

CHAPTER 25

STORM WATER

Article I. Storm water and Non-Storm water Control

Sec. 25-1-1	Purpose	1
Sec. 25-1-2	Applicability	2
Sec. 25-1-3	Definition	2
Sec. 25-1-4	Storm Water Runoff System Design	4
Sec. 25-1-5	System Responsibility	7
Sec. 25-1-6	Non Planning Board reviewed storm water runoff	7
Sec. 25-1-7	Design Adjustment	7
Sec. 25-1-8	Non-Storm Water Regulation	7
Sec. 25-1-9	Enforcement	9
Sec. 25-1-10	Severability	10

Article II. Post Construction Storm water Management

Sec. 25-2-1	Purpose	10
Sec. 25-2-2	Objectives	11
Sec. 25-2-3	Applicability	11
Sec. 25-2-4	Definitions	11
Sec. 25-2-5	Post-Const. Storm Water Management Plan	14
Sec. 25-2-6	Post-Const. Storm Water Management Plan Compliance	16
Sec. 25-2-7	Enforcement	17
Sec. 25-2-8	Notice of Violation	17
Sec. 25-2-9	Penalties/Fines/Injunctive Relief	18
Sec. 25-2-10	Consent Agreement	18
Sec. 25-2-11	Appeal of Notice of Violation	18
Sec. 25-2-12	Enforcement Measures	18
Sec. 25-2-13	Severability	18

Article I. Storm water and Non-storm water Control

Sec. 25-1-1. Purpose.

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

Sec. 25-1-2. Applicability.

The provisions of this chapter shall apply to:

- a. Any proposed activity subject to Planning Board review and involving 43,560 square feet or more of added impervious surface, paving, clearing, or vegetative alterations, or any development requiring Subdivision Review (Chapter 16, Subdivision Ordinance)
- b. Any Discharge of storm water or non-storm water from any premises into the Town Storm Water Runoff System.
- c. All extensions of the storm water runoff system must be constructed to comply with minimum standards developed by the Enforcement Authority.

Sec. 25-1-3. Definitions.

For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

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

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

CFR: Code of Federal Regulations.

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

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

Disturbed area. All land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. "Disturbed area" does not include routine maintenance, but does include re-development and new impervious areas. "Routine maintenance" is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces while maintaining the original line and grade, hydraulic capacity and original purpose of the facility is considered routine maintenance. Cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered "disturbed area." A disturbed area

continues to be considered as a "disturbed area" if it meet the definition of "developed area" or impervious area" following final stabilization.

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

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

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

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

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

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

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

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

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

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

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

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

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

Town: The Town of Cape Elizabeth.

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

Uncontaminated: Free of Pollutants.

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

- a. Applicability. This section shall be applicable to the following development:
 1. Any development involving 43,560 sq. ft. or more of impervious surface and which requires Site Plan (Chapter 19, Zoning Ordinance); and
 2. Any development requiring Subdivision Review_(Chapter 16, Subdivision Ordinance) by the Planning Board.

- b. Submission Requirements. The following information shall be submitted to the Planning Board.
 1. Professional Engineer. Designation of a professional engineer licensed in the State of Maine who will design, sign and stamp the storm water runoff system.
 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.

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

c. Review Standards.

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

Sec. 25-1-5. System Responsibility.

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

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

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

Sec. 25-1-7. Design Adjustment.

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

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

- a. **Objectives.** The objectives of this section are:
 1. To regulate Non-Storm Water Discharges to the Storm Water Runoff 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 System. The Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the Storm Water Runoff System, or to minimize danger to persons, provided, however, that in taking such steps the Enforcement Authority may enter upon the Premises that are the source of the actual or threatened Non-Storm Water Discharge to the Storm Water Runoff System only with the consent of the Premises' owner, occupant or agent, except in an emergency when consent shall not be required.
- e. **Monitoring of Discharges.** In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at reasonable hours with the consent of the Premises' owner, occupant or agent, to inspect the Premises and connections thereon to the Storm Water Runoff System; and to conduct monitoring, sampling and testing of the Discharge to the Storm Water Runoff System.

Sec. 25-1-9. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance.

- a. **Notice of Violation.** Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this

Ordinance by written Notice of Violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

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

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

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

- d. **Appeal of Notice of Violation.** Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Town to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the Notice of Violation. A suspension under Section 18-2-8(d) of this

Ordinance shall remain in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Zoning Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

- e. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- f. **Ultimate Responsibility of Discharger.** The standards set forth in this Ordinance are minimum standards. Compliance with this Ordinance does not ensure that a Person will not have contaminated, polluted or unlawfully discharged Pollutants into waters of the U.S. This Ordinance shall not create liability on the part of the Town, or any officer, agent or employee thereof for any damages that result from a Person's reliance on or compliance with this Ordinance or any administrative decision lawfully made under this Ordinance.

Sec. 25-1-10 Severability.

If any part or parts, section or subsection, sentence, clause or phrase of this Ordinance or the rules and regulations promulgated thereunder is for any reason declared to be unconstitutional or invalid, such declaration shall not affect the validity or constitutionality of the remaining portions of this Ordinance or the rules and regulations promulgated thereunder.

Article II. Post Construction Storm water Management

Sec. 25-2-1. Purpose.

The purpose of this "Post-Construction Storm Water Management Ordinance" (the "Ordinance") is to provide for health, safety, and general welfare of the citizens of the Town of Cape Elizabeth through review and approval of postconstruction storm water management plans and monitoring and enforcement of compliance with such plans as required by Federal and State law. This Ordinance establishes methods for post-construction storm water management in order to comply with minimum control measure requirements of the Federal Clean Water Act, of federal regulations, of Maine's Small Municipal Separate Storm Sewer Systems General Permit, and the Town's Storm Water Program Management Plan. The Town of Cape Elizabeth enacts this Post-Construction Storm Water Management Control Ordinance (the "Ordinance") pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 *et seq.* (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "General Permit for the Discharge of Storm Water

from Small Municipal Separate Storm Sewer Systems," has listed the Town of Cape Elizabeth as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Town's Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 ("Post-construction storm water management in new development and redevelopment").

