

# **STORMWATER BYLAW**

Final 4/25/2012

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## **INTRODUCTION**

Localities in the Commonwealth of Massachusetts are required to comply with a number of both State and Federal laws, regulations and permits which require a locality to address the impacts of development and post-development stormwater runoff quality and nonpoint source pollution. One such regulation, under the Clean Water Act (33 U.S.C. 1251 & seq.), is the Town's National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System Permit, referred to herein as the MS4 Permit.

The Town of Upton has established this stormwater management bylaw to eliminate non-stormwater discharges to the Town's stormwater management system, and to provide reasonable guidance for the regulation of development and post-development stormwater runoff for the purpose of protecting local water resources from degradation. This bylaw prohibits the discharges of illicit materials to the Town's stormwater management system and requires the removal of all such illicit connections. This bylaw also regulates the construction stormwater controls for both new and re-development projects. For the purposes of this Bylaw, the term development includes new construction as well as re-development of existing parcels.

It has been determined that it is in the public interest to reduce the discharge of contaminated water into the waters of the United States, and that reducing these discharges is protective of the quality of the receiving waters. It has further been determined that it is in the public interest to regulate development stormwater runoff discharges in order to control and minimize increases in stormwater runoff rates and volumes, construction soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with development stormwater runoff.

## **1.0 PURPOSE**

A) The purpose of this Bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased development stormwater runoff and nonpoint source pollution associated with development. It has been determined that proper management of development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, and promote groundwater recharge to protect surface and groundwater drinking supplies. This Bylaw seeks to meet that purpose through the following objectives:

1. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;
2. Require that development and all land conversion activities maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
3. Establish minimum development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of storm water

runoff; establish minimum design criteria for measures to minimize nonpoint source pollution from stormwater runoff which would otherwise degrade water quality;

4. Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum development stormwater management standards;
5. Encourage the use of nonstructural stormwater management, stormwater better site design practices or “low-impact development practices”, such as reducing impervious cover and the preservation of greenspace and other natural areas, to the maximum extent practicable.
6. Establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
7. Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented as part of this Bylaw;
8. Establish administrative procedures for the submission, review, approval or disapproval of Stormwater Management Plans, and for the inspection of approved active projects, and long-term follow up; Establish certain administrative procedures and fees for the submission, review, approval, or disapproval of stormwater plans, and the inspection of approved projects.
9. Prevent and eliminate non-stormwater discharges to the Town’s municipal separate storm sewer system (MS4).
10. Prohibit illicit connections and unauthorized discharges to the MS4, and require the removal of all such illicit connections.

B) Nothing in this Bylaw is intended to replace the requirements of either, United States Environmental Protection Agency Construction General Permit, the Army Corps of Engineers Flood Plain Easement requirements, the Town of Upton General Wetlands Protection Bylaw, or any other Bylaw that may be adopted by the Town of Upton. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

## **2.0 DEFINITIONS**

The following definitions shall apply in the interpretation and implementation of this Bylaw. Additional definitions may be adopted by separate regulation:

**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.

**ALTER** – Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as “alteration of drainage characteristics,” and “conducting land disturbance activities.” Improvements to the MS4, including normal maintenance, completed by the Town shall not be considered alterations.

**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.

**APPROVAL NOT REQUIRED (ANR)** — If the Conservation Commission or their Authorized Representative determines that the project does not require approval, based on the guidelines outlined below, the project plan shall be endorsed with “Approval Not Required”.

**BEST MANAGEMENT PRACTICE (BMP)** – Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment. “Structural” BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. “Nonstructural” BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

**CLEARING**— Any activity that removes the vegetative surface cover.

**COLD WATER FISHERY**— Environmental recourses defined by Massachusetts Division of Fisheries and Wildlife as meeting at least one of three criteria:

1. Brook, brown or rainbow trout has been determined;
2. Slimy sculpin or long nosesucker are present; or
3. The water is part of the Atlantic Salmon restoration effort or is stocked with Atlantic Salmon fry or parr.

**DESIGN STORM** — A rainfall event of specified size and return frequency that is used to calculate the runoff volume and peak discharge rate to best management practices (BMP).

