

TOWN OF ROSS

ORDINANCE NO. 657

AN ORDINANCE OF THE TOWN OF ROSS AMENDING THE ROSS MUNICIPAL CODE CHAPTERS 12.28, 15.24, 18.39, AND 18.41 TO PROVIDE FOR EROSION AND SEDIMENT CONTROL PLANS, STORMWATER CONTROL PLANS AND OTHER REQUIREMENTS PURSUANT TO THE PHASE II STORMWATER PERMIT AND TO PREVENT URBAN RUNOFF POLLUTION

The Town Council of the Town of Ross does ordain as follows:

SECTION 1: Chapter 12.28 of the Ross Municipal Code is amended and restated as follows:

“ARTICLE I. TITLE, PURPOSE AND GENERAL PROVISIONS

12.28.010 Title. This chapter shall be known as the "town urban runoff pollution prevention ordinance" and may be so cited.

12.28.020 Purpose and intent. The purpose of this chapter is to ensure the future health, safety, and general welfare of Ross citizens and to protect and enhance watercourses, fish and wildlife habitat by:

1. Minimizing discharges other than storm runoff to storm drains or watercourses;
2. 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;
3. Reducing pollutants in stormwater discharges to the maximum extent practicable;
4. Requiring operators of construction sites, new or redeveloped land, and industrial and commercial facilities to install, implement, or maintain appropriate best management practices (BMPs); and
5. Requiring development projects to maintain or reduce the volume, velocity, peak flow rate and duration of runoff as compared to pre-development stormwater runoff 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 our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Clean Water Act, 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.

12.28.030 Definitions. (a) The following definitions shall be applicable when the following words or phrases are used in this chapter. Words and phrases used in this chapter and not otherwise defined shall be interpreted as defined in the regulations of the U.S. Environmental Protection Agency to implement the provisions of the federal Clean Water Act, the California Water Code, and the Phase II Stormwater Permit, as each may be amended from time to time. In the event of any conflict, the relevant state or federal definition will prevail over the definitions contained herein and shall be incorporated into this ordinance:

(1) "Authorized enforcement official" means the town manager or designee.

(2) "BASMAA Post Construction Manual" shall mean the most recent version of the Bay Area Stormwater Management Agencies (BASMAA) Post Construction Manual.

(3) "Best management practices (BMPs)" means 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 site runoff, spillage or leaks, sludge or waste recycling or disposal, or drainage from raw material storage.

(4) "Construction activity" means any activity that involves soil disturbing activities including, but not limited to, clearing, paving, grading, disturbances to ground such as stockpiling, and excavation.

(5) "Discharge of a Pollutant" means (a) the addition of any pollutant or combination of pollutants to waters of the United States from any point source, or (b) 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 which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

(6) "Illicit connection" means any device or method that conveys non-stormwater to a municipal separate storm sewer (storm drain) system (MS4) or receiving water.

(7) "Illicit discharge" means 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).

(8) "Incidental irrigation runoff" means 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.

(9) "Low Impact Development (LID)" means 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.

(10) "MCSTOPPP" is the Marin County Stormwater Pollution Prevention Program.

(11) "NPDES permit" means 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.

(12) "Non-stormwater discharge" means any discharge that is not entirely composed of stormwater.

(13) "Phase II Stormwater Permit" means 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.

(14) "Pollutant" means dredged soil, solid waste, incinerator residue, filter backwash, sewage, biological materials, pet wastes, manure, garbage, sewage sludge, munitions, chemical wastes, 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.

(15) "Post Construction Measures Requirements" shall mean the provisions in Section E.12 of the Phase II Stormwater Permit that contain design standards or performance criteria to address the post-construction phase impacts of new projects and redeveloped projects on stormwater quality and quantity. The *BASMAA Post Construction Manual* describes projects subject to the post-construction measures.

(16) "Premises" means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

(17) "Storm drains" means and includes but is not limited to those facilities within the town 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, man-made 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.

(18) "Stormwater" or "storm runoff" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(19) "Stormwater Control Plan" shall mean a plan that meets those criteria contained in the most recent version of the *BASMAA Post Construction Manual*.

