

Amendment to the Town's General By-law
Part One of Three

Low Impact Development (LID) Regulations
Article I General

____. 1 Purpose:

The purpose of this bylaw is to establish minimum requirements and controls to protect and safeguard the environment, natural resources, general health, safety, and welfare of the public residing in watersheds within the Town's jurisdiction from the adverse impacts of soil erosion, sedimentation, and stormwater runoff.

This section seeks to meet that purpose through the following objectives:

- A. To eliminate or reduce the adverse effects of soil erosion and sedimentation;
- B. To minimize stormwater runoff from any development;
- C. To minimize nonpoint source pollution caused by stormwater runoff from development;
- D. To provide for groundwater recharge where appropriate; and
- E. To ensure controls are in place to respond to objectives in Subsections _____.1 A and _____.1 B and that these controls are properly operated and maintained.

____. 2 Definitions

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

AGRICULTURE

The normal maintenance or improvement of land in agricultural or aquacultural use as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

APPLICANT

A property owner or agent of a property owner who has filed an application.

BUILDING

An independent structure having a roof supported by columns or walls, resting on its own foundations and designed for the shelter, housing or enclosure of persons, animals, chattel or property of any kind.

DETENTION

The temporary storage of stormwater runoff in a stormwater management facility with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

DETENTION FACILITY

A detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

DEVELOPER

A person who undertakes land disturbance activities.

DIRECTOR

The Director of the Fairhaven Department of Public Works.

EASEMENT

A legal right granted by a landowner to a third party grantee allowing the use of private land for stormwater management purposes.

IMPERVIOUS COVER

Those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INFILTRATION

The flow of water from the ground surface down into the soil.

INFILTRATION FACILITY

Any structure or device designed to infiltrate retained water to the ground. These facilities may be above grade or below grade.

LAND DISTURBANCE ACTIVITY

Any activity that changes the volume or peak flow discharge rate of rainfall runoff from the land surface, including: grading, digging, cuffing, scraping, excavating of soil, placement of fill materials, paving construction, substantial removal of vegetation, any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

LANDOWNER/OWNER

The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding propriety rights in the land.

MUNICIPAL STORM DRAIN SYSTEM or MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Fairhaven.

NONPOINT SOURCE POLLUTION

Pollution from any source other than from any discernible, confined, and discrete conduit or waterway, and shall include, but not be limited to, pollutants from agricultural, mining, construction, subsurface disposal and urban runoff sources.

RECHARGE

The replenishment of water to aquifers.

REDEVELOPMENT

Any construction, alteration, or improvement exceeding one acre in area where existing land use is high-density commercial, industrial, institutional or multi-family residential.

RESOURCE AREA

Any area protected under the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Fairhaven Conservation Commission regulations.

SOIL EROSION AND SEDIMENT CONTROL PLAN

A plan required to be submitted as part of this bylaw as detailed in Article [II](#), § [add General Bylaw #-12](#).

START OF CONSTRUCTION

The first land-disturbing activity associated with a development, including but not limited to land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

STORMWATER MANAGEMENT PLAN

A plan required to be submitted as part of this bylaw as detailed in Article [III](#), § [add General Bylaw #-15](#).

STORMWATER RUNOFF

Water resulting from precipitation that flows overland.

STORMWATER TREATMENT PRACTICES

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

WATERCOURSE

Any body of water, including, but not limited to, lakes, ponds, rivers and streams.

WATERWAY

A channel, either natural or man-made, that directs surface runoff to a watercourse or to the public storm drain.

____. 3 Applicability

This bylaw shall apply to all activities that result in a land disturbance activity of one or more acres of land or that will disturb less than one acre of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre of land. No person shall perform any activity that results in a land disturbance activity of an acre or more of land without an approved soil erosion and sediment control plan and stormwater management plan. Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetland Protection Act Regulation 310 CMR 10.4, are exempt. In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the above activities that are subject to jurisdiction under the Wetland Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Policy as reflected in an order of conditions issued by the Town of Fairhaven Conservation Commission are deemed to be in compliance with this bylaw.

____. 4 Statutory Authority:

Chapter add General Bylaw # is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

____. 5 Responsibility:

The Director shall administer, implement and enforce Chapter add General Bylaw #. Any powers granted to or duties imposed upon the Director may be delegated in writing by the Director to employees or agents.

