

ARTICLE 71

(General Bylaw: Stormwater Management)

To see if the Town will vote to amend the Code of the Town of Nantucket by adding a new Chapter 142 (Stormwater Management) as follows:

Chapter 142

Stormwater Management

§1. Purposes.

A. The purposes of this bylaw are:

1. To establish a fair and equitable regulatory system for utilizing and maintaining the Town of Nantucket's Stormwater System;
2. To authorize the establishment of a Stormwater Utility to administer rules and regulations;
3. To authorize the regulation of stormwater and contaminated stormwater runoff to protect the Town's water bodies and groundwater, protect the Waters of the Commonwealth, and safeguard the public health, safety, welfare, and the environment.

B. Increased volumes of stormwater, contaminated stormwater runoff from impervious surfaces, and soil erosion and sedimentation are major causes of:

1. Impairment of water quality;
2. Decreased flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
3. Contamination of drinking water supplies;
4. Erosion of stream channels;
5. Alteration or destruction of aquatic and wildlife habitat;
6. Flooding;
7. Overloading or clogging of municipal catch basins, infiltration systems, and storm drainage systems; and
8. Flooding and erosion on abutting properties.

C. Sedimentation from land disturbance activities and polluted stormwater runoff from land development and redevelopment are major sources of water pollution and impact drinking water supplies, natural habitats, and recreational resources. Runoff with sediment clogs stormwater infiltration systems causing failure and a

need for replacement. Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of Nantucket's water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public, and to protect the natural resources of the Town.

D. The objectives of this bylaw are to:

1. Protect water resources;
2. Ensure the control of stormwater runoff from new development, redevelopment, and in some cases, existing development;
3. Protect groundwater and surface water from degradation or depletion;
4. Promote infiltration and the recharge of groundwater where appropriate;
5. Prevent pollutants and sediments from entering the municipal storm drain system;
6. Prevent flooding and erosion to abutting properties;
7. Ensure that land disturbing activities or development incorporate practices that minimize erosion and sedimentation and downgradient impacts;
8. Ensure adequate long-term operation and maintenance of stormwater control measures;
9. Comply with applicable state and federal statutes and regulations relating to stormwater discharges; and
10. Establish the Town of Nantucket's legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

§2. Authority.

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act G.L. c. 43B. The Select Board may adopt, through rules and regulations authorized by this Bylaw, a Stormwater Utility pursuant to G.L. c. 83, § 16, G.L. c. 40, § 10, and G.L. c. 40, § 1A and any other applicable provisions of law.

This bylaw authorizes the Town of Nantucket to promulgate regulations applicable to land disturbing activities.

§3. Definitions.

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

ABUTTER

A person or entity that owns property next to or adjoining another piece of property.

ALTERATION OF DRAINAGE CHARACTERISTICS

Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined or discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; or change in the recharge to groundwater on the area.

APPLICANT

Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government, to the extent permitted by law, requesting a Stormwater Permit.

BEST MANAGEMENT PRACTICE (BMP)

An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

DRAFT

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC)
A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

CLEAN WATER ACT

The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

CLEARING

Any activity that removes the vegetative surface cover, including mechanical, manual, or chemical methods.

COMMON PLAN OF DEVELOPMENT OR SALE

A contiguous area where multiple separate and distinct development or redevelopment activities have occurred, are occurring, or are proposed to occur under one plan. The “plan” in a “common plan of development or sale” is broadly defined as any announcement or piece of documentation (including, but not limited to, a sign, public notice or hearing, advertisement, drawing, permit application) or physical demarcation (including, but not limited to, boundary signs, lot stakes, surveyor markings).

CONSTRUCTION PERIOD EROSION AND SEDIMENTATION CONTROL AND POLLUTION PREVENTION PLAN (CPPP)

A document containing a narrative, drawings and details developed by a qualified professional engineer (PE), Certified Professional in Erosion and Sedimentation Control (CPESC), or equivalently certified professional, which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbing activities.

CRITICAL AREA

Critical areas include Outstanding Resource Waters as designated in 314 CMR 4.00, Special Resource Waters as designated in 314 CMR 4.00, recharge areas for public water supplies as defined in 310 CMR 22.02 (Zone Is, Zone IIs and Interim Wellhead Protection Areas for groundwater sources and Zone As for surface water sources), bathing beaches as defined in 105 CMR 445.000, cold-water fisheries as defined in 310 CMR 10.04 and 314 CMR 9.02, and shellfish growing areas as defined in 310 CMR 10.04 and 314 CMR 9.02.

DISCHARGE OF POLLUTANTS

The addition from any source of any pollutant or combination of pollutants into the Nantucket Stormwater System or into the Waters of the Commonwealth from any source.

DOWNTOWN DISTRICT

Inclusive of the Commercial Downtown (CDT) and the Residential Old Historic (ROH) districts.

ENVIRONMENTALLY SENSITIVE SITE DESIGN (ESSD)

A suite of practices using nature-based solutions to treat stormwater while reducing or eliminating structural Stormwater Control Measures needed to meet certain stormwater management standards. More specifically, ESSD means designs that incorporate Low Impact Development (LID) techniques or practices to prevent the generation of stormwater and non-point source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat.

ENVIRONMENTALLY SENSITIVE SITE DESIGN CREDIT (ESSD CREDIT)

A credit for the use of ESSD that counts towards compliance with the stormwater requirements.

EQUIVALENT RESIDENTIAL UNIT

A billing unit for stormwater runoff based on the impervious area of an average-sized residential parcel.

EROSION

The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, land disturbing activities or vehicle traffic and the subsequent detachment and transportation of soil particles.

EXISTING STORMWATER OUTFALL

Existing stormwater discharge points where no work is proposed, and where no additional stormwater runoff is directed.

GRADING

Changing the level or shape of the ground surface.

GROUNDWATER

Water beneath the surface of the ground.

GRUBBING

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

HAZARDOUS MATERIAL

Any material which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as "toxic" or "hazardous" by MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

ILLCIT CONNECTION

A surface or subsurface drain or conveyance which allows an illicit discharge into the Nantucket Stormwater System, including without limitation sewage, process wastewater, wash water, or groundwater, and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of these regulations.

ILLCIT DISCHARGE

Direct or indirect discharge to the Nantucket Stormwater System or into a watercourse or the Waters of the Commonwealth that is not composed entirely of stormwater, except as exempted in Article II. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from fire-fighting activities exempted pursuant to Article II of this regulation.