(20) "Stormwater Facilities Operation and Maintenance Plan" shall mean 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.

(21) "Stormwater management facility" shall mean any device designated to detain, retain, filter, or infiltrate stormwater.

(22) "Town" means the town of Ross.

(23) "Urban runoff" means 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.

(24) "Urbanized area" means a densely settled core of census tracts and/or census blocks that have a population of at least 50,000, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core.

(25) "Watercourse" means any natural or once natural flowing river, creek, stream, swale or drainageway, whether perennial, intermittent or ephemeral. Includes natural waterways that have been channelized but does not include channels, ditches, culverts or other above or below ground constructed conduits, i.e., storm drains.

12.28.040 Responsibility for administration. This chapter shall be administered for the town by the authorized enforcement official. Where storm drains and/or watercourses have been accepted for maintenance by a public agency legally responsible for certain storm drains and/or watercourses, then the responsibility for enforcing the provisions of this chapter may be assigned to such agency (through contract or agreement executed by the town and such agency) with respect to those storm drains and/or watercourses for which they have accepted maintenance. 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 this chapter and the Phase II Stormwater Permit.

12.28.050 Construction and application. This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act 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 II. DISCHARGE REGULATIONS AND REQUIREMENTS

12.28.060 Discharge of Pollutants. (a) The discharge of non-stormwater discharges to a town storm drain 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 item 4 of this section are met.

(4) Discharges from incidental irrigation runoff; provided, irrigation systems must be designed to conserve water and prevent water leaving the area of application. Persons responsible for controlling irrigation systems shall prevent excessive irrigation runoff by:

- (A) Detecting leaks and correcting the irrigation system within 72 hours of discovering the leak;
- (B) Properly designing and aiming sprinkler heads to only irrigate the planned application area;
- (C) Not irrigating during precipitation events; and
- (D) Where recycled water is used for irrigation, designing and managing holding ponds such that no discharge occurs unless it is the result of the 25 year-24 hour storm event. Any releases from holding ponds must be reported to the Regional Water Board and the County of Marin within 24 hours of the discharge.

12.28.070 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.

12.28.080 Illicit discharges and illicit connections. The establishment, use, maintenance, or continuance of illicit connections to a town storm drain or watercourse, and/or commencement or continuance of any illicit discharges to a town storm drain 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 responsible for an illicit connection shall promptly remove the connection as directed by the authorized enforcement official.

(c) The town may perform clean-up and abatement work and recover its costs from the responsible person as provided in Sections 12.28.110 and 12.28.130, or as otherwise provided by law.

12.28.090 Reduction of pollutants in urban runoff. Any person engaged in activities which will or may result in pollutants entering a town storm drain shall undertake all practicable measures to cease such activities and/or eliminate or reduce such pollutants. Such activities include, but are not limited to, ownership, operation and/or use of parking lots, gasoline stations, industrial facilities, commercial facilities, ground disturbing activities, and stores fronting town streets.

(1) Littering. Except for pollutants lawfully disposed of by way of containers or at lawfully established dumping grounds, no person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and 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 in the town, such that, in the opinion of the authorized enforcement official, the same might be or become a pollutant discharged to the waters of the United States.

The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the town in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt and/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.

(2) Standard for Parking Lots and Similar Structures. Persons owning or operating a parking lot, gas station or similar facility shall clean same as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to a town storm drain or watercourse.

(3) Best Management Practices for Construction, New Development, and Redevelopment.

(A) Any person performing construction, development or redevelopment activities in the town that require a permit or approval under the Ross Municipal Code, including but not limited to approvals under Titles 15, 17 and 18, shall implement appropriate BMPs to prevent the discharge of construction wastes or contaminants from construction materials, tools and equipment from entering a town storm drain or watercourse.

(B) 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 the site using up-to-date standards and practices. The agency will provide references to current guidance manuals and BMP information on request.

