

ADOPTION OF LOCAL STORMWATER BYLAWS
Guidance for Massachusetts Municipalities with
NPDES Phase II Model Stormwater Bylaws

April 2004

These model bylaws and guidance are the result of the efforts of the following people and we are grateful to these professionals who generously shared their expertise:

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ADOPTION OF LOCAL STORMWATER BYLAWS

Guidance for Massachusetts Municipalities

Introduction

These model bylaws are intended to help regulated Massachusetts communities comply with the National Pollutant Discharge Elimination System (NPDES) Storm Water Phase II permit program. Phase II requires that regulated municipalities reduce the discharge of pollutants in stormwater to the maximum extent practicable. As part of the reduction measures municipalities must develop and adopt, or already have in place, bylaws, ordinances, or other regulatory mechanism to address control of sources of pollutants entering the municipal storm drain system. While Phase II allows the use of local regulations to administer and enforce certain of the required minimum control measures, the adoption of a municipal bylaw is an effective and more commonly used means of accomplishing such objectives. Accordingly, these model bylaws and related guidance were developed for use by Massachusetts municipalities regulated by the Phase II Storm Water Rule.

Phase II requirements applicable to Small MS4s

The federal Phase II requirements for adopting bylaws or ordinances in connection with the implementation of certain of the required minimum control measures by small municipal separate storm sewer systems (“small MS4s”) are contained in 40 CFR 122.34(b)(3-5), and in the Massachusetts Department of Environmental Protection’s (DEP) revised Surface Water Discharge Permit Regulations at 314 CMR 3.06(11)(b)5. These requirements are also incorporated in the small MS4 General Permit jointly issued by EPA and DEP. See sections II.B. 3.(b), IIB.4. (a)-(g), and II.B.5.(a)&(b) of the General Permit. A Small Municipal Separate Storm Sewer System or “small MS4” is defined in 40 CFR 122.26(b)(8) and 314 CMR 3.02 as “all separate storm sewers that are:

Owned or operated by the United States, the Commonwealth of Massachusetts, a city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Federal Act that discharges to waters of the United States. Not defined as a large or medium municipal separate storm sewer systems pursuant to 40 CFR s.122.26(b)(4) and (b)(7) or designated under 40 CFR s.122.26(a)(1)(v). This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas such as individual buildings.”

The key components of the required bylaws, ordinances or other regulatory mechanisms are as follows:

1. A bylaw, ordinance, or other regulatory mechanism that addresses Illicit Connection Detection & Elimination and must: prohibit non-stormwater discharges into the MS4, and contain enforcement procedures and actions.
2. A bylaw, ordinance, or other regulatory mechanism to control Construction Site Stormwater Runoff that must: apply to sites disturbing 1 acre or more THAT contribute RUNOFF TO THE MS4; also apply to smaller sites that are part of a common plan that together will disturb 1 or more acres of land; require Erosion and Sedimentation controls; include a process for public input; ensure site plan review, including preconstruction review, and that considers potential water quality impacts; require control of construction waste; provide for site inspections; and have procedures for enforcement of control measures.
3. A bylaw, ordinance, or other regulatory mechanism to control Post-construction Stormwater Management from New Development and Redevelopment that must: apply to projects that newly discharge runoff to the MS4; apply to projects that disturb 1 or more acres; apply to projects less than one acre if part of a common plan that all together will disturb 1 or more acre; require permanent stormwater controls to minimize water quality impacts; require stormwater controls appropriate to the community; and ensure long-term operation & maintenance of structural stormwater controls.

Evaluating the task of adopting the required bylaws

At the outset, the relevant municipal officials and their legal counsel should evaluate the extent to which the municipality's existing bylaws, ordinances or other regulatory mechanisms already address the required small MS4 minimum control measures described above. For example, as authorized in the Small MS4 General Permit for Massachusetts, for storm water discharges resulting from construction site and post-construction site activities in areas subject to jurisdiction under the Wetlands Protection Act, compliance with the Department's Storm Water Policy as reflected in an Order of Conditions issued by the local conservation commission satisfies the relevant minimum control measure. The involvement of municipal counsel is critical at this and subsequent stages of the bylaw evaluation and development task. Municipal counsel should review existing bylaws, ordinances and regulations, determine what relevant legal controls are already in place, and provide advice on the scope and substance of any new or modified bylaws or ordinances needed to comply with the relevant small MS4 minimum control measures. The model bylaws contained in this guidance have been drafted as separate bylaws to emphasize each area that must be addressed and to provide the required elements of each. However, municipalities may decide to combine the models into a master stormwater management bylaw or keep them separate. Alternatively, a municipality may cut and paste as appropriate to develop the needed modifications or additions to existing bylaws. The goal is to make sure that all of the required Phase II components are incorporated into one or more municipal bylaws. Municipalities have flexibility in how they accomplish that goal.

The decision whether to amend existing bylaws or adopt new bylaws

As a general rule, it is easier to persuade town meeting to amend an existing bylaw than to adopt a whole new bylaw. On the other hand, a series of amendments to existing bylaws may result in a more complicated and unwieldy process, or a municipality may be faced with a current board of selectmen who are philosophically opposed to the purpose and intent of the amendments. A municipality, in consultation with its legal counsel, should weigh the pros and cons of these alternative approaches. Keep in mind that even if a municipality decides to adopt one of the models in its entirety, it must first ensure that each section of the model bylaw applies appropriately to the municipality – i.e., it accurately reflects the physical landscape, the types of existing infrastructure, and is not conflict with any existing bylaw.

The Use of General Bylaws vs. Zoning Bylaws

Zoning bylaws must be adopted in accordance with the procedures provided in G.L. c. 40A, § 5, (<http://www.state.ma.us/legis/laws/mgl/40a%2D5.htm>), have prospective effect only on uses and structures, and enjoy certain "grandfathering" protections. In comparison, non-zoning (or "general") bylaws do not require extra procedures for adoption, are not given certain statutory protections, and do not grandfather existing uses unless the bylaw itself otherwise provides. More specifically, zoning bylaws require a 2/3 majority of town/city council or town meeting, while general by-laws require a simple majority vote.

The distinction between "general" bylaws and a zoning by-law is important because zoning bylaws are also accorded additional levels of protection under G.L. c. 40A. For example, zoning bylaws provide protection to land shown on subdivision plans that is related to the effective date of a bylaw. Specifically, G.L. c. 40A, § 6, allows land shown on a definitive subdivision plan (or preliminary plan followed within seven months by a definitive plan) to be governed by the zoning bylaws that are in effect at the time of the first submission of the plan to the planning board *as long as* (emphasis added) written notice is also given to the town clerk before the effective date of the amended zoning by-law. Therefore, if a plan is submitted and written notice is given to the town clerk before the amended or subsequent zoning by-law takes effect (i.e., date of adoption by town meeting), the land shown on that plan will be protected from amendments to the zoning bylaws by town meeting for eight years (or longer if an appeal is taken.). <http://www.state.ma.us/legis/laws/mgl/40a-6.htm> The delay in effect caused by such "grandfathering" protections means zoning changes will not provide effective controls on the relevant stormwater activities until after the end of the first 5 year term of the Phase II small MS4 General Permit.

