

## STORM WATER ORDINANCE

Adopted by Town Council  
March 1, 2011

Amended September 5, 2023

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## **CHAPTER 1**

### **NON-STORM WATER DISCHARGE**

#### **Section 1. Purpose/Objectives.**

**1.1. 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 Gorham 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 of Gorham's Storm Drainage System in order to comply with requirements of the federal Clean Water Act and State law.

**1.2. Objectives.** The objectives of this Ordinance are:

- a. To prohibit unpermitted or unallowed Non-Storm Water Discharges to the Storm Drainage System; and
- b. 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 2. Definitions.**

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

**2.1. 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.

**2.2. 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.

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

**2.4. 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”).

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

2.6. Municipality. Municipality means the Town of Gorham.

2.7. 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.

2.8. 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.

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

2.10. 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.

2.11. 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.

2.12. 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 in Storm Drainage System are or may be created, initiated, originated or maintained.

2.13. 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 dated June 3,2003 (General Permit), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4 located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4S.

2.14. 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.

**2.15. Storm Drainage System.** Storm Drainage System means the Municipality's Regulated Small MS4.

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

**2.17. 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 3.     **Applicability.****

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

### **Section 4.     **Responsibility for Administration.****

**4.1** The Code Enforcement Officer, Assistant Code Enforcement Officer, and any employee designated by the Town Manager is the Enforcement Authority who shall administer, implement, and enforce the provisions of this Ordinance.

### **Section 5.     **Prohibition of Non-Storm Water Discharges.****

**5.1. 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 unallowed Non-Storm Water Discharges to the Storm Drainage System.

**5.2. 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:

**a.** 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;

- b. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and
- c. Dye testing, with verbal notification to the Enforcement Authority prior to the time of the test.

**5.3. 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).

## **Section 6. Suspension of Access to the Municipality's Small MS4.**

**6.1** 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, 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 Drainage System only with the consent of the Premises' owner, occupant or agent.

## **Section 7. Monitoring of Discharges.**

**7.1** 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 Drainage System; and to conduct monitoring, sampling and testing of the Discharge to the Storm Drainage System.

## **Section 8. Enforcement**

**8.1** 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 Title 30-A M.R.S.A. Section 4452.

**8.2. 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:

- a. The elimination of Non-Storm Water Discharges to the Storm Drainage System, including, but not limited to, disconnection of the Premises from the MS4;
- b. The cessation of discharges, practices, or operations in violation of this Ordinance;
- c. 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
- d. 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 and/or restoration of affected property is required, the notice shall set forth a deadline of not more than 60 days from when the Non-Storm Water Discharge was detected, within which such abatement or restoration must be completed. Where elimination of an illicit discharge within 60 calendar days of its identification and verification is not possible, the Municipality must establish an expeditious schedule for its elimination and report the dates of identification and schedules for removal in the permittee's annual MS4 reports.

**8.3. 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 Title 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.

**8.4. 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.

**8.5. 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. The notice of appeal must be received The notice of appeal must be received "vithin30 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.

**8.6. 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. Notwithstanding these requirements, in the event of an emergency situation that presents an immediate threat to public health, safety or welfare or that may result in damage to



the Town's Storm Drainage System, the Town may seek injunctive relief at any time after learning of such emergency situation.

**8.7. 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 9. Severability.**

**9.1** 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 10. Basis.**

**10.1** The Town of Gorham enacts this Non-Storm Water Discharge Ordinance (the Ordinance pursuant to Title 30-A M.R.S.A. § 300 I (municipal home rule ordinance authority), Title 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 Gorham as having a Regulated 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.

## **CHAPTER 2**

### **POST-CONSTRUCTION STORMWATER MANAGEMENT**

#### **Section 1. Purpose.**

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

#### **Section 2. Objectives**

**2.1** 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 health or public safety.

#### **Section 3. Definitions.**

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

**3.1 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.

**3.2 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.

**3.3 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.

**3.4 Construction Activity.** “Construction Activity” means Construction Activity including 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 disturb equal to or greater than one acre.

