

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
Wednesday, September 5, 2012
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Wednesday, September 5, 2012. Chair Quinn opened the meeting at 7:03 p.m.

The following were in attendance:

Chair Bob Quinn
Vice Chair Michael Tousignant
~~Councilor Sharri MacDonald~~
Councilor Robin Dayton
Councilor Michael Coleman
Town Manager Mark Pearson
Assistant Town Manager V. Louise Reid
Chris White, Superintendent of Wastewater Department
Ed Leonard – Wright Pierce Engineering
Steve Guerrette – Wright Pierce Engineering
Christine Rineheart – Wright Pierce Engineering
Citizens from Ocean Park Conservation Commission
Joseph Anderson – York County Soil and Water Conservation District

Absent: Councilor Sharri Mac Donald

There were individuals attending from Ocean Park which added to the discussions with the Council on important issues long-standing and requests to move forward on issues related to the agenda this evening. The power point presentation included the items that are **a** below and there was discussion on each of the items being addressed by representatives of Wright Pierce.

As it regarded Jordan Park Marsh, there was discussion on the impacts; visual, recreational, fire danger, biological and hydrological. There was involvement by Stakeholders, some in attendance, including the Ocean Park Association, Ocean Park Meadows Condominiums, Oceanwood Camp and Conference Center, Ocean Park Conservation Society and Ocean Park residents. In meetings with them there was a straw poll in which four desired these issues be brought to Council; two did not wish them to come to Council and one abstained. Next steps including obtaining Council approval to implement the plan as presented; recognition that the schedule requires swift action; and the need to hire entity to implement plan.

1. Jordan Park Marsh - Invasive Plant Management Plan

Background

The Town is in the process of developing a strategy for controlling invasive plants in Jordan Park Marsh. The York County Soil and Water Conservation District developed an Invasive Plant Management Plan to control the existing stand of *Phragmites australis* (also known as common reed) and *Iris pseudacorus* (also known as yellow flag iris). The Plan recommended an Integrated Vegetation Management approach as the most effective, long-term control strategy. The integrated approach includes both mechanical and chemical control measure techniques, including repeated chemical applications, mowing, and monitoring by a licensed and qualified contractor over a five year period. The Plan has been provided to stakeholders for review including the Ocean Park Association, Ocean Park Meadows Condominium Owners Association, Ocean Park Conservation Society, Oceanwood Camp & Conference Center, and an Ocean Park resident. Multiple stakeholder meetings have been held to discuss the Plan. A brief straw poll taken at the last meeting recommended presentation of the Plan the Council for approval.

Action

The next step is to obtain Council approval to implement the Plan. It is the intention to put this on the next agenda.

2. New Salt Marsh Monitoring

Monitoring of the New Salt Road Marsh is important and this long-term monitoring program will permit assessing the effects of the installation of tidal gates under New Salt Road on the tidal hydrology of the salt marsh up-gradient of the tidal gates; and that Maine DEP continues to be interested in the results and has requested continuing monitoring. There was a presentation of history including 1996 – new tide gate was installed; 1997 – monitoring – baseline; 1998- monitoring – shift to less brackish; 1999- monitoring upland species migrating; 2006- Self regulating tide (SRT) gate installed; 2011 – monitoring being maintained; 2012 – monitoring of the upper marsh shift; and 2013 – continuing of monitoring.

Background

In accordance with Maine DEP requests, the Town has continued the New Salt Marsh monitoring program. The purpose of the marsh monitoring program is to assess the potential effects that the installation of the tide gates under New Salt Road (installed in the mid-1990's) has had on the tidal hydrology of the salt marsh upstream of the tide gates. A 2012 vegetation assessment was recently conducted as part of the monitoring program. The purpose of the vegetation assessment was to collect data on dominant vegetation

located within the salt marsh and to compare the results to previous salt marsh vegetation assessments completed in the late 1990's and in 2011. Due to the changes observed between the 2011 and 2012 vegetative assessments, it is likely that the DEP will request another round of vegetation assessment in 2013.

