

[PROPOSED] TOWN OF SAN ANSELMO ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO
AMENDING TITLE 5 CHAPTER 8 (URBAN RUNOFF POLLUTION PREVENTION)
OF THE SAN ANSELMO MUNICIPAL CODE**

WHEREAS, the Town of San Anselmo General Plan calls for the protection of creeks against pollution and recommends they be maintained or restored to their natural state.

WHEREAS, the State Water Resources Control Board has issued an order, No. 2013-0001-DWQ (Phase II Permit), to the Town which strengthens protections against water pollution.

WHEREAS, a requirement of the Phase II Permit is that the San Anselmo municipal code contain the specificity and legal authority to enforce higher standards of water quality protection.

WHEREAS, in response to severe flooding in 2005, San Anselmo and the Ross Valley Flood Protection and Watershed Program are implementing a Capital Improvement Plan.

WHEREAS, Low Impact Development is a type of landscape design which can improve water quality and reduce runoff by minimizing impervious surfaces and promoting groundwater infiltration.

WHEREAS, minimizing localized flooding and drainage issues between properties will enhance the quality of life and improve community infrastructure.

WHEREAS, at the recommendation of the San Anselmo Flood Committee, the Town has required Low Impact Development as a condition of building permit approval since 2012.

WHEREAS, the adoption of an Urban Runoff Pollution Prevention Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines because adoption of this ordinance is an action by a regulatory agency, the Town, for protection of the environment (14 Cal. Code Regs. §15308).

NOW THEREFORE, the Town Council of the Town of San Anselmo does hereby ordain as follows:

Section 1. Title 5, Chapter 8 is amended to read as follows:

Title 5 – SANITATION AND HEALTH
Chapter 8 - URBAN RUNOFF POLLUTION PREVENTION

Article 1. Title, Purpose and General Provisions*

5-8.01 Title.

5-8.02 Purpose and intent.

5-8.03 Definitions.

5-8.04 Responsibility for administration.

5-8.05 Construction and application.

5-8.01 Title.

This chapter shall be known as the "Town of San Anselmo Urban Runoff Pollution Prevention Ordinance" and may be so cited.

5-8.02 Purpose and intent.

The purpose of this chapter is to ensure the future health, safety, and general welfare of Town of San Anselmo citizens and to protect and enhance watercourses, fish, and wildlife habitat by:

- (a) Minimizing discharges other than storm runoff to storm drains or watercourses;
- (b) Responding to the discharge of spills, preventing and controlling the discharge of spills to storm drains or watercourses, and prohibiting dumping or disposal of materials other than stormwater;
- (c) Reducing pollutants in stormwater discharges to the maximum extent practicable;
- (d) Requiring operators of construction sites, new or redeveloped land, and industrial and commercial facilities to install, implement, and maintain appropriate best management practices (BMPs); and
- (e) Requiring development projects to maintain or reduce the volume, velocity, peak flow rate, and duration of runoff as compared to the pre-development stormwater runoff rates; and preventing stormwater pollution whenever possible, through stormwater management controls and ensuring that these management controls are properly maintained.

The intent of this chapter is to protect and enhance the water quality of the State's and Nation's watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Clean Water Act (33 U.S.C. §1251 *et seq.*), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 *et seq.*), and the Phase II Small Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit, Water Quality Order No. 2013-0001—DWQ, General Permit No. CAS000004 (Phase II Stormwater Permit) and subsequent revisions and amendments thereto.

5-8.03 Definitions.

- (a) Any terms defined in the Phase II Stormwater Permit, the federal Clean Water Act (33 U.S.C. § 1251 *et seq.*), and acts amendatory thereof or supplementary thereto, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency on November 16, 1990 (as may from time to time be amended) as used in this chapter shall have the same meaning as in said Act or regulations. If any of these definitions are in conflict, the more inclusive definition shall apply.

