

LEGAL NOTICE OF PUBLIC HEARING  
Town of Boxborough  
Bylaw Amendments

The Boxborough Select Board will conduct a public hearing pursuant to MGL Chapter 40A, Section 5 on Monday, January 24, 2022 at 7:00 PM, or as soon thereafter as the Select Board's agenda permits, to consider amendments to the Boxborough Construction and Post-Construction Stormwater Bylaw.

The proposed Construction and Post-Construction Stormwater Bylaw amendments are available for review on the Planning Board page of the Town website at [www.boxborough-ma.gov](http://www.boxborough-ma.gov). Based on current Covid-19 circumstances, this public hearing will be conducted via Zoom and details will be made available on the Boxborough Select Board Agenda on the Town website when posted a minimum of 48 hours prior to the meeting.

Written comments may be sent by January 19, 2022, to the Planning Office at 29 Middle Road Boxborough, MA 01719.

PUBLICATION DATES:        Jan. 6, 2022  
   Jan. 13, 2022

**~~STORMWATER BYLAW~~ – CONSTRUCTION AND POST-CONSTRUCTION-  
STORMWATER BYLAW**

## SECTION 1. PURPOSE

The purpose of this Bylaw is to establish minimum stormwater management requirements and procedures in order to minimize damage to public and private property and infrastructure; safeguard the public health, safety, environment and general welfare; protect aquatic resources and wildlife habitat; protect the quality and health of water resources; conserve groundwater supplies; and, foster climate change resiliency.

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

1. establish the Town of Boxborough **Planning Board** as the legal authority to ensure compliance with the provisions of this Bylaw and its accompanying Rules and Regulations through a review process, inspections, monitoring, and enforcement;
2. establish administrative procedures for: the submission, review, and approval or disapproval of Stormwater Management Permits; the inspection of approved active projects; and post construction monitoring;
3. establish decision-making processes surrounding new development and redevelopment that protect watershed integrity and preserves and/or restores the health of local water resources such as lakes, ponds, streams, rivers, wetlands, and groundwater; and
4. ensure compliance with requirements of the United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable state and federal mandates.

## SECTION 2. DEFINITIONS

For the purposes of this Bylaw, the following shall mean:

**AGRICULTURAL USE:** The normal maintenance or improvement of land in agricultural or ~~aquaculture~~ **aquacultural** use, as defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131, § 40, and its implementing regulations.

**APPLICANT:** Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth of Massachusetts or the federal government to the extent permitted by law requesting a ~~soil erosion and sediment control permit~~ **Stormwater Management Permit** for proposed ~~land disturbance~~ **Disturbance of Land** activity.

~~**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that helps reduce the quantity or improve the quality of stormwater runoff.~~

**CERTIFICATE OF COMPLETION:** Document issued by the Town of Boxborough ~~Select~~ **Planning** Board or **its** Reviewing Agent upon receipt of a final inspection report and acknowledgement that all conditions of the Stormwater Management Permit have been satisfactorily completed.

~~–~~ **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.

**DISTURBANCE OF LAND: Action to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils.**

ENFORCEMENT ORDER: A written order issued by the **Select Planning** Board or **its** Reviewing Agent to enforce the provisions of this Bylaw.

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

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

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER

DISCHARGE PERMIT: A permit issued by the EPA or jointly with the Commonwealth of Massachusetts that authorizes the discharge of stormwater to waters of the United States.

NEW DEVELOPMENT: Any construction, ~~land alteration, activities~~ or addition **Disturbance** of ~~impervious surfaces on previously undeveloped sites~~ **Land** resulting in a total **disturbance of land equal to or earth disturbances** greater than 1 acre (or activities that are part of a larger common plan of development disturbing greater than 1 acre) **on an area** that **does has** not ~~meet the definition of Redevelopment previously been developed to include impervious cover.~~

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

**PLANNING BOARD: Town of Boxborough Planning Board.**

PROFESSIONAL ENGINEER (P.E.): A **registered licensed** Professional Engineer within the Commonwealth of Massachusetts in good standing.