Sec. 25-2-2. Objectives.

The objectives of this Ordinance are:

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

Sec. 25-2-3. Applicability.

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

Sec. 25-2-4. Definitions.

For the purposes of this Ordinance, the following terms shall have the meanings given herein. All words not defined herein shall carry their customary and usual meanings.

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

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

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

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

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

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

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

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

Town: The Town of Cape Elizabeth.

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

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

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

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

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

Pollutant: Any dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, solid waste, sewage sludge, munitions, chemicals, biological or radiological materials, oil,

petroleum products or by-products, heat, wrecked or discarded equipment, aggregate materials, and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

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

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

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

- a. The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and
- b. The Inspector shall also meet the following criteria as approved by the Town's Enforcement Authority:
 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;

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.

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.

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

b. Performance Standards

1. DEP Chapter 500 Quality and Quantity Standards apply. The Applicant shall make adequate provisions for the management of the quantity and quality of all storm water generated by a New Development or Redevelopment through a Post-Construction Storm Water Management Plan. This Post-Construction Storm Water Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection's most current rules as may be

updated or amended including its Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Storm Water Management for Maine*, published by Maine Department of Environmental Protection, latest edition, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.

2. Use of Onsite or Offsite Treatment Facilities. The Applicant shall meet the quantity and quality standards above either onsite or off-site. Where off-site facilities are used, the Applicant must submit to the Town documentation, approved as to legal sufficiency by the Town's attorney, that the Applicant has a sufficient property interest in the property where the off-site facilities are located – by easement, covenant or other appropriate legal instrument – to ensure that the facilities will be able to provide post-construction storm water management for the New Development or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.
3. Maintenance Agreement Required. Where the Applicant proposes to retain ownership of the Storm Water Management Facilities shown in its Post-Construction Storm Water Management Plan, the Applicant shall submit to the Town documentation, approved as to the legal sufficiency the Town's attorney that the Applicant, its successor, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the Storm Water Management Facilities. Applications for New Development or Redevelopment requiring Storm Water Management Facilities that will not be dedicated to the Town shall enter into a Maintenance Agreement with the Town. A sample of this Maintenance Agreement is available from the Town.
4. Easements and Access. Whenever elements of the Storm Water Runoff System are not within the right-of-way of a public street and the facilities will not be offered to the Town for acceptance as public facilities, the Town Permitting Authority may require that perpetual easements conforming substantially with the lines of existing natural drainage, and providing adequate access for maintenance in a form acceptable to the Town's attorney, shall be provided to the Town allowing access for maintenance, repair, replacement and improvement of the Storm Water Runoff System. When an offer of dedication is required by the Town Permitting Authority, the Applicant shall be responsible for the maintenance of these Storm Water Runoff Systems under this Ordinance until such time (if ever) as they are accepted by the Town.
5. Other Standards and Conflicts. In addition to any other applicable requirements of this Ordinance and the Town's Municipal Code, any New Development or Redevelopment which also requires a storm water management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the Applicant shall document such compliance to the Town Permitting Authority. Where the standards or other provisions of such storm water rules conflict with Town ordinances, the stricter (more protective) standard shall apply.

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

- a. **General Requirements.** Any Person owning, operating, leasing or having control over Storm Water Runoff Systems required by a Post-Construction Storm Water Management Plan approved under this Ordinance shall demonstrate compliance with that Plan as follows:
1. Annual Inspection. A Qualified Post-Construction Storm Water Inspector , shall, at least annually, inspect the Storm Water Runoff Systems, including but not limited to any roads, parking areas, catch basins, drainage swales, detention basins and ponds, pipes, conduits, and related structures, in accordance with all Town and State inspection, cleaning and maintenance requirements of the approved Post-Construction Storm Water Management Plan.
 2. Corrective Actions. If the Storm Water Runoff Systems require maintenance to function as intended by the approved Post-Construction Storm Water Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.
 3. Annual Reporting to Town. A Qualified Post-Construction Storm Water Inspector shall provide, on or by August 1 of each year, a completed and signed certification to the Town Enforcement Authority in a form prescribed by the Town or in a similar form approved by the Town Enforcement Authority, certifying that the Storm Water Runoff Systems have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Storm Water Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Storm Water Runoff Systems. If the Storm Water Runoff Systems require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Storm Water Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.
 4. Fee. In addition, any persons required to file an annual certification under this Sec. 25-2-6 of this Ordinance shall include with the annual certification a fee established by the Town Council in accordance with the Town Fee Schedule. The purpose of this fee is to pay the administrative and technical costs of review of the annual certification.
- b. **Right of Entry.** In order to determine compliance with this Ordinance and with the Post-Construction Storm Water Management Plan, the Town Enforcement Authority may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Storm Water Runoff Systems.
- c. **Annual Report.** Each year the Town shall include the following in its Annual Report to the Maine Department of Environmental Protection:

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

Sec. 25-2-7. Enforcement.

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

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

Whenever the Enforcement Authority believes that a Person has violated this Ordinance of the Post-Construction Storm Water Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Storm Water Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

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

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

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

Sec. 25-2-10. Consent Agreement.

The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Storm Water Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Storm Water Management Plan and of recovering fines, costs and fees without court action.

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

Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of that date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Sec. 25-2-12. Enforcement Measures.

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

Sec. 25-2-13. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.