- (b) When used in this chapter, the following words shall have the meanings ascribed to them in this section:
- (1) "Authorized Enforcement Official" The following Town officials: Director of Public Works, Senior Engineer, Planning Director, Senior Planner, Assistant Planner, Building Inspector, Fire Chief, Fire Marshal, Fire Inspector, Public Works Supervisor or designee.
 - (2) "BASMAA Post Construction Manual." The most recent version of the Bay Area Stormwater Management Agencies (BASMAA) Post Construction Manual that provides design guidelines for reducing stormwater pollutant discharges through the construction, operation, and maintenance of source control measures, low impact development design, site design measures, stormwater treatment measures and hydromodification management measures. San Anselmo has modified Table 1.1 of the manual and requires the use of the "San Anselmo specific BASMAA Post Construction Manual."
 - (3) "Best Management Practices (BMPs)." Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste recycling or disposal, or drainage from raw material storage.
 - (4) "Construction activity." Any activity that involves soil disturbing activities including, but not limited to, clearing, paving, grading, and disturbances to ground such as stockpiling and excavation.
 - (5) "Discharge of a Pollutant." (i) the addition of any pollutant or combination of pollutants to waters of the United States from any point source, or (ii) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term includes additions of pollutants to waters of the United States from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person that do not lead to a treatment facility; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.
 - (6) "Flatwork Permit." The permit issued by the Public Works Department which is required for construction or pavement projects that create 150 square feet or more of impervious surface, including but not limited to driveways, parking lots, athletic courts, decks and patios.
 - (7) "Illicit Connection." Any device or method that conveys non-stormwater to a municipal separate storm sewer (storm drain) system (MS4) or receiving water.
 - (8) "Illicit Discharge." Any discharge to a municipal separate storm sewer (storm drain) system (MS4) that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-

stormwater discharges not composed entirely of stormwater and discharges that are identified under the Discharge of Pollutants section of this chapter. The term illicit discharge does not include discharges that are regulated by an NPDES permit (other than the NPDES permit for discharges from the MS4).

- (9) “Impervious Surface.” Any artificial structure or surfacing that seals the soil surface thereby eliminating rainwater infiltration and groundwater recharge, and resulting in runoff.
- (10) “Incidental Irrigation Runoff.” Unintended amounts (volume) of runoff, such as unintended, minimal over-spray from sprinklers that escapes the landscaped area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.
- (11) “Low Impact Development (LID).” A sustainable practice that benefits water supply and contributes to water quality protection. LID uses site design and stormwater management to maintain the site’s pre-development runoff rates and volumes. The goal of LID is to mimic a site’s predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to the source of rainfall.
- (12) “Maximum Extent Practicable (MEP)” means the minimum required performance standards, BMPs, control techniques and systems, design and engineering methods, and such other provisions as the Environmental Protection Agency Administrator or the State determines appropriate for reducing pollutants in stormwater. MEP is the cumulative effect of implementing, evaluating, and making corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate controls are implemented in the most effective manner. This process of implementing, evaluation, revising, or adding new BMPs is commonly referred to as the iterative process.
- (13) “MCSTOPPP.” The Marin County Stormwater Pollution Prevention Program.
- (14) "NPDES permit." A National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, or a California Regional Water Quality Control Board pursuant to the Clean Water Act that authorizes discharges to waters of the United States.
- (15) "Non-stormwater discharge." Any discharge that is not entirely composed of stormwater.
- (16) “Phase II Stormwater Permit.” The NPDES general stormwater permit applicable to the County of Marin, Water Quality Order No. 2013-0001—DWQ, General Permit No. CAS000004, and any subsequent amendment, reissuance or successor to this NPDES permit.
- (17) “Pollutant.” Anthropogenic substance or condition that contaminates water or soil in a way that impairs the health of organisms and use by people. Pollutants

include dredged soil, solid waste, incinerator residue, filter backwash, sewage, pet wastes, manure, garbage, sewage sludge, munitions, paint, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sediment, cellar dirt, dumped yard wastes, and industrial, municipal, and agricultural waste; or sand and gravel placed in such a way as to be carried away by stormwater into the storm drains and watercourses of the Town.

