



**Agenda Item No. 24.**

**Staff Report**

**Date:** June 14, 2018

**To:** Mayor Robbins and Council Members

**From:** Heidi Scoble, Planning Manager

**Subject:** Abramo Pool and Landscape Project, Design Review and Variance at 74 Shady Lane  
File No. 2018-004

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**Recommendation**

Town Council approval of Resolution 2051 approving Design Review and a Variance to allow for the new construction of a swimming pool that would be located approximately 24 feet from the rear property line and 10 feet from the right-side yard property line at 74 Shady Lane.

**Background and Discussion**

On April 25, 2018, the Town Council reviewed a Variance and Design Review to allow for the construction of a new swimming pool to be constructed within a designated floodway as shown on the Flood Insurance Rate Map 06041, Panel 0458F dated March 16, 2018. The project was continued in order for the Town staff to consult with a third-party engineer selected by Town Staff to discuss the merits of swimming pools located within a floodplain/ floodway, as well as the impacts of the project relative to the Town's "Urban Runoff" regulations per Ordinance 657 regarding watercourse protection and the impacts of impervious surfaces within a floodplain/floodway.

Since the April 25, 2018 meeting, the Town has consulted with James Reilly with Stetson Engineers, Inc. As discussed in Attachment 2, Mr. Reilly has identified in his letter that in his opinion, a swimming pool constructed at-grade in a FEMA Regulatory Floodway would have no effect on flooding. Mr. Reilly also identifies in his letter that the FEMA regulations also allow building additions, accessory buildings, and similar small projects (including pools) to be located in the FEMA AE Regulatory Floodway if placed in the "conveyance shadow." A conveyance shadow is the area upstream and downstream of an existing building or other obstruction to flood flows. The assumption to allow structures within the conveyance shadow is that flood water is already flowing around the larger obstruction, so the addition of a new structure will not change existing flood flow. Structures to be constructed within a conveyance shadow would be required to be documented by a "No-Rise" certification.

To ensure FEMA compliance, the applicant has revised the plan so that the swimming pool would be constructed at grade, Stetson Engineering and the Town's Public Works Director/Floodplain Coordinator/Town Hydrologist have established the conveyance shadow of the property, and a "No-Rise" certificate has been prepared (see Attachment 4) to demonstrate the project would not modify the natural flow of water in the creek consistent with the watercourse protection regulations. Furthermore, as provided by the preliminary drainage plan and stormwater control plan presented at the April 25, 2018 meeting, the project is designed, would be conditioned, and would be constructed to meet the purpose and intent of the Urban Runoff Pollution Prevention regulations of Chapter 12.28 of the Ross Municipal Code and Ordinance 657.

With the information contained in the April 24, May 10, and this staff report and because the project would be designed and constructed to meet the Town's Urban Runoff Pollution Prevention regulations, staff suggests that the requisite findings to approve the project can be achieved and recommends approval of the project as provided in Resolution 2051.

#### **Attachments**

1. Resolution 2051
2. Ordinance 657, Urban Runoff
3. Chapter 12.28 of the Ross Municipal Code
4. Revised plans date-stamped received June 6, 2018
5. Technical Letter prepared by dated May 3, 2018
6. No-Rise Certificate for 74 Shady Lane

## ATTACHMENT 1

## **TOWN OF ROSS**

### **RESOLUTION NO. 2051**

#### **A RESOLUTION OF THE TOWN OF ROSS APPROVING DESIGN REVIEW AND A VARIANCE TO ALLOW THE THE NEW CONSTRUCTION OF A SWIMMING POOL AT 74 SHADY LANE, APN 073-101-38**

**WHEREAS**, property owners Thomas and Lindsey Abramo, have submitted an application for Design Review and a Variance to allow for the new construction of a swimming pool that would be located 24 feet from the rear property line and 10 feet from the right-side yard property line at 74 Shady Lane (herein referred to as the "project"); and

**WHEREAS**, the project was determined to be categorically exempt from further environmental review pursuant to the California Environmental Quality Act (CEQA) Guideline Section 15303 – *New Construction*, because it involves construction of new swimming pool with no potential for impacts as proposed and as outlined in the staff report and no exception set forth in Section 15300.2 of the CEQA Guidelines (including but not limited to subsection (a) which relates to impacts on environmental resources; subsection (b) which relates to cumulative impacts, subsection (c) which relates to unusual circumstances; or subsection (f) which relates to historical resources) was found to apply to the project; and

**WHEREAS**, on April 25, 2018, May 10, 2018, and June 14, 2018, the Town Council held a duly noticed public hearing to consider the proposed project; and

**WHEREAS**, the Town Council has carefully reviewed and considered the staff reports, correspondence, and other information contained in the project file, and has received public comment; and

**NOW, THEREFORE, BE IT RESOLVED** the Town Council of the Town of Ross hereby incorporates the recitals above; makes the findings set forth in Exhibit "A" approving the Project described herein, subject to the Conditions of Approval attached as Exhibit "B" at 74 Shady Lane.

The foregoing resolution was duly and regularly adopted by the Ross Town Council at its regular meeting held on the 14<sup>th</sup> day of June 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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Elizabeth Robbins, Mayor

**ATTEST:**

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Linda Lopez, Town Clerk

**EXHIBIT "A"**  
**FINDINGS TO APPROVE**  
**74 SHADY LANE**  
**APN 073-101-38**

**A. Findings**

**I. In accordance with Ross Municipal Code Section 18.41.070, Design Review is approved based on the following findings:**

**a) The project is consistent with the purpose of the Design Review chapter as outlined in Ross Municipal Code Section 18.41.010:**

As supported in the April 25, 2018, May 10, 2018, and June 14, 2018 staff reports, the project would meet the purpose of the Design Review chapter through its high-quality design and materials. The project would be consistent with the architectural style and materials of the existing residence. The project would not impact the "small town" character of the Town because the project would be designed to maintain the overall mass, bulk, and style of the existing residence and garage. Additionally, the project would not impact any unique environmental resources due to the location of the project site relative to any sensitive wildlife habitat, species, and/or creeks. Lastly, the project would be required to address drainage and stormwater prior to issuance of any building permit to allow for the construction of the project.