**DETENTION** — The temporary storage of storm runoff in a best management practice, which is used to control the peak discharge rates, and which provides gravity settling of pollutants.

**DISCHARGE OF POLLUTANTS** – The addition from any source of any pollutant or combination of pollutants into the MS4.

**DRAINAGE WAY** — Any channel that conveys surface runoff throughout the site.

**EASEMENT** — A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land effected by such easement.

**EROSION CONTROL** — A measure that prevents erosion.

**EROSION AND SEDIMENT CONTROL PLAN** — A set of plans prepared by or under the direction of a licensed professional engineer, certified professional in erosion and sediment control, or other appropriately licensed and experienced professional, indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

**GRADING** — Excavation or fill of material, including the resulting conditions thereof.

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

**HOTSPOT** – Land uses or activities with higher potential pollutant loadings, such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas.

**ILLICIT CONNECTION** – A surface or subsurface drain, conduit, or conveyance that allows an illicit discharge to enter the MS4, including without limitation sewage, septage, process wastewater, or wash water, and any connection from indoor drains, sinks, or toilets, regardless of whether said connection was permissible under applicable law, regulation, or custom at the time

of construction.

**ILLICIT DISCHARGE** – Direct or indirect discharge to the MS4 that is not composed entirely of stormwater, except as exempted herein.

**IMPERVIOUS SURFACES** — Areas, such as pavement or rooftops, which prevent the infiltration of water into the soil.

**INFILTRATION** — The downward movement of water from the surface to the subsoil.

**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. The standards established by the Policy have subsequently been incorporated in the Regulations to the Wetlands Protection Act at 310 CMR 10.05(6)(k) through (q), and the Water Quality Certification Regulations at 314 CMR 9.06(6)(a).

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)** — 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 manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Upton.

**NEW DEVELOPMENT** — Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain alteration by man-made activities.

**NONPOINT SOURCE POLLUTION** — Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

**NON-STORMWATER DISCHARGE** — Discharge to the MS4 not composed entirely of stormwater.

**OPERATION AND MAINTENANCE PLAN (O&M PLAN)** — A plan describing the functional, financial, and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

**OWNER** – a person with a legal or equitable interest in property.

**PERIMETER CONTROL** — A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to an on-site sediment trap or basin.

**PERSON** – Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Upton, and any other legal entity, its legal representatives, agents, or assigns.

**PHASING** — Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

**PRE-DEVELOPMENT** – The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Town of Upton Planning Board and/or Conservation Commission. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

**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 the MS4 or any Wetland Resource Areas. Effluent waters from

dewatering operations are adequately regulated under NPDES. Pollutants shall include without limitation:

1. Paints, varnishes and solvents;
2. Gasoline, diesel fuel, oil, grease 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, fertilizers, and nutrients;
6. Hazardous materials and wastes;
7. Heavy metals and toxins;
8. Solvents, chemicals and detergents;
9. Sewage, viruses, bacteria, and pathogens;
10. Dissolved and particulate metals;
11. Animal wastes;
12. Rock, sand, salt and soils;
13. Construction wastes and residues; and
14. Noxious or offensive matter of any kind;
15. Vegetable oil and waste vegetable oil.

**POST-DEVELOPMENT** – The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion.

**RECHARGE** – The replenishment of underground water reserves.

**REDEVELOPMENT** – Any construction, alteration, improvement, repaving or resurfacing of a previously-developed site, where the existing land use is commercial, industrial, institutional, or multi-family residential.

**RETENTION**— The holding of runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

**SEDIMENT CONTROL** — Measures that prevent eroded sediment from leaving the site or entering off-site drainage structures.

**SITE** — A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

**STABILIZATION** — The use of practices that prevent exposed soil from eroding.

**START OF CONSTRUCTION** — The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

**STORMWATER AUTHORITY** – the Town of Upton Conservation Commission (the Commission), OR its authorized agent(s). The Upton Conservation Commission is responsible for coordinating the review, approval and permit process as defined in this Bylaw. Other Boards and/or departments participate in the review process as defined in the Stormwater Regulations adopted

by the Upton Conservation Commission.

**STORMWATER MANAGEMENT PERMIT (SMP)** – A permit issued by the Upton Conservation Commission after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious affects of uncontrolled and untreated stormwater runoff during development.

