

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

3  
4 Subdivision Ordinance

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

7  
8 (b) **Plan Recording.** Once the plans are determined to be in compliance with the Planning Board  
9 approval, the recording plan shall be properly signed by a majority of the Planning Board,  
10 and shall be recorded by the subdivider in the Cumberland County Registry of Deeds. If the  
11 subdivision approval includes phasing of the subdivision, the recording plan shall depict all  
12 phases of the subdivision. Any final plans not so recorded within ninety (90) days following  
13 the date of Planning Board Decision shall become null and void. The applicant may request,  
14 prior to the expiration date, that the Planning Board grant an extension due to particular  
15 circumstances of the applicant which extension shall not exceed an additional period of  
16 ninety (90) days. Once recorded, the subdivider shall provide the Planner with three (3) paper  
17 copies of the subdivision plat with the Planning Board signatures and the book and page  
18 recording information from the Registry of Deeds.

19  
20 (c) **Performance Guarantee.**

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22 2. Amount. The Performance Guarantee amount shall be based on a detailed estimate  
23 prepared by the applicant, broken down by unit cost and quantity, and reviewed by the  
24 Town Engineer. Costs included in the estimate shall include, but not be limited to,  
25 completion of all roads, sewer, water, drainage, open space, landscaping, lighting and other  
26 required improvements shown on the approved plans. The cost estimate shall also include  
27 a contingency amount equal to ten (10) percent of the Performance Guarantee estimate.  
28 ~~When the Performance Guarantee estimate exceeds two hundred fifty thousand (\$250,000)~~  
29 ~~dollars, the contingency amount shall be calculated at a rate of five (5) percent for that~~  
30 ~~portion of the Performance Guarantee estimate in excess of two-hundred fifty thousand~~  
31 ~~(\$250,000) dollars.~~

32  
33 (d) **Inspection Fee.** In addition to the Performance Guarantee, the applicant shall pay an  
34 inspection fee. When the Performance Guarantee equals five hundred thousand dollars  
35 (\$500,000) or less, the inspection fee amount shall be five percent (5%) of the amount  
36 of the total performance guarantee, ~~except that the minimum inspection fee amount~~  
37 ~~shall be one-thousand five hundred dollars (\$1,500).~~ When the Performance Guarantee  
38 exceeds five hundred thousand dollars (\$500,000), the inspection fee amount shall be  
39 two and one-half percent (2.5%) of the cost of the total Performance Guarantee. The fee  
40 shall be payable to the Town of Cape Elizabeth. The inspection fee shall be held by the  
41 Town to defray the Town's cost for inspection by the Town Engineer and Town staff.  
42 Any funds not disbursed for this purpose shall be returned to the applicant upon  
43 release of the Performance Guarantee. If the costs for inspection exceed the amount of  
44 the inspection fee, the applicant shall pay an additional fee to the Town, which shall be  
45 recommended by the Town Engineer and approved by the Town Manager based on the  
46 status of the development.

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

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

16  
17 (a) **Commencement of Construction.** At least ten (10) days prior to commencing construction  
18 of required improvements, the subdivider shall request a pre-construction meeting with the  
19 Town Manager. At the meeting, the subdivider shall submit plans for construction of the  
20 subdivision and notify the Town Manager when construction of such improvements will  
21 commence. The subdivider is also responsible for communicating ongoing progress of  
22 construction so that the Town can cause inspections and so that requirements shall be met  
23 during construction and to assure satisfactory completion of all improvements and utilities  
24 required by the Planning Board. [Revised eff. 11/11/83; Revised eff. 6/13/90]  
25

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

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

38  
39 **A. Road Design**

40  
41 7. Road Trees.

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43 a. **Adjacent to Road.** Each road shall be designed to include, within the right-of-  
44 way, at least one (1) tree for every fifty (50) feet of each side of road frontage.  
45 Up to twenty (20) percent of road trees may be ornamental trees. All trees shall  
46 comply with tree species and size standards further described in Appendix C.

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Road Tree List, Existing trees within the right-of-way which have been preserved may be counted toward this requirement if the species, size, preservation measures, and post-construction condition of the trees are approved by the Tree Warden. Where an esplanade is included in the road design, road trees required on that side of the street shall be planted in the esplanade. The esplanade shall be filled with soil, such as common borrow, suitable for growing trees. Where the esplanade provides insufficient soil volume to support a road tree, structural soils may be used underneath the sidewalk to expand the tree growth area. See also Appendix C, Road Tree List.

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Repeal and Replace Appendix C with a new Appendix C

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1  
2 APPENDIX C  
3 Road Tree List

4  
5 Introduction

6  
7 The selection of tree species to plant along roadsides, sidewalks and parking lots, including  
8 in islands and esplanades, is governed by the Town's commitment to maintaining a  
9 sustainable forest canopy. Sustainability requires managing for diversity at the genus level,  
10 and to the extent possible, selecting tree species from genera that are considered less  
11 susceptible to exotic tree pathogens. The Town's goal is to work toward a forest canopy in  
12 which no more than 5% of 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:  
17 Acer (Maples), Betula (Birches), Fraxinus (Ashes), Quercus (Oaks), Populus (Aspens), and  
18 Tsuga (Hemlocks).

19  
20 Priority Species

21  
22 The following tree species are from monotypic genera (ie. each genus has only one species),  
23 and are thus considered highly resistant to exotic tree pests. These trees may not be  
24 appropriate for many locations, but they should receive priority consideration when site  
25 characteristics are appropriate. These tree species are recommended for planting to meet  
26 the road tree requirements, subject to final approval by the Tree Warden based on site  
27 characteristics. The list includes the scientific and common tree name, whether the tree is  
28 native to Maine, expected height at maturity, and comments when applicable. All trees  
29 must be planted with a minimum caliper of 2 inches.

30

<u>Scientific</u>	<u>Common</u>	<u>Native</u>	<u>Height</u>	<u>Comments</u>
<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>	

39

40  
41 Acceptable Species

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

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

3	4	5	6	7	8	9	10	11	12
Scientific	Common	Native	Height	Comments					
<u>Aesculus hippocastanum</u>	<u>Horsechestnut</u>	<u>N</u>	<u>70'</u>						
<u>Aesculus x carnea</u>	<u>Red Horsechestnut</u>	<u>N</u>	<u>40'</u>						
<u>Carpinus betulus</u>	<u>American Hornbeam</u>	<u>Y</u>	<u>30'</u>						
<u>Carpinus caroliniana</u>	<u>European Hornbeam</u>	<u>N</u>	<u>40'</u>						
<u>Carya ovata</u>	<u>Shagbark Hickory</u>	<u>Y</u>	<u>80'</u>						
<u>Cladrastus kentuckea</u>	<u>Yellowwood</u>	<u>N</u>	<u>60'</u>						
<u>Corylus columnna</u>	<u>Turkish Filbert</u>	<u>N</u>	<u>50'</u>						
<u>Gleditsia triacanthos</u>	<u>Honey Locust</u>	<u>N</u>	<u>40</u>	<u>Var.</u>					
<u>inermis</u>									
<u>Juglans nigra</u>	<u>Black Walnut</u>	<u>N</u>	<u>70'</u>						
<u>Koelreuteria paniculata</u>	<u>Panicled Goldenraintree</u>	<u>N</u>	<u>30'</u>						
<u>Liriodendron tulipifera</u>	<u>Tuliptree</u>	<u>N</u>	<u>70'</u>						
<u>Liquidambar styraciflua</u>	<u>Sweetgum</u>	<u>N</u>	<u>60'</u>	<u>Spiny seed</u>					
<u> pods</u>									
<u>Magnolia spp.</u>	<u>Magnolia</u>	<u>N</u>	<u>Various</u>						
<u>Nyssa sylvatica</u>	<u>Tupelo</u>	<u>Y</u>	<u>60'</u>						
<u>Ornamental spp.</u>	<u>Pears, Crabapples,</u>	<u>Y/N</u>	<u>Various</u>	<u>As approved</u>					
<u>by</u>									
	<u>Dogwoods, Cherries,</u>				<u>Tree Warden</u>				
	<u>tree form of Hydrangea</u>								
	<u>&amp; Hibiscus, etc.</u>								
<u>Ostrya virginiana</u>	<u>Eastern Hophornbeam</u>	<u>Y</u>	<u>30'</u>						
<u>Oxydendrum arboreum</u>	<u>Sourwood</u>	<u>N</u>	<u>30'</u>						
<u>Platanus x acerfolia</u>	<u>London Plane</u>	<u>N</u>	<u>75'</u>						
<u>Platanus occidentalis</u>	<u>American Sycamore</u>	<u>Y</u>	<u>75'</u>						

