

Chapter 165

STORMWATER MANAGEMENT AND EROSION CONTROL

GENERAL REFERENCES

Wetlands protection — See Ch. 190.

Stormwater regulations — See Ch. 250.

Zoning — See Ch. 195.

Subdivision regulations — See Ch. 255.

§ 165-1. Findings and purpose.

- A. Increased volumes of stormwater, contaminated stormwater runoff from impervious surfaces, and soil erosion and sedimentation are major causes of:
- (1) Impairment of water quality in lakes, ponds, streams, rivers, wetlands and groundwater;
 - (2) Decreased flow in lakes, ponds, streams, rivers, wetlands and groundwater;
 - (3) Contamination of drinking water supplies;
 - (4) Erosion of stream channels;
 - (5) Alteration or destruction of aquatic and wildlife habitat;
 - (6) Flooding;
 - (7) Overloading or clogging of municipal and private catch basins and storm drainage systems; and
 - (8) Flooding and erosion on abutting properties.
- B. The United States Environmental Protection Agency has identified sedimentation from land disturbance activities and polluted stormwater runoff from land development and redevelopment as major sources of water pollution, impacting drinking water supplies, natural habitats, and recreational resources. Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of North Andover water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public and protect the natural resources of the Town.
- C. The objectives of this bylaw are to:
- (1) Protect water resources;
 - (2) Require practices that eliminate soil erosion and sedimentation;
 - (3) Control the volume and rate of stormwater runoff resulting from land disturbance activities in order to minimize potential impacts of flooding;

- (4) Require practices to manage and treat stormwater runoff generated from new development and redevelopment;
- (5) Protect groundwater and surface water from degradation or depletion;
- (6) Promote infiltration and the recharge of groundwater;
- (7) Prevent pollutants from entering the municipal and private storm drain system;
- (8) Prevent flooding and erosion to abutting properties;
- (9) Ensure that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into the site planning and design process and are implemented and maintained;
- (10) Ensure adequate long-term operation and maintenance of stormwater best management practices;
- (11) Require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality;
- (12) Comply with state and federal statutes and regulations relating to stormwater discharges; and
- (13) Establish the legal authority of the Town of North Andover to ensure compliance with the provisions of this bylaw through inspection, monitoring and enforcement.

§ 165-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ABUTTER — The owner(s) of land abutting the land disturbance site.

AGRICULTURE — The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) and its implementing regulations (310 CMR 10.00).

ALTERATION OF DRAINAGE CHARACTERISTICS — Any activity on an area of land that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include, but are not limited to: change from distributed runoff to confined, concentrated 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 — The owner of record of all of the land shown on any plan submitted for approval to the Planning Board in accordance with the Stormwater Management Bylaw and Regulations, any person or persons acting on behalf of the applicant for purposes of preparing and submitting plans and documents to the Planning Board, and may include engineers, surveyors, contractors or attorneys, and may also include any person or persons having an equitable interest in the land under an agreement or option to purchase the land. The owner shall certify in writing the identity of each applicant who is authorized to submit plans and/or documents and act on behalf of the owner. Without such certification, an applicant shall not act on behalf of the owner. The applicant

shall submit the title reference or references from the Essex County Registry of Deeds indicating the owner of record. All applications shall include original signatures of all owners.

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

CLEARING — Any activity that removes the vegetative surface cover and/or organic layer. Clearing activities generally include grubbing activity as defined below.

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

DESIGN CRITERIA — Engineering design criteria as contained in the Stormwater Regulations authorized under this bylaw.¹

DETENTION — The temporary storage of storm runoff, used to control the peak discharge rates, and which provides settling of pollutants.

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

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

ENVIRONMENTAL SITE MONITOR — A professional engineer, or other trained professional approved by the Planning Board and retained by the holder of a land disturbance permit to periodically inspect the work and report to the Planning Board.

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.

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).

GRADING — Changing the level or shape of the ground surface.