- (C) 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 agency. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the agency.
 - (D) 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 Ross Municipal Code.
 - (E) All construction plans and applications for construction activity submitted to the town shall consider the potential for erosion and sedimentation at the construction site, and shall include appropriate erosion and sedimentation controls.
- (4) Erosion and Sediment Control Plan Requirements:
- (A) An Erosion and Sediment Control Plan (ESCP) shall be required for:
 1. Any project subject to a grading permit under Chapter 15.24;
 2. Any project 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. Any other project as required by the town manager or designee 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 manager or designee. The project applicant shall follow the most recent version of the *MCSTOPPP Construction Erosion and Sediment Control Plan Applicant*

Package to prepare the ESCP. At a minimum, the ESCP shall include:

1. Description of the proposed project and soil disturbing activity.
2. Site specific construction-phase BMPs.
3. Rationale for selecting the BMPs, including if needed, soil loss calculations.
4. List of applicable 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).
5. Proof that the applicant has obtained the applicable permits associated with the soil disturbing activity must be submitted prior to approval of the ESCP.
6. Project information as required by the ESCP applicant checklist provided in the *MCSTOPPP Construction Erosion and Sediment Control Plan Applicant Package*:

- i. Owner and contractor contact information
- ii. Site information (location, status, size of project, size of disturbed area)
- iii. Project watershed
- iv. Planned start date and anticipated completion date (as may be revised from time to time).

(C) For projects subject to the State's General Construction Activity Stormwater Permit (CGP), project applicants may submit a Storm Water Pollution Prevention Plan (SWPPP) developed pursuant to the CGP in lieu of submitting an ESCP.

(D) 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) Attention is directed to the town stormwater management ordinance, Chapter 15.54. Prior to and/or during construction, town manager or designee may establish controls on the volume and rate of stormwater runoff from new developments and redevelopment as may be appropriate to minimize peak flows or total runoff volume, and to mimic the pre-development site hydrology. These controls may include limits on impervious area or provisions for detention and retention of runoff on-site.

(6) Stormwater Control Plan Requirements:

(A) For each new development or redevelopment project subject to the post construction measures requirements, or where required by the nature and extent of a proposed project and where deemed appropriate by the agency, every applicant shall submit a Stormwater Control Plan (SCP) that meets the criteria in the most recent version of the *BASMAA Post Construction Manual*, and

shall implement conditions of approval that reduce 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. Increases in runoff shall be managed in accordance with the post construction measures requirements.

The town may require, as a condition of project approval, permanent structural controls designed for the removal of sediment and other pollutants and for control on the volume and rate of stormwater runoff from the project's added or replaced impervious surfaces. The selection and design of such controls shall be in general accordance with criteria established or recommended by state, federal, and local agencies, and where required, the BASMAA Post Construction Manual. Where physical and safety conditions allow, the preferred control measure is to retain drainageways above ground and in as natural a state as possible or other biological methods such as bioretention areas.

(B) The SCP is separate and distinct from the ESCP requirements described in Section 12.28.090(4).

(C) Where projects are required to have a SCP, project applicants shall follow the appropriate SCP template, based on the project type, in the *BASMAA Post Construction Manual*.

(D) Implementation of an approved SCP and submittal of an approved Stormwater Facilities Preparation and Maintenance Plan by the applicant shall be a condition precedent to the issuance of a building permit or a construction permit for a project subject to this section.

(E) Financial security may be required to ensure that stormwater management facilities operate and are maintained following construction for a period which may be determined by the agency. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the agency.

(F) All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the *BASMAA Post Construction Manual*.

(D) All stormwater management facilities shall be maintained according to the *BASMAA Post Construction Manual* and the approved Stormwater Facilities Operation and Maintenance Plan. The person(s) or organization(s) responsible for maintenance shall be designated in the plan. Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the stormwater management facilities at least annually. The Stormwater Facilities Operation and Maintenance Plan shall describe how the maintenance costs will be funded. Upon the failure of a responsible person to maintain the stormwater management facilities in accordance with this chapter or the plan, the town may perform the maintenance and recover its costs from the responsible person as

provided in Article III of this Chapter.

(E) For each new development and redevelopment project subject to the post construction measures requirements, or where deemed appropriate by the town, access by the town to stormwater management facilities for inspections, provided in Section 12.28.110, 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.