REDEVELOPMENT: ~~Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area on previously developed sites.~~ Any construction, **land alteration Disturbance of Land**, or improvement of impervious surfaces resulting in total **disturbance of land equal to or earth disturbances** greater than 1 acre (or activities that are part of a larger common plan of ~~redevelopment~~ **development** disturbing greater than 1 acre) that does not meet the definition of **New Development new development.**

REVIEWING AGENT: ~~Person~~ **The Boxborough Town Planner, other employee or third-party consultant** designated by the **Select Planning** Board ~~as responsible~~ for **the purposes of administering and** enforcing this **Bylaw.** ~~SELECT BOARD: Town of Boxborough Select Board~~ **bylaw.**

STORMWATER: Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

STORMWATER MANAGEMENT PERMIT: The written approval granted by the **Select Planning** Board to undertake a construction activity pursuant to a Stormwater Management Permit Application. A valid Stormwater Management Permit must be signed by a majority of the **Select Planning** Board participating at a duly noted public hearing, and such permit must be recorded at the Middlesex Registry of Deeds, prior to the start of any work.

**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, groundwaters, and vernal pools.**

WETLAND RESOURCE AREAS: Areas specified in the Massachusetts Wetlands Protection Act Regulations, 310 CMR 10.00, as amended, and in the Town of Boxborough Wetland Bylaw, as amended.

### SECTION 3. APPLICABILITY

No person may undertake a construction activity, including clearing, grading, or excavation that results in a ~~land disturbance~~ **Disturbance of Land** to an area equal to or greater than one (1) acre ~~of land~~ or will disturb less than one acre ~~of land~~ but is part of a larger common plan of development or sale that will ultimately disturb an area equal to or greater than one (1) ~~acre of land~~ within the Town of Boxborough without first obtaining a Stormwater Management Permit issued by the ~~Select~~ **Planning** Board ~~or Reviewing Agent~~.

### SECTION 4. AUTHORITY

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, pursuant to the Regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Boxborough at the spring 2020 Town Meeting and as amended.

### SECTION 5. RESPONSIBILITY FOR ADMINISTRATION

The ~~Select~~ **Planning** Board shall be the permit granting authority for this Bylaw. Any powers granted to or duties imposed upon the ~~Select~~ **Planning** Board may be delegated in writing by the ~~Select~~ **Planning** Board to any Town employee, board, commission, committee or ~~town~~ agent, ~~or third-party agent~~ hereby known as the ~~Reviewing Agent~~.

~~The Select Board shall not have jurisdiction over stormwater issues within wetland resource areas and/or buffer zone where the Conservation Commission has jurisdiction under the Wetlands Protection Act, the Boxborough Wetland Bylaw and/or the Town of Boxborough Regulations for the Wetland Bylaw. The Conservation Commission shall be the permit granting authority under this Bylaw for projects requiring a Stormwater Management Permit for land disturbance activities occurring within wetland resource areas and/or buffer zone subject to the Commission's jurisdiction.~~

~~The Select Board or its Reviewing Agent~~ **The Planning Board** shall take any of the following actions as a result of an application for a Stormwater Management Permit as specifically defined within the Stormwater Management Rules and Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, or Disapproval.

### SECTION 6. REGULATIONS

The ~~Select~~ **Planning** Board may adopt, and periodically amend, the Stormwater Management Rules and Regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Bylaw by majority vote of the ~~Select~~ **Planning** Board, after conducting one (1) advertised public hearing to receive comments on any proposed revisions. The hearing(s) shall be duly advertised in a paper of general circulation in the Town of Boxborough no less than fourteen (14) days prior to the date of the public hearing.

### SECTION 7. EXEMPTIONS

The following activities are exempt from requirements under this bylaw:

1. normal maintenance and improvement of land in agricultural use as defined by the \_\_\_\_\_, Wetlands Protection Act regulation 310 CMR 10.04, as amended;
2. maintenance of -existing landscaping, -gardens, -or lawn -areas -associated -with a single- family dwelling;
3. the construction of fencing that will not substantially alter existing terrain or drainage patterns;
4. normal maintenance and improvements of the Town of Boxborough's publicly owned roadways and associated drainage infrastructure; **and**
5. emergency repairs to any stormwater management system or feature that poses a threat to public health or safety, or as deemed necessary by a Town department or board; **and**,
6. ~~projects that are wholly subject to jurisdiction under the Wetlands Protection Act and/or the Boxborough Wetlands Protection Bylaw and demonstrate compliance with the Massachusetts Stormwater Management Policy as reflected in an Order of Conditions issued by the Conservation Commission.~~

## SECTION 8. ENFORCEMENT

The **Select Planning** Board, **and/or** ~~an authorized agent of the Select Board~~ **its Reviewing Agent**, shall enforce this Bylaw, regulations, ~~orders~~, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

Civil Relief. If a person violates the provisions of this Bylaw, permit, notices, **and/or** order issued thereunder, the **Select Planning** Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations **and/or** compelling the person to perform abatement or remediation of the violation.

