

## SECTION 32050 STORMWATER

### 1. Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the Regulations of the federal Clean Water Act found at 40 CFR 122.34.

### 2. Purpose

The purpose of this Bylaw is to reduce flooding, protect water quality, increase groundwater recharge, reduce erosion and sedimentation, promote environmentally sensitive site design practices such as Low Impact Development that protect vegetation and enhance town character, ensure long-term maintenance of stormwater controls and meet or exceed federal requirements under Phase II of the National Pollutant Discharge Elimination System.

### 3. Definitions

**ALTERATION OF DRAINAGE CHARACTERISTICS:** Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge, change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, or structural improvement that helps to reduce the rate or volume of stormwater runoff or improve its water quality.

**DEVELOPMENT:** Any construction or land disturbance on vacant land that is currently in a natural state and has not been disturbed.

**DISTURB:** To cause a change in the position, location, or arrangement of soil, sand rock, gravel or similar earth material, remove the vegetative surface cover on all or a portion of a site or make any other change which would alter drainage characteristics as per the definition above.

**EROSION:** The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

**EROSION AND SEDIMENTATION CONTROL PLAN:** A document containing a narrative, drawings and details developed by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC), which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation resulting from pre-construction and construction related land disturbance activities.

**GRADING:** Changing the level or shape of all or a portion of the ground surface of a site.

**IMPERVIOUS:** Preventing water from infiltrating the underlying soil. Impervious surfaces include paved surfaces (parking lots, sidewalks, driveways,) walkways and patios of a continuous hardened surface, rooftops, swimming pools, patios, and paved, gravel and compacted dirt surfaced roads.

**OPERATION AND MAINTENANCE PLAN:** A plan that shows or establishes the physical, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed, including during pre- and post-construction activities.

**PERMITTING AUTHORITY:** For the purposes of this bylaw, the permitting authority shall mean either the Planning Board or Conservation Commission, or the Town Planner or Conservation and Natural Resource Officer.

**PRE-CONSTRUCTION:** All activity undertaken in preparation for construction.

**POST CONSTRUCTION:** All activity undertaken after a Certificate of Completion is issued.

**REDEVELOPMENT:** Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

**RUNOFF:** Rainfall, snowmelt, or irrigation water flowing over the ground surface.

**SEDIMENT:** Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

**SEDIMENTATION:** The process or act of deposition of sediment.

**SITE:** Any lot or parcel of land or area of property.

**SLOPE:** The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

**STABILIZATION:** The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or reduce erosion.

**STOP WORK ORDER:** An order issued by the Permitting Authority or its designee which requires that all construction activity on a site be stopped.

**STORMWATER MANAGEMENT PLAN:** A plan required as part of the application for a Stormwater Management Permit.

**STORMWATER:** Storm water runoff, snow melt runoff, and surface water runoff and drainage.

**SUBDIVISION:** As defined in the Subdivision Control Law of Massachusetts, M.G.L. – Chapter 41, Section 81L Definitions.

#### **4. Applicability**

A. Regulated Activities. This bylaw shall apply to the following activities:

1. All development and redevelopment projects that will disturb over 15,000 sq. ft. of land in a Residential zoning district; render 25% or more of an undeveloped lot impervious or increase impervious area of a developed lot by 25% or more, even if that disturbance is conducted over separate phases and/or by separate owners.

2. All development and redevelopment projects that will disturb over 1,000 sq. ft. of land on undisturbed or natural slopes greater than 25%, even if that alteration is conducted over separate phases and/or by separate owners.
3. Construction of a new drainage system or alteration of a drainage system serving a drainage area of more than 15,000 sq. ft. of land.
4. Any development or redevelopment involving "land uses with higher potential pollutant loads," as defined in the Massachusetts Stormwater Management Policy. Land uses with higher potential pollutant loads include auto salvage yards, auto fueling facilities (gas stations), fleet storage yards, high-intensity commercial parking lots, road salt storage areas, commercial nurseries, outdoor storage and loading areas of hazardous substances, and marinas.

