

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Maureen O'Meara, Town Planner
DATE: August 1, 2007
SUBJECT: Trout Brook Watershed Community Fee Utilization Plan

Introduction

Attached is a proposal to create a local Community Fee Utilization Plan (CFUP) for the Trout Brook Watershed. The watershed has been designated an urban impaired watershed by the Maine DEP. Any development in the watershed that triggers DEP review under the Site Location of Development Law will be subject to Urban impaired watershed standard.

Why establish a fee system?

Establishing a local fee system alleviates the need for developers to seek mitigation projects within the watershed. Because the watershed includes designated local growth areas, additional requirements can create disincentives that contradict local growth management policies. Establishment of a local fee system begins reduces the disincentive to locate in the growth areas.

Relationship to proposed Stormwater Fee

This proposal is a companion piece to the proposed stormwater fee, which would re-establish equilibrium between areas within and outside the urban impaired watershed.

DEP Review required

The CFUP must also be reviewed and approved by the DEP. It has been submitted to them in draft form, but no comments have been received as of this date.

Conclusion

This proposal has been submitted to the Town Council because there is a project in the design stage in the Trout Brook watershed. Town staff have worked with City of South Portland staff on this proposal and continue to solicit comments. The Town is not obligated to adopt a fee system, however, the fee system will begin to counteract how the urban impaired stream policy is contradicting local land use policies.

Draft
Trout Brook
Stormwater Compensation Fee Utilization Plan and Compensation Fund

Purpose: The Town of Cape Elizabeth recognizes that, depending on the alterations proposed, properties in the Trout Brook watershed may be subject to the Urban Impaired Street standard contained in the Maine Department of Environmental Protection (DEP) Rule Chapter 500 Stormwater Management regulations. This standard requires that developers either (1) mitigate any adverse water quality impacts by improving the quality of stormwater runoff at an off-site location or (2) pay into a compensation fund if a Compensation Fee Utilization Plan (CFUP) has been created and approved by the Maine DEP.

A large portion of the mapped Trout Brook Watershed is included in the Town of Cape Elizabeth RB and RC Zoning Districts. The Town's Land Use policies identify RB and RC Districts as growth areas most suitable to accept the modest growth that occurs in the Town of Cape Elizabeth. These policies have been articulated in the Town Comprehensive Plan, which has been deemed consistent with State Comprehensive Planning Goals by the State Planning Office. To allow developers to pay a Compensation Fee in lieu of seeking appropriate off-site mitigation projects, the Town of Cape Elizabeth hereby establishes a Trout Brook Compensation Fund.

Urban Impaired Stream: Trout Brook in Cape Elizabeth and South Portland.

Limits of Area: Attachment 1 shows the area in Cape Elizabeth and South Portland that falls within the boundaries of the Trout Brook (and its tributaries) Watershed that may be subject to the Urban Impaired Street Standard.

Process for Determining the Amount of the Fee to be Paid: The Maine DEP determines the amount of the fee that will be paid into the fund. Any new development or redevelopment project in the Trout Brook Watershed area that triggers the Site Location of Development Regulations will be subject to the Urban Impaired Stream standards (Generally, projects with 3 acres or more of impervious surface or over 20 acres of developed area). For new projects, Maine DEP staff review the proposed project and determine the number of mitigation credits or amount of compensation fee that will apply to the project. The developer may then determine whether they would like to pay the compensation fee, or mitigate offsite. The Maine DEP will determine the amount of compensation paid or amount of off-site mitigation required.

For redevelopment projects, the Maine DEP staff review the proposed project and determine whether water quality will be adversely impacted or not from the new impervious surface. Redevelopment projects that adversely impact water quality will be subject to the standard.

Process for Receiving Compensation Funds: A developer electing to pay into the Trout Brook Watershed Compensation Fund will notify the Planning Department in writing. Upon receiving the compensation fee, the Town will provide the developer with a receipt confirming payment of the fee. The applicant must then submit this receipt to the Department of Environmental Protection before he may receive a permit for the proposed project.

The Town will deposit the funds in the Trout Brook Watershed Compensation Fund. The Fund will accumulate interest at the standard rate applied to all town accounts. The fund and any interest earned may only be used for implementation of projects described in Attachment 2, which are designed to mitigate the effects of stormwater discharges and riparian encroachment on Trout Brook.

Process for implementing proposed compensation work: The Town of Cape Elizabeth will determine when sufficient funds have been collected to begin a project using funds collected in the Trout Brook Watershed Compensation Fund. When proposed projects are located in the City of South Portland, approval from the South Portland City Council will also be required. Projects eligible for funding that are described in Attachment 2 are listed in order of priority. The process for initiating projects will be as follows:

1. When the project is located on private property, town staff will re-contact the property owner(s) to confirm continued interest in completing the project selected. Refinements to the selected project may be made as agreed to by both the Town and the property owner.
2. With input from the property owner(s), and, if necessary, assistance from consultants contracted for the purpose, the Town will develop detailed design plans and specifications for the project.
3. With approval from the property owner, the Town will construct, or contract with a qualified contractor to construct the project.
4. With approval from the property owner, the Town will formalize the plan for long term maintenance of the stormwater Best Management Practices (BMPs) to be installed or implemented on the site. The maintenance plan

will identify the parties responsible for maintenance, a schedule for inspections and regular maintenance, and any penalties for failure to implement the maintenance plan. The maintenance plan will conform to the Maine Stormwater BMP Manual (2005 version).