**SWALE**— A natural depression or wide, shallow ditch used to temporarily store, route, or filter runoff.

**TOTAL CUMULATIVE DISTURBED AREA** – The total land area (square feet) affected by any action (land clearing, grading, bulldozing, digging or similar activity) that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material.

**WATERCOURSE** — Any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water.

**WATERWAY** — A channel that directs surface runoff to a watercourse or to the public storm drain.

**Wetlands** – Resource areas as defined in the Wetlands Protection Act, G.L. c. 131, § 40, and its Regulations, 310 CMR 10.00 et seq., and the Upton Wetland Bylaw.

**WAIVER** — An intentional relinquishment of some right, interest, or the like. An express or written statement of such relinquishment.

### **3.0 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, and as authorized by the residents of the Town of Upton at Town Meeting, dated May 10, 2012.

### **4.0 ADMINISTRATION**

- A) The Upton Conservation Commission shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Commission may be delegated in writing by the Commission to its employees or agents.
- B) Stormwater Regulations. The Upton Conservation Commission may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Stormwater Management Bylaw by majority vote of the Commission, 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. After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.
- C) Stormwater Handbook. The Upton Conservation Commission will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Stormwater Handbook for execution of the provisions of this Bylaw. This Handbook includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The Handbook may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the Stormwater Regulations,

stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

- D) Permit Waiver. The Upton Conservation Commission shall have the authority to waive the requirement for a Stormwater Management Permit for specific types of projects, such as, without limitation Construction of a Deck, Patio, Retaining Wall, Existing Driveway Expansion, Shed, Swimming Pool, Tennis or Basketball Court. Any Stormwater Management Permit waiver shall be subject to the conditions as presented in Section 9.B of this Bylaw.
- E) Actions by the Upton Conservation Commission. The Upton Conservation Commission may take any of the following actions as a result of an application for a Stormwater Management Permit as more specifically defined as part of Stormwater Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, or Disapproval.

## 5.0 APPLICABILITY

- A) This bylaw shall apply to flows entering the municipally-owned storm drainage system, a watercourse, and any wetland resource area located within the boundaries of the Town of Upton. It shall be applicable to all new development and re-development, including, but not limited to, site plan applications, subdivision applications, grading applications, land use conversion applications, and any other activity that will result in an increased amount of stormwater runoff or pollutants flowing from the a parcel of land, or any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to Section 5.D of this Bylaw.
- B) Development Tiers. All new development and re-development shall be classified in a two-tier system. No person shall start a project subject to the provisions of this Bylaw without first obtaining the approval by the Conservation Commission or their Authorized Representative.
  - 1. Tier I: Notification
    - a. Disturbance of more than 5,000 square feet up to 1 acre (43,560 square feet) of land
    - OR
    - b. Stockpiling more than 100 cubic yards of excavated soil or fill

Tier I classification requires the applicant to comply with the following procedures:

- a. Notify Conservation Commission or their Authorized Representative in writing of the date and nature (including a sketch) of the proposed project at least 10 days prior to commencement of site clearing or stockpiling activities;
- b. Implement measures to prevent the offsite discharge of sediment;
- c. Construction materials (paints, glue, thinners, etc.) shall be managed so as not to pollute stormwater. Containers/materials shall be stored and disposed of properly;
- d. Implement other stormwater management measures at the direction of the Conservation Commission or their Authorized Representative;
- e. The erosion control system shall be inspected by the Conservation Commission or their Authorized Representative prior to disturbing the site. The applicant shall be responsible for maintaining and removing this system at project completion.
- f. Provide additional stormwater-related information at the request of the Conservation Commission or their Authorized Representative. This may include providing an engineered plan prepared and stamped by a Massachusetts

Registered Professional Engineer or a Certified Professional In Erosion and Sediment Control, evaluating existing drainage systems, or a complete Stormwater Management Plan, as deemed applicable by the Conservation Commission or their Authorized Representative because of the size or character of the development project or because of the natural conditions at the site.

