



TOWN CLERK

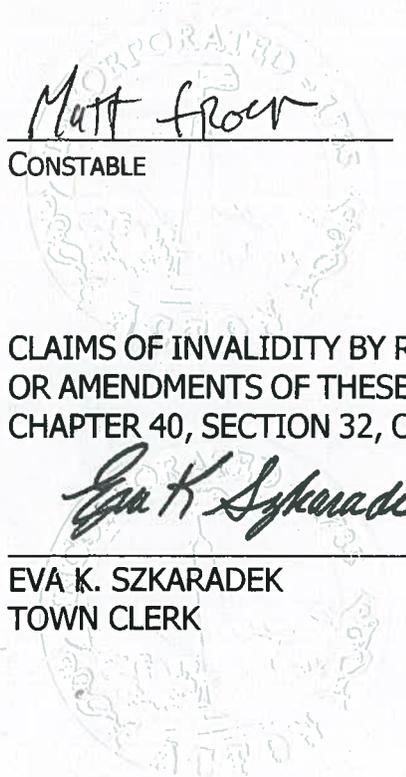
TOWN OF ACTON
472 MAIN STREET
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February 3, 2016

MIDDLESEX, SS:

ON THE ABOVE DATE, I POSTED ATTESTED COPIES OF THE AMENDMENT TO THE TOWN GENERAL BYLAW, ARTICLE 9, WHICH PASSED AT THE SPECIAL TOWN MEETING THAT CONVENEED ON NOVEMBER 10, 2015. THE ARTICLE MENTIONED FOR THE TOWN GENERAL BYLAW, WAS APPROVED BY THE ATTORNEY GENERAL, MAURA HEALEY ON FEBRUARY 2, 2016 AND IS POSTED AT THE FOLLOWING PLACES IN THE TOWN OF ACTON:

NAGOG WOODS POST OFFICE, TOWN HALL, WEST ACTON POST OFFICE, CENTER POST OFFICE, PUBLIC SAFETY FACILITY, CENTER LIBRARY AND TOWN WEB PAGE.



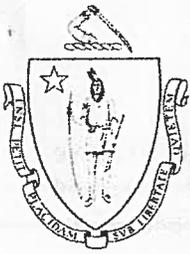
Matt Groer

CONSTABLE

CLAIMS OF INVALIDITY BY REASON OF ANY DEFECT IN THE PROCEDURE OF ADOPTION OR AMENDMENTS OF THESE BYLAWS MAY ONLY BE MADE WITHIN NINETY DAYS (90) PER CHAPTER 40, SECTION 32, OF THE GENERAL LAWS OF THE COMMONWEALTH.

Eva K. Szkaradek

EVA K. SZKARADEK
TOWN CLERK



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

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February 2, 2016

Eva K. Szkaradek, Town Clerk
Town of Acton
472 Main Street
Acton, MA 01720

**RE: Acton Special Town Meeting of November 10, 2015 - Case # 7817
Warrant Article # 9 (General)**

Dear Ms. Szkaradek:

Article 9 - We approve Article 9 from the November 10, 2015 Acton Special Town Meeting. Our comments on Article 9 are provided below.

Article 9 adds to the Town's general by-laws a new Chapter X, "Stormwater Management and Erosion & Sediment Control." The purpose of the new Chapter X is to "establish stormwater management requirements and controls that protect the public health, safety, and welfare through the...objectives" set forth in Sections 2.1.1 - 2.1.17. Section 4 of the by-law provides that the new Chapter X is "adopted under authority granted by the Home Rule Amendment, Article LXXXIX (89) of the Constitution of the Commonwealth of Massachusetts, the Home Rule statutes, and in accordance with the regulations of the federal Clean Water Act found at 40 CFR 122.34...."

I. Applicable Law

Both the federal government and the Commonwealth of Massachusetts have enacted certain regulations relative to stormwater management by municipalities. For instance, the federal Environmental Protection Agency has enacted requirements pertaining to operators of municipal separate storm sewers. *See* 40 C.F.R. § 122.34. The Massachusetts Department of Environmental Protection (the Department) has promulgated regulations at 310 C.M.R. § 10.05 (6) (k) - (q) ("Stormwater Management Standards"), pursuant to G.L. c. 131, § 40. Furthermore, the Department has promulgated stormwater regulations at 314 C.M.R. §§ 3.04 and 5.04, pursuant to G.L. c. 21, §§ 26-53 (the Massachusetts Clean Waters Act). Any local regulation of stormwater management must be supplementary to and consistent with the regulation of such matters by the federal government and the Commonwealth of Massachusetts. The federal

regulations suggest that municipalities adopt local laws or regulations as part of an effective stormwater management plan. *See, e.g.* 40 C.F.R. § 122.34 (b)(3)(ii)(B); 40 C.F.R. § 122.34 (b)(4)(ii)(A) and 40 C.F.R. § 122.34 (b)(5)(ii)(B). It appears the new Chapter X is part of the Town's efforts to effectively manage stormwater.¹