**3.5 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.

**3.6 Disturbed Area.** “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. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

**3.7 Enforcement Authority.** “Enforcement Authority” means the person(s) or department authorized by the Town of Gorham to administer and enforce this Ordinance.

**3.8 Municipality.** “Municipality” means the Town of Gorham.

**3.9 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.

**3.10 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.

**3.11 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.

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

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

**3.14 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.

**3.15 Post-Construction Stormwater Management Plan.** “Post-Construction Stormwater Management Plan” means BMPs and 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.

**3.16 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.

**3.17 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:

- a. The Inspector shall not have any ownership of 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 or similar criteria as approved by the Public Works Director, who shall maintain a list of approved Qualified Post-Construction Stormwater inspectors:
  1. Have a working knowledge of Chapter 500, Stormwater management Rules and Maine’s Stormwater BMP Manual,
  2. Have a college degree in environmental science, civil engineering, or comparable expertise,
  3. Have a demonstrated practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities,
  4. Have the ability to determine if stormwater facilities are performing as intended, and
  5. Have received appropriate training from the Department of Environmental Protection.

**3.18 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 of structures.

**3.19 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.

**3.20 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.

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

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

**3.23 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.

**3.24 Urbanized Area (“UA”).** “Urbanized Area” or “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.

#### **Section 4. Applicability.**

**4.1** This Ordinance applies to all New Development and Redevelopment within the Urbanized Area and to associated Stormwater Management Facilities.

**4.2 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**

**5.1 General Requirement.** Notwithstanding any ordinance provision to the contrary, and except as provided in Section 4.2, 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 to that New Development or Redevelopment.

**5.2 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**

**6.1 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 demonstrate compliance with that Plan as follows.

- a. That Person or a Qualified Post Construction Stormwater Inspector hired by that Person, shall, 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.

b. 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.

c. That Person or a Qualified Post-Construction Stormwater Inspector hired by that Person, shall, on or by May 1 of each year, provide a completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 1 to this Ordinance, certifying that the Person has inspected the Stormwater Management Facilities 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 a Post-construction BMP requires maintenance, the owner or operator must provide to the municipality a record of the deficiency and corrective action(s) taken no later than 60 days following the date the deficiency was identified. If the corrective action(s) cannot be completed within 60 days, then the permittee must establish an expeditious schedule to complete the maintenance and establish a record of the deficiency and corrective action(s) taken.

**6.2. 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.

**6.3. 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:

- a. The cumulative number of sites that have Stormwater Management Facilities discharging into their MS4;
- b. A summary of the number of sites that have Stormwater Management Facilities discharging into their MS4 that were reported to the Municipality;
- c. The number of sites with documented functioning Stormwater Management Facilities; and
- d. The number of sites that required routine maintenance or remedial action to ensure that Stormwater Management Facilities are functioning as intended.
- e. In addition, any persons required to file an annual certification under Section 6.1 of this Ordinance shall include with the annual certification payment in the amount of Twenty Dollars (\$20) to pay the administrative and technical costs of review of the annual certification.

**Section 7. Enforcement.**

**7.1** 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.

**7.2 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:

- a. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater 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 Stormwater Management Facilities and/or the restoration of any affected property; and/or
- c. 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.

**7.3 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.

**7.4 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.

**7.5 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 Chapter 1 Section IV of the Land Use and Development Code. 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.



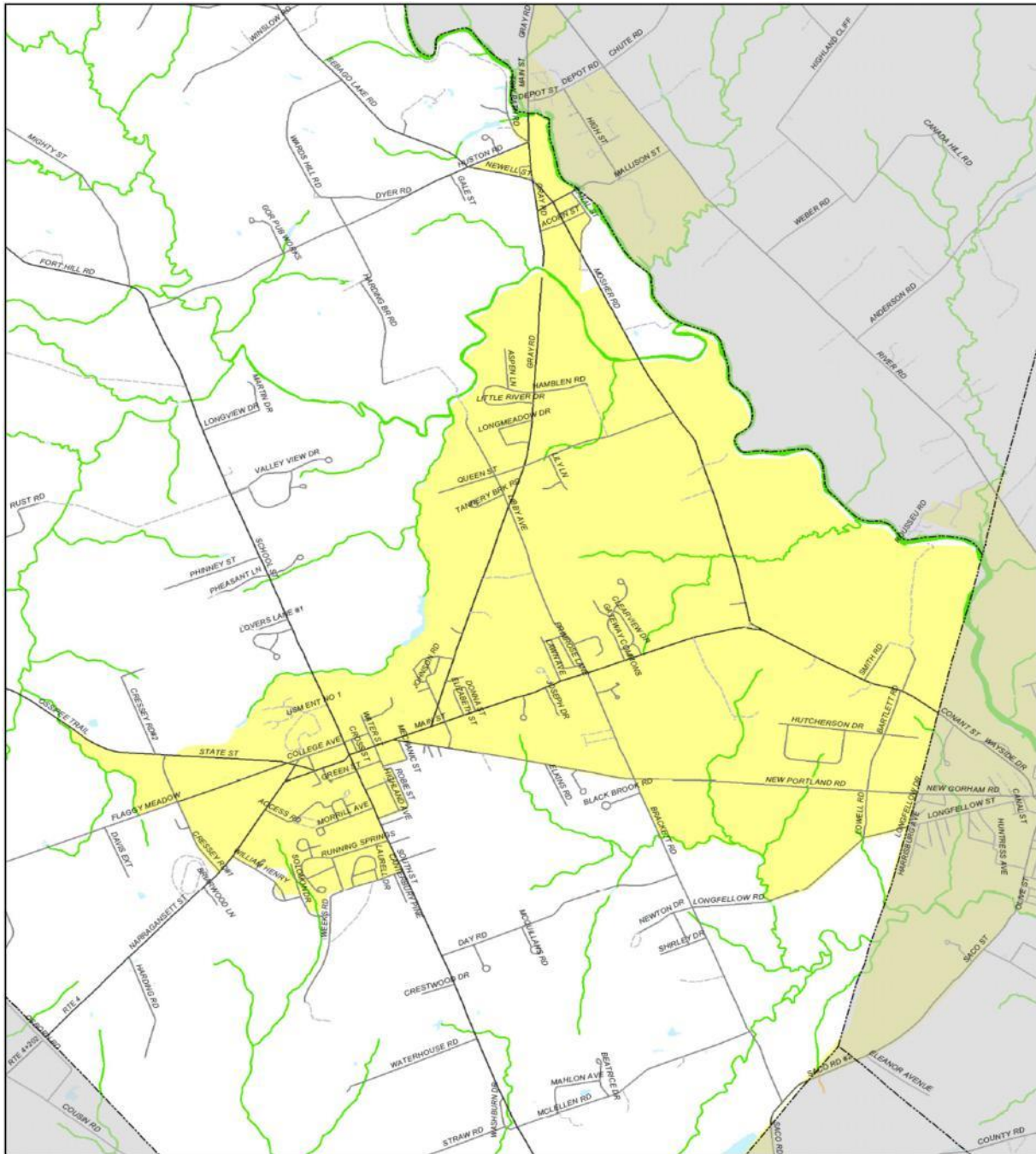
**7.6 Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the 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.**

**8.1** 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.**

**9.1** The Town of Gorham 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 Gorham 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 new development and redevelopment").



**NPDES Phase II Stormwater Program  
Automatically Designated MS4 Areas - Gorham, Maine**

Available As A Google Earth Application At: <http://www.maine.gov/dep/gis/datamaps/>

-  Political Boundary
-  Regulated Area (2000 Urbanized Area)
- Stream Classification 2008
-  AA
-  A
-  B
-  C