Action

None needed at this time; however an additional vegetation assessment will likely be required in 2013.

3. Self-Regulating Tide Gate Controls

Plans and specifications developed including re-routing power to West Grand Pump Station; Re-routing controls to West Grand Pump Station; upstream marsh water level sensor; and controls and instrumentation modification. Bids obtained came in at two times the engineer's estimates – the lowest bid being \$108,000. It was indicated that the current operation protocol includes closing SRT at 9.5 feet tide level (automatic); and close SRT in advance of 2.5 inches of predicted rain. Tide Level inspections on June 27 to June 29, 2012 showed 10.05 feet to 10.59 feet tides. It flooded various properties along West Grand and the impacts to property and the retaining wall at 25 Oceana Avenue. Next steps were to include the Waste Water Superintendent and the Public Works Director would like to keep work-in house; \$60,000 using Waste Waters usual electrician with a savings of \$48,000; and Council approval to keep SRT work-in-house; and post improvement monitoring to further adjust SRT trigger level (25 Oceana retaining wall; up-gradient sensor at SRT; and Colby Avenue check valve.)

Background

Plans and Specifications were developed and bids were obtained for the New Salt Road Tide Gate Modification project. The project consists of re-routing power and controls for the existing Self-Regulating Tide Gate to the West Grand Pump Station. The project also includes provisions for the installation of an upstream marsh water level sensor and for Results Engineering to perform the PLC modifications and other Instrumentation work. Two Bids were received at over twice the estimated price, with a low bid of \$108,000. The WWTP Superintendent and the Public Works director believe they can keep costs down by keeping the work in-house, by using the WWTP's usual Electrician and Results Engineering for the programming. The estimated price to keep the work in-house is approximately \$60,000, a savings of close to \$50,000.

Action

The next step is to obtain Council approval to keep work in-house using the WWTP's usual Electrician. The Council has appeared to have consensus for this to continue.

4. Oceana Retaining Wall

The Oceana retaining wall at 25 Oceana needs to be replacement; structure within two to three feet of wall; soil borings collected; preliminary design started including cast-in-place concrete and gabions; and construction in 2012.

Background

An existing retaining wall along the western side of 25 Oceana Avenue is in disrepair and is in need of replacement. An existing structure, located within 2-3 feet of the existing wall, has experienced differential settlement due to the gradual movement of the existing wall. The public works department has met with representatives from the Maine Department of Environmental Protection (MDEP) and has started preliminary site investigations and design for a suitable wall replacement. Soil borings were collected behind the wall for use in design. Potential designs include a gabions, poured-in-place concrete, and timber.

Action

None needed at this time.

5. West Grand Berm

Storm surges overtopping the New Salt Road and West Grand Avenue measure 2.5 to 3.0 foot berm to elevation of 10.6 feet; and requires a NRPA permit from the Maine DEP. It was noted that the Maine DEP permits needs an additional survey; alternatives analysis; final design plans; Maine Historic Preservation Commission review; Rachel Carson National Wildlife Refuge coordination; Oceanwood coordination; at a cost of \$5,000 to \$7,000 to prepare the permit application. The next steps including continuing with design and permitting and construction in 2013 because of permitting.

Background

Resident concerns regarding the potential for, and documented cases of, significant storm surges overtopping New Salt Road and West Grand Avenue, effectively bypassing and negating the purpose of the tide gates, has prompted the Town to consider the construction of a berm along New Salt Road and West Grand Avenue, and along a portion of the force main maintenance road. A preliminary design has been completed showing a 2.5 to 3 feet high berm composed of clay or glacial till, with a peak elevation of 10.5 feet. Marsh vegetation would be planted on the estuary side of the berm. A Pre-Application meeting was held with DEP to discuss the potential permitting implications of the proposed berm. It was determined that because this would result in fill placed within 25 feet of a saltwater wetland the project would require an Individual NRPA Permit. The permitting process will require additional survey, alternatives analysis, final design plans (including erosion control), Maine Historic Preservation Commission submittal, Rachel Carson National Wildlife Refuge coordination, Oceanwood coordination, and public notice. It is anticipated that the additional work associated with the permit will cost \$5,000 to \$7,500.

