design of the stormwater drainage system shall provide for the disposal of~~
20 ~~stormwater without damage to streets, adjacent properties, downstream properties, soils,~~
21 ~~and vegetation.~~

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

24
25 ~~— 7. The biological and chemical properties of the receiving waters will not be degraded by~~
26 ~~the stormwater runoff from the development site. The use of oil and grease traps in~~
27 ~~manholes, the use of on-site vegetated waterways, and vegetated buffer strips along~~
28 ~~waterways and drainage swales, and the reduction in use of deicing salts and fertilizers~~
29 ~~may be required, especially where the development stormwater discharges into a gravel~~
30 ~~aquifer area or other water supply source.~~

31
32 **5E. Erosion Control**

33
34 All building, site, and roadway designs and layouts will harmonize with existing
35 topography and conserve desirable natural surroundings to the fullest extent possible.
36 Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on
37 sloped sites will be terraced to avoid undue cut and fill, and/or the need for retaining
38 walls. Natural vegetation will be preserved and protected wherever possible.

39
40 During construction, soil erosion and sedimentation of watercourses and water bodies
41 will be minimized by an active program meeting the requirements of the Maine Erosion
42 and Sediment Control Best Management Practices (BMP's) as prepared by the Bureau of
43 Land and Water Quality of the Maine Department of Environmental Protection, March
44 2003 or most recent edition. ~~Cumberland County Soil and Water Conservation District's~~
45 ~~Best Management Practices.~~

1
2 **6F. Utilities~~Water Supply~~**
3

4 a. Water Supply. The development will be provided with a system of water supply that
5 is adequate in quantity and quality to the proposed use. An adequate supply of water
6 for fire protection purposes is provided. Connection to a public water supply for
7 drinking water and fire protection is encouraged. ~~provides each use with an adequate~~
8 ~~supply of drinking water. If the project is proposed to be served by a public water~~
9 ~~supply, the applicant shall secure and submit a written statement from the supplier~~
10 ~~that the proposed water supply system conforms with its design and construction~~
11 ~~standards, will not result in an undue burden on the source or distribution system, and~~
12 ~~will be installed in a manner adequate to provide needed domestic and fire protection~~
13 ~~flows.~~

14
15 bG. Sewage Disposal. The development will be provided with a method of disposing of
16 sewage which is in compliance with Chapter 15, Sewer Ordinance.

17
18 ii1. Public Sewage System. All sanitary sewage from new or expanded uses
19 shall be discharged into a public sewage collection and treatment system when
20 such facilities are currently available or can reasonably be made available at the
21 lot line and have adequate capacity to handle the projected waste generation.

22
23 ii2. Private Sewage System. If the public system cannot serve or be extended
24 to serve a new or expanded use, the sewage shall be disposed of by an on-site
25 sewage disposal system meeting the requirements of the State Wastewater
26 Disposal Rules and Chapter 15, Article II, Private Sewage Disposal Ordinance.

27
28 iii-3. Common ownership. When two or more lots or buildings in different
29 ownership share the use of a common subsurface disposal system, the system
30 shall be owned and maintained in common by an owners' association and shall
31 conform to the provisions of Chapter 15, Article III, Management of Cluster
32 Disposal Systems. Covenants in the deeds for each lot shall require mandatory
33 membership in the association and provide for adequate funding of the
34 association to assure proper maintenance of the system.

35
36 ~~—4. Industrial or commercial waste waters may be discharged to public sewers in~~
37 ~~such quantities and/or of such quality as to be compatible with sewage treatment~~
38 ~~operations. Such wastes may require pretreatment at the industrial or~~
39 ~~commercial site in order to render them amenable to public treatment processes.~~
40 ~~Pretreatment includes, but is not limited to, screening, grinding, sedimentation,~~
41 ~~pH adjustment, surface skimming, chemical oxidation and reduction and~~
42 ~~dilution.~~

43
44 **H. ~~Utilities~~**
45

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

14 |
15 |
16 | d. Solid Waste. The proposed development will provide for adequate storage and
17 | disposal of solid wastes.

18 |
19 | i. Screening. Any solid waste stored on the property prior to removal to an
20 | authorized facility shall be secured and screened from public view.

21 |
22 | ii. Liquid/semi-solid wastes. All storage facilities for fuel, chemicals, chemical
23 | or industrial wastes, and biodegradable raw materials, shall meet the standards
24 | of the State Department of Environmental Protection and the State Fire
25 | Marshall's Office.