IMPAIRED WATER

A water body that does not support one or more of its designated uses in accordance with the Clean Water Act.

IMPERVIOUS SURFACE

Any material or structure on or above the ground that prevents water from infiltrating the underlying soil. Impervious Surface includes, without limitation, paved roads, paved parking lots, packed earthen materials, sidewalks, and rooftops.

IMPOUNDMENT

A stormwater pond created by either constructing an embankment or excavating a pit which retains a permanent pool of water.

IMPRACTICABLE

Impossible in practice to do or carry out based solely on physical constraints.

INFILTRATION

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

LAND-DISTURBING ACTIVITY

Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing and grading; or results in an alteration of drainage characteristics. Areas that support the land-disturbing activity such as on-site or off-site stockpiles, borrow areas, concrete truck washouts, fueling areas, and material and equipment storage areas are considered part of the land-disturbing activity.

LAND USE WITH HIGHER POTENTIAL POLLUTANT LOADS (LUHPPL)

Land uses identified in 310 CMR 22.20B(2), 22.20C(2)(a) through (k) and (m), 22.21(2)(a)1. through 8., and (b)1. through 6.; areas within a site that are the location of activities that are subject to an individual National Pollutant Discharge Elimination

System (NPDES) permit or the NPDES Multi-sector General Permit; auto fueling facilities (gas stations); exterior fleet storage areas; exterior vehicle service and equipment cleaning areas; marinas and boatyards; parking lots with high intensity use; confined disposal facilities and disposal sites.

LONG-TERM OPERATOR

A person or organization responsible for the implementation and upkeep of the Operation and Maintenance Plan for a post-construction stormwater management system.

LOT

A tract of land in common ownership, including land under water, not divided by a street, which may include multiple parcels of adjacent land in common ownership.

LOW IMPACT DEVELOPMENT (LID)

Low Impact Development refers to the application of a stormwater management system that seeks to mimic pre-development hydrology, including managing rainfall at the source using uniformly distributed decentralized micro-scale controls.

NANTUCKET STORMWATER 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 Nantucket.

NEW DEVELOPMENT

Land disturbing activities, structural development (construction, installation or expansion of a building or other structure), and/or creation of impervious surfaces on a previously undeveloped site.

NONPOINT SOURCE POLLUTION

Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and man-made pollutants finally depositing them into a water resource area.

NONRESIDENTIAL PROPERTY

A property that is not considered residential.

NONSTORMWATER DISCHARGE

Discharge to the municipal storm drain system not composed entirely of stormwater.

OFF-LINE DESIGN

The use of a flow separator structure in order to divert only a portion of flow to a stormwater control.

OPEN DRAIN

Any uncovered ditch, swale or culvert used for the conveyance of surface water runoff or groundwater. A culvert that carries a watercourse or intermittent stream is not an open drain.

OPERATION AND MAINTENANCE PLAN

A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of stormwater management systems to ensure that it continues to function as designed.

OUTFALL

Any point where a storm sewer system discharges to Waters of the Commonwealth or Waters of the United States.

OWNER

A person with a legal or equitable interest in property.

PERMANENT STABILIZATION

The state of a site being developed or redeveloped when all soil disturbing activities have been completed and a perennial, preferably native, vegetative cover with a uniform density of at least 70 percent has been established on all unpaved areas and areas not covered by permanent structures, and all slopes and channels have been permanently stabilized against erosion.

PERSON

An 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.

POINT SOURCE

Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

POLLUTANT

Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works, watercourse, or Waters of the Commonwealth. Pollutants include, but are not limited to:

- a. Oil and other automotive fluids;
- b. Nonhazardous liquid and solid wastes and yard wastes;
- c. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnance, accumulations and floatables;

- d. Pesticides, herbicides, and fertilizers;
- e. Hazardous materials and wastes;
- f. Sewage, fecal coliform and pathogens;
- g. Dissolved and particulate metals;
- h. Animal wastes;
- i. Rock, sand, salt, soils;
- j. Construction wastes and residues; and
- k. Noxious or offensive matter of any kind.

PRIVATE ROADS

A road that has not been accepted by the Town and is owned by the residents, a homeowner's association, or the original developer.

PROJECT SITE

Specific area of land where a development project will be built or implemented. The project site may include development conducted on either a single property or multiple properties as part of a single proposal (e.g., residential subdivision).

RECHARGE

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

REDEVELOPMENT

Land disturbing activities, structural development (construction, installation or expansion of a building or other structure), and/or creation of impervious surfaces on a previously developed site. Redevelopment which will result in a net increase in impervious area shall comply with all stormwater standards applicable to new development.

REQUIRED RECHARGE VOLUME

The stormwater volume that must be infiltrated to replicate pre-development groundwater recharge within a developed site per Nantucket Stormwater Standards. It is calculated based on the total post-construction impervious area on a site multiplied by a required depth of runoff which is set by the Nantucket Stormwater Standards according to project location.

RESIDENTIAL PROPERTY

Areas that are developed or able to be developed for the purpose of human habitation.

RUNOFF

Rainfall, snowmelt, or irrigation water flowing over the ground surface without infiltration.

SEDIMENT

An array of particles in water, such as dirt, silt, fine sand, minerals, rust and organic debris.

SEDIMENTATION

The process or act of deposition of sediment.

SITE

Any lot or parcel of land or area of property where Land-Disturbing Activities are, were, or will be performed.

SOIL

Mineral or organic material on the immediate surface of the Earth.

STORM DRAIN

A conduit or channel which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

STORMWATER

Runoff from precipitation or snow melt and surface water runoff and drainage.

STORMWATER CONTROL MEASURE (SCM)

Structural or nonstructural technique for managing stormwater to prevent or reduce point or non-point source pollutants from entering surface waters or ground waters. A Nonstructural Stormwater Control Measure includes but is not limited to source control, Environmentally Sensitive Site Design, some Low Impact Development techniques or practices, street cleaning and pollution prevention measures. A structural Stormwater Control Measure includes, but is not limited to, a basin, discharge outlet, swale, rain garden, filter, some Low Impact Development techniques or practices, or other stormwater treatment practice or measure either alone or in combination, including without limitation, any overflow pipe, conduit, weir control structure that: (a) is not naturally occurring; (b) is not designed as a wetland replication area; and (c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing, discharging, recharging or treating stormwater. A Stormwater Control Measure may be a component of a Stormwater Management System.

STORMWATER MANAGEMENT PLAN (SWMP)

A plan required as part of the application for a Stormwater Permit.