Assign responsibility for drafting amendments or bylaws

The decision to amend or draft the required bylaws should be made or ratified by the chief executive of the municipality. Consultation among town boards and departments during the drafting process is essential. A committee of municipal officials with the most relevant responsibilities is one way to achieve this consultation. Recruiting volunteers from the community to the committee can spread the workload and start the necessary process of publicizing the project. As stated earlier, municipal counsel should be involved at this and subsequent stages in the process.

Set a schedule

Phase II requires that the municipal stormwater controls be in place no later than the end of the first permit term in 2008. It is a good idea to adopt the bylaws as soon as practical. The bylaws give the town necessary mechanisms to use in complying with Phase II. For example, the bylaw Governing Discharges to the Municipal Storm Drain System confers express enforcement authority on the municipality to require elimination or correction of improper or “illicit” connections to its sewer system. The process from the drafting of a bylaw through its final adoption is lengthy. Consultation with and the assistance of municipal legal counsel is essential throughout the bylaw development and adoption process.

When developing a schedule for adopting the bylaw(s), include time for Attorney General review and subsequent publication and posting of the bylaw(s). This is because the new bylaw(s) will not take effect until these steps have been completed. The effective date of a general bylaw is governed by G.L. c. 40 § 32, which establishes the procedures that must be followed in order for a general bylaw to take effect. First, the bylaw must be submitted to and approved by the Attorney General or ninety days elapse after submittal without any action by the Attorney General. Second, once approved by the Attorney General (or if the bylaw is constructively approved by failure of the Attorney General to act within 90 days), the town must post and publish the bylaw as set out in section 32. (To read the text of G.L. c. 40, § 32, go to <http://www.state.ma.us/legis/laws/mgl/40-32A.htm>). In comparison, the effective date of zoning bylaws is more complicated and is governed by G.L. 40A § 5. If a municipality is amending or adopting a zoning bylaw, it is particularly important to consult with municipal legal counsel to confirm the process and timing of adopting such a bylaw.

Designating Responsibility for Administering the Bylaw

Designate the most appropriate municipal board or department to administer each new bylaw. Consider the current task and expertise distribution in town. There may be an obvious choice. Planning Boards, Zoning Boards of Appeals, Conservation Commissions, and Boards of Health can legally collect consultant fees using a special account (See fees section below). Without the use of some sort of special account any funds taken in by any board must go into the municipality’s general fund. If the municipality has in house expertise (i.e., town engineer or engineering dept.), fees for review can appropriately go to the general fund and be based on average review costs. DPW probably knows the most about the MS4.

Whole Town vs. Urbanized Area

The Phase II small MS4 Rule requires the adoption of bylaws in small MS4s located within the boundaries of an “Urbanized Area” of Massachusetts, which have been designated by EPA based on federal Census Bureau data. Accordingly, a municipality is required to adopt bylaws that apply only to the “Urbanized Area” of the municipality. However, as a practical matter, this approach of limiting the scope of the bylaws to the Urbanized Area of the municipality may be difficult to administer. For example, the coverage area would need to be changed at Town Meeting after each decennial census when the Census Bureau recalculates

Urbanized Areas.

Entry onto Private Property

Municipal officials do not have the authority under a local bylaw to conduct warrantless searches of private property without permission of the owner. Commonwealth v. John G. Grant & Sons Co., Inc., 403 Mass. 151, 159-60 (1988). When entry upon private property is necessary or appropriate for the investigation of an apparent or suspected violation of a bylaw, it would be necessary for the municipal body authorized to enforce the bylaw to obtain a warrant to do so in the absence of express permission by the owner or other lawful means. In a nutshell; start by asking nicely. If refused, get a warrant. Consult municipal legal counsel about the procedure for getting a warrant and a reasonable expectation of the time needed to do so.

Agriculture

Agriculture is protected from local regulation by state laws that exempt regulation of agriculture, therefore the model bylaws contain exemptions for agricultural activities. G.L. c. 40A, § 3, paragraph. 1 – provides that towns cannot prohibit, unreasonably regulate, or require a Special Permit for the use of land for the primary purpose of agriculture. The only exception is land under 5 acres that is not zoned agricultural. In addition, please note that the Storm Water Management and Land Disturbance model bylaw and the Post-Construction Storm Water Management model bylaw exempt the normal maintenance and improvement of land in agricultural use, as such activities are defined under the term “agriculture” in DEP’s Wetlands Regulations. As explained in more detail in the above referenced regulatory definition, land in agricultural use means land within wetland resources areas or the buffer zone that is primarily used in producing or raising specified agricultural commodities for commercial purposes. In developing and enforcing the above referenced bylaws, municipalities should rely on their local conservation commission for assistance in understanding the scope and substance of the agricultural use exemption as defined in 310 CMR 10.04. Conservation commissions should have a copy of 310 CMR 10.00 (DEP’s Wetlands Regulations). Copies are also available from the State House Bookstore and DEP’s website at: <http://www.state.ma.us>.

Fees

Towns should be aware that application of their fee provisions could result in municipal revenues brushing up against or exceeding the limits imposed on local government by state statutes. The town should discuss with town counsel whether the fee provisions, collectively, and as applied, amount to a tax not specifically authorized by the Legislature and are therefore unlawful.

Valid fees are generally distinguishable from invalid taxes by three criteria: (i) the fee is assessed for a particular government service benefitting the party paying the fee in a manner not shared by other persons; (ii) the person assessed has the option to decline the service and thus avoid the charge; and (iii) the amounts paid compensate the town for its costs and expenses of providing the services rather than raising revenues. Emerson College v. Boston, 391 Mass. 415, 427-428 (1984). Moreover, a lawful fee is one that only covers the Board’s reasonably

anticipated costs of providing the services for which the fee is assessed. Southview Cooperative Housing Corp. v. Rent Control Board of Cambridge, 396 Mass. 395, 402 (1985).

Fees to Cover the Cost of Review by a Municipality's Consultant

General Laws Chapter 44 § 53, [found at, <http://www.state.ma.us/legis/laws/mgl/44-53.htm>] provides that “all moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Therefore, any fees collected by the town from an applicant to cover consultant review must be deposited with the Town Treasurer and made part of the town's general fund. Such funds would **only** be available for the purpose for which they were assessed (paying the consultant) once an appropriation is made by Town Meeting.

General Laws Chapter 44, Section 53G, is an illustration of “as otherwise provided by special acts and except fees provided for by statute.” General Laws Chapter 44 § 53G authorizes conservation commissions, zoning boards, planning boards, and boards of health acting under authority conferred by G.L. c. 40, § 8C, 40A, § 9 and 12, c. 41 § 81Q, c. 40B, § 21, and c. 111, to impose a fee to pay for its anticipated expenses in retaining a consultant, to draw upon the funds collected for the stated purpose, and to return unused portions to the applicant.