- (18) "Post Construction Measures Requirements." The provisions in Section E.12 of the Phase II Stormwater Permit that contain design standards or performance criteria to address the post-construction impacts of new projects and redeveloped projects on stormwater quality and quantity. The San Anselmo specific *BASMAA Post Construction Manual* describes projects subject to the post construction measures.
- (19) "Premises." Any building, lot parcel, real estate, or land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- (20) "Storm Drains." Includes, but is not limited to, those stormwater drainage conveyance facilities within the Town, both public and private, by which stormwater may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains, which are not part of a publicly owned treatment works (POTW) as defined at 40 Code of Federal Regulations (C.F.R) 122.2.
- (21) "Stormwater" or "storm runoff." Stormwater runoff, snow melt runoff, and surface runoff and drainage.
- (22) "Stormwater Control Plan." A plan that meets those criteria contained in the most recent version of the San Anselmo specific *BASMAA Post Construction Manual*.
- (23) "Stormwater Facilities Operation and Maintenance Plan." A plan identifying the locations and characteristics of stormwater management facilities on a newly developed or redeveloped site and describing maintenance activities, schedules, and responsibilities to ensure the ongoing proper operation of those facilities.
- (24) "Stormwater Management Facility" Any engineered system designed to remove pollutants from storm water runoff by settling, filtration, biological degradation, plant uptake, media absorption/adsorption or any other physical, biological, or chemical process. This includes landscape-based systems such as grassy swales and bioretention units as well as proprietary systems.
- (25) "Town." The Town of San Anselmo.
- (26) "Urban Runoff." Stormwater runoff from an urbanized area including streets and adjacent domestic and commercial properties that carries pollutants of various types into the storm drainage system and receiving waters.
- (27) "Watercourse." Any natural or once natural flowing river, creek, stream, swale or drainageway, whether perennial, intermittent or ephemeral. This definition includes natural waterways that have been channelized but does not include

channels, ditches, culverts, or other above or below ground constructed conduits, for example, storm drains.

5-8.04 Responsibility for administration.

This chapter shall be administered for the Town by the authorized enforcement official. In administering this chapter, the authorized enforcement official has the authority to request and require the submittal of information deemed necessary to assess compliance with the chapter and the Phase II Stormwater Permit.

5-8.05 Construction and application.

This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act (33 U.S.C. §1251 *et seq.*) and acts amendatory thereof or supplementary thereto, and applicable implementing regulations, including the current and future versions of the water quality control plan for the San Francisco Bay basin and the Phase II Stormwater Permit.

Article 2. Discharge Regulations and Requirements

5-8.06 Discharge of pollutants.

5-8.07 Discharge in violation of permit.

5-8.08 Littering.

5-8.09 Illicit discharges and illicit connections.

5-8.10 Construction phase best management practices.

5-8.11 Limitation of Impervious Surfaces, Flatwork Permits and Post-Construction Requirements.

5-8.12 Watercourse protection.

5-8.06 Discharge of pollutants.

- (a) The discharge of non-stormwater discharges to storm drains is prohibited. All discharges of material other than stormwater must be in compliance with an NPDES permit issued for the discharge.
- (b) Exceptions to discharge prohibition. The following discharges are exempt from the prohibition set forth in subsection (a) of this section.
 - (1) Discharges regulated under another NPDES permit issued to the discharger and administered by the State of California under authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.
 - (2) Discharges or flows from fire-fighting activities unless they are identified as significant sources of pollutants to waters of the United States.
 - (3) Discharges from the following activities, provided any pollutants in the discharges are identified and appropriate control measures to minimize the impacts of such discharges are developed and implemented.
 - (A) Water line flushing;

- (B) Individual residential car washing;
 - (C) Diverted stream flows;
 - (D) Rising groundwaters;
 - (E) Uncontaminated ground water infiltration (as defined at 40 C.F.R. §35.2005(20)) to separate storm sewers;
 - (F) Uncontaminated pumped groundwater;
 - (G) Discharges from potable water sources;
 - (H) Foundation drains;
 - (I) Air conditioning condensation;
 - (J) Springs;
 - (K) Water from crawl space pumps;
 - (L) Footing drains;
 - (M) Flows from riparian habitats and wetlands;
 - (N) Dechlorinated swimming pool discharges; and
 - (O) Incidental irrigation runoff from landscaped areas provided the conditions in subsection 4 of this section are met.
- (4) Irrigation systems must be designed to conserve water and prevent Incidental Irrigation Runoff. Property owners and persons responsible shall control irrigation systems to prevent excessive irrigation runoff by implementing the following BMPs:
- (A) Detect and repair leaks from the irrigation system within 72 hours of discovering the leak;
 - (B) Properly design and aim sprinkler heads to only irrigate the planned application area;
 - (C) Do not irrigate during precipitation events; and
 - (D) Where recycled water is used for irrigation, design and manage holding ponds such that no discharge occurs unless it is the result of a 25 year-24 hour storm event. Any releases from holding ponds must be reported to the Regional Water Board and the Town within 24 hours of the discharge.