STORMWATER MANAGEMENT SYSTEM

Stormwater Management System means a physical system and infrastructure for conveying, collecting, storing, discharging, recharging or treating stormwater (and only stormwater) on-site including Stormwater Control Measures and any pipes and outlets

intended to transport, reduce pollutants, and discharge stormwater to ground water or surface water.

STORMWATER PERMIT (SWP)

A permit issued by the Stormwater Utility pursuant to this bylaw prior to commencement of Land Disturbing Activity, the addition or replacement of impervious surface, or a new connection to the Nantucket Stormwater System.

STORMWATER UTILITY

The entity established by the Select Board to administer, implement and enforce the Town of Nantucket's Stormwater Regulations and to administer the Stormwater Enterprise Fund.

TEMPORARY STABILIZATION

The application of vegetation or non-erodible materials to disturbed or exposed soils for erosion protection during active construction and when construction activity has temporarily ceased.

TOTAL SUSPENDS SOLIDS or TSS

Undissolved organic or inorganic particles in water.

TOWN

The Town of Nantucket.

VERNAL POOLS

Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

WATERCOURSE

A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

WATER QUALITY VOLUME (WQV)

The stormwater runoff volume requiring treatment to reduce defined stormwater pollutants to prescribed treatment levels per Nantucket Stormwater Standards according to project location.

WATERS OF THE COMMONWEALTH

All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, groundwater, and Waters of the United States as defined under the Federal Clean Water Act as hereafter amended.

WETLANDS

Tidal and non-tidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and

streams), brackish and salt marshes; common names include marshes, swamps and bogs.

§4. Applicability.

- A. A Stormwater Permit shall be required for all construction and/or land disturbing activities that individually or as part of a Common Plan of Development or Sale result in land disturbing activities in excess of the thresholds outlined in the regulations promulgated hereunder.
- B. A Stormwater Permit is not required for emergency repairs or routine maintenance to roads or their drainage systems which are performed to maintain the original line and grade, hydraulic capacity or the original purpose of the stormwater system.
- C. Land disturbing activities that are exempt are:
 - 1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations 310 CMR 10.04 and G.L. c. 40A, Section 3;
 - 2. Ground disturbances in the course of customary cemetery use and regular maintenance;
 - 3. Maintenance of existing landscaping, gardens, or lawn areas associated with a single-family dwelling provided such maintenance does not include the addition of more than 100 cubic yards of soil or other material, or alteration of drainage patterns;
 - 4. The construction of fencing that will not alter existing terrain or drainage patterns;
 - 5. Normal maintenance of Town owned land, ways, and appurtenances;
 - 6. Construction or repair or maintenance of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter drainage pattern, including an individual subsurface septic disposal system, and related elements such as pipes, etc. provided that the post-repair drainage is equal to the pre-repair drainage;
 - 7. Any land disturbing activities authorized under approvals and/or permits issued before the effective date of this bylaw;
 - 8. Maintenance or resurfacing of any public way;
 - 9. The Town of Nantucket Department of Public Works ice and snow control operations; and

10. Emergency repairs to any stormwater management system or feature that poses a threat to public health or safety, or as deemed necessary by the Stormwater Utility.

- D. All activities are subject to all existing provisions of the Town of Nantucket's bylaws and regulations. Where any provision of this bylaw imposes restrictions different from those imposed by any other bylaw, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall take precedence.
- E. No activities which require a Stormwater Permit may commence until a Stormwater Permit is issued, regardless of whether other local permits have been received.
- F. Development that drains directly to Waters of the Commonwealth within the limits of the Town of Nantucket is subject to the jurisdiction of the Wetlands Protection Act, which is administered by the Nantucket Conservation Commission.

§5. Stormwater Utility.

- A. The Select Board may authorize the formation of a Stormwater Utility to administer, implement and enforce rules and regulations promulgated hereunder. Any powers granted to the Stormwater Utility or duties therein may be delegated in writing by the Stormwater Utility to employees or agents of the Planning Board, Board of Health, Conservation Commission, and/or other Town Departments.
- B. The Stormwater Utility shall have the authority to issue Stormwater Permits as applicable according to Section 4.
- C. The Stormwater Utility shall have the authority, at its discretion, to maintain all stormwater control measures and stormwater drainage systems within the public road right-of-way, within permanent stormwater easements, within publicly owned lands, and within private roads if necessary easements are granted.
- D. All stormwater drainage systems, including open channels, that convey water solely from the property on which they are contained shall be maintained by the property owner.
- E. The Stormwater Utility shall not be responsible for improvements to the stormwater system for private roads except through private road betterments process as stated in Chapter 127 Art VIII of the Town Bylaws. The cost of improvements to the stormwater management system for private roads shall not be funded by the Stormwater Enterprise Fund and shall be borne by the landowners abutting such private ways. All improvements to stormwater systems and drainage on private roads shall be done in accordance with the Town requirements for temporary and permanent repairs on private roads.

- F. The Town hereby establishes a charge for the use of the stormwater management services of the Town to be known as the “Stormwater Utility Fee.” Stormwater Management shall be funded by revenue collected through the Stormwater Utility Fee and other funds as may, from time to time, be appropriated or obtained through grants or low interest loans. The Stormwater Utility Fee shall be imposed on all parcels within the Town.
- G. The Stormwater Utility Fee shall be billed periodically to the record title owner of the property. The Stormwater Utility shall develop and, from time to time, update the Stormwater Utility Fee after consideration of total Stormwater management costs.
- H. Receipts generated from the Stormwater Utility Fee shall be deposited in a Stormwater Enterprise Fund which is hereby established in accordance with the authority granted by G.L. c.44, §53F1/2.
- I. The funds deposited into the Stormwater Enterprise Fund shall be used to fund:
1. Operation and maintenance of the Town’s stormwater system;
 2. Administrative and implementation costs associated with managing the Town’s stormwater system, including the Stormwater Utility Fee;
 3. Water quality monitoring and water quality programs;
 4. Repair, replacement or expansion of the Town’s stormwater system, including design and construction;
 5. Public education and outreach programs relevant to stormwater;
 6. Public participation and involvement programs relevant to stormwater;
 7. Illicit discharge detection and elimination programs, including, but not limited to, mapping and sampling of the drainage system;
 8. Construction and post-construction site runoff control programs, including assistance with comprehensive construction and post-construction site inspections, as well as long-term inspection of stormwater control measures as needed;
 9. Pollution Prevention/Good Housekeeping activities including, but not limited to, catch basin cleaning and street sweeping;
 10. Inspection and enforcement activities; and
 11. Other activities, which are reasonably necessary, including costs related to regulatory compliance.

