

GENERAL ARTICLE

ARTICLE #

RE: Amend General Bylaw Article XIV, Section 6, Burlington Stormwater Management Bylaw.

To see if the Town will vote to amend the General Bylaws Article XIV, Section 6 by replacing the section in its entirety. Or take any action relative thereto:

6.0 Erosion and Sedimentation Control

Regulation of discharges is necessary for the protection of the Town of Burlington water bodies and groundwater, as well as for safeguarding the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff associated with development and redevelopment projects and the accompanying increase in impervious surface are major causes of impairment, including:

- a. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
- b. contamination of drinking water supplies;
- c. alteration or destruction of aquatic and wildlife habitat;
- d. flooding;
- e. erosion of stream channels; and
- f. overloading or clogging of municipal catch basins and storm drainage systems.

This Bylaw establishes stormwater management standards to minimize adverse impacts that would be borne by abutters, townspeople and the general public and complies with all the applicable state and Federal statutes and regulations detailed in subsequent sections of this Bylaw.

6.1 Definitions

ABBREVIATED EROSION AND SEDIMENTATION CONTROL PERMIT: A permit issued for a land-disturbing activity equal to or greater than 10,000 square feet, but less than 20,000 square feet.

ABUTTER: The owner(s) of land abutting or within three hundred feet of the activity.

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff from a pre-activity condition. Such changes from a pre-activity condition may include: change from distributed runoff to confined discrete point discharges, 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, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sedimentation control permit for proposed land-disturbance activity.

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 an erosion and sedimentation control permit.

AUTHORIZED ENFORCEMENT AGENCIES: The Burlington Conservation Commission is the lead agency with authority given by this Bylaw to promulgate regulations and policies that support the goals and objectives of this Bylaw. The Burlington Conservation Commission, its employees or agents, and the Burlington Planning Board, its employees or agents will share the administration and enforcement of this Bylaw as detailed herein.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps reduce the quantity or improve the quality of stormwater runoff. It shall also include schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems.

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

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

CLEARING: Any activity that removes the vegetative surface cover.

DEVELOPMENT: The modification of land to accommodate a new use, revised use, or expansion of use, usually involving construction.

DISTURBANCE: Action to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting and filling), soil compaction and movement and stockpiling of topsoils.

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 Certified Professional in Erosion and Sedimentation Control (CPESC) or other qualified professional, 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.

EROSION AND SEDIMENTATION CONTROL PERMIT: A permit with conditions upon a proposed land-disturbing activity issued by either the Burlington Conservation Commission or Burlington Planning Board under this Bylaw.

EROSION AND SEDIMENTATION CONTROL APPLICATION PACKAGE: The application materials consisting of a Stormwater Management Plan, an Erosion and Sedimentation Control Plan, and an Operation and Maintenance Plan submitted to either the Burlington Conservation Commission or Burlington Planning Board (as stipulated within this Bylaw) requesting an Erosion and Sedimentation Control Permit.

GRADING: Changing the level or shape of the ground surface contour by means of excavation, fill, in-place ground modification, or any combination thereof, including the establishment of a grade following demolition of a structure.

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

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 non-porous material; buildings, rooftops, structures, artificial turf and compacted gravel or soil.

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Landscaping activities which involve greater than or equal to 500 square feet are considered a land-disturbing activity and may be the subject of enforcement action under this Bylaw. Routine landscaping activities which involve less than 500 square feet are not considered a land-disturbing activity for the purposes of this Bylaw.

LAND IN AGRICULTURAL USE: Normal maintenance and improvement of land in agricultural or aquacultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.4.

LOW IMPACT DEVELOPMENT (LID): An ecosystem-based approach to land development and stormwater management that ensures each development site is designed to protect, or restore, the natural hydrology of the site. This can be achieved by the incorporation of non-structural and natural approaches to new and redevelopment projects to reduce adverse effects on water quality and the natural environment by conserving natural areas, reducing impervious cover and better integrating stormwater treatments.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 §. 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and to control the quantity of runoff from a site.

