

DRAFT
Town of Southampton
Stormwater Management & Erosion and Sediment Control BYLAW
(pulled from Section XIV of the Zoning Bylaw)

for June 17, 2020 Planning Board Meeting

- A. Purpose and Authority
- B. Definitions
- C. Applicability
- D. Exemptions
- E. Administration
- F. Enforcement and Penalties
- G. Severability

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Blue highlights = flagged for attention when finalize document

A. Purpose and Authority

1. Purpose

- a. The purpose of this **Bylaw** is to better manage land development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of Southampton by establishing minimum requirements and procedures to control the adverse impacts associated with stormwater runoff.
- b. The proper management of stormwater runoff will meet the following objectives:
 - (1) Reduce the adverse water quality impacts of stormwater discharges to rivers, lakes, reservoirs and streams in order to attain federal water quality standards;
 - (2) Prevent the discharge of pollutants, including hazardous chemicals, into stormwater runoff;
 - (3) Minimize the volume and rate of stormwater ~~which that~~ is discharged, to rivers, streams, reservoirs, lakes and combined sewers that flows from any site during and following development;
 - (4) Prevent erosion and sedimentation from land development, and reduce stream channel erosion caused by increased runoff;
 - (5) Provide for the recharge of groundwater aquifers and maintain the base flow of streams;
 - (6) Provide stormwater facilities that are attractive, maintain the natural integrity of the environment, and are designed to protect public safety;
 - (7) Maintain or reduce pre-development runoff characteristics after development to the maximum extent feasible;
 - (8) Minimize damage to public and private property from flooding;
 - (9) Ensure that these management controls are properly maintained.

- c. This **Bylaw** and its associated regulations are also intended to bring the Town of Southampton into compliance with requirements in the United States Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts ("Massachusetts Small MS4 General Permit")

2. **Authority**

The [Southampton](#) Planning Board [will serve as the Stormwater Authority and](#) 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 or to the [Southampton](#) Highway Department.

Commented [A1]: There was some discussion in the advisory group about what happens when there are non-compliance issues. It was indicated that enforcement actions are typically delegated to the Building Inspector.

B. Definitions

The following definitions describe the meaning of the terms used in this [Bylaw](#):

Commented [P2]: Only words within Bylaw are included here as definitions. Regulations have more definitions.

[“Alter” is any activity that will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as “alteration of drainage characteristics,” and “conducting land disturbance activities.”](#)

[“Adverse impact” means any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.](#)

[“Agricultural activity” producing or raising one or more of the following agricultural commodities for commercial purposes:](#)

- [1. animals, including but not limited to livestock, poultry, and bees;](#)
- [2. fruits, vegetables, berries, nuts, maple sap, and other foods for human consumption; and](#)
- [3. feed, seed, forage, tobacco, flowers, sod, nursery or greenhouse products, and ornamental plants or shrubs.](#)

[and as further defined by the Massachusetts Wetlands Protection Act and its implementing regulations.](#)

[“Authorized Enforcement Agency” is the \[Southampton\]\(#\) Planning Board, its employees or agents designated to enforce this \[Bylaw\]\(#\).](#)

[“Best management practices” \(BMPs\) are structural or biological devices that temporarily store or treat stormwater runoff to reduce flooding, remove pollutants, and provide other amenities. They can also be non-structural practices that reduce pollutants at their source. BMPs are described in \[the Massachusetts Stormwater Handbook described below\]\(#\)](#)

~~[Stormwater Technical Handbook \(March, 1997, Mass. Department of Environmental Protection, as updated or amended\).](#)~~

“Construction activity” is disturbance of the ground by removal of vegetative surface cover or topsoil, grading, excavation, clearing or filling.

“Design storm” is a rainfall event of specified size and return frequency that is used to calculate the runoff volume and peak discharge rate to a BMP.

“Detention” is the temporary storage of storm runoff in a BMP, which is used to control the peak discharge rates, and which provides gravity settling of pollutants.

“Disturbance” is any land clearing, grading, bulldozing, digging or similar activities.