II. Comments on Specific Sections of the New Chapter X.

1. Section 3 - Definitions.

Section 3 defines the term "Person or Persons" as follows, with emphasis:

Person or Persons: Any 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.

We approve this definition. However, the Town's authority to regulate state and federal entities is limited. "The doctrine of essential governmental functions prohibits municipalities from regulating entities or agencies created by the Legislature in a manner that interferes with their legislatively mandated purpose, absent statutory provisions to the contrary." Greater Lawrence Sanitary Dist. v. Town of North Andover, 439 Mass. 16 (2003). *See also* Teasdale v. Newell & Snowling Const. Co., 192 Mass. 440 (1906) (holding local board of health could not require state park commissioners to obtain license to maintain stable on park land). Similarly, municipalities may not regulate federal governmental entities in a manner that impedes with their purpose. *Cf.* First Nat'l Bank v. Missouri, 263 U.S. 640, 656 (1926) (state laws may not regulate federal entities if "such laws interfere with the purposes of their creation [or] tend to impair or destroy their efficiency as federal agencies"); Palfrey v. City of Boston, 101 Mass. 329 (1869) (federal internal revenue stamps not subject to state or local property tax). The Town's application and enforcement of Chapter X cannot impermissibly interfere with the operation of state or federal entities. We suggest that the Town discuss this issue in more detail with Town Counsel.

2. Section 8 - Administration.

a. Section 8.2 - Regulations.

Section 8.2 authorizes the Board of Selectmen to promulgate and periodically amend "[r]egulations to effectuate the objectives this Bylaw." The Town and the Board of Selectmen have no power to adopt rules and regulations which are inconsistent with state law. American Lithuanian Naturalization Club v. Board of Health of Athol, 446 Mass. 310, 321 (2006). We

¹ We note that throughout the new Chapter X, the citations to various other sections appear to contain typographical errors. For example, Section 5.1, "Applicability", references Sections 4.1 and 4.2 but it appears that the correct sections are Sections 6.1 and 7.1. Typographical errors citing incorrect sections also appear in Sections 7.2; 8.3.3; 8.6; 8.10.3; 9.1; 12.5; and 13.5. The Town may wish to amend these typographical errors to reference the correct section numbers at a future Town Meeting.

suggest that the Town and Board of Selectmen discuss with Town Counsel any proposed regulations to ensure they comply with state law.

b. Section 8.9 - Entry onto Land.

Section 8.9 provides that “[f]iling an Application for a Land Disturbance Permit grants the Implementing Authority, or its agent, permission to enter the Site to verify the information in the Applicant and to inspect for compliance with permit conditions.” Municipal officials do not have the authority to conduct non-emergency warrantless searches of private property without permission of the owner. Commonwealth v. John G. Grant & Sons Co., Inc., 403 Mass. 151, 159-60 (1988). The U.S. Supreme Court has held that warrants are required for non-emergency administrative inspections. Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1966) (requiring warrant for health inspector non-emergency entry); See v. City of Seattle, 387 U.S. 541 (1966) (requiring warrant for non-emergency inspection by fire chief). “[A]dministrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure.” See, 387 U.S. at 545. Massachusetts courts have similarly recognized that “statutes can no longer convey blanket powers of warrantless entries.” Commonwealth v. Hurd, 51 Mass. App. Ct. 12, 17 (2001) (holding that G.L. c. 129, § 7, does not authorize warrantless searches for animal inspection). The Town should consult with Town Counsel to ensure that it applies Section 8.9 in a manner consistent with state law and applicable constitutional requirements.