**b) The project is in substantial compliance with the design criteria of Ross Municipal Code Section 18.41.100.**

As summarized in the staff reports dated April 25, 2018, May 10, 2018, and June 14, 2018, the project would be consistent with the design review criteria and standards relative to architectural design, materials, colors, and landscaping. Lastly, the project would address health and safety through the issuance of a building permit to ensure compliance with the building, public works, and fire code regulations.

**c) The project is consistent with the Ross General Plan and zoning ordinance.**

The scope of the project is consistent with the allowed structures and uses that may be permitted within the Medium Density land use designation of the General Plan and the single family residence chapter of the zoning ordinance.

**II. In accordance with Ross Municipal Code Section 18.48.020, a Variance is approved based on the following findings:**

**1. That there are special circumstances or conditions applicable to the land, building or use referred to in the application;**

As supported in the April 25, 2018, May 10, 2018, and June 14, 2018 staff reports, the requisite special circumstance findings can be achieved to allow the side and rear setback

Variance due to the parcel configuration relative to the existing development conditions of the project site.

**2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights;**

The granting of the project Variances as described in the April 25, 2018, May 10, 2018, and June 14, 2018 staff reports, the project would be consistent with other Variances that have been granted for similar projects in similar zoning districts within the Town.

**3. That the granting of the application will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.**

The project would not adversely affect health and safety of nearby residents as the project would be constructed in compliance with the building code and fire codes.

**EXHIBIT "B"**  
**CONDITIONS OF APPROVAL**  
**74 SHADY LANE**  
**APN 073-101-38**

1. This approval authorizes a Design Review and a Variance allow for the new construction of a swimming pool that would be located 24 feet from the rear property line and 10 feet from the right-side yard property line at 74 Shady Lane.
2. The building permit shall substantially conform to the plans entitled, "Abramo Residence" consisting of 6 sheets prepared by Imprints Landscape Architecture, date stamped received February 8, 2017.
3. PRIOR TO ISSUANCE OF ANY GRADING OR BUILDING PERMIT, the following conditions of approval shall be reproduced on the cover sheet of the plans submitted for a building permit. The property owner shall certify on the building permit plans that they have read and agree to the following conditions.
4. PRIOR TO ISSUANCE OF ANY GRADING OR BUILDING PERMIT, the applicant shall submit a final grading plan to the Director of Public Works to demonstrate the project will not result in any fill within the floodway and that project would meet all FEMA AE Regulatory Floodway regulations.
5. Except as otherwise provided in these conditions, the project shall comply with the plans submitted for Town Council approval. Plans submitted for the building permit shall reflect any modifications required by the Town Council and these conditions.
6. No changes from the approved plans, before or after project final, including changes to the materials and material colors, shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town for review and approval prior to any change. The applicant is advised that changes made to the design during construction may delay the completion of the project and will not extend the permitted construction period.
7. Prior to Building Permit Issuance, the applicant shall submit proposed exterior lighting fixtures if any new lighting will be installed as a result of the project. All lighting shall be shielded (no bare bulb light fixtures or down lights that may be visible from down-slope sites). Exterior lighting of landscaping by any means shall not be permitted if it creates glare, hazard or annoyance for adjacent property owners. Lighting expressly designed to light exterior walls or fences that is visible from adjacent properties or public right-of-ways is prohibited. No up



lighting is permitted. Interior and exterior lighting fixtures shall be selected to enable maximum "cut-off" appropriate for the light source so as to strictly control the direction and pattern of light and eliminate spill light to neighboring properties or a glowing night time character.

8. The project shall comply with the following conditions of the Town of Ross Building Department and Public Works Department:
  - a. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee. Applicant shall provide the names of the owner, architects, engineers and any other people providing project services within the Town, including names, addresses, e-mail, and phone numbers. All such people shall file for a business license. A final list shall be submitted to the Town prior to project final.
  - b. A registered Architect or Engineer's stamp and signature must be placed on all plan pages.
  - c. The building department may require the applicant to submit a deposit prior to building permit issuance to cover the anticipated cost for any Town consultants, such as the town hydrologist, review of the project. Any additional costs incurred by the Town, including costs to inspect or review the project, shall be paid as incurred and prior to project final.
  - d. The applicant shall submit an erosion control plan with the building permit application for review by the building official/director of public works. The Plan shall include signed statement by the soils engineer that erosion control is in accordance with Marin County Stormwater Pollution Prevention Program (MCSTOPP) standards. The erosion control plan shall demonstrate protection of disturbed soil from rain and surface runoff and demonstrate sediment controls as a "back-up" system (i.e., temporary seeding and mulching or straw matting).
  - e. No grading shall be permitted during the rainy season between October 15 and April 15 unless permitted in writing by the Building Official/Director of Public Works. Grading is considered to be any movement of earthen materials necessary for the completion of the project. This includes, but is not limited to cutting, filling, excavation for foundations, and the drilling of pier holes. It does not include the boring or test excavations necessary for a soils engineering investigation. All temporary and permanent erosion control measures shall be in place prior to October 1.
  - f. The drainage design shall comply with the Town's stormwater ordinance (Ross Municipal Code Chapter 15.54). A drainage plan and hydrologic/hydraulic analysis shall be submitted with the building permit application for review and approval by the building official/public works director.
  - g. The plans submitted for a building permit shall include a detailed construction and traffic management plan for review and approval of the building official, in consultation with the

town planner, Town Engineer and police chief. The plan shall include at a minimum: tree protection, management of worker vehicle parking, location of portable toilets, areas for material storage, traffic control, method of hauling and haul routes (including proposed waste disposal site), size of vehicles, and washout areas. The plan shall demonstrate that on-street parking on Shady Lane associated with construction workers and deliveries are prohibited and that all project deliveries shall occur during the working hours as identified in the below condition m.

