

ARTICLE ____

Revisions to Article XXIV.

1. *Section 1.2, entitled “Definitions” in Article XXIV is hereby deleted, in its entirety, and replaced with the following new Section 1.2.*

Section 1.2 Definitions

A. The terms used in this Bylaw shall have the following meanings:

1. **ABUTTER** — The owner(s) of land abutting the activity.
2. **AGRICULTURE** — The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (M.G.L. c. 131 § 40) and its implementing regulations (310 CMR 10.00).
3. **ALTERATION OF DRAINAGE CHARACTERISTICS**: Any land disturbing activity, as defined herein, on an area of land that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.
4. **BEST MANAGEMENT PRACTICE (BMP)** — An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff
5. **CLEAN WATER ACT**: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
6. **CLEARING**: Any activity that removes the vegetative surface cover. Clearing activities generally include grubbing activity as defined below.
7. **COMMON PLAN OF DEVELOPMENT OR SALE**: A contiguous area where multiple separate and distinct construction activities are occurring under one plan.
8. **CONSTRUCTION ACTIVITY** — Activities subject to NPDES Construction General Permits.
9. **CONSTRUCTION AND WASTE MATERIALS** — Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter, sanitary waste at a construction site that may adversely impact water quality, and clearing/grubbing wastes such as stumps and asphalt.
10. **DEVELOPMENT**: The modification of land to accommodate a new use or expansion of use, usually involving construction.
11. **DIRECTOR**: The Director of the Town of Holden Department of Public Works.
12. **DISCHARGE OF POLLUTANTS**: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

13. ENFORCING AGENT: The Town's Director of Public Works, the Stormwater Committee (as defined herein), or its designated agent.
14. ENVIRONMENTAL SITE MONITOR — Trained professional approved by the Stormwater Committee and retained by the holder of a Land Disturbance Permit to periodically inspect the work and report to the Stormwater Committee.
15. EROSION: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.
16. EROSION AND SEDIMENT CONTROL PLAN — A document containing narrative, drawings, and details developed by an Environmental Site Monitor which includes BMPs, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction and construction related land disturbances. The plan is required as part of the application for a Land Disturbance Permit.
17. ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS — Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).
18. 25-FOOT NO-DISTURB-ZONE — The area adjacent to the wetland resource area, excluding Riverfront and Buffer Zone, where there is no grading, filling, excavation, removal of vegetation or other construction activity allowed.
19. 100-FOOT BUFFER - The zone around all resource areas except Land Under Waterbodies, Land Subject to Flooding and Riverfront Area, where work may be conditioned to protect the resource area (310 CMR 10.02(2)(b)).
20. GRADING: Changing the level or shape of the ground surface.
21. GROUNDWATER: Water beneath the surface of the ground.
22. GRUBBING: The act of clearing land surface by digging up roots and stumps.
23. HAZARDOUS OR TOXIC MATERIALS — Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, corrosive, flammable, reactive, toxic, radioactive, or infectious characteristics, may cause or significantly contribute to a substantial present or potential hazard to human health, safety, or welfare, or to property or the environment. Hazardous or Toxic materials include, but are not limited to, any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Hazardous or Toxic under M.G.L. c.21C and c.21E, and 310 CMR 30.000 and 310 CMR 40.0000.
24. ILLICIT CONNECTIONS: An illicit connection is defined as either of the following:

- (a) Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the municipal storm drain system, including but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the municipal storm drain system, and any connections to the municipal storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or
 - (b) Any drain or conveyance connected from a commercial or industrial land use to the municipal storm drain system which has not been documented in plans, maps, or equivalent records and approved by the Town.
25. ILLICIT DISCHARGE: Any direct or indirect non-stormwater discharge to the municipal storm drain system, except as exempted in *Section 2.2* of this Article.
26. IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops. Impervious surface also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 85.
27. INDUSTRIAL ACTIVITY — Activities subject to NPDES Industrial Permits.
28. LAND-DISTURBING ACTIVITY, LAND DISTURBANCE, or DISTURBANCE of LAND: Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.
29. LOW IMPACT DEVELOPMENT — An approach to environmentally friendly land use development. It includes landscaping and design techniques that attempt to maintain the natural, pre-developed ability of a site to manage rainfall. LID techniques capture water on site, filter it through vegetation, and let it soak into the ground.
30. MASSACHUSETTS ENDANGERED SPECIES ACT — (MGL c. 131A) and its implementing regulations at (321 CMR 10.00) which prohibit the “taking” of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.
31. MASSACHUSETTS STORMWATER POLICY OR MASSACHUSETTS STORMWATER MANAGEMENT POLICY — The Policy and guidance Handbook issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by 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 addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site. The Handbook provides detailed guidance on the Policy.
32. MAXIMUM EXTENT PRACTICABLE — The limits of available technology and the practical and technical limits on an Owner in planning and designing stormwater management practices to reduce

potential for pollutants to enter the municipal storm drainage system or waters of the Commonwealth.