2. Tier II: Stormwater Management Permit

- a. Total cumulative disturbed area of more than one (1) acre (43,560 square feet) (see Section 2.0 – DEFINITIONS)

OR

- b. New Development or redevelopment which causes alteration of drainage characteristics (see Section 2.0 – DEFINITIONS)

Under the jurisdiction of this Bylaw, Tier II classification requires a Stormwater Management Permit, including the submittal of an Erosion and Sediment Control Plan, as prescribed in this Bylaw.

3. Hotspots

Notwithstanding any other provisions of Section 5.B of this Bylaw, an alteration, re-development, or conversion of land use to a hotspot, as defined in Section 2.0 of this Bylaw, shall require a Stormwater Management Permit.

C) Stormwater Management Permit

The Stormwater Management Permit (SMP) shall be designed to meet the Massachusetts Stormwater Standards and DEP Stormwater Handbook, as revised. The plans, documents and calculations submitted must be stamped by a Massachusetts Professional Engineer or a Certified Professional in Erosion and Sediment Control.

The applicant shall complete and sign the SMP Application and deliver the application, Stormwater Management Plan and drawings to the Conservation Commission or their Authorized Representative.

The Stormwater Management Plan shall fully describe the project in drawings and narrative. It shall include:

1. Contact information

- a. The location of the Stormwater Management Plan;
- b. The name, address and the beeper or cell phone number, if applicable, of the:
  1. Owner of the project;
  2. Operator of the project;
  3. Emergency Contact;
  4. Person responsible for routine inspections of Best Management Practices;
  5. Person responsible for maintaining the Best Management Practices;
  6. Person responsible for documenting changes to the Stormwater Management Plan; and
  7. Person responsible for communicating changes in the Stormwater Management Plan to the people working on the site.

2. Site map requirements:

- a. A locus map showing the parcel in relation to the surrounding properties;
- b. A North arrow, scale and date;
- c. The property lines;
- d. Easements and/or legal rights of other persons within the property lines;



- e. All structures, utilities, downstream culverts, roads and other paved areas ;
  - f. Topographic contours at two foot intervals ;
  - g. Critical area boundaries at the site;
  - h. Surface water and wetlands, drainage patterns and watershed boundaries;
  - i. Existing vegetation at the site;
  - j. The extent of one-hundred-year floodplain boundaries if identified on the Federal Emergency Management Agency floodplain maps;
  - k. Soils information for design purposes from the Natural Resources Conservation Services soil survey and available site soil samples;
  - l. A depiction of areas of soil disturbance;
  - m. A depiction of areas of cut and fill; and
  - n. A construction details sheet showing notes specifying materials to be used and construction specifications.
3. Site and activity description including:
    - a. Location;
    - b. Existing conditions;
    - c. Proposed conditions;
    - d. Area to be disturbed in square feet and acres;
    - e. Topography;
    - f. Wetlands and water bodies; and
    - g. Land type
  4. Identification of potential pollutant sources such as paint, pesticides, oil, or other toxic chemicals etc.
  5. Description of controls to reduce pollutants
    - a. List and discuss each Best Management Practice, its purpose, its construction sequence and installation timing as they apply to the site and the project proposed.
    - b. Design calculations of all temporary and permanent stormwater management and erosion and sediment control best management practices.
    - c. Erosion and Sediment Control Plan, as defined in Section 6.0.
  6. Phases as related to soil disturbance
    - a. Tabulated sequence of construction
    - b. The construction schedule
    - c. The earth movement schedule
  7. Maintenance/inspection procedures
    - a. Proposed schedule for the inspection and maintenance of all best management practices.
    - b. Proposed inspection forms to be filled out by the person responsible for routine inspections of Best Management Practices.

The Conservation Commission or their Authorized Representative may waive all, or some, of the requirements for a stormwater management and erosion control application if it determines that some, or all, of the application requirements are unnecessary because of the size or character of the development project or because of the natural conditions at the site.

The Conservation Commission shall act on an original or revised SMP Application within 30 calendar days of receipt. Applicant shall proceed only when approval of the full SMP has been granted by the Commission. Pending preparation and approval of a revised SMP, development activities shall be allowed to proceed in accordance with conditions established by the Commission.

The applicant shall make all requests for waivers in writing. The applicant must submit supporting technical information and documentation to demonstrate that, because of minimal environmental impact, some, or all, of the requirements are unnecessary. The Enforcing Agent's decision to grant or deny waiver shall be in writing and shall set forth the reasons for the grant or denial.