5-8.07 Discharge in violation of permit.

Any discharge that would result in or contribute to a violation of the Phase II Stormwater Permit and any amendment, revision, or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) so causing or responsible for the discharge, and such persons shall defend, indemnify, and hold harmless the Town in any administrative or judicial enforcement action relating to such discharge.

- (a) Notification of intent and compliance with general permits. Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general stormwater permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the Regional Water Quality Control Board, shall provide Permit Registration Documents, comply with, and undertake all other activities required by any general stormwater permit applicable to such discharges.
- (b) Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by the NPDES permit.
- (c) Compliance with best management practices. Where best management practices guidelines or requirements have been adopted by any Federal, State of California, regional, and/or local agency, for any activity, operation, or facility that may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the storm drains, every person undertaking such activity or operation, or owning or operating such facility shall comply with such guidelines or requirements as may be identified by the authorized enforcement official.

5-8.08 Littering

Except for pollutants lawfully disposed of by way of containers or at a licensed dumping ground, no person shall throw, deposit, leave, maintain, or keep -- or permit to be thrown, deposited, placed, left, maintained, or kept -- any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, or accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land or other premises in the Town, so that the same might be or become a pollutant discharged to water.

The occupant or tenant -- or in the absence of the occupant or tenant, the owner, lessee, or proprietor -- of any premises in the Town of San Anselmo in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the recycling or disposal of garbage.

5-8.09 Illicit discharges and illicit connections.

The establishment, use, maintenance, or continuance of illicit connections to the storm drains or watercourse, and/or the commencement or continuance of illicit discharges to the storm drains or watercourse is prohibited. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection.

- (a) Any person responsible for a discharge, spill, or pollutant release shall promptly cease and desist discharging and/or cleanup and abate such a discharge as directed by the authorized enforcement official.

- (b) Any person engaged in activities that will or may result in pollutants entering any storm drain or drains shall undertake all practicable measures to cease such activities, and/or eliminate or reduce such pollutants. Such activities shall include, but not be limited to, ownership and use of parking lots, gasoline stations, industrial facilities, commercial facilities, ground disturbing activities, and stores fronting Town streets or adjacent to streams
- (c) Any person responsible for an illicit connection shall promptly remove the connection as directed by the authorized enforcement official.
- (d) The Town may perform clean-up and abatement work and recover its costs from the responsible person as provided in Section 5-8.14.

5-8.10 Construction-Phase Best Management Practices.

Any person performing construction activities in the Town shall implement appropriate BMPs to prevent the discharge of construction wastes or contaminants from construction materials, tools, and equipment from entering storm drains or watercourse.

The Town has the authority to review designs and proposals for construction activities to determine whether adequate BMPs will be installed, implemented, and maintained during construction and after final stabilization.

Construction-phase BMPs include erosion and sediment controls and pollution prevention practices. Erosion control BMPs may include, but are not limited to, scheduling and timing of grading activities, timely revegetation of graded areas, the use of hydroseed and hydraulic mulches, and installation of erosion control blankets. Sediment control may include properly sized detention basins, dams, or filters to reduce entry of suspended sediment into the storm drain system and watercourses, and installation of construction entrances to prevent tracking of sediment onto adjacent streets. Pollution prevention practices may include designated washout areas or facilities, control of trash and recycled materials, tarping of materials stored on-site, and proper location of and maintenance of temporary sanitary facilities. The combination of BMPs used, and their execution in the field, must be customized to each site using up-to-date standards and practices. The Town will provide references to current guidance manuals and BMP information on request.