3. Section 10 - Fees.

Section 10.1 authorizes the Board of Selectmen to establish and adjust “fees to cover the expenses connected with application administration and review, inspections, monitoring permit compliance, and enforcement, including the cost of Town administrative and professional staff and outside consultant support as needed.” Although a municipality may impose fees, it “has no independent power of taxation.” Silva v. City of Attleboro, 454 Mass. 165, 169 (2009). In distinguishing valid fees from impermissible taxes, the Supreme Judicial Court has noted that fees tend to share the following common traits: (1) fees, unlike taxes, are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society; (2) user fees (although not necessarily regulatory fees) are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and (3) fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. See Silva, 454 Mass. at 168 (citing Emerson College v. City of Boston, 391 Mass. 415, 424-25 (1984)). The Town may wish to consult with Town Counsel to ensure that the fees charged under Section 10.1 constitute valid fees rather than impermissible taxes.

4. Section 11 - Performance Guarantee.

Section 11.1 requires the Permittee to post “a surety bond, irrevocable letter of credit, cash, or other acceptable performance guarantee” as determined by the Implementing Authority. Any bond proceeds must be applied in a manner consistent with state law. In the absence of any

general or special law to the contrary, performance security funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town's general fund, pursuant to G.L. c. 44, § 53. General Laws Chapter 44, Section 53, provides that "[a]ll moneys received by a city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury." Under Section 53, all moneys received by the Town become part of the general fund, unless the Legislature has expressly made other provisions that are applicable to such receipt. Therefore, bond proceeds do not become Town funds unless and until the Permittee defaults on the obligations imposed under the by-law. Moreover, if the Town must use the bond to pay for any work to be done in accordance with the Land Disturbance Permit, an appropriation is required before an expenditure is made to do the work. The Town should consult with Town Counsel on this issue.

5. Section 13 - Enforcement.

Section 13.6, "Lien," authorizes the Town to recover the costs it incurs in remediating violations of the by-law, and provides in relevant part that "the amount of the Town's costs shall be a special assessment against the property and shall constitute a lien on the property pursuant to G.L. c. 40 § 58." The expenses incurred by the Town may be considered a charge for purposes of G.L. c. 40, § 58, the municipal charges lien statute. In order to avail itself of G.L. c. 40, § 58, the Town must take a separate vote authorizing the use of G.L. c. 40, § 58, for costs incurred by the Town for remediating violations of the by-law. The vote under Article 9 appears to be such a vote.

In addition, it is not proper here to refer to costs incurred by the Town under the bylaws as a "special assessment." Betterments (or special assessments) are special property taxes assessed to recover costs of installing infrastructure or other public improvements that specially benefit properties in a defined area. *See* G.L. c. 80 and 83. According to the Department of Revenue, Division of Local Services, ("DOR/DLS"), any expense incurred by a Town to abate or remediate violations of a by-law is not a betterment or special assessment and cannot be added to the real estate tax for collection purposes as a betterment or special assessment. Therefore, the Town may wish to amend this section at a future Town Meeting to delete reference to the term "special assessment." The Town should consult further with Town Counsel on this issue, and on the proper application of G.L. c. 40, § 58.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

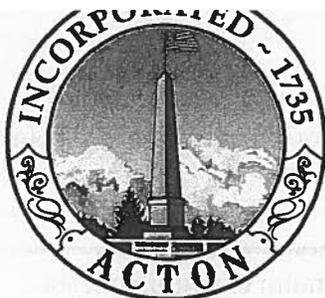
Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Nicole B. Caprioli

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cc: Town Counsel Stephen D. Anderson



TOWN CLERK

A TRUE COPY, ATTEST:

Em K. Szkaradek

TOWN CLERK, ACTON, MA

TOWN OF ACTON

472 MAIN STREET

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EXCERPT OF THE SPECIAL TOWN MEETING HELD

TUESDAY, NOVEMBER 10, 2015, 7:00 P.M.

ACTON-BOXBOROUGH REGIONAL HIGH SCHOOL AUDITORIUM

Article 9 Amend Town Bylaws – Stormwater Management and Erosion & Sediment Control
(Majority vote)

To see if the Town will vote to amend the General Bylaws by adding the following chapter as Chapter X – Stormwater Management and Erosion & Sediment Control

CHAPTER X

Stormwater Management and Erosion & Sediment Control

X1. Findings

- 1.1 The United States Environmental Protection Agency (U.S. EPA) through the National Pollutant Discharge Elimination System (NPDES) Permit for Small Municipal Separate Storm Sewer Systems (MS4s) requires that the Town of Acton must establish an appropriate regulatory framework for stormwater management.
- 1.2 Land disturbances and developments can alter the hydrology of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition.
- 1.3 Stormwater runoff can contain water-borne pollutants.
- 1.4 Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through appropriate stormwater management.
- 1.5 Regulation of land disturbances and developments that create stormwater runoff is necessary to protect water bodies and groundwater resources; to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff; to safeguard public health, safety, and welfare; and to protect natural resources.
- 1.6 This Bylaw is needed to manage stormwater runoff caused by land disturbances or developments, and to minimize its degrading effects on local water resources and the resulting threats to public health and safety.

