

Storm Water By law Article XVI

GENERAL BYLAW

Town of Nahant

SECTION I. PURPOSE

Regulation of activities that result in the disturbance of land and the creation of storm water runoff is necessary for the protection of the Town of Nahant to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town of Nahant, including the water bodies and groundwater. The purpose of this Bylaw is to prevent or diminish these impacts by controlling runoff and preventing soil erosion and sedimentation resulting from site construction and development.

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.

The objectives of this by-law are:

1. To require practices that eliminate soil erosion and sedimentation and control the volume and rate of storm water runoff resulting from land disturbance activities;
2. To ensure that soil erosion and sedimentation control measures and storm water runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
3. To 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;
4. To require practices to control the flow of storm water from new and redeveloped sites into the Town of Nahant storm drainage system in order to prevent flooding and erosion;
5. To protect ground water and surface water from degradation;
6. To promote groundwater recharge;
7. To prevent pollutants from entering the Town of Nahant municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;

8. to ensure adequate long-term operation and maintenance of structural storm water best management practices so that they work as designed;
9. to comply with state and federal statutes and regulations relating to storm water discharges; and
10. To establish the Town of Nahant legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement;
11. To establish decision-making processes surrounding the land development activities that protect the integrity of the watershed and preserve the health of wetland and water resources;
12. to require that new development, redevelopment and all land conversion activities maintain the after-development runoff characteristics equal to or less than predevelopment runoff characteristics to provide recharge and to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream, channels and aquatic habitats;
- I 3. To establish construction/alteration and post-development storm water management standards and design criteria for the regulation and control of storm water runoff quality and quantity
- I 4. To establish design criteria for measures to minimize nonpoint source pollution from storm water runoff which would otherwise degrade water quality;
- I 5. To establish design and application criteria for the construction and to use of structural storm water control facilities that can be used to meet minimum construction/alteration and post-development storm water management, storm water site design practices or "low- impact development" practices, such as reducing impervious cover and the preservation of open space and other natural areas, to the maximum extent practicable;
16. To establish provisions for the long-term responsibility for and maintenance of structural storm water control facilities and nonstructural storm water management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
17. To establish provisions to ensure that there is an adequate funding mechanism, including surety, for the proper review, inspection, and long-term maintenance of storm water facilities implemented as part of this Bylaw; and
18. To establish administrative procedures and fees for the submission, review, approval, or disapproval of storm water management plans, and for the inspection of approved active projects and long-term follow-ups.

SECTION 2. DEFINITIONS

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

AGRICULTURE: The normal maintenance or improvement of land agricultural or aqua cultural use, as defined by the Massachusetts Wetlands Protection Act G.L. c. 131, § 40, 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 Planning 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 storm water runoff.

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.

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 or similar earth material.

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.

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).

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 in filtering the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

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 STORM WATER 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 storm water 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 storm water, 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 Nahant.

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

OUTFALL: The point at which storm water flows out from a point source discernable, 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 Storm water 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 discernable 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.

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.

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

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

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

SEDIMENTATION: The process or act of deposition of sediment.

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

STORMWATER MANAGEMENT PLAN: A plan required as part of the application for a Storm water Management Permit. Sec Section 7. 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.

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

TSS: Total Suspended Solids.

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 Town of Nahant wetland bylaw/ordinance.

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

Nothing in this Bylaw is intended to replace the requirements of any other bylaw that has been made or may be adopted by the Town of Nahant.

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. Except as authorized by the Planning Board in a Storm water Management 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 aqua cultural 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.

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 part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre of land draining in to the Town of Nahant municipal storm sewer system without a permit from the Planning 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.

