

CHAPTER 700

STORMWATER MANAGEMENT AND LAND DISTURBANCE BYLAW

6-701. PURPOSE

- A. The harmful impacts of soil erosion and sedimentation are:
1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
 2. contamination of drinking water supplies;
 3. alteration or destruction of aquatic and wildlife habitat;
 4. flooding; and,
 5. overloading or clogging of municipal catch basins and storm drainage systems.
- B. The objectives of this bylaw are to:
1. protect water resources;
 2. require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities;
 3. promote infiltration and the recharge of groundwater;
 4. 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;
 5. require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
 6. comply with state and federal statutes and regulations relating to stormwater discharges; and,
 7. establish the Town's legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

6-702. DEFINITIONS

ABUTTER: The owner(s) of land abutting the activity.

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

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 sediment control permit for proposed land-disturbance activity.

AUTHORIZED ENFORCEMENT AGENCY: The Town of Longmeadow, Director of Public Works appointed pursuant to Section 6-3(c) of the Town Charter (the DPW DIRECTOR), designated to enforce this by-law.

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC): A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

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.

DEPARTMENT OF PUBLIC WORKS: The Longmeadow Department of Public Works.

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

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

ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS: Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

MASSACHUSETTS ENDANGERED SPECIES ACT: (G.L. c. 131A) and its implementing regulations at (321 CMR 10.00) which prohibit the “taking” of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act 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 control the quantity of runoff from a site.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or municipal storm drain system: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Longmeadow.

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

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

PRE-CONSTRUCTION: All activity in preparation for construction.

PRIORITY HABITAT OF RARE SPECIES: Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.

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.

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

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

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

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

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

VERNAL POOLS: Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

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 the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 and in the (city or town's) wetland bylaw/ordinance.

WETLANDS: Tidal and non-tidal 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), brackish and salt marshes; common names include marshes, swamps and bogs.

6-703. 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

6-704. APPLICABILITY

This bylaw shall apply to all activities that result in disturbance of land that drains to the municipal separate storm sewer system that is maintained by the Department of Public Works (DPW). Except as authorized by the DPW in a Land Disturbance Permit or as otherwise provided in this bylaw, no person shall perform any activity that results in disturbance of an acre or more of land or any activity that could adversely affect the storm sewer system. Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.4, are exempt. In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the above activities that are subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this bylaw.

6-705. RESPONSIBILITY FOR ADMINISTRATION

A. The DPW DIRECTOR shall administer, implement and enforce this bylaw.

B. Waiver. The DPW DIRECTOR may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:

- (1) such action is allowed by federal, state and local statutes and/or regulations,
- (2) is in the public interest, and
- (3) is not inconsistent with the purpose and intent of this by-law.

C. Rules and Regulations. The Select Board, by majority vote, may adopt, and periodically amend, rules and regulations relating to the procedures and administration of this bylaw after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general circulation at least seven (7) days prior to the hearing date. Failure by Select Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

6-706. PERMITS and PROCEDURE

A. Application A completed application for a Land Disturbance Permit shall be filed with the DPW DIRECTOR. A permit must be obtained prior to the commencement of land disturbing activity that may result in the disturbance of an area of one acre or more. Activities that affect smaller areas, but could adversely affect the storm sewer system, may also require a permit subject to the discretion of the DPW DIRECTOR. The Land Disturbance Permit Application package shall include:

1. a completed Application Form with original signatures of all owners;
2. a list of abutters, certified by the Assessors Office;
3. three (3) copies of the Erosion and Sediment Control Plan as specified in Section 7 of this bylaw;
4. payment of the application and review fees; and, 5. one (1) copy each of the application Form and the list of abutters filed with the Town Clerk.

B. Entry. Filing an application for a permit grants the DPW DIRECTOR or his agent, permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

C. Other Boards. The DPW DIRECTOR shall notify the Town Clerk of receipt of the application, and shall give one copy of the application package to the Conservation Commission, Building Department, and/or Planning Board as appropriate.

D. Public Hearing. The DPW DIRECTOR shall hold a public hearing within twenty-one (21) days of the receipt of a complete application and shall take final action within twenty-one (21) days from the close of the hearing unless such time is extended by agreement between the applicant and the DPW DIRECTOR. Notice of public hearing shall be given by publication in a local paper of general circulation, by posting and by first-class mailings to abutters at least seven (7) days prior to the hearing. The DPW DIRECTOR may elect to waive the public hearing if he determines after review that the proposed activity on the site will not have a significant negative impact with respect to the storm water collection system and site run off. The cost of the publication, mailing and other costs related to the hearing shall be borne by the applicant.