X2. Purpose

- 2.1 The purpose of this Bylaw is to establish stormwater management requirements and controls that protect the public health, safety, and welfare through the following objectives:

- 2.1.1 require practices that eliminate soil erosion and sedimentation;
- 2.1.2 control the volume and rate of stormwater runoff resulting from land disturbances;
- 2.1.3 minimize flooding;
- 2.1.4 mimic pre-existing hydrologic conditions during and after land disturbances or development to the maximum extent practicable;
- 2.1.5 require the management and treatment of stormwater runoff from land disturbances and development;
- 2.1.6 protect groundwater and surface water from degradation or depletion;
- 2.1.7 maintain the natural infiltration of stormwater on sites and/or promote recharge to groundwater where appropriately sited and/or treated, with emphasis on the Zone 1, Zone 2 and Zone 3 recharge areas;
- 2.1.8 maintain the integrity of stream channels;
- 2.1.9 minimize stream bank erosion;
- 2.1.10 minimize impacts to stream temperature;
- 2.1.11 prevent pollutants from entering the municipal storm drainage system;
- 2.1.12 ensure that soil erosion and sedimentation control measures and stormwater runoff management practices, including efforts to minimize the area of land disturbance, are incorporated into the site planning and design process and are implemented and maintained during and after construction;
- 2.1.13 ensure adequate long-term operation and maintenance of stormwater best management practices;
- 2.1.14 require practices to control construction waste;
- 2.1.15 prevent or minimize adverse impacts to water quality;
- 2.1.16 comply with state and federal statutes and regulations relating to stormwater discharges; and
- 2.1.17 establish the Town of Acton's legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring and enforcement.

- 2.2 This Bylaw is intended to address gaps in jurisdiction for stormwater management requirements in the Town of Acton Bylaws and the Massachusetts Wetlands Protection Act.

X3. Definitions

Abutter: Each property owner, determined by the most recent records in the Assessors Office, of real property that abuts the Site on which the proposed Land Disturbance activity is to take place.

Alteration of Runoff or Drainage Characteristics: Any activity on a Site that changes the Water Quality, or the force, quantity, direction, timing or location of Runoff or Drainage flowing from the Site. Such changes include: change from distributed Runoff to concentrated, confined or discrete Discharge; change in the volume of Runoff; change in the peak rate of Runoff; and change in the Recharge to groundwater on the area.

Applicant: Any Person or Persons requesting a Land Disturbance Permit.

Best Management Practice (BMP): An activity, procedure, restraint, or structural improvement that helps reduce the quantity or improve the quality of stormwater runoff.

Clearing: Any activity that removes vegetation. Clearing generally includes grubbing as defined below.

Construction Preparation: All activity in preparation for construction.

Construction Waste: Excess or discarded building or construction site materials that may adversely impact Water Quality, including but not limited to concrete truck washout, chemicals, litter and sanitary waste.

Development: The modification of land to accommodate a new use or expansion of use, usually involving construction; and redevelopment, rehabilitation, expansion, demolition, or phased projects that disturb the ground surface or increase the Impervious Cover area on previously developed sites.

Drainage: Water, originating from precipitation, flowing over or through man-made conveyances.

Erosion: The wearing away of the land surface by natural or man-made forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

Erosion and Sedimentation Control Plan: A document with narrative, drawings and details prepared by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC), which includes Best Management Practices, or equivalent measures designed to control surface Runoff, Erosion and Sedimentation during construction preparation and construction related Land Disturbance activities.

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

Impervious Cover: Material covering the ground with a coefficient of runoff greater than 0.7 (as defined in Data Book for Civil Engineers by Seelye; $C = \text{runoff} / \text{rainfall}$) including, but not limited to, macadam, concrete, pavement and buildings.

Implementing Authority: The Board of Selectmen, or the Town Department designated by the Board of Selectmen to carry out the provisions of this Bylaw and the Regulations adopted by the Board of Selectmen.

Land Disturbance: Any activity, including Clearing and Grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

Massachusetts Stormwater Management Policy: The Policy issued by the Department of Environmental Protection, as amended, that coordinates state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act, MGL c. 131 s. 40, and the Massachusetts Clean Waters Act, MGL c. 21, ss. 23-56. The Policy regulates stormwater impacts through performance standards aimed to reduce or prevent pollutants from reaching water bodies and to control the quantity of site runoff.

Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System or Municipal Storm Sewer System: A conveyance or system of conveyances designed or used for collecting or conveying stormwater, including but not limited to any road with a drainage system, municipal street, catch basins, manhole, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, ditch, swale, reservoir, and other drainage structure, that together comprise the storm drainage system owned or operated by the Town of Acton.

Operation and Maintenance Plan: A plan prepared by a qualified professional engineer (PE) or a Certified Professional in Erosion and Sedimentation Control (CPESC) describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

Owner: A Person with a legal or equitable interest in property, including his/her authorized representative.

Permittee: The Person who holds a Land Disturbance Permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

Person or Persons: Any 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.

Pollutant: Any element or property of: sewage; agricultural, industrial, construction or commercial waste; runoff; leachate; heated effluent; or other matter whether originating at a point or non-point source, that is or may be introduced into the MS4, groundwater or surface water.

Pollutants shall include, but are not limited to:

- Paints, varnishes, and solvents;
- Oil, fuel, and other automotive fluids;
- Non-hazardous liquid and solid wastes and yard wastes;
- Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- Pesticides, herbicides and fertilizers;
- Hazardous materials and wastes;
- Sewage, fecal coliform, pathogens and animal wastes;
- Dissolved and particulate metals which are not naturally occurring;
- Rock, sand, salt, soils;
- Construction Waste and residues; and
- Noxious or offensive matter of any kind.

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

Runoff: Water flowing over the ground surface and originating from rainfall, snowmelt, or irrigation water flowing over the ground surface.

Sediment: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

Sedimentation: The process or act of deposition of Sediment.

Site: Any lot or parcel of land or area of property where Land Disturbance occurs, has occurred or will occur.

Slope: The incline of a ground surface expressed as a ratio of horizontal to vertical distance.

Soil: Earth materials including duff, humic materials, sand, rock and gravel.

Stormwater: Runoff and Drainage.

Stormwater Management Plan: A document containing narrative, drawings and details prepared by a qualified professional engineer (PE), which includes structural and non-structural Best Management Practices to manage and treat Stormwater generated from regulated Development activity. A Stormwater Management Plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural Best Management Practices.

Water Quality: The chemical, physical, and biological integrity of Water Resources.

Water Resources: Waters of the Commonwealth as defined by the Massachusetts Clean Waters Act, G.L. c. 21, § 26A.

Zone 1, Zone 2, Zone 3 and Zone 4: Groundwater Protection zones as defined by the Town of Acton.

X4. Authority

4.1 This Bylaw is adopted under authority granted by the Home Rule Amendment, Article LXXXIX (89) of the Constitution of the Commonwealth of Massachusetts, the Home Rule statutes, and in accordance with the regulations of the federal Clean Water Act found at 40 CFR 122.34, the Phase II rule from the Environmental Protection Agency found in the December 8, 1999 Federal Register, and the National Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems issued by EPA Region 1 on April 18, 2003.

X5. Applicability

5.1 This Bylaw shall apply to all Land Disturbances and Development within the jurisdiction of the Town of Acton. Except in accordance with a Land Disturbance Permit issued pursuant to this Bylaw, no Person shall perform any Land Disturbance that results in one or more of the Regulated Activities defined in Section 4.1 that is not an Exempt Activity listed in Section 4.2.

X6. Regulated Activities

6.1 Regulated activities subject to a Land Disturbance Permit shall include:

- 6.1.1 Land Disturbance or Development of greater than or equal to one (1) acre, or which is part of a common plan for Development that will disturb one or more acres of land.
- 6.1.2 Land Disturbance or Development of an area greater than or equal to 5,000 square feet having a 10% or greater Slope, or which is part of a common plan for Development that will disturb an area greater than or equal to 5,000 square feet having a 10% or greater Slope.
- 6.1.3 Land Disturbance or Development involving the creation or disturbance of 5,000 square feet or more of Impervious Cover, or which is part of a common plan for Development that will create or disturb 5,000 square feet or more of Impervious Cover.
- 6.1.4 Construction of a new drainage system, or alteration of an existing drainage system or conveyance, serving a drainage area of (a) one acre or more, or (b) 5,000 square feet or more of Impervious Cover.

