

Report of the Southborough Town Clerk
Minutes of the Southborough Annual Town Meeting
March 25, 2023

ARTICLE 30: Subject to the passage of an article for the deletion of Section § 174-13.5 of the Zoning Bylaws, to see if the Town will vote to amend its General Bylaws by adopting a new Section 154, entitled Stormwater Management, as follows:

§ 154. Stormwater and erosion control.

A. Purpose. Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of Southborough to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town. 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. This bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the bylaws of the federal Clean Water Act found at 40 CFR 122.34. Nothing in this bylaw is intended to replace the requirements of either the Town of Southborough Wetlands Protection Bylaw,¹ or any other bylaw that has been or may be adopted by the Town of Southborough. Any activity subject to the provisions of the above-cited bylaws must comply with the specifications of each applicable bylaw. The objectives of this bylaw are to:

- (1) Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of wetland and water resources;
- (2) Require that new development, redevelopment and all land conversion activities maintain the after-development runoff characteristics as equal to or less than the pre-development 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;
- (3) Establish minimum construction/alteration and post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality and 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 stormwater runoff;
- (4) Establish design criteria for measures to minimize 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 the minimum construction/alteration and post-development stormwater management standards and to encourage the use of nonstructural stormwater management, stormwater 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;

¹ Editor's Note: See Chapter 170, Wetlands Protection

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- (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; and
- (8) Establish administrative procedures and fees for the submission, review, approval, or disapproval of stormwater management plans, and for the inspection of approved active projects, and long-term follow up.

B. Definitions.

AGRICULTURE — The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) and its implementing regulations (310 CMR 10.00).

ALTER — Any activity that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area and will measurably change the ability of a ground surface area to absorb water. 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. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land disturbance activities."

APPLICANT — Any "person" as defined below requesting a stormwater and erosion control permit for proposed land-disturbance activity.

AUTHORIZED ENFORCEMENT AGENCY — The Conservation Commission (hereinafter "the Commission") and its employees or agents or other employee of the Town of Southborough shall be in charge of enforcing the requirements of this bylaw.

BEST MANAGEMENT PRACTICE (BMP) — Structural, nonstructural, vegetative and managerial techniques that are recognized to be the most effective and practical means to reduce erosion and sediment, prevent 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 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, and using natural features for stormwater management.

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

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DISTURBED AREA — An area, man-made or natural, where the existing condition has been or is proposed to be altered.

ENVIRONMENTAL SITE MONITOR — A professional engineer, or other trained professional selected by the Commission and retained by the holder of a stormwater and erosion control permit to periodically inspect the work and report to the Commission.

EROSION — A condition in which the earth's surface, including soil or rock fragment, is detached and moved away by the action of water, wind, ice, gravity or other natural means.

GENERAL STORMWATER MANAGEMENT PERMIT (GSMP) — A permit issued for an application that meets a set of predetermined standards outlined in the regulations to be adopted by the Commission under this bylaw. By meeting these predetermined standards, the proposed project will be presumed to meet the requirements and intent of this bylaw.

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.

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, MGL c. 131, § 40, and Massachusetts Clean Waters Act MGL c. 21, §§ 23 through 56.² 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.

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.

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 Southborough, and any other legal entity, its legal representatives, agents, or assigns.

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 and does not refer to the construction phase of a project.

PRE-DEVELOPMENT — The conditions that exist at the time that plans for the land development of a tract of land are submitted to the 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.

² Editor's Note: See the Clean Waters Act in MGL c. 21, §§ 26 through 53.

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RECHARGE — The replenishment of underground water reserves.

REDEVELOPMENT — Any construction, alteration, or improvement exceeding land disturbance of 5,000 square feet, where the existing land use is commercial, industrial, institutional, or multifamily residential.

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

SEDIMENT — Solid material, whether mineral or organic, that is in suspension, is transported or has been moved from its site of origin by erosion.

SEDIMENTATION — A process of depositing material that has been suspended and transported in water.

SLOPE — The vertical rise divided by the horizontal distance and expressed as a fraction or percentage.

STABILIZED — The elimination of any erosion.

STORMWATER MANAGEMENT HANDBOOK — Stormwater Management Handbook, Volume One and Volume Two, prepared by the Mass. Department of Environmental Protection and the Mass. Office of Coastal Zone Management dated March 1997, as the same may be from time to time revised.

STORMWATER MANAGEMENT PERMIT (SMP) — A permit issued by the 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 effects of uncontrolled and untreated stormwater runoff.