E. Information requests. The applicant shall submit all additional information requested by DPW DIRECTOR to issue a decision on the application.

F. Action by the DPW may:

1. Approve the Land Disturbance Permit Application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this by-law;
2. Approve the Land Disturbance Permit Application and issue a permit with conditions, modifications or restrictions that the DPW DIRECTOR determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this by-law;
3. Disapprove the Land Disturbance 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.

G. Failure of the DPW to take final action upon an Application within the time specified above shall be deemed to be approval of said Application. Upon certification by the Town Clerk that the allowed time has passed without DPW DIRECTOR action, the Land Disturbance Permit shall be issued by the DPW DIRECTOR.

H. Fee Structure. Each application must be accompanied by the appropriate application fee as established by the Select Board. Applicants shall pay review fees as determined by the Select Board sufficient to cover any expenses connected with the review of the Land Disturbance Permit Application before the review process commences. The DPW DIRECTOR is authorized to retain a Registered Professional Engineer or other professional consultant to advise the DPW on any or all aspects of the Application.

I. Project Changes. The permittee, or their agent, must notify the DPW DIRECTOR in writing of any change or alteration of a land-disturbing activity authorized in a Land Disturbance Permit before any change or alteration occurs. If the DPW DIRECTOR determines that the change or alteration is significant, based on the design requirements listed in Section 7.B. and accepted construction practices, the DPW DIRECTOR may require that an amended Land Disturbance Permit application be filed and a public hearing held. If any change or alteration from the Land Disturbance Permit occurs during any land disturbing activities, the DPW DIRECTOR may require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

6-707. EROSION AND SEDIMENT CONTROL PLAN

A. The Erosion and Sediment Control Plan shall contain sufficient information to describe the nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, and proposed erosion and sedimentation controls. The applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements listed in Section 7.B. below.

B. The **design requirements** of the Erosion and Sediment Control Plan are:

1. Minimize total area of disturbance;
2. Sequence activities to minimize simultaneous areas of disturbance;
3. Minimize peak rate of runoff in accordance with the Massachusetts Stormwater Policy;
4. Minimize soil erosion and control sedimentation during construction, provided that prevention of erosion is preferred over sedimentation control;
5. Divert uncontaminated water around disturbed areas;
6. Maximize groundwater recharge;
7. Install, and maintain all Erosion and Sediment Control measures in accordance with the manufacturers specifications and good engineering practices;
8. Prevent off-site transport of sediment;
9. Protect and manage on and off-site material storage areas (overburden and stockpiles of dirt, borrow areas, or other areas used solely by the permitted project are considered a part of the project);
10. Comply with applicable Federal, State and local laws and regulations including waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control;

11. Prevent significant alteration of habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or Of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species from the proposed activities;

12. Institute interim and permanent stabilization measures, which shall be instituted on a disturbed area as soon as practicable but no more than 14 days after construction activity has temporarily or permanently ceased on that portion of the site;

13. Properly manage on-site construction and waste materials; and

14. Prevent off-site vehicle tracking of sediments.

C. Erosion and Sedimentation Control Plan Content. The Plan shall contain the following information:

1. Names, addresses, and telephone numbers of the owner, applicant, and person(s) or firm(s) preparing the plan;

2. Title, date, north arrow, names of abutters, scale, legend, and locus map;

3. Location and description of natural features including:

(a) Watercourses and water bodies, wetland resource areas and all floodplain information, including the 100-year flood elevation based upon the most recent Flood Insurance Rate Map, or as calculated by a professional engineer for areas not assessed on these maps;

(b) Existing vegetation including tree lines, canopy layer, shrub layer and ground cover, and trees with a caliper twelve (12) inches or larger, noting specimen trees and forest communities;

(c) Habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species within five hundred (500) feet of any construction activity.