26 |
27 | iii. Hazardous Materials. The handling, storage, and use of all materials identified
28 | by the standards of a federal or state agency as hazardous, special or
29 | radioactive shall be done in accordance with the standards of these agencies.
30 | Any waste produced which is classified as a hazardous, special or radioactive
31 | waste by either federal or state standards shall be disposed of at a licensed
32 | disposal facility appropriate for the type of waste and done in accordance with
33 | applicable state and federal regulations.

34 |
35 | **~~I. Water Quality Protection~~**

36 |
37 | ~~All aspects of the project shall be designed so that:~~

38 |
39 | ~~I. No person shall locate, store, discharge, or permit the discharge of any treated, untreated,~~
40 | ~~or inadequately treated liquid, gaseous, or solid materials of such nature, quantity,~~
41 | ~~obnoxiousness, toxicity, or temperature that may run off, seep, percolate, or wash into~~
42 | ~~surface or groundwaters so as to contaminate, pollute, or harm such waters or cause~~
43 | ~~nuisances, such as objectionable shore deposits, floating or submerged debris, oil or~~
44 | ~~seum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or~~
45 | ~~aquatic life.~~

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

4
5
6 **J. ~~Wastes~~**

7
8 ~~The handling, storage, and use of all materials identified by the standards of a federal or state~~
9 ~~agency as hazardous, special or radioactive shall be done in accordance with the standards of~~
10 ~~these agencies.~~

11
12 ~~Any waste produced which is classified as a hazardous, special or radioactive waste by either~~
13 ~~federal or state standards shall be disposed of at a licensed disposal facility appropriate for the~~
14 ~~type of waste and done in accordance with applicable state and federal regulations.~~

15
16 ~~No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless~~
17 ~~they are located at least seventy five (75) feet from any lot line, or forty (40) feet in the case of~~
18 ~~underground storage. All materials shall be stored in a manner and location which is in~~
19 ~~compliance with appropriate rules and regulations of the Maine Department of Public Safety and~~
20 ~~other appropriate federal, state, and local regulations.~~

21
22 ~~The proposed development will also provide for adequate disposal of solid wastes. All solid~~
23 ~~waste will be disposed of at a licensed disposal facility having adequate capacity to accept the~~
24 ~~project's wastes.~~

25
26 **7K. Shoreland Relationship**

27
28 The development will not adversely affect the water quality or shoreline of any adjacent
29 water body. The development plan will provide for access to abutting navigable water
30 bodies for the use of the occupants of the development if appropriate.

31
32 **8. Landscaping and Buffering**

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

41
42 b. Landscaping Plan. The development plan will provide for landscaping that
43 defines street edges, mitigates the expanse of parking areas, enhances the
44 appearance of the development and reduces the impact of the development on
45 abutting properties. Landscaping materials shall be chosen for their ability to

1 thrive at the planting site, provide screening, create visual interest and promote
2 diversity of the community forest.

3
4 c. Screening. The development shall provide for screening of service and storage
5 areas.

6
7
8 ~~L. Technical and Financial Capacity~~

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

12
13 **2M. Exterior Lighting**

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

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

32
33 ~~N. Landscaping and Buffering~~

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

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

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

3
4 Required parking and loading spaces for nonresidential uses and multiplex housing, where not
5 enclosed within a building, shall be effectively screened from view by a continuous landscaped
6 area not less than eight (8) feet in width containing evergreen shrubs, trees, fences, walls, berms,
7 or any combination thereof forming a visual barrier not less than six (6) feet in height along
8 exterior lot lines adjoining all residential properties, except that driveways shall be kept open to
9 provide visibility for vehicles entering and leaving. This requirement may be reduced or waived
10 when it is determined that such buffering is not necessary or desirable.

11
12 **10. Signs.**

13
14 Signs shall meet the standards of the Sign Ordinance. Sign materials and lighting shall be
15 of high quality and compatible with the character of the development.