C. **Applicability.** This bylaw shall be applicable to all new development and redevelopment, including, but not limited to, site plan applications, subdivision applications, grading applications, land use conversion applications, any activity that will result in an increased amount of stormwater runoff or pollutants flowing from a parcel of land, or any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to Subsection D of this bylaw. After April 10, 2006, the Commission shall not approve any application for development or redevelopment if the land or parcels of land were held in common ownership (including ownership by related or jointly controlled persons or entities) and were subdivided or otherwise modified to avoid compliance. A development shall not be segmented or phased in a manner to avoid compliance with this bylaw. A stormwater and erosion control permit shall be required from the Commission for the following:

- (1) Any activity subject to major site plan review (§ 174-10) except when no land disturbance is commencing;
- (2) Any activity that will result in land disturbance of one (1) acre or more;
- (3) Any residential development or redevelopment proposed pursuant to the Subdivision Control Law, MGL c. 41, §§ 81K to 81GG, inclusive, or proposed under a special permit process pursuant to MGL c. 40A, § 9;
- (4) Any activity that will increase the amount of impervious surfaces more than 50% of the area of a parcel or lot when the lot size is greater than one (1) acre; and
- (5) Any activity that will disturb land with 15% or greater slope and where the land disturbance is greater than or equal to 15,000 square feet within the sloped area.

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- (6) Any residential development or redevelopment that is part of a common plan of development or sale which will disturb one (1) acre, 43,560 sf, or more of land. The Commission requires an application if the land, or parcels of land, were or are in common ownership and were subdivided or otherwise modified to avoid compliance.
- (7) The maintenance, reconstruction or resurfacing of any public way; and the installation of drainage structures or utilities within or associated with public ways when the width of the road is expanded three feet or greater for one hundred (100) feet or more.
- (8) Any land disturbance that will result in soil disturbance of one-half acre (1/2), 21,780 square feet up to, but not including, one (1) acre, 43,560 square feet, shall be required to follow the procedure outlined within the currently approved Stormwater Policy for Minor Projects enforced by the Conservation Agent and shall at a minimum require: Notify the Conservation Commission, in writing, of the date and nature (including a sketch) of the proposed project at least 7 calendar days prior to the commencement of land disturbing activities
 - (a) Implement measures such as erosion control barriers, to prevent the offsite discharge of sediment at the direction of the Conservation Commission or their agent
 - (b) Construction materials shall be managed to not pollute stormwater
 - (c) Containers and materials shall be stored and disposed of properly
 - (d) Sediment and stormwater shall not be allowed to be directed or impact abutting properties or roadways
 - (e) The Conservation Commission reserves the right to request additional measures at the discretion of the Commission if sedimentation and erosion controls become problematic at a site

D. Exemptions. The following activities are exempt from the requirements of this bylaw:

- (1) Normal maintenance of Town-owned public land, ways and appurtenances;
- (2) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation, 310 CMR 10.04 and MGL c. 40A,§ 3;
- (3) Repair or replacement of septic systems when approved by the Board of Health for the protection of public health;
- (4) Normal 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 400 cubic yards of soil material, or alteration of drainage patterns;
- (5) The construction of fencing that will not alter existing terrain or drainage patterns;

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- (6) Construction and associated grading of a way that has been approved by the Planning Board except those in conjunction with any residential development or redevelopment as described in Section 3.3;
- (7) The maintenance, reconstruction or resurfacing of any public way; and the installation of drainage structures or utilities within or associated with public ways that do not meet the applicability in Section 3.7 that have been approved by the appropriate authorities, provided that written notice be filed with the Conservation Commission 14 days prior to commencement of activity;
- (8) The removal of earth products undertaken in connection with an agricultural use if the removal is necessary for or directly related to planting, cultivating or harvesting or the raising or care of animals; or
- (9) Activity in accordance with the terms of an existing order of conditions or determination of applicability issued by the Commission pursuant to MGL c. 131, § 40, or the Southborough Wetlands Protection Bylaw, Chapter 170 of the Code of the Town of Southborough prior to the effective date of this Bylaw.

E. Administration.

- (1) The Conservation Commission shall be the permit granting authority for the issuance of a stormwater and erosion control permit and 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 or other municipal employees as appropriate. Such permit applications shall be submitted, considered, and issued only in accordance with the provisions of this bylaw and the regulations adopted pursuant to this bylaw.
- (2) Stormwater regulations. The Commission shall adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Stormwater and Erosion Control 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.
- (3) Right of entry. Filing an application for a stormwater and erosion control permit grants the Commission, or its agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.
- (4) Stormwater management manual. The Commission will utilize the policy, criteria and information, including specifications and standards of the latest edition of the Massachusetts Stormwater Management Policy, for execution of the provisions of this bylaw. This policy includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. The policy 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

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accordance with these design and sizing criteria will be presumed to be protective of Massachusetts's water quality standards.