B. Exempt Activities. The following activities shall be exempt from this bylaw:

1. a. Construction on an individual lot within a subdivision that has previously been issued a stormwater permit, or was approved under the Subdivision Rules and Regulations adopted 8/13/10 or later;
- b. Construction on a lot served by an approved Common Driveway or shown on an approved Site Plan where the proposed stormwater management system and Operation & Maintenance Plan were reviewed by the Town's consulting engineer and approved by the Planning Board, and if applicable, a current Common Driveway Agreement is on file with the Planning Board; or
- c. Construction on any lot that has previously been issued a stormwater permit, so long as that construction substantially conforms to the grading, the limit of work, impervious area and drainage characteristics shown on an approved plan. Any plan changes that would have the effect of altering drainage characteristics must be on file with the Permitting Authority prior to construction commencing. The Permitting Authority may require that the applicant obtain an engineer's certification that drainage characteristics will not be altered by proposed changes to a plan.
2. Landscaping for a single-family home that involves the addition or removal of fewer than 100 cubic yards of soil material or alteration of less than two feet of elevation with maintenance of existing drainage characteristics.
3. Repair and replacement of existing roofs.
4. Construction of walls and fencing that will not alter existing drainage characteristics.
5. Use, maintenance, and improvement of agricultural land.
6. Construction of utilities, other than drainage, that will not alter existing terrain or drainage characteristics, including repairs to existing septic systems when required by the Board of Health.
7. Emergency repairs to any existing stormwater management facility.

8. Routine maintenance and improvement of town-owned public ways not resulting in an increase in impervious area.

## **5. Administration**

- A. This bylaw shall be administered by the Planning Board and Conservation Commission. Any activity regulated under this bylaw that is also subject to regulation by the Wetlands Protection Act and/or local Wetlands Bylaw shall also require approval of a Stormwater Permit by the Conservation Commission or its designee. Any activity regulated by this bylaw that is not subject to regulation by the Wetlands Protection Act and/or local Wetlands Bylaw shall require approval by the Planning Board. A project required to undergo stormwater review under the Subdivision Rules and Regulations or as required for a Common Driveway or Site Plan will not require a separate Stormwater Permit from the Planning Board. In practice, the Conservation Commission' jurisdiction will mostly include single family dwellings falling under the jurisdiction of the Wetland Protection Act. All other regulated activities shall require a Stormwater Permit from the Planning Board or its designee. The term Permitting Authority shall be used to refer to the board having jurisdiction over land disturbance or alteration under this bylaw.
- B. The Planning Board may adopt and amend Stormwater Regulations related to the content of permit applications and the performance standards for development activities, as described in Section 6 below. Failure to promulgate such Regulations shall not have the effect of suspending or invalidating this bylaw.
- C. The Planning Board or Conservation Commission as applicable, their agents or their designee shall review all applications for a Stormwater Permit, issue a Stormwater Permit, conduct necessary inspections and site investigations, monitor and enforce the conditions of the permit, and issue a Certificate of Completion, and shall be responsible for enforcement of this bylaw.
- D. The Permitting Authority may refer any application for a Stormwater Permit to its consulting engineer for review.

Following receipt of a completed permit application, the Permitting Authority shall seek review and comments from the Conservation Commission or Planning Board as applicable, Board of Health, Department of Public Works, Water Resources Committee for projects within the Water Resource Protection District and other town boards or authorities as appropriate.
- E. The Town Planner or Conservation and Natural Resources Officer may issue a Stormwater Permit for projects which do not disturb an area greater than 40,000 sq. ft., or greater than 1,000 sq. ft. with a slope of 25% or greater. This shall be considered an Administrative Stormwater Project Review and shall be issued according to procedures outlined in the Stormwater Regulations, which shall not require a public hearing.
- F. Construction under a Stormwater Permit shall be authorized upon the date of issuance but in no case more than three years from the date of issuance unless this time period is extended by vote of the Planning Board or Conservation Commission.

## **6. Adoption of Regulations**

- A. The Stormwater Regulations shall include separate performance standards for rainwater-produced stormwater and land subject to coastal storm flowage. All regulations shall be adopted after a public hearing and public comment period, and transmitted to the Planning Board within one week of adoption for inclusion in the bylaw.
- B. The public hearing shall be advertised in a newspaper of general local circulation at least seven days prior to the hearing date.
- C. Other boards, commissions, and departments with responsibilities that include or are related to stormwater management are encouraged to adopt those Regulations by reference.

**7. Submittal Requirements.** Submittal requirements for development, site disturbance and alteration shall include an application form, application fee and plans as listed below. These may be consolidated into a single site plan. All plans and certifications shall be prepared by a licensed Professional Engineer.