X7. Exempt Activities

7.1 The following activities are exempt from the requirements of this Bylaw:

- 7.1.1 Activities for which all Stormwater management has been reviewed and approved as part of an order of conditions issued by the Acton Conservation Commission;
- 7.1.2 Normal maintenance of, or emergency repairs to, Town owned public ways, drainage systems and appurtenances.
- 7.1.3 Normal maintenance and improvement of land in agricultural use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.
- 7.1.4 Maintenance and repair of septic systems.
- 7.1.5 The construction of fencing that will not result in Alteration of Runoff or Drainage Characteristics.
- 7.1.6 Emergency repairs to existing utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.).
- 7.1.7 Normal maintenance of or emergency repairs to any Stormwater treatment facility deemed necessary by the Implementing Authority or its agents.

7.2 The following activities are exempt from the requirements of this Bylaw UNLESS they exceed the threshold set forth in Section 4.1(1):

- 7.2.1 Improvement of Town-owned public ways and appurtenances that will not result in an expansion of impervious cover of more than 5,000 square feet.

7.2.2 Activities on single-family residential lots that are not in Zone 1 or Zone 2, where the activities are not part of a larger common plan of Development (including but not limited to a subdivision plan, special permit plan, or plan showing multiple "ANR" lots).

7.2.3 Construction of utilities other than drainage (e.g., gas, water, sanitary sewer, electricity, telephone, cable television, etc.) that will not result in a permanent Alteration of Runoff or Drainage Characteristics and will comply with the Erosion Control standard in the Massachusetts Stormwater Standards.

X8. Administration

8.1 The Acton Board of Selectmen shall administer this Bylaw. It shall, with the approval of the Town Manager, designate a Town department or official to be the Implementing Authority.

8.2 The Board of Selectmen, after public notice and hearing, shall promulgate and may periodically amend Regulations to effectuate the objectives of this Bylaw. The date of such hearing shall be advertised in a newspaper of general circulation in the Town at least seven (7) days before the hearing date.

8.3 The Regulations shall (without limitation):

8.3.1 Specify the information (including site plans) that must be submitted as part of a Land Disturbance Permit Application;

8.3.2 Specify the procedures for review of Land Disturbance Permit Applications, including consideration of potential Water Quality impacts; and

8.3.3 Specify the performance standards for construction and post-construction Stormwater management measures, and/or the Best Management Practices for control of Stormwater, that are reasonable and appropriate to achieve the objectives listed in Section 1.2 of this Bylaw.

8.4 If the Board of Selectmen determines that another Town project approval process adequately regulates construction and post-construction Stormwater management in a manner sufficient to achieve the objectives of this Bylaw, the Regulations may provide that the approval resulting from that process will serve as the Land Disturbance Permit for purposes of this Bylaw. The Regulations may also or in the alternative provide that the Implementing Authority may determine on a case-by-case basis that approval of the project by another Town entity will serve as the Land Disturbance Permit, provided that the Implementing Authority determines that the objectives of this Bylaw will be achieved by that approval. In any case where approval by another Town entity serves as the Land Disturbance Permit, the Implementing Authority is empowered to enforce all Stormwater-related conditions of that approval pursuant to the enforcement provisions of this Bylaw.

8.5 Failure by the Board of Selectmen to promulgate Regulations shall not have the effect of suspending or invalidating this Bylaw.

8.6 In the absence of Regulations promulgated pursuant to Section 5.3, the Implementing Authority shall use the Massachusetts Stormwater Standards, as elaborated in the latest edition of the Massachusetts Stormwater Management Handbook, as the performance standards for Land Disturbance Permits.

8.7 The Implementing Authority and its agents shall review all Applications for a Land Disturbance Permit, conduct inspections as appropriate, issue or deny a Land Disturbance Permit, and conduct any necessary enforcement action. Following receipt of a completed Application, the Implementing Authority shall notify relevant Town departments, boards and committees (as designated in the Regulations or as determined by the Implementing Authority in the absence of Regulations) and the Water Supply District of Acton of receipt of the Application.

8.8 After submitting a Land Disturbance Permit Application to the Implementing Authority, the Applicant shall publish in the local newspaper and submit to the Town Clerk to be posted on the Town website a notice that the Implementing Authority is accepting comments on the Land Disturbance Permit Application. The Land Disturbance Permit Application shall be available for inspection and comment by the public during normal business hours at the Town Hall for 5 business days from the date of newspaper publication of the notice. A public hearing is not required. Members of the public shall submit their comments to the Implementing Authority during the above-described inspection period. The Implementing Authority reserves the right to require notification of Abutters should it be determined by the Implementing Authority to be appropriate.