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

ILLCIT CONNECTION — A surface or subsurface drain or conveyance which allows an illicit discharge into the North Andover storm drain system, 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 North Andover storm drain system that is not composed entirely of stormwater, including without limitation sewage, process wastewater, or wash water, except as exempted in § 165-4D of this bylaw or in implementing regulations.²

1. Editor's Note: See the regulations in Ch. 250 of the Town Code.

2. Editor's Note: See the regulations in Ch. 250 of the Town Code.

IMPERVIOUS SURFACE — Any material or structure on or above the ground that limits water infiltrating the underlying soil. Impervious surface includes, without limitation: roads, paved parking lots, sidewalks, sports courts and rooftops. Impervious surface also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 85.

LAND-DISTURBANCE PERMIT — A permit issued by the Planning Board.

LAND-DISTURBING ACTIVITY or **LAND DISTURBANCE** — Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

LOT — An area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

LOW-IMPACT DEVELOPMENT (LID) — An approach to environmentally friendly land use planning and stormwater management that includes a suite of landscaping and design techniques that attempt to maintain the natural, pre-developed ability of a site to manage rainfall. LID techniques typically preserve natural drainage characteristics and/or capture water on site, filter it through vegetation, and let it soak into the ground, where it can recharge the local water table rather than becoming surface runoff.

MASSACHUSETTS ENDANGERED SPECIES ACT — MGL 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, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) and the Massachusetts Clean Waters Act (MGL c. 21, §§ 26 through 53). The policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

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

OPERATION AND MAINTENANCE PLAN — A plan developed by a Massachusetts licensed professional engineer (PE) describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

OUTFALL — The point at which stormwater flows out from a discernible, confined point source or concentrated conveyance into waters of the commonwealth.

OUTSTANDING RESOURCE WATERS (ORWs) — Waters designated by the Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociological, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts

Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

OWNER — The owner of record of all the land shown on any plan submitted. The owner shall submit the title reference or references from the Essex County Registry of Deeds (or Registry District of the Land Court if the land constitutes registered land) indicating the owner of record.

PERMITTEE — The person who holds a land disturbance permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

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.

PLANNING BOARD — The designees authorized to implement all actions and procedures authorized by this bylaw. The Planning Board may, by majority vote at a public meeting, delegate any of the responsibilities for the administration of this bylaw to the Town Planner.

POINT SOURCE — Any discernible, confined, and concentrated conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, concentrated fissure, or container from which pollutants are or may be discharged.

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.

PRIVATE STORM DRAIN SYSTEM or PRIVATE SEPARATE STORM SEWER 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 that is not owned and maintained by the Town.

RECHARGE — Addition of stormwater runoff to the groundwater by natural or artificial means.

REDEVELOPMENT — Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.

RESPONSIBLE PARTIES — The applicant, owner(s), persons with financial responsibility, and persons with operational responsibility.

RETENTION — The holding of stormwater runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

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 — Earth materials including duff, humic materials, sand, rock and gravel.

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

STORMWATER — Stormwater runoff, snow melt runoff, surface water runoff and drainage.

STORMWATER MANAGEMENT PLAN AND NARRATIVE — A document containing narrative, drawings and details prepared by a Massachusetts-licensed qualified professional engineer (PE) which includes structural and nonstructural best management practices to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an operation and maintenance plan describing the maintenance requirements for structural best management practices.

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

TSS — Total suspended solids. Material, including but not limited to trash, debris, soils, sediment and sand, suspended in stormwater runoff.

VERNAL POOLS — Seasonally wet basin depressions that do not support breeding populations of fish, because of periodic drying. Vernal pools serve as breeding sites for unique organisms and may be protected by state, local and federal laws. Specifically, vernal pools are isolated depressions or closed basins which temporarily confine water during periods of high water table and high input from spring runoff or snowmelt or heavy precipitation, and support populations of nontransient microorganisms, serve as breeding habitat for select species of amphibians or contain a variety of wetland plant species. They serve as temporarily flooded amphibian breeding habitat, as well as habitat for other wildlife. These pools are characteristically small; they rarely exceed 150 feet in width; however, a given pool may vary in size from year to year depending on the amount of rainfall or snowmelt. In the absence of those habitat functions, the areas will be considered isolated vegetated wetlands. The existence of either a confined basin depression; evidence of amphibian and/or reptile species that breed only in vernal pools; the presence of fairy shrimp or their eggs; or documented presence of water in a confined basin depression for at least two continuous months in the spring and/or summer will verify the existence of a vernal pool.