MILL AND OVERLAY: A street maintenance technique that requires the removal of the top layer (two inches) of a street by the grinding action of a large milling machine. After the top layer is removed, a new layer of bituminous pavement is put in its place.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The municipal storm drain system is 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 Burlington.

NEW DEVELOPMENT: any construction activities or land alteration on an area that has not previously been developed to include impervious cover.

NONPOINT SOURCE POLLUTION: 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 man-made pollutants, finally depositing them into a water resource area.

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 it continues to function as designed.

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

PLAN: A technical drawing that shows details of how a building or site will be built or developed.

PRE-CONSTRUCTION: All activity in preparation for construction.

REDEVELOPMENT: Any construction, land alteration or improvement of impervious surfaces that does not meet the definition of new development.

RESPONSIBLE PARTY: Any entity holding the fee title to the property or other person contracted or obligated by other agreement to implement and maintain pre- and post-construction stormwater BMPs.

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

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

SEDIMENTATION: The process or act of deposition of sediment.

SITE: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

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

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods; to prevent or retard erosion.

STANDARD EROSION AND SEDIMENTATION CONTROL PERMIT: A permit issued under this Bylaw containing a standard set of conditions requiring best management practices be implemented to prevent erosion and sedimentation from the site. This permit applies to sites proposing a land-disturbing activity of greater than 20,000 square feet or greater than 500 cubic yards.

STORMWATER: Rainwater runoff, snow melt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PLAN: A plan showing existing and proposed features on a site. This is required as part of the application for an Erosion and Sedimentation Control Permit. See Section 6.6.2.

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

TOTAL MAXIMUM DAILY LOAD (TMDL): Is a calculation of the maximum amount of a pollutant a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes load allocations for nonpoint sources and/or natural background and must include a margin of safety and account for seasonal variations.

TOTAL SUSPENDED SOLIDS (TSS): Total Suspended Solids is a water quality measurement that includes particles suspended in water that will not pass through a filter.

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

WETLAND RESOURCE AREA: Areas specified in either the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 or in Burlington's Wetland Bylaw (Article XIV).

WETLANDS: Areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments including freshwater marshes around ponds and channels (rivers and streams). Common names include marshes, swamps and bogs.

6.2 Detailed Objectives

This Bylaw complies with Federal and state 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"). It is intended to:

- a. Protect ground water and surface water to prevent degradation of drinking water supply;
- b. Require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land-disturbing activities;
- c. Promote infiltration and the recharge of groundwater;
- d. Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
- e. Require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at a construction site that may cause adverse impacts to water quality;

- f. Establish minimum construction and post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- g. Prevent pollutants from entering the Burlington MS4 and to minimize discharge of pollutants from the MS4;
- h. Ensure adequate long-term operation and maintenance of structural stormwater best management practices so that stormwater structures work as designed;
- i. Comply with Federal and state statutes and regulations relating to stormwater discharges; and
- j. Establish the legal authority for the Town of Burlington to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

6.3 Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

6.4 Applicability

No person may undertake any construction activity that results in a land-disturbing activity that disturbs equal to or greater than 10,000 square feet of land that drains to

- the Burlington municipal separate storm sewer system, or
- onto an adjacent property, or
- into a municipal / private street, or
- into a wetland / stream

without an Erosion and Sedimentation Control Permit from either the Burlington Conservation Commission or the Burlington Planning Board. Segmenting projects part of a larger common plan of development or sale to avoid thresholds shall not be permitted.

Exemptions from the requirement to obtain a permit (under this Bylaw) are:

- a. Roadway projects that do not remove existing pavement down to underlying dirt/soil (i.e. mill and overlay) as they are not land-disturbing redevelopment activities;
- b. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;
- c. Maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling disturbing less than 10,000 square feet;
- d. The construction of fencing that will not substantially alter existing terrain or drainage patterns;

- e. Construction of utilities other than drainage (gas, water, electric, cable, telephone, etc.) which will not alter terrain or drainage patterns;
- f. As authorized in Burlington's Phase II Small MS4 General Permit, stormwater discharges resulting from the activities identified in Section 6.4 that are wholly subject to jurisdiction under either the Wetlands Protection Act or activities which are subject to Burlington's Bylaw Article XIV and demonstrate compliance with the Massachusetts Stormwater Management Regulations as reflected in an Order of Conditions issued by the Burlington Conservation Commission, are exempt from compliance with this Bylaw.

