



MEMORANDUM

TO: Caroline Pelletier, Town Planner, and Interim Town Manager
FROM: Adam S. Bliss, P.E., Town Engineer
DATE: September 13, 2023
SUBJECT: Zoning and Subdivision Ordinance Revisions

This memorandum provides materials for Town Council review related to Zoning, Subdivision, Chapter 27, and Chapter 53 Ordinance revisions required under the General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s). The MS4 General Permit is a Maine DEP-regulated stormwater discharge permit that requires municipalities to address stormwater runoff from construction and post-construction sites and several other measures. The Town has been regulated by this General Permit since 2003, with the most recent revisions effective July 2022.

The proposed Ordinance revisions recommended for adoption relate to stormwater discharges and Erosion and Sediment Control (ESC) standards. The 2022 MS4 General Permit requires the Town to inspect any proposed development that disturbs one or more acres of land discharging stormwater runoff into the Town's Urbanized Area. Town staff also recommend reducing the threshold to projects greater than 5,000 square feet applicable to all areas of Town. The purpose of the reduced threshold is as follows.

Erosion and Sediment Control Plans are currently at the discretion of the Project Review Board for Major Subdivisions only. No standard is currently set for minor subdivisions or projects requiring site plan review. The reduced threshold is current industry practice and is consistent with other municipalities. Further, Freeport is unique with its streams and wetlands, steep gullies, and erosive soils: these resources should be protected to the maximum extent possible without restricting development opportunities. Staff have provided language in the revisions that guide contractors through ESC Plan development. Most contractors are already certified in Erosion Control Practices through the Maine DEP, so the Town's standard should not be detrimental to development.

The proposed Zoning, Subdivision, Chapter 27, and Chapter 53 changes are summarized in the lists below.

Zoning Ordinance

- ◆ Adopt by reference the Maine DEP stormwater standards in Section 529.4, Stormwater Management;
- ◆ Add ESC Plan requirement to Section 602.D, Site Plan Submission Requirements;
- ◆ Add ESC standards to Section 602.F.1.m, Criteria and Standards.

Subdivision Ordinance

- ◆ Clarify “Disturbed Area” in 3.2, Definitions;
- ◆ Revise name and date of the Stormwater Management Design Manual for consistency with Maine DEP in 3.2, Definitions; in 11.16.B.1, Performance Standards; in 11.16.C.1, Design Guidelines; and in Appendix E;
- ◆ Add ESC Plan requirements to Appendices D and F;
- ◆ Remove the Stormwater Maintenance Agreement from the Subdivision Ordinance and use it as a standalone document, per the Town Attorney's recommendation;
- ◆ Add a 60-day maintenance repair timeline to the Stormwater Maintenance Agreement.

Chapter 27 Non-Storm Water Discharge Ordinance

- ◆ Require timely removal of non-stormwater discharges from the Town’s separated storm drain system;
- ◆ Revise Small MS4 definition;
- ◆ Revise Urbanized Area definition;
- ◆ Add a 60-day maintenance repair timeline;
- ◆ Establish an alternative deadline when the 60-day maintenance repair is not possible;
- ◆ Remove reference to 2003 General Permit.

Chapter 53 Post Construction Stormwater Management Ordinance

- ◆ Require timely maintenance of private stormwater infrastructure after construction and updating schedules for enforcement
- ◆ Revise Qualified Post Construction Stormwater Inspector definition
- ◆ Add a 60-day maintenance repair timeline;
- ◆ Establish an alternative deadline when the 60-day maintenance repair is not possible;
- ◆ Update Appendix 1 for consistency with the changes in Chapter 53 above.

I look forward to meeting with the Town Council on September 19 and appreciate placing these Ordinance revisions on the agenda.

CHAPTER 27

Non-Storm Water Discharge Ordinance

TOWN OF FREEPORT

Section 27-101 Purpose/Objectives.

A. Purpose. The purpose of this Non-Storm Water Discharge Ordinance (the “Ordinance”) is to provide for the health, safety, and general welfare of the citizens of the Town of Freeport through the regulation of Non-Storm Water Discharges to the Municipality’s Storm Drainage System as required by federal and State law. This Ordinance establishes methods for controlling the introduction of Pollutants into the Town’s Storm Drainage System in order to comply with requirements of the federal Clean Water Act and State law.

B. Objectives. The objectives of this Ordinance are:

1. To prohibit un-permitted or un-allowed Non-Storm Water Discharges to the Storm Drainage 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.

Section 27-102 Definitions.