- J. Failure of the Town to send a bill for the Stormwater Utility Fee shall not relieve the property owner of record from the obligation to pay the fee. If a property is unbilled, or if no bill is sent for a particular parcel of land, the Town may back bill for the fees as applicable for a period not to exceed one year of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.
- K. Stormwater utility bills shall be managed by the Stormwater Utility for collection. The Treasurer shall keep records of all paid and unpaid stormwater utility bills and maintain financial records for the utility. If a Stormwater Utility bill is not paid in full by the thirtieth (30th) day from the date the bill is mailed, interest at the statutory rate shall accrue on any unpaid balance. Interest shall accrue from the date of the mailing of the bill. At any time after interest begins to accrue on an unpaid account, the Treasurer may serve the assessed party a statement of the amount due, including interest, with a demand for payment.
- L. In the event that a property owner believes the Stormwater Utility Fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the Stormwater Utility bill, and after payment of the bill in full, apply to the Stormwater Utility for an abatement. The Stormwater Utility shall issue a written decision on the abatement request within 30 days. The property owner shall have the right to appeal the Stormwater Utility's abatement decision to the Select Board within 30 days of receipt of the Stormwater Utility's decision. The Select Board shall review the owner's appeal within 60 days of receipt of the appeal and shall issue a decision affirming, reversing or altering the Stormwater Utility's decision within 90 days of receipt of the owner's appeal unless a later date is agreed to in writing by the applicant. The Select Board's decision shall be final and any appeal shall be to a court of competent jurisdiction.

§6. Administration.

- A. The Stormwater Utility shall be the permit granting authority for the issuance of Stormwater Permits and shall administer, implement, and enforce this bylaw. Any powers granted to, or duties imposed upon the Nantucket Stormwater Utility may be delegated in writing to any other Town employees or agents.
- B. Stormwater Permit procedures and submission requirements shall be defined and included as part of the Stormwater Rules and Regulations.
- C. Stormwater Rules and Regulations. The Town of Nantucket may adopt, and may periodically amend, rules and regulations relating to the procedures and administration of this bylaw. The Regulations shall be adopted by majority vote of the Select Board after conducting a public hearing.

- D. Waivers. The Nantucket Stormwater Utility may in its discretion and after due consideration decide to waive and exempt strict compliance with any requirement of the Town of Nantucket Stormwater Bylaw or the Rules and Regulations promulgated hereunder, where it makes a written finding that such action is: 1. Allowed by federal, state, or local statutes and/or regulations; 2. In the public interest; and 3. Consistent with the purpose and intent of the Town of Nantucket Stormwater Bylaw and its Rules and Regulations.

§7. Enforcement.

- A. The Stormwater Utility shall enforce this bylaw and related regulations, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.
- B. Orders
1. The Stormwater Utility or an authorized agent of the Stormwater Utility may issue a written order to enforce the provisions of this Bylaw or the regulations thereunder, which may include requirements to:
 - a. Cease and desist from construction, disturbance of land, or unlawful discharges, practices, or operations until there is compliance with the bylaw and regulations of the Stormwater Utility.
 - b. Eliminate illicit connections or discharges to the Nantucket Stormwater System.
 - c. Repair, maintain, replace or install additional erosion and sediment control measures.
 - d. Repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan.
 - e. Monitor, analyze, and report.
 - f. Remediate erosion and sedimentation resulting directly or indirectly from the land disturbing activity.
 - g. Abate or remediate adverse impacts that result directly or indirectly from malfunction of the stormwater management system including any contamination in connection therewith. The plan for remediation and/or abatement must be submitted to the Stormwater Utility for approval; and/or
 - h. Complete any abatement or remediation by a deadline established by the Stormwater Utility.

2. If the Stormwater Utility determines that abatement or remediation of erosion, sedimentation, and/or adverse impacts 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 of Nantucket may, at its option, with the approval of a court of competent jurisdiction, undertake such work, and the property owner shall reimburse the Town's expenses.
 3. The Stormwater Utility must approve the abatement or remediation measures by violators prior to their implementation in writing.
 4. Within thirty (30) 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 of Nantucket, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Nantucket Select Board within thirty (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 thirty (30) days following a decision of the Nantucket Select Board 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 a statutory rate, as provided in G.L. c. 59, §57, after the thirty-first day following the day on which the costs were due.
- C. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Nantucket may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, §21D. The penalty for all violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- D. Civil Penalties. The Stormwater Utility and/or its duly authorized representative may assess and enforce civil penalties for violations as set forth in the regulations promulgated hereunder.
- E. Appeals. The property owner or its designee may appeal the notice of violation or the enforcement order to the Select Board within five (5) calendar days of receipt of the written notice of violation or enforcement order. Failure to appeal within five (5) calendar days shall render the order final. The Select Board shall review any such appeal during a public meeting and shall issue a decision either affirming, modifying or overturning the order or violation notice within sixty (60) days of receipt of an appeal or such later date as agreed to by the applicant in writing. Further appeal shall be to a court of competent jurisdiction.

- F. 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.

§8. Access Permission.

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Nantucket Stormwater Utility and its agents, officers, and employees may request entry 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 Nantucket Stormwater Utility deems reasonably necessary to determine compliance with the permit. Denial of entry onto privately-owned property may constitute violation of the Stormwater Permit and/or cause for enforcement.

§9. Surety.

The Stormwater Utility may require the permittee to post a surety bond, irrevocable letter of credit, cash, or other acceptable security before the start of land disturbance or construction activity. The form of the bond shall be approved by Select Board at an amount deemed sufficient by the Stormwater Utility to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Utility may release part of the bond as each phase is completed in compliance with the permit, but the bond may not be fully released until the Stormwater Utility has received the final report outlined in the Stormwater Rules and Regulations and issue a certificate of completion. If the permittee defaults on any obligations imposed by the Stormwater Permit, the Stormwater Utility may, after notification of the permittee, inform the holder of the security of the default, in which event the Town shall be entitled to the security funds.

§10. Severability.

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.

(Select Board)

FINANCE COMMITTEE MOTION: Moved that the Code of the Town of Nantucket is hereby amended by adding a new Chapter 142 (Stormwater Management) as follows:

**Chapter 142
Stormwater Management**

§1. Purposes.