6.5 Responsibility for Administration

The Burlington Conservation Commission shall be the lead agency that may grant waivers and promulgate regulations to support this Bylaw as specified in Sections 6.5.1 and 6.5.2 below. The Burlington Conservation Commission and the Burlington Planning Board shall have shared responsibilities to administer and implement this Bylaw. Any powers granted to, or duties imposed upon either the Burlington Conservation Commission or the Burlington Planning Board may be delegated to their respective employees and/or their agents, and with mutual concurrence these duties may be delegated to each other's respective employees and/or their agents.

6.5.1 Waiver

The Burlington Conservation Commission shall be the lead agency to grant a waiver of compliance with this Bylaw. The Commission, with input from the Planning Board, may waive strict compliance with any requirement of this Bylaw or the rules and regulations promulgated hereunder, where:

1. Such action is allowed by Federal, state and local statutes and/or regulations; and
2. is in the public interest; and
3. is not inconsistent with the purpose and intent of this Bylaw.

6.5.2 Rules and Regulations

6.5.2.1 The Burlington Conservation Commission shall be the lead agency to initiate a change to this Bylaw. The Burlington Conservation Commission working with input from the Burlington Planning Board may adopt, and periodically amend, rules and regulations to effectuate the purposes of this Bylaw by majority vote of the Burlington Conservation Commission, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven (7) days prior to the hearing date.

6.5.2.2 Failure by the Burlington Conservation Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Bylaw.

6.6 Standard Erosion and Sedimentation Control Permit

6.6.1 Application for Standard Erosion and Sedimentation Control Permit

6.6.1.1 The site owner or his/her agent shall file with the Burlington Conservation Commission three (3) copies of a completed application package for a Standard Erosion and Sedimentation Control Permit. Permit issuance is required prior to any site-altering activity. While the Applicant can be a representative of the site owner, the permittee must be the owner of the site.

6.6.1.2 Standard Erosion and Sedimentation Control Application Package

The Standard Erosion and Sedimentation Control Application package shall include:

- a. a completed Application Form with original signatures of all owners plus two (2) copies of the signed form;
- b. a list of abutters within three hundred feet of the proposed activity certified by the Assessor's Office;
- c. three (3) copies of the Stormwater Management Plan and project description referenced in Section 6.6.2 of this Bylaw;
- d. three (3) copies of the Erosion and Sediment Control Plan as referenced in Section 6.8 of this Bylaw;
- e. three (3) copies of the Operation and Maintenance Plan as referenced by Section 6.6.4 of this Bylaw;
- f. one (1) electronic copy of the complete package; and
- g. payment of the application fees.

6.6.2 Stormwater Management Plan

The Stormwater Management Plan shall contain sufficient information for the issuing Commission/Board 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 the Massachusetts Stormwater Management Standards (or as revised), the Massachusetts Stormwater Management Handbook Volumes I and II (or as revised), and any specific regulations promulgated under this Bylaw.

6.6.2.1 Stormwater Management Plan Content

The Stormwater Management Plan shall fully describe the project in drawings and narrative. The Stormwater Management Plan shall conform to any detail provided in either regulations or policies promulgated under this Bylaw. The Conservation Administrator may, at his/her discretion, waive some detail requirements described below as long as in his/her opinion, the goals and objectives of this Bylaw are not compromised.

6.6.2.2 Standards

The Stormwater Management Plan shall meet the current Standards of the Massachusetts Stormwater Management Policy and the MS4 permit requirements of the Town of Burlington. When one or more of the standards cannot be met, an Applicant may demonstrate an

equivalent level of environmental protection will be provided. This determination shall be at the discretion of the Conservation Commission.