16
17 **110. Noise**

18
19 ~~1. The proposed development shall not substantially increase noise levels and cause human~~
20 ~~discomfort.~~ The maximum permissible ~~sound pressure A-weighted decibel~~ level of ~~a any~~
21 continuous, regular or frequent or intermittent source of sound produced by ~~any unique~~
22 activities, structures or equipmenty on the site shall be limited by the time period and by
23 the abutting land use as listed below. Sound levels shall ~~apply be measured~~ at least four
24 (4) feet above ground at the property boundary of the source. ~~Existing background sounds~~
25 ~~are excluded from the decibel measurement and noise generated by construction of the~~
26 ~~site is exempt.~~

27
28
29 Sound Pressure Level Limits Using the A-weighted decibel level (dBA)
30 Sound Equivalent Level of
31 One Minute (leq 1) (Measured in dB(a) Scale)

32
33

<u>Abutting Use</u>	<u>7 a.m. - 10 p.m.-</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

34
35
36
37
38
39
40
41
42

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

1 | ~~3. No person shall engage in construction activities, on a site abutting any residential use~~
2 | ~~between the hours of 10 p.m. and 7 a.m.~~

3 |
4 | **12P. Storage of Materials**

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

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

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

20 |
21 | **L. Technical and Financial Capacity**

22 |
23 | ~~The applicant has demonstrated the financial and technical capacity to carry out the project in a~~
24 | ~~timely fashion in accordance with this ordinance and the approved plan.~~

25 |
26 | ~~[note: pairs with submission item q]~~

27 |
28 | **SEC. 19-9-6. AMENDMENTS**

29 |
30 | Any alteration to a site which is inconsistent with the approved site plan shall require an
31 | amendment to the site plan. Planning Board approval must be obtained prior to the alteration.

32 |
33 | **A. De Minimus Change.** ~~De minimus changes to an approved site plan may be~~
34 | ~~placed on the Planning Board Consent Agenda at the discretion of the Town~~
35 | ~~Planner. The intent of this section is to process minor deviations from the~~
36 | ~~approved plan that typically arise as a project moves from conception to~~
37 | ~~completion of construction.~~ De minimus changes shall not include (1) a change to
38 | a public or private right-of-way or easement, (2) a decrease in proposed buffering
39 | or landscaping, ~~or~~ (3) any issue involving a condition placed on the site plan
40 | approval, ~~or~~ (4) any change in a building footprint greater than five (5) feet in any
41 | direction. Site plan changes which do not receive de minimus approval shall be
42 | submitted to the Planning Board under Sec. 19-9-6.B.

43 |
44 | **1. Review.** The applicant shall meet with the Town Planner and provide a
45 | written description of the proposed amendments and all applicable plans
46 | impacted by the amendments. The Town Planner shall review the

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

6
7 2. Decision. The Town Planner shall forward the De Minimus Change
8 application and a recommendation to the Planning Board Chair.
9 Notwithstanding Sec. 19-9-4(B)(1), the Planning Board Chair shall make
10 the final determination to approve a de minimus change or to forward the
11 site plan amendment to the Planning Board for review.

12
13 **B. Amendment.** Any change to a plan approved by the Planning Board must be
14 submitted to the Planning Board for review and approval, unless the amendment
15 is a De Minimus Change. The Planning Board shall review the amendments in
16 accordance with the Review Procedures, Sec. 19-9-4. Submission requirements
17 may be limited to the information related to the proposed amendments. Any
18 Planning Board Decision to approve amendments to a previously approved Site
19 Plan shall incorporate the original Site Plan Approval, except as specifically
20 amended. ~~Prior to placement on the Consent Agenda, the applicant shall meet~~
21 ~~with the Town Planner to review the proposed changes and shall provide eight (8)~~
22 ~~copies of the revised site plan to the Town Planner at least eighteen (18) days~~
23 ~~prior to the next regular Planning Board meeting. The decision of the Town~~
24 ~~Planner not to place an item on the Consent Agenda may be appealed to the~~
25 ~~Planning Board upon submission of fourteen (14) copies of the proposed change~~
26 ~~to the Town Planner eighteen (18) days prior to the next regular meeting of the~~
27 ~~Planning Board.~~

28
29
30 **SEC. 19-9-7. APPEALS OF PLANNING BOARD ACTIONS**

31
32 Appeal of an action taken by the Planning Board regarding site plan review shall be to the
33 Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.
34

1 **CHAPTER 25**

2
3 **STORM WATER**

4
5 **Article I. Storm water and Non-Storm water Control**

6
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17
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19
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32 Sec. 25-2-13 Severability 25-17

33
34 **Article I. Storm water and Non-storm water Control**

35
36 **Sec. 25-1-1. Purpose.** The purpose of this Ordinance is to require the disposal of storm
37 water on the land at the site of development through the wise use of the natural features of
38 the site and to regulate storm water and non-storm water Discharges to the Town Storm
39 Water Runoff System as required by federal and state law. Storm water and non-storm water
40 shall be deposited in a manner so that it does not pose dangers of flooding, soil erosion,
41 pollution of receiving waters, or otherwise constitute a threat to public health, safety or
42 welfare.