Another such general law is established by G.L. c. 44, § 53E-1/2, authorizing revolving funds. There are many practical problems and difficulties in trying to adapt the functionality of the revolving fund to purposes which the fund established under G.L. c. 44, 53G, was uniquely designed to achieve. Revolving funds were authorized by the Legislature for the deposit of “departmental receipts received in connection with the programs supported by such revolving fund.” It is not entirely clear whether the term “programs” is malleable enough to be applicable to the project-oriented review functions of an administering board, or that the “consultant fee” is the functional equivalent of the “program fee” for which revolving fees were authorized by the Legislature. It is important to point out, however, that the purposes intended require an applicant to give money to the town to cover anticipated “but only estimated” expenses for consulting services. Moreover, unused portions of the fee may not be returned to the applicant if the fee was deposited either to the general fund under G.L. c. 44, § 53, or in a revolving fund under G.L. c. 44 § 53E-1/2. Section 53G funds are equipped with a statutory basis for the return of unused portions.

Lastly, G.L. c. 44 § 53E-1/2, requires revolving funds to be established and renewed annually by Town Meeting, and may not be set up in the body of a town by-law. Each town meeting has the power to decide whether or not to authorize a revolving fund for the upcoming fiscal year and if so, what particular receipts will be credited to the fund and how the funds may be spent. One town meeting cannot bind future town meetings with respect to authorizing a revolving fund. The town should consult with Town Counsel so as to assure that all of the provisions of G.L. c. 44, § 53E-1/2, are complied with in the handling of such fees.

State and Federal Government

Legislatively created state entities, such as state agencies and public authorities, are generally exempt from local regulation if such regulation would prevent or interfere with the performance of an “essential governmental function” of that state entity or unless the relevant statute expressly subjects the state entity to local regulation or when the state entity has chosen to submit to local regulation. This does not mean, however, that a legislatively created state entity has absolute immunity from all local regulation. It remains subject to local regulations that do not interfere with its ability to fulfill its essential governmental purposes and have only a negligible effect on its operations. See Greater Lawrence Sanitary District v. Town of North Andover, 439 Mass. 16, 785 N.E. 2d 337 (2003). The doctrine of federal supremacy protects the legitimate activities of the United States Government from regulation by state and local authorities. Municipalities should consult with their legal counsel as to the circumstances in which state and federal government will be subject to the provision of the model bylaws.

Non-criminal Disposition

General Laws, Chapter 40, Section 21D, allows municipalities to use non-criminal disposition as a method to enforce town bylaws. The law has several specific requirements. Section 21D requires that a bylaw contain a reference to the enforcing person. The enforcing person is the person empowered to enforce the particular bylaw. Section 21D also requires that the violation be subject to a specific penalty. Non-criminal disposition is not available for the violations having a range of penalties. Before the town applies the non-criminal disposition provision of a bylaw, the town must provide for an enforcing person and specific penalty for violations.

Public Education

In addition to the adoption of the required minimum controls applicable to small MS4s under Phase II, enactment of new or amended municipal bylaws requires publication, posting, and persuasion. These activities can be part of meeting the public education requirements of Phase II. It is wise to start public education early. Have at least one public meeting about the proposed bylaws before town meeting, even if a hearing is not required. Assemble and present information about specific stormwater effects in your town to illustrate the need for and effect of the bylaws.

More Resources

<http://www.epa.gov/region01/npdes/ms4.html> The Draft National Pollutant Discharge Elimination System General Permit For Storm Water Discharges From Small Municipal Separate Storm Systems (Small MS4s).

http://www.umass.edu/masscptc/Tips_on_Drafting.html This website has a very helpful document about drafting bylaws.

<http://www.stormwatercenter.net/> This site has other model bylaws. They don't fit well with the structure of Massachusetts governments but are useful for other viewpoints on stormwater management.

<http://www.state.ma.us/legis/laws/mgl/> The General Laws of Massachusetts. The site cautions that it is not official but the index and search features make it an excellent ready reference during the drafting process.

<http://www.state.ma.us/dep/brp/stormwtr/stormlis.htm> The list of Stormwater Phase II communities based on Urbanized Areas calculated from 2000 Census and 1990 Census.

<http://www.state.ma.us/dep/brp/stormwtr/stormpub.htm> Stormwater Management Information including Stormwater Policy Handbook (scroll down).

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ARTICLE # _

Bylaw Governing Discharges To The Municipal Storm Drain System

SECTION 1. PURPOSE

Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the [*city or town's*] water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment.

The objectives of this by-law are:

1. to prevent pollutants from entering the [*city or town's*] municipal separate storm sewer system (MS4);
2. to prohibit illicit connections and unauthorized discharges to the MS4;
3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to stormwater discharges; and
5. to establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

SECTION 2. DEFINITIONS

For the purposes of this by-law, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY: The [*insert appropriate Town body/dept./board*] (hereafter [*the Board*]), its employees or agents designated to enforce this by-law.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) as hereafter amended.

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

GROUNDWATER: Water beneath the surface of the ground.

ILLCIT CONNECTION: A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law [or ordinance]

ILLCIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 7. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 7, subsection 4, of this by-law.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the *[town/city of _____]*.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POLLUTANT: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;

- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock, sand, salt, soils;
- (10) construction wastes and residues; and
- (11) and noxious or offensive matter of any kind.

PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

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

SURFACE WATER DISCHARGE PERMIT. A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

TOXIC OR HAZARDOUS MATERIAL or WASTE: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

WASTEWATER: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

SECTION 3. APPLICABILITY

This by-law shall apply to flows entering the municipally owned storm drainage system.

SECTION 4. AUTHORITY

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

SECTION 5. RESPONSIBILITY FOR ADMINISTRATION

[*The Board*] shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon [*the Board*] may be delegated in writing by the [*the Board*] to employees or agents of [*the Board*].

SECTION 6. REGULATIONS

[*The Board*] may promulgate rules and regulations to effectuate the purposes of this by-Law. Failure by the [*the Board*] to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

SECTION 7. PROHIBITED ACTIVITIES

Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from [*The Board*].

SECTION 8. EXEMPTIONS

Discharge or flow resulting from fire fighting activities.

The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

- (1) Waterline flushing;
- (2) Flow from potable water sources;
- (3) Springs;
- (4) Natural flow from riparian habitats and wetlands;
- (5) Diverted stream flow;
- (6) Rising groundwater;
- (7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- (9) Discharge from landscape irrigation or lawn watering;
- (10) Water from individual residential car washing;
- (11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- (12) Discharge from street sweeping;
- (13) Dye testing, provided verbal notification is given to the [*the Board*] prior to the time of the test;
- (14) Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- (15) Discharge for which advanced written approval is received from the [*the Board*] as necessary to protect public health, safety, welfare or the environment.

SECTION 9. EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

[*The Board*] may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

SECTION 10. NOTIFICATION OF SPILLS

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and [insert other appropriate departments]. In the event of a release of non-hazardous material, the reporting person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

SECTION 11. ENFORCEMENT

[*The Board*] or an authorized agent of [*the Board*] shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

Civil Relief. If a person violates the provisions of this by-law, regulations, permit, notice, or order issued thereunder, the [*the Board*] may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

Orders. [*The Board*] or an authorized agent of [*the Board*] may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) that unlawful discharges, practices, or operations shall cease and desist; and (d) remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the [*city or town*] may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the [city or town], including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with [the Board] within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of [the Board] affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, § 57 after the thirty-first day at which the costs first become due.