D) Exemptions

No person shall alter land within the Town of Upton without having completed Notification procedures or obtained a SMP for the property with the following exceptions:

1. Any activity that will disturb an area less than 5,000 square feet or less than 25% of a contiguous property, whichever is less; provided that Best Management Practices are implemented for the activity. This exception may not be applied for contiguous properties held in common ownership at the time of adoption of this Bylaw that may have been previously subdivided and/or are attributed to multiple separate owners;
2. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A Section 3.
3. Normal town maintenance and improvements of town-owned public land, ways, and appurtenances, including the MS4.
4. Activities conducted in accordance with an approved Forest Cutting Plan under the provisions of the Forest Cutting Practices Act (M.G.L.c. 132, sec 40-46) and its implementing regulations (304 CMR 11.00).
5. Any construction activity or project wholly within the jurisdiction of the Conservation Commission provided that an order of condition has been issued by the Conservation Commission.
6. Any construction activity or project requiring approval under the subdivision control law where the planning board has approved an application for definitive subdivision approval and any construction activity or project requiring site plan review, provided that the plans include storm water management provisions for the site that are consistent with the requirements of this Bylaw.
7. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;
8. Simple repair or replacement of an existing roof of a single-family dwelling or a duplex-style dwelling, as determined by the Conservation Commission to be equivalent in square footage to that of a single-family dwelling;
9. The construction or repair of any fence or wall that will not alter existing terrain or drainage patterns;
10. Construction of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not significantly alter terrain, ground cover, or drainage patterns;
11. Emergency repairs to any utilities (gas, water, sewer, electric, telephone, etc.), storm water management facility or practice that poses a threat to public health or safety, or as deemed necessary by the Conservation Commission or their Authorized Representative.
12. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Bylaw;

13. Re-development projects for which the total impervious cover is reduced by 40% from existing conditions; providing that all erosion and sediment control requirements presented herein are met.
14. Habitat management or restoration activities on Conservation or Town owned land conducted in accordance with an approved Land Stewardship or Forest Management Plan.

## **6.0 EROSION AND SEDIMENT CONTROL PLAN**

### **A) Purpose**

The purpose of this section is to eliminate or reduce the adverse effects of soil erosion and sedimentation on the environment, public welfare/health, and municipal facilities. These adverse effects may be the result of managed construction and other activities including but not limited to earth alteration, excavation, removal of vegetation and general construction activities.

### **B) Jurisdiction**

No person shall excavate, cut, grade or perform any land-disturbing activities of significance, without an approved Stormwater Management Permit and Erosion and Sediment Control Plan. Activities of significance are those which meet or exceed the following thresholds:

1. Any change of existing grade of more than 5,000 sq. ft. or 25% of the lot whichever is smaller;
2. Removal of existing vegetation of more than 5,000 sq. ft. or 25% of the lot whichever is smaller;
3. Storage of more than 100 cubic yards of excavated soil or fill.
4. Activity disturbing an area of 2,500 sq. ft. or greater if the slope of the disturbance is 4:1 (25%) or greater.

Activities which are exempt from the requirement of an approved Erosion and Sediment Control Plan are as follows:

1. Emergency activities for the protection of life, property, or natural resources;
2. Existing permitted nursery and agricultural operations.

### **C) Erosion and Sediment Control Plan**

1. Activities which require the change of existing grade or removal of existing vegetation on any parcel of less than 20,000 sq. ft. or storage of excavated soil or fill between 100 and 1300 cubic yards shall be deemed a project of minor significance and will require that the following information to be included in the Erosion and Sediment Control Plan:
  - a. Name, address and telephone number of owner, civil engineer and person responsible for implementation of the plan.
  - b. Property lines.
  - c. Location of all existing and proposed building and impervious surfaces.
  - d. Location of all existing and proposed stormwater utilities, including structures, pipes, swales and detention basins.