43
44 **Sec. 25-1-2. Applicability.** The provisions of this chapter shall apply to:

- 45
46 a. Any proposed activity subject to Planning Board review and involving 43,560 square feet
47 or more of added impervious surface, paving, clearing, or vegetative alterations, or any

1 development requiring Subdivision Review (Chapter 16, Subdivision Ordinance)

2
3 b. Any Discharge of storm water or non-storm water from any premises into the Town
4 Storm Water Runoff System.

5
6 c. All extensions of the storm water runoff system must be constructed to comply with
7 minimum standards developed by the Enforcement Authority.

8
9 **Sec. 25-1-3. Definitions.** For the purposes of this Ordinance, the following terms shall
10 have the meanings given herein. All words not defined herein shall carry their customary
11 and usual meanings.

12
13 **Best Management Practices ("BMP"):** Any schedule of activities, prohibitions of practices,
14 maintenance procedures, and other management practices to prevent or reduce the pollution of
15 waters of the State of Maine. BMPs also include treatment requirements, operating procedures,
16 and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage
17 from raw material storage.

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

21
22 **CFR:** Code of Federal Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6
7 **Tidal Waters:** Waters contiguous to the Atlantic Ocean where the surface rises and falls
8 due to gravitational pull.

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

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

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

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

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

25
26 1. Any development involving 43,560 sq. ft. or more of impervious surface and
27 which requires Site Plan (Chapter 19, Zoning Ordinance); and

28
29 2. Any development requiring Subdivision Review (Chapter 16, Subdivision
30 Ordinance) by the Planning Board.

31
32 b. Submission Requirements. The following information shall be submitted to the Planning
33 Board.

34
35 1. Professional Engineer. Designation of a professional engineer licensed in the
36 State of Maine who will design, sign and stamp the storm water runoff system.

37
38 2. Base information. The existing site information required for subdivision or site
39 plan review, including but not limited to standard boundary survey, topographic
40 contours, location of water bodies and water courses, shall be used as the base for
41 the storm water runoff system plan.

42
43 3. Impervious surface. On the storm water runoff plan and in the written materials,
44 the calculated square footage of existing impervious surface and proposed
45 impervious surface.

46
47 4. Pre- and post construction calculations. Storm water runoff calculations based on

1 the 2- and 25-year storm for the property.

2
3 5. Existing system. On the storm water runoff plan and in the written materials,
4 show and describe the existing storm water runoff system, including but not
5 limited to storm water infrastructure, drainage channels, culverts and other
6 conveyances, and deficiencies that result in storm water surcharge or flooding on
7 the property.

8
9 6. Proposed improvements. On the storm water runoff plan and in the written
10 materials, show and describe the proposed storm water runoff plan, including but
11 not limited to proposed storm water runoff system components, showing design of
12 all facilities and conveyances. The storm water runoff plan and written materials
13 shall include information describing the difference in the pre and post-
14 development flows, infiltration on the site, storm water runoff discharge
15 downstream impacts, accommodation of upstream flows, and include all
16 necessary design details and components.

17
18 7. Easements. When storm water runoff plan components are not located in the
19 public right-of-way, executable easement deeds providing the Town with access
20 and maintenance rights.

21
22 8. Maintenance. When all or part of the storm water runoff system infrastructure will
23 not be conveyed to the Town, provide a draft maintenance agreement and include
24 the following note on the plans: The site requires (a) a Maintenance Agreement
25 for the storm water runoff system to be executed with the Enforcement Authority
26 and filed with the Cumberland County Registry of Deeds, and (b) after
27 construction is complete, provide annually a certification to the Enforcement
28 Authority that the storm water runoff system has been inspected and maintained
29 in accordance with the Post Construction storm water runoff system management
30 plan approved for this site.

31
32 9. Record drawings. On the storm water runoff plan a note that "a reproducible set of
33 record drawings, as well as digital files in a format used by the project engineer
34 during project design or other format approved by the Public Works Director
35 suitable for import into the Town Geographic Information System (GIS),
36 indicating the storm water runoff work constructed and how the record drawings
37 were compiled shall be provided to the Enforcement Authority upon completion
38 of construction."

39
40 c. Review Standards.

41
42 1. Professional Engineer. The storm water runoff system shall be prepared by a
43 professional engineer licensed in the State of Maine.

44
45 2. 2 and 25 year storm. The storm water runoff system shall be designed for a storm
46 of intensity equal to the 2 and 25-year storm. No non-storm water structures shall

1 be permitted in areas of the site that flood or surcharge during the 2 and 25-year
2 storm. Where state or federal law is more restrictive, such provisions shall
3 supersede this section.