(F) All project proponents and their successors, or successors in fee title, in control of a new development and redevelopment project subject to the post construction measures requirements, shall submit one of the following as a condition prior to final inspection and approval of building permit closure:

1. 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;
2. 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;
3. Written text in project deeds, 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
4. 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 Permittee.

(7) 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.

Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by such permit.

(8) 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, contamination and/or illicit discharges, to a storm drain, every person undertaking such activity or operation, or owning or operating such facility shall comply with

such guidelines or requirements as may be required by the authorized enforcement official.

12.28.100 Watercourse protection. (a) Every person owning occupying, leasing, renting, or in control of the 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 which would and/or could pollute or contaminate 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) In addition to the requirement for Town Council design review approval under Chapter 18.41, no person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the town manager or designee:

- (1) Discharge into a watercourse;
- (2) Modify the natural flow of water in a watercourse;
- (3) Deposit 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 within a watercourse or so close to the side so as to cause a probability of such material being carried away by storm-waters.

ARTICLE III. INSPECTION AND ENFORCEMENT

12.28.110 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 and 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 council. Violations may also be subject to Administrative Penalties pursuant to Chapter 9.70.

(1) Abatement Procedure--Costs--Lien. The abatement of any public nuisance under this chapter shall follow the procedures as set forth in Chapter 9.04 of this 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 it is paid. Said lien shall be imposed and collected in accordance with the applicable provisions of state law and this code.

(2) Inspections and Sampling--Authority and Procedure.

- (A) The authorized enforcement official may, within the limitations of applicable state and federal laws, enter any building or any premises at all reasonable times to inspect the same or any facilities, equipment, practices or operations, for any or all of the following situations, as

determined by the authorized enforcement official:

- (i) Routine inspections to ensure implementation of BMPs and other requirements of this chapter;
 - (ii) Active or potential stormwater discharges;
 - (iii) Whenever there is reasonable cause to believe that there exists any condition which constitutes a violation of the provisions of this chapter or the Phase II Stormwater Permit;
 - (iv) Actual violations of this chapter or the Phase II Stormwater Permit;
 - (v) Whenever necessary to enforce any of the provisions of this chapter or the Phase II Stormwater Permit; or
 - (vi) To perform any duty imposed upon the official by this chapter.
- (B) The authorized enforcement official must present proper credentials to, and obtain consent from the owner or occupant to enter. If such building or premises be unoccupied, the official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. In the event the owner and/or occupant refuses entry or cannot be contacted, the official shall request assistance of the town council to obtain an administrative warrant for the premises, pursuant to the provisions of state law.
- (C) The authorized enforcement official has the right to conduct routine sampling and monitoring. The costs of such routine sampling and/or monitoring activities, including test reports and results, shall be borne by the town. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination or illicit discharges to a storm drain, or similar factors.
- (D) Whenever the authorized enforcement official determines there exists 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 other unlawful material, to a storm drain, the official may require the owner and/or occupant to 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 enforcement official.
- (E) Whenever a condition is found to exist in violation of this chapter that, in the opinion of the authorized enforcement official, 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 official shall take whatever reasonable and appropriate action he or she may deem necessary to neutralize the danger, including but not limited to, entry upon private premises for inspection, sampling and monitoring, and abatement.

12.28.120 Violations--Misdemeanors or infractions--Penalties. 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 provisions of this chapter, any such violation of this chapter may, at the discretion of the authorized enforcement official, 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 permitted by the person, firm, corporation or organization and shall be punishable accordingly.

12.28.130 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 civil action brought by the town council 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 preparing and bringing legal action;
- (3) Costs of restoration of the premises from its condition resulting from the violations back to its original condition or incurred in removing, correcting, or terminating the adverse effects resulting from the violation; Compensatory damages including but not limited to loss and/or damage to water quality, wildlife, fish, aquatic life and other adverse environmental effects. Damages recovered under this subsection shall be paid to the town and shall be used for costs of sampling and monitoring, of establishing stormwater discharge pollution control systems and implementing and/or enforcing the provisions of this chapter and/or restoration of aquatic or riparian habitat.