6.6.3 Erosion and Sedimentation Control Plan

The Erosion and Sedimentation Control Plan contained within the Stormwater Management Plan shall contain sufficient information to describe the proposed erosion and sedimentation controls. The Applicant shall submit such material as is necessary to show the proposed development will comply with the design requirements referenced in Section 6.6.3.2 below. The Conservation Administrator may, at his/her discretion, waive some detail requirements described below as long as, in his/her opinion, the goals and objectives of this Bylaw are not compromised.

6.6.3.1 Erosion and Sedimentation Control Plan Content

The Plan shall at a minimum contain the following information:

- a. Names, addresses, and telephone numbers of the owner, applicant, and person(s) or firm(s) preparing the plan;
- b. Title, date, north arrow, names of abutters, scale, legend, and locus map;
- c. Location and description of natural features.

6.6.3.2 Standards

The Erosion and Sedimentation Control Plan must conform to the details of any regulations and policies promulgated under this Bylaw.

6.6.4 Operations and Maintenance Plan

Operation and Maintenance plan (O&M Plan) is required as part of the Stormwater Management Plan at the time of application for all projects. Upon request by the Applicant, the issuing Commission/Board may delay the completion date of the O&M plan, but in all cases, the O&M Plan must be submitted and approved prior to the completion of the project and before any occupancy takes place.

6.6.4.1 Content

The O&M Plan shall remain on file with the issuing Commission/Board and shall be an ongoing requirement for the Responsible Parties in perpetuity. The details of the O&M Plan shall conform to the requirements of any regulations and policies promulgated under this Bylaw. The O&M Plan shall, at a minimum, include:

- A. The name(s) of the owner(s) for all components of the system;
- B. Detail of maintenance agreements;
- C. Detail on stormwater management easement(s);
- D. Changes to O&M Plans
 1. The owner(s) of the stormwater management system must notify the issuing Commission/Board of changes in ownership or assignment of financial responsibility.
 2. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this Bylaw by mutual agreement of the issuing

Commission/Board and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

6.6.4.2 Standards

The O&M plan shall be designed to ensure compliance with the Permit and 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 issuing Commission/Board shall make the final decision of what maintenance option is appropriate in a given situation. The issuing Commission/Board will consider natural features, proximity of site to water bodies and wetlands, 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.

6.6.4.3 Recording

The O&M Plan for a project with a Standard Erosion & Sedimentation Control Permit shall be recorded at the Southern Middlesex Registry of Deeds prior to occupancy. The Applicant shall provide proof to the issuing Commission/Board that the O&M Plan has been filed.

6.6.5 Public Hearing

6.6.5.1 Within seven (7) days of the filing date, the Burlington Conservation Commission (through its agent) shall make a determination on whether to schedule a formal hearing before the Commission, or shall delegate its authority under this Bylaw to the Burlington Planning Board. In either case, a formal public hearing is required. This determination shall be made based on an assessment of the potential for sedimentation and erosion from the proposed land-disturbing activity (including grubbing, clearing and/or grading). The Commission's agent shall give consideration to the original and proposed grading of the site, existing slopes, the presence of intermittent streams or channels, the size of the site, and/or other factors which may contribute to runoff and erosion potential. Proposed projects where routine erosion and sedimentation controls are needed, will be referred to the Burlington Planning Board for a simultaneous hearing for this permit with other matters in connection with this project. This action will expedite the permitting process for an Applicant who must appear before the Burlington Planning Board for other matters in connection with the proposed work.

6.6.5.2 If the Burlington Conservation Commission or its agent delegates its authority under this Bylaw to the Burlington Planning Board, the staff of the Burlington Conservation Commission shall transfer the original application package (and associated copies) to the Burlington Planning Board office. The Burlington Conservation Commission shall also notify the Applicant in writing of the Commission's decision to refer this application to the Burlington Planning Board. The Applicant shall also be notified the hearing will be scheduled before the Burlington Planning Board within twenty-one (21) days of the receipt of a complete application or at a time to coincide with other regulatory matters which are being heard by the Board on the same project.