4
5
6 3. Infiltration. The storm water runoff system shall maximize to the greatest extent
7 practical the amount of storm water infiltrating on the site during storm events,
8 except that development located in the Town Center District shall design a storm
9 water plan that is consistent with the Town Center Storm water Management
10 Plan, updated September 2015 or most recent version.

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

21
22 5. Upstream flows. The storm water runoff system shall be designed to
23 accommodate all existing up stream flows that pass through the site.

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

29
30 7. Maintenance. A permanent routine maintenance plan shall be prepared for the
31 storm water runoff system. The note requiring maintenance of the storm water
32 runoff system is on the plan.

33
34 8. Record Drawings. The storm water runoff system plans shall include a note that,
35 upon completion of the storm water runoff system installation, a reproducible set
36 of record drawings indicating the storm water runoff system work accomplished
37 and how the record drawings were compiled will be submitted to the Enforcement
38 Authority.

39
40 **Sec. 25-1-5. System Responsibility.** The developer shall maintain all components of the
41 Storm Water Runoff System until they are formally accepted by the Town or transferred to a
42 property owners association whose charter and powers for financing and maintaining the
43 Storm Water Runoff System shall be approved by the Town Attorney. Storm Water Runoff
44 System components within proposed public ways shall become Town property upon formal
45 acceptance. Storm Water Runoff System components outside of public ways may be
46 accepted by the Town but shall otherwise be deeded to a property owners association, as

1 required by the Planning Board or as agreed by the Town and the developer prior to project
2 approval. In all cases the Town shall have the right to access and enter the Storm Water
3 Runoff system to conduct emergency maintenance, as it deems necessary.
4
5

6 **Sec. 25-1-6 Non Planning Board reviewed storm water runoff**
7

8 Any Discharge of storm water or non-storm water into the Town Storm Water Runoff System for
9 which the Planning Board has not conducted a storm water runoff system review shall be subject
10 to Best Management Practices for Erosion and Sedimentation control. The Enforcement
11 Authority may direct additional erosion control measures to be taken if there is a reasonable
12 expectation that storm water runoff will cause erosion and sediment to leave the development
13 site.
14

15 **Sec. 25-1-7. Design Adjustment.** The Planning Board may waive any filing or design
16 requirements unnecessary for full consideration of any proposed Storm Water Runoff
17 System, such as data relating to site features and runoff rates downstream of the entrance to
18 a piped Discharge directly to tidal waters. The Planning Board may also reduce or waive any
19 requirements of this Ordinance where it finds from the basic site data furnished under
20 Section 25-1-4.b that the estimated costs of construction and long-term maintenance resulting
21 from compliance with the design requirements in any instance clearly outweigh the downstream
22 benefits to be achieved by compliance.
23

24 **Sec. 25-1-8. Non-Storm Water Regulation.**
25

26 **a. Objectives.** The objectives of this section are:
27

- 28 1. To regulate Non-Storm Water Discharges to the Storm Water Runoff System; and
- 29 2. To set forth the legal authority and procedures to carry out all inspection,
30 monitoring and enforcement activities necessary to ensure compliance with this
31 Ordinance.
32

33 **b. General Prohibition.** Except as allowed in this Section, no Person shall create, initiate,
34 originate or maintain a Non-Storm Water Discharge to the Storm Water Runoff System.
35 Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Town
36 may have approved the connections, drains or conveyances by which a Person discharges
37 unallowed Non-Storm Water Discharges to the Storm Water Runoff System.
38

39 **c. Allowed Non-Storm Water Discharges.** The creation, initiation, origination and
40 maintenance of the following Non-Storm Water Discharges to the Storm Water Runoff
41 System are allowed:
42

- 43 1. Landscape irrigation; diverted stream flows; rising ground waters;
44 uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
45 uncontaminated pumped ground water; uncontaminated flows from foundation
46 drains; air conditioning and compressor condensate; irrigation water; flows from

1 uncontaminated springs; uncontaminated water from crawl space pumps;
2 uncontaminated flows from footing drains; flows from riparian habitats and
3 wetlands; residual street wash water (where spills/leaks of toxic or hazardous
4 materials have not occurred, unless all spilled material has been removed and
5 detergents are not used); dechlorinated hydrant flushing discharges and
6 firefighting activity runoff; water line flushing and discharges from potable water
7 sources; individual residential car washing; lawn watering runoff, and
8 dechlorinated swimming pool discharges.

