
ARTICLE XXVII. Stormwater and Erosion Control By-Law

Section I. Purpose

A. The purpose of this By-Law is to protect, maintain and enhance the public health, safety, environment and general welfare of the Town by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of 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, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This Bylaw seeks to meet that purpose through the following objectives:

1. Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of its National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates.
2. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.
3. Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics where appropriate 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.
4. Establish minimum post-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 alterations in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; Establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.
5. Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.
6. Encourage the use of nonstructural stormwater management, better site design practices or "low-impact development practices", such as reducing impervious cover, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.
7. Promote water conservation through the re-use of stormwater for irrigation.
8. Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.

9. Establish provisions to 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.

10. 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 or the environment.

11. 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 By-Law.

12. Establish administrative procedures for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, 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, inspection of construction sites, and the inspection of approved projects.

13. Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater runoff, which would degrade water quality.

14. Establish the Town of Weston's legal authority and capacity to ensure compliance with the provisions of this By-Law through funding, permitting, inspection, monitoring, and enforcement.

B. Nothing in this Bylaw is intended to replace the requirements of the Town of Weston Zoning By-Law, the Mass Wetlands Protection Act, the Town of Weston General By-Law, any other By-Law that may be adopted by the Town of Weston, or any Rules and Regulations adopted there under.

Section II Definitions

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

ALTER: Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site.

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.

BETTER SITE DESIGN: Site design approaches and techniques, including low-impact development (LID) that can reduce a site's impact on the watershed through the use of nonstructural stormwater management practices. Better site design includes conserving and

protecting natural areas and green space, reducing impervious cover, using natural features for stormwater management, and providing site-wide infiltration.

DEVELOPMENT: Any construction that disturbs or alters a parcel of land.

DISTURBANCE OF LAND (Land Disturbance): Any action causing any removal of vegetation including tree and brush clearing; importation, removal or redistribution of soil, sand, rock, gravel or similar earth material.

EXISTING LAWN: Grass area which has been maintained and mowed in the previous two years.

IMPERVIOUS: Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

INFILTRATION: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

LOW IMPACT DEVELOPMENT (LID): An ecosystem-based approach to land development and stormwater management that ensures that each development site is designed to protect, or restore, the natural hydrology of the site.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS: The latest version as may be amended from time to time of the Stormwater Management Standards and accompanying Stormwater Handbook issued by the Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

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 of Weston.

NONPOINT SOURCE POLLUTION: Pollution from many diffuse sources caused by rainfall, snowmelt, or other method of pollutant transport 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.

NORMAL MAINTENANCE: Activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.

PRE-DEVELOPMENT: The conditions that exist prior to the proposed disturbance activity. 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.

POST-DEVELOPMENT: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

RECHARGE: The replenishment of underground water reserves.

RECONSTRUCTION: Any action causing complete removal and replacement of paved surfaces, such as driveways, parking areas and roads.

REDEVELOPMENT: Any construction, alteration, improvement, repaving, or resurfacing on a previously-developed site.

RUNOFF: Rainfall or snowmelt water flowing over the ground surface or other source which may result in transport of pollutants.

SITE: The entire parcel of land being developed.

STOCKPILING: The storage of unsecured material for future use, excluding the storage of materials 10 cubic yards or less when secured utilizing erosion controls to prevent erosion of material.

STORMWATER MANAGEMENT: The use of structural or non-structural practices that are designed to control or treat stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates. Stormwater Management includes the use of Low-Impact Development (LID) management practices.

STORMWATER MANAGEMENT PERMIT (SMP): A permit issued by the Stormwater Permitting Authority (SWPA), after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

Section III. Authority

This By-Law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and 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 Weston at Town Meeting dated May 10, 2011

Section IV. Applicability

Where a project is subject to Site Plan Approval, Definitive Subdivision or Special Permit Approval from the Planning Board, the Stormwater Regulations adopted by the Planning Board shall apply and the stormwater review shall be completed as part of the Planning Board process provided that the Planning Board also finds that the activity is in compliance with any additional performance standards contained in the Regulations promulgated to implement this By-Law.

