

Town



of Danvers,
Massachusetts 01923

Joseph L. Collins, Director of Administrative Services
Treasurer/Collector/Clerk

978-777-0001 Phone
978-777-1025 Fax
jcollins@mail.danvers-ma.org Email

May 31, 2011

TO WHOM IT MAY CONCERN:

Certification is hereby made that the following is a true copy of Article 12 and the vote thereon of the Annual Town Meeting held on May 16, 2011, at the Holten Richmond Middle School, Conant Street, Danvers, Massachusetts:

ARTICLE 12: To see if the Town will vote to adopt Chapter XXXIX to the General By-laws of the Town, by adding language as follows, or take any other action thereon.

Chapter XXXIX
STORMWATER MANAGEMENT AND LAND DISTURBANCE BY-LAW

Section 1. Introduction: It is hereby determined that:

Land development or redevelopment in which land is altered or changed has an adverse effect on the hydrologic system and can create soil erosion, sedimentation, and greater surface water runoff. These are known to cause impaired water quality, contamination of drinking water supplies, erosion of stream and river channels, alteration and destruction of aquatic life and wildlife habitat, flooding, and overloading or clogging of municipal storm drain systems.

Localities in the Commonwealth of Massachusetts are required to comply with a number of Federal and State statutes, regulations and permit procedures which require the locality to address the impacts of construction and post development stormwater runoff quantity, quality and nonpoint source pollution.

Therefore, the Town of Danvers has established this By-law to provide reasonable guidance for site planning and stormwater runoff control during construction and post-construction for the purpose of protecting local water

resources from degradation. This By-law regulates the construction and post-construction stormwater controls for both new and redevelopment projects.

Section 2. Purpose: This By-law provides the controls to ensure the safeguarding of public health and safety, public and private property, surface water, public drinking water, groundwater resources, recreational areas, aquatic habitats and life and the environment as a whole by establishing minimum requirements and procedures to control the adverse effects of increased stormwater runoff, non-point source pollution associated with development and redevelopment, and erosion and sedimentation associated with construction.

The purpose of this by-law is to establish regulations and enforcement procedures by which the Town can meet the requirements of Federal and State statutes, regulations and permit procedures. This By-law seeks to meet that purpose through the following:

- A. Protecting groundwater and surface water from degradation;
- B. Minimizing damage to public and private property and infrastructure;
- C. Preventing flooding;
- D. Controlling the volume and rate of stormwater runoff resulting from land disturbance activities;
- E. Promoting infiltration and groundwater recharge to maintain the natural hydraulic regime in streams, rivers, wetlands, ponds, and groundwater;
- F. Ensuring that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process;
- G. Preventing pollutants from entering and discharging from the Town of Danvers municipal separate storm sewer system;
- H. Requiring practices to control waste such as but not limited to discarded building materials, concrete truck washouts, chemicals, litter, and sanitary waste at construction sites;
- I. Ensuring adequate operation and maintenance of structural stormwater best management practices so that they work as designed, both long-term and during construction;
- J. Establishing the Town of Danvers' legal authority and capacity to ensure compliance with the provisions of this by-law through permitting, inspection, monitoring, and enforcement.

Section 3. Definitions: The following definitions shall apply in the interpretation and enforcement of this By-law. Additional terms that apply to issuance of a Stormwater Management Permit established by this By-law shall be defined and included as part of the regulations promulgated and, from time to time, amended under section 8.B of this by-law, a copy of which is available at the Stormwater Authority and the office of the Town Clerk. Terms not defined in said regulations or pertinent statutes shall be construed according to their customary and usual meaning.

The following terms are defined in the Massachusetts Wetlands Regulations (310 CMR 10.00): Cold-water fishery, Critical areas, Environmentally sensitive site design, Flood control, Ground water, Illicit discharge, Land uses with higher potential pollutant loads, Low impact development (LID) techniques, Maintenance of a stormwater management system, Redevelopment, Stormwater best management practice, Stormwater management system, and Surface water.