33. 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 manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Holden.
34. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMITS: General, group, and individual stormwater discharge permits issued by the United States Environmental Protection Agency which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act.
35. NON-STORMWATER DISCHARGE: Any discharge to the municipal storm drain system that is not composed entirely of stormwater.
36. NEW DEVELOPMENT — Any construction activities or land alteration on an area that has not previously been developed to include impervious cover.
37. NON-STORMWATER DISCHARGE — Any discharge to the municipal storm drain system that is not composed entirely of stormwater.
38. OPERATION AND MAINTENANCE PLAN — A plan setting up 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.
39. OUTFALL — The point at which stormwater flows out from a point source discernible, confined, and discrete conveyance into waters of the Commonwealth of Massachusetts.
40. OUTSTANDING RESOURCE WATERS (ORWs) — Waters designated by Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Policy Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.
41. OWNER: A person with a legal or equitable interest in property.
42. OWNER'S TECHNICAL REPRESENTATIVE — A Massachusetts Registered Professional Engineer in a competent field and retained by the holder of a Land Disturbance Permit to certify that design, construction, and maintenance are completed in accordance with the applicable local, state, and federal stormwater requirements.

43. PERMITTEE: The person who holds a land disturbance permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.
44. PERSON: Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, legal entity, agency, public or quasi-public body, authority, department, or political subdivision of the Town of Holden, the Commonwealth, or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
45. PLAN: Any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot.
46. 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.
47. POLLUTANT: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.
48. POLLUTION: The human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses.
49. PRE-CONSTRUCTION — All activity in preparation for construction.
50. PREMISES — Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
51. PRIORITY HABITAT OF RARE SPECIES — Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.
52. PROCESS WASTEWATER — Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.
53. RECHARGE: The replenishment of underground water reserves.
54. REDEVELOPMENT: Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.
55. RESPONSIBLE PARTY(IES) or PERSON(S): owner(s), persons with financial responsibility, and persons with operational responsibility.
56. RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.
57. SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

- 58. SEDIMENTATION: The process or act of deposition of sediment.
- 59. SITE: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.
- 60. SLOPE: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.
- 61. SOIL: Earth materials including duff, humic materials, sand, rock and gravel.
- 62. STABILIZATION — The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.
- 63. STORMWATER: Any surface flow, runoff, and drainage consisting entirely of water from rainstorm events.
- 64. STORMWATER COMMITTEE: A Committee of the Town of Holden consisting of the Department of Public Works Director or his designee, the Conservation Commission Agent, the Town Planner, and the Building Commissioner.
- 65. STORMWATER MANAGEMENT PLAN — A plan required as part of the application for a Land Disturbance Permit.
- 66. STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — Plan required for permit coverage under the NPDES General Permit for Discharges from Large and Small Construction Activities. The SWPPP is a detailed plan describing how erosion and sediment controls and other BMPs will be implemented on a construction site.
- 67. STRIP: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.
- 68. SURFACE WATER DISCHARGE PERMIT. A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.
- 69. TOWN: The Town of Holden.
- 70. TSS — Total Suspended Solids.
- 71. VERNAL POOL: shall include, in addition to scientific definitions found in the Conservation Commission Regulations, and the Wetlands Protection Act any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other Vernal Pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the Resource Areas for Vernal Pools shall be the mean annual high-water line defining the depression and an additional one-hundred feet, the jurisdictional buffer shall consist of an additional one hundred feet from the resource area.
- 72. WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

- 73. WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, s.40 and in the Town of Holden Wetland Protection Bylaw.
- 74. WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, groundwaters, and vernal pools.
- 75. WETLANDS: Wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent communities in inland waters; that portion of any bank which touches any inland water.

- II. *Section 1.3, entitled “Authority and Responsibility for Enforcement” in Article XXIV is hereby deleted, in its entirety, and replaced with the following new Section 1.3:*

Section 1.3 Authority and Enforcement

- A. This Bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act (MGL Chapter 43B), the Holden Town Charter, MGL Chapter 40, Section 21, pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and any other enabling authority available to the Town.
- B. The Director of Public Works of the Town of Holden (the “Director”), The Stormwater Committee, or an authorized agent thereof (hereafter known as Enforcing Agent), shall administer, implement, and enforce the provisions of this Bylaw, its regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations:
1. The Director shall administer, implement, and enforce the provisions of Section 2.0: Illicit Discharge Detection and Elimination. Any powers granted or duties imposed upon the Director may be delegated in writing by the Director to persons or entities acting on behalf of the Town.
 2. The Stormwater Committee shall administer, implement, and enforce the provisions of Section 3.0: Stormwater Management and Erosion Control. The Stormwater Committee shall consist of the Town’s Department of Public Works Director or his designee, the Conservation Commission Agent, the Town Planner, and the Building Commissioner. The Stormwater Committee shall internally elect the Chair of the Committee every calendar year. Any powers granted or duties imposed upon the Committee may be delegated in writing by the Chair of the Committee to persons or entities acting on behalf of the Town.
- C. The Enforcing Agent shall have the authority to seek remedies, as described herein or as otherwise available under law, to enforce this Bylaw, its regulations and/or the terms and conditions of its permits.
- D. Any person found by the Enforcing Agent to be violating any of the provisions of this Bylaw and the regulations promulgated hereunder shall be subject to enforcement action pursuant to the authority granted by this Bylaw and by any and all applicable federal, state or local laws, regulations or rules and as described within this Bylaw. Each day in which any such violation continues shall be deemed a separate offense.
- E. Civil Relief: If a person violates the provisions of this Bylaw or the regulations adopted hereunder, the Enforcing Agent may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