For the purposes of this Ordinance, the terms listed below are defined as follows:

A. Clean Water Act. “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.

B. Discharge. “Discharge” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.”

C. Direct Discharge. “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.

D. Enforcement Authority. “Enforcement Authority” means the person(s) or department authorized under Section 4 of this Ordinance to administer and enforce this Ordinance.

E. Exempt Person or Discharge. “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-Storm Water 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”).

F. Industrial Activity. “Industrial Activity” means activity or activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

G. Municipality. “Municipality” means the Town of Freeport.

H. Municipal Separate Storm Sewer System, or MS4. “Municipal Separate Storm Sewer System” or “MS4,” 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.

I. National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. “National Pollutant Discharge Elimination System (NPDES) Storm Water 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.

J. Non-Storm Water Discharge. “Non-Storm Water Discharge” means any Discharge to an MS4 that is not composed entirely of Storm Water.

K. Person. “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 Storm Water or a Non-Storm Water Discharge.

L. Pollutant. “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.

M. Premises. “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.

N. Regulated Small MS4. “Regulated Small MS4” means any Small MS4 ~~regulated~~ authorized by the most recent in force 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.

O. Small Municipal Separate Storm Sewer System, or Small MS4. “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.

P. Storm Drainage System. “Storm Drainage System” means the Municipality’s Regulated Small MS4.

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

R. Urbanized Area (“UA”). “Urbanized Area” or “UA” means the areas of the State of Maine so defined by inclusive sum of the ~~latest decennial (2000)~~ decennial census and the 2010 decennial census by the U.S. Bureau of the Census.

Section 27-103 Applicability.

This Ordinance shall apply to all Persons discharging Storm Water and/or Non-Storm Water Discharges from any Premises into the Storm Drainage System.

Section 27-104 Responsibility for Administration.

The Codes Enforcement Officer of the Town of Freeport is the Enforcement Authority who shall administer, implement, and enforce the provisions of this Ordinance.

Section 27-105 Prohibition of Non-Storm Water Discharges.

A. General Prohibition. Except as allowed or exempted herein, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Drainage System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that

the Municipality may have approved the connections, drains or conveyances by which a Person Discharges un-allowed Non-Storm Water Discharges to the Storm Drainage System.

B. Allowed Non-Storm Water Discharges. The creation, initiation, origination and maintenance of the following Non-Storm Water Discharges to the Storm Drainage System is 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; lawn watering runoff; 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); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing;
2. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and
3. Dye testing, with verbal notification to the Enforcement Authority prior to the time of the test.

C. Exempt Person or Discharge. This Ordinance shall not apply to an Exempt Person or Discharge, except that the Enforcement Authority may request from Exempt Persons and Persons with Exempt Discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the Discharge(s).

27-106 Suspension of Access to the Municipality’s Small MS4.

The Enforcement Authority may, without prior notice, physically suspend Discharge access to the Storm Drainage System to a Person when such suspension is necessary to stop an actual or threatened Non-Storm Water Discharge to the Storm Drainage System which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Storm Drainage System, or which may cause the Municipality 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 Discharges to the Storm Drainage System. If the Person fails to comply with a suspension order issued in an emergency, the Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the Storm Drainage System, or to minimize danger to persons. In taking such steps the

Enforcement Authority may enter upon the property of the Premises at reasonable hours or a building on the Premises with the consent of owner, occupant or agent.

Section 27-107 Monitoring of Discharges.

In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and inspect the property of the Premises subject to this Ordinance at reasonable hours or any building on the Premises with the consent of the Premises' owner, occupant or agent: to inspect the Premises and connections thereon to the Storm Drainage System; and to conduct monitoring, sampling and testing of the Discharge to the Storm Drainage System.

Section 27-108 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. Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

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 Drainage System within 60 days of identification of the source, including, but not limited to, disconnection of the Premises from the MS4;
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 Drainage System and the restoration of any affected property; and/or
4. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.
5. If abatement of a violation and/or restoration of affected property is required, of if the elimination of the Non-storm water discharge is not possible within 60 days of identification, 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 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 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; this responsibility shall be in addition to any 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 Enforcement Authority to the Board of Appeals in accordance with the applicable provisions of the Freeport Zoning Ordinance. 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 suspension under Section 6 of this Ordinance remains in place unless or until lifted by the Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the 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 recommend to the municipal officers that the municipality's attorney 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 herein are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor unauthorized discharge of Pollutants into waters of the U.S. caused by said Person. This Ordinance shall not create liability on the part of the Municipality, or any officer agent or employee thereof for any damages that result from any Person's reliance on this Ordinance or any administrative decision lawfully made hereunder.