- A. **ALTER:** Any activity that will measurably change the ability of a ground surface to absorb water or will change existing surface drainage patterns. "Alter" may be similarly represented as "alteration of drainage characteristics" and "conducting land disturbance activities."
- B. **APPROVAL NOT REQUIRED (ANR) PLAN:** A plan of land that does not require approval under the Subdivision Control Law of Massachusetts (Massachusetts General Laws, Chapter 41, §§81K through 81GG).
- C. **APPLICANT:** Any person, 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 requesting authorization to connect to the Danvers Municipal Separate Storm Sewer System (MS4) or for a proposed land-disturbance activity.
- D. **BEST MANAGEMENT PRACTICE (BMP):** A structural or nonstructural technique for managing stormwater to prevent or reduce pollutants from entering surface waters or ground waters. A structural stormwater best management practice includes a basin, discharge outlet, swale, rain garden, filter or other stormwater treatment practice or measure either alone or in combination including without limitation any overflow pipe, conduit, weir control structure that: (a) is not naturally occurring; (b) is not designed as a wetland replication area; and (c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater. Nonstructural stormwater best management practices include source control and pollution prevention measures.
- E. **BETTER SITE DESIGN:** Site design approaches and techniques that can reduce a site's impact on watershed practices. Better site design includes (without limitations) conserving and protecting natural areas and green spaces, providing substantial buffer zones for sensitive resources, reducing impervious cover, and using natural features for stormwater management.

- F. **COMMON PLAN OF DEVELOPMENT:** Any announcement or piece of documentation (including a contract, public notice or hearing, advertisement, drawing, plan, or permit application, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor marking, etc.) indicating imminent or future plans to disturb earth regardless of how many phases or how long it will take to complete. Under this by-law, a facility is no longer considered a common plan if the following criteria are met: (a) The original plan, including modifications, was substantially completed with less than one acre of the original common plan remaining (i.e., less than 1 acre of the common plan was not built out at the time); and (b) There was a clearly identifiable period of time (2 years or more) where there was no ongoing construction, including meeting the criteria for final stabilization.
- G. **DEVELOPMENT:** The modification of land to accommodate a new use or expansion of use.
- H. **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.
- I. **LAND DISTURBANCE:** Any action that causes a change in the position, location or arrangement of soil, sand, rock, gravel or similar earth material. See also **ALTER**.
- J. **MASSACHUSETTS STORMWATER MANAGEMENT HANDBOOK:** The policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by State laws promulgated under the authority of the Massachusetts Wetlands Protection Act M.G.L. c. 131 §40 and Massachusetts Clean Waters Act M.G.L. c. 21, §§23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.
- K. **MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS:** The requirements described in the Massachusetts Stormwater Handbook, as they may be amended from time to time, that address water quality (pollutants) and water quantity (flooding, low base flow and recharge) by establishing standards that require the implementation of a wide variety of stormwater management strategies. These strategies include environmentally sensitive site design and LID techniques to minimize impervious surface and land disturbance, source control and pollution prevention, structural Best Management Practices, construction period erosion and sedimentation control, and the long-term operation and maintenance of stormwater management systems. The Stormwater Management Standards have been incorporated in the Wetlands

Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

- L. **MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM:** The system of conveyances designed, constructed, and used for collecting or conveying stormwater, including any 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 Danvers.
- M. **NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES):** Stormwater Discharge Permit shall mean a permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.
- N. **NON-POINT SOURCE POLLUTION:** Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, depositing them into water resources areas. Non-point sources include, but are not limited to, urban, agricultural, or silvicultural runoff.
- O. **OWNER:** A person with a legal or equitable interest in property.
- P. **POINT SOURCE:** Any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete, fissure, container, rolling stock concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.
- Q. **REDEVELOPMENT:** Development, replacement, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites. Redevelopment is further defined by Massachusetts Stormwater Management Standard 7.
- R. **STORMWATER AUTHORITY:** The Town of Danvers Department of Public Works or its designee is the entity responsible for adopting regulations pursuant to this by-law.
- S. **SITE:** Any parcel of land or area of property where land-disturbing activities are, were, or will be performed.

- T. **STORMWATER MANAGEMENT:** The use of structural or non-structural practices that are designed to reduce and control stormwater runoff pollutant loads, discharge volumes and/or peak flow discharge rates.
- U. **STORMWATER MANAGEMENT PERMIT:** A permit issued by the Stormwater Authority, after review of an application, plans, calculations, and other supporting documents approving a system that is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

Section 4. Authority: This by-law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule Statutes, and pursuant to the rules and regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Danvers at Town Meeting, dated May 16, 2011.