1	<u>Sorbus alnifolia</u>	<u>Korean Mountain Ash</u>	<u>N</u>	<u>35'</u>	
2					
3	<u>Stewartia pseudocamelia</u>	<u>Japanese Stewartia</u>	<u>N</u>	<u>30'</u>	
4					
5	<u>Syringa reticulata</u>	<u>Japanese Tree Lilac</u>	<u>N</u>	<u>30'</u>	
6					
7	<u>Tilia americana</u>	<u>American Basswood</u>	<u>Y</u>	<u>70'</u>	
8	<u>Tilia cordata</u>	<u>Littleleaf Linden</u>	<u>N</u>	<u>60'</u>	<u>Cultivars only</u>
9	<u>Tilia tomentosa</u>	<u>Silver Linden</u>	<u>N</u>	<u>60'</u>	
10					
11	<u>Ulmus hybrids</u>	<u>Accolade, Triumph</u>	<u>N</u>	<u>50'</u>	
12	<u>Ulmus parvifolia</u>	<u>Chinese Elm</u>	<u>N</u>	<u>50'</u>	
13					
14	<u>Zelkova serrata</u>	<u>Zelkova</u>	<u>N</u>	<u>50'</u>	
15					
16	<u>Other species</u>	<u>E.g., Conifer spp.</u>	<u>Y/N</u>	<u>Various</u>	<u>As approved by</u>
17					<u>Tree Warden</u>

18 Cultivars and Hybrids

19  
20 Cultivars and hybrids of the tree species listed above, unless specifically identified above,  
21 require approval of the Tree Warden.

22  
23 Esplanade and Islands

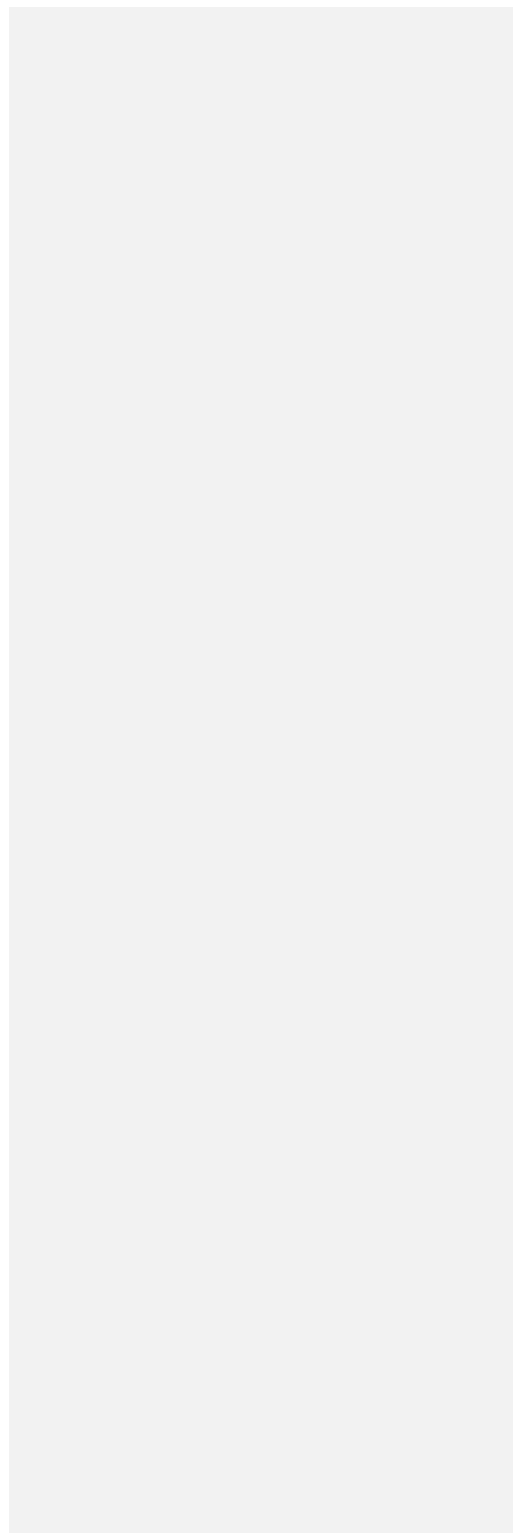
24  
25 The key to planting sustainable trees in esplanades and islands is to ensure there is  
26 sufficient soil volume available to support the expected size of maturity for the tree species  
27 selected. Accordingly, any plan to plant trees species from the lists above in an esplanade  
28 or island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

31  
32 Site and Tree Characteristics

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

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Chapter 18  
Conservation Ordinance

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

Article II.  
~~Reserved.~~

Article IV. ~~Storm water~~  
~~Reserved.~~

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Deleted: Post Construction Stormwater

Deleted: Management Ordinance

1  
2 **Zoning Ordinance**  
3

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

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

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

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

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

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

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

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

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15 **SEC. 19-4-3. NONCONFORMANCE WITH ALL ZONING DISTRICTS EXCEPT**  
16 **THE SHORELAND AND RESOURCE PROTECTION DISTRICTS**

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

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26  
27 **A. Nonconforming Lots**

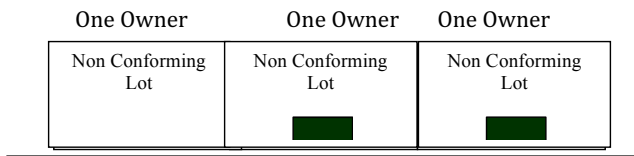
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29 The following provisions shall govern the development of lots that are nonconforming  
30 because they do not meet the minimum lot area, net lot area per dwelling unit, minimum  
31 street frontage, or similar requirement of the district within which they are located. Lots  
32 that do not meet the minimum street frontage requirement shall also comply with Sec. 19-  
33 7-9, Private Access Provisions, before a building permit can be issued. (Effective November  
34 14, 2015)

35  
36 **1. Vacant Nonconforming Lots,**

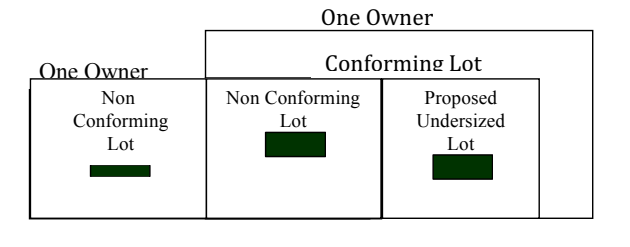
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37  
38 **a. Buildability.** Vacant nonconforming lots may be built upon in conformance with  
39 the provisions of the district in which they are located even though the lots do  
40 not meet the minimum lot area, net lot area per dwelling unit, street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



**Proposed  
undersized lot is  
NOT buildable**

**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).**

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	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	25%	25%	NA
- with on-site sewage disposal	20%	20%	NA

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

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

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**B. Nonconforming Buildings and Structures**

**3. Reconstruction or Replacement**

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

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

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**4. Enlargement**

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

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

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

#### 10 **SEC. 19-4-4. NONCONFORMANCE WITHIN THE SHORELAND** 11 **PERFORMANCE OVERLAY DISTRICT**

12  
13 The following provisions shall govern nonconformance with provisions of the  
14 Shoreland Performance Overlay District. Nonconforming conditions in existence  
15 before the effective date of this district, or amendments thereto, shall be allowed to  
16 continue, subject to the requirements set forth in this section.