Action

Consensus to continue with design and permitting but nothing to go to Council at this time for approval.

6. Smithwheel Phase III Sidewalk

.30 miles – start with the existing Phase II sidewalk at Ryefield; stop at the existing sidewalk past Vallee Lane; fills in sidewalk gap; asphalt sidewalk; asphalt curb; driveway aprons and drainage. There was two options under consideration; bid the entire project at \$180,700; or use Town forces for portion (\$170,000); submitted to the Safe Routes to School Grant Application to Maine DOT and submitted preliminary design report to Maine DOT. Next steps – wait for results of Maine DOT application; and formal acceptance of funding if offered.

Background

Funding application for the MaineDOT Quality Community Program Transportation Enhancement & Safe Roads program was submitted in June of 2012. To show the MaineDOT that the Town is interested in obtaining the funding and completing the project, a Preliminary Design Report was submitted to the MaineDOT in August of 2012. The project consists of roughly 0.3 miles of sidewalk from the westerly end of the existing Phase II Safe Route to Schools project on Smithwheel Road, near Ryefield Drive and extended westerly on Smithwheel Road to the limits of the existing sidewalk, approximately 625 feet past Vallee Lane. The project will serve to close a sidewalk gap between densely populated housing on the west side of town and the Old Orchard Beach High School, Loranger Middle School, and Jameson Elementary School. Pending receipt of funds, the project will be advertised in the spring of 2014 and constructed in the summer of 2014. The preliminary construction cost estimated for the sidewalk and drainage improvements is \$180,700, with the Town required to provide a match of 20%.

Action

Formal acceptance of MaineDOT funding should the project be awarded funding.

7. Check Valve at Colby Avenue

Colby Check Valve – will decrease flooding in West Grand at this location; successful at reducing flooding along West Grand near Jordan Park Marsh; and to be installed by Public Works forces.

Background

A catch basin located along West Grand between Ancona and Colby Avenue is connected directly to the large box culvert. During periods of high water surface elevations, water bubbles out of the catch basin grate and results in flooding of West Grand Avenue. Due to the successful installation and use of a flapper gate style check valve on the previous stormwater project along West Grand, it's been proposed that a similar valve be installed at this location to prevent water from backing up and out of the basin.

Action

None needed at this time.

8. Post-Construction Stormwater Management Ordinance

The Post-construction storm water Management Ordinance is required by Town's Small Municipal Separate Storm Sewer Systems (MS4) General permit, to be adopted by June 30, 2009; based on sample ordinance developed for Maine Municipal Association; and worked with the planner and the department of public works director to adapt the Ordinance which will go to a Public Hearing on the next agenda. The purpose of the ordinance is to reduce the impact on receiving waters from post-construction storm water discharges; and ensure adequate long-term operation and maintenance of post-construction BMPs. It applies to new development and redevelopment with construction activity of one acre or more of disturbed area. It requires post-construction storm water management plan; maintenance agreement; qualified post-construction inspector; and annual certification.