Section 27-109 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 27-110 Basis.

The Town of Freeport enacts this Non-Storm Water Discharge 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” ~~dated June 3, 2003~~, has listed the Town of Freeport 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.

Post-Construction Stormwater Management Ordinance Chapter 53

Section 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 Freeport through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations, and of Maine’s General Permit for Small Municipal Separate Storm Sewer Systems.

Section 2. Objectives

This Ordinance seeks to ensure that post-construction stormwater management plans are followed, and stormwater management facilities are properly maintained and pose no threat to public safety.

Section 3. Definitions.

For the purposes of this Ordinance, the terms listed below are defined as follows:

A. Applicant. "Applicant" means a 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 Stormwater Management Plan under this Ordinance.

B. Best Management Practices (“BMP”). “Best Management Practices” or “BMPs” 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.

C. Clean Water Act. “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.

D. Construction Activity. “Construction Activity” means construction with one acre or more of Disturbed Area; or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately have Disturbed Area equal to or greater than one acre; or 20,000 square feet or more of Impervious Area in the watershed of an urban impaired stream as listed in Chapter 502, Appendix B in the Rules of the Maine Department of Environmental Protection, as amended from time to time.

E. Discharge. “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.

F. Disturbed Area. “Disturbed Area” is surface area proposed for 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.

G. Enforcement Authority. “Enforcement Authority” means the Codes Enforcement Officer, with the support of the Town Engineer, who are both authorized by the Municipality to administer and enforce this Ordinance.

H. Impervious Area. “Impervious Area” means the total area of the Premises 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 areas that will be compacted through design or use to reduce their permeability.

I. Municipality. “Municipality” means the Town of Freeport.

J. Municipal Permitting Authority. “Municipal Permitting Authority” means the municipal official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment, now the Project Review Board.

K. Municipal Separate Storm Sewer System, or MS4. “Municipal Separate Storm Sewer System” or “MS4,” 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) 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.

L. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. “National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” means a permit issued by the U.S. 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.

M. New Development. “New Development” means any Construction Activity on unimproved Premises.

M. Person. “Person” means any individual, firm, corporation, municipality, quasi-municipal corporation, State agency or Federal agency or other legal entity.

O. Pollutant. “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.

P. Post-Construction Stormwater Management Plan. “Post-Construction Stormwater Management Plan” means BMPs and associated inspection and maintenance procedures for the Stormwater Management Facilities employed by a New Development or Redevelopment to meet the stormwater standards of the Municipality’s subdivision, site plan, or other zoning, planning or other land use ordinances, and approved by the Municipal Permitting Authority.

Q. Premises. “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 Urbanized Area in Freeport

R. Qualified Post-Construction Stormwater Inspector. “Qualified Post-Construction Stormwater Inspector” means a person who conducts post-construction inspections of Stormwater Management Facilities and meets the following qualifications:

1. The inspector must 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
2. The inspector must be on the list of approved post-construction stormwater inspectors maintained by the Town Engineer, who shall approve such inspectors only if they meet the following criteria:
 - a. Have a college degree in an environmental science or civil engineering, or comparable expertise, or has received a Certification in Inspection and Maintenance of Stormwater BMPs from the Maine DEP,
 - b. Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and
 - c. Have the ability to determine if stormwater facilities are performing as intended.

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

T. Regulated Small MS4. “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” effective July 1, 2008 (“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.

U. Small Municipal Separate Storm Sewer System, or Small MS4. “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.

V. Storm Drainage System. “Storm Drainage System” means the Municipality’s Regulated Small MS4.

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

X. Stormwater Management Facilities. “Stormwater Management Facilities” 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 New Development or Redevelopment.

Y. Urbanized Area (“UA”). “Urbanized Area” or “UA” means the areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

Section 4. Applicability.

A. In General. This Ordinance applies to all New Development and Redevelopment within the Urbanized Area and to associated Stormwater Management Facilities.

B. Exception. This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its Post-Construction Stormwater Management Plan and Stormwater Management Facilities under the Municipality’s subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel shall not require additional review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

Section 5. Post-Construction Stormwater Management Plan Approval

A. General Requirement. Notwithstanding any ordinance provision to the contrary, and except as provided in Section 4.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 Applicant also receives approval under the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances for its Post-Construction Stormwater Management Plan and Stormwater Management Facilities for

that New Development or Redevelopment, even if the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances would not otherwise apply.