~~“Easement” means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.~~

~~“Erosion and sediment control plan” is a document containing narrative, drawings and details—developed by a qualified professional engineer (PE) or a certified professional in erosion and sedimentation control (CPESC) — that includes best management practices or equivalent measures designed to control surface runoff, erosion, and sedimentation during construction and construction-related land disturbance activities.~~

~~“Flooding” is a “Flow attenuation means prolonging the flow time of runoff to reduce the peak discharge.~~

~~“Forest Cutting Plan” is a plan for the cutting of trees on forest land that is prepared and submitted in accordance with M.G.L. Chapter 132 Sections 40 - 46A. The Forest Cutting Plan requires approval by a Service Forester of the Massachusetts Department of Conservation and Recreation, as provided under 304 CMR 11.~~

~~“Grading” means changing the level or shape of the ground surface.~~

~~“Groundwater” is all water beneath any land surface, including water in the soil and bedrock beneath water bodies, but not including water in manmade structures.~~

~~“Hydrology mode” may include one of the following:~~

“Infiltration” is the downward movement of water from the surface to the subsoil.

~~“Infiltration trench” is a stormwater management excavation filled with aggregate,~~

which can include, but is not limited to, the use of LID techniques to restore and protect a site's predevelopment hydrology through protection of on-site natural features and environmentally sensitive site design that limits impervious areas, preserves open space, and uses decentralized small scale facilities to capture and manage rainfall (or snowmelt) close to where it falls. These small-scale facilities serve to slow, absorb, and treat flow and include bioretention areas, grass swales, porous pavements, cisterns, and green roofs and walls.

"Massachusetts Stormwater Handbook and Stormwater Standards" is the guidance issued by MassDEP, 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 Handbook addresses stormwater impacts through implementation of performance standards to promote increased stormwater recharge, the treatment of runoff from polluting land uses, low impact development (LID) techniques, pollution prevention, the removal of illicit discharges to stormwater management systems, and improved operation and maintenance of stormwater best management practices (BMPs). MassDEP applies the Stormwater Management Standards pursuant to its 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 revised Stormwater Management Standards have been 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).

"New development" is any construction activities or land alteration resulting in total earth disturbances greater than 40,000 square feet (or activities that are part of a larger common plan of development disturbing greater than 40,000 square feet) on an area that has not previously been developed to include impervious cover.

"Nonpoint source pollution" is pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

"Operation and maintenance plan" is a plan that defines 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" is the person with a legal or equitable interest in a property.

"Peak discharge" is the maximum instantaneous rate of flow during a storm, usually in

reference to a specific design storm event.

“Person” is any individual, group of individuals, or entity, including an association, partnership, corporation, company, business, organization, trust, estate, administrative agency, public or quasi-public corporation or body, the Commonwealth or political subdivision thereof.

“Point source” is any discernible, 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.

“Pollutant” is any element of property or sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or Waters of the Commonwealth. Pollutants shall include:

1. Paints, varnishes and solvents;
2. Oil and other automotive fluids;
3. Nonhazardous liquid and solid wastes and yard wastes;
4. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, accumulations and floatables;
5. Pesticides, herbicides and fertilizers;
6. Hazardous materials and wastes; sewage, fecal coliform and pathogens;
7. Dissolved and particulate metals;
8. Animal wastes and residues;
9. Rock, sand, salt and soils;
10. Construction wastes and residues;
11. Noxious or offense matter of any kind.

“Recharge” is the replenishment of underground water reserves.

“Redevelopment” is any construction, land alteration, or improvement of impervious surfaces resulting in total earth disturbances greater than 40,000 square feet or activities that are part of a larger common plan of development disturbing greater than 40,000 square feet that does not meet the definition of “new development” (see above).

“Related entities” are any corporation in which the owner is an officer, director or shareholder; a limited partnership in which the owner is a limited partner or general partner; a general partnership in which the owner is a partner; a limited liability company in which the owner is a shareholder or director; a trust in which the owner is a trustee or beneficiary; or any other entity in which the owner has a beneficial interest.

“Retention” is the holding of runoff in a basin without release except by means of

evaporation, infiltration, or emergency bypass.

“Runoff” is rainfall, snowmelt, or irrigation water flowing over the ground surface.

“Sediment” is any mineral or organic soil material that is transported by wind or water from its origin to another location, the product of erosion processes.