- A.** For projects not subject to Site Plan Approval, Definitive Subdivision or Special Permit Approval from the Planning Board, this By-Law shall be applicable to all new development and redevelopment, land disturbance and any other activity that may result in an increased amount of stormwater runoff or pollutants, or changes to drainage characteristics causing an increases in

runoff, flowing from a parcel of land, unless exempt pursuant to Section V of this By-Law. This By-Law shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly-controlled persons or entities) as of the effective date of this By-Law, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in Section IV.B and are not exempted by Section V. A development shall not be segmented or phased in a manner to avoid compliance with this By-Law.

- B. No Permit Required** – For activities including, but not necessarily limited to, those listed below, no permit shall be required by the SWPA provided that erosion control measures are used and the activity will not result in an increased amount of stormwater runoff or pollutants flowing from a parcel of land and entering a traveled way or adjacent properties.
1. Land Disturbance not to exceed 5,000 square feet in area other than work described in Section IV.B.4 and Section IV.C.1.
 2. The creation of new impervious area, or expansion of existing impervious area, not to exceed 750 square feet.
 3. Repair, replacement or reconstruction of an existing driveway.
 4. Restoration of existing lawn areas provided that any imported material is spread at a thickness no greater than four inches and the total imported material does not exceed 250 cubic yards.
 5. The addition or on-site redistribution of up to 250 cubic yards of material.
 6. Demolition of a structure provided that any land disturbance, including the area of the structure, does not exceed 5,000 square feet.
 7. Routine maintenance and improvement of institutional open space, and recreational uses, provided that an annual letter or plan is filed with and approved by the SWPA describing the work to be done.
- C. Storm Water Management Permit Thresholds** - A Storm Water Management Permit shall be required for any of the following, except for an activity exempt per Section V:
1. Minor Permit
 - a) The creation of new impervious area, or expansion of existing impervious area, greater than 750 square feet and not exceeding 2,500 square feet.
 - b) Repair, replacement, expansion of septic systems provided the work does not exceed the thresholds in Section IV.C.2.d.
 - c) The addition or on-site redistribution of more than 250 cubic yards, but not exceeding 500 cubic yards, of earth materials including, but not limited to, sand, gravel, stone, soil, loam, clay, sod, fill and mineral products.
 2. Major Permit
 - a) Construction of any new dwelling or new dwelling replacing an existing dwelling in conformance with Article VIII, Section V.B.1.a and Section V.C.1.a of the Weston Zoning By-Laws;
 - b) Any land disturbance exceeding an area of 5,000 square feet, or more than 20% of a parcel or lot, whichever is less, other than activities described in section IV.B.
 - c) Creation of new impervious surface area greater than 2,500 square feet.
 - d) The addition or on-site redistribution of more than 500 cubic yards of earth materials including, but not limited to, sand, gravel, stone, soil, loam, clay, sod, fill and mineral products.
 - e) Reconstruction of public or private way.
 - f) Reconstruction or replacement of existing non-residential parking lots, including associated

driveways, greater than 2,500 square feet.

Section V. Exemptions

Exemptions from this By-Law apply to the following activities, provided that a project is solely comprised of any one of these activities:

- A. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04 ("Agricultural") and the conversion of additional land to agricultural use, when undertaken in such a manner as to prevent erosion and siltation through the use of Best Management Practices recommended by the U.S. Department of Agriculture Natural Resources Conservation Service or the Massachusetts Department of Agricultural Resources.
- B. Any work or projects for which all necessary approvals and permits were issued before the effective date of this By-Law.
- C. Normal maintenance of existing landscaping, gardens or lawn areas
- D. Construction of any fence that will not alter existing terrain or drainage patterns.
- E. Construction of utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.) other than drainage which will not alter terrain, ground cover, or drainage patterns, so long as BMPs are used to prevent erosion, sedimentation and release of pollutants.
- F. Emergency repairs to any existing utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility that poses a threat to public health or safety, designated by the SWPA. Where such activity is subject to the jurisdiction of the Conservation Commission, the work shall not proceed without the issuance of an Emergency Certification by the Commission.
- G. The maintenance or resurfacing (not including reconstruction) of any public or private way.