**Enforcement** Orders. The **Select Planning** Board may issue a written order to enforce the provisions of this Bylaw, which may include requirements to:

1. cease and desist from construction or ~~land disturbing~~ **Disturbance of Land** activity until there is compliance with this Bylaw and the Stormwater Management Permit;
2. repair, maintain, or replace the stormwater management system or portions thereof in accordance with the operation and maintenance plan;
3. maintain, install, or perform additional erosion and sediment control measures;
4. perform monitoring, analyses, and reporting;
5. remediate adverse impact resulting directly or indirectly from malfunction of the stormwater management system or erosion and sediment control system;
6. cease and desist from unlawful discharges, practices, or operations; and/or,
7. remediate contamination in connection therewith.

If the **Select Planning** Board determines that abatement **and/or** remediation of adverse impacts is required, the Enforcement Order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator **and/or** property **owner/Owner** fail to abate or perform remediation within the specified deadline, the Town of Boxborough may, at its option, **with the approval of a court of competent jurisdiction**, undertake such work, and the property **owner/Owner** shall reimburse the Town's expense.

Within thirty (30) days after completing all measures necessary to abate the violation, the violator and the property **owner/Owner** shall be notified of the costs incurred by the Town of Boxborough, including administrative costs. The violator **and/or** property **owner/Owner** may file a written protest objecting to the amount or basis of costs with the **Select Planning** 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 **Select Planning** Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall constitute “municipal charges” as set forth in G.L. c.40, §58, and by its adoption of this bylaw the Town of Boxborough authorizes the imposition of a “municipal charges lien” for such costs in accordance with that statute. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, § 57, after the thirty-first day at which the costs first become due.

**Criminal Penalty.** Any person who violates any provision of this Bylaw, order, or permit issued thereunder, shall be punished by a fine of not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

**Non-Criminal Disposition.** As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, section 21D, in which case the **Select Planning** Board **and/or** its Reviewing Agent shall be the Authorized Enforcing Agent. The penalty for the 1<sup>st</sup> violation shall be \$100. The penalty for the 2<sup>nd</sup> violation shall be \$200. The penalty for the 3<sup>rd</sup> and all subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

**Entry to Perform Duties under this Bylaw.** To the extent permitted by state law, or if authorized by the ~~owner~~**Owner** or other party in control of the property, the **Select Planning** Board **and/or** its Reviewing Agent, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys, or sampling as the **Select Planning** Board **and/or** Reviewing Agent deems reasonably necessary.

**Appeals.** A decision of the **Select Planning** Board **and/or** its Reviewing Agent shall be final. Further relief of a decision by the **Select Planning** Board **and/or** its Reviewing Agent made under this Bylaw shall be appealed to the Superior Court, in accordance with M.G.L. c. 249, §4.

**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.

## **SECTION 9. WAIVERS AND PROVISIONS FOR RELIEF**

The **Select Planning** Board **or its Reviewing Agent**, in its discretion, may waive strict compliance with any requirement of this Bylaw or any other regulations promulgated hereunder, where:

1. such action is allowed by federal, state and local statutes and/or regulations;
2. it is in the public interest;
3. a public safety issue exists; and
4. it is consistent with the purpose and intent of this Bylaw.

Any ~~applicant~~**Applicant** may submit a written request to be granted such a waiver, **provided that an alternative or equivalent approach to meeting this Bylaw and accompanying Stormwater Management Rules and Regulations is provided to the Planning Board or its Reviewing agent.** Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of this Bylaw does not further the purposes or objectives of this Bylaw. The **Select Planning** Board **or its Reviewing Agent** may require documentation to be submitted and stamped by a qualified P.E. ~~registered~~ **licensed** in Massachusetts or a Certified Professional in Erosion and Sediment Control (CPESC).

## **SECTION 10. SURETY**

The **Select Planning** Board may require the permittee to post before the start of **land disturbance** **Disturbance of Land** or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by Town counsel, and be in an amount deemed sufficient by the **Select Planning** Board to ensure that the work will be completed in accordance with the Stormwater Management Permit. If the project is phased, the **Select Planning** Board may release part of the bond as each phase is completed in compliance with the Stormwater Management Permit but the bond may not be fully released until the **Select Planning** Board has received the final inspection report as required by the Stormwater Management Rules and Regulations and issued a Certificate of Completion.

## SECTION 11. 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.

Adopted:

June 29, 2020 **TBD**

Approved by the Attorney General's Office:

December 16, 2020 **TBD**

DRAFT