Criminal Penalty. Any person who violates any provision of this by-law, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$ [____]. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the [city or town] may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and the insert citation town enabling vote/bylaw (if applicable) of the Town of [city or town], in which case the insert title or other authorized agent of the city/town shall be the enforcing person. The penalty for the 1st violation shall be \$[____]. The penalty for the 2nd violation shall be \$[____]. The penalty for the 3rd and subsequent violations shall be \$[____]. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Entry to Perform Duties Under this By-Law. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, [the Board], its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and regulations and may make or cause to be made such examinations, surveys or sampling as [the Board] deems reasonably necessary.

Appeals. The decisions or orders of [the Board] shall be final. Further relief shall be to a court of competent jurisdiction.

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

SECTION 12. SEVERABILITY

The provisions of this by-law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this by-law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this by-law.

SECTION 13. TRANSITIONAL PROVISIONS

Residential property owners shall have [_____] days from the effective date of the by-law to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period.

STORMWATER MANAGEMENT AND LAND DISTURBANCE BYLAW

SECTION 1. PURPOSE

A. The harmful impacts of soil erosion and sedimentation are:

1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
2. contamination of drinking water supplies;
3. alteration or destruction of aquatic and wildlife habitat;
4. flooding; and
5. overloading or clogging of municipal catch basins and storm drainage systems.

B. The objectives of this bylaw are to:

1. protect water resources;
2. require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities;
3. promote infiltration and the recharge of groundwater;
4. ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
5. require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
6. comply with state and federal statutes and regulations relating to stormwater discharges; and
7. establish the [city or town's] legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

SECTION 2. DEFINITIONS

ABUTTER: The owner(s) of land abutting the activity.

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

APPLICANT: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sediment control permit for proposed land-disturbance activity.

AUTHORIZED ENFORCEMENT AGENCY: The [appropriate Town body/dept./board, hereafter the Board], its employees or agents designated to enforce this by-law.

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC): A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

CONSTRUCTION AND WASTE MATERIALS: Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter and sanitary waste at a construction site that may adversely impact water quality.

CLEARING: Any activity that removes the vegetative surface cover.

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 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 during pre-construction and construction related land disturbance activities.

ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS: Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

MASSACHUSETTS ENDANGERED SPECIES ACT: (G.L. c. 131A) and its implementing

regulations at (321 CMR 10.00) which prohibit the “taking” of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 §. 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or municipal storm drain system: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the [town/city of _____].

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

PRE-CONSTRUCTION: All activity in preparation for construction.

PRIORITY HABITAT OF RARE SPECIES: Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.

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 where land-disturbing activities are, were, or will be performed.

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

SOIL: Any earth, sand, rock, gravel, or similar material.

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

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

STRIP: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

VERNAL POOLS: Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook, or underground stream.

WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 and in the (city or town's) wetland bylaw/ordinance.

WETLANDS: Tidal and non-tidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes, swamps and bogs.

SECTION 3. 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

SECTION 4. APPLICABILITY

This bylaw shall apply to all activities that result in disturbance of one or more acres of land that drains to the municipal separate storm sewer system *[insert a reference to maps or Board where this information can be obtained]*. Except as authorized by the *[insert appropriate board, commission, department or its agent, hereafter known as "The Board"]* in a Land Disturbance Permit or as otherwise provided in this bylaw, no person shall perform any activity that results in disturbance of an acre or more of land. Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.4, are exempt. In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the above activities that are subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this bylaw.

SECTION 5. RESPONSIBILITY FOR ADMINISTRATION

A. *[The Board]* shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon *[the Board]* may be delegated in writing by *[the Board]* to its employees or agents.

B. Waiver. [*The Board*] may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:

- (1) such action is allowed by federal, state and local statutes and/or regulations,
- (2) is in the public interest, and
- (3) is not inconsistent with the purpose and intent of this by-law.

C. Rules and Regulations. [*The Board*] may adopt, and periodically amend rules and regulations to effectuate the purposes of this by-law. Failure by [*the Board*] to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

SECTION 6. PERMITS and PROCEDURE

A. Application. A completed application for a Land Disturbance Permit shall be filed with [*the Board*]. A permit must be obtained prior to the commencement of land disturbing activity that may result in the disturbance of an area of one acre or more. The Land Disturbance Permit Application package shall include:

1. a completed Application Form with original signatures of all owners;
2. a list of abutters, certified by the Assessors Office;
3. three (3) copies of the Erosion and Sediment Control Plan as specified in Section VI of this bylaw;
4. payment of the application and review fees; and,
5. one (1) copy each of the Application Form and the list of abutters filed with the Town Clerk.

B. Entry. Filing an application for a permit grants [*the Board*] or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

C. Other Boards. The [*the Board*] shall notify the Town Clerk of receipt of the application, and shall give one copy of the application package to [*each of the other relevant boards. Fill in the Planning Board, the Conservation Commission, or Department of Public Works as appropriate*].

D. Public Hearing. [*The Board*] shall hold a public hearing within twenty-one (21) days of the receipt of a complete application and shall take final action within twenty-one (21) days from the time of the close of the hearing unless such time is extended by agreement between the applicant and [*the Board*]. Notice of the public hearing shall be given by publication and posting and by first-class mailings to abutters at least seven (7) days prior to the hearing. [*the Board*] shall make the application available for inspection by the public during business hours at the [*city or*

town] [specify office]

E. Information requests. The applicant shall submit all additional information requested by [the Board] to issue a decision on the application.

F. Action by [the Board].

[The Board] may:

1. Approve the Land Disturbance Permit Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this by-law;
2. Approve the Land Disturbance Permit Application and issue a permit with conditions, modifications or restrictions that [the Board] determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this by-law;
3. Disapprove the Land Disturbance Permit Application and deny the permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this by-law.

G. Failure of [the Board] to take final action. Failure of [the Board] to take final action upon an Application within the time specified above shall be deemed to be approval of said Application. Upon certification by the Town Clerk that the allowed time has passed without [the Board's] action, the Land Disturbance Permit shall be issued by [the Board].

H. Fee Structure. Each application must be accompanied by the appropriate application fee as established by [the Board]. Applicants shall pay review fees as determined by [the Board] sufficient to cover any expenses connected with the public hearing and review of the Land Disturbance Permit Application before the review process commences. [the Board] is authorized to retain a Registered Professional Engineer or other professional consultant to advise [the Board] on any or all aspects of the Application.

I. Project Changes. The permittee, or their agent, must notify [the Board] in writing of any change or alteration of a land-disturbing activity authorized in a Land Disturbance Permit before any change or alteration occurs. If [the Board] determines that the change or alteration is significant, based on the design requirements listed in Section 7.B. and accepted construction practices, [the Board] may require that an amended Land Disturbance Permit application be filed and a public hearing held. If any change or alteration from the Land Disturbance Permit occurs during any land disturbing activities, [the Board] may require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

SECTION 7. EROSION AND SEDIMENT CONTROL PLAN

A. The Erosion and Sediment Control Plan shall contain sufficient information to describe the

nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, and proposed erosion and sedimentation controls. The applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements listed in Section 7.B. below.

