

Town of Foxborough, MA
STORMWATER MANAGEMENT

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ARTICLE I – GENERAL PROVISIONS

Section 1. Purpose

- A. The purpose of this Stormwater Management Bylaw (Bylaw) is to protect the health, safety, general welfare, and environment by regulating illicit connections and discharges to the storm drain system and controlling the adverse effects of construction site stormwater runoff and post-construction runoff. Stormwater runoff is potentially a major cause of:
- (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, groundwater and drinking water supplies;
 - (2) Contamination of drinking water supplies;
 - (3) Contamination of downstream coastal areas;
 - (4) Alteration or destruction of aquatic and wildlife habitat;
 - (5) Overloading or clogging of municipal stormwater management systems; and
 - (6) Flooding.
- B. The objectives of this Bylaw are:
- (1) Protect water resources;
 - (2) Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements;
 - (3) To prevent pollutants from entering the Town's municipal separate storm sewer system (MS4) and reduce or eliminate pollutants entering the Town's MS4 from existing uses;
 - (4) To prohibit illicit connections and unauthorized discharges to the MS4 and require their removal;
 - (5) To establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
 - (6) To establish provisions for the long-term responsibility for, and maintenance of, structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety; and
 - (7) To establish the Town of Foxborough's legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

Section 2. Definitions

Definitions applicable to this Bylaw are as follows:

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete

discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

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 Land Disturbance Permit for proposed land-disturbance activity.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CERTIFICATE OF COMPLETION (COC): A document issued by the Planning Board after all construction activities have been completed, which states that all conditions of an issued Land Disturbance Permit have been met and that a project has been completed in compliance with the conditions set forth in the SWMP.

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.

CLEAN WATER ACT: The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

CLEARING: Any activity that removes the vegetative surface cover.

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

DISTURBANCE OF LAND: Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material.

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 a 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 and erosion and sedimentation during pre-construction and construction related land disturbance activities.

GROUNDWATER: Water beneath the surface of the ground.

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

ILLICIT CONNECTION: A surface or subsurface drain or conveyance which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water, and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this Bylaw.

ILLCIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Article 2 Section 2-D. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from fire-fighting activities exempted pursuant to Article 2 Section 2-D of the Stormwater Management Bylaw.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water from infiltrating the underlying soil. "Impervious surface" includes without limitation roads, paved parking lots, sidewalks, and rooftops.

IMPOUNDMENT: A stormwater pond created by either constructing an embankment or excavating a pit which retains a permanent pool of water.

INFILTRATION: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

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

LAND USE OF HIGHER POTENTIAL POLLUTANT LOAD (LUHPPL): Land uses or activities with higher potential pollutant loadings, as defined in the Massachusetts Stormwater Management Standards (see Standard 5 of the Mass DEP Stormwater Handbook, as amended).

MASSACHUSETTS ENDANGERED SPECIES ACT (MESA): G.L. c. 131A and its implementing regulations 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 STANDARDS: The Standards 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, § 26-53. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity and quality 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 Foxborough.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

NEW DEVELOPMENT: Any construction activities or land alteration resulting in total earth disturbances equal to or greater than 1 acre (or activities that are part of a larger common plan of development disturbing greater than 1 acre) on an area that has not previously been developed to include impervious cover.

NONSTORMWATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of stormwater.

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 that it continues to function as designed.

OUTFALL: The point at which stormwater flows out from a point source into waters of the Commonwealth.

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.

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-CONSTRUCTION: All activity in preparation for construction.

POLLUTANT: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

- A. Paints, varnishes, and solvents;
- B. Oil and other automotive fluids;
- C. Nonhazardous liquid and solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinance, accumulations and floatables;
- E. Pesticides, herbicides, and fertilizers;
- F. Hazardous materials and wastes; sewage, fecal coliform and pathogens;
- G. Dissolved and particulate metals;
- H. Animal wastes;
- I. Rock; sand; salt; soils;
- J. Construction wastes and residues; and
- K. Noxious or offensive matter of any kind.

PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

REDEVELOPMENT: Any construction, land alteration, or improvement of impervious surfaces resulting in total earth disturbances equal to or greater than 1 acre (or activities that are part of a larger common plan of development disturbing greater than 1 acre) that does not meet the definition of new development (see above).

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 AUTHORITY: Town of Foxborough Planning Board or its authorized agent(s).

STORMWATER: Runoff from precipitation or snow melt and surface water runoff and drainage.

STORMWATER MANAGEMENT PLAN (SWMP): A plan required as part of the application for a Land Disturbance Permit.