“Sedimentation” is a process of depositing material that has been suspended and transported in water.

“Site” is the area extent of construction activities, including but not limited to the creation of new impervious cover and improvement of existing impervious cover.

“Stormwater management” is the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

“Stormwater management permit” is the permit issued by the Southampton Planning Board, after review of an application, including plans (stormwater management and erosion and sediment control), calculations, and other supporting documents, that is designed to protect the Town from the adverse effects of uncontrolled and untreated stormwater runoff.

“Stormwater management plan” is a plan to be submitted with the application for a Stormwater Management Permit, which shall include current and proposed site conditions, proposed improvements, proposed stormwater control measures, development schedules, and such other matters as may be required by the Southampton Planning Board.

“Stop work order” is an order issued that requires that all construction activity on a site be stopped.

“Swale” is a natural depression or wide shallow ditch used to temporarily store, route, or filter runoff.

Commented [A3]: If remove LID above, remove this definition because does not appear anywhere else in bylaw.

C. Applicability

1. This Bylaw shall apply throughout the Town of Southampton. Prior to the issuance of any Special Permit, ~~or~~ site plan approval, or development permit for any proposed new development or redevelopment listed below, a stormwater management permit, or a waiver of the requirement for a stormwater management permit, must be approved by the Southampton Planning Board. No person shall, on or after the effective date of the Bylaw, initiate any land clearing, land grading, earth moving or development activities without first complying with this Bylaw. The following uses and activities shall be required to submit a stormwater management plan, including drainage reports, an erosion and sediment control plan, plans, construction drawings, specifications, operation and maintenance plan, and ~~as-constructed-built~~ information in conformance with the requirements of this Bylaw and associated regulations:
- a. Multi-family residential developments involving four or more units;
- b. Any new commercial, industrial, and institutional structures under the same ownership or owned by related entities with at least 5,000 square feet of gross floor area, 10,000 square feet of impervious surface, or that require 10 or more parking spaces.
- c. Redevelopment or additions to existing commercial, industrial, and institutional uses ~~which that~~ result in an additional impervious surface area or gross floor area of greater than 5,000 square feet, or ~~which that~~ results in an increase of 10 or more parking spaces.
- d. Subdivisions and construction activities of any kind disturbing greater than 40,000 square feet.
- e. Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs greater than 40,000 square feet ~~one or more acres~~.

This Bylaw shall also apply to land altering activity involving construction of a single-family dwelling, where “approval is not required,” as defined in the Subdivision Control Act, and that disturbs less than 1 acre of land.

Merged with E. 3. Below. 2. The Planning Board may issue a waiver of any or all of the requirements of this bylaw for a project that will, in its judgement, generate minimal stormwater, erosion or sedimentation, and will have minimal

Commented [P4]: Note to Counsel: Project advisory group members have said that segmentation of projects is a problem in Town. For example, a property owner has a project and clears less than 40,000 square feet of land (so is not subject to the requirements of a stormwater permit). At a later date, they get additional monies and are able to clear another 20,000 square feet of land. Is this section clear enough to prevent such situations?

Commented [P5]: Such projects are included in the Town's stormwater application form.

Commented [A6]: T

D. Exemptions

1. ~~To prevent the adverse impacts of stormwater runoff, the Southampton Planning Board has developed a set of performance standards that must be met at new and development sites. These standards apply to construction activities as described under Section C-1.~~ The following activities may be exempt from the requirements for submittal and approval of a stormwater management permit, but must meet the ~~these~~ stormwater management and erosion and sediment control performance standards as described in the associated regulations:
 - a. Any agricultural activity ~~which that~~ is consistent with an approved soil conservation plan prepared or approved by the Natural Resources Conservation Service;
 - b. Any logging ~~which that~~ is consistent with a Forest Cutting Plan ~~timber management plan~~ approved under the Forest Cutting Practices Act by Massachusetts Department of Conservation and Recreation;
 - c. Additions or modifications to existing single-family structures that do not disturb more than 40,000 square feet of land;
 - d. ~~Developments — other than a —single-family dwelling, where “approval is not required” —~~that do not disturb more than 40,000 square feet of land, provided that they are not part of a larger common development plan; and,
 - e. Repairs to any stormwater treatment system deemed necessary by the Southampton Planning Board or Highway Department.
 - f. Any emergency activity that is immediately necessary for the protection of life, property or the environment, as determined by the Southampton Planning Board or Highway Department.
 - g. Activities that are exclusively limited to maintenance and improvement of existing sidewalks and roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections with such elements as turning lanes, improving existing drainage systems, and repaving projects). Note that 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 are subject to the requirements of this bBylaw.

