

Article _____ Shall ordinances entitled “Chapter 35, Post-Construction Stormwater Management”, “Amendments to Chapter 31, Non-Stormwater Discharges” and “Amendments to Chapter 1, General Provisions” of the Municipal Code of Ordinances of the Town of Eliot, Maine to address stormwater runoff from construction sites disturbing more than one acre dated _____ be enacted? The Amendment will:

- Require review and approval of post-construction stormwater management plans and monitoring and enforcement of compliance with such plan as required by federal and State law.
- Establish methods for post construction stormwater management in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations, and of Maine’s Small Municipal Separate Storm Sewer Systems General Permit.
- Relocate definitions previously located in Chapter 31 to Chapter 1.

- ❑ A complete copy of the text is available for review at the Town Hall.
- ❑ This change was drafted by an attorney for the Maine Municipal Association.

Chapter 35, Post-Construction Stormwater Management, Amendments to Chapter 31, Non-Stormwater Discharges and Amendments to Chapter 1, General Provisions of the Municipal Code of Ordinances of the Town of Eliot, Maine to address stormwater runoff from construction sites disturbing more than one acre.

**Amend Sec. 1-2 as by adding the following definitions:
Sec. 1-2. Definitions and rules of construction.**

Applicant (Chapter 35) means a Person with requisite right, title or interest or an agent for such Person who has filed an application for Development that requires a Post-Construction Stormwater Management Plan under this Ordinance.

Best Management Practices or “BMPs”(Chapter 35) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. 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 (Chapters 31 and 35) means 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.

Direct discharge or point source (Chapter 31) means 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.

Discharge (Chapters 31 and 35) means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.”

Disturbed Area is 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.

Enforcement authority (Chapter 31) means the person(s) or department authorized under section 31-4 to administer and enforce ~~this~~ *the* chapter.

Exempt person or discharge (Chapter 31) means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a general permit for the discharge of stormwater from state or federally owned authority municipal separate storm sewer system facilities; and any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

Industrial activity (Chapter 31) means activity or activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipality means the Town of Eliot.

Municipal Permitting Authority means the municipal official or body that has jurisdiction over the land use approval or permit required for a Development.

Municipal Separate Storm Sewer System or “MS4” (Chapter 31 and 35) means 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 surface waters of the State.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit (Chapters 31 and 35) means a permit issued by the EPA or by the 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 means any Construction Activity on unimproved Premises.

Non-stormwater discharge (Chapter 31) means any discharge to an MS4 that is not composed entirely of stormwater.

Pollutant (Chapters 31 and 35) means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Stormwater Management Plan (Chapter 35) means BMPs and Stormwater Management Facilities employed by a Development to meet the standards of Chapter 35 and approved by the Planning Board.

Premises (Chapters 31 and 35) means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

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

Regulated Small MS4 (Chapters 31 and 35) means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater 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 an UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

Routine maintenance (Chapter 35) is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Small Municipal Separate Storm Sewer System, or "Small MS4" (Chapters 31 and 35) means any MS4 that is not already covered by the Phase I MS4 stormwater 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 Drainage System (Chapters 31 and 35) means the Municipality's Regulated Small MS4 and any of the unregulated small MS4.

Stormwater means any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "Storm Water."

Stormwater Management Facilities (Chapter 35) means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a Development.

Urbanized area ("UA") (Chapter 35) means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.

Waters of the State means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, 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, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

Amend Section 31-3 by deleting the following definitions:

(Note: Definitions have been relocated to Section 1-2. Definitions and rules of construction Sec. 31-3. Definitions)

~~Clean Water Act means 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.~~

~~Discharge means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state."~~

~~Direct discharge or point source means 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.~~

~~Enforcement authority means the person(s) or department authorized under section 31-4 to administer and enforce this chapter.~~

~~Exempt person or discharge means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a general permit for the discharge of stormwater from state or federally owned authority municipal separate storm sewer system facilities; and any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").~~

~~Industrial activity means activity or activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).~~