- e. Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sediment transport, including provisions to preserve topsoil and limit disturbance.
  - f. Design details for both temporary and permanent erosion control structures.
  - g. The Upton Conservation Commission may require any additional information or data deemed appropriate and/or may impose such conditions thereto as maybe deemed necessary to the preservation of public health and safety.
2. Activities which require:
- a. the change of existing grade or removal of exiting vegetation on more than 20,000 sq. ft. or
  - b. storage of excavate or fill in excess of 1300 c.y. shall be deemed a project of significant impact and will require that the Erosion and Sediment Control Plan include all of the information required of projects of minor significance plus the following additional information:
    - 1. An attached vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures.
    - 2. Suitable contours for the existing and proposed topography.
    - 3. A clear and definite delineation of any areas of vegetation or trees. Note all vegetation that is to be removed and all vegetation that is to be saved.
    - 4. A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on the site.
    - 5. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities; infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, and establishment of permanent vegetation.

D) Performance Standards

A construction project shall be considered in conformance with this section if soils or other eroded matter has been prevented from being deposited onto adjacent properties, rights-of-ways, public storm drainage system, or wetland or watercourse. The design, testing, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards and specifications contained in the Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas dated March 1997 or the latest edition thereof.

E) Review and Approval

An Erosion and Sediment Control review is triggered by a building permit application or other activity that falls within the jurisdiction described in paragraphs B and C above. Applicants are referred by the permit issuing agency to the Upton Conservation Commission to conduct the Erosion and Sediment Control review for issuance of a Stormwater Management Permit. Activities that fall within the jurisdiction described in paragraphs B and C above that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek Erosion and Sediment Control review directly from the Upton Conservation Commission.

The Upton Conservation Commission will review each Erosion and Sediment Control Plan to determine its conformance with the provisions of this section.

Within 30 calendar days, or additional period requested by the Applicant or Commission and agreed by both parties, after receiving an application, the Upton Conservation Commission shall, in writing:

1. Approve the plan as submitted.
2. Approve the plan subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
3. Disapprove the plan, indicating the reason(s) and procedure for submitting a revised application and/or submission.

Failure of the Upton Conservation Commission to act on an original or revised plan within 30 calendar days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the Commission. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the Commission.

#### F) Inspections

The Upton Conservation Commission, or designated agent shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Upton Conservation Commission shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Commission at least two working days before the following:

1. Installation of sediment and erosion control measures
2. Start of construction
3. Completion of site clearing
4. Completion of rough grading
5. Close of the construction season
6. Completion of final landscaping

The person responsible for implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Upton Conservation Commission at the time intervals specified in the approved permit.

To the extent permitted by law, or if authorized by the applicant or other party in control of the property, the Upton Conservation Commission or its designated agent may enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

#### G) Enforcement

**Suspension of Construction or Site Alteration Activity**—In the event that the activity at a site violates the conditions as stated or shown on the approved Erosion and Sediment Control Plan in such a manner as to adversely affect the environment, public welfare/health and municipal facilities, then the Upton Conservation Commission may suspend work until the violations are corrected. The Upton Conservation Commission will notify the applicant in

writing identifying the nature of the violation and corrective action required.

## **7.0 ILLICIT DISCHARGES**

1. No person or entity shall dump, discharge, cause, or allow to be discharged any pollutant or non-stormwater discharge into any pipe, drain, catch basin, or other structure in the MS4 such that it discharges into the MS4, a water body, or a wetland resource area, whether by direct or indirect connection. No person shall construct, use, allow, maintain, or continue any illicit connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation, or custom at the time of construction. No person or entity shall discharge, cause, or allow to be discharged any septage or septic tank or cesspool overflow into the MS4.
2. A discharge or flow resulting from firefighting activities is exempt from the above prohibition. The following non-stormwater discharges or flows are exempt from the prohibition, provided that the source is not a significant contributor of a pollutant to the MS4: water line or hydrant flushing; foundation or footing drains; landscape irrigation and lawn watering; air conditioning condensation; dechlorinated (<1 part per million chlorine) swimming pool discharges; water from individual residential car washing; discharge from street sweeping; flow from potable water sources; flow from springs, wetlands, diverted streams, or riparian habitats; rising groundwater, including uncontaminated infiltrated or pumped groundwater; and others with prior approval of the Conservation Commission.