Commented [P7]: Synchs with applicability above and requirements indicated in Stormwater Permit Application.

E. Administration — This section not in existing Zoning Bylaw; Added here and organized with some existing content

- ~~1.—~~
- 3.2. The Planning Board may adopt and periodically amend rules and regulations relating to the procedures, standards, and administration of this Stormwater Management Bylaw, by majority vote of the Planning Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing date

shall be advertised in a newspaper of general local circulation at least seven days prior to the hearing date.

3. The ~~Stormwater Authority~~ Planning Board may waive strict compliance with any or all of the requirements of this Bylaw for a project that will, in its judgement, generate minimal stormwater runoff and erosion and sedimentation, have minimal impact on the municipal stormwater system and nearby surface waters, and if such action is allowed by Federal, State, and local statutes, bylaws, and/or regulations; is in the public interest; and is consistent with the purposes of this Bylaw.
4. The Planning Board's Stormwater Authority's action, rendered in writing, may consist of any of the following as a result of an application for a Stormwater Management Permit: Approval; Approval subject to conditions; Disapproval.
5. The Planning Board may establish a permit review fee schedule, based on the type and complexity of projects, and may update this fee as needed, to cover the costs of permit administration for Stormwater Management Permits.
6. This Bylaw is intended to integrate with other parts of the Town's land use bylaws and regulations and not replace requirements. Any activity subject to the provisions of the above-cited bylaws must comply with the specifications of each.

F. Enforcement and Penalties

1. Violations

Any development activity that has commenced or is conducted contrary to this ~~B~~bylaw may be restrained by injunction or otherwise abated in a manner provided by law.

2. Notice of Violation

When the Southampton Planning Board determines that an activity is not being carried out in accordance with the requirements of this ~~B~~bylaw or associated regulations, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- a. ~~T~~he name and address of the owner applicant;
- b. ~~T~~he address when available or the description of the building, structure, or land upon which the violation is occurring;
- c. ~~A~~ statement specifying the nature of the violation;
- d. ~~A~~ description of the remedial measures necessary to bring the development activity into compliance with this Bylaw and a time schedule for the completion of such remedial action;
- e. ~~A~~ statement of the penalty or penalties that shall or may be assessed against

- the person to whom the notice of violation is directed;
- f. a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within ~~fifteen-thirty~~ (30+5) days of service of notice of violation pursuant to the procedures of M.G.L.c.40a, §15.

3. Stop Work Orders

Persons receiving a notice of violations will be required to halt all construction activities. This “stop work order” will be in effect until the Southamptton Planning Board confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Bylaw. The Southamptton Planning Board may utilize the services of a Massachusetts registered engineer to verify compliance at the Applicant’s expense.

4. Criminal and Civil Penalties

Any person who violates any provision of this Bylaw, valid regulation, or the terms or conditions in any permit or order prescribed or issued thereunder, shall be subject to a fine not to exceed \$300 for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.

5. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Southamptton may elect to utilize the non-criminal disposition procedure set forth in Southamptton’s town bylaws. The Southamptton Planning Board shall be the enforcing entity. The penalty for the 1st violation shall be up to \$100. The penalty for the 2nd violation shall be up to \$200. The penalty for the 3rd and subsequent violations shall be \$ 300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6. Restoration of Lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Southamptton Planning Board may take necessary corrective action the cost of which shall become a lien upon the property until paid.

7. Holds on Certificate of Occupancy

Certificates of occupancy will not be granted until corrections to all stormwater

Commented [A8]: Note to Counsel: Project Advisory Group members would like to include this. Do you see any issues?

practices have been made and accepted by the Southampton Planning Board and other parties.

Commented [A9]: Does Planning Board issue certificate of completion that signals BI to issue CO?

G. Severability

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof. Or take any action relative thereto.