

ARTICLE 36

STORMWATER MANAGEMENT BY-LAW

SECTION 1: Purpose

The purpose of this By-law is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and non-point source pollution associated with new development and redevelopment construction activity.

The Town of Grafton requires the use of Low Impact Development (LID) stormwater management practices whenever possible and better site design to minimize stormwater related impacts within the Town. The LID practices promoted in the Massachusetts Stormwater Management Regulations should be considered for use on development and redevelopment projects in the Town.

SECTION 2: Applicability

This By-law applies to any land-disturbing activity in the Town of Grafton as defined here in §2. All other land disturbing activities below the thresholds established below do not require an administrative review but shall employ best management practices to ensure that erosion is controlled and that disturbed soil is contained on site.

Stormwater Management Permit. The following land-disturbing activities, whether new development or redevelopment, shall require a Stormwater Management Permit:

1. Excavating, grading, or other activity which disturbs an area of 40,000 or more square feet or a volume of earth resulting in a total quantity equal to or greater than 1,000 cubic yards.

The application for a Stormwater Management Permit shall include the submittal of a Stormwater Management Plan to the Conservation Commission. This Stormwater Management Plan shall contain sufficient information for the Commission to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from stormwater. The Plan shall be designed to meet, at a minimum, the Massachusetts Stormwater Management Standards as set forth in the DEP Stormwater Management Regulations, Volumes I and II and as amended from time to time. The Town of Grafton requires the use of nonstructural stormwater management practices, better site design practices or Low Impact Development (LID) practices, such as reducing impervious cover and the preservation of Open Space and other natural areas, to the maximum extent practicable.

SECTION 3: Exceptions

The provisions of this By-law shall not apply to:

- a. Work performed for normal maintenance or improvement of land in agricultural or forestry use;

- b. The removal of hazardous and/or dead trees;
- c. Routine maintenance of vegetation and removal of dead or diseased limbs or trees necessary to maintain the health of cultivated plants, to control noxious weeds or vines in accordance with a Department of Conservation and Recreation (DCR) approved Forest Management Plan, or to remedy a potential fire or health hazard or threat to public safety;
- d. Repair or replacement of individual sewage disposal systems serving a single- or two-family dwelling when required by the Board of Health for the protection of public health;
- e. Normal maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling, provided that such maintenance does not include the following:
 - construction of any walls more than four feet in height;
 - alteration of existing grades by more than two feet in elevation; or
 - alteration of drainage patterns.
- f. Construction of utilities other than drainage (gas, water, sewer, electric, telephone, etc.) that will not alter terrain or drainage patterns.
- g. Routine maintenance and upgrade of existing municipal drainage system/stormwater system that will not significantly alter existing terrain or drainage system.
- h. Routine maintenance and upgrading of existing public ways including reclamation and paving, and other routine maintenance activities that apply to roadway maintenance that will not significantly alter the existing terrain or drainage system.

SECTION 4: Waivers

The Commission may waive strict compliance with any requirement of this By-law or the rules and regulations promulgated hereunder, 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.

Any applicant may submit a written request to be granted such a waiver. Such a waiver request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this Bylaw does not further the purposes or objectives of this By-law.

All waiver requests shall be discussed by the Commission and a decision will be made by the Commission within 30 days of receiving the waiver request.

If, in the Commission's opinion, additional time or information is required for review of a waiver request, the Commission may continue consideration of the waiver request to a date certain announced at the meeting. In the event the applicant refuses a continuance, or fails to provide the requested information, the waiver request shall be denied.

SECTION 5: Administration - Permits, Determination, and Conditions

The Grafton Conservation Commission, as established under M.G.L. C. 40, § 8C shall have authority to administer this Bylaw. The Conservation Commission shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Conservation Commission may be delegated in writing by the Conservation Commission to its employees or agents.

- a. Review. The Commission and its agents shall review all applications for Stormwater Management Permits, conduct inspections, issue a final permit and conduct any necessary enforcement action. The applicant shall submit all additional information requested by the Commission to issue a decision on the application.
- b. Standards. Projects shall meet the standards of the Massachusetts Stormwater Management Regulations.
- c. Action. The Commission may:
 1. Approve the Stormwater Management Permit application and issue an objectives and requirements of this Bylaw;
 2. Approve the Stormwater Management Permit application and issue a permit with conditions, modifications or restrictions that the Commission determines are required to ensure that the project will protect water resources and meet the objectives and requirements of this Bylaw;
 3. Disapprove the Stormwater 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.
- d. Extensions. A Stormwater Management Permit shall be valid for three years from the date the permit is issued. The Commission may grant extensions for additional 1 year periods, upon written request for renewal no later than 30 days prior to expiration of the permit.