A. The purposes of this bylaw are:

- 1. To establish a fair and equitable regulatory system for utilizing and maintaining the Town of Nantucket's Stormwater System;**

2. To authorize the establishment of a Stormwater Utility to administer rules and regulations;
 3. To authorize the regulation of stormwater and contaminated stormwater runoff to protect the Town's water bodies and groundwater, protect the Waters of the Commonwealth, and safeguard the public health, safety, welfare, and the environment.
- B. Increased volumes of stormwater, contaminated stormwater runoff from impervious surfaces, and soil erosion and sedimentation are major causes of:**
1. Impairment of water quality;
 2. Decreased flow in lakes, ponds, streams, rivers, wetlands, and groundwater;
 3. Contamination of drinking water supplies;
 4. Erosion of stream channels;
 5. Alteration or destruction of aquatic and wildlife habitat;
 6. Flooding;
 7. Overloading or clogging of municipal catch basins, infiltration systems, and storm drainage systems; and
 8. Flooding and erosion on abutting properties.
- C. Sedimentation from land disturbance activities and polluted stormwater runoff from land development and redevelopment are major sources of water pollution and impact drinking water supplies, natural habitats, and recreational resources. Runoff with sediment clogs stormwater infiltration systems causing failure and a need for replacement. Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary for the protection of the Town of Nantucket's water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public, and to protect the natural resources of the Town.**
- D. The objectives of this bylaw are to:**
1. Protect water resources;
 2. Ensure the control of stormwater runoff from new development, redevelopment, and in some cases, existing development;
 3. Protect groundwater and surface water from degradation or depletion;

4. Promote infiltration and the recharge of groundwater where appropriate;
5. Prevent pollutants and sediments from entering the municipal storm drain system;
6. Prevent flooding and erosion to abutting properties;
7. Ensure that land disturbing activities or development incorporate practices that minimize erosion and sedimentation and downgradient impacts;
8. Ensure adequate long-term operation and maintenance of stormwater control measures;
9. Comply with applicable state and federal statutes and regulations relating to stormwater discharges; and
10. Establish the Town of Nantucket's legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

§2. Authority.

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act G.L. c. 43B. The Select Board may adopt, through rules and regulations authorized by this Bylaw, a Stormwater Utility pursuant to G.L. c. 83, § 16, G.L. c. 40, § 10, and G.L. c. 40, § 1A and any other applicable provisions of law.

This bylaw authorizes the Town of Nantucket to promulgate regulations applicable to land disturbing activities.

§3. Definitions.

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

ABUTTER

A person or entity that owns property next to or adjoining another piece of property.

ALTERATION OF DRAINAGE CHARACTERISTICS

Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined or discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; or change in the recharge to groundwater on the area.

APPLICANT

Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government, to the extent permitted by law, requesting a Stormwater Permit.

BEST MANAGEMENT PRACTICE (BMP)

An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC)

A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

CLEAN WATER ACT

The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

CLEARING

Any activity that removes the vegetative surface cover, including mechanical, manual, or chemical methods.

COMMON PLAN OF DEVELOPMENT OR SALE

A contiguous area where multiple separate and distinct development or redevelopment activities have occurred, are occurring, or are proposed to occur under one plan. The “plan” in a “common plan of development or sale” is broadly defined as any announcement or piece of documentation (including, but not limited to, a sign, public notice or hearing, advertisement, drawing, permit application) or physical demarcation (including, but not limited to, boundary signs, lot stakes, surveyor markings).

CONSTRUCTION PERIOD EROSION AND SEDIMENTATION CONTROL AND POLLUTION PREVENTION PLAN (CPPP)

A document containing a narrative, drawings and details developed by a qualified professional engineer (PE), Certified Professional in Erosion and Sedimentation Control (CPESC), or equivalently certified professional, which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbing activities.

CRITICAL AREA

Critical areas include Outstanding Resource Waters as designated in 314 CMR 4.00, Special Resource Waters as designated in 314 CMR 4.00, recharge areas for public water supplies as defined in 310 CMR 22.02 (Zone Is, Zone IIs and Interim Wellhead Protection Areas for groundwater sources and Zone As for surface water sources), bathing beaches as defined in 105 CMR 445.000, cold-water fisheries as defined in 310 CMR 10.04 and 314 CMR 9.02, and shellfish growing areas as defined in 310 CMR 10.04 and 314 CMR 9.02.

DISCHARGE OF POLLUTANTS

The addition from any source of any pollutant or combination of pollutants into the Nantucket Stormwater System or into the Waters of the Commonwealth from any source.

DOWNTOWN DISTRICT

Inclusive of the Commercial Downtown (CDT) and the Residential Old Historic (ROH) districts.

ENVIRONMENTALLY SENSITIVE SITE DESIGN (ESSD)

A suite of practices using nature-based solutions to treat stormwater while reducing or eliminating structural Stormwater Control Measures needed to meet certain stormwater management standards. More specifically, ESSD means designs that incorporate Low Impact Development (LID) techniques or practices to prevent the generation of stormwater and non-point source pollution by reducing impervious surfaces, disconnecting stormwater sheet flow paths and treating stormwater at its source, maximizing open space, minimizing disturbance, protecting natural features and processes, and/or enhancing wildlife habitat.

ENVIRONMENTALLY SENSITIVE SITE DESIGN CREDIT (ESSD CREDIT)

A credit for the use of ESSD that counts towards compliance with the stormwater requirements.

EQUIVALENT RESIDENTIAL UNIT

A billing unit for stormwater runoff based on the impervious area of an average-sized residential parcel.

EROSION

The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, land disturbing activities or vehicle traffic and the subsequent detachment and transportation of soil particles.

EXISTING STORMWATER OUTFALL

Existing stormwater discharge points where no work is proposed, and where no additional stormwater runoff is directed.

GRADING

Changing the level or shape of the ground surface.

GROUNDWATER

Water beneath the surface of the ground.

GRUBBING

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

HAZARDOUS MATERIAL

Any material which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as "toxic" or "hazardous" by MGL c. 21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

ILLICIT CONNECTION

A surface or subsurface drain or conveyance which allows an illicit discharge into the Nantucket Stormwater System, including without limitation sewage, process wastewater, wash water, or groundwater, and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of these regulations.

ILLICIT DISCHARGE

Direct or indirect discharge to the Nantucket Stormwater System or into a watercourse or the Waters of the Commonwealth that is not composed entirely of stormwater, except as exempted in Article II. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from fire-fighting activities exempted pursuant to Article II of this regulation.

IMPAIRED WATER

A water body that does not support one or more of its designated uses in accordance with the Clean Water Act.