- (a) When required by the Phase II Stormwater Permit or by the Town, a project shall have an **Erosion and Sediment Control Plan (ESCP)** that addresses erosion and sediment control and pollution prevention during the construction phase, as well as final stabilization control measures. The ESCP and the specific control measures to be utilized shall be subject to the review and approval of the Town. The ESCP shall be implemented year round and shall be revised to reflect changing conditions on the project site. The Town shall require modifications of an approved ESCP if during the course of construction at a site unanticipated conditions occur, or the plans prove inadequate for the intended purpose. Revisions of the approved ESCP shall be submitted to the Town for review and approval. An Erosion and Sediment Control Plan (ESCP) shall be required for any project:
 1. Subject to a grading permit under Chapter 18 Excavation, Grading and Erosion Control;

2. Subject to a building permit or other permit that has the potential for significant erosion and/or significant non-stormwater discharges of sediment and/or construction site waste;
 3. As required by the Town considering factors such as whether the project involves hillside soil disturbance, rainy season construction, construction near a creek or an intermittent or ephemeral drainageway, or any other condition or construction site activity that could lead to a non-stormwater discharge to a storm drain if not managed by effective implementation of an ESCP.
- (b) The ESCP shall be submitted for review and approval by the Town and shall include information required in the most recent version of the MCSTOPPP Construction Erosion and Sediment Control Plan Applicant Package. At a minimum, the ESCP shall include:
1. Description of the proposed project and soil disturbing activity;
 2. Site specific construction-phase Best Management Practices (BMPs);
 3. Rationale for selecting the BMPs;
 4. List of applicable outside agency permits associated with the soil disturbing activity, such as: Construction General Permit (CGP); Clean Water Act Section 404 Permit; Clean Water Act Section 401 Water Quality Certification; Streambed/Lake Alteration Agreement (1600 Agreements).
- (c) If the project requires coverage under the CGP issued by the State Water Resources Control Board (SWRCB), Permit Registration Documents must be filed with the SWRCB for said coverage, and a copy of the Waste Discharge Identification Number shall be submitted to the Town prior to issuance of a permit for construction. The applicant may submit the Storm Water Pollution Prevention Plan (SWPPP) required by the General Construction Activity Stormwater Permit in lieu of the ESCP provided it meets the requirements of the ESCP.
- (d) Financial security may be required to ensure that temporary measures to control stormwater pollution are implemented and maintained during construction and after construction for a period determined by the Town. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the Town.
- (e) When any work is being done contrary to the provisions of this article, the authorized enforcement official may order the work stopped by notice in writing served on any persons engaged in doing or causing the work to be done. Such work shall stop until the authorized enforcement official authorizes the work to proceed. This remedy is in addition to and does not supersede or limit any and all other remedies, both civil and criminal, provided in the Town of San Anselmo Municipal Code.
- (f) Implementation of an approved ESCP shall be a condition of the issuance of a building permit, a grading permit, or other permit issued by the Town for a project subject to this section. The ESCP shall be implemented year round and must be updated to reflect

changing conditions on the project site. Any modifications to the ESCP shall be submitted to the Town for review and approval.

5-8.11 Limitation of Impervious Surfaces, Flatwork Permits and Post-Construction Requirements

All new construction must minimize the creation of impervious surfaces and stormwater runoff. It shall be unlawful for any person to pave or otherwise create more than 150 square feet of impervious surface without first having secured a Flatwork Permit to do so from the Public Works Department.

- (a) Small Projects. Projects creating between 150 and 500 square feet of impervious surface. Applicants shall develop, submit and implement a Stormwater Control Plan for small projects (SCP) as described in the San Anselmo specific *BASMAA Post Construction Manual*.
 - (1) The SCP shall follow the appropriate SCP template, based on project type, in the most recent version of the San Anselmo specific *BASMAA Post Construction Manual*.
 - (2) The project shall include one or more site design measures to reduce runoff. Low impact development site design measures include directing runoff from roofs and impervious pavement to vegetated areas that slow the speed and amount of water leaving a property, and use of permeable pavements.
 - (3) The specific practices proposed in the SCP shall be subject to the review and approval of the Town and shall be in general accordance with the San Anselmo specific *BASMAA Post Construction Manual*, and the Phase II Stormwater Permit.
- (b) Large Projects: projects creating or replacing more than 500 sq. ft. of impervious surface. Replacement or redevelopment of an impervious surface is defined as any work except for general maintenance as defined here: slurry seals, crack seals, regrouting, repair work less than 1-inch deep or less than 150 square feet. Also exempt from these requirements is the in-kind replacement of roofs.

In addition to the site design measures and a Flatwork permit required for small projects, new and redeveloped projects that create or replace more than 500 square feet of impervious surface may require, as a condition of project approval, the following.