Section VI. Administration

- A. The Board of Selectmen shall be the appointing authority for the Stormwater Permitting Authority. The Stormwater Permitting Authority is responsible for the administration, implementation, and enforcement of this By-Law. Meetings of the Stormwater Permitting Authority shall be subject to the Massachusetts Open Meeting Law, MGL Ch. 30A, §§ 18-25.
- B. Stormwater Permitting Authority (SWPA). The SWPA shall consist of (5) five members, four of whom shall permanently be the Town Engineer, the Town Planner, the Conservation Administrator, and the Public Health Director. One (1) member shall be a resident of the Town of Weston and possess a degree in landscape architecture, environmental or civil engineering or environmental science appointed by the Board of Selectmen serving a (3) year term. The SWPA shall administer, implement and enforce this By-Law. Any powers granted to or duties imposed upon the SWPA may be delegated in writing by the SWPA to any Town employee, board or agent.
- C. Stormwater & Erosion Control Regulations ("Regulations"). The SWPA may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), delegation of authority, procedures and administration of this By-Law after conducting a public hearing to receive comments on the proposed rules and regulations or 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. Failure of the SWPA 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 By-Law.

D. Massachusetts Stormwater Handbook

The SWPA will utilize the policy, criteria and information including specifications and standards of the most recent edition of the Massachusetts Stormwater Handbook for execution of the provisions of this By-Law. Unless otherwise specified in the 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.

E. Stormwater Management Permit

The SWPA shall have the authority to issue a Stormwater Management Permit (SMP) for projects exceeding the thresholds defined in Section IV.B. of this By-Law and not otherwise exempted by Section V. Requirements of the SMP may be defined and included within the Regulations promulgated pursuant to Section VI.C of this By-Law.

F. SWPA Approval Process.

1. Action by SWPA

- a. **Determination of Completeness:** The SWPA shall review the application submission and issue a determination stating whether the application is complete and whether it complies with the Design Standards established in the Stormwater Rules and Regulations, as may be waived in accordance with Section 3.E. of this By-Law.
- b. **Incomplete Applications:** If the SWPA determines the application is incomplete, including insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the SWPA may require the submission of additional information and/or disapprove the application and deny the Permit.
- c. **Applications deemed to be complete and in compliance with Design Standards.** Each application for a Stormwater Management Permit that complies with the Regulations, and is determined to be a complete application by the SWPA shall be acted upon within thirty (30) days of the date of filing with the SWPA, unless such application has been withdrawn from consideration. The SWPA may:
 - i. Approve the Permit Application upon finding that the proposed plan will protect water resources and meets the objectives and requirements of this By-Law;
 - ii. Approve the Permit Application with conditions, modifications or restrictions that are required to ensure that the project will protect water resources and meets the objectives and requirements of this By-Law; or
 - iii. Disapprove the Permit Application if the proposed plan will not protect water resources or fails to meet the objectives and requirements of this By-Law.
- d. **Applications not in compliance with Design Standards.**
 - i. For applications where the SWPA has determined that the Design Standards are not met, the Applicant may appeal the determination and request a public hearing with the SWPA to consider the application or resubmit the application demonstrating compliance.
 - ii. For applications where the Design Standards cannot be met due to site conditions or the applicant wishes to propose an alternative design not consistent with the Design Standards, the applicant may immediately request a public hearing with the SWPA.