12.28.140 Violations--Administrative enforcement action. In addition to any other enforcement powers and/or remedies provided in this chapter, the authorized enforcement official may issue an order 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 preventative action as may be deemed necessary by the official. 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:

- (a) Warning Letters and Orders to Abate Pollution;
- (b) Warning Letters with requirements to submit written reports; or
- (c) Administrative citations and compliance orders as described in this chapter and as authorized by Chapter 9.70 of the town of Ross Municipal Code.

12.28.150 Remedies not exclusive. The 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.

12.28.160 Authority to arrest and issue citations. Any person who violates any provision of this chapter shall be subject to arrest or citation 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 Chapter 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 prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees acting in the course and scope of employment pursuant to this chapter.

ARTICLE IV. COORDINATION WITH OTHER PROGRAMS

12.28.170 Coordination with hazardous materials inventory and response program. The first revision of the business plan for any facility subject to County Code Chapter 7.90 (Hazardous Materials Release Response Plans and Inventories) shall include a program for compliance with this chapter, including the prohibitions on illicit discharges, and the requirement to reduce stormwater pollutants to the maximum extent practicable.”

SECTION 2: Subdivision (3) of Section 15.24.020 of the Ross Municipal Code is amended by adding the following new subsections:

“G. A proposed Erosion and Sediment Control Plan that meets the requirements of Chapter 12.28 of this Code.

H. A Stormwater Control Plan and a Stormwater Facilities Operation and Maintenance Plan, if required by Chapter 12.28 of this Code.”

SECTION 3: Subdivision (b) of Section 18.39.030 of the Ross Municipal Code is amended and restated as follows:

“(b) Every hillside lot application shall include drawings, plans, reports, specifications and graphic or written material as required by the town planner or town council to clearly and accurately describe the proposed work, its effect on the environment and its relationship to existing improvements. Standard submittal requirements will be prepared by the town planner. Such submittals shall include a proposed Erosion Control Plan, and if required by chapter 12.28

of the town code, a Stormwater Control Plan and a Stormwater Facilities Operation and Maintenance Plan. Additional information may be required by the planner or town council. The town engineer will review all applications to determine the appropriate level of geotechnical report necessary to evaluate the safety of the proposed improvement.”

SECTION 4: Subdivision (h)(5) of Section 18.39.060 of the Ross Municipal Code is amended and restated as follows:

“(5) Erosion control measures shall be required for all development. Erosion control plans shall comply with the County of Marin stormwater regulations and shall meet the National Pollutant Discharge Elimination System (NPDES) permit requirements for Marin County and chapter 12.28 of this Code.”

SECTION 5: Section 18.41.040 of the Ross Municipal Code is amended and restated as follows:

“18.41.040 Submittal requirements. Every design review application shall include drawings, plans, specifications and graphic or written material as required by the town planner or town council to clearly and accurately describe the proposed work, its effect on the environment and its relationship to existing improvements. The applicant shall pay a fee as set by the town council. All drawings and plans shall show both existing and proposed elevations and clearly identify all new construction and label all materials as new or existing. A structural engineer’s report on the condition of the existing structure and its ability to meet building code requirements without additional modifications shall be prepared as required by the town planner or town council. An extensive termite, dry rot damage report shall be prepared, as required by the town planner or town council, which shall not only identify areas of damage but shall explore to determine the full extent of the damage, both exposed and concealed. Complete photos and a videotape of the structure’s exterior shall be provided as required by the town planner or town council. A project manager, hired by the town at the applicant’s expense, shall monitor demolition/construction activity as deemed necessary by the town building official. The applicant shall submit a proposed erosion control and sediment control plan, stormwater control plan, and/or stormwater facilities operation and maintenance plan if required by chapter 12.28 of the town code. Standard submittal requirements will be prepared by the town planner. Additional material may be required by the town planner.”

SECTION 6: This Ordinance shall go into effect on thirty (30) days from its adoption, and shall be posted in three public places in Town.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 13th day of November, 2014, and was adopted at a regular meeting of the Ross Town Council on the 11th day of December, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Elizabeth Brekhus, Mayor

ATTEST:

Linda Lopez, Town Clerk