

LITTLETON PLANNING BOARD STORMWATER MANAGEMENT AND EROSION CONTROL REGULATIONS

1. AUTHORITY AND PURPOSE

- 1.1. These Regulations are promulgated by the Littleton Planning Board under the authority of the Littleton Stormwater Management and Erosion Control Bylaw, Chapter 38, Article II, of the Code of the Town of Littleton, Massachusetts.
- 1.2. The purpose of these Regulations is to effect the purposes of the Bylaw. The failure of these Regulations to address all aspects of the Bylaw, or a legal declaration of their invalidity, shall not act to suspend or invalidate the effect of the Bylaw.

2. DEFINITIONS

- 2.1. Applicant: Any person requesting a Stormwater Permit.
- 2.2. Application: A Stormwater Permit Application.
- 2.3. Bylaw: The Littleton Stormwater Management and Erosion Control Bylaw, Chapter 38, Article II, of the Code of the Town of Littleton, Massachusetts.
- 2.4. Impaired Water: A water is impaired if it does not meet one or more of its designated use(s). For purposes of these Regulations, Impaired Waters are those classified as categories 4 and 5 of the five-part categorization approach used for classifying the water quality standards attainment status for water segments under the U.S. EPA Total Maximum Daily Load (TMDL) program.
- 2.5. Offsite Mitigation: Pollutant removal practices implemented at a location not on the Property that achieve the required pollutant removal.
- 2.6. Permittee: Any person to whom a Stormwater Permit has been issued.
- 2.7. Planning Board: The Littleton Planning Board.
- 2.8. Planning Department: The Littleton Planning Department.
- 2.9. Property: The parcel(s) on which the activities proposed in a Stormwater Permit will take place.
- 2.10. USGS HUC12: Subwatershed with a unique 12-digit United States Geological Survey Hydrologic Unit Code.

3. PERMIT FEES

3.1. Permit Application Fee

- 3.1.1. Each Application shall be accompanied by the appropriate Permit Application Fee as set forth in the Stormwater Permit Fee Schedule promulgated by the Planning Board. The Permit Application Fee is non-refundable.

3.2. Consultant Fee

- 3.2.1. Pursuant to Section 38-15.F of the Bylaw and Chapter 44, Section 53G of the Massachusetts General Laws, each Stormwater Permit Application is also subject to an initial Consultant Fee, which will be determined after an administratively complete Application is received by the Planning Department.

3.2.2. Selection of Consultant and Determination of Initial Consultant Fee

- 3.2.2.1. Upon receipt of a complete Application, Planning Department staff shall forward a copy of the Application to an individual with expertise in engineering and stormwater management (the “Consultant”). Selection of a Consultant shall be within the discretion of the Planning Department, subject to the following requirements:
 - 3.2.2.1.1. The Consultant must possess either (a) a college degree in science or engineering including coursework relevant to stormwater management, or (b) three years of experience in the field of stormwater management.
 - 3.2.2.1.2. The Consultant must not have a conflict of interest that would prevent him or her from making a fair and impartial technical evaluation of the Applicant’s Application and supporting materials. Previous or concurrent engagement by the Town of Littleton on other matters does not constitute a conflict of interest.
- 3.2.2.2. The Consultant shall provide a written scope of services and cost estimate to the Planning Department for some or all of the following, as directed by Planning Department staff: reviewing the Application; providing written comments to the Planning Board; recommending the amount of cash bond to be required based on estimated costs of completion of stormwater management measures; attending a meeting of the Planning Board; providing a written response to questions/comments from the Planning Board, questions/comments from other Town boards and departments, and comments by the Applicant; conducting inspections during construction; reviewing as-built plans; and any other tasks specified by the Planning Department. The amount specified in such cost estimate shall be the initial Consultant Fee. The Consultant shall also provide a statement of qualifications.
- 3.2.2.3. Within ten (10) calendar days of receipt of a complete Application, Planning Department staff shall notify the Applicant of the initial Consultant Fee and shall provide the Applicant a copy of the scope of services, cost estimate and statement of qualifications received from the Consultant. Such notification shall be made by e-mail to the e-mail address specified by the Applicant in the Application.