IMPERVIOUS SURFACE

Any material or structure on or above the ground that prevents water from infiltrating the underlying soil. Impervious Surface includes, without limitation, paved roads, paved parking lots, packed earthen materials, sidewalks, and rooftops.

IMPOUNDMENT

A stormwater pond created by either constructing an embankment or excavating a pit which retains a permanent pool of water.

IMPRACTICABLE

Impossible in practice to do or carry out based solely on physical constraints.

INFILTRATION

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

LAND-DISTURBING ACTIVITY

Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably

changes the ability of a ground surface to absorb waters; involves clearing and grading; or results in an alteration of drainage characteristics. Areas that support the land-disturbing activity such as on-site or off-site stockpiles, borrow areas, concrete truck washouts, fueling areas, and material and equipment storage areas are considered part of the land-disturbing activity.

LAND USE WITH HIGHER POTENTIAL POLLUTANT LOADS (LUHPPL)

Land uses identified in 310 CMR 22.20B(2), 22.20C(2)(a) through (k) and (m), 22.21(2)(a)1. through 8., and (b)1. through 6.; areas within a site that are the location of activities that are subject to an individual National Pollutant Discharge Elimination System (NPDES) permit or the NPDES Multi-sector General Permit; auto fueling facilities (gas stations); exterior fleet storage areas; exterior vehicle service and equipment cleaning areas; marinas and boatyards; parking lots with high intensity use; confined disposal facilities and disposal sites.

LONG-TERM OPERATOR

A person or organization responsible for the implementation and upkeep of the Operation and Maintenance Plan for a post-construction stormwater management system.

LOT

A tract of land in common ownership, including land under water, not divided by a street, which may include multiple parcels of adjacent land in common ownership.

LOW IMPACT DEVELOPMENT (LID)

Low Impact Development refers to the application of a stormwater management system that seeks to mimic pre-development hydrology, including managing rainfall at the source using uniformly distributed decentralized micro-scale controls.

NANTUCKET STORMWATER 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 Nantucket.

NEW DEVELOPMENT

Land disturbing activities, structural development (construction, installation or expansion of a building or other structure), and/or creation of impervious surfaces on a previously undeveloped site.

NONPOINT SOURCE POLLUTION

Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and man-made pollutants finally depositing them into a water resource area.

NONRESIDENTIAL PROPERTY

A property that is not considered residential.

NONSTORMWATER DISCHARGE

Discharge to the municipal storm drain system not composed entirely of stormwater.

OFF-LINE DESIGN

The use of a flow separator structure in order to divert only a portion of flow to a stormwater control.

OPEN DRAIN

Any uncovered ditch, swale or culvert used for the conveyance of surface water runoff or groundwater. A culvert that carries a watercourse or intermittent stream is not an open drain.

OPERATION AND MAINTENANCE PLAN

A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of stormwater management systems to ensure that it continues to function as designed.

OUTFALL

Any point where a storm sewer system discharges to Waters of the Commonwealth or Waters of the United States.

OWNER

A person with a legal or equitable interest in property.

PERMANENT STABILIZATION

The state of a site being developed or redeveloped when all soil disturbing activities have been completed and a perennial, preferably native, vegetative cover with a uniform density of at least 70 percent has been established on all unpaved areas and areas not covered by permanent structures, and all slopes and channels have been permanently stabilized against erosion.

PERSON

An 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.

POINT SOURCE

Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

POLLUTANT

Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works, watercourse, or Waters of the Commonwealth. Pollutants include, but are not limited to:

- a. Oil and other automotive fluids;
- b. Nonhazardous liquid and solid wastes and yard wastes;
- c. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnance, accumulations and floatables;
- d. Pesticides, herbicides, and fertilizers;
- e. Hazardous materials and wastes;
- f. Sewage, fecal coliform and pathogens;
- g. Dissolved and particulate metals;
- h. Animal wastes;
- i. Rock, sand, salt, soils;
- j. Construction wastes and residues; and
- k. Noxious or offensive matter of any kind.

PRIVATE ROADS

A road that has not been accepted by the Town and is owned by the residents, a homeowner's association, or the original developer.

PROJECT SITE

Specific area of land where a development project will be built or implemented. The project site may include development conducted on either a single property or multiple properties as part of a single proposal (e.g., residential subdivision).

RECHARGE

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

REDEVELOPMENT

Land disturbing activities, structural development (construction, installation or expansion of a building or other structure), and/or creation of impervious surfaces on a previously developed site. Redevelopment which will result in a net increase in impervious area shall comply with all stormwater standards applicable to new development.

REQUIRED RECHARGE VOLUME

The stormwater volume that must be infiltrated to replicate pre-development groundwater recharge within a developed site per Nantucket Stormwater Standards. It is calculated based on the total post-construction impervious area on a site multiplied by a required depth of runoff which is set by the Nantucket Stormwater Standards according to project location.

RESIDENTIAL PROPERTY

Areas that are developed or able to be developed for the purpose of human habitation.

RUNOFF

Rainfall, snowmelt, or irrigation water flowing over the ground surface without infiltration.

SEDIMENT

An array of particles in water, such as dirt, silt, fine sand, minerals, rust and organic debris.

SEDIMENTATION

The process or act of deposition of sediment.

SITE

Any lot or parcel of land or area of property where Land-Disturbing Activities are, were, or will be performed.

SOIL

Mineral or organic material on the immediate surface of the Earth.

STORM DRAIN

A conduit or channel which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

STORMWATER

Runoff from precipitation or snow melt and surface water runoff and drainage.

STORMWATER CONTROL MEASURE (SCM)

Structural or nonstructural technique for managing stormwater to prevent or reduce point or non-point source pollutants from entering surface waters or ground waters. A Nonstructural Stormwater Control Measure includes but is not limited to source control, Environmentally Sensitive Site Design, some Low Impact Development techniques or practices, street cleaning and pollution prevention measures. A structural Stormwater Control Measure includes, but is not limited to, a basin, discharge outlet, swale, rain garden, filter, some Low Impact Development techniques or practices, or other stormwater treatment practice or measure either alone or in combination, including without limitation, any overflow pipe, conduit, weir control structure that: (a) is not naturally occurring; (b) is not designed as a wetland replication area; and (c) has been designed, constructed, and installed for the purpose of conveying, collecting, storing,

discharging, recharging or treating stormwater. A Stormwater Control Measure may be a component of a Stormwater Management System.