- h. The applicant shall submit a schedule that outlines the scheduling of the site development to the building official. The schedule should clearly show completion of all site grading activities prior to the winter storm season and include implementation of an erosion control plan. The construction schedule shall detail how the project will be completed within the construction completion date provided for in the construction completion chapter of the Ross Municipal Code (Chapter 15.50).
- i. A preconstruction meeting with the property owner, project contractor, project architect, project arborist, representatives of the Town Planning, Building/Public Works and Ross Valley Fire Department and the Town building inspector is required prior to issuance of the building permit to review conditions of approval for the project and the construction management plan.
- j. A copy of the building permit shall be posted at the site and emergency contact information shall be up to date at all times.
- k. The Building Official and other Town staff shall have the right to enter the property at all times during construction to review or inspect construction, progress, compliance with the approved plans and applicable codes.
- l. Inspections shall not be provided unless the Town-approved building permit plans are available on site.
- m. Working Hours are limited to Monday to Friday 8:00 a.m. to 5:00 p.m. Construction is not permitted at any time on Saturday and Sunday or the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day. If the holiday falls on a Sunday, the following Monday shall be considered the holiday. If the holiday falls on a Saturday, the Friday immediately preceding shall be considered the holiday. Exceptions: 1.) Work done solely in the interior of a building or structure which does not create any noise which is audible from the exterior; or 2.) Work actually physically performed solely by the owner of the property, on Saturday between the hours of 10:00 a.m. and 4:00 p.m. and not at any time on Sundays or the holidays listed above. (RMC Sec. 9.20.035 and 9.20.060).
- n. Failure to comply in any respect with the conditions or approved plans constitutes grounds for Town staff to immediately stop work related to the noncompliance until the

matter is resolved. (Ross Municipal Code Section 18.39.100). The violations may be subject to additional penalties as provided in the Ross Municipal Code and State law. If a stop work order is issued, the Town may retain an independent site monitor at the expense of the property owner prior to allowing any further grading and/or construction activities at the site.

- o. Materials shall not be stored in the public right-of-way. The project owners and contractors shall be responsible for maintaining all roadways and rights-of-way free of their construction-related debris. All construction debris, including dirt and mud, shall be cleaned and cleared immediately. All loads carried to and from the site shall be securely covered, and the public right-of-way must be kept free of dirt and debris at all times. Dust control using reclaimed water shall be required as necessary on the site or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at site. Cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.
- p. Applicants shall comply with all requirements of all utilities including, the Marin Municipal Water District, Ross Valley Sanitary District, and PG&E prior to project final. Letters confirming compliance shall be submitted to the building department prior to project final.
- q. All electric, communication and television service laterals shall be placed underground unless otherwise approved by the director of public works pursuant to Ross Municipal Code Section 15.25.120.
- r. The project shall comply with building permit submittal requirements as determined by the Building Department and identify such in the plans submitted for building permit.
- s. The applicant or owner shall repair any damage to public or private property including the roadway, curb and gutter, drainage facilities, fire hydrants, or any other property caused by construction activities. Applicant is advised that, absent of clear video evidence to the contrary, property damage on Town-maintained and non-Town maintained roadways must be repaired to the satisfaction of the Public Works Department and all private users of the roadway, respectively during construction and prior to project final. Final damage assessment and extent of repair in all cases shall be at the sole discretion of the Town, and input of private users of the roadway will be considered in making that assessment.
- t. Final inspection and written approval of the applicable work by Town Building, Planning and Fire Department staff shall mark the date of construction completion.
- u. The Public Works Department may require submittal of a grading security in the form of a Certificate of Deposit (CD) or cash to cover grading, drainage, and erosion control. Contact the Department of Public Works for details.

- v. BEFORE FINAL INSPECTION, the Soils Engineer shall provide a letter to the Department of Public Works certifying that all grading and drainage has been constructed according to plans filed with the grading permit and his/her recommendations. Any changes in the approved grading and drainage plans shall be certified by the Soils Engineer and approved by the Department of Public Works. No modifications to the approved plans shall be made without approval of the Soils Engineer and the Department of Public Works.
- i. The existing vegetation shall not be disturbed until landscaping is installed or erosion control measures, such as straw matting, hydroseeding, etc, are implemented.
- ii. All construction materials, debris and equipment shall be stored on site. If that is not physically possible, an encroachment permit shall be obtained from the Department of Public Works prior to placing any construction materials, debris, debris boxes or unlicensed equipment in the right-of-way.
- iii. The applicant shall provide a hard copy and a CD of an as-built set of drawings, and a certification from all the design professionals to the building department certifying that all construction was in accordance with the as-built plans and his/her recommendations.

9. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with the Town Council and Town boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding ("action") against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or alleging any other liability or damages based upon, caused by, or related to the approval of the project. The Town shall promptly notify the applicants and/or owners of any action. The Town, in its sole discretion, may tender the defense of the action to the applicants and/or owners or the Town may defend the action with its attorneys with all attorneys fees and litigation costs incurred by the Town in either case paid for by the applicant and/or owners.

## ATTACHMENT 2

## **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 18.39.090 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 13<sup>th</sup> day of November, 2014, and was adopted at a regular meeting of the Ross Town Council on the 11<sup>th</sup> day of December, 2014 by the following vote:

**AYES:** Council Members Brekhus, Hoertkorn, Kuhl, Robbins, Small

**NOES:**

**ABSENT:**

**ABSTAIN:**

  
Elizabeth Brekhus, Mayor

**ATTEST:**

  
Linda Lopez, Town Clerk

## ATTACHMENT 3

## Chapter 12.28

### URBAN RUNOFF POLLUTION PREVENTION

#### Sections:

#### ARTICLE I. TITLE, PURPOSE AND GENERAL PROVISIONS

- 12.28.010 Title.
- 12.28.020 Purpose and intent.
- 12.28.030 Definitions.
- 12.28.040 Responsibility for administration.
- 12.28.050 Construction and application.