Background

As required by the Town's Maine Pollutant Discharge Elimination System (MEPDES) Municipal Separate Storm Sewer System (MS4) General Permit, the Town must adopt an ordinance or similar measure to ensure the adequate long-term operation and maintenance of post-construction best management practices (BMPs). Using the sample ordinance that was developed by the Maine Municipal Association, the Town Planner and Public Works Director with assistance from Wright-Pierce adapted it to meet the Town's needs. The Ordinance is proposed to be a stand-alone ordinance, and applies to new development and redevelopment resulting in construction activity of one acre or more of disturbed area. Under the Ordinance, an Applicant for new development or redevelopment would be required to submit a Post-Construction Stormwater Management Plan to the Planning Board as part of the land use permitting approval process. In addition, the Applicant or person owning, operating, leasing, or having control over post-construction BMPs, would need to annually certify that the post-construction BMPs on their property are functioning as intended by hiring a Qualified Post-Construction Stormwater Inspector to conduct an inspection. As per the Town's MS4 General Permit, the Ordinance was to be adopted by June 30, 2009, and the Town is responsible for ensuring that all post-construction BMPs that discharge to the Town's MS4 that were approved and installed after June 30, 2009 and prior to the adoption of the Ordinance are functioning as intended and that all required maintenance has been completed.

Post-Construction Stormwater Management Ordinance

On the next agenda will be setting the Public Hearing date for this Ordinance for October 2, 2012. 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 Old Orchard Beach through review and approval of post-construction stormwater management plans

C:\Users\kmclaughlin\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\Y0TT4TNR\9 5 12 workshop on public works and wastewater issues.doc Page 6 of 14

and monitoring and enforcement of compliance with such plans as required by federal and state law. This Ordinance establishes methods for post-construction stormwater management in order to comply with minimum control measure requirements of the federal Clean Water Act, of federal regulations and of Maine's Small Municipal Separate Storm Sewer Systems General Permit. The Ordinance seeks to meet the above purpose through the following objectives:

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

B. Reduce stormwater runoff rates and volumes, soil erosion and non-point source pollution, wherever possible, through use of Best Management Practices as promulgated by the Maine Department of Environmental Protection pursuant to its Chapters 500 and 502 Rules, and ensure that these management controls are properly maintained and pose no threat to public safety.

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 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; 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 Maine Department of Environmental Protection Rules, 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" means all land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a project. 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 and new impervious area. "Routine maintenance"

is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surface while maintaining the original line and grade, hydraulic capacity, and original purpose of the facility is considered routine maintenance.

G. Enforcement Authority. “Enforcement Authority” means the Code Enforcement Officer in coordination with the Department of Public Works, the person(s) and/or departments 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. Common impervious areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and other surfaces which similarly impede the natural infiltration of stormwater.

I. Municipality. “Municipality” means the Town of Old Orchard Beach.

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, currently the Planning Board.

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

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.

N. 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. "Post-Construction" means after the start of any disturbance of a property associated with an approved subdivision or site plan and when the Stormwater Management BMPs and Facilities are in functioning mode.

Q. Post-Construction Stormwater Management Plan. “Post-Construction Stormwater Management Plan” means BMPs and Stormwater Management Facilities (together referred to as "Post-

Construction BMPs") employed by a New Development or Redevelopment to meet the standards of this Ordinance and approved by the Municipal Permitting Authority.

R. 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.

S. Qualified Post-Construction Stormwater Inspector. "Qualified Post-Construction Stormwater Inspector" means a person who conducts Post-Construction BMP inspections 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 ownership or financial interest in the property, and Non-Proprietary Post-Construction BMPs;

2. The inspector must be on the list of approved third-party inspectors maintained by the Department of Public Works, or be approved by the Director of Public Works prior to conducting the inspection(s). The Director shall approve third-party inspectors only if they meet the following criteria:

a. Have a working knowledge of Chapter 500, Stormwater Management Rules and Maine Stormwater BMP Manual,

b. Have a post-secondary degree in an environmental science or civil engineering, or comparable expertise,

c. Have a demonstrated practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Post-Construction BMPs, and

d. Have the ability to determine if Post-Construction BMPs are performing as intended.

Proprietary Post-Construction BMPs

a. Proprietary Post-Construction BMPs must be inspected by a person approved by the manufacturer or equivalent.

T. 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.

U. 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 ("MS4 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 MS4 General Permit have been designated by the DEP as Regulated Small MS4s.