____. 6 Promulgation of Rules and Regulations:

The Director may promulgate rules and regulations to effectuate the purpose of Chapter add General Bylaw #. Failure by the Director to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

____. 7 Inspections: Submission of Final Plans:

A. The Director, or designated agent, shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the owner or person responsible for the implementation of the plan wherein the work fails to comply with the soil erosion and sediment control plan, as described in Article II, § add General Bylaw #-12, or stormwater management plan, as described in Article III, § add General Bylaw #-15, as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the Department of Public Works shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the Department of Public Works at least two working days before each of the following:

- (1) Installation of sediment and erosion control measures.
- (2) Start of construction.
- (3) Completion of site clearing.
- (4) Completion of rough grading.
- (5) Installation of stormwater controls.
- (6) Close of the construction season.
- (7) Completion of final landscaping.

B. The person responsible for the implementation of the plan shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved soil erosion and sediment control plan(s). The purpose

of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and submitted to the Department of Public Works at the time interval specified in the approved permit.

C. The Director, or designated agent, shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed as noted above.

D. The applicant shall submit an "as-built" plan for the stormwater controls after the final construction is completed. The plan must show the final design and specifications of all stormwater management systems and must be prepared by a professional engineer.

____. 8 Project Changes:

The permittee, or his or her agent, shall notify the Director in writing of any change or alteration of a land-disturbing activity authorized in either the soil erosion and sediment control plan or the stormwater management plan before any change or alteration occurs. If the Director determines that the change or alteration is significant, based on the design requirements listed in this bylaw and accepted construction practices, the Director may require that an amended soil erosion and sediment control plan and/or stormwater management plan application be filed. If any change or deviation from these plans occurs during a project, the Director may require the installation of interim measures before approving the change.

____. 9 Fees:

The appropriate application fee as established by the Director must accompany each application. Applicants shall pay review fees, as determined by the Director, sufficient to cover any expenses connected with any public hearing, review of the soil erosion and sediment control plan, and site inspection.

____. 10 Surety:

The Director may require the permittee to post a surety before the start of any land disturbance or construction activity. The surety shall be in an amount deemed sufficient by the Director to protect the Town's interests and ensure that the work will be completed in accordance with the permit. If the project is phased, the Director 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 Director has received the final inspection report and issued a certificate of completion.

____. 11 Enforcement:

The Director, or an authorized employee or agent, shall enforce Chapter **add General Bylaw #**, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

A. Suspension of construction or site alteration activity. In the event that the activity at a site violates the conditions as stated or shown on the approved soil erosion and sediment control plan or stormwater management plan in such a manner as the Director determines to adversely affect the environment, public welfare/health and municipal facilities, then the Director may suspend work until the violation is corrected.

B. Civil relief. If a person violates the provisions of this bylaw or any regulation permit, notice, or order issued thereunder, the Director may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

C. Orders.

(1) The Director, or an authorized employee or agent, may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include:

- (a) Performance of monitoring, analyses, and reporting;
- (b) That unlawful discharges, practices, or operations shall cease and desist; and
- (c) Remediation of contamination.

(2) If the enforcing person determines that abatement or remediation of contaminations is required, the order shall set a deadline by which the abatement or remediation must be completed. The order shall also state that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Fairhaven may, at its option, undertake the work, and expenses shall be charged to the violator. 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 Fairhaven, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Director 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 Director 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 provided in MGL c. 59, § 57, after the 31st day at which the costs first become due.

D. Criminal penalty. Any person, who violates any provision of this bylaw, or any regulation, order or permit issued thereunder, shall be subject to a fine of not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Director may elect to utilize the noncriminal disposition procedure in accordance with the provisions of MGL c. 40, § 21D. The penalty for the first violation shall be \$100. The penalty for the second violation shall be \$200. The penalty for the third violation shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

F. Appeals. The decision or orders of the Director shall be final. Further relief shall be to a court of competent jurisdiction.

G. Remedies not exclusive. The remedies listed in Chapter **add General Bylaw #** are not exclusive of any other remedies available under any applicable federal, state or local law.