#### ARTICLE II. DISCHARGE REGULATIONS AND REQUIREMENTS

- 12.28.060 Discharge of pollutants.
- 12.28.070 Discharge in violation of permit.
- 12.28.080 Illicit discharge and illicit connections.
- 12.28.090 Reduction of pollutants in urban runoff.
- 12.28.100 Watercourse protection.

#### ARTICLE III. INSPECTION AND ENFORCEMENT

- 12.28.110 Violations constitute a public nuisance--Abatement--Restoration.
- 12.28.120 Violations--Misdemeanors or infractions--Penalties.
- 12.28.130 Violations--Civil action for enforcement.
- 12.28.140 Violations--Administrative enforcement action.
- 12.28.150 Remedies not exclusive.
- 12.28.160 Authority to arrest and issue citations.

#### ARTICLE IV. COORDINATION WITH OTHER PROGRAMS

- 12.28.170 Coordination with hazardous materials inventory and response program.

#### **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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

**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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

## **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.

(Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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*.

(G) 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.

(H) 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.

(I) 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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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.

(Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

### **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.

(Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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.

(Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

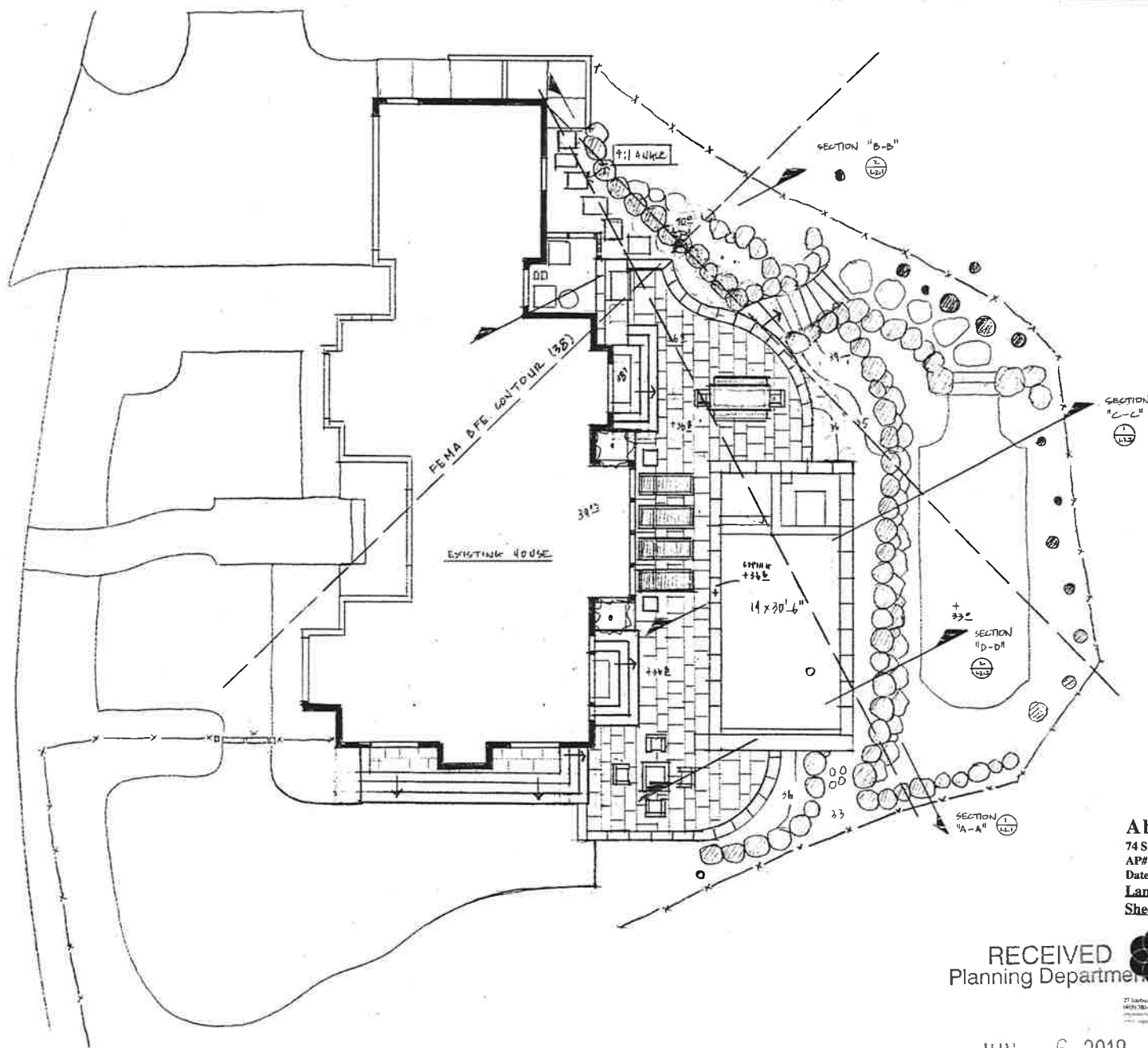
12.28.150 Remedies not exclusive. The remedies provided in this chapter are in addition to and do not supersede or limit any and all other remedies, both civil and criminal. The remedies provided for herein shall be cumulative to, and not exclusive of, each other. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

#### **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. (Ord. 657 (part), 2014; Ord. 529 Div. 1(part), 1995).

## ATTACHMENT 4



**Abramo Residence**  
 74 Shady lane  
 AP#-073-101-38  
 Date: 6 / 5 / 2018  
**Landscape Concept Plan**  
**Sheet L1.1**