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### 17 **ARTICLE V. ZONING BOARD OF APPEALS**

#### 18 **SEC. 19-5-2. POWERS AND DUTIES**

19  
20 The Board shall have the following exclusive powers and duties to be exercised only upon  
21 written appeal by a party aggrieved by a decision of the Code Enforcement Officer or other  
22 municipal official or board:  
23

##### 24 **A. Administrative Appeals**

25  
26 To determine whether the decision of the Code Enforcement Officer is in conformity with  
27 the provisions of this Ordinance, to modify such decision to conform with such provisions,  
28 and to interpret the meaning of the Ordinance in all cases of uncertainty. The Board shall  
29 hear the administrative appeals on a de novo basis. The Board shall base its decision on the  
30 materials presented to or used by the Code Enforcement Officer (if any), as well as any new  
31 evidence or testimony presented at the hearing before the Board. The Board shall resolve  
32 appeals by deciding the matters afresh, undertaking its own independent analysis of  
33 evidence and the law and reaching its own decision.  
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#### 35 **SEC. 19-6-1. RESIDENCE A DISTRICT (RA)**

##### 36 **F. Site Plan Review**

37  
38 The following uses and activities shall be subject to site plan review by the Planning Board,  
39 according to the terms of Article IX, Site Plan Review, prior to issuance of any building  
40 permit, plumbing permit, or other permit:  
41  
42  
43

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

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

### 11 **F. Site Plan Review**

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

- 18  
19 1. Multiplex housing and eldercare facilities. As part of Site Plan Review for multiplex  
20 housing, Sec. 19-7-2 (E), Multiplex Housing Standards, shall also apply. (Effective  
21 November 14, 2015)
- 22 2. Nonresidential uses listed in Sec. 19-6-2.B.3, except home day cares, wind energy  
23 systems, short term rentals and day camps, which shall not require site plan review  
24 (Effective August 11, 1999)
- 25 3. Nonresidential uses listed Sec. 19-6-2.C.2
- 26 4. Any other use or activity listed in Sec. 19-9-2, Applicability, as requiring site plan review  
27

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

### 29 **F. Site Plan Review**

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

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

## 44 **SEC. 19-7-9. PRIVATE ACCESS PROVISIONS**

1  
2 **D. Private Accessway Procedures**

3  
4 **5. Post Approval Procedures**

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

15  
16 **SEC. 18-8-1. RESERVED**

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

18  
19 **1. Procedure**

- 20  
21 b. Submission Requirements. In addition to the Submission requirements of  
22 Sec. 19-9, Site Plan Review, or Sec. 19-3-3, Building Permits, as applicable,  
23 the applicant shall be required to submit all information necessary to  
24 demonstrate compliance with the Performance Standards in Sec. 19-8-2 (2),  
25 below. The applicant shall also provide a map showing existing  
26 telecommunication coverage and anticipated coverage with the installation  
27 of the proposed telecommunications.

28  
29 **ARTICLE IX. SITE PLAN REVIEW**

30  
31 **SEC. 19-9-1. PURPOSE**

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

42  
43 **SEC. 19-9-2. APPLICABILITY**

44  
45 **A. Activities Requiring Site Plan Review**

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

- 5
- 6 **1.** The construction of any nonresidential building or building addition
- 7
- 8 **2.** Any nonresidential expansion or change in use except that changes of use within the  
9 Town Center District shall be governed by the provisions of Sec. 19-6-4.E, Site Plan  
10 Review and uses within the Business A District shall be governed by the provisions  
11 of Sec. 19-6-5. F. Site Plan Review. **(Effective June 10, 2010)**
- 12
- 13 **3.** Multiplex housing and eldercare facilities
- 14
- 15 **4.** Any other activity or use requiring Planning Board review in the Zoning Ordinance
- 16 **5.** New construction involving more than ten thousand (10,000) square feet of  
17 impervious surface, paving, clearing, or vegetative alteration, or any combination  
18 thereof. (The Planning Board shall review the proposal for control of ~~storm water~~  
19 runoff under the terms of Chapter ~~25Storm Water~~ Ordinance.)
- 20

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## 22 **B. Activities Not Requiring Site Plan Review**

23  
24 The following activities shall **not** require site plan approval (certain of these activities may,  
25 however, require the owner to obtain a building permit, plumbing permit, or other State  
26 and local approvals):

- 27
- 28 **1.** The construction, alteration or enlargement of a single family or two-family  
29 dwelling unit, including accessory buildings and structures, except as required in  
30 the Town Center Core Subdistrict. **(Effective June 10, 2010)**
- 31
- 32 **2.** The placement of manufactured housing or mobile home on individual lots
- 33
- 34 **3.** Agricultural buildings as follows: **(Effective June 10, 2010)**
  - 35
  - 36 a. Any temporary agricultural building, where temporary shall mean  
37 that the structure remains in place no more than 3 months in any 12  
38 month period.
  - 39
  - 40 b. If sales shall be conducted from the building, the structure must be a  
41 temporary structure and sales shall not be conducted from the  
42 building for more than 3 months in any 12 month period.
  - 43
  - 44 c. Any barn, greenhouse, or storage shed with a building footprint that  
45 does not exceed 2,000 sq. ft. in size.
  - 46

- d. Any structure that shall provide housing, other than a single family home, shall require Site Plan Review under Sec. 19-2-2(A)(4) above.
- e. Any structure which does not comply with subparagraphs a, b, and c above shall require Site Plan Review.

4. Temporary structures such as construction trailers or equipment storage sheds

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

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

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

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

**A. Workshop**

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

**1. Purpose**

The purposes of the preapplication workshop are to:

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

**2. Information Required**

1  
2 There are no formal submission requirements for a pre-application workshop.  
3 However, the applicant should be prepared to discuss the following with the  
4 Planning Board:

- 5  
6 a. The proposed site, including its location, size, and general characteristics  
7  
8 b. The natural characteristics of the site that may limit its use and development  
9  
10 c. The nature of the proposed use and potential development, including a  
11 conceptual site plan  
12  
13 d. Any issues or questions about existing municipal regulations and their  
14 applicability to the project  
15  
16 e. Any requests for waivers from the submission requirements  
17

18 **3. Planning Board Workshop**

19  
20 The Planning Board workshop shall be informational and shall not result in any  
21 formal action. The Planning Board shall identify any issues or constraints which  
22 need to be addressed in the formal site plan application.  
23

24 **B. Application Review Procedures**

- 25  
26 1. Completeness. After an application has been submitted with the requisite fees,  
27 including establishment of a Review Escrow Account under the terms of Sec. 16-2-1  
28 (c) of the Subdivision Ordinance, and after any required Zoning Board of Appeals  
29 approval has been obtained, the Town Planner shall accept and date an application  
30 for Planning Board review. In consultation with the Planning Board Chair or Vice  
31 Chair, the Town Planner shall review the site plan application and accompanying  
32 materials to determine whether the application is complete or incomplete. If, in  
33 consultation with the Planning Board Chair or Vice Chair, the application is  
34 preliminarily determined to be incomplete, the Town Planner shall notify the  
35 applicant in writing and shall list in the written determination the materials that  
36 must be submitted in order to make the application complete. If the applicant fails  
37 to submit a complete application within four (4) months of the written  
38 determination of incompleteness, the application shall be deemed withdrawn.  
39 When the Town Planner makes the preliminary determination that an application is  
40 complete, the application shall be scheduled for consideration at the next available  
41 Planning Board meeting. The Planning Board may require other information in  
42 addition to that required in Sec. 19-9-4.C, Submission Requirements. The Planning  
43 Board may also request an evaluation of specific aspects of the site plan from the  
44 Conservation Commission, the Town Engineer, or others. In the event that the  
45 Planning Board requires additional information or evaluation, it may deem the  
46 application incomplete.

