

Town of Northborough

Chapter 2-60

STORMWATER MANAGEMENT AND LAND DISTURBANCE

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Adopted May 1, 2021 ATM, Art. 21

2-60-010 Purpose and Objective.

- A. The purpose of this bylaw is to protect public health, safety, general welfare, and the environment by controlling the adverse effects of construction site stormwater runoff and post-construction stormwater runoff. Stormwater runoff can be a major cause of:
 - (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, groundwater and drinking water supplies;
 - (2) Contamination of drinking water supplies;
 - (4) Alteration or destruction of aquatic and wildlife habitat;
 - (5) Overloading or clogging of municipal stormwater management systems; and
 - (6) Flooding.

- B. The objectives of this bylaw are to:

- (1) Protect water resources;
- (2) Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements, and with the General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts, issued by the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection (“MS4 Permit”);
- (3) Prevent and reduce pollutants from entering the Town of Northborough’s municipal separate storm sewer system (MS4);
- (4) Establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- (5) Establish provisions for the long-term responsibility for, and maintenance of, structural stormwater control facilities and nonstructural stormwater best management practices to ensure that they continue to function as designed, and pose no threat to public safety; and
- (6) Recognize the Town of Northborough’s legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

2-60-020 Definitions.

Unless a different definition is indicated in other sections of this bylaw, the following definitions and provisions shall apply throughout this bylaw:

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 or 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.

APPLICANT: Any person requesting a Land Disturbance Permit.

AS-BUILT DRAWING: Drawings that completely record and document applicable aspects and features of conditions of a project following construction using Stormwater Management Plans derived from a Land Disturbance Permit.

BEST MANAGEMENT PRACTICES (BMPs): Schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control project site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENTATION 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.

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

hereafter amended.

CLEARING: Any activity that removes the vegetative surface cover of land.

COMMON PLAN OF DEVELOPMENT: A plan of development for a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

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

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

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

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

GROUNDWATER: Water beneath the surface of the ground.

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

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

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 4-12-080 of the Town's *Illicit Discharges to The Municipal Storm Drain System* Bylaw, Chapter 4-12 of the Northborough Town Code.

IMPERVIOUS SURFACE: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil. This can include but is not limited to: roads, driveways, parking areas and other areas created using nonporous material, buildings, rooftops, structures, artificial turf and compacted gravel or soil.

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

LAND DISTURBANCE PERMIT: A permit issued by the Stormwater Authority pursuant to this bylaw prior to commencement of a Land Disturbing Activity.

LAND DISTURBING ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing, grading, or

excavating, including grubbing; or results in an alteration of drainage characteristics.

LOW IMPACT DEVELOPMENT or LID: Site planning and design strategies that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and aesthetically appealing site drainage that treat stormwater as a resource rather than a waste product. LID practices include but are not limited to bioretention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

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 Northborough.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT: A permit issued by the EPA, or jointly with the Commonwealth, that authorizes the discharge of pollutants to Waters of the United States.

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

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

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

POINT SOURCE: Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged.

PRE-CONSTRUCTION: All activity in preparation for construction.

POLLUTANT: Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, construction wastes and residues including discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes and industrial, municipal and agricultural waste discharged into water.

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

REDEVELOPMENT: Development, rehabilitation, expansion, demolition, construction, land alteration, or phased projects that disturb the ground surface, including impervious surfaces, 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: The location, to its full areal extent, of construction activities, including but not limited to the creation of new impervious cover and improvement of existing impervious cover.

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

STORMWATER AUTHORITY: Town of Northborough Conservation Commission or its authorized agent(s).

STORMWATER: Stormwater runoff, snow melt runoff, and surface runoff and drainage.

STORMWATER MANAGEMENT PLAN: A document containing narrative, drawings, details and reporting requirements developed by a qualified professional engineer (PE), which describes structural and non-structural best management practices designed to control the discharge of pollutants from impervious surfaces and onsite activities as well as the volume and peak rate of surface runoff from a site on an ongoing basis after construction has been completed.

TOTAL MAXIMUM DAILY LOAD or TMDL: Section 303(d) of the Clean Water Act authorizes the EPA to assist states, territories and authorized tribes in listing impaired waters and developing Total Maximum Daily Loads (TMDLs) for these waterbodies. A TMDL establishes the maximum amount of a pollutant that a waterbody can accept and still meet water quality standards for protecting public health and maintaining the designated beneficial uses of those waters for drinking, swimming, recreation, and fishing. A TMDL includes waste load allocations for point source discharges, load allocations for nonpoint sources and/or natural background, and must include a margin of safety and account for seasonal variations.