0 0.25 0.5 1 1.5 2 Miles



**CHAPTER 3**  
**EROSION AND SEDIMENTATION CONTROL AT CONSTRUCTION SITES**

- A. The Erosion and Sedimentation Control Law (Title 38 M.R.S.A § 420-C) applies to all activities in Maine's organized territories that will cause the filling, displacement or exposure of all earthen materials. The Erosion and Sedimentation Control Law requires that appropriate measures be taken to prevent unreasonable soil erosion and sedimentation beyond the site or into a protected natural resource (such as a river, stream, brook, lake, pond, or wetland). Erosion control measures must be installed before the activity begins and must be maintained until the site is permanently stabilized.
- B. An erosion control plan is required for all new development or redevelopment projects that result in one or more acres of disturbed area or more than 10,000 square feet of new or redeveloped impervious area. This provision also applies to projects disturbing less than one acre if the construction activity is part of a larger common plan or development or sale that would disturb one or more acres.
- C. Erosion control plan. The plan shall include comprehensive erosion and sediment control provisions as summarized below:
  - 1. The plan shall show the use of erosion and sediment control best management practices (BMPs) at construction sites consistent with the minimum standards outlined in the Maine DEP Stormwater Rule Chapter 500 Appendix A - Erosion and Sediment Control, Appendix B - Inspections and Maintenance, Appendix C - Housekeeping. Erosion and Sedimentation Control BMPs shall be designed, installed and maintained in accordance with the standards contained in the latest revisions of the following Maine DEP documents:
    - i. Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers.
    - ii. Maine Erosion and Sediment Control Practices Field Guide for Contractors.
  - 2. An erosion control plan prepared by a registered Maine professional engineer shall be submitted. The plan shall include the following:
    - i. Narrative. Provide a narrative describing the site's erosion potential and the measures to be employed to control erosion and sedimentation during construction and after completion of the development. Describe the temporary and permanent erosion control methods to be employed on the site.
    - ii. Give the expected date by which final stabilization of the site will be complete.
    - iii. Show the locations of all roads, lot boundaries, buildings, parking lots, material stockpiles, existing and proposed culverts, drainage channels, catch basins, subsurface drainage pipes and storm drain outfalls.
    - iv. Show the location of all temporary and permanent erosion controls to be installed on the site.
    - v. Show the limits of the areas disturbed by construction.
    - vi. Provide design drawings and specifications for the temporary and permanent erosion and sedimentation control measures to be used on the site. The drawings and details must be sufficiently detailed to allow a contractor unfamiliar with the controls to install and maintain them.
    - vii. Provide calculations for sizing, spacing, or stabilizing each erosion and sedimentation control measure in accordance with the latest revision of the Maine DEP "Erosion and Sediment Control Handbook for Construction: Best Management Practices."

These calculations must include analyses for determining the peak runoff flow to a control, its storage volume, and its outlet design. At a minimum, the erosion and sedimentation control plan must include the following:

1. Location plan(s) showing, at a minimum, the location of structures, disturbed land, pre-construction site topography, post-construction site topography, on-site or adjacent water resources, and all erosion and sediment control measures.
2. Detail plan(s) showing the following:
  - a. Erosion and sedimentation control notes including, but not limited to, permanent stabilization measures, seeding and mulching rates, and a construction schedule with the proposed construction dates and time frame for major earth moving and construction events.
  - b. Construction and installation details for erosion and sedimentation control measures including, but are not limited to, sedimentation barriers, ditch lining, rip rap, and culvert inlet and outlet designs.
  - c. Inspection and maintenance requirements for the temporary and permanent erosion and sedimentation controls for the project site shall be specified for each BMP in accordance with Maine DEP Stormwater Rule Chapter 500 Appendices A and B. At a minimum, the inspection and maintenance plan must include the following:
    - i. List of the erosion control measure and stormwater management measures to be inspected and maintained (e.g., "parking lot catch basins").
    - ii. Inspection and maintenance tasks specific to each erosion control measure or stormwater management measure (e.g., "remove accumulated sediments in basin sumps"). Submit the specific qualifications of the person performing each task (e.g., "a professional engineer registered in the State of Maine will inspect the retention pond embankment").
    - iii. Specify required frequency of each inspection and maintenance task (e.g., "accumulated sediments will be removed from all catch basins annually in early spring").
    - iv. Responsible parties. Submit the name, job title, employer, employer address, phone number, and current email contact information for the person responsible for ensuring that inspection and maintenance tasks are completed. Submit the names, job titles, employer addresses, phone number, and any current email contact information of the engineers or other design professionals who designed the erosion control measures and stormwater management measures for the site. Include suppliers of proprietary erosion control measures or proprietary stormwater management measures used on the site.
    - v. For stormwater management ponds or basins, include a maintenance plan that specifies, at a minimum, the inspection and maintenance requirements for the pond's embankments, outlet structure, and emergency spillway.