9
10 2. Discharges authorized by the Enforcement Authority as being necessary to protect
11 public health and safety; and

12
13 3. Dye testing, with authorization from the Enforcement Authority prior to the time
14 of the test.

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

32
33 e. **Monitoring of Discharges.** In order to determine compliance with this Ordinance, the
34 Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at
35 reasonable hours with the consent of the Premises' owner, occupant or agent, to inspect
36 the Premises and connections thereon to the Storm Water Runoff System; and to conduct
37 monitoring, sampling and testing of the Discharge to the Storm Water Runoff System.

38
39 **Sec. 25-1-9. Enforcement.** It shall be unlawful for any Person to violate any provision of or to
40 fail to comply with any of the requirements of this Ordinance.

41
42 a. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has
43 violated this Ordinance, the Enforcement Authority may order compliance with this
44 Ordinance by written Notice of Violation to that Person indicating the nature of the
45 violation and ordering the action necessary to correct it, including, without limitation:
46

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

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

25
26 c. **Consent Agreement.** The Enforcement Authority may, with the approval of the
27 municipal officers, enter into a written consent agreement with the violator to address
28 timely abatement of the violation(s) of this Ordinance for the purposes of eliminating
29 violations of this Ordinance and of recovering fines, costs and fees without court action.

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

41
42 e. **Enforcement Measures.** If the violation has not been corrected pursuant to the
43 requirements set forth in the Notice of Violation, or, in the event of an appeal to the
44 Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the
45 Enforcement Authority's decision, then the Enforcement Authority may file an
46 enforcement action in a Maine court of competent jurisdiction under Rule 80K of the

1 Maine Rules of Civil Procedure.

2
3 f. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are
4 minimum standards. Compliance with this Ordinance does not ensure that a Person will
5 not have contaminated, polluted or unlawfully discharged Pollutants into waters of the
6 U.S. This Ordinance shall not create liability on the part of the Town, or any officer,
7 agent or employee thereof for any damages that result from a Person's reliance on or
8 compliance with this Ordinance or any administrative decision lawfully made under this
9 Ordinance.

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

16
17 **Article II. Post Construction Storm water Management**

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

39
40 **Sec. 25-2-2. Objectives.** The objectives of this Ordinance are:

- 41
42 a. To reduce the impact of post-construction discharge of storm water on receiving waters;
43 and
44
45 b. To reduce storm water runoff rates and volumes, soil erosion and nonpoint source
46 pollution, wherever possible, through use of Best Management Practices as promulgated

1 by the Maine Department of Environmental Protection pursuant to its most current rules
2 as may be updated or amended including its Chapters 500 and 502 Rules, and ensure that
3 these management controls are properly maintained and pose no threat to public safety.
4

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

16 **Sec. 25-2-4. Definitions.** For the purposes of this Ordinance, the following terms shall have the
17 meanings given herein. All words not defined herein shall carry their customary and usual
18 meanings.
19

20 **Applicant:** Any Person with requisite right, title, or interest or an agent for such Person who has
21 filed an application for New Development or Redevelopment that requires a Post- Construction
22 Storm Water Management Plan under this Ordinance.
23

24 **Best Management Practices ("BMP"):** Any schedule of activities, prohibitions of practices,
25 maintenance procedures, and other management practices to prevent or reduce the pollution of
26 waters of the State of Maine. BMPs also include treatment requirements, operating procedures,
27 and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage
28 from raw material storage.
29

30 **Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also
31 known as the "Clean Water Act"), and any subsequent amendments thereto.
32

33 **Construction Activity:** Any Construction Activity including one acre or more of Disturbed
34 Area. Construction Activity also includes activity with less than one acre of total land Disturbed
35 Area if that area is part of a subdivision that will ultimately disturb an area equal to or greater
36 than one acre.
37

38 **Discharge:** Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other
39 addition of Pollutants to Waters of the State.
40

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

46 **Disturbed Area:** Any clearing, grading, and excavation. Mere cutting of trees, without

1 grubbing, stump removal, disturbance or exposure of soil is not considered "Disturbed Area."
2 "Disturbed Area" does not include routine maintenance but does include Redevelopment.
3 "Routine Maintenance" is maintenance performed to maintain the original line and grade,
4 hydraulic capacity, and original purpose of land or improvements thereon.

5
6 **Enforcement Authority:** The Town Manager or his/her designee who is the person(s) or
7 department authorized by the Town to administer and enforce this Ordinance.