Section 5. Scope and Applicability: This by-law shall be applicable to the following activities:

- A. Any residential, commercial or industrial development or redevelopment activity that results in a land disturbance greater than or equal to one acre of land within the Town of Danvers, or any activity that disturbs less than one acre if that project is part of a larger common plan of development that eventually will disturb one acre or greater of land unless exempt pursuant to Section 6.0 of this by-law; or
- B. Any development project that:
 - 1. Requires a Special Permit or a Special Permit with Site Plan Review; or
 - 2. Requires approval of a Definitive Plan under the Subdivision Control Law;or
- C. Any alteration, redevelopment, or land use conversion in an area with "higher potential pollutant loads" as described in Standard 5 of the Massachusetts Stormwater Management Policy, as it may be amended from time to time.

Plans that do not require approval under the Subdivision Control Law, hereafter referred to as "Approval Not Required or ANR lots," and meet one or more of the applicability criteria described herein are subject to the provisions of this by-law and shall obtain a Stormwater Management Permit.

Section 6. Exemptions: No person who meets Section 5 of this by-law shall alter land within the Town of Danvers without having obtained a Stormwater Management Permit for the property with the following exceptions:

- A. Municipal roadway maintenance, when conducted in accordance with an approved Stormwater Pollution Prevention Plan, prepared in accordance with the Stormwater Management regulations promulgated under Section 5;

- B. Ground disturbances in the course of customary cemetery use and regular maintenance;
- C. Maintenance of landscaping, gardens, or lawn areas;
- D. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act 310 CMR 10.04 and Massachusetts General Laws chapter 40A, section 3;
- E. Any work or projects for which the required permit applications have been submitted to the Planning Board, Zoning Board of Appeals, and the Conservation Commission before the effective date of this by-law.

For proposed Subdivisions, a Definitive Plan must have been submitted to be considered exempt from this by-law. This by-law will not apply to any activities ongoing on its effective date, provided that such activities have been fully compliant with the law.

- F. Emergency repairs to any existing utilities (gas, water, sewer, etc.) and/or stormwater management facility or practice, such that the original design location, size, and technology remain the same, that poses a threat to public health or safety, or as deemed necessary by the Stormwater Authority. Where such activity is subject to the jurisdiction of the Conservation Commission, the work shall not proceed without the issuance of an Emergency Certification by the Commission;
- G. Replacement of existing wells or septic systems on lots having an existing dwelling, with use of BMPs to prevent erosion, sedimentation and release of pollutants;
- H. Construction of utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.) other than drainage which will not alter terrain, ground cover, or drainage patterns, when conducted in accordance with an approved Stormwater Pollution Prevention Plan, prepared in accordance with the Stormwater Management regulations promulgated under Section 5;
- I. The construction, reconstruction, or repair of any fence or wall that will not alter the existing terrain or drainage patterns; and
- J. Any agricultural activity which is consistent with an approved soil conservation plan prepared or approved by the Natural Resource Conservation Service.

Section 7. Coordination with Other Town Permits

- A. No Town Street Opening or Excavation and Trench Permit, Order of Conditions from the Conservation Commission, Building Permit, Subdivision approval, Special Permit, variance or finding shall constitute compliance with this By-law. For a project or activity that meets the Scope and Applicability of this By-law, no work may commence until the site owner or his agent submits a complete Stormwater Management Permit application, the Stormwater Authority issues a Stormwater Management Permit, and the site owner and responsible parties sign and certify that all land clearing, construction, and development will be done pursuant to the

approved Plans and Permit.

- B. This By-law is not intended to interfere with, abrogate, or annul any other by-law, rule or regulation, statute, or other provision of law. The requirements of this By-law should be considered minimum requirements, and where any provision of this By-law imposes restrictions different from those imposed by any other by-law, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.
- C. In case of conflicting requirements, applicable state statutes and regulations shall be considered the more restrictive or more protective of human health and the environment, and shall take precedence over this by-law and the regulations promulgated thereunder. These state statutes and regulations include, but are not limited to, the following documents: the Massachusetts Wetlands Protection Act, the Massachusetts Rivers Act, the Massachusetts Watershed Protection Act, and the Massachusetts Stormwater Management Standards, as amended.

Section 8. Administration

A. The Stormwater Authority

The Department of Public Works or its designee shall administer, implement and enforce this by-law and regulations adopted under this by-law as the Stormwater Authority.

B. Stormwater Management Regulations

The Stormwater Authority may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including but not limited to application, clerical, inspection, and/or consultant fees), procedures and administration of this By-law after conducting a public hearing to receive comments on any proposed regulations or revisions.

Public hearing dates shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. After public notice and public hearing, the Stormwater Authority may promulgate rules and regulations to effectuate the purposes of this by-law. Failure by the Stormwater Authority to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this by-law.