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

WETLAND RESOURCE AREA — Areas specified in the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) and regulations promulgated thereunder and in the Town of North Andover Wetland Protection Bylaw and Regulations.³ Wetlands include

3. Editor's Note: See the regulations in Ch. 250 of the Town Code.

wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent communities in inland waters; that portion of any bank which touches any inland water.

§ 165-3. 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.

§ 165-4. Applicability; regulated, exempt and prohibited activities.

Except as permitted by the Planning Board in a land disturbance permit or as otherwise provided in this bylaw, no person shall perform any land disturbance involving disturbance of 43,560 square feet or more of land.

A. Regulated activities.

(1) Regulated activities shall include:

- (a) Land disturbance of 43,560 square feet or more of land associated with construction or reconstruction of structures.
- (b) Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs 43,560 square feet or more of land.
- (c) Paving or other change in surface material over an area of 43,560 square feet or more of land.
- (d) Construction of a new drainage system or alteration of an existing drainage system or conveyance draining an area of 43,560 square feet or more of land.
- (e) Any other activity, on an area of land of 43,560 square feet or more, that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include, but are not limited to: change from distributed runoff to confined, concentrated 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.

(2) No person may create or maintain a direct connection or discharge to the MS4 without a connection and discharge permit from the Department of Public Works.

(3) The Town of North Andover is not exempt from the provisions of this bylaw.

B. Exempt activities. The following activities are exempt from the requirements of this bylaw:

- (1) Normal maintenance and improvement of Town-owned public or maintained ways and appurtenances to the public or maintained ways.
 - (2) Normal maintenance and improvement of land in agricultural use.
 - (3) Repair of septic systems when required by the Board of Health for the protection of public health.
 - (4) Normal maintenance of currently existing landscaping, gardens or lawn areas associated with a single-family or two-family dwelling.
 - (5) Activities for which the North Andover Conservation Commission and/or Massachusetts Department of Environmental Protection has issued an order of conditions under the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) and Regulations promulgated thereunder and/or the Town of North Andover Wetland Protection Bylaw and regulations.⁴
 - (6) Activities for which the North Andover Planning Board has issued an approval pursuant to a special permit (including site plan review) as well as definitive subdivision approval pursuant to the North Andover Planning Board Rules and Regulations Governing the Subdivision of Land.⁵
 - (7) Activities for which the North Andover Zoning Board of Appeals (ZBA) has issued a comprehensive permit pursuant to MGL c. 40B.
 - (8) Any work or projects for which all necessary approvals and permits, including building permits, have been issued before the effective date of this bylaw.
- C. Prohibited activities. The following activities are prohibited under this bylaw:
- (1) Illicit discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the MS4, into a watercourse, or into the waters of the commonwealth.
 - (2) 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.
 - (3) 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 approval from the Department of Public Works.
- D. Allowable non-stormwater discharges. The following activities are allowed without the need for consultation with the Planning Board:
- (1) Discharge or flow resulting from fire-fighting activities;
 - (2) Water line flushing;

4. Editor's Note: See the regulations in Ch. 250 of the Town Code.

5. Editor's Note: See Ch. 255, Subdivision of Land.

- (3) Flow from potable water sources;
- (4) Springs;
- (5) Natural flow from riparian habitats and wetlands;
- (6) Diverted stream flow;
- (7) Rising groundwater;
- (8) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- (9) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- (10) Discharge from landscape irrigation or lawn watering;
- (11) Water from individual residential car washing;
- (12) Discharge from dechlorinated swimming pool water (less than one ppm chlorine), provided the water is allowed to stand one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- (13) Discharge from street sweeping;
- (14) Dye testing, provided verbal notification is given to the Department of Public Works prior to the time of the test;
- (15) Non-stormwater discharge permitted under a NPDES permit or a surface water discharge permit, waiver, or waste discharge order administered under the authority of the United States Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- (16) Discharge for which advanced written approval is received from the Department of Public Works as necessary to protect public health, safety, welfare or the environment.

§ 165-5. Administration, review and approval procedures.