8
9 **Town:** The Town of Cape Elizabeth.

10
11 **Town Permitting Authority:** The Town official or body that has jurisdiction over the land use
12 approval or permit required for a New Development or Redevelopment.

13
14 **Municipal Separate Storm Sewer System, or MS4:** Conveyances for storm water, including,
15 but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters,
16 ditches, human-made channels or storm drains (other than publicly owned treatment works and
17 combined sewers) owned or operated by any municipality, sewer or sewage district, fire district,
18 State agency or federal agency or other public entity that discharges directly to Waters of the
19 State.

20
21 **National Pollutant Discharge Elimination Systems (NPDES) Storm Water Discharge**
22 **Permit:** A permit issued by the United States Environmental Protection Agency ("EPA") or by
23 the Maine Department of Environmental Protection ("DEP") that authorizes the Discharge of
24 pollutants to waters of the United States, whether the permit is applicable on an individual,
25 group, or general area-wide basis.

26
27 **New Development:** Any Construction Activity on unimproved Premises and for purposes of this
28 ordinance includes "Redevelopment" defined below.

29
30 **Person:** Any individual, firm, corporation, municipality, town, quasi-municipal Corporation,
31 State or Federal agency, or other legal entity.

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

37
38 **Post-Construction Storm Water Management Plan:** BMPs and associated inspection and
39 maintenance procedures for the Storm Water Runoff System employed by a New Development
40 or Redevelopment to meet the standards of this Ordinance and approved by the Town's
41 Permitting Authority.

42
43 **Premises:** Any building, lot, parcel of land, or portion of land, whether improved or
44 unimproved, including adjacent sidewalks and parking strips, located within the Town from
45 which Discharges into the Town Storm Water Runoff System are or may be created, initiated,
46 originated, or maintained.

1
2 **Qualified Post-Construction Storm Water Inspector:** A person who conducts
3 postconstruction inspections of Storm Water Runoff Systems and meets the following
4 qualification:

5
6 a. The Inspector shall not have any ownership or financial interest in the property being
7 inspected nor be an employee or partner of any entity having an ownership or financial
8 interest in the property, and

9
10 b. The Inspector shall also meet the following criteria as approved by the Town's
11 Enforcement Authority:

12
13 1. Someone who has received the appropriate training for such inspection from DEP
14 and holds a valid certificate from DEP for such inspection or;

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

24
25 **Redevelopment:** Any Construction Activity on Premises already improved with buildings,
26 structures, or activities or uses, but does not include such activities as exterior remodeling of
27 structures.

28
29 **Regulated Small MS4:** Any Small MS4 regulated by the State of Maine "General Permit for the
30 Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems" ("General
31 Permit"), including all those located partially or entirely within an Urbanized Area (UA) and
32 those additional Small MS4s located outside a UA that as of the issuance of the General Permit
33 have been designated by the DEP as Regulated Small MS4s.

34
35 **Small Municipal Separate Storm Sewer System, or Small MS4:** Any MS4 that is not already
36 covered by the Phase I MS4 Storm Water program including municipally owned or operated
37 storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons,
38 Maine Department of Transportation and Maine Turnpike Authority road systems and facilities,
39 and military bases and facilities.

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

42
43 **Storm Water Runoff System:** An element or array of elements that convey water from or
44 across land, including, but not limited to, natural elements.

45
46 **Urbanized Area ("UA")** means the areas of the State of Maine as defined by the latest

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

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

4
5 **a. General Requirement**

- 6
7 1. Except as provided in Sec. 25-2-3 b. above, no Applicant for a building permit,
8 subdivision approval, site plan approval or other zoning, planning or other land
9 use approval for New Development or Redevelopment to which this Ordinance is
10 applicable shall receive such permit or approval for that New Development or
11 Redevelopment unless the Town Permitting Authority for that New Development
12 also determines that the Applicant's Post- Construction Storm Water Management
13 Plan for the New Development meets the requirements of this Ordinance.
- 14
15 2. At the time of application, the Applicant shall notify the Town Permitting
16 Authority if its Post-Construction Storm Water Management Plan includes any
17 BMP(s) that will discharge to the Town's MS4 and shall include in this
18 notification a listing of which BMP(s) will so discharge.