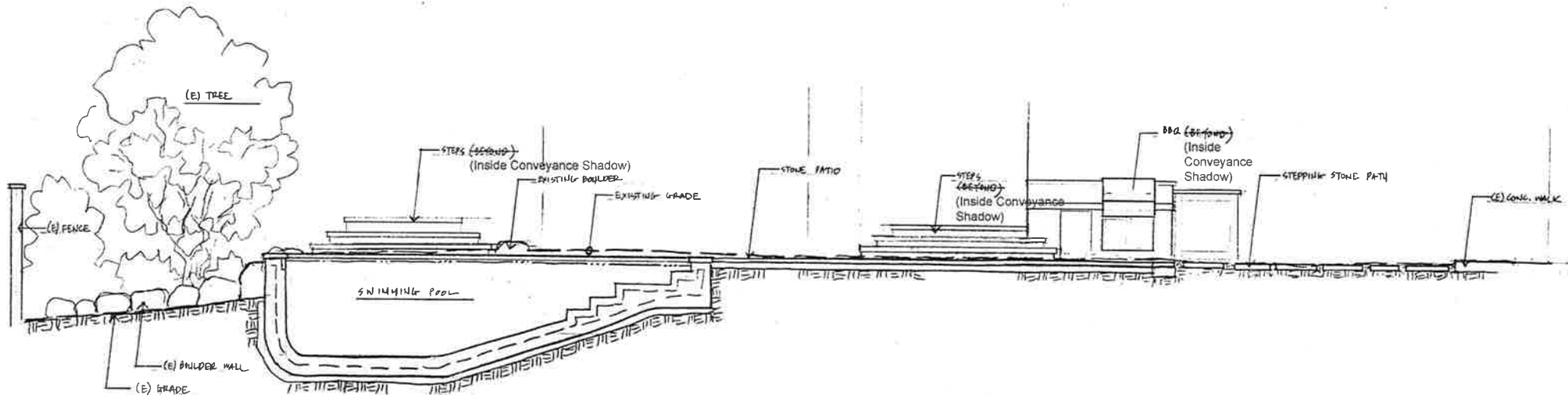
RECEIVED  
 Planning Department



27 Siskiyew - Milpitas, CA 95035  
 408-280-0711  
 www.imprintslandscape.com

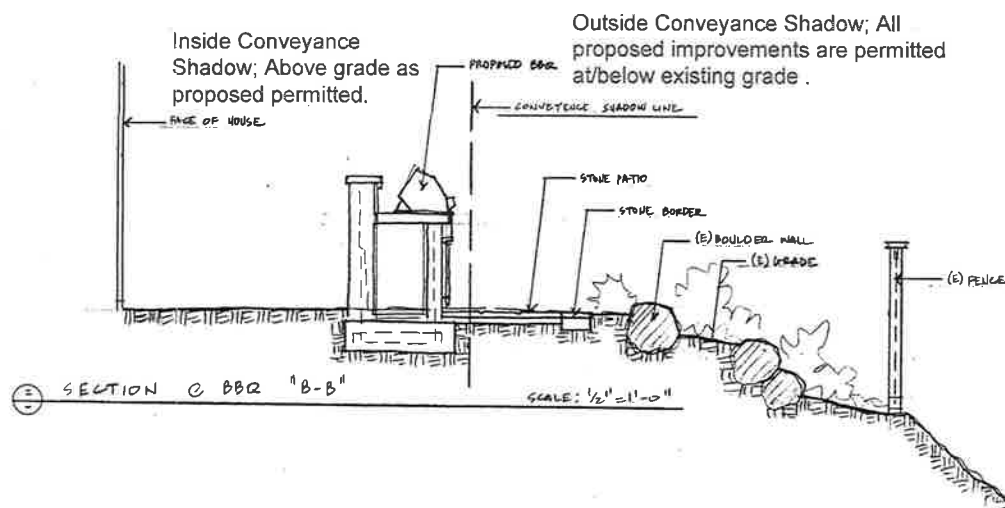
JUN - 6 2018

Town of Ross



SECTION 1 SECTION ALONG OUTSIDE OF CONVEYANCE SHADOW "A-A"

SCALE: 3/8" = 1'-0"



SECTION 2 SECTION C BBR "B-B"

SCALE: 1/2" = 1'-0"