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

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

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

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

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

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5. **Approval Expiration.** Site plan approval shall be valid for a period of one (1) year from the date of the Planning Board vote. Prior to the expiration of the site plan approval, the applicant may request an extension of up to one year from the Planning Board for cause shown. Site plan approval shall remain valid if a building permit has been issued for the project prior to the expiration date. Expiration of the building permit prior to completion of the project shall render the site plan approval null and void. Failure to comply with conditions placed upon site plan approval, to post any necessary performance guarantees, to comply with any other permitting processes or to address any other issues of site development, except pending

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litigation challenging the site plan approval, shall render the approval null and void unless an extension is granted by the Planning Board for good cause.

C. Submission Requirements

1. General Submission parameters.

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

2. List of Submission items.

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

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

b. ~~Written description.~~ Written description of the proposed project including proposed uses quantified by square footage, number of seats, number of units or beds or number of students, and how development has been placed on the portions of the site most suited for development; application form; identification of the zoning district in which the property is located and the location of any zoning district boundary that bisects or abuts the property.

c. ~~Name of Project/Applicant.~~ Proposed name of the project; name and address of record owner and applicant, names of adjoining property owners; date of submission; north point; graphic map scale.

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

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Deleted: 2. A key map of the site with reference to surrounding areas and existing street locations  
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Deleted: of all contiguous land and or property directly across the street and within two hundred (200) feet of the property, as shown by the most recent tax records of all municipalities in which such properties shall lie  
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1 e. Existing Conditions. All significant existing physical features on the site  
2 including streams, watercourses, watershed areas, existing woodlands  
3 and existing trees at least eight (8) inches in diameter as measured four  
4 and one-half (4 ½) feet above grade, and other significant vegetation; soil  
5 boundaries and names in wetland locations and where subsurface  
6 wastewater disposal systems are proposed; when applicable, any portion  
7 of the property located in the floodplain, within two hundred and fifty  
8 (250) feet of the Normal High Water Line, or in a Resource Protection 1,  
9 Resource Protection 1 Buffer or Resource Protection 2 District.

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10  
11 f. Topography. Contour lines, existing and proposed, at intervals of two (2)  
12 feet or at such intervals as the Planning Board may require, based on  
13 United States Geological Survey datum, referenced to mean sea level.

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14  
15 g. Buildings. Location of all existing and proposed buildings and structures  
16 with the distance from the nearest property lines labeled. Size in square  
17 feet of existing and proposed building footprints and total size of building;  
18 elevations of each vertical side of a new building with dimensions;  
19 location of doors and windows, exterior materials and roof pitch labeled;  
20 elevations of each side of an existing building proposed to be altered with  
21 dimensions, location of doors and windows, exterior materials and roof  
22 pitch labeled; floor plans; building footprints located on adjacent  
23 properties within fifty (50) feet of the project property line.

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

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proposed, funded road improvements and town evaluation of road improvements.

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Storm water. 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.

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<b>Deleted:</b> 7. - Building setback, side line, and rear yard distance -
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<b>Deleted:</b> 8. - All existing physical features on the site and within two hundred (200) feet thereof, including streams, watercourses, existing woodlands, and existing trees at least eight (8) inches in diameter as measured four and one-half (4 1/2) feet above grade.
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<b>Deleted:</b> Soil conditions as reflected by a medium intensity survey (such as wetlands, rock ledge, and areas of high water table) shall also be shown. The Planning Board may require a high intensity soils survey where it deems necessary. -
<b>Deleted:</b> 9. - Topography showing existing and proposed contours at five (5) foot intervals for slopes averaging five percent (5%) or greater and at two (2) foot intervals for land of lesser slope. A reference benchmark shall be clearly designated. Where variations in the topography may affect the layout of buildings and roads, the Planning Board may require that the topographic maps be based on an on-site survey. -
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<b>Deleted:</b> 10. - Parking, loading, and unloading areas shall be indicated with dimensions, traffic patterns, access aisles, and curb radii -
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<b>Deleted:</b> 11. - Improvements such as roads, curbs, bumpers, and sidewalks shall be indicated with cross sections, design details and dimensions -
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<b>Summary Chart of Stormwater Submission Requirements and Review Standards</b> (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"> <li>Professional Engineer not required</li> <li>Pre/post calculations not required</li> </ul>	<ul style="list-style-type: none"> <li>LID method is used</li> </ul>
Increase of 10,000 sq. ft. to less than 43,560 sq. ft.	<ul style="list-style-type: none"> <li>Stormwater plan must be prepared by a Professional Engineer</li> <li>Pre/post calculations required</li> <li>Time of concentration path segments must be shown</li> </ul>	<ul style="list-style-type: none"> <li>LID method is used to treat first 1/2 inch of stormwater from new impervious surface</li> </ul>
Increase of 43,560 sq. ft. or more	See Chapter 25, Stormwater Ordinance	See Chapter 25, Stormwater Ordinance

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

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k. Utilities.

i. Water: Ability to serve letter from the Portland Water District; 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.

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ii. Sewage Disposal. When the project will be served by public sewage, an ability to serve letter from the Town of Cape Elizabeth Sewer Superintendent; All existing and proposed public or shared sewage

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facilities and connection to the public sewage system; when not served by public sewer, evidence to demonstrate suitability of soils for subsurface wastewater disposal; the location of the subsurface wastewater system; all designs, specifications and details for a clustered, private or public sewage system.

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

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

l. Landscaping, Location and description of existing vegetation to be preserved; methods of preserving vegetation to be used during construction; Landscaping and buffering plan showing what will be planted, indicating botanical and common names of plants and trees, fencing location, type, material and size.

m. Lighting. Location and type of lighting to be installed; lighting fixture details indicating type of standards, wattage and mounting height; A photometric study showing the footcandle lighting level at the property line when new lights shall be installed.

n. Signs. Location, dimensions, materials, and details of signs.

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

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

q. Financial and Technical Capability. Demonstration of technical and financial capability to complete the project. If the applicant concludes that public disclosure of confidential financial information may be detrimental to the success of the project, the applicant may disclose such financial information to the Town Manager, who shall explore with due diligence, the applicant's

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1 financial capability to complete the project as proposed in a timely fashion and  
2 make a recommendation to the Planning Board.

3  
4 **3. Waiver of Submission items.**

5  
6 Where the Planning Board finds that the submission of any information  
7 listed in Sec. 19-9-4.C, Submission Requirements, is not required in the  
8 interest of public health, safety, and general welfare, the Planning Board may  
9 waive such requirements. Without limitation, the following circumstances  
10 may support a waiver of certain submission requirements.

11  
12 a. Existing conditions. When no change to existing site conditions for  
13 that submission item is proposed, the Planning Board may designate a  
14 submission item as not applicable.

15  
16 b. Substitution. Alternative information has been submitted more suited  
17 to the scope of the project.

18  
19 c. Small project. The limited nature of the project allows the Planning  
20 Board to apply the Approval Standards and safeguard public health,  
21 safety and general welfare without submission of additional  
22 information.

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23  
24 **SEC. 19-9-5. APPROVAL STANDARDS**

25  
26 The following criteria shall be used by the Planning Board in reviewing applications for site  
27 plan review and shall serve as minimum requirements for approval of the application. The  
28 application shall be approved unless the Planning Board determines that the applicant has  
29 failed to meet one or more of these standards. In each instance, the burden of proof shall  
30 be on the applicant to produce evidence sufficient to warrant a finding that all applicable  
31 criteria have been met.

32  
33 **1. Utilization of the Site**

34  
35 The plan for the development will reflect the natural capabilities of the site to  
36 support development. Buildings, lots, and support facilities will be clustered in  
37 those portions of the site that have the most suitable conditions for development.  
38 Environmentally sensitive areas such as wetlands, steep slopes, flood plains, and  
39 unique natural features will also be maintained and preserved to the maximum  
40 extent feasible. Natural drainage areas will also be preserved to the maximum  
41 extent feasible.