- (5) **Application.** To obtain approval for a project subject to the provisions of this bylaw, the applicant shall submit a stormwater management and erosion control plan and an operation and maintenance plan prepared, stamped and signed by a professional engineer registered in Massachusetts, a registered land surveyor, or a Massachusetts licensed soil evaluator, as appropriate, that complies with the requirements set forth herein and in the regulations adopted pursuant to this bylaw. The operation and maintenance plan (O&M plan) shall be designed to ensure compliance with the permit, this bylaw, and that the Massachusetts surface water quality standards, 314 CMR 4.00, are met in all seasons and throughout the life of the system. The O&M plan shall remain on file with the Commission, the Planning Board, the Department of Public Works and the Town Engineer and shall be an ongoing requirement. The O&M plan shall meet the criteria set forth in the regulations adopted pursuant to this bylaw. The plans shall fully describe the project in drawings, narrative, and calculations.
 - (a) At the time of application, the applicant shall provide in writing the name and the 24 hours a day and seven days a week contact information of the person who is responsible for erosion and sediment control for the site- disturbing activity which is the subject of the application. Said person shall ensure that the approved activity takes place in accordance with the application, plan and permit requirements.
- F. **Fees.** The Commission shall establish fees to cover expenses incurred by the Town in reviewing the application and monitoring permit compliance. The Commission is authorized to retain and charge the applicant fees to cover the cost of hiring a registered professional engineer or other professional consultant to advise the Commission on any or all aspects of the project. The applicant for a stormwater and erosion control permit may be required to establish and maintain an escrow account to cover the costs of said consultants. Applicants shall pay review fees to the Commission before the review process may begin.
- G. **Surety.** The Commission may require a cash performance guaranty to ensure compliance with these requirements and for the long-term operation and maintenance of all permanent erosion control and stormwater management measures. The form of the bond shall be approved by the Commission upon the recommendation of Town Counsel and the Town Treasurer, as appropriate. With the approval of the Commission upon the recommendation of Town Counsel and the Town Treasurer, as appropriate, the applicant may substitute an irrevocable letter of credit or performance bond in lieu of the cash performance guaranty. Any performance bond or letter of credit shall be executed and maintained by a financial institution, surety, or guaranty company qualified to do business in the Commonwealth of Massachusetts.
- H. **Waivers.**
 - (1) The Commission may waive strict compliance with some of the requirements of this bylaw 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

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development project or because of the natural conditions at the site and where such action:

- (a) Is allowed by federal, state and local statutes and/or regulations;
- (b) Is in the public interest; and
- (c) Is not inconsistent with the purpose and intent of this bylaw.

(2) Any request from an applicant for a waiver of these rules shall be submitted, in writing, to the Commission at the time of submission of the application. Such requests shall clearly identify the provisions 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 bylaw and the rules and regulations promulgated hereunder.

I. Findings and conditions of approval.

- (1) The Commission shall not approve any application for a stormwater and erosion control permit unless it finds that BMPs will be employed to meet the following requirements:
 - (a) Compliance with all applicable federal, state and local regulations and guidelines, including but not limited to the Stormwater Management Handbook as it may be amended, has been demonstrated;
 - (b) Measures shall be employed to minimize adverse impacts on wildlife habitats and corridors, natural or historic landscape features, and scenic vistas and views;
 - (c) The duration of exposure of disturbed areas due to removal of vegetation, soil removal, and/or regrading shall be set forth in a written time table and approved by the Commission;
 - (d) There shall be no net increase in the rate of stormwater runoff from the site;
 - (e) There shall be no net increase in the volume of stormwater runoff across the boundaries of the site unless provisions have been made to tie into the public storm drains, where available, with the approval of the appropriate parties or authorities or, the Commission has determined that all reasonable provisions have been made to minimize any changes in stormwater runoff at the site;
 - (f) There shall be no adverse impacts to abutting properties from any increase in volume of stormwater runoff, including erosion, silting, flooding, sedimentation or impacts to wetlands, groundwater levels or wells;
 - (g) Where the site is not proposed to be covered with gravel, hardscape, or a building or structure, a planting plan to ensure permanent revegetation of the site has been approved;