STORMWATER MANAGEMENT PLAN (SWMP)

A plan required as part of the application for a Stormwater Permit.

STORMWATER MANAGEMENT SYSTEM

Stormwater Management System means a physical system and infrastructure for conveying, collecting, storing, discharging, recharging or treating stormwater (and only stormwater) on-site including Stormwater Control Measures and any pipes and outlets intended to transport, reduce pollutants, and discharge stormwater to ground water or surface water.

STORMWATER PERMIT (SWP)

A permit issued by the Stormwater Utility pursuant to this bylaw prior to commencement of Land Disturbing Activity, the addition or replacement of impervious surface, or a new connection to the Nantucket Stormwater System.

STORMWATER UTILITY

The entity established by the Select Board to administer, implement and enforce the Town of Nantucket's Stormwater Regulations and to administer the Stormwater Enterprise Fund.

TEMPORARY STABILIZATION

The application of vegetation or non-erodible materials to disturbed or exposed soils for erosion protection during active construction and when construction activity has temporarily ceased.

TOTAL SUSPENDED SOLIDS or TSS

Undissolved organic or inorganic particles in water.

TOWN

The Town of Nantucket.

VERNAL POOLS

Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

WATERCOURSE

A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

WATER QUALITY VOLUME (WQV)

The stormwater runoff volume requiring treatment to reduce defined stormwater pollutants to prescribed treatment levels per Nantucket Stormwater Standards according to project location.

WATERS OF THE COMMONWEALTH

All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, groundwater, and Waters of the United States as defined under the Federal Clean Water Act as hereafter amended.

WETLANDS

Tidal and non-tidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes, swamps and bogs.

§4. Applicability.

- A. A Stormwater Permit shall be required for all construction and/or land disturbing activities that individually or as part of a Common Plan of Development or Sale result in land disturbing activities in excess of the thresholds outlined in the regulations promulgated hereunder.**
- B. A Stormwater Permit is not required for emergency repairs or routine maintenance to roads or their drainage systems which are performed to maintain the original line and grade, hydraulic capacity or the original purpose of the stormwater system.**
- C. Land disturbing activities that are exempt are:**
 - 1. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations 310 CMR 10.04 and G.L. c. 40A, Section 3;**
 - 2. Ground disturbances in the course of customary cemetery use and regular maintenance;**
 - 3. Maintenance of existing landscaping, gardens, or lawn areas associated with a single-family dwelling provided such maintenance does not include the addition of more than 100 cubic yards of soil or other material, or alteration of drainage patterns;**
 - 4. The construction of fencing that will not alter existing terrain or drainage patterns;**
 - 5. Normal maintenance of Town owned land, ways, and appurtenances;**
 - 6. Construction or repair or maintenance of utilities other than drainage (gas, water, electric, telephone, etc.) which will not alter drainage pattern, including an individual subsurface septic disposal system, and related elements such**

as pipes, etc. provided that the post-repair drainage is equal to the pre-repair drainage;

7. Any land disturbing activities authorized under approvals and/or permits issued before the effective date of this bylaw;
 8. Maintenance or resurfacing of any public way;
 9. The Town of Nantucket Department of Public Works ice and snow control operations; and
 10. Emergency repairs to any stormwater management system or feature that poses a threat to public health or safety, or as deemed necessary by the Stormwater Utility.
- D. All activities are subject to all existing provisions of the Town of Nantucket's bylaws and regulations. Where any provision of this bylaw imposes restrictions different from those imposed by any other bylaw, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall take precedence.
- E. No activities which require a Stormwater Permit may commence until a Stormwater Permit is issued, regardless of whether other local permits have been received.
- F. Development that drains directly to Waters of the Commonwealth within the limits of the Town of Nantucket is subject to the jurisdiction of the Wetlands Protection Act, which is administered by the Nantucket Conservation Commission.
- §5. Stormwater Utility.
- A. The Select Board may authorize the formation of a Stormwater Utility to administer, implement and enforce rules and regulations promulgated hereunder. Any powers granted to the Stormwater Utility or duties therein may be delegated in writing by the Stormwater Utility to employees or agents of the Planning Board, Board of Health, Conservation Commission, and/or other Town Departments.
 - B. The Stormwater Utility shall have the authority to issue Stormwater Permits as applicable according to Section 4.
 - C. The Stormwater Utility shall have the authority, at its discretion, to maintain all stormwater control measures and stormwater drainage systems within the public road right-of-way, within permanent stormwater easements, within publicly owned lands, and within private roads if necessary easements are granted.

- D. All stormwater drainage systems, including open channels, that convey water solely from the property on which they are contained shall be maintained by the property owner.
- E. The Stormwater Utility shall not be responsible for improvements to the stormwater system for private roads except through private road betterments process as stated in Chapter 127 Art VIII of the Town Bylaws. The cost of improvements to the stormwater management system for private roads shall not be funded by the Stormwater Enterprise Fund and shall be borne by the landowners abutting such private ways. All improvements to stormwater systems and drainage on private roads shall be done in accordance with the Town requirements for temporary and permanent repairs on private roads.
- F. The Town hereby establishes a charge for the use of the stormwater management services of the Town to be known as the "Stormwater Utility Fee." Stormwater Management shall be funded by revenue collected through the Stormwater Utility Fee and other funds as may, from time to time, be appropriated or obtained through grants or low interest loans. The Stormwater Utility Fee shall be imposed on all parcels within the Town.
- G. The Stormwater Utility Fee shall be billed periodically to the record title owner of the property. The Stormwater Utility shall develop and, from time to time, update the Stormwater Utility Fee after consideration of total Stormwater management costs.
- H. Receipts generated from the Stormwater Utility Fee shall be deposited in a Stormwater Enterprise Fund which is hereby established in accordance with the authority granted by G.L. c.44, §53F1/2.
- I. The funds deposited into the Stormwater Enterprise Fund shall be used to fund:
1. Operation and maintenance of the Town's stormwater system;
 2. Administrative and implementation costs associated with managing the Town's stormwater system, including the Stormwater Utility Fee;
 3. Water quality monitoring and water quality programs;
 4. Repair, replacement or expansion of the Town's stormwater system, including design and construction;
 5. Public education and outreach programs relevant to stormwater;
 6. Public participation and involvement programs relevant to stormwater;
 7. Illicit discharge detection and elimination programs, including, but not limited to, mapping and sampling of the drainage system;