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

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, groundwater, and including, to the extent applicable, Waters of the United States as defined under the Federal Clean Water Act as hereafter amended.

2-60-030 Applicability.

- A. A Land Disturbance Permit is required for all construction activity or land disturbance that individually or as part of a Common Plan of Development results in land disturbance of one acre (43,560 square feet) or more.
- B. The following activities are exempt from the provisions of Chapter 2-60:
 - (1) Maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling conducted in such a way as not to cause a nuisance;
 - (2) Construction of fencing that will not substantially alter existing terrain or drainage patterns;
 - (3) Construction of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns or result in discharge of sediment or other pollutants to the MS4 or, directly or indirectly, to a Watercourse or Waters of the Commonwealth;

- (4) Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act regulation at 310 CMR 10.04;
 - (5) Activities conducted in accordance with a Forest Cutting Plan approved by the Massachusetts Department of Conservation and Recreation; and
 - (6) Redevelopment activities that are exclusively limited to maintenance and improvement of existing public roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects) and that will improve existing conditions unless infeasible. Construction may not commence until issuance of EPA's approval of the NPDES Construction General Permit Notice of Intent and the final Stormwater Pollution Prevention Plan is posted at the site (if applicable), and best management practices are in place in accordance with the Massachusetts Stormwater Management Standard 8 related to construction related impacts. Roadway widening or improvements that increase the amount of impervious area on the redevelopment site by greater than or equal to a single lane width shall not be exempt.
- C. Any person that fails to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, and Operations and Maintenance Plan, shall be in violation of this bylaw.

2-60-040 Authority.

This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Massachusetts home rule statute, and the regulations under the Federal Clean Water Act including 40 CFR 122.34.

2-60-050 Responsibility for Administration.

The Stormwater Authority shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon the Stormwater Authority may be delegated in writing by the Stormwater Authority to employees or authorized agents of the Town.

2-60-060 Waivers.

The Stormwater Authority, or its authorized agent, may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where such action is:

- A. Allowed by federal, state and local statutes and/or regulations and the MS4 Permit; and
- B. In the public interest; and
- C. Not inconsistent with the purpose and intent of this bylaw.

2-60-070 Regulations.

- A. The Stormwater Authority may adopt, and may periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Stormwater Management Bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised

in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. Failure of the Stormwater Authority to issue such rules, or regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this bylaw.

- B. Stormwater Management regulations, rules or guidance shall identify requirements for Land Disturbance Permits required by this bylaw and shall be consistent with or more stringent than the relevant requirements of the most recent MS4 Permit.

2-60-080 Permit.

- A. A Land Disturbance Permit must be obtained prior to the commencement of any construction activity, tree clearing, or land disturbance for which such a permit is required. An applicant seeking a permit shall file an appropriate application with the Stormwater Authority in a form and containing information as specified in this bylaw and in regulations adopted by the Stormwater Authority.
- B. Each application must be accompanied by the appropriate application fee as established by the Stormwater Authority. Applicants shall pay the application fee before the review process commences. The Stormwater Authority is authorized to retain a Registered Professional Engineer (PE) or other professional consultant to advise the Stormwater Authority on any or all aspects of the application and/or the project's compliance with conditions of a Permit. The Stormwater Authority may require the applicant to pay reasonable costs to be incurred by the Stormwater Authority for the employment of outside consultants pursuant to Stormwater Authority regulations adopted as authorized by G.L. c.44, §53G.
- C. Required submittals to obtain a Land Disturbance Permit shall include (without limitation) an Erosion and Sedimentation Control Plan, a Stormwater Management Plan, and an Operation and Maintenance Plan. To obtain a Land Disturbance Permit, the applicant must show that site design, construction site stormwater runoff control and post-construction stormwater management will meet the standards set by the Stormwater Authority under this bylaw, in its regulations, rules and/or guidance, which shall be at least as stringent as the relevant requirements of the MS4 Permit and may also address relevant environmental considerations including (without limitation) protection of aquifers and sensitive water bodies, climate resilience, and prevention of flooding.
- D. The Land Disturbance Permit shall include measures to ensure adequate long-term operation and maintenance of stormwater management design features and BMPs. The Stormwater Authority may impose requirements including (without limitation) the following:
 - (1) A requirement that funds for future operation and maintenance be set aside in a dedicated fund or escrow account;
 - (2) A permanent permit condition requiring compliance with an Operation and Maintenance Plan;
 - (3) A permanent permit condition requiring that the property owner submit an annual report or certification regarding operation and maintenance;
 - (4) A requirement to record the Operation and Maintenance Plan (or notice thereof);

- (5) A requirement that a legal instrument be put in place establishing responsibility for operation and maintenance of a stormwater BMP serving more than one lot; and
- (6) A requirement that an easement be recorded allowing the Town to access the property to remedy any operational failure or maintenance problem.