- A. The primary authority for the administration, implementation, and enforcement of § 165-4 shall lie with the Planning Board.
- B. The Planning Board and its agents shall review all applications for a land disturbance permit, conduct inspections, issue a final permit and conduct any necessary enforcement action.
- C. If not already required by another permitting agency, the Planning Board may retain, at the applicant's expense, independent consultants as needed to advise the committee on any and all aspects of a specified project. The Planning Board will accept the findings of any previous outside environmental review. Independent consultants may include but are not limited to registered professional engineers and

environmental site monitors.

- D. The Planning Board may adopt and periodically amend stormwater regulations relating to land disturbance permits, exemption or waiver applications, permit terms or conditions, design criteria, additional definitions, enforcement, fees (including application, inspection, and/or consultant fees), or other 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 local circulation, at least 14 days before the hearing date, and a draft of the regulations proposed to be adopted shall be available to the public, including posting on the Town's website, by the date on which such advertisement is published in said newspaper. After public notice and hearing, the Planning Board may promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Planning Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.⁶
- E. The Planning Board will refer to the policy, criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater Management Policy or with design criteria as described in North Andover's Subdivision Regulations,⁷ whichever is more stringent, in the protection of the Town's environmental and infrastructure resources, for execution of the provisions of this bylaw.
- F. All meetings of the Planning Board are subject to the Open Meeting Law.⁸ Unless already reviewed by another permitting authority, a notice in the local newspaper of a hearing on the land disturbance application and that the Planning Board is accepting comments on the land disturbance application shall be published at the applicant's expense, at least five business days before the hearing date. The land disturbance application shall be available for inspection by the public during normal business hours at the Town offices. Comments may be submitted to the Planning Board during business hours at the Town offices.
- G. The Planning Board or its agent shall have the authority, with prior approval from the property owner, or pursuant to court process, to enter upon privately owned land for the purpose of performing its duties under this bylaw.
- H. The Planning Board will accept the findings of any project previously review by Conservation or Planning for stormwater effects.
- I. The Planning Board may:
- (1) Approve the application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this bylaw;
 - (2) Approve the application and issue a permit with conditions, modifications, requirements for operation and maintenance requirements of permanent structural BMPs, designation of responsible party, or restrictions that the

6. Editor's Note: See the regulations included in Ch. 250 of the Town Code.

7. Editor's Note: See Ch. 255, Subdivision of Land.

8. Editor's Note: See MGL c. 30A, §§ 18 through 25.

Planning Board determines are required to ensure that the project will protect water resources and will meet the objectives and requirements of this bylaw; or

- (3) Disapprove the application and deny a permit if it finds that the proposed plan fails to meet the objectives and requirements of this bylaw and its regulations.⁹ If the Planning Board finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the Planning Board may disapprove the application, denying a permit.
- J. The Planning Board shall take final action on an application within 60 days of receipt of a complete application. If, in the Planning Board's opinion, additional time or information is required for review, the Planning Board, by written agreement of the applicant, may continue a consideration of the request to a date certain announced at the meeting.
- K. Failure to take action within the time provided by this bylaw shall be deemed to be approval of said application. Upon certification by the Town Clerk that the allowed time has passed without the Planning Board's action, the land disturbance permit shall be issued by the Planning Board.
- L. Appeals of action by the Planning Board. A written decision of the Planning Board shall be final when it is executed by the Planning Board or its chair or acting chair and filed in the Town Clerk's office. Further relief of a decision by the Planning Board made under this bylaw shall be reviewable in the Superior Court or Land Court in accordance with applicable law. Appeal actions shall be filed within 60 days of issuance in accordance with MGL c. 249, § 4. The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law. No work shall commence until the applicable appeal period has passed with no appeal or, if an appeal has been filed, the appeal has been finally resolved by adjudication or otherwise.
- M. All activity, exclusive of maintenance required in perpetuity, permitted by the land disturbance permit must be completed within two years of permit issuance. Extensions of time can be granted by the Planning Board upon formal written request by the applicant. Upon the expiration of one year from the date of permit issuance, if an extension has not been granted, the permit shall be considered to be revoked.
- N. The stormwater management permit shall be recorded at the Essex North District Registry of Deeds at the applicant's expense and proof of recording provided to the Planning Board prior to the commencement of any work under the permit.
- O. The Planning Board will issue a certificate of completion upon receipt and approval of final reports and documentation as outlined in the regulations¹⁰ and/or upon otherwise determining that all work of the permit has been satisfactorily completed in accordance with this bylaw. The certificate of completion shall be recorded at the Essex North District Registry of Deeds (or Registry of District of the Land Court,