19
20 **b. Performance Standards**

- 21
22 1. DEP Chapter 500 Quality and Quantity Standards apply. The Applicant shall
23 make adequate provisions for the management of the quantity and quality of all
24 storm water generated by a New Development or Redevelopment through a Post-
25 Construction Storm Water Management Plan. This Post-Construction Storm
26 Water Management Plan shall be designed to meet the standards contained in the
27 Maine Department of Environmental Protection's most current rules as may be
28 updated or amended including its Chapters 500 and 502 Rules and shall comply
29 with the practices described in the manual *Storm Water Management for Maine,*
30 published by Maine Department of Environmental Protection, latest edition,
31 which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
- 32
33 2. Use of Onsite or Offsite Treatment Facilities. The Applicant shall meet the
34 quantity and quality standards above either onsite or off-site. Where off-site
35 facilities are used, the Applicant must submit to the Town documentation,
36 approved as to legal sufficiency by the Town's attorney, that the Applicant has a
37 sufficient property interest in the property where the off-site facilities are located
38 – by easement, covenant or other appropriate legal instrument – to ensure that the
39 facilities will be able to provide post-construction storm water management for
40 the New Development or Redevelopment and that the property will not be altered
41 in a way that interferes with the off-site facilities.
- 42
43 3. Maintenance Agreement Required. Where the Applicant proposes to retain
44 ownership of the Storm Water Management Facilities shown in its Post-
45 Construction Storm Water Management Plan, the Applicant shall submit to the
46 Town documentation, approved as to the legal sufficiency the Town's attorney

1 that the Applicant, its successor, heirs and assigns shall have the legal obligation
2 and the resources available to operate, repair, maintain and replace the Storm
3 Water Management Facilities. Applications for New Development or
4 Redevelopment requiring Storm Water Management Facilities that will not be
5 dedicated to the Town shall enter into a Maintenance Agreement with the Town.
6 A sample of this Maintenance Agreement is available from the Town.
7

8 4. Easements and Access. Whenever elements of the Storm Water Runoff System
9 are not within the right-of-way of a public street and the facilities will not be
10 offered to the Town for acceptance as public facilities, the Town Permitting
11 Authority may require that perpetual easements conforming substantially with the
12 lines of existing natural drainage, and providing adequate access for maintenance
13 in a form acceptable to the Town's attorney, shall be provided to the Town
14 allowing access for maintenance, repair, replacement and improvement of the
15 Storm Water Runoff System. When an offer of dedication is required by the Town
16 Permitting Authority, the Applicant shall be responsible for the maintenance of
17 these Storm Water Runoff Systems under this Ordinance until such time (if ever)
18 as they are accepted by the Town.
19

20 5. Other Standards and Conflicts. In addition to any other applicable requirements of
21 this Ordinance and the Town's Municipal Code, any New Development or
22 Redevelopment which also requires a storm water management permit from the
23 Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D
24 shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the
25 same may be amended from time to time, and the Applicant shall document such
26 compliance to the Town Permitting Authority. Where the standards or other
27 provisions of such storm water rules conflict with Town ordinances, the stricter
28 (more protective) standard shall apply.
29

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

31
32 a. **General Requirements.** Any Person owning, operating, leasing or having control over
33 Storm Water Runoff Systems required by a Post-Construction Storm Water Management
34 Plan approved under this Ordinance shall demonstrate compliance with that Plan as
35 follows:
36

37 1. Annual Inspection. A Qualified Post-Construction Storm Water Inspector, shall,
38 at least annually, inspect the Storm Water Runoff Systems, including but not
39 limited to any roads, parking areas, catch basins, drainage swales, detention
40 basins and ponds, pipes, conduits, and related structures, in accordance with all
41 Town and State inspection, cleaning and maintenance requirements of the
42 approved Post-Construction Storm Water Management Plan.
43

44 2. Corrective Actions. If the Storm Water Runoff Systems require maintenance to
45 function as intended by the approved Post-Construction Storm Water
46 Management Plan, that Person shall take corrective action(s) to address the

1 deficiency or deficiencies.

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

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

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

27
28 c. **Annual Report.** Each year the Town shall include the following in its Annual Report to
29 the Maine Department of Environmental Protection:

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

39
40 **Sec. 25-2-7. Enforcement.** It shall be unlawful for any Person to violate any provision
41 of or to fail to comply with any of the requirements of this Ordinance or of the Post-
42 Construction Storm Water Management Plan. Whenever the Enforcement Authority believes
43 that a Person has violated this Ordinance or the Post-Construction Storm Water Management
44 Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A
45 M.R.S.A. § 4452.

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

7
8 a. The abatement of violations, and the cessation of practices, or operations in violation of
9 this Ordinance or of the Post-Construction Storm Water Management Plan;

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

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

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

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

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

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

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

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