Include as part of this plan provisions for the removal and disposal of accumulated sediments in the pond and the control of woody vegetation on the pond's embankments.

- vi. For infiltration structures or basins, include a maintenance plan that specifies, at a minimum, the inspection and maintenance requirements for the structure's pretreatment measures, embankments, surface lining, and overflow spillway. Include, as part of this plan, provisions for the removal and disposal of accumulated sediments in the structure and for the rehabilitation of clogged surface linings.
- vii. For vegetated underdrained filter basins, include a maintenance plan that specifies, at a minimum, the inspection and maintenance requirements for the filter embankments, surface lining, underdrain piping, and overflow spillway. Include, as part of this plan, provisions for the removal and disposal of accumulated sediments in the structure, the rehabilitation of clogged surface linings, and the flushing of underdrain piping.
- viii. For stormwater buffers, include a maintenance plan that specifies, at a minimum, the inspection and maintenance requirements to ensure the integrity and function of the project's stormwater buffers. As part of this plan, include provisions for the inspection, maintenance, and, if necessary, reconstruction of any level spreaders or ditch turnouts used to spread runoff into the buffers. Include, as part of this plan, provisions for the frequent removal and disposal of accumulated sediments and debris in the level spreader and turnout bays, provisions for the inspection and repair of any eroded areas within the buffer, and provisions for the re-establishment of buffer vegetation destroyed by post-construction activities.
- ix. For manufactured stormwater treatment systems include a maintenance plan that specifies, at a minimum, the inspection and maintenance requirements for the system's inlet, treatment chambers, and outlet. The plan shall conform to the inspection and maintenance guidelines recommended by the manufacturer based on the estimated runoff and pollutant load expected to the system from the project. As part of this plan, include provisions for the frequent removal of accumulated sediments, debris, and contaminated waters from the system and, if applicable, provisions for the removal, disposal, and replacement of any clogged or spent filter media.
- x. For ditches, culverts, and storm drains, include a maintenance plan that specifies, at a minimum, the inspection and maintenance requirements for all stormwater conveyances to be built or installed on the site, including, but not limited to, ditches, swales, culverts, catch basins, and storm drain piping. As part of this plan, include provisions for the repair of eroded areas at the inlet, within, and at the outlet of each conveyance and include provisions for the frequent removal and disposal of accumulated sediments and

debris at the inlet, within, and at the outlet of each conveyance.

3. Submit a housekeeping plan in accordance with the requirements contained in Maine DEP Stormwater Rule Chapter 500, Appendix C. The housekeeping plan shall address spill prevention, groundwater protection, fugitive sediment and dust, debris and other materials, trench or foundation de-watering, or non-stormwater charges, as applicable to the specific site.

**APPENDIX 1**  
**Town of Gorham**  
**Annual Stormwater Management Facilities Certification**  
**(to be sent to Code Enforcement Office**  
**75 South Street, Suite 1**  
**Gorham, ME 04038)**

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. (Circle One) I am the:
- a. Owner
  - b. Operator
  - c. Tenant
  - d. Lessee
  - e. President of the Homeowners' Association
  - f. A qualified Post Construction Stormwater Inspector

4. I have knowledge of erosion and stormwater control and have reviewed the approved Post-Construction Stormwater Management Plan for the Property;

5. On \_\_\_\_\_, 20\_\_, I inspected or had inspected by \_\_\_\_\_  
\_\_\_\_\_, a Qualified Post Construction Stormwater Inspector, 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;

6. At the time of my inspection of the Stormwater Management Facilities on the Property, I or the Qualified Post Construction Stormwater Inspector identified the following need(s) for routine maintenance or deficiencies in the Stormwater Management Facilities:

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7. On \_\_\_\_\_, 20\_\_\_\_, I 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:

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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

\_\_\_\_\_  
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**

Code Enforcement Office  
75 South Street, Suite 1  
Gorham, ME 04038