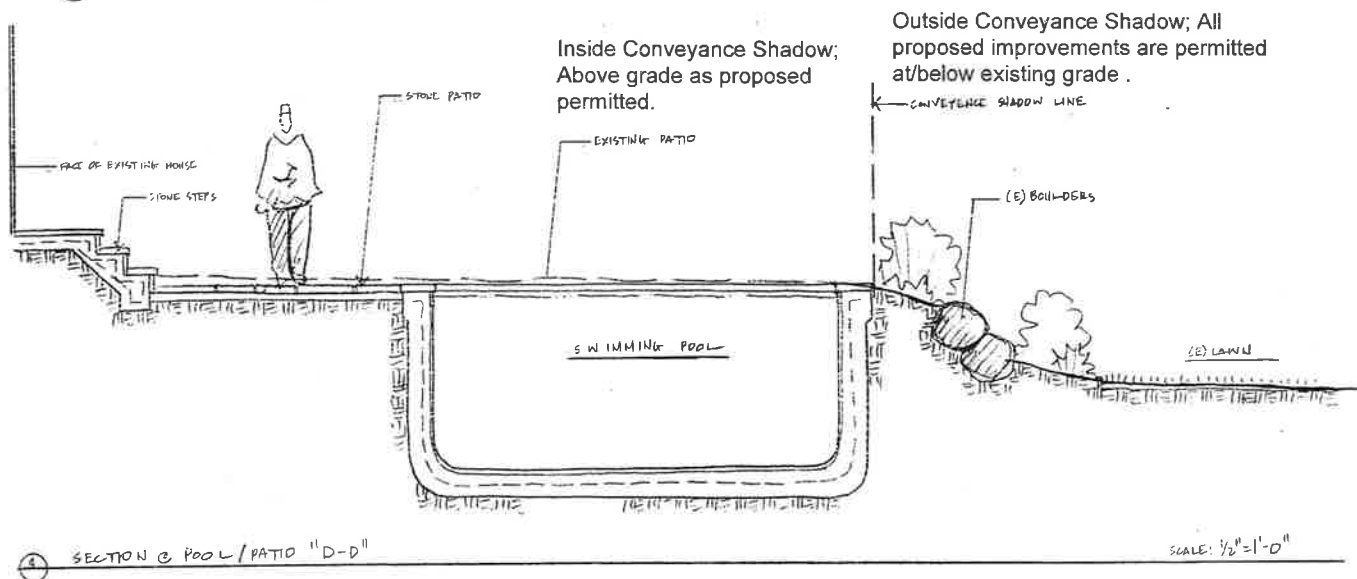
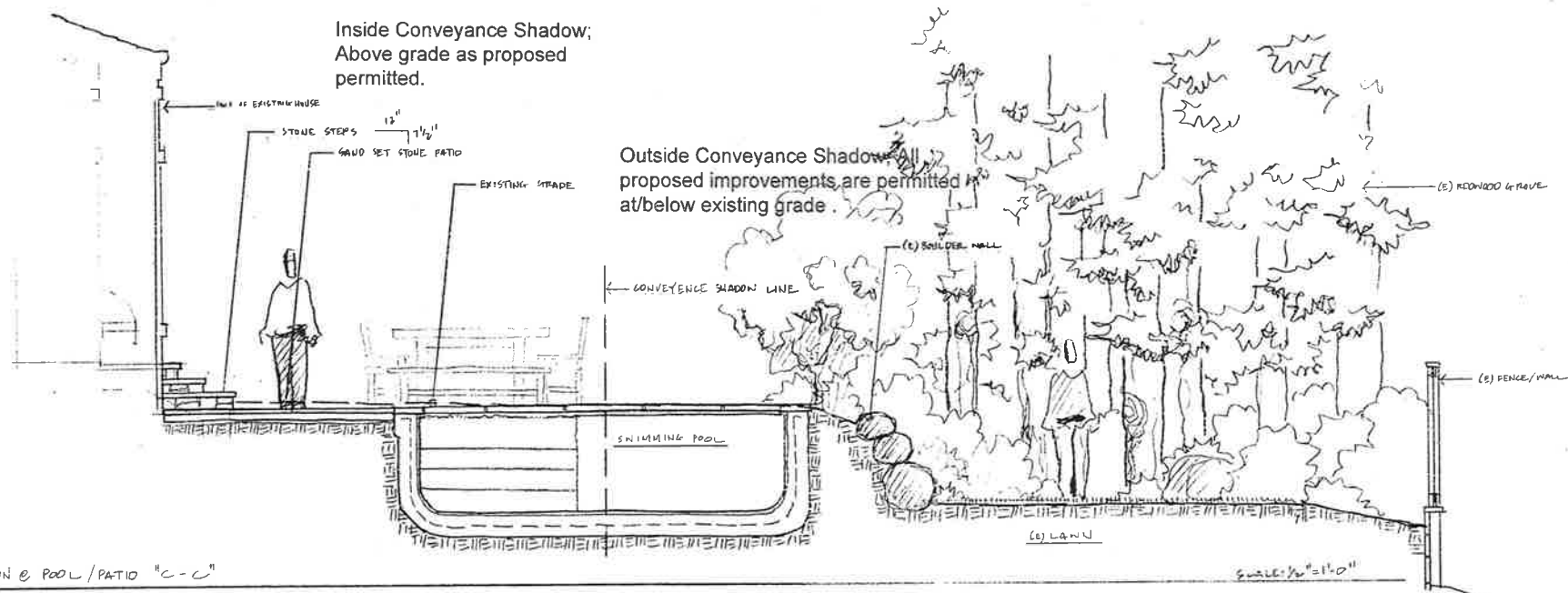
## Abramo Residence

74 Shady lane  
AP#:073-101-38  
Date: 6/5/2018  
Scale: As Shown

Site Sections  
Sheet L2.1



27 Sycamore • Mill Ranch, CA 94045  
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## Abramo Residence

74 Shady lane  
AP# 073-101-38  
Date: 6 / 5 / 2018  
Site Sections  
Sheet L2.2

Ross, CA.

Scale: As Shown



27 North Main Street, Suite 100  
Berkeley, CA 94704  
415.863.0731  
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## ATTACHMENT 5





2171 E. Francisco Blvd., Suite K • San Rafael, California 94901  
Phone: (415) 457-0701 • Fax: (415) 457-1638 • Website: [www.stetsonengineers.com](http://www.stetsonengineers.com)

Northern California • Southern California • Arizona • Colorado • Oregon

May 3, 2018

Richard Simonitch  
Public Works Director/Town Engineer  
Town of Ross  
P.O. Box 320  
Ross, CA 94957

Subject: Opinion Regarding Potential Effects of an At-Grade Pool on Flooding

Dear Mr. Simonitch:

As you requested, this letter describes my opinion of the potential effect of a swimming pool, filled with water, constructed at-grade in a FEMA AE Regulatory Floodway, on flooding.

A swimming pool, filled with water and constructed in a FEMA AE Regulatory Floodway, could potentially exacerbate flooding in three ways: (1) If constructed above grade and in the pathway of the flood flow, it would obstruct the flood flow, creating a "backwater effect" that raises the level of the floodwater surface upstream of the pool; (2) it would displace a volume of floodwater equal to the volume that it occupies above-grade within the flood water column, thereby raising the level of the floodwater surface; and (3) if it ruptured, it would release water additional water to the flood thereby raising the level of the floodwater surface.

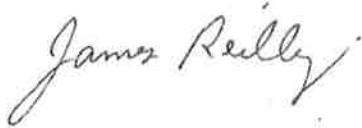
However, if a pool is constructed at-grade, none of these effects would occur: There would be no obstruction to flow because the flood would flow over the pool; there would be no displacement of floodwater because the pool would not extend upward and into the flood water column; and there would be no release of water to the flood because there would be no net force to cause the water to release from the pool. Therefore, my opinion is that a swimming pool constructed at-grade in a FEMA Regulatory Floodway would have no effect on flooding.