6.6.5.3 The issuing Commission/Board shall hold a public hearing within twenty-one (21) days of the receipt of a complete application (or a greater timeframe as mutually agreed upon) and shall take final action within either twenty-one (21) days from the time of the close of the hearing or within such longer time period mutually agreed to by both the Commission/Board and the Applicant to coincide with other regulatory decisions on the same project. Notice of

the public hearing shall be given by publication and posting, and by first-class mailings to abutters (owners of land within three hundred feet from the boundary of the site) at least seven (7) days prior to the hearing. The issuing Commission/Board shall make the application available for inspection by the public during business hours at the issuing Commission/Board office.

6.7 Abbreviated Erosion and Sedimentation Control Permit

The site owner or his/her agent shall file with the Burlington Conservation Commission two (2) copies of a completed application package for an Abbreviated Erosion and Sedimentation Control Permit. Permit issuance is required prior to any site-altering activity. While the Applicant can be a representative of the site owner, the permittee must be the owner of the site.

6.7.1 Content

The application package shall contain an Application Form and a Stormwater Management/Erosion and Sediment Control Plan. The Stormwater Management/Erosion Control Plan shall at a minimum contain sufficient information to describe the existing and proposed features of the land including structures, vegetation, and drainage and anticipated maintenance requirements of structures.

6.7.2 Standards

The Stormwater Management/Erosion Control Plan shall conform to any detail provided in either regulations or policies promulgated under this Bylaw.

6.7.3 Abbreviated Erosion and Sedimentation Control Permit Issuance

Within seven (7) days of the filing date, the agent of the Burlington Conservation Commission will issue an Abbreviated Erosion and Sedimentation Control Permit under this Bylaw. No public meeting or hearing shall be required for sites in this category. For sites in this size category not adequately covered by the Abbreviated Erosion and Sedimentation Control Permit, additional special conditions may be appended by the Commission. The Commission may extend the seven (7) day turnaround time for issuing the Abbreviated Erosion and Sedimentation Control Permit for reasons of insufficient information of which the Applicant has been notified in writing.

6.8 Performance Standards

6.8.1 At a minimum all projects subject to a Standard Erosion and Sedimentation Control Permit shall comply with the performance standards of the most recent version of the Massachusetts stormwater management standards and The Massachusetts Stormwater Handbook, and this Bylaw.

6.8.2 All projects must consider and, unless infeasible, propose and implement Low Impact Development (LID) Best Management Practices listed in the Massachusetts Stormwater Handbook. Applicants shall demonstrate compliance with design standards for LID BMPs through generally accepted methods. LID BMPs should be considered for their improvements to water quality, and ability to handle water quantity.

6.8.3 Stormwater management systems on new development disturbing more than one acre shall be designed to meet an average annual pollutant removal equivalent to 90% of the average annual load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 60% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site.

6.8.4 Stormwater management systems on redevelopment sites disturbing more than one acre shall be designed to meet an average annual pollutant removal equivalent to 80% of the average annual post-construction load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 50% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site.

6.8.5 When determining whether the requirements have been met, the issuing commission/board shall consider all stormwater management practices available and capable of being implemented after taking into consideration costs, existing technology, proposed use, and logistics in light of overall project purposes. Project purposes shall be defined generally (e.g., single family home or expansion of a commercial development). Applicants shall detail how the project will:

- a. Comply with the Massachusetts Stormwater Management Standards as further defined in the Massachusetts Stormwater Handbook or its successor;
- b. Implement structural and non-structural stormwater best management practices (BMPs) for projects that discharge, directly or indirectly, to a water body subject to one or more pollutant-specific Total Maximum Daily Loads (TMDLs). These practices shall be consistent with each such TMDL;
- c. Implement structural and non-structural stormwater BMPs optimized to remove the pollutant(s) responsible for the impairment to the extent the project will discharge, directly or indirectly, to an impaired water body not subject to a TMDL;
- d. Avoid disturbance of areas susceptible to erosion and sediment loss;
- e. Use Low Impact Development (LID) techniques where adequate soil, groundwater and topographic conditions allow. These may include, but not limited to, reduction in impervious surfaces, disconnection of impervious surfaces, bioretention (rain gardens), and infiltration systems.

6.8.6 Redevelopment activities exclusively limited to maintenance and improvement of existing roadways (excavating down to dirt/soil), including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects shall only be required to improve existing drainage conditions where feasible.