4. Lines of existing abutting streets showing drainage and driveway locations and curb cuts;

5. Existing soils, volume and nature of imported soil materials

6. Topographical features including existing and proposed contours at intervals no greater than two (2) feet with spot elevations provided when needed;

7. Surveyed property lines showing distances and monument locations, all existing and proposed easements, rights-of-way, and other encumbrances, the size of the entire parcel, and the delineation and number of square feet of the land area to be disturbed;

8. Drainage patterns and approximate slopes anticipated after major grading activities (Construction Phase Grading Plans);

9. Location and details of erosion and sediment control measures with a narrative of the construction sequence/phasing of the project, including both operation and maintenance for structural and non-structural measures, interim grading, and material stockpiling areas;

10. Path and mechanism to divert uncontaminated water around disturbed areas, to the maximum extent practicable;

11. Location and description of industrial discharges, including stormwater discharges from dedicated asphalt plants and dedicated concrete plants, which are covered by this permit;

12. Stormwater runoff calculations in accordance with the Department of Environmental Protection's Stormwater Management Policy;
13. Location and description of and implementation schedule for temporary and permanent seeding, vegetative controls, and other stabilization measures;
14. Description of construction and waste materials expected to be stored on-site. The Plan shall include a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
15. A description of provisions for phasing the project where one acre of area or greater is to be altered or disturbed;
16. Plans must be stamped and certified by a qualified Professional Engineer registered in Massachusetts or a Certified Professional in Erosion and Sediment Control and
17. Such other information as is required by the DPW DIRECTOR.

6-708. INSPECTION AND SITE SUPERVISION

A. Pre-construction Meeting

Prior to starting 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 DPW DIRECTOR, to review the permitted plans and their implementation.

B. DPW Inspection

The DPW DIRECTOR or his designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the land disturbance permit as approved. The Permit and associated plans for grading, stripping, excavating, and filling work, bearing the signature of approval of the DPW DIRECTOR, shall be maintained at the site during the progress of the work. In order to obtain inspections (as deemed necessary by DPW DIRECTOR and specified in the permit), the permittee shall notify the DPW DIRECTOR at least two (2) working days before each of the following events:

1. Erosion and sediment control measures are in place and stabilized;
2. Site Clearing has been substantially completed;
3. Rough Grading has been substantially completed;
4. Final Grading has been substantially completed;
5. Close of the Construction Season; and
6. Final Landscaping (permanent stabilization) and project final completion.

C. Permittee 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 will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures.

D. Access Permission

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

6-709. SURETY

The DPW DIRECTOR may require the permittee to post before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by the DPW DIRECTOR to ensure that the work will be completed in accordance with the permit. If the project is phased, the DPW DIRECTOR may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the DPW DIRECTOR has received the final report as required by Section 10 and issued a certificate of completion.

6-710. FINAL REPORTS

If required in the individual permit, upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, or Certified Professional in Erosion and Sediment Control (CPESC), 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.

6-711. ENFORCEMENT

A. The DPW DIRECTOR shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

B. Orders

1. The DPW DIRECTOR may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

- a) a requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw and provisions of the land-disturbance permit;
- 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.

2. If the enforcing person determines that 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 Town of Longmeadow may, at its option, undertake such work, and the property owner shall reimburse the Town's expenses.

3. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the DPW DIRECTOR within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the DPW affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in G.L. Ch. 59, § 57, after the thirty-first day following the day on which the costs were due.

C. Criminal Penalty Any person who violates any provision of this by-law, regulation, order or permit issued there under, shall be punished by a fine of not more than Three Hundred Dollars (\$300). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.. 40, §21D and Sections 1-501,

502 and 503 of the general bylaws of the Town in which case the DPW DIRECTOR shall be the enforcing person. The penalty for the 1st violation shall be One Hundred Dollars (\$100.00). The penalty for the 2nd violation and subsequent violations shall be Two Hundred Dollars (\$200.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Appeals The decisions or orders of the DPW DIRECTOR may be appealed to the Town Manager by the party who is subject of the decision or order. A written notice of the appeal shall be filed with the Town Manager within 30 days or receipt of the order or decision being appealed from. The Town Manager shall hold a hearing within 30 days of receipt of the notice of appeal and shall issue a decision within 30 days of conclusion of the hearing. Further relief from a decision by the Town Manager shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

6-712. CERTIFICATE OF COMPLETION

The issuing authority will issue a letter certifying completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this bylaw.

6- 713. SEVERABILITY

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