All projects in the FEMA AE Regulatory Floodway must undergo an encroachment review to determine their effect on flood flows and ensure that they do not cause problems. The objective of this requirement in the floodplain management ordinance is to ensure that the floodway is reserved to do its natural job: carrying floodwater. The preferred approach is to avoid all development there. To ensure that the encroachment review is done right, the Town may require the property owner/applicant to provide an encroachment certification. This is often called a "no-rise" certification because it certifies that the development project will not affect flood heights. The certification must be supported by technical data, which should be based on the same computer model used to develop the floodway shown on the community's map.

FEMA does allow building additions, accessory buildings, and similar small projects (including pools) to be located in the FEMA AE Regulatory Floodway if placed in the "conveyance shadow." This is the area upstream and downstream of an existing building or other obstruction to flood flows. Flood water is

already flowing around the larger obstruction, so the addition of a new structure will not change existing flood flow. Placement in the conveyance shadow should be documented in the "no-rise" certification.

Sincerely,

A handwritten signature in black ink that reads "James Reilly". The signature is written in a cursive style with a large, stylized "J" and "R".

James F. Reilly, PE  
Principal  
STETSON ENGINEERS INC.

## ATTACHMENT 6

## "NO-RISE" CERTIFICATION

74 Shady Lane, Ross, CA

This is to certify that I am a duly qualified registered professional engineer licensed to practice in the State of California.

It is further to certify that the attached technical data supports the fact that proposed rear yard improvements at 74 Shady Lane, Ross, CA consisting of a pool, patio, and landscaping improvements, will not impact the 100-year flood elevations, floodway elevations, or floodway widths on Ross Creek at published sections in the Flood Insurance Study for Marin County (Ross; Community Number 060179; Panel 0458F; Map Number 06041C0458F) dated March 16, 2016 and will not impact the 100-year flood elevations, floodway elevations, or floodway widths at unpublished cross-sections in the vicinity of the proposed development.

Attached are the following documents that support my findings:

1. Abramo Residence Landscape Concept Plan (Sheet L1.1), 74 Shady Lane, Ross CA

This plan provided by Owner shows the spatial extent of proposed rear yard improvements. Overlaid on this plan is the elevation contour line depicting the nearest FEMA2014 Effective Model cross section which passes through the middle of the existing building at 74 Shady Lane – the Base Flood Elevation 38 feet NAVD line ("38 feet BFE Line") and a line perpendicular to the 38-foot BFE Line. Also shown are the alignments of cross sections A-A, B-B, C-C, and D-D.

2. Abramo Residence Site Sections (Sheets L2.1 and L.2.2), 74 Shady Lane, Ross CA

These plans provided by Owner compare the existing and finished (post-project) topographical grade lines.

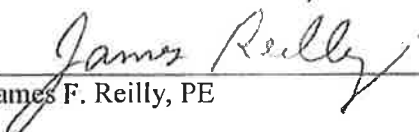
3. Hydraulic Analysis at 31 Bolinas Road, Fairfax, CA

Sheet L1.1 shows the conveyance shadow at 74 Shady Lane, Ross, CA. The conveyance shadow shown is the area downstream of the existing building, which acts as an existing obstruction to flood flows. The conveyance shadow was delineated by drawing a line starting at the northeast corner of the building obstruction and extending downstream at a 4:1 ratio deviation from perpendicular to the 38 feet BFE Line.

Flood water is already flowing around this larger obstruction, so the addition of above grade improvements inside of this conveyance shadow (i.e., on the side toward the building) **will not change existing flood flows.**

Sheets L2.1 and L.2.2 compare the existing and finished (post-project) topographical grade lines. These sheets indicate that all proposed improvements located outside of the conveyance shadow will be built at or below existing grade, so the addition of these improvements **will not change existing flood flows.**



  
James F. Reilly, PE

Date: 6/8/18

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2. Abramo Residence Site Sections (Sheets L2.1 and L2.2), 74 Shady Lane, Ross CA