- (1) Bioretention or permanent stormwater controls designed to remove sediment and other pollutants and to mimic the pre-project site hydrology by controlling the flow rates and/or the volume of stormwater runoff from the project's added and/or replaced impervious surfaces. The selection and design of such controls shall be in general accordance with criteria established or recommended by federal, state, and local agencies, and where required by the Town, the San Anselmo Specific *BASMAA Post Construction Manual*. Where physical and safety conditions allow, the preferred control measure is to retain drainage ways above ground and

in as natural a state as possible, or other biological methods such as bioretention areas.

- (2) Applicants shall develop, submit and implement a Stormwater Control Plan (SCP) as described below:
 - (A) The SCP shall follow the appropriate SCP template, based on project type, in the most recent version of the San Anselmo specific *BASMAA Post Construction Manual*.
 - (B) The specific practices proposed in the SCP shall be subject to the review and approval of the Town and shall be in general accordance with the San Anselmo specific *BASMAA Post Construction Manual*, and the Phase II Stormwater Permit.
 - (C) The SCP is separate and distinct from the ESCP requirements described in Section 5-8.10
 - (D) All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines for bioretention facilities are outlined in the San Anselmo specific *BASMAA Post Construction Manual*.
- (3) Applicants shall submit a preliminary Stormwater Facilities Operation and Maintenance Plan (O&M Plan). The approval of the O&M Plan by the Town is required prior to final inspection and approval of building permit closure.
 - (A) All stormwater management facilities shall be maintained according to the approved O&M Plan. The person(s) or organization(s) responsible for maintenance shall be designated in the plan. The plan shall require that stormwater management facilities be inspected by those responsible for maintenance at least annually. The O&M Plan shall also describe how the maintenance will be funded. Upon the failure of a responsible person to maintain the stormwater management facilities in accordance with the O&M Plan, the Town may perform the maintenance and recover its costs from the responsible person as provided in Section 5-8.15.
 - (B) Where deemed appropriate by the Town, access by the Town staff to stormwater management facilities for inspections, as provided in Section 5-8.12 -- and through such means as may be appropriate, including, but not limited to, legal agreements, recorded covenants or easements -- shall be provided by the property owner.
- (4) All project proponents and their successors, or successors in fee title, in control of a project that is located within the Town and that is defined as a Regulated Project in Section E.12.c. of the Phase II Stormwater Permit, or where required by the Town, shall submit one of the following as a condition prior to final inspection and approval of building permit closure:

- (a) The project proponent's signed statement accepting responsibility for the operations and maintenance of stormwater management facilities until such responsibility is legally transferred to another entity;
 - (b) Written conditions in the sales or lease agreements or deed for the project that requires the buyer or lessee to assume responsibility for the operations and maintenance of the stormwater management facilities until such responsibility is legally transferred to another entity;
 - (c) Written text in project deeds that require the property owner -- or conditions, covenants and restrictions for multi-unit residential projects that require the homeowners association or, if there is no association, each individual owner -- to assume responsibility for the operation and maintenance of the stormwater management facilities until such responsibility is legally transferred to another entity; or
 - (d) Any other legally enforceable agreement or mechanism, such as recordation in the property deed, that assigns the operation and maintenance of the stormwater management facilities to the project owner(s) or the Town.
- (5). Financial security may be required to ensure that stormwater management facilities operate and are maintained following construction for a period that may be determined by the Town. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the Town.
- (c) In cases where site design measures are not possible, or on any project deemed significant to water quality and stormwater runoff, and that may result in an increase of runoff, the Town may:
- (1) Require submission of a drainage/hydraulic/hydrologic analysis prepared by a professional engineer
 - (2) Establish specific runoff reduction standards
 - (3) Require bioretention for projects creating less than 500 square feet.
- (d) The applicants shall, at the time of filing their application, pay such fee as is set forth by resolution of the Town Council.

5-8.12 Watercourse protection.

- (a) Every person owning, occupying, leasing, renting, or in control of premises through which a watercourse passes, shall:
- (1) Keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would and/or could pollute, contaminate, or significantly retard the flow of water through the watercourse;
 - (2) Maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and

- (3) Not remove healthy bank vegetation beyond that actually necessary for said maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.
- (b) No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the authorized enforcement official:
 - (1) Discharge into or connect any pipe or channel to a watercourse;
 - (2) Modify the natural flow of water in a watercourse;
 - (3) Deposit in, plant in, or remove any material from a watercourse including its banks, except as required for necessary maintenance;
 - (4) Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or
 - (5) Place any loose or unconsolidated material adjacent to or within a watercourse so as to cause a diversion of the flow, or to cause a probability of such material being carried away by stormwaters passing through such watercourse.