B. The design requirements of the Erosion and Sediment Control Plan are:

1. Minimize total area of disturbance;
2. Sequence activities to minimize simultaneous areas of disturbance;
3. Minimize peak rate of runoff in accordance with the Massachusetts Stormwater Policy;
4. Minimize soil erosion and control sedimentation during construction, provided that prevention of erosion is preferred over sedimentation control;
5. Divert uncontaminated water around disturbed areas;
6. Maximize groundwater recharge;
7. Install and maintain all Erosion and Sediment Control measures in accordance with the manufacturers specifications and good engineering practices;
8. Prevent off-site transport of sediment;
9. Protect and manage on and off-site material storage areas (overburden and stockpiles of dirt, borrow areas, or other areas used solely by the permitted project are considered a part of the project);
10. Comply with applicable Federal, State and local laws and regulations including waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control;
11. Prevent significant alteration of habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or Of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species from the proposed activities;
12. Institute interim and permanent stabilization measures, which shall be instituted on a disturbed area as soon as practicable but no more than 14 days after construction activity has temporarily or permanently ceased on that portion of the site;
13. Properly manage on-site construction and waste materials; and
14. Prevent off-site vehicle tracking of sediments.

C. Erosion and Sedimentation Control Plan Content. The Plan shall contain the following information:

1. Names, addresses, and telephone numbers of the owner, applicant, and person(s) or firm(s) preparing the plan;
2. Title, date, north arrow, names of abutters, scale, legend, and locus map;
3. Location and description of natural features including:
 - (a) Watercourses and water bodies, wetland resource areas and all floodplain information, including the 100-year flood elevation based upon the most recent Flood Insurance Rate Map, or as calculated by a professional engineer for areas not assessed on these maps;
 - (b) Existing vegetation including tree lines, canopy layer, shrub layer, and ground cover, and trees with a caliper twelve (12) inches or larger, noting specimen trees and forest communities; and
 - (c) Habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species within five hundred (500) feet of any construction activity.
4. Lines of existing abutting streets showing drainage and driveway locations and curb cuts;
5. Existing soils, volume and nature of imported soil materials;
6. Topographical features including existing and proposed contours at intervals no greater than two (2) feet with spot elevations provided when needed;
7. Surveyed property lines showing distances and monument locations, all existing and proposed easements, rights-of-way, and other encumbrances, the size of the entire parcel, and the delineation and number of square feet of the land area to be disturbed;
8. Drainage patterns and approximate slopes anticipated after major grading activities (Construction Phase Grading Plans);
9. Location and details of erosion and sediment control measures with a narrative of the construction sequence/phasing of the project, including both operation and maintenance for structural and non-structural measures, interim grading, and material stockpiling areas;
10. Path and mechanism to divert uncontaminated water around disturbed areas, to the maximum extent practicable;

11. Location and description of industrial discharges, including stormwater discharges from dedicated asphalt plants and dedicated concrete plants, which are covered by this permit;
12. Stormwater runoff calculations in accordance with the Department of Environmental Protection's Stormwater Management Policy;
13. Location and description of and implementation schedule for temporary and permanent seeding, vegetative controls, and other stabilization measures;
14. A description of construction and waste materials expected to be stored on-site. The Plan shall include a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
15. A description of provisions for phasing the project where one acre of area or greater is to be altered or disturbed;
16. Plans must be stamped and certified by a qualified Professional Engineer registered in Massachusetts or a Certified Professional in Erosion and Sediment Control; and
17. Such other information as is required by [*the Board*].

SECTION 8. INSPECTION AND SITE SUPERVISION

- A. Pre-construction Meeting. Prior to starting clearing, excavation, construction, or land disturbing activity the applicant, the applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet with [*The Board*], to review the permitted plans and their implementation.
- B. Board Inspection. [*The Board*] or its designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the land disturbance permit as approved. The Permit and associated plans for grading, stripping, excavating, and filling work, bearing the signature of approval of [*the Board*], shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify [*the Board*] at least two (2) working days before each of the following events:
 1. Erosion and sediment control measures are in place and stabilized;
 2. Site Clearing has been substantially completed;
 3. Rough Grading has been substantially completed;
 4. Final Grading has been substantially completed;
 5. Close of the Construction Season; and
 6. Final Landscaping (permanent stabilization) and project final completion.

C. Permittee Inspections. The permittee or his/her agent shall conduct and document inspections of all control measures) no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit monthly reports to *[the Board]* or designated agent in a format approved by *[the Board]*.

D. Access Permission. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, *[the Board]* its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as *[the Board]* deems reasonably necessary to determine compliance with the permit.

SECTION 9. SURETY

[The Board] may require the permittee to post before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by *[the Board]* to ensure that the work will be completed in accordance with the permit. If the project is phased, *[the Board]* may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until *[the Board]* has received the final report as required by Section 10 and issued a certificate of completion.

SECTION 10. FINAL REPORTS

Upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, or Certified Professional in Erosion and Sediment Control (CPESC), certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

SECTION 11. ENFORCEMENT

A. *[The Board]* or an authorized agent of *[the Board]* shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Orders

1. *[The Board]* or an authorized agent of the *[the Board]* may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

(a) a requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw and provisions of the land-disturbance 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 the land-disturbing activity.

2. If the enforcing person 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. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the [city or town] may, at its option, undertake such work, and the property owner shall reimburse the [city or town's] expenses.

3. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the [city or town], including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with [the Board] within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of [the Board] affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in G.L. Ch. 59, § 57, after the thirty-first day following the day on which the costs were due.

- C. Criminal Penalty. Any person who violates any provision of this by-law, regulation, order or permit issued there under, shall be punished by a fine of not more than \$[____]. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- D. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the [city or town] may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.. 40, §21D and *[the insert citation town enabling vote/bylaw (if applicable)]* of the Town of [____], in which case *[the insert title or other authorized agent]* of the [city/town] shall be the enforcing person. The penalty for the 1st violation shall be \$[____]. The penalty for the 2nd violation shall be \$[____]. The penalty for the 3rd and subsequent violations shall be \$[____]. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- E. Appeals. The decisions or orders of [the Board] shall be final. Further relief shall be to a court of competent jurisdiction.
- F. Remedies Not Exclusive. The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

SECTION 12. CERTIFICATE OF COMPLETION

The issuing authority will issue a letter certifying completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this bylaw.

SECTION 12. SEVERABILITY

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

LAND DISTURBANCE PERMIT APPLICATION

To [*The Board*]:

The undersigned wishes to submit a Land Disturbance Permit Application as defined in the Zoning By-Laws of the Town of [insert Town] Section [reference] and requests a review and determination by the [*the Board*] of said Land Disturbance Plan.

The Land Disturbance Plan involves property where owner's title to the land is derived under deed from _____, dated _____, and recorded in the [Insert] County Registry of Deeds, Book _____, Page _____, or Land Court Certificate of Title No. _____, Registered in _____ District, Book _____, Page _____.