6.8.7 Further criteria for Stormwater Management Standards shall be defined and included as part of any Rules and Regulations promulgated under Section 6.5.3 of this Bylaw.

6.9 Entry

Filing an application for a permit grants the issuing Commission/Board and its agents permission to enter the site to verify the information in the application.

6.10 Fee Structure

6.10.1 Standard Erosion and Sedimentation Control Permit fee

The issuing Commission/Board shall obtain with each submission an Application Fee. The fee shall be established by the Burlington Conservation Commission with input from the Burlington Planning Board to cover expenses connected with the public hearing and application review for the Erosion and Sedimentation Control Permit and a technical Review Fee (if requested by the Commission/Board) sufficient to cover professional technical review, if needed. The Commission/Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the issuing Commission/Board on any or all aspects of these plans as provided by G.L.c. 44, Section 53G. Applicants must pay all review fees due before a permit will be issued. The Commission/Board will not be subject to final action deadlines if the appropriate fees have not been paid.

6.10.2 Abbreviated Erosion and Sedimentation Control Permit fee

The Commission will establish a reduced fee schedule.

6.11 Information requests

The Applicant shall submit all additional information requested by issuing Commission/Board to issue a decision on the application.

6.12 Approval Process for a Standard Erosion Control Permit

The issuing Commission/Board may:

1. Issue an Erosion and Sedimentation Control Permit based upon a determination the proposed plan meets the Massachusetts Stormwater Management Standards referenced by Section 6.6.2.2, adequately protects the water resources of the community, and complies with the requirements set forth in this Bylaw;
2. Issue an Erosion and Sedimentation Control Permit subject to any conditions, modifications or restrictions required by the issuing Commission/Board which will ensure the project meets the Massachusetts Stormwater Management Standards referenced by Section 6.6.2.2 and adequately protect water resources; set forth in this Bylaw;
3. Disapprove the issuance of an Erosion and Sedimentation Control Permit based upon a determination the proposed plan as submitted does not meet the Massachusetts Stormwater Management Standards referenced by Sections 6.6.2.2, 6.6.3.2, 6.6.4.2, 6.7.2 or 6.8 or adequately protect surface and/or groundwater resources as set forth in this Bylaw.

Failure of the issuing Commission/Board to take final action upon an application within either twenty-one (21) days from the time of the close of the hearing or within such longer time period mutually agreed to by both the Commission/Board and the Applicant to coincide with other regulatory decisions on the same project; shall be deemed to be approval of said Application.

6.13 Project Changes

The permittee must notify the issuing Commission/Board in writing of any drainage change or alteration in the system authorized in an Erosion and Sedimentation Control Permit before any change or alteration is made. If the issuing Commission/Board determines the change or alteration is significant based on the Stormwater Management Standards in Sections 6.6.2.2, 6.6.3.2, 6.6.4.2, 6.7.2 or 6.8 of this Bylaw and accepted construction practices, the issuing Commission/Board may require an amended application be filed and a public hearing held. The issuing Commission/Board may also require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

6.14 Project Completion

Upon completion of the project, the permittee shall submit as-built record drawings of all structural stormwater controls and best management practices implemented for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a Registered Professional Engineer.

6.15 Inspection and Site Supervision

6.14.1 Pre-construction Meeting

When requested, prior to the start of clearing, excavation, construction, or land-disturbing activity, the Applicant, the Applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet with the issuing Commission/Board, to review the permitted plans and their implementation.

6.14.2 Commission/Board Inspections

6.14.2.1 The issuing Commission/Board or its designated agents shall make inspections as needed and shall either approve any portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sedimentation Control Permit as approved.

6.14.2.2 If inspections are required by the Commission/Board, the permittee shall notify the issuing Commission/Board at least two (2) working days before each of the following events:

- a. Erosion and sediment control measures are in place and stabilized;
- b. Site clearing has been substantially completed;
- c. Rough grading has been substantially completed;
- d. Final grading has been substantially completed;
- e. Close of the construction season; and
- f. Final landscaping (permanent stabilization) and project final completion.