2. Public Hearing Process

- a. A public hearing is required for all Minor and Major Stormwater Management Permits (SMP) where design standards cannot be met. Minor Permits and Major Permits that meet design

standards shall not require a public hearing. Public hearings shall be published in a newspaper of general circulation for two (2) consecutive weeks. The first publication date shall be published not less than fourteen (14) days before the day of the hearing. A copy of the hearing notice shall be posted in the Office of the Town Clerk for a period of not less than fourteen (14) days before the date of the hearing. Copies of the notice shall be mailed, postage prepaid, to the applicant, property owner (if different) and to direct abutters and owners of land directly opposite on a public or private way as they appear on the most recent Assessor's list.

- b. The SWPA may take any of the following actions following the close of the public hearing for an application for a Stormwater Management Permit
 - i. Approve the Permit Application upon finding that the proposed plan will protect water resources and meets the objectives and requirements of this By-Law;
 - ii. Approve the Permit Application with conditions, modifications or restrictions that are required to ensure that the project will protect water resources and meets the objectives and requirements of this By-Law; or
 - iii. Disapprove the Permit Application if the proposed plan will not protect water resources or fails to meet the objectives and requirements of this By-Law.

G. Appeals of Action by the SWPA. A decision of the SWPA shall be final. Further relief of a decision by the SWPA made under this By-Law shall be to a court of competent jurisdiction.

H. Waivers. The SWPA may waive strict compliance with any of the requirements of this By-Law or the rules and regulations promulgated hereunder, if it determines that some 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 and where such action is:

1. Allowed by federal, state and local statutes and/or regulations,
2. In the public interest, and
3. Not inconsistent with the purpose and intent of this By-Law.

Any request from an Applicant for a waiver of these rules shall be submitted, in writing, to the SWPA at the time of submission of the application. Such requests shall clearly identify the provision/s of the rule from which relief is sought and be accompanied by a statement setting forth the reasons why, in the applicant's opinion, the granting of such a waiver would be in the public interest or the specific information required to show strict compliance is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of this By-Law and the rules and regulations promulgated hereunder.

Section VII. Performance Standards

Criteria for Stormwater Management Standards shall be defined and included as part of any Rules and Regulations promulgated under Section VI.C of this By-Law.

Section VIII. Enforcement

- A.** The SWPA, or an authorized agent of the SWPA, shall enforce this By-Law, and any Regulations, permits orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.
- B.** If a person violates the provisions of this By-Law or its Regulations, or a permit, notice or order issued there under, the SWPA may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or to compel the person to perform abatement or remediation of the violation.

C. The SWPA, or an authorized agent of the SWPA, may issue a written order to enforce the provisions of this By-Law or the Regulations, which may include requirements to:

1. Cease and desist from land-disturbing activity until there is compliance with the By-Law or provisions of an approved Stormwater Management Permit;
2. Maintain, install or perform additional erosion and sediment control measures;
3. Perform monitoring, analyses, and reporting;
4. Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
5. Comply with requirements in the Stormwater Management Permit for operation and maintenance of stormwater management systems; and,
6. Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems.

If the SWPA or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

D. Criminal Penalties. Any person who violates any provisions of this By-Law, regulation, order or permit issued hereunder, shall be punished by a fine of not more than \$300. Each day a violation exists shall constitute a separate violation.

E. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town may utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40, §21D and Article V of the Town By-Laws, in which case any police officer of the Town of Weston, the Town Engineer, and such other persons as are authorized by the SWPA shall be the enforcing person. If non-criminal disposition is used, any person who violates any provision of this By-Law, regulation, order or permit issued thereunder, shall be punished as follows:

1. First Violation: Warning
2. Second violation: \$100
3. Third violation: \$200
4. Fourth and subsequent violations: \$300
5. Each day a violation exists shall constitute a separate violation

F. Remedies Not Exclusive. The remedies listed in this By-Law are not exclusive of any other remedies available to the SWPA or the Town under any applicable federal, state or local law.

Section IX. Severability

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

Section X. Effective Date

This By-Law, originally adopted October 1, 2011, and amended May 14, 2014, shall take effect on July 3, 2014, provided that all other requirements of G.L. c.40, §32 have been met.