F. Notice of Violation: Whenever the Enforcing Agent finds that a person has violated a prohibition or failed to meet a requirement of this Bylaw or the regulations adopted hereunder, the Enforcing Agent may order compliance by written Notice of Violation to the Responsible Person. Such Notice of Violation may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. a requirement to cease and desist from the violating discharges, practices, operations, or Land-Disturbing Activity until there is compliance with the Bylaw or provisions of the Land Disturbance Permit;
4. maintenance, installation or performance of additional erosion and sediment control measures;
5. remediation of erosion and sedimentation resulting directly or indirectly from the Land Disturbing Activity;
6. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
7. Payment to cover the Town's administrative and remediation costs; and
8. The implementation of source control or treatment of the stormwater.

If the Enforcing Agent determines that abatement of a violation, restoration of affected property and/or remediation of erosion and sedimentation is required, the Notice of Violation shall set forth a deadline by which such abatement, remediation, and/or restoration must be completed. Said Notice of Violation shall further advise that, should the violator or property owner fail to abate, restore, and/or perform remediation within the specified deadline, the Town of Holden may, at its option, undertake such work, and the violator shall reimburse the Town's expenses.

G. Penalties

1. Criminal Penalty. Any person who violates any provision of this Stormwater Management Bylaw or the regulations adopted hereunder, or any order or permit issued there under, shall be punished by a fine of not more than \$ 300.00. Each day or part thereunder that such violation occurs or continues shall constitute a separate offense.
2. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Enforcing Agent may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, §21D and Article XIX of these General Bylaws, to be enforced by the Director of the Department of Public Works. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

H. Appeals

Notwithstanding the provisions of *Section K* below, any person receiving a Notice of Violation under *Section F* above, but not including a ticket or notice of violation under the Non-Criminal Disposition Process, may appeal the determination of the Enforcing Agent to the Town Manager. The notice of appeal must be received by the Town Manager within 5 days from the date of the Notice of Violation. A hearing on the appeal before the Town Manager or his/her designee shall take place within 15 days from the date of Town's receipt of the notice of appeal. The decision of the Town Manager or designee shall be final. Further relief shall be to a court of competent jurisdiction.

I. Charging Cost of Abatement/Liens

- A. Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the Enforcing Agent shall notify the violator and the property owner of the costs incurred by the Town, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment with the Board of Selectmen within 15 days of receipt of the notification of the costs incurred. A hearing on the protest by the Board of Selectmen shall take place within 30 days from the date of Town's receipt of the written protest. The decision of the Board of Selectmen shall be final. Further relief shall be to a court of competent jurisdiction.
- B. If the amount due is not paid within 10 days of the decision of the Board of Selectmen or the expiration of the time in which to file an appeal under this Section, the charges shall be recorded as a municipal charges lien on the property, pursuant to M.G.L. c.40, §58. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. c.59, §57 after the thirty-first day at which the costs first become due.

J. Emergency Abatement

The Enforcing Agent shall require the immediate abatement of any violation of this Bylaw or the regulations adopted hereunder that constitutes an immediate threat to the health, safety or welfare of the public. If any such violation is not abated immediately as directed by the Enforcing Agent, to the extent permitted by law, or if authorized by the owner or other party in control of the property, the Town may enter the property and take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Town shall be at the expense of the property owner and/or violator. Any relief obtained under this Section shall not prevent Town from seeking other and further relief authorized pursuant to this Bylaw or at law or equity.

K. Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the Enforcing Agent may accept from a violator alternative compensatory actions, such as storm drain stenciling, maintenance of stormwater BMPs, participation in municipal waste or pollution reduction programs, attendance at compliance workshops, brook cleanup, etc.

- III. *In Section 2.0, “Illicit Discharge Detection and Elimination”, insert a new Section 2.4 therein, after Section 2.3, to read as follows:*

Section 2.4 Notification of Spills

- A. Notwithstanding other requirements of federal, state or local laws, rules or regulations, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants or illicit discharges into stormwater, to the municipal storm drainage system, or waters of the Commonwealth, the person shall take all necessary steps to ensure discovery, containment, and cleanup of the release. In the event of a release of oil or hazardous waste to the municipal storm drainage system, the person shall immediately notify the Town’s fire, board of health and public works departments. In the event of a release of a non-hazardous pollutant to the municipal storm drainage system, the reporting person shall notify the Town's Department of Public Works in person or by phone or facsimile no later than 4:00 p.m. of the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town's Department of Public Works within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained by the Town in accordance with the Massachusetts Public Records Law.