- A. **Application Fee.** Each application must be accompanied by the appropriate application fee pursuant to the Stormwater Regulations. This fee shall be sufficient to cover any expenses connected with the public hearing, where required, and review of the Stormwater Permit application. The Permitting Authority is authorized to retain a licensed Professional Engineer or other professional consultant to advise the Permitting Authority on any or all aspects of the Application.
- B. **Erosion and Sedimentation Control.** All applications must include an Erosion and Sedimentation Control Plan to show proposed methods for properly stabilizing the site before construction begins. This plan shall show the Best Management Practices (BMP's) that will be used during construction to minimize erosion of the soil, sedimentation of stormwater and flow of stormwater onto neighboring properties, roads or drainage systems. These BMPs should include both stabilization practices such as: seeding, mulching, preserving trees and vegetative buffer strips, contouring and structural practices such as: earth dikes, silt socks, silt fences, stabilized construction entrances, drainage swales, sediment traps, check dams, and subsurface or pipe slope drains.
- C. **Site Plan and Narrative Showing Proposed Stormwater Measures.** All applications shall include a Site Plan showing BMP's proposed to manage stormwater after construction. This Plan shall contain sufficient information to evaluate the environmental impact, effectiveness, and acceptability of the measures for reducing adverse impacts from stormwater. All plans shall meet the Performance Standards in the Stormwater Regulations. Any easements or deed- restricted areas shall be clearly shown and identified. With the exception of plans for construction of single- and two-family homes, all plans shall be designed to meet the Massachusetts Stormwater Management Standards and DEP Stormwater Management Handbook Volumes I and II, as revised, where these are otherwise applicable. A brief narrative shall be included describing the BMP's with references to their location and function.
- D. **Pre- and Post-Construction Operations and Maintenance Plans.** Pre- and Post-Construction Operation and Maintenance Plans (O&M Plans) are required at the time of application for all projects. The required contents of these plans shall be described in the Stormwater Regulations. Pre-Construction O&M Plans shall address maintenance of erosion control and site stabilization measures; operation of equipment during construction and

inspections required during construction. Post-Construction Plans shall include methods for maintaining the stormwater management system; protection of vegetation where needed to absorb and take up stormwater; responsibilities of the homeowner and any third parties; and the estimated cost of maintenance. . They shall be designed to ensure compliance with this bylaw and the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 in all seasons and throughout the life of the stormwater system. The Town shall make the final decision on what maintenance is appropriate in a given situation with consideration for natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and the need for ongoing maintenance activities. The O&M Plans shall remain on file with the Planning Board or Conservation Commission as applicable and shall be an ongoing requirement.

**8. Performance Standards.** Performance standards for site design, erosion control, stormwater management, operation & maintenance guidelines, materials, vegetation, and other aspects of developments shall be described in the Stormwater Regulations with compliance required to the extent practicable in the opinion of the Permitting Authority. Separate performance standards may be adopted for single family homes, and all other types of development. Performance standards shall reflect all requirements for stormwater in the Water Resource Protection District found in the Zoning Bylaw for properties in that district. Separate standards shall be adopted for land subject to coastal storm flowage.

A. Performance standards will include (but not be limited to) the following standards for rainwater-produced stormwater:

1. Peak Discharge Rates (flooding protection and channel protection)
2. Peak Discharge Volume
3. Retention of First 1" of Stormwater for Development and Redevelopment of One or More Acres. For new development or redevelopment of one or more acres, the first inch of runoff from all impervious surface must be retained on the site, unless pollutant removal of first inch of runoff with BMP (equivalent pollutant removal as with a biofilter) is provided. Shutoff and containment is required in the case of discharge near an environmentally sensitive area, i.e. public water.
4. Recharge Volume
5. Pretreatment and Water Quality
6. Erosion Control
7. Vegetation, Site Design, and Site Restoration

B. Performance standards shall also be adopted for coastal storm associated floodwater, to avoid channelization and minimize the velocity of flood waters.

1. Standards for land subject to coastal storm flowage.

Preservation of the abilities of existing topography, slope, surface area, soil characteristics, erodibility, and permeability of land in the flood plain will tend to allow for the dissipation of storm wave energy, slowing of moving water, and absorption of flood waters. Standards for land subject to coastal storm flowage may include limits on creation of new pavement or other impervious surfaces, or that there shall be no adverse impact from work proposed in Land Subject to Coastal Storm Flowage. Standards may also be adopted for increases in impervious surface, removal of natural vegetation and pervious areas, filling, locating foundations or pavement so as to channelize floodwater,

use of solid foundations and fill so as to deflect, reflect or redirect wave energy or channelize floodwater, or dredging or removal of soil materials within the floodplain so as to allow storm waves to break further inland and impact upland or wetland resource areas.