~~Municipality means the Town of Eliot.~~

~~Municipal separate storm sewer system, or MS4 means conveyances for stormwater, 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 surface waters of the state.~~

~~National pollutant discharge elimination system (NPDES) stormwater discharge permit means a permit issued by the EPA or by the 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.~~

~~Non-stormwater discharge means any discharge to an MS4 that is not composed entirely of stormwater.~~

~~Person means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of stormwater or a non-stormwater discharge.~~

~~Pollutant means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.~~

~~Premises means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.~~

~~Regulated small MS4 means any small MS4 regulated by the State of Maine "General permit for the discharge of stormwater from small municipal separate storm sewer systems" dated June 3, 2003 ("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 means any MS4 that is not already covered by the Phase I MS4 stormwater 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 drainage system means the municipality's regulated small MS4.~~

~~Stormwater means any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "storm water" has the same meaning as "stormwater."~~

~~Urbanized area ("UA") means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of the Census.~~

Add the following chapter:

Chapter 35. Post-Construction Stormwater Management

Section 35-1. Purpose.

The purpose of this "Post-Construction Stormwater Management Ordinance" (the "Ordinance") is to provide for the health, safety, and general welfare of the citizens of the Town of Eliot through review and approval of post-construction stormwater 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 stormwater management in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit.

Section 35-2. Objectives

This Ordinance seeks to meet the above purpose through the following objectives:

- A. Reduce the impact of post-construction discharge of stormwater on waters of the state; and

- B. Reduce stormwater 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 (MEDEP) pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

Section 35-3. Applicability.

A. In General. This Ordinance applies to:

1. Development or Redevelopment that disturbs more than one acre of land within the Municipality; and
2. Development that disturbs less than one acre if the development is part of a larger common plan of development or sale.

Section 35-4. Post-Construction Stormwater Management Plan Approval

A. General Requirement. No Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for Development to which this Ordinance is applicable shall receive such permit or approval for that Development unless the Municipal Permitting Authority for that Development also determines that the Applicant's Post-Construction Stormwater Management Plan for that Development meets the requirements of this Ordinance.

B. Performance Standards

1. The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the Development through a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the MEDEP's Chapters 500 and 502 Rules and shall comply with the practices described in the manual *Stormwater Management for Maine*, published by the MEDEP, January 2006, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.
2. The Applicant may meet the quantity and quality design standards of Chapter 500 and Chapter 502 MEDEP Rules above either on-site or off-site, but where off-site facilities are used, the applicant must submit to the Municipality documentation approved as to legal sufficiency by the Municipality'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 stormwater management for the Development and that the property interest will not be altered in a way that interferes with the off-site facilities.
3. Where the Applicant proposes to retain ownership of the Stormwater Management Facilities shown in its Post-Construction Stormwater Management Plan, the Applicant shall submit to the Municipality documentation, approved as to legal sufficiency by the Municipality's

attorney that the Applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the stormwater management facilities. Applications for Development requiring Stormwater Management Facilities that will not be dedicated to the Municipality shall enter into a Maintenance Agreement with the Municipality. A sample of this Maintenance Agreement is attached as Appendix 1 to this Ordinance.

4. Whenever elements of the Stormwater Management Facilities are not within the right-of-way of a public street and the facilities will not be offered to the Municipality for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, containing facilities necessary for post-construction stormwater management as approved by the municipal permitting authority and in a form acceptable to the Municipality's attorney, shall be provided to the Municipality allowing access for maintenance, repair, replacement and improvement of the Stormwater Management Facilities. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of these Stormwater Management Facilities under this Ordinance until such time (if ever) as they are accepted by the Municipality.

5. In addition to any other applicable requirements of this Ordinance and the Municipality's Municipal Code of Ordinances, any Development which also requires a stormwater management permit from the MEDEP 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 Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

6. In addition, any persons required to enter into a maintenance agreement under this section of this Ordinance will be inspected annually by the Town's Code Enforcement officer or as designated by the Board of Selectmen, and shall pay an annual fee to cover the inspection. The amount of the initial fee is included in the project application fees. The party to the Maintenance Agreement shall receive notices annually thereafter of the amount of the inspection fee.