9. Editor's Note: See the regulations in Ch. 250 of the Town Code.

10. Editor's Note: See the regulations in Ch. 250 of the Town Code.

if registered land) at the applicant's expense and proof of recording shall be provided to the Planning Board.

§ 165-6. Permit procedures.

Permit procedures and requirements shall be defined and included as part of any rules and regulations promulgated as permitted under § 165-5 of this bylaw.¹¹

§ 165-7. Fees.

The Planning Board shall establish fees, subject to approval of the Board of Selectmen, to cover expenses connected with application review and monitoring permit compliance. The fees shall be sufficient to cover Town secretarial staff and professional staff and any such other direct and indirect costs to the Town of processing and receiving the applications. Provided that a revolving fund is established by the Town in accordance with the provisions of MGL c. 44, § 53E 1/2, the Planning Board is also authorized to collect fees from the applicant in amounts sufficient to pay a registered professional engineer and such other professional consultants as the Planning Board requires to advise the Planning Board on any and all aspects of the project. The fees for such professional engineers and consultants shall be paid to the Town for deposit into the revolving fund.¹²

§ 165-8. Surety.

Unless otherwise posted with the Town as a separate "site opening bond" specifically dedicated to the compliance with the intent of this bylaw, the Planning Board may require the applicant to post before the start of land disturbance activity a surety bond, or other acceptable security. The form of the bond shall be approved by the Planning Board, and be in an amount deemed sufficient by the Planning Board to insure that the work will be completed in accordance with the permit. If the project is phased, the Planning Board 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 Planning Board has issued a certificate of completion.

§ 165-9. Waivers.

- A. The Planning Board may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder where the activity:
 - (1) Is allowed by federal, state or local statutes and/or regulations; or
 - (2) Is in the public interest, and is not inconsistent with the purpose and intent of this bylaw and its regulations.
- B. Any applicant may submit a written request to be granted such a waiver at the time of submission. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that the activity is allowed by federal, state or local statutes and/or regulations or is in the public

11. Editor's Note: See the regulations included in Ch. 250 of the Town Code.

12. Editor's Note: See the revolving funds listed in Ch. 20, Art. II, of the Town Code.

interest and is not inconsistent with the purpose and intent of this bylaw and its regulations.

- C. All waiver requests shall be discussed and a decision will be made at the time of final action by the Planning Board.
- D. If, in the Planning Board's opinion, additional information is required for review of a waiver request, the Planning Board may continue a consideration of the waiver request to a date certain announced at the meeting. In the event the applicant fails to provide requested information, the waiver request shall be denied. Any additional time required by this request will extend the deadline for issuance of a decision by the amount of time required to consider said request.

§ 165-10. Enforcement; violations and penalties.

- A. The Planning Board or its authorized agent shall enforce this bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- B. Orders. The Planning Board or its authorized agent may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include:
 - (1) A requirement to cease and desist from the land-disturbing activity until there is compliance with the bylaw or provisions of the land disturbance permit;
 - (2) Maintenance, installation or performance of additional erosion and sediment control measures;
 - (3) Monitoring, analyses, and reporting;
 - (4) Remediation of erosion and sedimentation resulting directly or indirectly from the land disturbing activity.
- C. Compliance with the operation and maintenance plan. 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.
- D. Fines. Unless already being fined for the same offense by some other Town regulatory body, any person who violates any provision of this bylaw, regulation, order or permit issued thereunder shall be punished by a fine of \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate violation.
- E. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Planning Board may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, which has been adopted by the Town, in which case the Planning Board or authorized agent shall be the enforcing person. The penalty for each violation shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate violation.

§ 165-11. 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.