SECTION 6: Coordination with other Boards

Following receipt of a completed application, the Commission shall seek review and comments from the Planning Board, Board of Health, Building Inspector, and Department of Public Works. The Commission shall not make a decision on the Stormwater Management Permit until it has received comments from these entities or until 14 days have elapsed after receipt of the application materials without submission of comments thereon.

SECTION 7: Notice and Hearings

- a. Application. A completed application for a Stormwater Management Permit shall be filed with the Commission. A permit, or a determination that a permit is not required, must be obtained prior to the commencement of land disturbing activity. The permit application requirements are specified in regulations adopted by the Commission.

In an appropriate case, the Commission may accept as the application and plans under this By-law any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

- b. **Public Hearing**. The Commission shall hold a public hearing within 30 days of the receipt of a complete application, with written notice given at the expense of the applicant five days prior to the hearing. The applicant shall also notify abutters by certified mail at least five days prior to the hearing. The Commission shall make the application available for inspection by the public during business hours at the Town Hall. The Commission shall take final action within 21 days from the time of the close of the hearing unless such time is extended by agreement between the applicant and the Commission.

In an appropriate case, the Commission may combine its hearing under this and regulations (310 CMR 10.00).

SECTION 8: Operation and Maintenance Plans

An operation and maintenance plan (O&M Plan) is required at the time of application for all projects subject to a Stormwater Management Permit. The maintenance plan shall be designed to ensure compliance with the permit, this By-law 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 Commission shall make the final decision on what maintenance option is appropriate in a given situation. The Commission will consider natural features, proximity of site to water bodies and wetland resource areas, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. The operation and maintenance plan shall remain on file with the Commission and shall be an ongoing requirement. Requirements for the content of the O&M Plan and its implementation are specified in Stormwater Management Rules and Regulations associated with this Bylaw.

SECTION 9: Certificate of Completion

Upon the completion of the activities allowed under a Stormwater Management Permit, the applicant shall notify the Commission and request a final inspection and certificate of completion. The applicant shall submit an as-built plan prepared by a professional land surveyor or registered professional engineer along with certification from a registered professional engineer that all construction has been done in accordance with the approved stormwater management plan.

SECTION 10: Stormwater Management Regulations

The Conservation Commission may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this By-law after conducting a public hearing to receive comments on any revisions. After public notice and public hearing, the Commission shall have authority to promulgate rules and regulations to implement this By-law, to review permit applications, to perform monitoring and inspections, to grant or deny permits, and to enforce the provisions of this By-law, and to take any other actions reasonable and appropriate to implement this By-law.

SECTION 11: Definitions

The following definitions shall apply in the interpretation and implementation of this By-law:

“Abutter” — The owner(s) of land sharing a common property line with the owner of land that is the subject of an application and the owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of land that is the subject of the application as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town.

“Agriculture” — The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (M.G.L. C. 131, §40) and its implementing regulations (310 CMR 10.00) and any agricultural activity which is consistent with an approved soil conservation plan prepared or approved by the United States Department of Agriculture (USDA) Natural Resources Conservation Service.

“Alteration” — Any activity that will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alteration may be similarly represented as “alteration of drainage characteristics,” and “conducting land-disturbing activities.” Such changes include, but are not limited to: 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.

“Applicant” — Any “person,” as defined below, requesting a Stormwater Management Permit for a proposed land-disturbing activity.

“Best Management Practice (BMP)” — Structural, nonstructural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and non-point 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.

“Clearing” — Any activity that removes the vegetative surface cover. Clearing activities generally include disturbance or grubbing activity as defined below.

“Cold Water Fishery” – Environmental resources defined by Massachusetts Division of Fisheries & Wildlife as meeting at least one of three criteria:

1. Brook, brown or rainbow trout has been determined;
2. Slimy sculpin or longnose sucker are present; or
3. The water is part of the Atlantic salmon restoration effort or is stocked with Atlantic salmon fry or parr.

“Development” — The modification of land to accommodate a new use or expansion of use, usually involving construction.

“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), a professional land surveyor (PLS), a registered landscape architect (RLA), 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.

“Grubbing” — The act of clearing land surface by digging up roots and stumps.