C. Delegation of Authority

The Stormwater Authority may choose to delegate, in writing, his/her authority, in whole or in part, to a qualified representative (s), except as provided herein.

D. Stormwater Management Permits

The Stormwater Authority shall have the authority to issue a Stormwater Management Permit for projects subject to Section 5 that meet the requirements of this by-law and are not exempted pursuant to Section 6. Any such Permit requirements may be defined and included as part of any Stormwater Regulations promulgated as a result of this bylaw. The

Stormwater Authority shall by regulation establish and collect permit application fees, inspection fees, and in special cases, consultant fees for review of applications.

E. Stormwater Management Manual

The latest edition of the Massachusetts Stormwater Management Handbook will be upheld by the Town of Danvers in order to keep in place specifications and standards for execution of the provisions of this by-law. This Handbook includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Unless specifically altered in this By-law and Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with the Massachusetts Stormwater Management Standards and design and sizing criteria in the Stormwater Management Handbook will be presumed to be protective of Massachusetts Water Quality Standards.

F. Actions by the Stormwater Authority

The Stormwater Authority shall, within 30 days of the date of receipt of a completed application:

1. Approve the Permit Application upon finding that the proposed plan will protect water resources and meet the objectives and requirements of this by-law;
2. Approve the Permit Application with conditions, modifications or restrictions that are required to ensure that the project will protect water resources and meet the objectives and requirements of this by-law; or
3. Disapprove the Permit Application if the proposed plan will not protect water resources or fails to meet the objectives and requirements of this by-law.

Failure of the Stormwater Authority 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 Stormwater Authority action, the Stormwater Authority must issue a Stormwater Management Permit.

G. Appeals of Action by the Stormwater Authority

A decision of the Stormwater Authority shall be final. Further relief of a decision by the Stormwater Authority under this by-law shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with M.G.L. Ch 249 § 4.

H. Waivers

The Stormwater Authority may, in its discretion and after due consideration, waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where such action is:

1. Allowed by and does not conflict with federal or state law or any Danvers by-laws or regulations;
2. In the public interest; and
3. Consistent with the purpose and intent of this by-law and its regulations.

Criteria for granting a waiver shall be defined and included as part of the regulations promulgated under section 8.B of this by-law. A waiver from this by-law and/or regulations promulgated pursuant to this by-law does not relieve the applicant or land owner of any obligations for compliance with other federal, state or local statutes, by-laws, regulations or permits.

Section 9. Permit Procedures: Permit procedures and requirements, including permit submittals, right-of-entry, fee schedule, and public hearing process, shall be defined and included as part of the Regulations promulgated under section 8.B of this by-law.

At a minimum, the applicant must meet standards 1 through 10 of the Massachusetts Department of Environmental Protection Stormwater Management Standards and Handbook using current best management practices.

Section 10. Performance Standards: Criteria for erosion and sediment control and post-construction stormwater management, including stormwater performance standards, shall be defined and included as part of the Regulations promulgated under section 8.B of this by-law.

Section 11. Enforcement

- A. The Stormwater Authority or an authorized agent of the Stormwater Authority shall enforce this by-law and resulting regulations, orders, violation notices, and enforcement orders, and may pursue all criminal and civil remedies, including injunctive relief, monetary damages and costs of litigation and attorney fees, for such violations and for abatement and mitigation and compliance actions taken by the Stormwater Authority.
- B. Any person who violates any provision of this by-law, regulations, order or permit issued there under, may be ordered to correct the violation and/or shall be punished by a fine of not more than \$300, excluding the cost of damages. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- C. As an alternative to criminal prosecution or civil action, the Stormwater Authority may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40, §21D, in which case the Stormwater Authority or its authorized agent shall be the enforcing person. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- D. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Stormwater Authority's 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 Stormwater Authority deems reasonably necessary to determine compliance with a permit issued under this by-law. Enforcement shall be further defined and included as part of the Regulations promulgated under section 8.B of this by-law.

Section 12. Severability: The invalidity of any section, provision, paragraph, sentence, or clause of this by-law shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

ARTICLE 12: The Finance Committee recommended that the Town vote to adopt Chapter XXXIX to the General By-laws of the Town, by adding language as it appears in the Warrant.

This recommendation being put to vote was voted unanimously.

ATTEST:



Joseph L. Collins

Asst Town Clerk

JLC:kmw