Give a brief summary of the nature of the project.

The property (building) is described as being located at _____; it is currently used as _____ and the changes proposed to be made are _____.

The project is located on the parcel shown on Assessors Map _____, Parcel _____.

Applicant's Signature _____ Owners' Signature(s) _____

Applicant's Name (print) _____ Owners' Names(s) _____

Applicant's Address _____ Owners' Address _____

Date Received by Town Clerk: _____

Signature _____

Please note: 1) An applicant for a Land Disturbance Plan Review must file with the [*the Board*] a completed Land Disturbance Permit Application, a list of abutters, three (3) copies of the Land Disturbance Plan Package, and the application and review fees as noted in the Land Disturbance Plan Review Fee Schedule. 2) The applicant shall also file a copy of the Land Disturbance Plan and the application with the Town Clerk. The date of receipt by the Town Clerk shall be the official filing date.

Land Disturbance Plan Review Fee Schedule

The following fee schedules are minimum fees. [The Board] may require higher fees if deemed necessary for proper review of an application or to ensure compliance.

| <u>Lot Area</u> | <u>Professional Review Fee</u> | <u>Application Fee</u> |
|-----------------------|--------------------------------|------------------------|
| Less Than 3 Acres | \$ ____. | \$ ____. |
| 3 to 10 Acres | \$ ____. | \$ ____. |
| Greater than 10 Acres | \$ ____ times the acreage | \$ ____. |
| Resubmittal/Amendment | | |
| Filing Fee | \$ ____ | |
| Review Fee | \$ ____ | |

GENERAL

1. Any application not accompanied by the appropriate fee shall be deemed incomplete. Payment must be made to [the Board] in cash, money order, bank or certified check payable to the Town of [insert name].
2. An Applicant's failure to pay any additional review or inspection fee within five business days of receipt of the notice that further fees are required shall be grounds for disapproval.
3. [The Board] will publish the public notice and send abutter notifications. Abutter notification shall be by certified mail-return receipt requested. The applicant shall pay all costs associated with the publication and notification requirements. These costs shall not be imposed on the applicant if the applicant completes the public notice and abutter notification requirements, and provides [the Board] with copies of the public notices and the return receipt cards.

Professional review fees include engineering review, legal review, and clerical fees associated with the public hearing and permit processing. A fee estimate may be provided by [the Board's] consulting engineer.

BY-LAW GOVERNING POST-CONSTRUCTION STORMWATER MANAGEMENT OF NEW DEVELOPMENTS & REDEVELOPMENTS

SECTION 1. PURPOSE

Regulation of discharges to the municipal separate storm sewer system (MS4) is necessary for the protection of the [*city or town's*] water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;

- 1) impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater,
- 2) contamination of drinking water supplies,
- 3) erosion of stream channels;
- 4) alteration or destruction of aquatic and wildlife habitat; and
- 5) flooding.

Therefore, this bylaw establishes stormwater management standards for the final conditions that result from development and redevelopment projects to minimize adverse impacts offsite and downstream which would be born by abutters, townspeople and the general public.

The objectives of this by-law are:

1. To require practices to control the flow of stormwater from new and redeveloped sites into the [town/city] storm drainage system in order to prevent flooding and erosion;
2. To protect groundwater and surface water from degradation;
3. To promote groundwater recharge;
4. To prevent pollutants from entering the [city or town's] municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
5. To ensure adequate long-term operation and maintenance of structural stormwater best management practices so that they work as designed;
6. To comply with state and federal statutes and regulations relating to stormwater discharges; and
7. To establish the [*city or town's*] legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

SECTION 2. 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, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

THE BOARD – Town of _____ [*Planning Board, or whatever Dept. the Town decides is appropriate OR its authorized agent(s)*].

CLEARING: Any activity that removes the vegetative surface cover.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBANCE OF LAND: Any action that causes a change in the position, location, or arrangement of soil, sand rock, gravel of similar earth material.

GRADING: Changing the level or shape of the ground surface.

GRUBBING: The act of clearing land surface by digging up roots and stumps.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the [town/city of _____].

OPERATION AND MAINTENANCE PLAN: A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

OUTFALL: The point at which stormwater flows out from a point source discernible, confined and discrete conveyance into waters of the Commonwealth.

OUTSTANDING RESOURCE WATERS (ORWs): Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POINT SOURCE: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

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.

STORMWATER MANAGEMENT PLAN: A plan required as part of the application for a Stormwater Management Permit. See Section 7.

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

TSS: Total Suspended Solids.

SECTION 3. 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.

SECTION 4. APPLICABILITY

A. No person may undertake a construction activity, including clearing, grading and excavation that results in a land disturbance that will disturb equal to or greater than one acre of land or will disturb less than one acre of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre of land draining to the *[name of town]*

municipal separate storm sewer system without a permit from [*the Board*]. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or the original purpose of the site

B. Exemptions

Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;

Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;

The construction of fencing that will not substantially alter existing terrain or drainage patterns;

Construction of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns;

As authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the activities identified in Section 4 that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this bylaw.

SECTION 5. ADMINISTRATION

A. [*The Board*], shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon [*the Board*] may be delegated in writing by [*the Board*] to its employees or agents.

B. Rules and Regulations. [*The Board*] may adopt, and periodically amend, rules and regulations relating to the procedures and administration of this Stormwater Management By-law, by majority vote of [*the Board*], after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) days prior to the hearing date.

SECTION 6. PERMITS and PROCEDURE

A. Filing Application. The site owner or his agent shall file with [*the Board*] hereinafter *the Board*, three (3) copies of a completed application package for a Stormwater Management Permit (SMP). Permit issuance is required prior to any site altering activity. While the applicant can be a representative, the permittee must be the owner of the site. The SMP Application package shall include:

1. a completed Application Form with original signatures of all owners;
2. a list of abutters, certified by the Assessors Office;
3. three (3) copies of the Stormwater Management Plan and project description as specified in Section 7.A.;

4. three (3) copies of the Operation and Maintenance Plan as required by Section 8 of this bylaw;
5. one (1) copy of the application form, the Stormwater Management Plan, the Operation & Maintenance Plan, and the list of abutters filed with the Town Clerk; and
6. payment of the application and review fees.

B. Entry. Filing an application for a permit grants *[the Board]*, or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with the resulting permit

C. Other Boards. The *[the Board]* shall notify the Town Clerk of receipt of the application, and shall give one copy of the application package to *[each of the other relevant boards. Fill in the Planning Board, the Conservation Commission, and/or Department of Public Works as appropriate]*.

D. Fee Structure. *[The Board]* shall obtain with each submission an Application Fee established by *[the Board]* to cover expenses connected with the public hearing and application review of the Stormwater Management Permit and a technical Review Fee sufficient to cover professional review. *[The Board]* is authorized to retain a Registered Professional Engineer or other professional consultant to advise *[the Board]* on any or all aspects of these plans. Applicants must pay review fees before the review process may begin.