8.9 Filing an Application for a Land Disturbance Permit grants the Implementing Authority, or its agent, permission to enter the Site to verify the information in the Application and to inspect for compliance with permit conditions.

8.10 The Implementing Authority shall:

8.10.1 Approve the Application and issue a Land Disturbance Permit if it finds that the proposed Stormwater controls will protect Water Resources, meet the objectives of the Bylaw, and meet the requirements of the Regulations;

8.10.2 Approve the Application and issue a Land Disturbance Permit with conditions that the Implementing Authority determines are required to ensure that the project's Stormwater controls will protect Water Resources, meet the objectives of the Bylaw, and meet the requirements of the Regulations; or

8.10.3 Disapprove the Application and deny a permit if it finds (a) that the proposed Stormwater controls are not protective of Water Resources or fail to meet the objectives of the Bylaw or the requirements of the Regulations, or (b) that the information submitted with the Application was insufficient to allow the Implementing Authority to make one of the determinations set forth in (i), (ii), or (iii)(a).

8.11 The Implementing Authority shall take final action on an Application within 30 days of the close of the public comment period. A copy of the final action shall on the same business day be filed with the Town Clerk. Certification by the Town Clerk that the allowed

time has passed without the action of the Implementing Authority shall be deemed a grant of the Land Disturbance Permit.

8.12 Appeal of Land Disturbance Permit Decision. A decision of the Implementing Authority regarding a Land Disturbance Permit Application shall be final. Such a decision shall be reviewable in the Superior Court in an action pursuant to G.L. c. 249, § 4. The remedies listed in this Bylaw are not exclusive of any other remedies (if any) available under any applicable federal, state or local law.

X9. Permit Procedures & Requirements

9.1 Permit procedures and permit filing requirements shall be defined in Regulations promulgated as provided in Section 5 of this Bylaw.

X10. Fees

10.1 The Board of Selectmen, based on recommendations of the Implementing Authority, may establish and from time to time adjust fees to cover expenses connected with application administration and review, inspections, monitoring permit compliance, and enforcement, including the cost of Town administrative and professional staff and outside consultant support as needed. Applicants must pay applicable review fees to the Implementing Authority before the review process may begin.

X11. Performance Guarantee

11.1 The Implementing Authority may require the Permittee to post, before the start of any Land Disturbance, a surety bond, irrevocable letter of credit, cash, or other acceptable performance guarantee. The form and substance of the guarantee must be sufficient to ensure that the work will be completed in accordance with the Land Disturbance Permit, as determined by the Implementing Authority. If the project is phased, the Implementing Authority may, in its discretion, release part of the guarantee as each phase is completed in compliance with the permit, but the guarantee may not be fully released until the Implementing Authority has made a determination that the project has been satisfactorily completed. The Implementing Authority may require a performance guarantee for ongoing operation and maintenance of a Stormwater management system.

X12. Waivers

12.1 The Implementing Authority may waive strict compliance with any requirement of this Bylaw or the Regulations promulgated hereunder, where such action:

12.1.1 is allowed or otherwise not prohibited by federal, state and local statutes and regulations and the Town's MS4 Permit,

12.1.2 is in the public interest, and

12.1.3 does not derogate from the purpose and intent of this Bylaw.

12.2 The Implementing Authority may waive compliance with any of the performance standards set forth in this Bylaw or in the Regulations promulgated hereunder, where the Applicant demonstrates that the proposed Stormwater controls comply with the performance standards to the maximum extent practicable given Site constraints (e.g., lot size).

12.3 Any Applicant may submit a written waiver request. Such a request shall be accompanied by an explanation or documentation supporting the waiver request. A waiver

request may be submitted with a Land Disturbance Permit Application, but is not required to be. The notice requirements of Section 5.5 apply in either case.

12.4 If, in the opinion of the Implementing Authority, additional information is required for review of a waiver request, the Implementing Authority shall notify the Applicant.

12.5 A decision on a waiver request shall be made by the Implementing Authority within 30 days of receiving all requested information (or within 30 days of receiving the waiver request if no additional information is requested). A copy of the waiver decision shall on the same business day be filed with the Town Clerk. A waiver request shall be deemed denied if not acted upon within the aforementioned time period. Certification by the Town Clerk that the allowed time has passed without the action of the Implementing Authority shall be deemed a denial of the waiver for the purpose of review as set forth in Section 9.6.