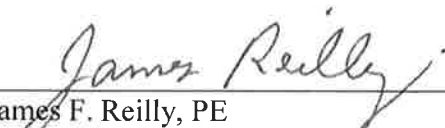
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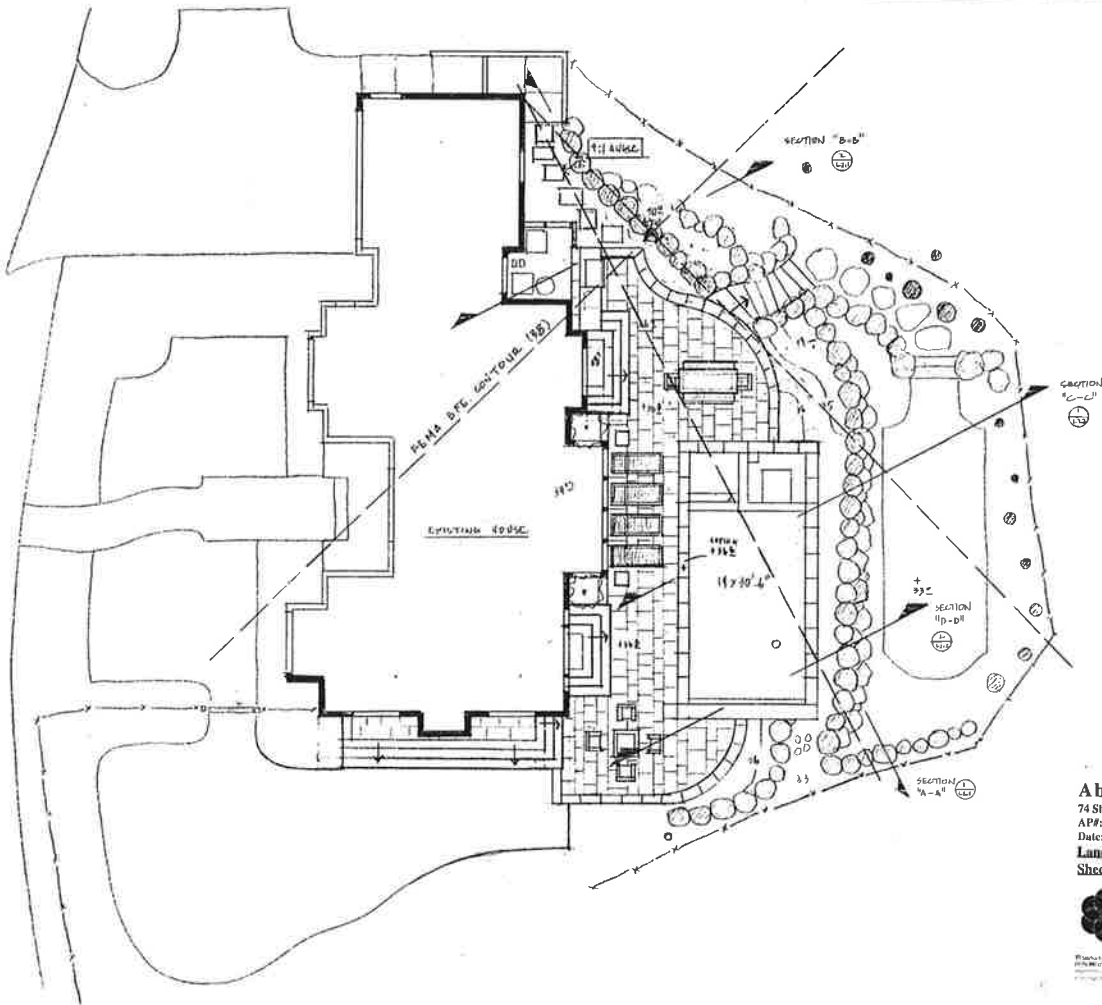
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Sheets L2.1 and L2.2 compare the existing and finished (post-project) topographical grade lines. These sheets indicate that all proposed improvements located outside of the conveyance shadow will be built at or below existing grade, so the addition of these improvements **will not change existing flood flows**.

  
James F. Reilly, PE

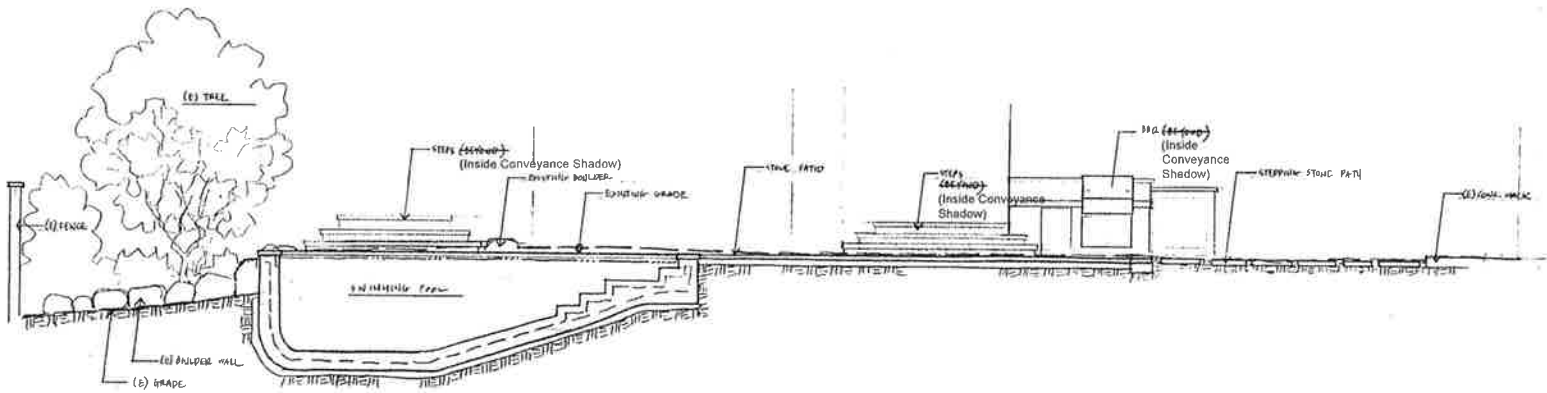
Date: 6/8/18



**Abramo Residence**  
 74 Shady lane  
 AP# 073-101-38  
 Date: 6/5/2018  
 Landscape Concept Plan  
 Sheet L1.1

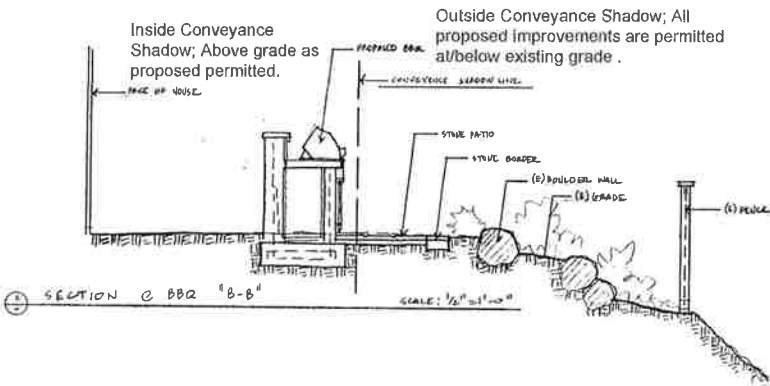


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SECTION A-A

SCALE: 3/8" = 1'-0"



SECTION B-B

SCALE: 3/8" = 1'-0"

# Abramo Residence

74 Shady Lane, Ross, CA

APR: 073-101-38 Date: 6/5/2018 Scale: As Shown

Site Sections

Sheet L2.1



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