E. Public Hearing. The *[the Board]* shall hold a public hearing within twenty-one (21) days of the receipt of a complete application and shall take final action within twenty-one (21) days from the close of the hearing unless such time is extended by agreement between the applicant and *[insert appropriate board or department]*. Notice of the public hearing shall be given by publication in a local paper of general circulation, by posting and by first-class mailings to abutters at least seven (7) days prior to the hearing.

F. Actions. *[The Board's]*'s action, rendered in writing, shall consist of either:

1. Approval of the Stormwater Management Permit Application based upon determination that the proposed plan meets the Standards in Section 7 and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this by-law;
2. Approval of the Stormwater Management Permit Application subject to any conditions, modifications or restrictions required by the *[the Board]* which will ensure that the project meets the Standards in Section 7 and adequately protect water resources, set forth in this by-law;
3. Disapproval of the Stormwater Management Permit Application based upon a determination that the proposed plan, as submitted, does not meet the Standards in Section 7 or adequately protect water resources, as set forth in this by-law.

G. Failure of *[the Board]* to take final action upon an Application within the time specified above shall be deemed to be approval of said Application. Upon certification by the Town Clerk that the allowed time has passed without Board action, *[the Board]* must issue a Stormwater Management

Permit.

H. Plan Changes. The permittee, must notify [*the Board*] in writing of any drainage change or alteration in the system authorized in a Stormwater Management Permit before any change or alteration is made. If [*the Board*] determines that the change or alteration is significant, based on the Stormwater Management Standards in Section 7.B. and accepted construction practices, [*the Board*] may require that an amended application be filed and a public hearing held.

I. Project Completion. At completion of the project the permittee shall submit as-built record drawings of all structural stormwater controls and treatment best management practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a Registered Professional Engineer.

SECTION 7. STORMWATER MANAGEMENT PLAN

A. The application for a stormwater management permit shall consist of submittal of a Stormwater Management Plan to the [*the Board*]. This Stormwater Management Plan shall contain sufficient information for the [*the Board*] to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from stormwater. The Plan shall be designed to meet the Massachusetts Stormwater Management Standards as set forth in Part B of this section and DEP Stormwater Management Handbook Volumes I and II. The Stormwater Management Plan shall fully describe the project in drawings, and narrative. It shall include:

1. A locus map,
2. The existing zoning, and land use at the site,
3. The proposed land use,
4. The location(s) of existing and proposed easements,
5. The location of existing and proposed utilities,
6. The site's existing & proposed topography with contours at 2 foot intervals,
7. The existing site hydrology,
8. A description & delineation of existing stormwater conveyances, impoundments, and wetlands on or adjacent to the site or into which stormwater flows,
9. A delineation of 100-year flood plains, if applicable,
10. Estimated seasonal high groundwater elevation (November to April) in areas to be used for stormwater retention, detention, or infiltration,
11. The existing and proposed vegetation and ground surfaces with runoff coefficients for each,
12. A drainage area map showing pre and post construction watershed boundaries, drainage area and stormwater flow paths,
13. A description and drawings of all components of the proposed drainage system including:
 - a. locations, cross sections, and profiles of all brooks, streams, drainage swales and their method of stabilization,
 - b) all measures for the detention, retention or infiltration of water,
 - c) all measures for the protection of water quality,

- d) the structural details for all components of the proposed drainage systems and stormwater management facilities,
 - e) notes on drawings specifying materials to be used, construction specifications, and typicals, and
 - f) expected hydrology with supporting calculations.
14. Proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable,
 15. Timing, schedules, and sequence of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization,
 16. A maintenance schedule for the period of construction, and
 17. Any other information requested by *the Board*.

B. Standards

Projects shall meet the Standards of the Massachusetts Stormwater Management Policy, which are as follows:

- 1) No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth.
- 2) Stormwater management systems must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.
- 3) Loss of annual recharge to groundwater should be minimized through the use of infiltration measures to the maximum extent practicable. The annual recharge from the post-development site should approximate the annual recharge rate from the pre-development or existing site conditions, based on soil types.
- 4) For new development, stormwater management systems must be designed to remove 80% of the average annual load (post development conditions) of Total Suspended Solids (TSS). It is presumed that this standard is met when:
 - (a) Suitable nonstructural practices for source control and pollution prevention and implemented;
 - (b) Stormwater management best management practices (BMPs) are sized to capture the prescribed runoff volume; and
 - (c) Stormwater management BMPs are maintained as designed.
- 5) Stormwater discharges from areas with higher potential pollutant loads require the use of specific stormwater management BMPs (see Stormwater Management Volume I: Stormwater Policy Handbook). The use of infiltration practices without pretreatment is prohibited.
- 6) Stormwater discharges to critical areas must utilize certain stormwater management BMPs approved for critical areas (see Stormwater Management Volume I: Stormwater Policy Handbook). Critical areas are Outstanding Resource Waters (ORWs), shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies.
- 7) Redevelopment of previously developed sites must meet the Stormwater Management

Standards to the maximum extent practicable. However, if it is not practicable to meet all the Standards, new (retrofitted or expanded) stormwater management systems must be designed to improve existing conditions.

- 8) Erosion and sediment controls must be implemented to prevent impacts during disturbance and construction activities.
- 9) All stormwater management systems must have an operation and maintenance plan to ensure that systems function as designed.

When one or more of the Standards cannot be met, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

C. Project Changes

The permittee, or their agent, shall notify [*the Board*] in writing of any change or alteration of a land-disturbing activity authorized in a Stormwater Management Permit before any change or alteration occurs. If [*the Board*] determines that the change or alteration is significant, based on the design requirements listed in Section _____ and accepted construction practices, [*the Board*] may require that an amended Stormwater Management Permit application be filed and a public hearing held. If any change or deviation from the Stormwater Management Permit occurs during a project, [*the Board*] may require the installation of interim measures before approving the change.

SECTION 8. OPERATION AND MAINTENANCE PLANS

An Operation and Maintenance plan (O&M Plan) is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the Permit, this Bylaw and that the Massachusetts Surface Water Quality Standards, 314, CMR 4.00 are met in all seasons and throughout the life of the system. [*The Board*] shall make the final decision of what maintenance option is appropriate in a given situation. [*The Board*] will consider 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 potential need for ongoing maintenance activities when making this decision. The Operation and Maintenance Plan shall remain on file with [*the Board*] and shall be an ongoing requirement. The O&M Plan shall include:

A. The name(s) of the owner(s) for all components of the system

B. Maintenance agreements that specify:

1. The names and addresses of the person(s) responsible for operation and maintenance
2. The person(s) responsible for financing maintenance and emergency repairs.
3. A Maintenance Schedule for all drainage structures, including swales and ponds.
4. A list of easements with the purpose and location of each.

5. The signature(s) of the owner(s).

C. Stormwater Management Easement(s).

1. Stormwater management easements shall be provided by the property owner(s) as necessary for:
 - a. access for facility inspections and maintenance,
 - b. preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event.
 - c. direct maintenance access by heavy equipment to structures requiring regular cleanout.
2. The purpose of each easement shall be specified in the maintenance agreement signed by the property owner.
3. Stormwater management easements are required for all areas used for off-site stormwater control, unless a waiver is granted by the [*The Board*].
4. Easements shall be recorded with the _____ County Registry of Deeds prior to issuance of a Certificate of Completion by the [Board].