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42  
43 **2. Traffic Access and Parking**

44  
45 a. Adequacy of Road System

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

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12  
13 i. Public improvement. A public agency has committed funds to construct the  
14 improvements necessary to bring the level of access to this standard,

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15  
16 ii. Private improvement. The applicant will assume financial responsibility for  
17 the improvements necessary to bring the level of service to this standard and  
18 will assure the completion of the improvements with a financial guarantee  
19 acceptable to the municipality, or

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20  
21 iii. Status quo. Town policy does not support the construction improvements. |

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22  
23 b. Access into the Site |

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

25  
26  
27 i. Safety. All entrance and exit driveways are located to afford maximum safety  
28 to traffic, provide for safe and convenient ingress and egress to and from the  
29 site and to minimize conflict with the flow of traffic.

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30  
31 ii. Sight Distance. Any exit driveway or driveway lane is so designated in profile  
32 and grading and so located as to provide the maximum possible sight  
33 distance measured in each direction. The sight distance available shall be  
34 consistent with the standards of the Subdivision Ordinance.

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35  
36 iii. Corner. Where a site occupies a corner of two (2) intersecting roads, no  
37 driveway entrance or exit is located within fifty (50) feet of the point of  
38 tangency of the existing or proposed curb radius of that site. |

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39  
40 iv. Side property line. No part of any driveway shall be located within a  
41 minimum of ten (10) feet of a side property line. However, the Planning  
42 Board may permit a driveway serving two (2) or more adjacent sites to be  
43 located on or within ten (10) feet of a side property line dividing the adjacent  
44 sites.

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

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

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c. **Internal Vehicular Circulation**

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

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

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

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

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

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d. **Parking Layout and Design**

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

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

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

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

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

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

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### 3. Pedestrian Circulation

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

### 4. Storm water Management

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

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

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

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

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

10 5. Erosion Control

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

17  
18  
19 During construction, soil erosion and sedimentation of watercourses and water bodies will  
20 be minimized by an active program meeting the requirements of the Maine Erosion and  
21 Sediment Control Best Management Practices (BMP's) as prepared by the Bureau of Land  
22 and Water Quality of the Maine Department of Environmental Protection, March 2003 or  
23 most recent edition,

25 6. Utilities

26  
27 a. Water Supply. The development will be provided with a system of water supply  
28 that is adequate in quantity and quality to the proposed use. An adequate supply  
29 of water for fire protection purposes is provided. Connection to a public water  
30 supply for drinking water and fire protection is encouraged.

31 b. Sewage Disposal. The development will be provided with a method of disposing  
32 of sewage which is in compliance with Chapter 15, Sewer Ordinance.

33  
34 i. Public Sewage System. All sanitary sewage from new or expanded uses  
35 shall be discharged into a public sewage collection and treatment system  
36 when such facilities are currently available or can reasonably be made  
37 available at the lot line and have adequate capacity to handle the projected  
38 waste generation.

39  
40 ii. Private Sewage System. If the public system cannot serve or be extended to  
41 serve a new or expanded use, the sewage shall be disposed of by an on-site  
42 sewage disposal system meeting the requirements of the State Wastewater  
43 Disposal Rules and Chapter 15, Article II, Private Sewage Disposal  
44 Ordinance.

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

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

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

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

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**Deleted:** 6. The design of the storm drainage systems will be fully cognizant of upstream runoff which must pass over or through the site to be developed. (... [5])

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**Deleted:** provides each use with an adequate supply of drinking water.

**Deleted:** If the project is proposed to be served by a public water supply, the applicant shall secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source or distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

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

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

**Deleted:** 4. . Industrial or commercial waste waters may be discharged to public sewers in such quantities and/or of such quality as to be compatible with sewage treatment operations. Such wastes may require pretreatment at the industrial or commercial site in order to render them amenable to public treatment processes. Pretreatment includes, but is not limited to, screening, grinding, sedimentation, pH adjustment, surface skimming, chemical oxidation and reduction and dilution.  
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d. Solid Waste. The proposed development will provide for adequate storage and disposal of solid wastes.

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

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

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

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

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

8. **Landscaping and Buffering**

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

b. Landscaping Plan. The development plan will provide for landscaping that defines street edges, mitigates the expanse of parking areas, enhances the appearance of the development and reduces the impact of the development on abutting properties. Landscaping materials shall be chosen for their ability to thrive at the planting site, provide screening, create visual interest and promote diversity of the community forest.

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

9. **Exterior Lighting**

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

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

**Deleted:** The handling, storage, and use of all materials identified by the standards of a federal or state agency as hazardous, special or radioactive shall be done in accordance with the standards of these agencies. -  
No flammable or explosive liquids, solids or gases shall be stored in bulk above ground unless they are located at least seventy-five (75) feet from any lot line, or forty (40) feet in the case of underground storage. All materials shall be stored in a manner and location which is in compliance with appropriate rules and regulations of the Maine Department of Public Safety and other appropriate federal, state, and local regulations. -

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

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

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**Deleted:** Lighting fixtures shall be shielded or hooded so that the lighting elements are not exposed to normal view by motorists, pedestrians, or from adjacent dwellings and so that they do not unnecessarily light the night sky.

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10. Signs.

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

11. Noise

The maximum permissible A-weighted decibel level of a continuous, regular or frequent or intermittent source of sound produced by unique activities, structures or equipment on the site shall be limited by the time period and by the abutting land use as listed below. Sound levels shall apply at least four (4) feet above ground at the property boundary of the source. Existing background sounds are excluded from the decibel measurement and noise generated by construction of the site is exempt.

Sound Pressure Level Limits Using the A-weighted decibel level (dBA)

Abutting Use	7 a.m. - 10 p.m.	
	10 p.m. - 7 a.m.	7 a.m.
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

12. Storage of Materials

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

b. Receptacles. All dumpsters or similar large collection receptacles for trash or other wastes shall be located on level surfaces which are paved or graveled. Dumpsters or receptacles shall be screened by fencing or landscaping.

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

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Deleted: 3. No person shall engage in construction activities, on a site abutting any residential use between the hours of 10 p.m. and 7 a.m.
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1 **L. Technical and Financial Capacity**

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

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

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

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

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

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

30 **B. Amendment.** Any change to a plan approved by the Planning Board must be  
31 submitted to the Planning Board for review and approval, unless the  
32 amendment is a De Minimus Change. The Planning Board shall review the  
33 amendments in accordance with the Review Procedures, Sec. 19-9-4.  
34 Submission requirements may be limited to the information related to the  
35 proposed amendments. Any Planning Board Decision to approve  
36 amendments to a previously approved Site Plan shall incorporate the original  
37 Site Plan Approval, except as specifically amended.

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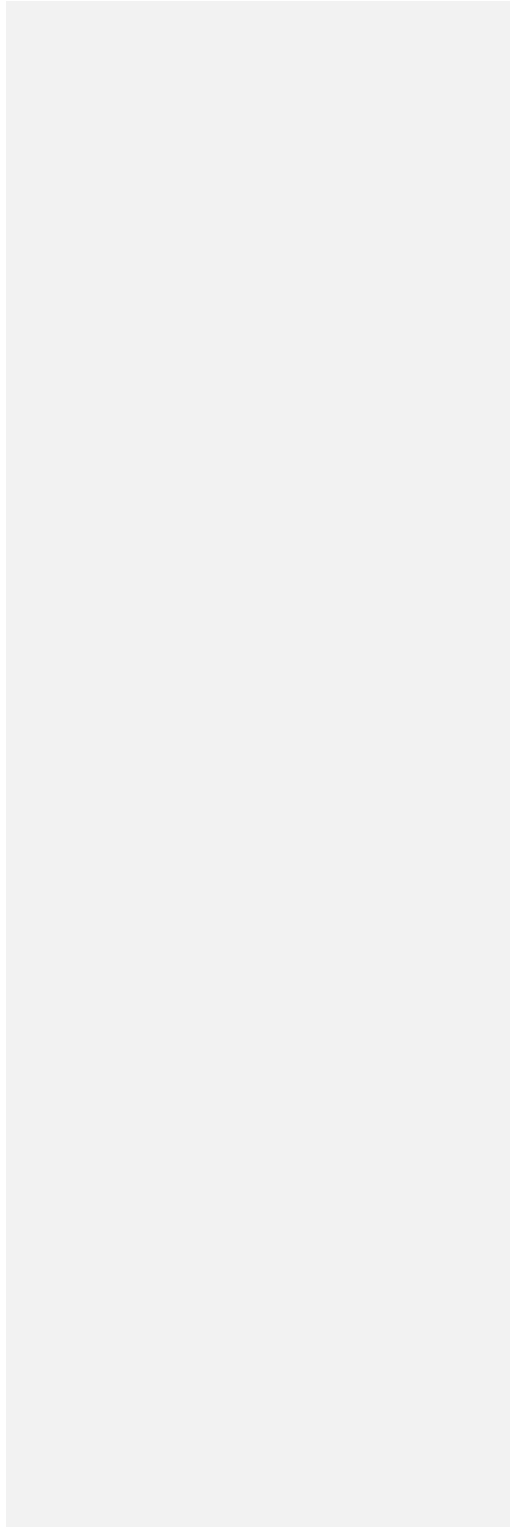
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Deleted: Prior to placement on the Consent Agenda, the applicant shall meet with the Town Planner to review the proposed changes and shall provide eight (8) copies of the revised site plan to the Town Planner at least eighteen (18) days prior to the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