V. 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, military bases and facilities, and Maine Department of Transportation and Maine Turnpike Authority road

systems and facilities. **W. Storm Drainage System.** “Storm Drainage System” means the Municipality’s Regulated Small MS4.

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

Y. 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.

Z. 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 Municipality and to associated Post-Construction BMPs.

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 is approved under this Ordinance; said lot, tract or parcel shall not require separate 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. 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 Municipal Permitting Authority for that New Development or Redevelopment also determines that the Applicant’s Post-Construction Stormwater Management Plan for that New Development or Redevelopment meets the requirements of this Ordinance.

B. Performance Standards

1. The Applicant shall make adequate provision for the management of the quantity and quality of all stormwater generated by the New Development or Redevelopment through a Post-Construction Stormwater Management Plan. This Post-Construction Stormwater Management Plan shall be designed to meet the standards contained in the Maine Department of Environmental Protection’s Chapters 500 and 502 Rules and shall comply with the practices described in the most recently revised version of the manual Stormwater Management for Maine, published by the Maine Department of Environmental Protection, which hereby are incorporated by reference pursuant to 30-A M.R.S.A. § 3003.

2. The Applicant may meet the quantity and quality standards above either on-site or offsite, but where off-site facilities are used, the Applicant must submit to the Municipality documentation, approved as to legal sufficiency by the Municipality’s attorney, that the Applicant has a sufficient property interest in the property where the off-site facilities are located (by easement, covenant or other appropriate legal instrument) to ensure that the facilities will be able to provide post-
C:\Users\kmclaughlin\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\Y0TT4TNR\9 5 12 workshop on public works and wastewater issues.doc Page 10 of 14

construction stormwater management for the New Development or Redevelopment and that the property will not be altered in a way that interferes with the off-site facilities.

3. Where the Applicant proposes to retain ownership of the Post-Construction BMPs shown in its Post-Construction Stormwater Management Plan, the Applicant shall submit to the Municipality documentation, approved as to legal sufficiency by the Municipality's attorney that the Applicant, its successors, heirs and assigns shall have the legal obligation and the resources available to operate, repair, maintain and replace the Post-Construction BMPs. Applications for New Development or Redevelopment requiring Post-Construction BMPs that will not be dedicated to the Municipality shall enter into a Maintenance Agreement with the Municipality prior to the start of construction. The Applicant shall cause the Maintenance Agreement to be recorded in the York County Registry of Deeds within 30 days of the date of execution of the Agreement. Failure to comply with the terms of the Maintenance Agreement shall constitute a violation of this Ordinance. A sample of this Maintenance Agreement is attached as Appendix 1 to this Ordinance.

4. Whenever elements of the Post-Construction BMPs are not within the right-of-way of a public street and the facilities will not be offered to the Municipality for acceptance as public facilities, the Municipal Permitting Authority may require that perpetual easements not less than thirty (30) feet in width, conforming substantially with the lines of existing natural drainage, and in a form acceptable to the Municipality's attorney, shall be provided to the Municipality allowing access for maintenance, repair, replacement and improvement of the Post-Construction BMPs. When an offer of dedication is required by the Municipal Permitting Authority, the Applicant shall be responsible for the maintenance of these Post-Construction BMPs under this Ordinance until such time (if ever) as they are accepted by the Municipality.

5. In addition to any other applicable requirements of this Ordinance and the Municipality's land use ordinances, any New Development or Redevelopment which also requires a stormwater management permit from the Maine Department of Environmental Protection (DEP) under 38 M.R.S.A. 420-D shall comply with the rules adopted by DEP under 38 M.R.S.A. 420-D(1), as the same may be amended from time to time, and the applicant shall document such compliance to the Municipal Permitting Authority. Where the standards or other provisions of such stormwater rules conflict with municipal ordinances, the stricter (more protective) standard shall apply.