D. Changes to Operation and Maintenance Plans

1. The owner(s) of the stormwater management system must notify [*the Board*] of changes in ownership or assignment of financial responsibility.
2. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of [*the Board*] and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

SECTION 9. SURETY

[*The Board*] may require the permittee to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by [*the Board*] to ensure that the work will be completed in accordance with the permit. If the project is phased, [*the Board*] may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until *the Board* has received the final inspection report as required by Section 10 and issued a Certificate of Completion.

SECTION 10. INSPECTIONS

[*The Board*] shall inspect the project site at the following stages:

- A. Initial Site Inspection: prior to approval of any plan.
- B. Erosion Control Inspection: to ensure erosion control practices are in accord with the filed plan.
- C. Bury Inspection: prior to backfilling of any underground drainage or stormwater conveyance structures.
- D. Final Inspection. After the stormwater management system has been constructed and before the surety has been released, the applicant must submit a record plan detailing the actual stormwater management system as installed. [*The Board*] shall inspect the system to confirm its "as-built" features. This inspector shall also evaluate the effectiveness of the system in an actual storm. If the inspector finds the system to be adequate he shall so report to [*the Board*] which will issue a Certificate of Completion.

If the system is found to be inadequate by virtue of physical evidence of operational failure, even though it was built as called for in the Stormwater Management Plan, it shall be corrected by the permittee before the performance guarantee is released. If the permittee fails to act the [*town of _____*] may use the surety bond to complete the work. Examples of inadequacy shall be limited to: errors in the infiltrative capability, errors in the maximum groundwater elevation, failure to properly define or construct flow paths, or erosive discharges from basins.

SECTION 11. WAIVERS

A. [*The Board*] may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:

- 1) such action is allowed by federal, state and local statutes and/or regulations,
- 2) is in the public interest, and
- 3) is not inconsistent with the purpose and intent of this by-law.

B. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the by-law does not further the purposes or objectives of this bylaw.

C. All waiver requests shall be discussed and voted on at the public hearing for the project.

D. If in the [*the Board's*] opinion, additional time or information is required for review of a waiver request, [*the Board*] may continue a hearing to a date certain announced at the meeting. In the event the applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

SECTION 12. CERTIFICATE OF COMPLETION

[*The Board*] will issue a letter certifying completion upon receipt and approval of the final inspection reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this bylaw.

SECTION 13. ENFORCEMENT

A. [*The Board*] or an authorized agent of [*the Board*] shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Orders

1. [*The Board*] or an authorized agent of the [*the Board*] may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include requirements to:

- a. cease and desist from construction or land disturbing activity until there is compliance with the by-law and the stormwater management permit;
- b. repair, maintain; or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan.
- c. perform monitoring, analyses, and reporting;
- d. remediate adverse impact resulting directly or indirectly from malfunction of the stormwater management system.

2. If the enforcing person determines that abatement or remediation of adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the [*city or town*] may, at its option, undertake such work, and the property owner shall reimburse the [*city or town's*] expenses.

3. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the [*city or town*], including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with [*the Board*] within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of [*the Board*] affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, § 57, after the thirty-first day at which the costs first become due.

C. Criminal Penalty. Any person who violates any provision of this by-law, or regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$_____. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the [city or town] may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and [*the insert citation town enabling vote/bylaw (if applicable)*] of the Town of _____, in which case [*the insert title or other authorized agent*] of the [city/town] shall be the enforcing person. The penalty for the 1st violation shall be \$____. The penalty for the 2nd violation shall be \$____. The penalty for the 3rd and subsequent violations shall be \$ _____. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Appeals

The decisions or orders of [*the Board*] shall be final. Further relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive

The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

SECTION 14. SEVERABILITY

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

STORMWATER MANAGEMENT PERMIT APPLICATION

To [*The Board*]:

The undersigned wishes to submit a Stormwater Management Permit Application as defined in the [*Zoning*] By-Laws of the Town of [*insert Town*] Section [reference] and requests a review and determination by [*The Board*] of the Stormwater Management Plan.

The Stormwater Management Plan involves property where owner's title to the land is derived under deed from _____, dated _____, and recorded in the [Insert] County Registry of Deeds, Book _____, Page _____, or Land Court Certificate of Title No. _____, Registered in _____ District, Book _____, Page _____.

Give a brief summary of the nature of the project.

The property (building) is described as being located at _____; it is currently used as _____, and the changes proposed to be made are _____.

The project is located on the parcel shown on Assessors Map _____, Parcel _____.

| | |
|--------------------------------|----------------------------|
| Applicant's Signature _____ | Owners' Signature(s) _____ |
| Applicant's Name (print) _____ | Owners' Names(s) _____ |
| Applicant's Address _____ | Owners' Address _____ |
| _____ | _____ |

Date Received by Town Clerk: _____

Signature _____

Please note: 1) An applicant for a Stormwater Management Plan Review must file with [*the Board*] a completed Stormwater Management Permit Application Form, a list of abutters, three (3) copies of the Stormwater Management Plan Package, three (3) copies of the Operation and Maintenance Plan, and the Application and Review Fees as noted in the Stormwater Management Plan Review Fee Schedule. 2) The applicant shall also file a copy of the Stormwater Management Plan, Operation & Maintenance Plan, and the Application Form with the Town Clerk. The date of receipt by the Town Clerk shall be the official filing date. 3) This application grants [*the Board* and its agents] permission to enter the property for inspection and verification of information submitted in the application.

Stormwater Management Plan Review Fee Schedule

The following fee schedules are minimum fees. [The Board] may require higher fees if deemed necessary for proper review of an application or to ensure compliance.

| <u>Lot Area</u> | <u>Professional Review Fee</u> | <u>Application Fee</u> |
|-----------------------|--------------------------------|------------------------|
| Less Than 3 Acres | \$_____ | \$_____ |
| 3 to 10 Acres | \$_____ | \$_____ |
| Greater than 10 Acres | \$_____ times the acreage | \$_____ |
| Resubmittal/Amendment | | |
| Filing Fee | \$_____ | |
| Review Fee | \$_____ | |

GENERAL

1. Any application not accompanied by the appropriate fee shall be deemed incomplete. Payment must be made to [The Board] in cash, money order, bank or certified check payable to the Town of [insert name].
2. An Applicant's failure to pay any additional review or inspection fee within five business days of receipt of the notice that further fees are required shall be grounds for disapproval.
3. The [The Board] will publish the public notice and send abutter notifications. Abutter notification shall be by certified mail-return receipt requested. The applicant shall pay all costs associated with the publication and notification requirements. These costs shall not be imposed on the applicant if the applicant completes the public notice and abutter notification requirements, and provides [The Board] with copies of the public notices and the return receipt cards.

Professional review fees include engineering review, legal review, and clerical fees associated with the public hearing and permit processing. A fee estimate may be provided by [The Board's] consulting engineer.