

# **Medway General Bylaws - Article 26 Stormwater Management and Land Disturbance (through November 13, 2023 Town Meeting)**

## **SECTION 26.1 AUTHORITY**

This Bylaw is adopted in accordance with the authority granted by M.G.L. Chapter 43B, Section 13.

## **SECTION 26.2 PURPOSE**

The purpose and intent of this Bylaw is to fulfill the Town's obligations under the Clean Water Act (33 U.S.C 1251 & seq.) (the "Act") and under the Town's National Pollution Discharge Elimination System ("NPDES") permit. More specifically, its purpose is the following:

1. To protect the waters of the U.S. as defined in the Act and implementing regulations from uncontrolled Discharges of Storm Water or discharges of contaminated water which have a negative impact on the receiving waters by changing the physical, biological and chemical composition of those waters resulting in an unhealthy environment for aquatic organisms, wildlife and people;
2. To establish a comprehensive and fair system of regulation of discharges to the Town's Municipal Separate Storm Sewer System (MS4);
3. To identify, and authorize or eliminate direct or indirect connections to the MS4;
4. To require the removal of all illicit discharges to MS4;
5. To comply with Town, state and federal regulations related to storm water discharges, including but not limited to point sources, construction or industrial activities, and post-construction runoff by establishing provisions for the long-term responsibility for and maintenance of stormwater control facilities; and
6. To establish legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring and enforcement.

## **SECTION 26.3 DEFINITIONS**

Except as listed below, words, all terms, abbreviations and acronyms that appear in this Bylaw and are also defined in Appendix A of the Final 2016 Massachusetts Small MS4 General Permit ("Appendix A") signed April 4, 2016 with an effective date of July 1, 2018, (MS4 General Permit) or as most recently amended, shall be construed to have the meaning presented in Appendix A.

**Common Plan of Development** - A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan. This Bylaw shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly-controlled persons or entities) as of the effective date of this Bylaw. A development shall not be segmented or phased in a manner to avoid compliance with this Bylaw. For example, if a developer buys a twenty-acre lot and builds roads, installs pipes, and runs electricity with the intention of constructing homes or other structures sometime in the future, this would be considered a larger common plan of development or sale. If the land is parceled off or sold, and

construction occurs on separate lots by independent builders, this activity still would be subject to stormwater and land disturbance permitting requirements if the smaller plots were included on the original site plan.

**Direct Connection** – A discharge that is connected to the MS4 through a pipe.

**Indirect Connection** – A flow generated outside the MS4 that enters through storm drain inlets or by infiltrating through the joints of the pipe.

**Discharge** – When used without qualifications, means the “discharge of a pollutant.”

**Discharge of a pollutant** – Any addition of any pollutant or combination of pollutants to waters of the United States from any point source. This includes additions of pollutants into waters of the United States from surface runoff which is collected and channeled by man; or discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

**Illicit Connection** - A direct or indirect connection, which allows an illicit discharge into the MS4, 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 or approved before the effective date of this Bylaw.

**Illicit Discharge** – Any discharge to a MS4 that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than NPDES permit for discharges from the MS4) and discharges from firefighting activities.

**Illicit Discharge Detection and Elimination Program (IDDE)** – The Town’s systematic procedure for locating and removing illicit discharges via catchment investigations and dry and wet weather outfall screening and sampling as administered and enforced by the Town’s Department of Public Works (DPW).

**Impervious Surface** – Any surface that prevents or significantly impedes the infiltration of water into the underlying soil. This can include but is not limited to: roads, driveways, parking areas and other areas created using non porous material; buildings, rooftops, structures, artificial turf and compacted gravel or soil.

**Land Disturbance** – An action to alter the existing surface, vegetation and/or underlying soil of a site, such as demolition, clearing, grading, site preparation (e.g., excavating, cutting and filling), soil compaction, construction, and movement and stockpiling of top soils.

**Limit of Work** – The boundaries of the full extent of the area of land to be altered or disturbed during a construction project. The boundary beyond which no construction work will take place. Includes but is not limited to the areas where trees and other vegetation will be cleared, where the sod layer and other earth materials will be removed, where excavation and grading will occur, where buildings and infrastructure will be constructed, and areas to be used for truck parking, equipment storage, and material storage during construction. Limit of Work is also known as the area encompassed by erosion controls.

**Municipal Separate Storm Sewer System (MS4)** – A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- a. Owned and operated by the Town that discharges to waters of the United States
- b. Designated or used for collection or conveyance stormwater
- c. Which is not a combined sewer; and
- d. Which is not part of Publicly Owned Treatment Works (POTW) is as defined at 40 CFR 122.2.

**New Development** – Any construction activities or land alteration resulting in total land disturbances of 20,000 square feet or greater (or activities that are part of a larger common plan of development disturbing greater than 20,000 square feet) on an area that is not developed which will now include impervious cover.

**Outfall** – A point source where the MS4 discharges to waters of the United States.

**Outfall Catchment** – The land area draining to a single outfall or interconnection. The extent of an outfall's catchment is determined not only by localized topography and impervious cover but also by the location of drainage structures and the connectivity of MS4 pipes.

**Permitting Authority** — The Conservation Commission or Planning and Economic Development Board (PEDB) as described in Section 26.5.3.

**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 agriculture stormwater runoff.

**Pollutant** – Dredged spoil, solid waste, incineration residue, filter backwash, sewage, garbage, sewer sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agriculture waste discharged into water.

**Redevelopment** – Any construction, land alteration, or improvement of impervious surfaces resulting in total land disturbances 20,000 square feet or greater (or activities that are part of a larger common plan of development disturbing 20,000 square feet or greater that does not meet the definition of New Development (see above).

**Stormwater** – Stormwater runoff, snow melt runoff, and surface runoff and drainage.

**Total Suspended Solids (TSS)** – The entire amount of organic and inorganic particles dispersed in water. TSS is a water quality metric used to assess the quality of a water sample.

**Town** – Town of Medway

**Unauthorized Connection** – A connection that discharges to the Town's MS4 without written permit from the Town.

## **SECTION 26.4 DISCHARGES TO THE MS4**

### **Section 26.4.1. Prohibited Activities:**

- a) No person shall dump, discharge, cause or allow to be discharged any pollutant,

unauthorized water from a point source, prohibited non-stormwater, or any other illicit discharge into the MS4 and/or Town right-of-way.

- b) No person shall construct, use, allow, maintain or continue any illicit connection or unauthorized connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.
- c) No person shall obstruct or interfere with the normal flow of stormwater into or out of the MS4 without prior written approval from the Enforcement Authority.
- d) No person shall dump or dispose of yard waste (leaves, grass clippings, etc.) into the MS4, or into catch basins, retention/detention basins or any other component of a stormwater management system which discharges to the MS4.

#### **Section 26.4.2. Pre-existing Discharges.**

- a) Illicit discharges, illicit connections, and unauthorized connections in existence prior to the adoption of this Bylaw shall be discontinued in compliance with the Town's Illicit Discharge Detection and Elimination (IDDE) program.
- b) Unauthorized connections that discharge only stormwater to the Town MS4 may be allowed to continue only with a MS4 Permit from the DPW following an examination of potential alternatives and a finding by the DPW that there is no viable alternative. In such a case, the owner of the property has the burden of demonstrating that there is no viable alternative. The owner of the property will be required to mitigate any stormwater discharge by on-site management to the maximum extent practicable, and by treatment of any stormwater prior to discharge to the Town's MS4 system to remove any pollutants and a minimum of 80% of TSS.

#### **Section 26.4.3. Non-Stormwater Discharges**

##### **26.4.3.1. Allowable Non-Stormwater Discharges**

The following categories of non-stormwater discharges are allowed unless the Town, the United States Environmental Protection Agency (EPA), or the Massachusetts Department of Environmental Protection (MassDEP) identifies any category or individual discharge of non-stormwater discharge as a significant contributor of pollutants to the MS4. Then that category or individual discharge is not allowed but rather shall be deemed an "illicit discharge" and the Town shall address that category or individual discharge as part of its IDDE Program:

- a. Water line flushing
- b. Diverted stream flows
- c. Discharge from potable water sources
- d. Air conditioning condensation
- e. Irrigation water, springs
- f. Individual resident car washing without detergents or chemicals
- g. Flows from riparian habitats and wetlands
- h. Street wash waters
- i. Residential building wash waters without detergents
- j. Fire-fighting activities

##### **26.4.3.2. Non-Stormwater Discharges Requiring a MS4 Connection and Discharge (CD)**

## Permit

A limited category of non-stormwater discharges are only allowed with a permit from the Department of Public Works (DPW). Such permits may be granted only following an examination of potential alternatives and a finding by DPW that there is no viable alternative and no detriment to the public good. These categories are:

- a. Uncontaminated pumped ground water
- b. Foundation drains
- c. Water from crawl space pumps
- d. Footing drains

### 26.4.3.3. Prohibited Non-Stormwater Discharges

The following non-stormwater discharges are strictly prohibited:

- a. Chlorinated swimming pool discharges
- b. Landscape irrigation
- c. Lawn watering
- d. Discharging anything other than stormwater or non-stormwater allowed under section 26.4.3.1. and 26.4.3.2. into the street.

### Section 26.4.4. 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 MS4 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 Fire Department and the Department of Public Works (DPW). In the event of a release of non-hazardous material, the reporting person shall notify DPW no later than the next business day. The reporting person shall provide to DPW written confirmation of all telephone, electronic or in-person notifications within three 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 years.

### Section 26.4.5. Municipal Separate Storm Sewer System (MS4) Permit Application

#### 26.4.5.1. Applicability

The MS4 Permit shall apply to

- a. Unauthorized connections described in section 26.4.2.b. of this Bylaw.
- b. Unauthorized non-stormwater discharges as described in section 26.4.3.2. of this Bylaw.

#### 26.4.5.2. MS4 Rules and Regulations

The Department of Public Works shall promulgate MS4 Rules and Regulations to carry out the purpose and intent of Section 26.4 Discharges to the MS4, including but not limited to application requirements for MS4 permits; procedures for submission and review of applications; performance standards; waivers; decision criteria; construction monitoring; reporting; and enforcement.

## **SECTION 26.5 LAND DISTURBANCE AND CONSTRUCTION ACTIVITY**

### **Section 26.5.1. Applicability**

This section shall apply to all activities in which the limit of work results in disturbance of:

- a. 20,000 square feet or more or
- b. Review for removal, disturbance, alteration, or addition of 10,000 square feet or more of impervious surface.

### **Section 26.5.2. Land Disturbance Permit**

#### **26.5.2.1. Applicability**

Except as authorized by the applicable board or commission, no person shall perform any applicable land disturbance activity without a Land Disturbance Permit. Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulations 310 CMR 10.04, is exempt. Roadway and utilities improvement and maintenance undertaken by the Town is also exempt from permitting but such road work that involves increasing impervious surface by more than a single lane width shall comply with MS4 General Permit requirements.

#### **26.5.2.2. Outside Consultants and Fees**

In connection with Land Disturbance Permit applications involving technical, legal, or other issues as to which the Permitting Authority considers it necessary or desirable to engage an outside consultant or consultants, such as engineers, lawyers, planners, licensed site professionals, or other appropriate professionals, to advise the Permitting Authority on those issues, the Permitting Authority may, in its sole discretion, require that the applicant pay a reasonable review fee sufficient to enable the Board to retain consultants of its choice, said fee to be deposited into a special separate account established pursuant to Mass. G.L. c. 44, Section 53G.

#### **26.5.2.3. Rules and Regulations.**

The Conservation Commission and the Planning and Economic Development Board shall promulgate Land Disturbance Permit Rules and Regulations to implement the Land Disturbance Permit process provided herein. The Rules and Regulations shall include but are not limited to application requirements, procedures for submission and review of applications, filing and review fees, performance standards, waivers, decision criteria, construction monitoring, reporting and enforcement.

### **Section 26.5.3. Coordinated Permitting**

The Conservation Commission shall be the Permitting Authority for Land Disturbance permits, except that, if subdivision, site plan, or special permit approval from the Planning and Economic Development Board (PEDB), is required, and there are no activities subject to the Conservation Commission jurisdiction under the Wetland Protection Act or the Town's Wetland Protection Bylaw, Land Disturbance Permits shall be reviewed and issued by the PEDB as a component of those other permits, including the fees, regulations, timing, notice and hearing requirements of those other permits

### **Section 26.5.4. Application**

A completed application for a Land Disturbance Permit that complies with the requirements of the Stormwater Management and Land Disturbance Rules and Regulations (hereinafter "Land Disturbance Rules and Regulations") shall be filed with

the Permitting Authority and when applicable, shall be submitted in conjunction with any other permit application to the applicable Permitting Authority as established in Section 25.5.3. A permit must be obtained prior to the commencement of any applicable land disturbing activity. The Land Disturbance Permit Application package shall include the following in addition to any other requirements set forth in the Land Disturbance Rules and Regulations:

- a. a completed Land Disturbance Application Form with original signatures of Applicant and all Owners;
- b. Erosion and Sediment Control Plan;
- c. Drainage Calculations in compliance with the most current Massachusetts Stormwater Management Standards and the National Oceanic and Atmospheric Administration (NOAA) Atlas 14+ precipitation rates as may be updated;
- d. Narrative on how the project meets the most current Massachusetts Stormwater Management Standards;
- e. Construction sequencing or phasing plan;
- f. Stormwater Operations and Maintenance Plan during Construction;
- g. Post-Construction Stormwater Management Plan;
- h. Long-Term Stormwater Operations and Maintenance Plan;
- i. Other permits already received for the project;
- j. Request for Waivers from the provisions of Section 26.5 of this Bylaw if necessary;
- k. Application and/or filing fee when applicable; and,
- l. Calculation of limit of work.

#### **Section 26.5.5. Waivers**

The Permitting Authority may waive strict compliance with any requirement of this Bylaw or the Rules and Regulations promulgated hereunder, where:

- a. Such action is allowed by federal, state and local statutes and/or regulations,
- b. a waiver is in the public interest, or
- c. a waiver is not inconsistent with the purpose and intent of this Bylaw, or
- d. the requirement does not apply to the particular site or situation under review, or
- e. a waiver would permit a superior design.

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 the waiver request meets the criteria of this section. All waiver requests shall be discussed and voted on at the public hearing for the project. If in the opinion of the Permitting Authority, additional time or information is required for review of a waiver request, it may continue the review to a date certain announced at the meeting.

## **Section 26.5.6. Erosion and Sediment Control Plan**

### **26.5.6.1. Applicability**

An Erosion and Sediment Control Plan (ESCP) is required of all construction site operators performing land disturbance activities under the jurisdiction of this Bylaw. The ESCP shall be submitted with the Land Disturbance Permit and shall contain sufficient information to describe the nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, and proposed erosion and sediment controls. Details of the Erosion and Sediment Control Plan content are described in the Land Disturbance Rules and Regulations. The Applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements listed in Section 26.5.6.2. below.

### **26.5.6.2. Design Requirements**

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

- a. Minimize total area of disturbance and protect natural resources;
- b. Sequence activities to minimize simultaneous areas of disturbance;
- c. Minimize soil erosion and control sedimentation during construction and document that proposed measures can handle the point precipitation frequencies for rates within a twenty-four hour period for a 100-year storm as provided in the NOAA Atlas 14+, recognizing that prevention of erosion is preferred over sedimentation control;
- d. Protect slopes on the construction site;
- e. Protect all storm drain inlets and armor all newly constructed outlets;
- f. Divert uncontaminated water around disturbed areas;
- g. Install and maintain all Erosion and Sediment Control measures in accordance with the manufacturer's specifications and good engineering practices;
- h. Stabilize construction site entrances and exits and use perimeter controls to prevent off-site vehicle tracking of sediment;
- i. Protect and manage on and off-site material storage areas (overburden and stockpiles of dirt, borrow areas, or other areas used solely by the permitted project are considered a part of the project);
- j. Comply with applicable federal, state and local laws and regulations including waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control;
- k. Prevent significant alteration of habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or Of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species from the proposed activities;
- l. Institute interim and permanent stabilization measures, which shall be instituted on a disturbed area as soon as practicable but no more than 14 days after

construction activity has temporarily or permanently ceased on that portion of the site;

- m. Properly manage on-site construction and waste materials; including but not limited to, discarded building materials, concrete truck wash out, chemicals, litter, and sanitary wastes. These wastes may not be discharged to the MS4.

### **Section 26.5.7 Stormwater Operations and Maintenance Plan during Construction**

#### **26.5.7.1. Applicability**

The Applicant shall submit a narrative titled “Stormwater Operations and Maintenance Plan (O&M) during Construction,” which describes how the project site will be managed during construction.

#### **26.5.7.2. Stormwater Operations and Maintenance Plan during Construction Content**

The narrative shall include:

- a. Good housekeeping practices, such as but not limited to, street sweeping, erosion and sediment control inspections and repairs, inspections of any pre-existing stormwater systems;
- b. Storage of materials and waste products inside or under cover;
- c. Routine inspections and maintenance of stormwater best management practices (BMPs);
- d. Spill prevention and response;
- e. Proper management of deicing chemicals and snow;
- f. Protection and stabilization of soils;
- g. Storage use and use of fertilizers, herbicides, and pesticides;
- h. Operations and maintenance of sanitary systems;
- i. Routine inspection of vehicles and equipment for leaks, spills, and other sources of pollutants.

#### **26.5.7.3. Reports**

Reports shall be submitted bi-weekly to the Permitting Authority and after any storm event resulting in 0.25 inches of precipitation or more within twenty-four hours.

### **Section 26.5.8 Post-Construction Stormwater Management Plan**

#### **Section 26.5.8.1 Applicability**

The application for a Land Disturbance Permit shall include a Post-Construction Stormwater Management Plan. The Post-Construction Stormwater Management Plan shall contain sufficient information for the applicable Permitting Authority to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the Applicant for reducing adverse impacts from stormwater. The Plan shall be designed to meet the most current Massachusetts Stormwater Management Standards and utilize NOAA Atlas 14+ precipitation rates as may be updated from time to time. Applicant’s

design shall reflect the most stringent requirements for stormwater management, whether it be federal, state, or local requirements. Details of the requirements for the Post-Construction Stormwater Management Plan content are described in the Land Disturbance Permit Rules and Regulations.

#### 26.5.8.2 Stormwater Design Requirements

##### a. Low Impact Development.

Projects shall use Low Impact Development (LID) site planning and design strategies unless infeasible and shall comply with the following requirements:

1. Reduce runoff and pollutant loading by managing runoff as close to its source as possible;
2. Utilize integrated LID and individual small-scale stormwater management practices (isolated LID practices) to promote the use of natural systems for infiltration, evapotranspiration, the harvesting and use of rainwater, and reduction of flows to drainage collection systems;
3. Reduce impervious cover;
4. Conserve and protect natural lands, especially open space landscapes, high quality wildlife habitat, and existing farmland;
5. Utilize compact building design and increasing density to prevent sprawl, enhance walkability, and preserve more undisturbed natural areas;

##### b. For new development sites:

1. Stormwater management systems must be designed to meet the most current Massachusetts Stormwater Standards and utilize NOAA Atlas 14+ precipitation rates as may be updated;
2. All stormwater management systems shall be designed to:
  - a) Retain the volume of runoff equivalent to, or greater than, one inch multiplied by the total post-construction impervious surface area on the site AND
  - b) Remove 90% of the average annual load of Total Suspended Solids (TSS) AND 60% of the average annual load of Total Phosphorus (TP) generated from the total post-construction impervious area on the site. Pollutant removal shall be calculated consistent with EPA Region 1's BMP Performance Extrapolation Tool or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance any federally or State approved BMP design guidance or performance standards (e.g. State stormwater handbooks and design guidance manuals) may be used to calculate BMP performance. The required removal percentage is not required for each storm; it is the average removal over a year that is required.

##### c. For redevelopment sites:

1. Stormwater management systems on redevelopment sites shall meet the most current Massachusetts Stormwater Standards and utilize NOAA Atlas 14+ precipitation rates as may be updated.

2. Stormwater management systems on redevelopment sites shall also improve existing conditions and be designed to:

- a) Retain the volume of runoff equivalent to, or greater than, 0.80 inch multiplied by the total post-construction impervious surface area on the site AND
- b) Remove 80% of the average annual post-construction load of Total Suspended Solids (TSS) AND 50% of the average annual load of Total Phosphorus (TP) generated from the total post-construction impervious area on the site. Pollutant removal shall be calculated consistent with EPA Region 1's BMP Performance Extrapolation Tool or other BMP performance evaluation tool provided by EPA Region 1 where available. If EPA Region 1 tools do not address the planned or installed BMP performance any federally or State approved BMP design guidance or performance standards (e.g. State stormwater handbooks and design guidance manuals) may be used to calculate BMP performance.

3. Redevelopment activities that are exclusively limited to maintenance and improvement of existing roadways, (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects) shall improve existing conditions unless infeasible and are exempt from the MS4 General Permit part 2.3.6.a.ii.4. Roadway widening or improvements that increase the amount of impervious area on the redevelopment site by greater than or equal to a single lane width shall meet the requirements of part 2.3.6.a.ii.4. of MS4 General Permit as most recently amended.

- d. All stormwater management systems must have a Long-Term Operation and Maintenance plan prepared in accordance with Section 26.5.9. to ensure that systems function as designed.
- e. No new stormwater conveyances (e.g. outfalls) may discharge untreated stormwater directly to or cause erosion in wetlands or waters of the Commonwealth.

#### 26.5.8.3 Recording

The Post-Construction Stormwater Management Plan shall be recorded at the Registry of Deeds along with the decision of the applicable Permitting Authority.

### **Section 26.5.9 Long-Term Operation and Maintenance Plan**

#### 26.5.9.1 Applicability

A Long-Term Operation and Maintenance Plan (O&M Plan) is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the Permit, this Bylaw and the Massachusetts Stormwater Standards are met in all seasons and throughout the life of the system. The applicable Permitting Authority shall make the final decision of what maintenance option is appropriate in a given situation. The applicable Permitting Authority will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance

activities when making this decision. The Long-Term Operation and Maintenance Plan shall remain on file with the applicable Permitting Authority and the Department of Public Works . Adherence to the O & M Plan shall be an ongoing requirement.

#### 26.5.9.2 Plan Contents

The Long-Term Operation and Maintenance Plan shall include:

- a. The name(s) of the owner(s) for all components of the system;
- b. Maintenance agreements that specify:
  1. The names and addresses of the person(s) responsible for operation and maintenance,
  2. The person(s) responsible for financing maintenance and emergency repairs,
  3. A maintenance schedule for structural and non-structural stormwater BMP's,
  4. A list of easements to the town with the purpose and location of each, if applicable,
  5. The signature(s) of the owner(s) acknowledging responsibility of maintenance.

#### 26.5.9.3 Stormwater Management Easement(s).

- a. Stormwater management easements may be required for areas used for off-site stormwater control.
- b. Stormwater management easements shall be provided to the Town by the property owner(s) as necessary to comply with the Post-Construction Stormwater Management Plan and Long-Term Operation and Maintenance Plans for:
  1. access for facility inspections and maintenance, preservation of stormwater runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the 100-year storm event.
  2. direct maintenance access by heavy equipment to structures requiring regular cleanout.
- c. The purpose of each easement shall be specified in the Long-Term Operation and Maintenance agreement signed by the property owner.
- d. Easements along with a plan illustrating their location shall be recorded with the Norfolk County Registry of Deeds prior to issuance of a Certificate of Project Completion by the applicable Permitting Authority.

#### 26.5.9.4 Changes to Long-Term Operation and Maintenance Plan

- a. The owner(s) of the stormwater management system must notify the Department of Public Works of changes in ownership or assignment of financial responsibility.
- b. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this Bylaw by mutual agreement of the Department of Public Works and the Responsible Parties. Proposed amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility. Proposed amendments must be described in detail along with reasons why the Town should consider them. Amendments will not

be considered until at least three years after Project Completion as defined in Section 26.5.14.

#### 26.5.9.5 Recording

The Long-Term Operation and Maintenance Plan shall be recorded at the Registry of Deeds along with the decision of the applicable Permitting Authority and the Post-Construction Stormwater Management Plan.

#### 26.5.9.6 Reports

The property owner shall provide an annual report to the Permitting Authority and Department of Public Works by December 15. The Report shall include documentation of compliance with the O & M Plan, including photographs, and maintenance receipts as applicable.

### **Section 26.5.10. Inspection and Site Supervision**

#### 26.5.10.1. Pre-construction Meeting

Prior to clearing, excavation, construction, or land disturbing activity, the Applicant, the Applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet with appropriate Town staff and/or designated agents, to review the permitted plans and their implementation.

#### 26.5.10.2. Construction Inspection

The applicable Town staff or its designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the Permittee wherein the work fails to comply with the Land Disturbance Permit as approved. The Land Disturbance Permit and associated plans for grading, stripping, excavating, and filling work, bearing the signature of approval of applicable Permitting Authority, shall be maintained at the site during the progress of the work. In order to obtain inspections, the Permittee shall notify applicable Permitting Authority at least two working days before each of the following events:

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

A written report of these inspections shall be provided to both the Permittee and the applicable Permitting Authority by the Town staff or designated agent. Such inspections may be combined with other inspections required under any other permits issued to authorize the project.

#### 26.5.10.3. Permittee Inspections and Reporting

The Permittee or Permittee's agent shall conduct and document inspections of all control measures no less than weekly during construction or as specified in the Land Disturbance Permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The Permittee or Permittee's

agent shall submit reports to the applicable Permitting Authority or designated agent as outlined in section 26.5.7.

#### **26.5.10.4. Access Permission**

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

#### **Section 26.5.11. Surety**

In instances where the proposed Land Disturbance does not require a special permit or site plan approval from the Planning and Economic Development Board, the applicable Permitting Authority may require the Permittee to post a performance guarantee in a form acceptable to Town Counsel and the Town Treasurer before the start of land disturbance activity. The Permitting Authority shall consider the size of the overall project, the potential environmental harms if work is not completed in compliance with the Permit, any unique topographical or other natural features of the site, the extent of mitigation needed, and other relevant factors in determining whether a performance guarantee is necessary to protect the interests of this Bylaw. The form of the surety shall be in an amount deemed sufficient by the applicable Permitting Authority to ensure that the work will be completed in accordance with the Permit. If the project is phased, the applicable Permitting Authority may release part of the surety as each phase is completed in compliance with the Permit but the surety may not be fully released until the applicable Permitting Authority has received the final report as required by Section 26.5.12. and has issued a Certificate of Completion. The amount of the surety shall be sufficient to ensure that the site may be stabilized, including a minimum of six inches of loam seeded over any disturbed area along with erosion controls plus 25% contingency.

#### **Section 26.5.12. Final Reports**

Upon completion of the work, the Permittee shall submit to the applicable Permitting Authority a report from the Professional Engineer (P.E.) of record, certifying that the project has been completed in accordance with the conditions of the approved Permit and the approved plans and including an as-built plan as described in Section 26.5.13. Any deviations should be noted in the cover letter. The Final Report shall include the Long-Term Operation and Maintenance Plan as described in 26.5.9.

#### **Section 26.5.13. Certified As-Built Plan**

As-Built Plans must depict all on-site controls, both structural and non-structural, designed to manage stormwater and demonstrate that the proposed work was completed in accordance with the approved Land Disturbance Permit. As-built construction plans must be stamped by a Professional Engineer (P.E.) and a Massachusetts Land Surveyor.

#### **Section 26.5.14. Project Completion**

The Permitting Authority will issue a document certifying completion upon receipt and approval of the Final Reports and As-Built Plans and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this Bylaw.

Such certification may be a component of Conservation Commission Certificate of Compliance or a PEDB Certificate of Completion. A copy of the Certificate, Final Report and As-built Plan shall be submitted by the Permitting Authority to the Department of Public Works.

## **SECTION 26.6. ENFORCEMENT**

### **Section 26.6.1. Applicability**

The Director of the Department of Public Works or his designee shall enforce Section 26.4 of this Bylaw, and the applicable Permitting Authority or an authorized agent shall enforce Section 26.5 of this Bylaw, (herein the “enforcing authority”), including associated regulations, and may issue orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

### **Section 26.6.2. Orders**

- a. The enforcing authority 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 any unauthorized or illicit connection, or illicit discharging to the MS4 until there is compliance with the Bylaw and provisions of the MS4 permit;
  - 2) 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;
  - 3) Maintenance, installation or performance of additional stormwater BMPs or erosion and sediment control measures;
  - 4) Monitoring, analyses, and reporting;
  - 5) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.
- b. If the enforcing person determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and the property owner shall reimburse the Town expenses.
- c. Within thirty days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Town Administrator within thirty 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 days following a decision of the Town Administrator affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in G.L. Ch. 59, § 57, after the thirty-first day following the day on which the costs were due.

### **Section 26.6.3. Non-Criminal Disposition**

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and Article XX of the Town of Medway General Bylaws through the applicable enforcing person. The penalty for the first violation shall be a written warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

### **Section 26.6.4. Criminal Penalty**

Any person who violates any provision of this Bylaw, regulation, order or permit issued there under, shall be punished by a fine of not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

### **Section 26.6.5. Appeals**

The decisions or orders of the DPW, PEDB or Conservation Commission shall be final. Further relief shall be to a court of competent jurisdiction.

### **Section 26.6.6. 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.

### **SECTION 26.7. SEVERABILITY**

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

[As amended through November 13, 2023 Town Meeting]