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

Section 35-5. Post-Construction Stormwater Management Plan Compliance

A. General Requirements. Any Person owning, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan under this Ordinance shall demonstrate compliance with that Plan as follows.

1. That Person shall, at least annually, clean and maintain the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state

inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.

2. That Person shall repair any deficiencies found during the Town's inspection of the Stormwater Management Facilities.

B. Right of Entry. In order to determine compliance with this Ordinance and with the Post-Construction Stormwater Management Plan and to conduct annual inspections, the Code Enforcement Officer or Town designee may enter upon property at reasonable hours with the consent of the owner, occupant or agent to inspect the Stormwater Management Facilities.

Section 35-6. 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 Stormwater Management Plan. Whenever the Code Enforcement Officer believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Code Enforcement Officer may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

A. Notice of Violation. Whenever the Code Enforcement Officer believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Code Enforcement Officer may order compliance with this Ordinance or with the Post-Construction Stormwater 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:

1. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;
2. At the Person's expense, compliance with BMPs required as a condition of approval of the Development, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
3. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater 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.

B. Penalties/Fines/Injunctive Relief. Any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality'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 or the Post-Construction Stormwater 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 Municipality for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance or the Post-Construction Stormwater Management Plan; this

responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

C. Consent Agreement. The Municipal Officers may 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 Stormwater Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Stormwater Management Plan 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 Code Enforcement Officer to the Board of Appeals in accordance with Chapter 45 Article II of the Eliot Code.

E. Enforcement Measures. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation the municipal officers, upon notice from the code enforcement officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and imposition of fines, that may be appropriate or necessary to enforce the provisions of this chapter in the name of the town.

Section 35-7. 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.

Section 35-8. Basis.

The Town of Eliot enacts this “Post-Construction Stormwater 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 Stormwater from Small Municipal Separate Storm Sewer Systems,” has listed the Town of Eliot 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 Municipality’s Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 (“Post-construction stormwater management in Development”).

Background and rationale for Chapter 35, Post-Construction Stormwater Management”, “Amendments to Chapter 31, Non-Stormwater Discharges” and “Amendments to Chapter 1, General Provisions” of the Municipal Code of Ordinances of the Town of Eliot, Maine to address stormwater runoff from construction sites disturbing more than one acre.

The Town of Eliot became subject to the Maine Pollution Discharge Elimination System (MPDES) program in March 2003 because the town operates a Municipal Separate Storm Sewer System (MS4) in an urbanized area as defined by the 2000 US Census. The Maine Department of Environmental Protection (MEDEP) is the delegated authority to issue permits, administer, and enforce the USEPA Clean Water Act permitting program in Maine. The MEDEP issued a single General Permit that requires all 28 MS4 communities in Maine to comply with the same set of requirements.

The first General Permit that the Maine MS4s were subject to became effective in 2003 and expired in 2008. The Town of Eliot is currently subject to the General Permit that became effective on July 1, 2008 and will expire on June 30, 2013.

The General permit requires that each community address six Minimum Control Measures including public education and outreach on stormwater impacts, public involvement and participation, illicit discharge detection and elimination, construction site stormwater runoff control, post-construction stormwater management in new development and redevelopment, and pollution prevention/good housekeeping for municipal operations.

Under the post-construction stormwater management Minimum Control Measure it is required that:

“i. Each permittee shall develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharges into the MS4. This program shall ensure that controls are in place that will prevent or minimize water quality impacts.

ii. To ensure adequate long-term operation and maintenance of post-construction Best Management Practices (BMPs), each permittee shall implement an ordinance or similar measure approved by the Department no later than June 20, 2009.”

This ordinance or similar measure must stipulate that the owner or operator of a post construction BMP...provide the permittee with an annual report documenting that the BMP is adequately maintained and is functioning as intended or requires maintenance. If the post-construction BMP requires maintenance, the owner or operator shall provide a record of the deficiency and corrective action(s) taken to the permittee...”