3.2.3. Appeal of Selection of Consultant

3.2.3.1. Pursuant to M.G.L. c. 44, § 53G, the Applicant may appeal the selection of a Consultant to the Littleton Select Board. The grounds for such an appeal shall be limited to claims that the Consultant selected has a conflict of interest or does not possess the minimum required qualifications set forth in Section 3.2.2.1.1 of these Regulations.

3.2.3.2. To appeal the selection of a Consultant, the Applicant shall, within seven (7) calendar days of the date that the Planning Department sends the selection notification e-mail, send by certified mail or hand deliver a letter to the Littleton Select Board, with a copy to the Planning Department. The letter shall state the specific grounds for the appeal and provide evidence of the Consultant's alleged conflict of interest or lack of qualifications.

3.2.3.3. If the Littleton Select Board, upon consideration of such an appeal, directs the Planning Department to select another Consultant, the Planning Department shall do so. In the event that no decision on the appeal is made by the Littleton Select Board within one month following the submission of the appeal, the selection made by the Planning Department shall stand.

3.2.3.4. The required time limits for action upon an Application by the Planning Department (if any) shall be extended by the duration of any such appeal regarding the selection of a Consultant to review the Application.

3.2.3.5. Any of the following shall constitute a final Consultant selection decision:

3.2.3.5.1. Selection by the Planning Department that is not appealed by the Applicant within seven (7) calendar days of the date of the Planning Department's selection notification e-mail;

3.2.3.5.2. Issuance by the Littleton Select Board of a written decision upholding the Planning Department's selection; or

3.2.3.5.3. Failure of the Littleton Select Board to issue a written decision on the appeal of the selection of a Consultant within one month of the submission of the appeal.

3.2.4. Payment and Administration of Consultant Fee

3.2.4.1. Within seven (7) calendar days of the date that the selection of a Consultant has become final as set forth in Section 3.2.3.5, the Applicant shall submit the initial Consultant Fee to the Planning Department. The Planning Department shall then engage the Consultant to review the Application.

3.2.4.2. The Consultant Fee shall be deposited in a special account established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, shall

be used by the Planning Department solely to pay the Consultant for services in connection with the Application. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the Applicant or to the Applicant's successor in interest and a final report of said account shall be made available to the Applicant or to the Applicant's successor in interest.

3.2.5. Additional Consultant Fee

- 3.2.5.1. During review of the Application, the Planning Board may determine that additional consulting services are required from the Consultant. In that event, the Planning Board shall specify the additional services needed and explain why they are necessary. The Planning Department shall request a scope of services and cost estimate from the Consultant. Such cost estimate shall be an additional Consultant Fee. Planning Department staff shall notify the Applicant of the additional Consultant Fee and shall provide the Applicant a copy of the scope of services and cost estimate. Within seven (7) calendar days of this notification, the Applicant shall submit the additional Consultant Fee to the Planning Department.

4. PERMIT APPLICATION PROCESS

- 4.1. The Applicant shall send by certified mail or hand deliver seven (7) paper copies and one (1) electronic copy of a completed application package for a Stormwater Permit to the Planning Department and one (1) paper copy of same to the Town Clerk. The Stormwater Permit Application package shall include:
- 4.1.1. A completed Application form (as provided by the Planning Department) with original signatures of the Applicant and all owners of the Property.
 - 4.1.2. An Erosion and Sediment Control Plan as specified in the Bylaw.
 - 4.1.3. A Stormwater Management Plan as specified in the Bylaw, subject to the following additional requirements:
 - 4.1.3.1. Hydrologic calculations shall use the precipitation data for Massachusetts provided in the National Oceanic and Atmospheric Administration's Atlas 14, Volume 10, or the Massachusetts Stormwater Handbook, whichever is more stringent.
 - 4.1.3.2. The Stormwater Management Plan shall identify all impaired waters to which stormwater from the site will discharge directly or indirectly.
 - 4.1.3.3. For sites that will discharge stormwater (directly or indirectly) to impaired waters in which phosphorus has been identified as a source of impairment (including all sites within the Assabet River watershed), the Stormwater Management Plan shall specify structural Best Management Practices that are optimized for phosphorus removal and shall provide calculations of phosphorus loading and phosphorus removal.