TOXIC OR HAZARDOUS MATERIAL OR WASTE: Any material which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as "toxic" or "hazardous" under MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

TSS: Total Suspended Solids.

WASTEWATER: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product.

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

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

WETLANDS: Tidal and non-tidal areas characterized by the presence of hydrophytic (water dependent or tolerant) plant communities and evidence of hydrology (e.g., hydric soils) generally located between terrestrial (land-based) and aquatic (water) environments.

Section 3. Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the home rule statutes, the regulations of the Federal Clean Water Act found at 40 CFR 122.34, and Chapter 1, Article 1, § 1-1 of the Code of the Town of Foxborough, Massachusetts.

Section 4. Responsibility for administration

- A. The Stormwater Authority shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Stormwater Authority may be delegated in writing by Stormwater Authority to its employees or agents.

Section 5. Waivers

- A. Following a public hearing on a waiver request, the Stormwater Authority 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.
- B. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the Bylaw does not further the purposes or objective of this Bylaw.
- C. All waiver requests shall be discussed and voted on at the public hearing for the project.
- D. If in the Stormwater Authority's opinion, additional time or information is required for review of a waiver request, the Stormwater Authority may continue a hearing to a certain date announced at the meeting. In the event the applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

Section 6. Compliance with EPA's General Permit for MS4s in Massachusetts

This Bylaw shall be implemented in accordance with the requirements of EPA's most recent General Permit for MS4s in Massachusetts relating to illicit connections and discharges, construction site runoff, and post-construction stormwater management. The Stormwater Authority shall include these requirements in any Regulations that it issues. The Stormwater Authority may establish additional requirements by Regulation to the further the purposes and objectives of this Bylaw so long as they are not less stringent than those in the MS4 General Permit for Massachusetts.

Section 7. Regulations

The Stormwater Authority may adopt, and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Stormwater Bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. Failure of the Stormwater Authority to issue such rules, or regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this Bylaw.

Such regulations, rules or guidance may include without limitation, provisions for the establishment of one or more categories of administrative review approvals for specific types or sizes of projects. Administrative review applications that meet all the standard requirements may be issued by one or more agents designated in writing by the Stormwater Authority, without the requirement for a public hearing as detailed in Article III of this Bylaw. Administrative review approval shall comply with all other provisions of this Bylaw.

Section 8. Severability

The provisions of this Bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this Bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Bylaw.

ARTICLE II – DISCHARGES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

Section 1. Applicability

Article II of this Bylaw shall apply to all water entering the municipally owned storm drainage system or going, directly or indirectly, into a watercourse, or into the waters of the Commonwealth, that is generated on any developed or undeveloped lands except as explicitly exempted in this Bylaw or where the Stormwater Authority has issued a waiver in accordance with Article I Section 5.

Section 2. Prohibited Activities; Exemptions.

- A. **Illicit Discharges.** No person shall dump, discharge, spill, cause or allow to be discharged any pollutant or nonstormwater discharge into the municipal separate storm sewer system (MS4), onto an impervious surface directly connected to the MS4, or, directly or indirectly, into a watercourse, or into the waters of the Commonwealth.
- B. **Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- C. **Obstruction of Municipal Storm Drain System.** No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written consent from the Stormwater Authority.
- D. **Exemptions.**
 - (1) Discharge or flow resulting from fire-fighting activities.
 - (2) The following nonstormwater discharges or flows are exempt from the prohibition of nonstormwater provided that the source is not a significant contributor of a pollutant to the municipal storm drain system or, directly or indirectly, into a watercourse, or into the waters of the Commonwealth:
 - (a) Waterline flushing;
 - (b) Flow from potable water sources.
 - (c) Springs;
 - (d) Natural flow from riparian habitats and wetlands;
 - (e) Diverted stream flow;
 - (f) Rising groundwater;
 - (g) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater (e.g. sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Stormwater Authority prior to discharge and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations to be issued by the Stormwater Authority;

- (h) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air-conditioning condensation;
- (i) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- (j) Discharge from street sweeping;
- (k) Dye testing, provided verbal notification is given to the Stormwater Authority prior to the time of the test;
- (l) Nonstormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- (m) Discharge for which advanced written approval has been received from the Stormwater Authority as necessary to protect public health, safety, welfare or the environment.