## **8.0 PROCEDURES**

Permit Procedures and Requirements shall be defined and included as part of any rules and regulations promulgated as permitted under Section 4 of this Bylaw.

## **9.0 NOTICE**

- A) Application: A completed application for a Stormwater Management Permit shall be filed with the Upton Conservation Commission. A permit must be obtained prior to commencement of land disturbing activity.
- B) Waiver: The Upton Conservation Commission may waive strict compliance with any requirement of this Bylaw or the rules and regulations promulgated hereunder, where such action:
  1. 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 Bylaw.

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

All waiver requests shall be discussed by the Upton Conservation Commission and a decision will be made by the Commission within 30 days of the waiver request.

If, in the opinion of the Commission, additional time or information is required for a review of the waiver request, the Commission may continue consideration of the waiver request to a date determined by the Commission and agreed by the applicant. In the event the applicant refuses a continuance, or fails to provide the requested information, the waiver request shall be denied.

## **10.0 OPERATION AND MAINTENANCE PLAN**

An operation and maintenance plan (O&M Plan) is required at the time of application for all projects subject to the provisions of Section 5.B of this Bylaw. 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 development. The Commission shall make the final decision on what maintenance option is appropriate in a given situation. The Commission will consider natural features, proximity of the site to water bodies and wetlands resource areas, 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 O&M Plan shall remain on file with the Commission and shall be an ongoing requirement.

## **11.0 CERTIFICATE OF COMPLETION**

Upon completion of activities allowed under a Stormwater Management Permit, the applicant shall notify the Commission and request a final inspection and certificate of completion. For projects subject to the provisions of Section 5.B.2 or 5.B.3 of this Bylaw, the applicant shall submit an as-built plan prepared by a professional land surveyor and certification from a registered professional engineer that all construction has been done in accordance with the approved Stormwater Management Permit.

## **12.0 SECURITY**

The Commission may require the applicant to post a performance bond, issued by a surety or guarantee company properly qualified and licensed to issue such a bond in the state of Massachusetts, before the start of any land disturbing activity. The form of the bond/surety, and the terms of an accompanying performance agreement among the Applicant, the surety, and the Commission, shall be approved by Town Counsel, and be in an amount deemed sufficient by the Commission to insure that the land disturbance activity will be completed in accordance with the Stormwater Management Permit. In the alternative, the Commission may permit the Applicant to provide equivalent cash security, to be held by a designated escrow agent approved by the Commission, pursuant to an agreement that authorizes the agent to complete the land disturbance activity in accordance with the Stormwater Management Permit.

## **13.0 ENFORCEMENT**

A) The Upton Conservation Commission, or an authorized agent of the Commission shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Enforcement shall be further defined and included as part of any Stormwater regulations promulgated as permitted under Section 4 of this Bylaw.

1. Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300. Each day or part thereunder that such violation occurs or continues shall constitute a separate offence.
2. As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. C. 40 & 21D, in which case the Commission or its agent shall be the enforcing person. The non-criminal penalty for violations shall be \$50 for the first violation, \$100 for the second violation, and \$300 for the third violation and each subsequent violation(s). Each day or part thereof that such violation occurs or continues shall constitute a separate offence.

3. Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder, shall be notified by Certified mail of said violation, with the date of mailing of the notice serving as the first violation. Failure to receive or accept the notice of violation shall not relieve the Applicant from their obligations under the provisions of this Section 13.

#### **14.0 FEES**

The Upton Conservation Commission by regulation shall promulgate an application fee schedule for stormwater permit applications and completion certificates. The fee schedule shall be reasonably related to the costs of processing, reviewing and acting upon the application. The fee specified in such a fee schedule shall be made payable to the Town of Upton and shall accompany the permit application or request for certificate of completion. The Commission may require an additional fee for review of any change in or alteration from an approved permit. Said fee shall be paid into a special account set up by the Town Treasurer and may be expended by the Commission for the purpose allocated without further appropriation in accordance with the provisions of M.G.L. C.44, § 55E ½.

#### **15.0 APPEALS**

A decision by the Commission made under this Bylaw shall be final. Further review shall be by a court of competent jurisdiction.

#### **16.0 SEVERABILITY**

The invalidity of any section, provision, paragraph, sentence, or clause of this Bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

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