The Permitting Authority may seek the services of a consultant to assess compliance with the adopted standards for rainwater and coastal storm floodwater.

## **9. Review Process**

- A. Applicants are strongly encouraged to schedule a pre-application meeting with the Town Planner or Conservation and Natural Resources Officer, as applicable, to review the proposed development plans at the earliest feasible time.
- B. The stormwater permit review shall not require a special public hearing, but stormwater issues may be discussed as part of other Public Hearings required for approval of the same project by the Planning Board or Conservation Commission. If no public hearing is required, the Planning Board or Conservation Commission may choose to hold a special public hearing to solicit public comment.
- C. After review of the application and comments received from other boards, and following the close of a Public Hearing where a hearing is required, the Permitting Authority shall take one of the following actions:
  - 1. Approve the application and issue a Stormwater Permit if it finds that the proposed plan meets the objectives and requirements of this bylaw.
  - 2. Approve the application and issue a Stormwater Permit with conditions, modifications, or restrictions as necessary to ensure protection of water resources or to meet the objectives of this bylaw.
  - 3. Disapprove the application and deny a permit if it finds the proposed plan will not protect water resources or fails to meet the objectives of this bylaw; or if it finds that the applicant has not submitted information sufficient to make such a determination.

### **D. Deadline for Action.**

For a Stormwater Permit for a single family home or a residential duplex, the Planning Board or its designee shall file its decision with the Town Clerk and the Building Commissioner within thirty (30) days of the receipt of a completed application. For all other development, a decision shall be made prior to approval of a Special Permit or Definitive Plan, if required, or prior to issuance of an Order of Conditions or building permit as applicable.

The review period may be extended by mutual consent of the Permitting Authority and the applicant. Failure to extend the review period or take action on the application before the deadline for action shall be deemed to be approval of such application. Upon certification by the Town Clerk that the allowed time has passed without action the Stormwater Permit shall be issued by the Permitting Authority.

- E. Appeals. Decisions under this bylaw may be appealed to Superior Court or Land Court.

## **10. Notification, inspections.**

Submittal of the stormwater permit application is construed to grant the Permitting Authority, its agent, or its designee with permission to enter the site for inspection.

The Permitting Authority may make unscheduled site visits to insure construction complies with the Operation & Maintenance Plan. If it does not comply, the Permitting Authority shall review whether to pursue remedies for enforcement of the Stormwater Permit as described in Section 12 of this bylaw.

- 11. Submittal of as-built plans.** Submittal of as-built plans depicting the construction conditions of the stormwater management system and grading on the site shall be required. Specifications for these as-built plans are outlined in the Stormwater Regulations.
- 12. Surety.** The Permitting Authority may require the posting of a surety bond until work is completed and satisfactorily inspected, or to ensure maintenance of the system.
- 13. Enforcement.** The Permitting Authority shall enforce this Bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations, including remedies available under non-criminal disposition. Mechanisms and procedures for enforcement may be further detailed in Regulations adopted by the Planning Board pursuant to this Bylaw.

A. Orders.

1. The Permitting Authority may issue a written order to enforce the provisions of this Section or the regulations thereunder, which may include:
  - a. A requirement to cease and desist the construction activity until there is compliance with the provisions of the Stormwater Permit;
  - b. Maintenance, installation or performance of additional erosion and sediment control measures;
  - c. Monitoring, analyses, and reporting;
  - d. Remediation of erosion and sedimentation resulting directly or indirectly from land-disturbing activity.
2. If the enforcing body determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. This deadline shall be no more than twelve months from the date of the violation.

- B. Any person that violates any provision of this Section may be punished, under G.L. c.40 §21D as a noncriminal offense, by fines of:

1. First offense: \$100
2. Second offense: \$200
3. Each additional offense: \$300

Each day on which any violation or offense exists shall be deemed a separate offense. No new permits shall be issued to an applicant if any permit fines are outstanding.

- C. Remedies Not Exclusive. The remedies listed in this Section are not exclusive of any other remedies available under any applicable federal, state or local law.



- 14. Severability.** If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.

**Excerpted from General Bylaws – Town of Scituate – April 14, 2016**