Section 3. Additional Prohibited Pollutants

- A. **Pet Waste:** Dog feces are a major component of stormwater pollution; it shall be the duty of each person who owns, possesses, or controls a dog to remove and properly dispose of any feces left by the dog on any public or private property neither owned nor occupied by said person. It is prohibited to dispose of dog feces in any public or private storm drain, catch basin, wetland, or water body or on any paved or impervious surface. However, this provision shall not be applicable to a person using a service dog or other service animal registered as such. Persons walking dogs must carry with them a device designed to dispose of dog feces including, but not limited to, a plastic bag or “pooper scooper.” For specific requirements and penalties for violations see Code of the Town of Foxborough, Chapter 78, § 78-2.
- B. **Pavement Sealers:** Coal tar based driveway and pavement sealers have been identified as a primary source of poly-aromatic hydrocarbons affecting streams in developed areas. Poly-aromatic hydrocarbons are classified by the US Environmental Protection Agency as a probable human carcinogen and are highly toxic to aquatic life. Asphalt-based driveway and pavement sealers contain low concentrations of poly-aromatic hydrocarbons. Therefore, application of coal tar based driveway and pavement sealers is prohibited for all paved areas directly connected to the MS4.

Section 4. Emergency Suspension of Storm Drainage System Access

The Stormwater Authority may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency

suspension order, the Stormwater Authority may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

Section 5. Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Municipal Fire and Police Departments. In the event of a release of nonhazardous material, the reporting person shall notify the authorized enforcement agency no later than the next business day. The reporting person shall provide to the Stormwater Authority written confirmation of all telephone, facsimile or in-person notifications within three (3) business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

Section 6. Enforcement

The Stormwater Authority or its authorized agent shall enforce this Bylaw, and any associated regulations, orders, violation notices, and enforcement orders and may pursue all civil and criminal remedies for such violations.

- A. Civil Relief. If a person violates the provisions of this Bylaw, or any associated regulations, permit, notice, or order issued thereunder, the Stormwater Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- B. Orders.
 - (1) The Stormwater Authority or its authorized agent may issue a written order to enforce the provisions of this Bylaw or any regulations thereunder, which may include:
 - (a) Elimination of illicit connections or discharges to the MS4;
 - (b) Performance of monitoring, analyses, and reporting;
 - (c) That unlawful discharges, practices, or operations shall cease and desist;
 - (d) That measures shall be taken to minimize the discharge of pollutants until such time as the illicit connection shall be eliminated; and
 - (e) Remediation of contamination in connection therewith.
 - (2) If the Stormwater Authority determines that abatement or remediation of contamination 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 may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

- (3) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will 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 Stormwater Authority 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 Stormwater Authority 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 provided in MGL c. 59, § 57 after the thirty-first (31st) day at which the costs first become due.
- C. **Criminal Penalty.** Any person who violates any provision of this Bylaw, regulation, order or permit issued thereunder 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. **Noncriminal Disposition.** As an alternative to criminal prosecution or civil action, the Town may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D and Chapter 1, Article II, § 1-5 of the Code of the Town of Foxborough, in which case the agent of the Stormwater Authority shall be the enforcing person. The penalty for the first violation shall be a warning. The penalty for the second violation shall be one hundred dollars (\$100). The penalty for the third and subsequent violations shall be three hundred dollars (\$300). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- E. **Entry to Perform Duties under this Bylaw.** To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this Bylaw and Regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.
- F. **Appeals.** The decisions or orders of the Stormwater Authority shall be final. Further relief shall be to a court of competent jurisdiction.
- G. **Remedies Not Exclusive.** The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

Section 7. Transitional Provisions

Residential property owners shall have sixty (60) days from the effective date of this Bylaw to comply with its provisions provided good cause is shown for the failure to comply with the Bylaw during that period.

ARTICLE III – STORMWATER MANAGEMENT AND LAND DISTURBANCE

Section 1. Applicability

A. Article III of this bylaw shall apply to all activities that result in disturbance of one acre (43,560 square feet) of land or more that drains to the municipal separate storm sewer system (MS4). Except as authorized by the Stormwater Authority in a Land Disturbance Permit or as otherwise provided in the Stormwater Regulations, no person shall perform any activity that results in disturbance of one acre (43,560 square feet) of land or more. Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.04, are exempt. In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the above activities that are subject to jurisdiction under the Wetlands Protection Act or require other permits from the Planning Board and demonstrate compliance with the Massachusetts Stormwater Management Standards as reflected in an Order of Conditions issued by the Conservation Commission or permitted by the Planning Board are exempt from compliance with these regulations. Any activity proposed or undertaken outside the areas specified in this bylaw is not subject to regulation and does not require the filing of a Land Disturbance Permit, unless and until that activity actually alters an area subject to protection under the bylaw. In the event that the Stormwater Authority determines that such activity has in fact altered an area subject to protection under the bylaw, it may require the filing of a Land Disturbance Permit and/or issuance of an Enforcement Order and shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the protection of the interests identified in Article I, Section I. Exemptions:

- (1) Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling conducted in such a way as not to cause a nuisance;
- (2) Construction of fencing that will not substantially alter existing terrain or drainage patterns;
- (3) Construction of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter terrain or drainage patterns or result in discharge of sediment to the MS4;
- (4) Normal maintenance and improvement of land in agricultural or aquacultural use; and
- (5) Disturbance or redevelopment of land that is subject to jurisdiction under the Wetlands Protection Act (M.G.L. Ch. 131, § 40), Foxborough Wetlands Protection Bylaw (Chapter 267) or requires other permits from the Planning Board and demonstrates compliance with the Massachusetts Stormwater Management Standards and the Town of Foxborough Stormwater Management Regulations as reflected in a valid Order of Conditions issued by the Conservation Commission or permitted by the Planning Board.

Permit procedures and requirements are outlined in the Town of Foxborough Stormwater Regulations (Regulations).

Any person that fails to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, and Operations and Maintenance Plan issued under the Regulations shall be in violation of the Code of the Town of Foxborough.

Section 2. Approval and/or Permit

An applicant seeking an approval and/or permit shall file an appropriate application with the Stormwater Authority in a form and containing information as specified in this Bylaw and in regulations adopted by the Stormwater Authority. Approval or permit must be obtained prior to the commencement of land disturbing or redevelopment activity based on thresholds described in the Regulations.

The Stormwater Authority shall hold a public hearing within thirty (30) days of the receipt of a complete application and shall take final action within thirty (30) days from the time of the close of the hearing unless such time is extended by agreement between the applicant and the Stormwater Authority. Notice of the public hearing shall be given by publication and posting and by first-class mailings to abutters at least seven (7) days prior to the hearing. The Stormwater Authority shall make the application available for inspection by the public during business hours at the office of the Town of Foxborough Planning Board.

Section 3. Entry

Entry to perform duties under this Bylaw. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this Bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.

Section 4. Inspection and Site Supervision

The Stormwater Authority or its designated agent shall make inspections as outlined in the Regulations to verify and document compliance with the Land Disturbance Permit.

Section 5. Surety

The Stormwater Authority may require the applicant to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by the Stormwater Authority and be in an amount deemed sufficient by the Stormwater Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Authority may release part of the bond as each phase is completed in compliance with the permit.

Section 6. Final Reports

Land Disturbance Permit: Upon completion of the work, the applicant shall submit a report (including certified as-built construction plans) from a Professional Engineer (PE), or Professional Land Surveyor (PLS), certifying that all erosion and sedimentation control devices, and approved changes or modifications, have been completed in accordance with the conditions of the approved Erosion and Sediment Control Plan and Stormwater Management Plan. Any discrepancies shall be noted in the cover letter.

Section 7. Enforcement

- A. **Civil Relief.** If a person violates the provisions of this Bylaw, or any associated regulations, permit, notice, or order issued thereunder, the Stormwater Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- B. **Orders.** If the Stormwater Authority determines that a person's failure to follow the requirements of a Land Disturbance Permit and the related Erosion and Sedimentation Control Plan, or Operations and Maintenance Plan is creating an adverse impact to a water resource, or if the Stormwater Authority determines that an activity not otherwise required to obtain a Land Disturbance Permit is causing an adverse impact to a water resource, then the Authority may issue a written Order to the person to remediate the adverse impact, which may include:
- (1) 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
 - (2) Maintenance, installation or performance of additional erosion and sediment control measures;
 - (3) Monitoring, analyses, and reporting; and
 - (4) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.
- C. If the Stormwater Authority determines that abatement or remediation of pollutants is required, the Order shall set forth a deadline for completion of the abatement or remediation. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and expenses thereof shall be charged to the violator or property owner. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will 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 Stormwater Authority 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 Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the cost shall become a special assessment against the property owner of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Chapter 59, s 57 after the thirtieth (30) day at which the costs first become due.
- D. **Criminal and Civil Penalties.** Any person who violates any provision of this Bylaw, valid regulation, or the terms or conditions in any permit or order prescribed or issued there under, shall be subject to a fine not to exceed three hundred dollars (\$300) for each day such violation occurs or continues or subject to a civil penalty, which may be assessed in an action brought on behalf of the Town in any court of competent jurisdiction.
- E. **Appeals.** The decisions or orders of the Stormwater Authority shall be final. Further relief shall be to a court of competent jurisdiction.

F. 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.