Authorization and Revisions to Proposed Compensation Work: The CFUP has been developed by the Town and has been approved by the Maine DEP. Any revisions of the CFUP by the Town will require review and approval by the Maine DEP.

Reference Materials:

- Trout Brook Stream Habitat Walk Report 2005
- Urban Streams Nonpoint Source Assessments in Maine, 2005, Suzanne Meidel
- Trout Brook Watershed Survey Report 2003
- Draft Trout Brook TMDL Summary Fact Sheet
- Draft Trout Brook TMDL Report 2005, Suzanne Meidel
- The Legal and Policy Implications of the TMDL Listing of Trout Brook in South Portland and Cape Elizabeth 2005, Julie Franklin
- Chapter 502 Rule, Urban Impaired Streams

Attachment 1
Trout Brook Watershed

Attachment 2
Trout Brook Watershed CFUP
List of Projects

1. Data Collection

Description: Most of the data collected in the Trout Brook Watershed is for the portion of the watershed located in South Portland. Most of the watershed located in South Portland is developed and much of the watershed located in Cape Elizabeth is not developed. In order to maximize the effectiveness of watershed protection efforts in Cape Elizabeth, additional data collection should be conducted. For example, the Urban Streams Report notes that testing for pesticides and herbicides near the Maxwell Farm has not been conducted although the report recommends that actions to reduce runoff from the farm be undertaken.

Property Owner: Dependent on testing sites selected.

Estimated Cost of Project: \$20,000

2. Riparian Buffer restoration

Description: The Urban Streams Report and the Trout Brook Survey both note the lack of riparian buffer along portions of the brook. In many cases, residential lawns extend to the edge of the brook. Educational materials will be developed and mailed to all abutters to the brook explaining the benefits of establishing native vegetation along the brook, avoiding spills, eliminating dumping and illicit discharges into the brook. Depending on funding available, willing abutters will be offered funding for plantings and volunteers to install a buffer along the brook. Agreements with abutters for long-term maintenance of buffers will be pursued. (See Attachment3 for email from the South Portland Land Trust indicating willingness to install buffers in South Portland.)

Property owners: All abutters to Trout Brook

Estimated Cost of Project: \$40,000+

3. Stormwater Outfall Erosion Control

Description: The Urban Streams Report identifies four locations where stormwater outfalls may create erosion of the brook. These locations include Norman Street, Providence Ave/Marsh Rd, above Highland Ave, below

Broadway, all in South Portland, and State Ave/Queen Acres in Cape Elizabeth. The project would evaluate these locations for erosion and design application of BMPs and fund construction. Emphasis would be on installing BMPs within rights-of-way and/or drainage easements currently held by the Town of Cape Elizabeth and City of South Portland although individual applications may require obtaining permission/rights on private property. BMP's that address treatment for quality in addition to quantity will be emphasized to assist in reducing toxic contributions.

Property Owners: City of South Portland, Town of Cape Elizabeth, potentially others

Estimated Cost of Project: \$192,000

4. Sinuosity Restoration

Description: From the Urban Streams Report, "the previously channelized section below Highland Ave where aggradation is occurring may be a good candidate for having some of its sinuosity restored by installing double wind deflectors in the stream, vegetating the bars formed by accumulating sediment, or infilling behind crib walls. Because this section of the stream was channelized many years ago (likely before 1964, Field 2003), the stream has had time to adjust to the alteration, and it is now approaching a new equilibrium condition. As a result little future change should be expected, and a restoration project should be successful if no significant changes in the dominant peak discharge occur. Because of the highly complex nature of fluvial geomorphology, any restoration activity will require the extensive involvement of a trained professional." (p. 50-51, see Attachment 4 for sketch)

Property Owners: See Attachment 5 for list of abutters provided by the South Portland Planning Office

Estimated Cost of Project: \$302,400

5. Street Sweeping Upgrade

Description: The Urban Streams Report recommends street sweeping where a vacuum or regenerative air system is used to maximize the pick-up of fines that hold the greatest toxicant load. The Town would purchase this sweeper and also explore a program to sweep private properties for a fee to cover labor costs.

Property Owner: The Town of Cape Elizabeth would own the sweeper or would partner for joint purchase with the City of South Portland.

Estimated Cost: \$425,000

6. Road stormwater runoff treatment

Description: Stormwater runoff entering Trout Brook often carries with it sediment, metals, toxics and water volume that impairs the health of the brook. Intercepting this stormwater and treating it can remove these stressors before the stormwater eventually enters the brook. This project would be a study by municipal engineers that inventory all road stormwater discharge points to Trout Brook and then design treatment using Stormwater BMPs.

Property Owners: City of South Portland, Town of Cape Elizabeth, potentially others

Estimated Cost: \$1,883,000