“Land-Disturbing Activity or Land Disturbance” — Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

“Low-Impact Development (LID)” — Development that results in minimized alterations of the land for a more sustainable land development pattern. The site planning process first identifies critical natural resources and then determines appropriate building envelopes to preserve resources. LID also incorporates a range of best management practices (BMPs) that preserve the natural hydrology of the land, minimize impervious areas and preserve vegetation.

“Massachusetts Stormwater Management Policy” — The policy issued by the Department of Environmental Protection, as amended from time to time, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act, M.G.L. C. 131, §40, and the Massachusetts Clean Waters Act, M.G.L. C. 21, §23-56. 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.

“Municipal Storm Drain System or Municipal Separate Storm Sewer System (MS4)” — 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 Grafton.

“Non-Point Source Pollution” — Pollution from diffuse sources, as opposed to discrete conveyances, caused by water, including rainfall or snowmelt, moving over or through the ground.

“Operation and Maintenance Plan” — A plan describing 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.

“Outstanding Resource Waters (ORW)” — Waters designated by the 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 Surface Water Quality Standards (314 CMR 4.00) and the Massachusetts

Stormwater 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.

“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, or container from which pollutants are or may be discharged.

“Pre-Development” — Those conditions that exist at the time that plans for the land development of a site or parcel of land are submitted to the Committee. When phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

“Post-Development” — Those conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or parcel of land. Post-development also refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

“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.

“Soil” — Earth materials, including decomposed organic material, humic materials, sand, rock and gravel.

“Stabilization” — The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

“Stormwater” — Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

“Stormwater Management Permit (SMP)” — A permit issued by the Commission, which is designed to protect the environment of the Town of Grafton from the deleterious effects of uncontrolled and untreated stormwater runoff.

“Stormwater Management Plan” — A document containing narrative, drawings and details prepared by a qualified professional engineer (PE), a professional land surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC), which includes structural and nonstructural best management practices to manage and treat stormwater runoff generated from regulated development activity. A Stormwater Management Plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural best management practices.

“Wetland Resource Area” — Areas specified in the Massachusetts Wetlands Protection Act, M.G.L. C. 131, §40, and in Article 25, General Wetlands Protection Bylaw, of the Town of Grafton.

SECTION 12: Security

The Commission may require the applicant to post a surety bond, cash, or other acceptable security before the start of any land-disturbing activity. The form of the bond/surety shall be approved by Town Counsel and the Town Treasurer, and be in an amount deemed sufficient by the Commission to insure that the work will be completed in accordance with the permit. Any performance bond or certificate of guarantee shall be executed and maintained by a financial institution, surety, or guaranty company qualified to do business in the Commonwealth.

SECTION 13: Enforcement and Penalties

The Commission or its authorized agent shall enforce this By-law, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

Any person who violates any provision of this By-law, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300. Each day or part thereunder that such violation occurs or continues shall constitute a separate offense.

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. C. 40, §21D, in which case the Commission or authorized agent shall be the enforcing person. The non-criminal penalty for violations shall be \$50 for the first violation, \$100 for the second violation, and \$300 for the third violation and each subsequent violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

SECTION 14: Inspection

Filing an application for a Stormwater Management Permit grants the Commission, or its agent, permission to enter the site of the land-disturbing activity, as permitted by law, to verify the information in the application and to inspect for compliance with permit conditions.

SECTION 15: Fees

The Commission by regulation shall promulgate an application fee schedule for stormwater management permit applications and completion certificates. The fee schedule shall be reasonably related to the costs of processing, reviewing and acting upon the application. The fee specified in such a fee schedule shall be made payable to the Town of Grafton and shall accompany the permit

application or request for certificate of completion. The Commission may require an additional fee for review of any change in or alteration from an approved permit. Said fee shall be paid into a special account set up by the Town Treasurer and may be expended by the Commission for the purpose allocated without further appropriation in accordance with the provisions of M.G.L C. 44, §~55E 1/2.

Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, securing outside consultants, including engineers or other experts, in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

SECTION 16: Appeals

A decision by the Conservation Commission made under this By-law shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with M.G.L. C. 249 § 4.

SECTION 17: Relation to the Clean Water Act.

This By-law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule Statutes, and the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

SECTION 18: Severability

If any provision, paragraph, sentence, or clause of this By-law is held invalid for any reason by a court of competent jurisdiction, all other provisions shall continue in full force and effect.

(ATM 5/11/09)