B. Notice of BMP Discharge to Municipality’s MS4. At the time of application 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, 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 6. Post-Construction Stormwater Management Plan Compliance

A. General Requirements. Any Person owning, operating, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan approved under the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances shall comply with that plan and demonstrate compliance with that Plan as follows.

1. That Person shall employ a Qualified Post-Construction Stormwater Inspector to, at least annually, inspect 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. If the Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies: within 60 days of identification of the deficiency. If 60 days is not possible, then the person shall propose an alternate expeditious schedule to complete the maintenance, which if approved by the Enforcement Authority must be met.

3. That Person shall employ a Qualified Post-Construction Stormwater Inspector to provide, on or by May 31 of each year, a a copy of the annual inspection and completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 1 to this Ordinance, certifying that the Stormwater Management Facilities have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Stormwater Management Facilities and, if the Stormwater Management Facilities require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Stormwater Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken. If any deficiencies are still outstanding when the certification is submitted in accordance with paragraph 2 of this section, that person or a qualified post construction stormwater inspector shall provide documentation of completion of the maintenance within 30 days of completion.

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

C. Annual Report. Beginning July 1, 2009 and each year thereafter, the Municipality shall include the following in its Annual Report to the Maine Department of Environmental Protection:

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

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

A. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority 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 New Development or Redevelopment, 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 of 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 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 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 Enforcement Authority to the Board of Appeals in accordance with the applicable provisions of the Freeport Zoning Ordinance. 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 the date of the 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 recommend to the municipal officers that the municipality’s attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

Section 8. 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 9. Basis.

The Town of Freeport enacts this “Post-Construction Stormwater Management 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 Freeport 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 for ~~required by Part IV-D-5~~ (“Post-construction stormwater management in new development and redevelopment”).

Enacted this 2nd day of June, 2009.

Effective Date: June 2, 2009.

DRAFT

APPENDIX 1

**Annual Stormwater Management Facilities Certification
(to be sent to Municipal Enforcement Authority)**

I, _____ (print or type name), certify the following:

1. I am making this Annual Stormwater Management Facilities Certification for the following property: _____
(print or type name of subdivision, condominium or other development) located at _____
_____ (print or type address), (the “Property”);

2. The owner, operator, tenant, lessee or homeowners’ association of the Property is: _____
(name(s) of owner, operator, tenant, lessee, homeowners’ association or other party having control over the Property);

3. I am a Qualified Post-Construction Stormwater Inspector (as defined by the Freeport Post-Construction Stormwater Management Ordinance, and) hired by the owner, operator, tenant, lessee or homeowners’ association of the Property (circle one);

5. On _____, 20__, I inspected the Stormwater Management Facilities, including but not limited to parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures required by the approved Post-Construction Stormwater Management Plan for the Property; and I have attached a copy of my inspection report;

6. At the time of my inspection of the Stormwater Management Facilities on the Property, (check one and complete any required information):

- a. The Stormwater Management Facilities were adequately maintained and functioning as intended, or
- b. The Stormwater Management Facilities required maintenance, which was completed within the required 60-day time period, and were functioning as intended after maintenance was completed, or
- c. The Stormwater Management Facilities required maintenance which was not completed within the required 60-day time period. (Attach additional sheets as necessary to describe the maintenance required, proposed schedule for completion, and an appropriate contact person. The Town will contact them to confirm or adjust the schedule to complete the maintenance and any needed further course of action. You will be required to show proof of final maintenance.)

~~I identified the following need(s) for routine maintenance or deficiencies in the Stormwater Management Facilities:~~

~~7. On _____, 20____, the owner, operator, tenant, lessee or homeowners' association of the Property took or had taken the following routine maintenance or the following corrective action(s) to address the deficiencies in the Stormwater Management Facilities stated in 6. above:~~

~~8. As of the date of this certification, the Stormwater Management Facilities are functioning as intended by the approved Post-Construction Stormwater Management Plan for the Property.~~

Date: _____, 20____.

By: _____
Signature of Qualified Post Construction Inspector

Print Name

~~STATE OF MAINE~~

~~_____, ss. _____, 20____~~

~~Personally appeared the above named _____, the _____ of _____, and acknowledged the foregoing Annual Certification to be said person's free act and deed in said capacity.~~

~~Before me,~~

Notary Public/Attorney at Law

Print Name: _____

Mail this certification to the Municipal Enforcement Authority at the following address:

Town Engineer
Freeport Municipal Building
30 Main Street
Freeport, ME 04032

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