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

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



1 **CHAPTER 25**

2 **STORM WATER**

3 **Article I. Storm water and Non-Storm water Control**

4

5

6

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

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

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

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

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

12 Sec. 25-1-6 Non Planning Board reviewed storm water runoff 25-5

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

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

17

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18 **Article II. Post Construction Storm water Management**

19

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

21 Sec. 25-2-2 Objectives 25-10

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

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

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

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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

40 water

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

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

43 welfare.

44

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

46

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

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

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

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

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

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

25 **CFR:** Code of Federal Regulations.

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

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

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

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

5  
6 **Enforcement Authority:** The Town of Cape Elizabeth Public Works Director or his/her  
7 designee.

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

18  
19 **Industrial Activity:** Activity subject to NPDES Industrial Permits as defined in 40 CFR,  
20 Section 122.26 (b)(14).

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

27  
28 **Non-Storm Water Discharge:** Any Discharge to the Town Storm Water Runoff System  
29 that is not composed entirely of Storm Water.

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

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

40  
41 **Premises:** All or any part of a building, lot, parcel of land, whether improved or  
42 unimproved, including adjacent sidewalks and parking areas from which Discharges into  
43 the  
44 Town Storm Water Runoff System that is created, initiated, originated or maintained.

45  
46 **Storm Water:** Runoff resulting from snowmelt, rain, precipitation or groundwater on the

1 ground.

2  
3 **Storm Water Maintenance agreement.** An agreement describing maintenance of storm  
4 water runoff system for development reviewed by the Planning Board. All privately owned  
5 facilities shall be included in the maintenance agreement. A maintenance agreement must  
6 include, at a minimum, the party responsible for maintenance, a list of the storm water  
7 runoff system components that require maintenance, inspection frequency, maintenance  
8 requirements, and submission of an annual report to the Town. Storm water runoff system  
9 components that will be privately owned until such time they are conveyed to the Town  
10 require a maintenance agreement until they are conveyed.

11  
12 **Storm Water Runoff System:** An element or array of elements that convey water from or  
13 across land, including but not limited to natural elements.

14  
15 **Tidal Waters:** Waters contiguous to the Atlantic Ocean where the surface rises and falls  
16 due to gravitational pull.

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

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

29  
30 **Uncontaminated:** Free of Pollutants.

31  
32 **Sec. 25-1-4. Storm Water Runoff System Design.**

33  
34 a. Applicability. This section shall be applicable to the following development:

35  
36 1. Any development involving 43,560 sq. ft. or more of impervious surface and  
37 which requires Site Plan (Chapter 19, Zoning Ordinance); and

38  
39 2. Any development requiring Subdivision Review (Chapter 16, Subdivision  
40 Ordinance) by the Planning Board.

41  
42 b. Submission Requirements. The following information shall be submitted to the  
43 Planning Board.

44  
45 1. Professional Engineer. Designation of a professional engineer licensed in the  
46 State of Maine who will design, sign and stamp the storm water runoff  
47 system.

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

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

4. Pre- and post construction calculations. Storm water runoff calculations based on the 2- and 25-year storm for the property.

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

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

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

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

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9. Record drawings. On the storm water runoff plan a note that "a reproducible set of record drawings, as well as digital files in a format used by the project engineer during project design or other format approved by the Public Works Director suitable for import into the Town Geographic

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1 Information System (GIS), indicating the storm water runoff work  
2 constructed and how the record drawings were compiled shall be provided to  
3 the Enforcement Authority upon completion of construction."

4  
5 c. Review Standards.

6  
7 1. Professional Engineer. The storm water runoff system shall be prepared by a  
8 professional engineer licensed in the State of Maine.

9  
10 2. 2 and 25 year storm. The storm water runoff system shall be designed for a  
11 storm of intensity equal to the 2 and 25-year storm. No non-storm water  
12 structures shall be permitted in areas of the site that flood or surcharge  
13 during the 2 and 25-year storm. Where state or federal law is more  
14 restrictive, such provisions shall supersede this section.

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17 3. Infiltration. The storm water runoff system shall maximize to the greatest  
18 extent practical the amount of storm water infiltrating on the site during  
19 storm events, except that development located in the Town Center District  
20 shall design a storm water plan that is consistent with the Town Center  
21 Storm water Management Plan, updated September 2015 or most recent  
22 version.

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23  
24 4. Downstream impacts. The storm water runoff system shall provide for the  
25 discharge of storm water from the site without damage to streets and storm  
26 water infrastructure, adjacent properties, downstream properties, soils and  
27 vegetation. When post-development flows exceed pre-development flows, the  
28 development shall demonstrate that either (1) storm water runoff will be  
29 stored on-site and released at a rate not to exceed pre-development flows or  
30 (2) that the storm water runoff system has sufficient capacity to carry the  
31 increased flow without adverse impacts. Direct discharge to tidally  
32 influenced areas shall be considered sufficient capacity to carry increased  
33 flow.

34  
35 5. Upstream flows. The storm water runoff system shall be designed to  
36 accommodate all existing up stream flows that pass through the site.

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

42  
43 7. Maintenance. A permanent routine maintenance plan shall be prepared for  
44 the storm water runoff system. The note requiring maintenance of the storm  
45 water runoff system is on the plan.

1 8. Record Drawings. The storm water runoff system plans shall include a note  
2 that, upon completion of the storm water runoff system installation, a  
3 reproducible set of record drawings indicating the storm water runoff system  
4 work accomplished and how the record drawings were compiled will be  
5 submitted to the Enforcement Authority.

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7 **Sec. 25-1-5. System Responsibility.** The developer shall maintain all components of the  
8 Storm Water Runoff System until they are formally accepted by the Town or transferred  
9 to a  
10 property owners association whose charter and powers for financing and maintaining the  
11 Storm Water Runoff System shall be approved by the Town Attorney. Storm Water  
12 Runoff  
13 System components within proposed public ways shall become Town property upon formal  
14 acceptance. Storm Water Runoff System components outside of public ways may be  
15 accepted by the Town but shall otherwise be deeded to a property owners association, as  
16 required by the Planning Board or as agreed by the Town and the developer prior to  
17 project  
18 approval. In all cases the Town shall have the right to access and enter the Storm Water  
19 Runoff system to conduct emergency maintenance, as it deems necessary.

20  
21  
22 **Sec. 25-1-6 Non Planning Board reviewed storm water runoff**

23  
24 Any Discharge of storm water or non-storm water into the Town Storm Water Runoff  
25 System for which the Planning Board has not conducted a storm water runoff system  
26 review shall be subject to Best Management Practices for Erosion and Sedimentation  
27 control. The Enforcement Authority may direct additional erosion control measures to be  
28 taken if there is a reasonable expectation that storm water runoff will cause erosion and  
29 sediment to leave the development site.