6. Engineering and administrative fees. All engineering and administrative fees associated with the review of the Post-Construction Stormwater Management Plan shall be included under the peer review process for materials submitted in support of the associated subdivision or site plan application. In addition, any persons required to file an annual certification under Section 6 of this Ordinance

shall include with the annual certification payment in the amount specified in the Schedule of License, Permit and Application Fees established by order of the Town Council to pay the administrative and technical costs of review of the annual certification.

7. Notice of Post-Construction BMP Discharge to Municipality's MS4. At the time of application, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any Post-Construction BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which Post-Construction BMP(s) will so discharge. Following construction, the Applicant shall notify the Municipal Permitting Authority of all Post-Construction BMPs that were installed. The notification shall include a listing of all Post-Construction BMPs, their location, where they discharge, as well as a copy of the record drawing or as-builts for the associated Post-Construction BMPs.

Section 6. Post-Construction Stormwater Management Plan Compliance

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

- 1. That Person shall hire a Qualified Post-Construction Stormwater Inspector to, at least annually, inspect, the Post-Construction BMPs, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.**
- 2. That person shall take any necessary corrective action(s) required to maintain properly functioning Post-Construction BMPs as intended by the approved Post-Construction Stormwater Management Plan, and that Person shall repair any deficiencies found during inspection of the Post-Construction BMPs.**
- 3. The Qualified Post-Construction Stormwater Inspector hired by that Person shall perform an inspection to determine the status of the Post-Construction BMPs. If the inspection identifies any deficiencies with the Post-Construction BMPs, the same Qualified Post-Construction Stormwater Inspector shall re-inspect the Post-Construction BMPs after they have been maintained or repaired to determine if they are performing as intended. The Qualified Post-Construction Stormwater Inspector will be responsible for furnishing a copy of all inspection reports to the Enforcement Authority.**
- 4. The Qualified Post-Construction Stormwater Inspector hired by that Person shall provide, on or by June 30 of each year, a completed and signed certification to the Enforcement Authority in a form identical to that attached as Appendix 2 to this Ordinance, certifying that the Post-Construction BMPs 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 Post-Construction BMPs, and if the Post-Construction BMPs require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.**

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 Post-Construction BMPs.

C. Annual Report. Beginning the year following the adoption of this Ordinance 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 Post-Construction BMPs discharging into their MS4;**
- 2. A summary of the number of sites that have Post-Construction BMPs discharging into their MS4 that were reported to the Municipality;**
- 3. The number of sites with documented functioning Post-Construction BMPs; and**
- 4. The number of sites that required routine maintenance or remedial action to ensure that Post-Construction BMPs are functioning as intended.**

D. Inspections. The Municipality, as deemed appropriate, may annually conduct "spot" inspections of Post-Construction BMPs that were reported as requiring maintenance or repair to ensure that corrective action has adequately been taken.

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 provisions of Chapter 78, Article II, Division 2 of the Town of Old Orchard Beach Code of Ordinances. 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

C:\Users\kmclaughlin\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\Y0TT4TNR\9 5 12 workshop on public works and wastewater issues.doc Page 13 of 14

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 Old Orchard Beach 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 Old Orchard Beach as having a Regulated Small Municipal Separate Storm Sewer System ("Small MS4"); under this General Permit, listing as a Regulated Small MS4 10 necessitates enactment of this Ordinance as part of the Municipality's Stormwater Management Program in order to satisfy the minimum control measures required by Part IV(H)(5) ("Post construction stormwater management in new development and redevelopment").

Action

Adoption of the Ordinance. The Council will direct the Assistant Town Manager to place this on the September 18th agenda to set a Public Hearing on this ordinance change to be held on October 2, 2012.

Free Street Storage

Coordination with the Ocean Park Association and possible construction in 2013.

The Council appreciated the support and discussion by those in attendance this evening and look forward to moving forward with these important Public Works and Wastewater Department projects with high priority.

The meeting was closed at 9:45 p.m.

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of fourteen (14) pages is a true copy of the original Minutes of the Town Council Workshop of September 5, 2012.

V. Louise Reid