Construction activities that are exempt are:

1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations 310 CMR 10.04 and MGL Chapter 40A, section 3;
2. Maintenance of existing landscaping gardens, or lawn areas associated with a single family dwelling provided such maintenance does not include the addition of more than 100 cubic yards of soil material, or alteration of drainage patterns;
3. The construction of fencing that will not substantially alter existing terrain or drainage patterns;
4. Normal maintenance of Town owned public land, ways, and appurtenances;
5. Maintenance, reconstruction or resurfacing of any public way; and the installation of drainage structures or utilities within or associated with public ways that have been approved by the appropriate authorities provided that written notice be filed with the Planning Board fourteen (14) days prior to commencement of activity;
6. 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 Condition issued by the Conservation Commission.

SECTION 5. RESPONSIBILITY FOR ADMINISTRATION

- A. The Planning Board shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon the Planning Board may be delegated in writing by the Planning Board to its employees or agents.
- B. Waiver. The Planning 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. Public Hearing. The Permit Authority shall hold a public hearing within sixty five (65) days of the receipt of a complete application and shall take final action within ninety (90) days from the time of the close of the hearing unless such time is extended by agreement between the applicant and the Permit Authority. Notice of the public hearing shall be given by publication and posting and by certified mail at the applicants expense to abutters at least fourteen (14) days prior to the hearing. The Permit Authority shall make the application available for inspection by the public during business hours at the Nahant Town Hall.

D. Information requests. The applicant shall submit all additional information requested by the Permit Authority to issue a decision on the application.

E. Actions by the Permit Authority may include;

1.. Approve the Storm water Management Permit (Storm water Management 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 Storm water Management Permit application and issue a permit with conditions, modifications or restrictions that the Permit Authority 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 Storm water Management 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.

F. Failure of the Permit Authority to take final action. Failure of the Permit Authority 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 Permit Authority's action, the Storm water Management Permit shall be issued by the Town Clerk.

SECTION 6. RULES AND REGULATIONS

The Planning Board may adopt, and periodically amend rules and regulations to effectuate the purposes of this by-law. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or in this by-law. The Rules and Regulations shall include Permits and Procedure; Storm water Management Plan; Operation and Maintenance Plans, etc.

SECTION 7. SURETY

The Planning 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 Planning Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the Planning 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 Planning Board has received the final report as required by Section I 0 and issued a certificate of completion.

SECTION 8. FINAL REPORTS

Upon completion of the work, the permittee shall submit a report (including certified as-built construction plans, as outlined in Subdivision Regulations, Section IV.B.8.a, 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 modification, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

SECTION 9. ENFORCEMENT

A. The Planning Board or an authorized agent of the Planning 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 Planning Board or an authorized agent of the Planning 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 Town of Nahant. may, at its option, undertake such work, and the property owner shall reimburse the Town of Nahant expenses

9(B) (3) (Special Assessment)

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 Town of Nahant, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Planning 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 Planning Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a municipal charges lien against the property owner pursuant to G.L.Ch. 40§58 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. Rev. 3/6/2017 by Town Counsel and TA.**

- 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 \$100.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

- D. **Non-Criminal Penalty**
 As an alternative to criminal prosecution or civil action, the Town of Nahant may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.40,§ 21 D. and Article XIII (Non-Criminal Disposition of Violations) within the Police By-Laws of the Town of Nahant, in which case the Planning Board of the Town of Nahant shall be the enforcing person. The penalty for the 1st violation shall be \$25.00. The penalty for the 2nd violation shall be \$50.00. The penalty for the 3rd and subsequent violations shall be \$100.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense. **Rev. 3/6/2017 by Town Counsel and TA.**

- E. Appeals. The decisions or order of the Planning 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 10. 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 11. SEVERABILITY

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

ATM 4/25/2015

Warrant Article 11. (General) approved *amendment* to the Town’s bylaws.

AG amendment approval 8/31/2015 Case # 7562

This general bylaw shall be in full force and effect from and after its passage approval recording and publications, as provided by law.

Passed and adopted by Town Meeting of the Town of Nahant on the twenty fifth (25th) day of April, 2015 by a unanimous vote in favor.

Approved by the Attorney General of Massachusetts on August 31, 2015.

Witness my hand and the seal of the Town of Nahant.

Margaret R. Barile
Town Clerk

A true copy, attest: