

Chapter XX

EROSION AND STORMWATER CONTROL

§ XX-1. Purpose.

- A. The purpose of this chapter is to protect, maintain and enhance the public health, safety, environment and general welfare of the Town by establishing minimum requirements and procedures to control the adverse effects of soil erosion and sedimentation, construction site runoff, increased post-development stormwater runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources, protect and enhance wildlife habitat, and promote groundwater recharge to protect surface and groundwater drinking supplies. This chapter seeks to meet that purpose through the following objectives:
- (1) Establish a mechanism by which the municipality can monitor and ensure compliance with requirements of its National Pollutant Discharge Elimination System (NPDES) MS4 General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems and other applicable state and federal mandates.
 - (2) Establish decision making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources.
 - (3) Require that new development, redevelopment and other land alteration activities maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics, where appropriate, in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats.
 - (4) Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to alterations in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff; establish minimum design criteria for measures to eliminate or minimize to the extent feasible nonpoint source pollution from stormwater runoff which would otherwise degrade water quality.
 - (5) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet or exceed the minimum post-development stormwater management standards.
 - (6) Require, when feasible, the use of nonstructural stormwater management, better site design practices or "low-impact development practices," such as reducing impervious cover, minimizing the area of disturbance, increasing site-wide infiltration, and preserving open space and other natural areas, to the maximum extent practicable.
 - (7) Promote water conservation through the re-use of stormwater for irrigation.

- (8) Establish provisions that require practices that eliminate soil erosion and sedimentation and control the volume and rate of stormwater runoff resulting from land disturbance activities.
- (9) Establish provisions to ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.
- (10) Establish provisions for the long-term responsibility for and maintenance and operation of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety or the environment.
- (11) Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of stormwater facilities implemented as part of this chapter.
- (12) Establish administrative procedures for the submission, review, approval or disapproval of stormwater management plans, erosion and sediment controls, and for the inspection of approved active projects, and long-term follow up; establish certain administrative procedures and fees for the submission, review, approval, or disapproval of stormwater plans, inspection of construction sites, and the inspection of approved projects.
- (13) Ensure that construction and waste materials, toxic materials, hazardous materials, hazardous wastes and other pollutants used and stored on site are prevented from mixing with stormwater runoff, which would degrade water quality.
- (14) Establish the Town of Salisbury's legal authority and capacity to ensure compliance with the provisions of this chapter through funding, permitting, inspection, monitoring, and enforcement.
- (15) Establish a permit mechanism and associated fees for activities covered under this chapter.

B. Nothing in this Bylaw is intended to replace or supersede the requirements of the Town of Salisbury Zoning Bylaw, the Massachusetts Wetlands Protection Act, and/or any other bylaw that may be adopted by the Town of Salisbury, and/or any rules and regulations adopted thereunder.

§ XX-2. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter. Additional definitions may be adopted by separate regulation.

ALTER — Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site.

BEST MANAGEMENT PRACTICE (BMP) — Structural, nonstructural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source

pollution, and promote stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

BETTER SITE DESIGN — Site design approaches and techniques, including low- impact development (LID) that can reduce a site's impact on the watershed through the use of nonstructural stormwater management practices. Better site design includes conserving and protecting natural areas and green space, reducing impervious cover, using natural features for stormwater management, and providing site-wide infiltration.

COMMON PLAN OF DEVELOPMENT OR SALE - One plan for development or sale, separate parts of which are related by any announcement, piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, plat, blueprint, contract, permit application, zoning request, computer design, etc.), physical demarcation (including contracts) that identify the scope of the project. A plan may still be a common plan of development or sale even if it is taking place in separate stages or phases, is planned in combination with other construction activities, or is implemented by different owners or operators.

DEVELOPMENT — Any construction that disturbs or alters a parcel of land.

DISTURBANCE OF LAND — Any action causing removal of vegetation or a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material.

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

ILLICIT CONNECTION — A surface or subsurface drain or conveyance which allows an illicit discharge into the Salisbury storm drain system regardless of whether said connection was previously allowed, permitted or applied for before the effective date of this Bylaw.

ILLICIT DISCHARGE — Direct or indirect discharge to the Salisbury storm drain system that is not composed entirely of stormwater, including and without limitation, sewage, processed stormwater, or wash water, except as exempted in 57-7 of this Bylaw or in implementing regulations.

LOW-IMPACT DEVELOPMENT (LID) — An ecosystem-based approach to land development and stormwater management that ensures that each development site is designed to protect, or restore, the natural hydrology of the site.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS — The latest version, as may be amended from time to time, of the Stormwater Management Standards and accompanying Stormwater Handbook issued by the Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, MGL c. 131, § 40, and the Massachusetts Clean Waters Act, MGL c. 21, §§ 26 through 53. The Stormwater Management Standards are 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).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM — The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin,

natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Salisbury.

NONPOINT SOURCE POLLUTION — Pollution from many diffuse sources caused by rainfall, snowmelt, or other method of pollutant transport moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

NORMAL MAINTENANCE — Activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.

PERMIT GRANTING AUTHORITY ("PGA") — The Conservation Commission or its agents designated to administer and enforce this chapter.

POST-DEVELOPMENT — The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity in accordance with approved plans on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

PRE-DEVELOPMENT — The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

RECHARGE — The replenishment of underground water reserves.

REDEVELOPMENT — Any construction, alteration, improvement, repaving, or resurfacing on a previously developed site. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management such as stormwater retrofit projects

RUNOFF — Rainfall or snowmelt water flowing over the ground surface or other source which may result in transport of pollutants.

SITE — The entire parcel of land being developed.

STOCKPILING — The storage of material for future use, excluding the storage of materials 10 cubic yards or less secured and utilizing erosion controls to prevent erosion of material.

STORMWATER MANAGEMENT — The use of structural or nonstructural practices that are designed to control or treat stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates. Stormwater management includes the use of low-impact development (LID) management practices.

STORMWATER MANAGEMENT PERMIT (SMP) — A permit issued by the Conservation Commission in its capacity as the PGA, after review of an application, plans, calculations, and other supporting documents, which are designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

§ XX-3. Legislative authority.

This chapter is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34., and as authorized by the residents of the Town of Salisbury at Town Meeting dated May 15, 2023.

§ XX-4. Applicability.

- A. This chapter shall be applicable to all new development and redevelopment, land disturbance and any other activity that will result in an increased amount of stormwater runoff or pollutants flowing from a parcel of land that exceed any of the stormwater management permit thresholds in § XX-4B, unless exempt pursuant to § XX-5 of this chapter. This chapter shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly controlled persons or entities) or part of a common plan of development as of the effective date of this chapter, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds in § XX-4B and are not exempted by § XX-5. A development shall not be segmented or phased in a manner to avoid compliance with this chapter.
- B. Stormwater management permit thresholds.

A minor stormwater management permit shall be required for any of the following, except for an activity exempt per § XX-6:

(1) **Administrative permit:**

- (a) The creation of new impervious area, or expansion of existing impervious area, greater than 200 square feet and less than 2,500 square feet.
- (b) Disturbance of land exceeding 1,000 square feet in area and not exceeding 5,000 square feet or 10% of a parcel, whichever is less.
- (c) Stockpiling of material 10 cubic yards or more

A major stormwater management permit shall be required for any of the following, except for an activity exempt per § XX-6:

(2) **Major permit:**

- (a) Any land disturbance exceeding an area of 5,000 square feet or more than 20% of a parcel or lot, whichever is less.
- (b) Any activity that will disturb land with a 10% or greater slope or where an area is proposed to have a 10% or greater finished slope, and where the land disturbance is greater than or equal to 2,500 square feet within the sloped area.
- (c) Creation of new impervious surface area, or expansion of existing impervious area, greater than 2,500 square feet.
- (d) The addition or on-site redistribution of more than 100 cubic yards of earth materials, including, but not limited to, sand, gravel, stone, soil, loam, clay, sod, fill and mineral products.

§ XX-5. Prohibited Activities & Allowable Non-Stormwater Discharges.

A. 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 Highway Department.

B. Allowable Non-Stormwater Discharges: The following activities are allowed without the need for consultation with the Conservation Commission:

1. Discharge or flow resulting from firefighting activities.
2. Waterline flushing.
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 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 Highway Department or Board of Health prior to the time of the test 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 Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
15. Discharge for which advanced written approval is received from the Highway Department as necessary to protect public health, safety, welfare or the environment.

§ XX-6. Exemptions.

Exemptions from this chapter apply to the following activities, provided that a project is solely comprised of any one of these activities:

- A. As authorized in the NPDES general permit for stormwater discharges for small MS4s for Massachusetts, an activity that is wholly subject to jurisdiction under the Wetlands Protection Act and demonstrates compliance with Massachusetts stormwater standards as reflected in an issued order of conditions, provided that the activity also demonstrates compliance with any additional performance standards contained in the regulations promulgated to implement this chapter.
- B. Construction of any single-family or duplex dwelling on a parcel under 1 acre.
- C. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04 ("Agricultural").
- D. Normal maintenance of Town-owned public land, ways and appurtenances.
- E. Repair, replacement, or reconstruction of an existing driveway, provided that erosion control measures are utilized to prevent runoff and sediment from entering a traveled way or adjacent properties.
- F. Any work or projects for which all necessary approvals and permits were issued before the effective date of this chapter.
- G. Normal maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling, provided erosion control measures are utilized to prevent runoff and sediment from entering a traveled way or adjacent properties.
- H. Construction of any fence that will not alter existing terrain or drainage patterns.
- I. Repair or replacement of septic systems or wells when approved by the Board of Health for the protection of public health on lots having an existing dwelling, provided that the Board of Health determines:
 - (1) There is minimal grading as defined in Title 5 of the State Environmental Code, 310 CMR 15.000;
 - (2) There is no change or expansion of use as defined by Title 5; and

- (3) The work includes the use of BMPs to prevent erosion, sedimentation, and release of pollutants.
- I. Construction of utilities (gas, water, wastewater systems, electric, telephone, cable television, etc.) other than drainage which will not alter terrain, ground cover, or drainage patterns, so long as BMPs are used to prevent erosion, sedimentation and release of pollutants.
- J. Emergency repairs to any existing utilities (gas, water, wastewater systems, electric, telephone, cable television, etc.) and emergency repairs to any stormwater management facility or practice that poses a threat to public health or safety, designated by the PGA. 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. This would require verbal authorization from the authority having jurisdiction.
- K. The maintenance, reconstruction or resurfacing of any public way, and the installation of drainage structures or utilities within or associated with public ways that have been approved by the appropriate authorities, provided that written notice be filed with the PGA 14 days prior to commencement of activity.
- L. The removal of earth products undertaken in connection with an agricultural use if the removal is necessary for or directly related to planting, cultivating or harvesting or the raising or care of animals.

§ XX-7. Administration.

- A. The Conservation Commission (PGA) shall be responsible for the administration, implementation, and enforcement of this chapter.
- B. Any powers granted to or duties imposed upon the PGA may be delegated, in writing, by the PGA to its employees or agents or other municipal employees as appropriate.
- C. Stormwater and erosion control regulations ("regulations"). The PGA may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), delegation of authority, procedures and administration of this chapter after conducting a public hearing to receive comments on the proposed rules and regulations or any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation at least seven days prior to the hearing date. Failure of the PGA 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 chapter.
- D. Massachusetts Stormwater Handbook. The PGA will utilize the policy, criteria and information, including specifications and standards, of the most recent edition of the Massachusetts Stormwater Handbook for execution of the provisions of this chapter. Unless otherwise specified in the regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.
- E. Stormwater management permit. The PGA's agent shall have the authority to issue an administrative stormwater management permit (ASMP) for projects exceeding the

thresholds defined in § XX-4B(1) of this chapter and not otherwise exempted by §XX-6. The PGA shall have the authority to issue a major stormwater management permit (SMP) for projects exceeding the thresholds defined in § XX-4B (2) of this chapter and not otherwise exempted by § XX-6. Requirements of the SMP may be defined and included within the regulations promulgated pursuant to § XX-7C of this chapter.

F. Action by the PGA. Each application for a stormwater management permit that complies with the regulations, and is determined to be a complete application by the PGA, shall be acted upon within 45 days of the date of filing with the PGA and the Town Clerk, unless such application has been withdrawn from consideration. If the PGA determines the application is incomplete, including insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the PGA may disapprove the application and deny the permit. The PGA may take any of the following actions as a result of an application for a Stormwater Management Permit:

- (1) Approve the permit application upon finding that the proposed plan will protect water resources and meets the objectives and requirements of this chapter;
- (2) Approve the permit application with conditions, modifications or restrictions that are required to ensure that the project will protect water resources and meets the objectives and requirements of this chapter; 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 chapter.

F. Appeals of action by the PGA. A decision of the PGA shall be final. Further relief of a decision by the PGA made under this chapter shall be to a court of competent jurisdiction.

G. Waivers.

- (1) The PGA may waive strict compliance with some of the requirements of this chapter or the rules and regulations promulgated hereunder, if it determines that some of the application requirements are unnecessary because of the size or character of the development project or because of the natural conditions at the site and where such action:
 - (a) Is allowed by federal, state and local statutes and/or regulations;
 - (b) Is in the public interest; and
 - (c) Is not inconsistent with the purpose and intent of this chapter.
- (2) Any request from an applicant for a waiver of these rules shall be submitted, in writing, to the PGA at the time of submission of the application. Such requests shall clearly identify the provision(s) of the requirement(s) from which relief is sought and be accompanied by a statement setting forth the reasons why, in the applicant's opinion, the granting of such a waiver would be in the public interest or the specific information required to show strict compliance is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of this chapter and the rules and regulations promulgated hereunder.

§ XX-8. Performance standards.

Criteria for stormwater management standards shall be defined and included as part of any rules and regulations promulgated under § XX-7C of this chapter.

§ XX-9. Enforcement; violations and penalties.

- A. The PGA, or an authorized agent of the PGA, shall enforce this chapter, and any regulations, permits, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.
- B. If a person violates the provisions of this chapter or its regulations, or a permit, notice or order issued thereunder, the PGA may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or to compel the person to perform abatement or remediation of the violation.
- C. The PGA, or an authorized agent of the PGA, may issue a written order to enforce the provisions of this chapter or the regulations, which may include requirements to:
 - (1) Cease and desist from land-disturbing activity until there is compliance with the Bylaw or provisions of an approved stormwater management permit;
 - (2) Maintain, install or perform additional erosion and sediment control measures;
 - (3) Perform monitoring, analyses, and reporting;
 - (4) Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
 - (5) Comply with requirements in the stormwater management permit for operation and maintenance of stormwater management systems; and
 - (6) Remediate adverse impacts resulting directly or indirectly from malfunction of the stormwater management systems. If the PGA or its authorized agent determines that abatement or remediation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.
- D. If the Conservation Commission or its authorized agent determines that abatement or remediation of a violation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further provide that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Salisbury may, at its option, pursue a court order allowing the Town to undertake such work, and expenses thereof shall be charged to the violator.
- E. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Salisbury, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Conservation Department within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the Conservation Commission affirming or reducing the costs, or from a final decision of a court of competent jurisdiction affirming or reducing the costs, the costs shall constitute a municipal charge for purposes of G.L. c.40, §58, and a lien may be imposed on the property for the amount of the unpaid charge, pursuant to G.L. c.40,

§58. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. c. 59 § 57 on the 31st day after the costs first become due.

- F. Entry to perform duties under this chapter. To the extent permitted by local, state or federal law, or if authorized by the owner or other party in control of the property, the members the Conservation Commission, including the Commission's agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Conservation Commission deems reasonably necessary. Refusal to grant voluntary access to a site may be grounds for denial of a stormwater permit application.
- G. Criminal penalties. Any person who violates any provisions of this chapter, regulation, order or permit issued hereunder may be subject to criminal penalties and prosecution in a court of competent jurisdiction and/or a fine of \$300 per violation. Each day a violation occurs or continues shall constitute a separate violation.
- H. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town may utilize the noncriminal disposition procedure set forth in MGL Ch. 40, § 21D and §§ 1-6 of the Town Code, in which case any police officer of the Town of Salisbury, the Conservation Commission's Agent, or Building Inspector and such other persons as are authorized by the PGA shall be the enforcing person. If noncriminal disposition is used, any person who violates any provision of this chapter, regulation, order or permit issued thereunder shall be subject to a fine of \$50 for a first violation, and \$300 for a second and all subsequent violations. Each day or part thereof that a violation occurs or continues shall constitute a separate violation.
- I. Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available to the PGA or the Town under any applicable federal, state or local law.

§ XX-10. Severability.

The invalidity of any section, provision, paragraph, sentence, or clause of this chapter shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.