6.14.3 Permittee Self-Inspections

The permittee or his/her agent shall conduct and document inspections of all control measures) no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections shall be to determine the overall effectiveness of the control plan and the need for maintenance or additional control measures. The permittee or his/her agent shall submit weekly reports to the issuing Commission/Board or designated agent in a format approved by the issuing Commission/Board, which may include the signature of the Professional Engineer if required by the issuing Commission/Board.

6.14.4 Access Permission

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the issuing Commission/Board, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this Bylaw and may make, or cause to be made, such examinations, surveys or sampling as the issuing Commission/Board deems reasonably necessary to determine compliance with the permit.

6.15 Surety

As part of any Erosion and Sedimentation Control Permit, the issuing Commission/Board may require the permittee to post before the start of land-disturbing activity a cash surety. The bond shall be in an amount deemed sufficient by the issuing Commission/Board to ensure that the work will be completed in accordance with the permit. For a phased project the issuing Commission/Board may release part of the bond upon completion of each phase in compliance with the permit. The amount released shall be at the discretion of the issuing Commission/Board. However, the bond may not be fully released until the issuing Commission/Board has received the final report as required by Section 6.16 and issued a certificate of completion.

6.16 Final Reports

Upon completion of the work and if required by the issuing Commission/Board, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

6.17 Enforcement

The Burlington Planning Board and Burlington Conservation Commission and their employees and agents shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Persons subject to enforcement under this Bylaw include:

- a. All permittees who have been issued a Standard Erosion and Sedimentation Control Permit;
- b. All permittees who have been issued an Abbreviated Erosion and Sedimentation Control Permit; and
- c. All other persons who have engaged in a land-disturbing activity as defined in this Bylaw as greater than 500 square feet, who have caused substantial erosion and sedimentation due to alteration of drainage characteristics, grading, grubbing, clearing, and/or stripping of soil.

6.17.1 Orders

6.17.1.1 The issuing Commission/Board or an authorized agent of the issuing Commission/Board may issue a written order to enforce the provisions of this Bylaw or the regulations thereunder which may include:

- a. A requirement to cease and desist from the land-disturbing activity until there is compliance with this Bylaw and its provisions of any permit issued;
- 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. Elimination of illicit connections or discharges to the MS4; and
- f. Elimination of discharges to the MS4 or, directly or indirectly, into a watercourse or into the waters of the Commonwealth.

6.17.1.2 If the enforcing Commission/Board or its agents determines abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Commission/Board may under this Bylaw and subsequent regulation promulgated hereunder impose a fine on a daily basis until such time as the abatement or remediation of erosion and sedimentation has been completed. The Town of Burlington, at its option, may seek a court order requiring the property owner to perform the work.

6.17.2 Criminal Penalty

Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder shall be punished by a fine. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6.17.3 Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Burlington may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, in which case the Conservation Administrator of Burlington shall be the enforcing agent. The penalty for the first violation shall be \$100 each day or part thereof such violation occurs. The penalty for the **second** violation shall be \$300 each day or part thereof such violation occurs. The penalty for subsequent violations shall be \$300 each day or part thereof for every day such violation occurs. For the purposes of issuing a non-criminal disposition penalty, both the Burlington Planning Board Director and Burlington Conservation Commission Administrator are named as the specific enforcing agents.

6.17.4 Appeals

The decisions or orders of the issuing Commission/Board shall be final. Further relief shall be to a court of competent jurisdiction.

6.17.5 Remedies Not Exclusive

The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable Federal, state or local law.

6.18 Certificate of Completion

Upon determining all work completed under a Standard permit has been satisfactorily completed in conformance with this Bylaw and the Permit, and all required documentation has been submitted per Section 6.14, the issuing authority shall issue a Certificate of Completion. This Certificate shall identify any continuing requirements. The Certificate of Completion shall stipulate the permit holder is to remove required erosion controls unless changed or waived by the Conservation Administrator within thirty (30) days of the date on the Certificate.

6.19 Severability

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

or to act in any other manner in relation thereto.

Submitted by the Board of Selectmen at the request of
Conservation Department

PASSED () DEFEATED () POSTPONED INDEFINITELY () OTHER ()