Article 3. Inspection and Enforcement

5-8.13 Violations constitute a public nuisance; abatement; restoration.

5-8.14 Violations; misdemeanors or infractions; punishment.

5-8.15 Violations; civil action for enforcement.

5-8.16 Violations; administrative enforcement action.

5-8.17 Remedies not exclusive.

5-8.18 Authority to arrest and issue citations.

5-8.13 Violations constitute a public nuisance; abatement; restoration.

Any condition caused or allowed to exist in violation of any of the provisions of this chapter constitutes a threat to the public health, safety and welfare, and is deemed and declared to be a public nuisance. This public nuisance may be summarily abated, and/or the property restored to its original condition, and/or enjoined or otherwise be compelled to cease and desist, by the authorized enforcement official, or by actions taken by the Town Attorney.

- (a) Abatement procedure; costs; lien. The abatement of any public nuisance under this chapter shall follow the procedures as set forth in Chapter 2, Title 1 of the Town's Municipal Code. The cost of such abatement and/or restoration of the property to its original condition shall be the responsibility of the owner of the property. Said costs shall be a lien upon and against the property and shall continue in existence until paid. Said lien shall be imposed and collected in accordance with the applicable provisions of State law and this Code.
- (b) Inspections and sampling; authority and procedure.
 - (1) The authorized enforcement official has the duty and the responsibility to inspect any and all locations for any violation of the provisions of this

chapter. The authorized enforcement official may, within the limitations of applicable state and federal laws, enter any building or any premises (including, but not limited to, facilities, equipment, practices, or operations) at all reasonable times to inspect the same for any or all of the following situations, as determined by the authorized enforcement official:

- (A) Routine inspections to ensure implementation of BMPs and other requirements of this chapter;
 - (B) Active or potential stormwater discharges;
 - (C) Whenever there is reasonable cause to believe that there exists any condition that constitutes a violation of the provisions of this chapter or the Phase II Stormwater Permit;
 - (D) Actual violations of this chapter or the Phase II Stormwater Permit;
 - (E) Whenever necessary to enforce any of the provisions of this chapter or the Phase II Stormwater Permit; or
 - (F) To perform any duty imposed upon the official by this chapter.
- (2) The authorized enforcement official must present proper credentials to, and obtain consent from, the owner or occupant to enter. In the event that the owner and/or occupant refuses entry, the authorized enforcement official shall request assistance of the Town Attorney to obtain an administrative warrant for the premises, pursuant to the provisions of State law.
- (3) The authorized enforcement official has the right to, and shall conduct routine sampling and monitoring on or adjacent to the premises under review. The cost of such routine sampling and/or monitoring activities, including test reports and results, shall be borne by the Town, unless such cost is required to be paid by the property owner pursuant to any permit or other lawful order. The authorized enforcement official may, within the limitations of law, enter such premises at reasonable times to conduct sampling and monitoring operations, provided that the official presents proper credentials to, and obtains consent from, the owner or occupant to enter. In the event that the owner and/or occupant refuses entry, the authorized enforcement official shall request assistance of the Town Attorney to obtain an administrative warrant for the premises, pursuant to the provisions of State law.
- (4) Whenever the authorized enforcement official has reasonable cause to believe that the owner and/or occupant of a premises is engaged in an activity and/or operating a facility that is causing or contributing to stormwater pollution or contamination, illicit discharges, and/or the discharge of non-stormwater or other unlawful material, to any storm drain or drains, the authorized enforcement official may require that the owner and/or occupant conduct sampling and/or monitoring activities on

the premises, and to furnish such test results and reports as the official may determine. The burden and cost of undertaking such sampling and monitoring activities, including test results and reports, shall be borne by the owner of the premises under review. The type and method of sampling and monitoring shall bear a reasonable relationship to the need for testing and monitoring and to the benefits to be obtained, as determined by the authorized enforcement official.

- (5) Exigent circumstances. Whenever a condition is found to exist in violation of this chapter that presents an immediate and present danger to the public health, safety, and welfare requiring immediate remedial action to prevent injury to persons or property, the authorized enforcement official shall take whatever reasonable and appropriate action is necessary to neutralize the danger, including, but not limited to, entry upon private premises for inspection, sampling and monitoring, and abatement.