8. Construction and post-construction site runoff control programs, including assistance with comprehensive construction and post-construction site inspections, as well as long-term inspection of stormwater control measures as needed;
 9. Pollution Prevention/Good Housekeeping activities including, but not limited to, catch basin cleaning and street sweeping;
 10. Inspection and enforcement activities; and
 11. Other activities, which are reasonably necessary, including costs related to regulatory compliance.
- J. Failure of the Town to send a bill for the Stormwater Utility Fee shall not relieve the property owner of record from the obligation to pay the fee. If a property is unbilled, or if no bill is sent for a particular parcel of land, the Town may back bill for the fees as applicable for a period not to exceed one year of charges, but no late fees or delinquency charges of any kind shall be charged or recovered from any property owner so back billed.
- K. Stormwater utility bills shall be managed by the Stormwater Utility for collection. The Treasurer shall keep records of all paid and unpaid stormwater utility bills and maintain financial records for the utility. If a Stormwater Utility bill is not paid in full by the thirtieth (30th) day from the date the bill is mailed, interest at the statutory rate shall accrue on any unpaid balance. Interest shall accrue from the date of the mailing of the bill. At any time after interest begins to accrue on an unpaid account, the Treasurer may serve the assessed party a statement of the amount due, including interest, with a demand for payment.
- L. In the event that a property owner believes the Stormwater Utility Fee is improperly calculated or is otherwise incorrect, the property owner may, within thirty (30) days from the date of issuance of the Stormwater Utility bill, and after payment of the bill in full, apply to the Stormwater Utility for an abatement. The Stormwater Utility shall issue a written decision on the abatement request within 30 days. The property owner shall have the right to appeal the Stormwater Utility's abatement decision to the Select Board within 30 days of receipt of the Stormwater Utility's decision. The Select Board shall review the owner's appeal within 60 days of receipt of the appeal and shall issue a decision affirming, reversing or altering the Stormwater Utility's decision within 90 days of receipt of the owner's appeal unless a later date is agreed to in writing by the applicant. The Select Board's decision shall be final and any appeal shall be to a court of competent jurisdiction.
- §6. Administration.

- A. The Stormwater Utility shall be the permit granting authority for the issuance of Stormwater Permits and shall administer, implement, and enforce this bylaw. Any powers granted to, or duties imposed upon the Nantucket Stormwater Utility may be delegated in writing to any other Town employees or agents.
- B. Stormwater Permit procedures and submission requirements shall be defined and included as part of the Stormwater Rules and Regulations.
- C. Stormwater Rules and Regulations. The Town of Nantucket may adopt, and may periodically amend, rules and regulations relating to the procedures and administration of this bylaw. The Regulations shall be adopted by majority vote of the Select Board after conducting a public hearing.
- D. Waivers. The Nantucket Stormwater Utility may in its discretion and after due consideration decide to waive and exempt strict compliance with any requirement of the Town of Nantucket Stormwater Bylaw or the Rules and Regulations promulgated hereunder, where it makes a written finding that such action is: 1. Allowed by federal, state, or local statutes and/or regulations; 2. In the public interest; and 3. Consistent with the purpose and intent of the Town of Nantucket Stormwater Bylaw and its Rules and Regulations.

§7. Enforcement.

- A. The Stormwater Utility shall enforce this bylaw and related regulations, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.
- B. Orders
 - 1. The Stormwater Utility or an authorized agent of the Stormwater Utility may issue a written order to enforce the provisions of this Bylaw or the regulations thereunder, which may include requirements to:
 - a. Cease and desist from construction, disturbance of land, or unlawful discharges, practices, or operations until there is compliance with the bylaw and regulations of the Stormwater Utility.
 - b. Eliminate illicit connections or discharges to the Nantucket Stormwater System.
 - c. Repair, maintain, replace or install additional erosion and sediment control measures.
 - d. Repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan.
 - e. Monitor, analyze, and report.

- f. Remediate erosion and sedimentation resulting directly or indirectly from the land disturbing activity.
 - g. Abate or remediate adverse impacts that result directly or indirectly from malfunction of the stormwater management system including any contamination in connection therewith. The plan for remediation and/or abatement must be submitted to the Stormwater Utility for approval; and/or
 - h. Complete any abatement or remediation by a deadline established by the Stormwater Utility.
 - 2. If the Stormwater Utility determines that abatement or remediation of erosion, sedimentation, and/or adverse impacts 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 of Nantucket may, at its option, with the approval of a court of competent jurisdiction, undertake such work, and the property owner shall reimburse the Town's expenses.
 - 3. The Stormwater Utility must approve the abatement or remediation measures by violators prior to their implementation in writing.
 - 4. Within thirty (30) 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 of Nantucket, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Nantucket Select Board within thirty (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 thirty (30) days following a decision of the Nantucket Select Board 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 a statutory rate, as provided in G.L. c. 59, §57, after the thirty-first day following the day on which the costs were due.
- C. **Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town of Nantucket may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, §21D. The penalty for all violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

- D. **Civil Penalties.** The Stormwater Utility and/or its duly authorized representative may assess and enforce civil penalties for violations as set forth in the regulations promulgated hereunder.
- E. **Appeals.** The property owner or its designee may appeal the notice of violation or the enforcement order to the Select Board within five (5) calendar days of receipt of the written notice of violation or enforcement order. Failure to appeal within five (5) calendar days shall render the order final. The Select Board shall review any such appeal during a public meeting and shall issue a decision either affirming, modifying or overturning the order or violation notice within sixty (60) days of receipt of an appeal or such later date as agreed to by the applicant in writing. Further appeal shall be to a court of competent jurisdiction.
- F. **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.

§8. Access Permission.

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Nantucket Stormwater Utility and its agents, officers, and employees may request entry 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 Nantucket Stormwater Utility deems reasonably necessary to determine compliance with the permit. Denial of entry onto privately-owned property may constitute violation of the Stormwater Permit and/or cause for enforcement.

§9. Surety.

The Stormwater Utility may require the permittee to post a surety bond, irrevocable letter of credit, cash, or other acceptable security before the start of land disturbance or construction activity. The form of the bond shall be approved by Select Board at an amount deemed sufficient by the Stormwater Utility to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Utility may release part of the bond as each phase is completed in compliance with the permit, but the bond may not be fully released until the Stormwater Utility has received the final report outlined in the Stormwater Rules and Regulations and issue a certificate of completion. If the permittee defaults on any obligations imposed by the Stormwater Permit, the Stormwater Utility may, after notification of the permittee, inform the holder of the security of the default, in which event the Town shall be entitled to the security funds.

§10. Severability.

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.