12.6 A decision of the Implementing Authority regarding a waiver request, including a deemed denial, shall be final. Such a decision shall be reviewable in the Superior Court in an action pursuant to G.L. c. 249, § 4. The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

X13. Enforcement

13.1 The Implementing Authority shall enforce this Bylaw, its Regulations, orders, violation notices, and enforcement orders, and may pursue all available civil and criminal remedies for such violations.

13.2 Enforcement Orders

13.2.1 The Implementing Authority may issue a written order to enforce the provisions of this Bylaw or the Regulations thereunder, which may include, without limitation:

- 13.2.1.a A requirement to cease and desist from the Land Disturbance until there is compliance with the Bylaw, the Regulations, and the Land Disturbance Permit;
- 13.2.1.b Maintenance, installation or performance of additional Erosion and Sediment control measures;
- 13.2.1.c Monitoring, analyses, and reporting;
- 13.2.1.d Remediation of Erosion and Sedimentation resulting directly or indirectly from the Land Disturbance; and/or
- 13.2.1.e Compliance with the approved Operation and Maintenance Plan.

13.2.2 If the Implementing Authority determines that corrective action is required, the order shall set forth a deadline by which such corrective action must be completed. Said order shall further advise that, should the violator or property Owner fail to complete the corrective action within the specified deadline, the Town of Acton may, at its option, undertake such work, and the property Owner shall reimburse the Town's expenses of doing so. A performance guarantee may be required as part of any consented-to enforcement order.

13.2.3 Failure by the Implementing Authority to issue a written order shall not relieve the Person responsible for the violation of the Person's responsibilities under this Bylaw.

- 13.3 Appeal of Enforcement Order. An appeal of an Enforcement Order of the Implementing Authority may be made in writing to the Board of Selectmen within seven (7) business days from receipt of the Order and reviewed at the next regularly scheduled meeting of the Board of Selectmen. Further relief shall be to a court of competent jurisdiction pursuant to G.L. c. 249, § 4.
- 13.4 Penalty. Any Person who violates any provision of this Bylaw, or any regulation, order or permit issued thereunder, may be punished by a penalty of not more than \$300.00 per offense which shall inure to the Town or to such uses as the Town may direct. Each day that such violation occurs or continues shall constitute a separate offense.
- 13.5 Non-Criminal Disposition. As an alternative to a penalty under Section 10.4 or a civil action to enforce the Bylaw, the Town of Acton may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D and the Town of Acton General Bylaws Chapter E 45, in which case the Implementing Authority or authorized agent shall be the enforcing person. The penalty for the first violation shall be \$100 per day. The penalty for the second violation shall be \$200 per day. The penalty for the third and subsequent violations shall be \$300 per day. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- 13.6 Lien. If the Implementing Authority or its authorized agent undertakes work to correct or mitigate any violation of this Chapter, the Implementing Authority shall (within thirty (30) days after completing the work) notify the permit holder and the Owner(s) of the property (if different) in writing of the costs incurred by the Town of Acton, including administrative costs, associated with that work. The permit holder and the property Owner(s) (if different) shall be jointly and severally liable to pay the Town of Acton those costs within thirty (30) days of the receipt of that notice. The permit holder and the property Owner(s) (if different) may file a written protest objecting to the amount or basis of costs with the Implementing Authority within thirty (30) days of receipt of the notice. If the amount due is not received by the Town of Acton by the expiration of the time in which to file such a protest, or within sixty (60) after the final decision of the Implementing Authority or a court of competent jurisdiction resolving that protest, the amount of the Town's costs shall be a special assessment against the property and shall constitute a lien on the property pursuant to G.L. c. 40, § 58. Interest shall accrue on any unpaid costs at the statutory rate, as provided in G.L. c. 59, § 57.

X14. Severability

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

X15. Effective Date

15.1 This Bylaw shall take effect six months after Town Meeting approval or upon completion of all relevant procedural requirements set forth in G.L. c. 40, § 32, whichever is later.

and to amend the General Bylaws by adding the following provision to Chapter E45 – Non-Criminal Dispositions after “Chapter U - Discharges to the Municipal Storm Drain System”:

Chapter X - Stormwater Management and Erosion & Sediment Control; Enforcing Person – Conservation Administrator, DPW Director or Health Director, or their respective authorized agents or employees; Fine \$100.00 per day for the first offense; \$200.00 per day for the second offense; \$300.00 per day for the third and each subsequent offense.

, or take any other action relative thereto.

MOTION: Ms. Adachi moves that the Town adopt the general bylaw amendments as set forth in the Article.

MOTION CARRIES