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- (h) Areas to be planted shall be loamed with not less than six inches compacted depth of good quality loam and seeded with turf grass seed or other appropriate ground cover in accordance with good planting practice;
- (i) Dust control shall be used during grading operations if the grading is to occur within 500 feet of an occupied residence or place of business, school, playground, park, cemetery, or place of worship;
- (j) During construction, temporary erosion and sedimentation control measures will be employed in accordance with the approved plan;
- (k) During construction, any site access from a paved public way shall be improved with a gravel apron of 15 feet wide and at least 24 feet long to prevent unstable material from being transported onto the street by vehicle tires or by runoff;
- (l) Until a disturbed area is permanently stabilized, sediment in runoff water shall be trapped by using a siltation barrier, siltation fences, and/or sedimentation traps;
- (m) Dust control shall be used during grading operations if the grading is to occur within 500 feet of the property line of an occupied residence or place of business. Dust control methods may consist of grading fine soils on calm days only or dampening the ground with water;
- (n) Permanent erosion control and vegetative measures shall be in accordance with the approved plan; and
- (o) Where applicable, homeowner's, facility or condominium documents shall provide for the long-term operation and maintenance of all permanent erosion control and stormwater management measures, including surety.

- (2) Based upon the nature of the application the Commission may impose reasonable requirements or limitations to minimize the impacts, if any, on abutting properties or uses.
- (3) Prior to commencement of any land disturbing activity, the applicant shall record the permit with the Registry of Deeds or Registry District of the Land Court, and shall submit to the Commission written proof of such recording.
- (4) At completion of the project, the owner shall submit as-built record drawings of all structural stormwater controls and treatment best management practices required for the site. The as-built drawing shall show deviations from the approved plans, if any, and shall be certified by a professional engineer registered in Massachusetts.

J. Actions by the Commission.

- (1) The Commission shall act on each application for a permit within 90 days of the date of filing with the Commission and the Town Clerk, unless such application has been withdrawn from consideration.
- (2) The Commission may take any of the following actions as a result of an application for a stormwater management and erosion control permit as more specifically defined as part of

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stormwater regulations promulgated as a result of this bylaw: approval, approval with conditions, disapproval, or disapproval without prejudice.

- (3) A stormwater and erosion control permit may be disapproved if the Commission determines:
 - (a) The requirements of this Bylaw are not met; or
 - (b) The intent of the application is to circumvent other provisions of the Town's Zoning Code and regulations.
- (4) Appeals of action by the Commission. A decision of the Commission shall be final. Relief of a decision by the Commission made under this bylaw shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with M.G.L. Ch 249. § 4. Such an appeal shall result in revocation of the written approval, until such time as the appeal process has been resolved. The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

K. Enforcement. The Commission or its authorized agent and the Town of Southborough shall have the power and duty to enforce this bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

- (1) Penalties. Any person who violates any provision of this bylaw, regulation, or permit issued hereunder, shall be subject to fines, civil action, criminal prosecution, and tax liens, as appropriate and as lawfully established by the Town of Southborough.
- (2) Tax liens. The Town of Southborough shall require the repayment of services provided to the responsible party that the responsible party was obligated to perform as set forth in the operation and maintenance plan. If repayment is not made within 30 days, the Town may impose a tax lien on the property of the responsible party or parties.
- (3) Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town may utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, in which case the Conservation Administrator, Conservation Agent or other authorized agent of the Town shall be the enforcing person.

L. Severability. Any determination that a particular provision or set of provisions in this bylaw is invalid or unenforceable shall not render ineffective, unenforceable, or inapplicable the remainder of this bylaw.

; or do or act anything in relation thereto.

Proposed by: SELECT BOARD; CONSERVATION COMMISSION

Select Board Recommendation: Support (Unanimous)

Advisory Committee Recommendation: Support (Unanimous)

Summary: *To insert a new bylaw based upon the amendment of the existing bylaw. The amendments include, but are not limited to, updating applicability thresholds to be equitable and not unfairly burden homeowners with smaller lot sizes, no longer allow segmentation of projects to stem resident concerns, allow administrative oversight on smaller residential projects to better protect abutting residents from*

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impacts, changing appeals to be handled by Superior Court instead of Zoning Board of Appeals, inclusion of current industry standard data, and update of definitions. If this article does not pass, then the existing (no amendments) bylaw shall remain in effect and unchanged and the previous vote shall be nullified.

MOTION MADE: I move the article as printed in the warrant.

MOTION PASSED UNANIMOUSLY.

True Copy

Attest:



James F. Hegarty, Town Clerk