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

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

43  
44 a. **Objectives.** The objectives of this section are:

45  
46 1. To regulate Non-Storm Water Discharges to the Storm Water Runoff

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System; and  
2. To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this Ordinance.  
**b. General Prohibition.** Except as allowed in this Section, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Water Runoff System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Town may have approved the connections, drains or conveyances by which a Person discharges unallowed Non-Storm Water Discharges to the Storm Water Runoff System.  
**c. Allowed Non-Storm Water Discharges.** The creation, initiation, origination and maintenance of the following Non-Storm Water Discharges to the Storm Water Runoff System are allowed:  
1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); dechlorinated hydrant flushing discharges and firefighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; lawn watering runoff, and dechlorinated swimming pool discharges.  
2. Discharges authorized by the Enforcement Authority as being necessary to protect public health and safety; and  
3. Dye testing, with authorization from the Enforcement Authority prior to the time of the test.  
**d. Suspension of Access to the Town Storm Water Runoff System.** The Enforcement Authority may, without prior notice, physically suspend Discharge access to the Storm Water Runoff System when such suspension is necessary to stop an actual or threatened Non-Storm Water Discharge to the Storm Water Runoff System that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Storm Water Runoff System, or that may cause the Town to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the Discharge to prevent or minimize a Non-Storm Water Discharge to the Storm Water Runoff

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1 System. The Enforcement Authority may take such steps as deemed necessary to  
2 prevent or minimize damage to the Storm Water Runoff System, or to minimize  
3 danger to persons, provided, however, that in taking such steps the Enforcement  
4 Authority may enter upon the Premises that are the source of the actual or  
5 threatened Non-Storm Water Discharge to the Storm Water Runoff System only  
6 with the consent of the Premises' owner, occupant or agent, except in an emergency  
7 when consent shall not be required.

8  
9 e. **Monitoring of Discharges.** In order to determine compliance with this Ordinance,  
10 the Enforcement Authority may enter upon and inspect Premises subject to this  
11 Ordinance at reasonable hours with the consent of the Premises' owner, occupant or  
12 agent, to inspect the Premises and connections thereon to the Storm Water Runoff  
13 System; and to conduct monitoring, sampling and testing of the Discharge to the  
14 Storm Water Runoff System.

15  
16 **Sec. 25-1-9. Enforcement.** It shall be unlawful for any Person to violate any provision of or  
17 to fail to comply with any of the requirements of this Ordinance.

18  
19 a. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has  
20 violated this Ordinance, the Enforcement Authority may order compliance with this  
21 Ordinance by written Notice of Violation to that Person indicating the nature of the  
22 violation and ordering the action necessary to correct it, including, without  
23 limitation:

- 24  
25 1. The elimination of Non-Storm Water Discharges to the Storm Water Runoff  
26 System, including, but not limited to, disconnection of the Premises from the  
27 Storm Water Runoff System;
- 28 2. The cessation of Discharges, practices, or operations in violation of this  
29 Ordinance;
- 30 3. At the Person's expense, the abatement or remediation in accordance with  
31 best management practices in DEP rules and regulations of Non-Storm  
32 Water Discharges to the Storm Water Runoff System and the restoration of  
33 any affected property; and/or
- 34 4. The payment of fines, of the Enforcement Authority's remediation costs and  
35 of the Enforcement Authority's reasonable administrative costs and  
36 attorneys' fees and costs, in accordance with 30-A M.R.S.A Sec. 4452. If  
37 abatement of a violation and/or restoration of affected property is required,  
38 the notice shall set forth a deadline within which such abatement or  
39 restoration must be completed.

40  
41 b. **Penalties/Fines/Injunctive Relief.** Any Person who violates this Ordinance shall be  
42 subject to fines, penalties and orders for injunctive relief and shall be responsible  
43 for the Town's attorney's fees and costs, all in accordance with 30-A M.R.S.A. §  
44 4452. Each day such violation continues shall constitute a separate violation.  
45 Moreover, any Person who violates this Ordinance also shall be responsible for any  
46 and all fines, penalties, damages and costs, including, but not limited to attorneys'

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1 fees and costs, incurred by the Town for violation of Federal and State  
2 environmental laws and regulations caused by or related to that Person's violation  
3 of this Ordinance; this responsibility shall be in addition to other penalties, fines or  
4 injunctive relief imposed under this Section.

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

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11  
12 **d. Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or  
13 suspension notice may appeal the determination of the Town to the Zoning Board of  
14 Appeals. The notice of appeal must be received within 30 days from the date of  
15 receipt of the Notice of Violation. The Board of Appeals shall hold a de novo hearing  
16 on the appeal within 30 days from the date of receipt of the notice of appeal. The  
17 Board of Appeals may affirm, reverse or modify the Notice of Violation. A  
18 suspension under Section 18-2-8(d) of this Ordinance shall remain in place unless or  
19 until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by  
20 the decision of the Zoning Board of Appeals may appeal that decision to the Maine  
21 Superior Court within 45 days of the date of the Zoning Board of Appeals decision  
22 pursuant to Rule 80B of the Maine Rules of Civil Procedure.

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

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

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38  
39 **Sec. 25-1-10 Severability.** If any part or parts, section or subsection, sentence, clause or  
40 phrase of this Ordinance or the rules and regulations promulgated thereunder is for any  
41 reason declared to be unconstitutional or invalid, such declaration shall not affect the  
42 validity  
43 or constitutionality of the remaining portions of this Ordinance or the rules and regulations  
44 promulgated thereunder.

45  
46 **Article II. Post Construction Storm water Management**

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

23  
24 **Sec. 25-2-2. Objectives.** The objectives of this Ordinance are:

- 25  
26 a. To reduce the impact of post-construction discharge of storm water on receiving  
27 waters; and  
28  
29 b. To reduce storm water runoff rates and volumes, soil erosion and nonpoint source  
30 pollution, wherever possible, through use of Best Management Practices as  
31 promulgated by the Maine Department of Environmental Protection pursuant to its  
32 most current rules as may be updated or amended including its Chapters 500 and  
33 502 Rules, and ensure that these management controls are properly maintained and  
34 pose no threat to public safety.

35  
36 **Sec. 25-2-3. Applicability.** This Ordinance applies to all New Development and  
37 Redevelopment within the Town that discharges storm water to the Town's Municipal  
38 Separate Storm Sewer System (MS4) and to associated storm water management facilities,  
39 which are considered to be an element or array of elements that convey water from or  
40 across land, including, but not limited to, natural elements, roads, parking areas, catch  
41 basins, drainage swales, detention basins and ponds, pipes, conduits, and related structures  
42 that are part of the Post-Construction Storm Water Management Plan for a New  
43 Development or Redevelopment. This ordinance does not apply to any development which  
44 has obtained subdivision approval and begun construction prior to the date this ordinance  
45 becomes effective. Construction shall mean (1) posting of a performance guarantee, (2)  
46 disturbance of soil, and (3) inspection by a town official.

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1  
2 **Sec. 25-2-4. Definitions.** For the purposes of this Ordinance, the following terms shall have  
3 the meanings given herein. All words not defined herein shall carry their customary and  
4 usual meanings.

5  
6 **Applicant:** Any Person with requisite right, title, or interest or an agent for such Person  
7 who has filed an application for New Development or Redevelopment that requires a Post-  
8 Construction Storm Water Management Plan under this Ordinance.

9  
10 **Best Management Practices ("BMP"):** Any schedule of activities, prohibitions of practices,  
11 maintenance procedures, and other management practices to prevent or reduce the  
12 pollution of waters of the State of Maine. BMPs also include treatment requirements,  
13 operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or  
14 waste disposal, or drainage from raw material storage.

15  
16 **Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also  
17 known as the "Clean Water Act"), and any subsequent amendments thereto.

18  
19 **Construction Activity:** Any Construction Activity including one acre or more of Disturbed  
20 Area. Construction Activity also includes activity with less than one acre of total land  
21 Disturbed Area if that area is part of a subdivision that will ultimately disturb an area  
22 equal to or greater than one acre.

23  
24 **Discharge:** Any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or  
25 other addition of Pollutants to Waters of the State.