5-8.14 Violations; misdemeanors or infractions; punishment.

The violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter, shall constitute a misdemeanor, except that, notwithstanding any other provision of this chapter, any such violation of this chapter may, in the discretion of the enforcement authority, constitute an infraction. If convicted of a misdemeanor, a person shall be subject to payment of a fine, imprisonment, or both, not to exceed the limits set forth in Government Code Section 36901. If convicted of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in Government Code Section 36900. A person, firm, corporation, or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or allowed by the person, firm, corporation or organization, and shall be punishable accordingly.

5-8.15 Violations; civil action for enforcement.

The violation of any provision of this chapter, or the failure to comply with any of the requirements of this chapter, may be enforced by a civil action brought by the Town Attorney in any court having appropriate jurisdiction. In any such action, the Town may seek any or all of the following remedies:

- (1) A temporary or permanent injunction;
- (2) Costs of investigation, inspection, sampling, or monitoring activities concerning the violation, and costs of suit;
- (3) Costs of restoration of the premises from its condition resulting from the violations back to its original condition;
- (4) Compensatory damages including, but not limited to, loss and/or destruction of water quality, wildlife, fish, aquatic habitat, and other adverse environmental effects. Damages recovered under this subsection shall be paid to the Town and shall be used exclusively for costs of sampling and monitoring, of establishing stormwater discharge pollution control systems, and of implementing and/or enforcing the provisions of this chapter.

5-8.16 Violations; administrative enforcement action.

In addition to any other enforcement powers and/or remedies provided in this chapter, an authorized enforcement official may issue an order to a person to cease and desist from the discharge, practice, operation, or other activity causing or likely to cause a violation of this chapter. Such order shall be directed to those persons in violation of the chapter stating clearly and concisely the nature of the violation, the requirements for compliance, a timetable for compliance, and such other remedial and/or preventive action as may be necessary. Upon the violator's failure to comply with such order, the Town shall take further enforcement action as specified in this chapter, or in accordance with any other appropriate provision of local, state, or federal law. At the discretion of the authorized enforcement official, orders to cease and desist may take the following form:

- (1) Verbal Warnings, as may be issued during inspections;
- (2) Warning Letters and Orders to Abate Pollution;
- (3) Warning Letters with requirements to submit written reports; or
- (4) Formal violations and legal action as described in this chapter and as authorized by Title 1, Chapter 2 of the Town of San Anselmo Municipal Code.

5-8.17 Remedies not exclusive.

The enumerated remedies provided in this chapter are in addition to, and do not supersede or limit, any and all other remedies, both civil and criminal. The remedies provided for herein shall be cumulative to, and not exclusive of, each other.

5-8.18 Authority to arrest and issue citations.

The authorized enforcement official shall have the authority to arrest or to cite any person who violates any provision of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or for citation of infractions and notice to appear, as prescribed by Chapters 5, 5c, and 5d of Title 3, Part 2 of the California Penal Code, including Section 853.6, or as the same may be hereinafter amended.

It is the intent of the Town Council that the immunities provided in Penal Code Section 836.5 be applicable to public officers or employees acting within the course and scope of their employment pursuant to this chapter.

Article 4. Coordination With Other Programs; Supercession

5-8.19 Supercession.

5-8.19 Supercession.

If any section, subsection, sentence, clause or phrase or word of this chapter is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The Town Council of the Town of San Anselmo hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

Section 2. The adoption of this ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines because adoption of this ordinance is an action by a regulatory agency, the Town, for protection of the environment (14 Cal. Code Regs. §15308); and

Section 3. Effective Date. This ordinance shall become effective thirty (30) days after the date of adoption.

Section 4. Posting. This Ordinance shall be published once in full before its final passage in a newspaper of general circulation, published, and circulated in the Town of San Anselmo, and shall be in full force and effective thirty (30) days after its final passage.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on the ____ day of _____, 2015, and was adopted at a regular meeting on the ____ day of _____, 2015, by the following vote:

AYES:

Councilmembers:

NOES:

Councilmembers:

ABSENT:

Councilmembers:

Mayor

ATTEST:

Barbara Chambers, Town Clerk