2-60-090 Consent to Entry onto Property.

By signing the permit application, an applicant consents to the entry of members of the Stormwater Authority or its authorized agents in or on the site while the application is under review to verify the information in the application, and at any time after a Permit is issued to inspect for compliance with Permit conditions.

2-60-100 Inspection and Site Supervision.

The Stormwater Authority or its designated agent shall make inspections to verify and document compliance with the Land Disturbance Permit.

2-60-110 Enforcement.

The Stormwater Authority or its authorized agent shall enforce this bylaw, and any associated regulations, orders, violation notices, and enforcement orders; and may pursue all civil and criminal remedies for such violations.

A. Criminal and Civil Relief.

- (1) Any person who violates the provisions of this bylaw, or any associated regulations, permit, or order issued thereunder, may be subject to criminal penalties and prosecution in a court of competent jurisdiction and/or a fine of not more than \$300 per violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (2) As an alternative to criminal prosecution or civil action, the Town of Northborough may elect to utilize the noncriminal disposition procedure set forth in G.L. c.40, §21D, in which case designated agents of the Stormwater Authority, including the Conservation Commission Agent, Town Engineer, or Building Inspector, shall be the enforcing persons. The penalty for the first violation shall be a warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (3) The Stormwater Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

B. Orders.

- (1) The Stormwater Authority, or its authorized agent, may issue a written order to enforce the provisions of Chapter 2-60 or any associated regulations or permit. Violations which may be subject of such an order include, without limitation: failure to obtain a Land Disturbance Permit for an activity subject to this bylaw;

and failure to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, or Operations and Maintenance Plan or any other authorization issued pursuant to this bylaw or regulations issued hereunder. The written order may require the violator to remediate the non-compliance and/or any adverse impact caused by it, including, without limitation:

- (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 or other authorization;
 - (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;
 - (e) Construction, reconstruction, repair or maintenance of stormwater BMPs or any other aspect of the post-construction stormwater management system;
 - (f) Remediation of adverse impacts resulting from improper construction or operation of the post-construction stormwater management system; and/or
 - (g) A requirement to eliminate discharges, directly or indirectly, into the MS4, a watercourse or into the Waters of the Commonwealth.
- (2) If the Stormwater Authority or its authorized agent determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further provide that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Northborough may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
- (3) Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Northborough, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Authority within 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 30 days following a decision of the Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction affirming or reducing the costs, the costs may constitute a municipal charge for purposes of G.L. c.40, §58, and for which a lien may be imposed on the property for the amount of the unpaid charge, pursuant to G.L. c.40, §58. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. c.59, §57 on the 31st day after the costs first become due.

C. Entry to perform duties under this bylaw. To the extent permitted by local, state or federal law, or if authorized by the owner or other party in control of the property, the

Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations adopted hereunder and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.

- D. Appeals. The decisions or orders of the Stormwater Authority shall be final. Further relief shall be appealed to a court of competent jurisdiction in an action filed within sixty (60) days thereof, in accordance with G.L. c.249, §4.
- E. Remedies not exclusive. The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

2-60-120 Severability.

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

2-60-130 Surety.

The Stormwater Authority may require the applicant to post, before the start of land disturbance or construction activity, a surety bond, cash, or other acceptable security. The form of the security shall be approved by the Stormwater Authority and be in an amount deemed sufficient by the Stormwater Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Authority may release part of the security as each phase is completed in compliance with the permit. If the permittee defaults on any obligations imposed by the Land Disturbance Permit, the Stormwater Authority may (after notification of the permittee) inform the holder of the security (and the Town Treasurer if the Treasurer is not holding the funds) of the default, in which event the Town shall be entitled to the security.

2-60-140 Final Reports.

Upon completion of the work and no later than two (2) years after completion of construction, the holder of a Land Disturbance Permit shall submit a report (including certified as-built construction plans) from a Professional Engineer (PE) or Land Surveyor (PLS) certifying that the project has been completed in accordance with the conditions of the Land Disturbance Permit. The holder of a Land Disturbance Permit shall also include certification from a PE that the drainage system was constructed in accordance with the approved plans and will perform as designed. The as-built drawings must depict all on site controls, both structural and non-structural, designed to manage the stormwater associated with the completed site (post construction stormwater management). Any discrepancies from the approved permit plans shall be noted in writing in the report and as-built plans.