26  
27 **Direct Discharge:** Any discernible, confined and discrete conveyance, including, but not  
28 limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling  
29 stock, concentrated animal feeding operation or vessel or other floating craft, from which  
30 Pollutants are or may be discharged (Also known as Point Source).

31  
32 **Disturbed Area:** Any clearing, grading, and excavation. Mere cutting of trees, without  
33 grubbing, stump removal, disturbance or exposure of soil is not considered "Disturbed  
34 Area." "Disturbed Area" does not include routine maintenance but does include  
35 Redevelopment. "Routine Maintenance" is maintenance performed to maintain the  
36 original line and grade, hydraulic capacity, and original purpose of land or improvements  
37 thereon.

38  
39 **Enforcement Authority:** The Town Manager or his/her designee who is the person(s) or  
40 department authorized by the Town to administer and enforce this Ordinance.

41  
42 **Town:** The Town of Cape Elizabeth.

43  
44 **Town Permitting Authority:** The Town official or body that has jurisdiction over the land  
45 use approval or permit required for a New Development or Redevelopment.

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

7  
8 **National Pollutant Discharge Elimination Systems (NPDES) Storm Water Discharge**  
9 **Permit:** A permit issued by the United States Environmental Protection Agency ("EPA")  
10 or by the Maine Department of Environmental Protection ("DEP") that authorizes the  
11 Discharge of pollutants to waters of the United States, whether the permit is applicable on  
12 an individual, group, or general area-wide basis.

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13  
14 **New Development:** Any Construction Activity on unimproved Premises and for purposes  
15 of this ordinance includes "Redevelopment" defined below.

16  
17 **Person:** Any individual, firm, corporation, municipality, town, quasi-municipal  
18 Corporation, State or Federal agency, or other legal entity.

19  
20 **Pollutant:** Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse,  
21 effluent, solid waste, sewage sludge, munitions, chemicals, biological or radiological  
22 materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment,  
23 aggregate materials, and industrial, municipal, domestic, commercial or agricultural  
24 wastes of any kind.

25  
26 **Post-Construction Storm Water Management Plan:** BMPs and associated inspection and  
27 maintenance procedures for the Storm Water Runoff System employed by a New  
28 Development or Redevelopment to meet the standards of this Ordinance and approved by  
29 the Town's Permitting Authority.

30  
31 **Premises:** Any building, lot, parcel of land, or portion of land, whether improved or  
32 unimproved, including adjacent sidewalks and parking strips, located within the Town  
33 from which Discharges into the Town Storm Water Runoff System are or may be created,  
34 initiated, originated, or maintained.

35  
36 **Qualified Post-Construction Storm Water Inspector:** A person who conducts  
37 postconstruction inspections of Storm Water Runoff Systems and meets the following  
38 qualification:

39  
40 a. The Inspector shall not have any ownership or financial interest in the property  
41 being inspected nor be an employee or partner of any entity having an ownership or  
42 financial interest in the property, and

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43  
44 b. The Inspector shall also meet the following criteria as approved by the Town's  
45 Enforcement Authority:

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

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

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

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

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

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

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

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

##### **a. General Requirement**

1. Except as provided in Sec. 25-2-3 b. above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Town Permitting Authority for that New Development also determines that the Applicant's Post-

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1 Construction Storm Water Management Plan for the New Development  
2 meets the requirements of this Ordinance.

- 3  
4 2. At the time of application, the Applicant shall notify the Town Permitting  
5 Authority if its Post-Construction Storm Water Management Plan includes  
6 any BMP(s) that will discharge to the Town's MS4 and shall include in this  
7 notification a listing of which BMP(s) will so discharge.

8  
9 **b. Performance Standards**

- 10  
11 1. DEP Chapter 500 Quality and Quantity Standards apply. The Applicant  
12 shall make adequate provisions for the management of the quantity and  
13 quality of all storm water generated by a New Development or  
14 Redevelopment through a Post-Construction Storm Water Management  
15 Plan. This Post-Construction Storm Water Management Plan shall be  
16 designed to meet the standards contained in the Maine Department of  
17 Environmental Protection's most current rules as may be updated or  
18 amended including its Chapters 500 and 502 Rules and shall comply with the  
19 practices described in the manual *Storm Water Management for Maine*,  
20 published by Maine Department of Environmental Protection, latest edition,  
21 which hereby are incorporated by reference pursuant to 30-A M.R.S.A. §  
22 3003.

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

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

- 45  
46 4. Easements and Access. Whenever elements of the Storm Water Runoff

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

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

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

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

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

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

43  
44 3. Annual Reporting to Town. A Qualified Post-Construction Storm Water  
45 Inspector shall provide, on or by August 1 of each year, a completed and  
46 signed certification to the Town Enforcement Authority in a form prescribed

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

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

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

23  
24 c. **Annual Report.** Each year the Town shall include the following in its Annual Report  
25 to the Maine Department of Environmental Protection:

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

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

44  
45 **Sec. 25-2-8. Notice of Violation.** Whenever the Enforcement Authority believes that a  
46 Person has violated this Ordinance of the Post-Construction Storm Water Management

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1 Plan.  
2 the Enforcement Authority may order compliance with this Ordinance or with the Post-  
3 Construction Storm Water Management Plan by written notice of violation to that Person  
4 indicating the nature of the violation and ordering the action necessary to correct it,  
5 including, without limitation:

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

10  
11 b. At the Person's expense, compliance with BMPs required as a condition of approval  
12 of the New Development or Redevelopment, the repair of Storm Water Runoff  
13 Systems 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,  
17 compliance with BMPs, repair of Storm Water Management Facilities and/or  
18 restoration of affected property is required, the notice shall set forth a deadline  
19 within which such abatement, compliance, repair and/or restoration must be  
20 completed.

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

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

43  
44 **Sec. 25-2-11. Appeal of Notice of Violation.** Any Person receiving a Notice of Violation  
45 or suspension notice may appeal the determination of the Enforcement Authority to the  
46 Zoning Board of Appeals. The notice of appeal must be received within 30 days from the

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1 date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on  
2 the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals  
3 may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by  
4 the decision of the Board of Appeals may appeal that decision to the Maine Superior Court  
5 within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine  
6 Rules of Civil Procedure.

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

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

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## Appendix C Road Tree List

The following trees are recommended for planting to meet the road tree requirements. Alternative species may also be acceptable upon approval of the Tree Warden, unless specified by the Planning Board. The list includes the scientific and common tree name, minimum required caliper at the time of planting, expected height at maturity and comments. The comments refer to tree characteristics of water and salt tolerance.

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

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

All trees shall be planted in accordance with the Planting Specifications of the Cape

Elizabeth Comprehensive Street Tree Plan.

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1. The required side and rear yards of nonresidential uses, except agriculture that are located within residential districts or that are on lots that abut a residential district shall be retained in their natural vegetated state to the maximum extent possible to provide a visual screen between different uses. (Effective June 10, 2010)
2. Where natural buffering does not exist, or is not possible to be retained, or is not sufficient to achieve an effective visual screen, the required side and rear yards shall be landscaped to provide a visual screen between different uses. The buffer shall be a minimum of twenty-five (25) feet wide and located between any building and the abutting property line and a minimum of ten (10) feet wide between any parking area or driveway and the abutting property line, and may be interrupted only by a single pedestrian pathway at each abutting property line no more than five (5) feet wide. The buffer shall include, for each one hundred (100) feet of length (or, if less than one hundred [100] feet, the fraction thereof), a minimum of two (2) canopy or evergreen trees, four (4) understory trees, and six (6) shrubs, plus such other plantings as a licensed landscape architect certifies in writing will achieve seventy-five percent (75%) opacity to a height of at least six (6) feet on a year-round basis within three (3) years of planting, or, if solid fencing also is installed in the buffer area, fifty percent (50%) opacity to a height of at least six (6) feet within three (3) years of planting.

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

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

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

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

## H. Utilities

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

## L. Technical and Financial Capacity

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

## N. Landscaping and Buffering

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

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

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

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

Sound Equivalent Level of  
One Minute (Leq 1) (Measured in dB(a) Scale)