- 4.1.3.4. For sites that will discharge stormwater (directly or indirectly) to impaired waters in which solids have been identified as a source of impairment, stormwater management systems designed on commercial and industrial land use areas draining to the impaired waterbody shall incorporate designs that allow for shutdown and containment where appropriate to isolate the system in the event of an emergency spill or other unexpected event.
- 4.1.3.5. Stormwater management systems on new development shall be designed to meet an average annual pollutant removal equivalent to 90% of the average annual load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 60% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site. Pollutant removal is calculated based on average annual loading and not on the basis of any individual storm event. Average annual pollutant removal requirements are achieved through one of the following methods:
 - 4.1.3.5.1. Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016) or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance, then the Massachusetts Stormwater Handbook may be used to calculate BMP performance; or
 - 4.1.3.5.2. Retaining the volume of runoff equivalent to, or greater than, one (1.0) inch multiplied by the total post-construction impervious surface area on the new development site; or
 - 4.1.3.5.3. Meeting a combination of retention and treatment that achieves the above standards; or
 - 4.1.3.5.4. Utilizing offsite mitigation that meets the above standards within the same USGS HUC12 as the new development site (if allowed by the Planning Board within its sole discretion, and with sufficient guarantees of proper long-term operation and maintenance).
- 4.1.3.6. Stormwater management systems on redevelopment sites shall be designed to meet an average annual pollutant removal equivalent to 80% of the average annual post-construction load of Total Suspended Solids (TSS) related to the total post-construction impervious area on the site AND 50% of the average annual load of Total Phosphorus (TP) related to the total post-construction impervious surface area on the site. Average annual pollutant removal requirements are achieved through one of the following methods:
 - 4.1.3.6.1. Installing BMPs that meet the pollutant removal percentages based on calculations developed consistent with EPA Region 1's BMP Accounting and Tracking Tool (2016) or other BMP performance evaluation tool provided by EPA Region 1, where available. If EPA Region 1 tools do not address the planned or installed BMP performance,

- then the Massachusetts Stormwater Handbook may be used to calculate BMP performance; or
- 4.1.3.6.2. Retaining the volume of runoff equivalent to, or greater than, 0.8 inch multiplied by the total post-construction impervious surface area on the redeveloped site; or
 - 4.1.3.6.3. Meeting a combination of retention and treatment that achieves the above standards; or
 - 4.1.3.6.4. Utilizing offsite mitigation that meets the above standards within the same USGS HUC12 as the redevelopment site (if allowed by the Planning Board within its sole discretion, and with sufficient guarantees of proper long-term operation and maintenance).
- 4.1.4. Redevelopment activities that are exclusively limited to maintenance and improvement of existing roadways, (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects) shall improve existing conditions unless infeasible and are exempt from Section 4.1.3.6. Roadway widening or improvements that increase the amount of impervious area on the redevelopment site by greater than or equal to a single lane width shall meet the requirements of Section 4.1.3.6.
- 4.1.5. An Operation and Maintenance Plan as specified in the Bylaw.
- 4.1.6. A certified list of abutters.
- 4.1.7. Payment of the Permit Application Fee.
- 4.2. The signature(s) of the Property owner(s) on the Application Form shall constitute permission for members of the Planning Board, Planning Department staff, and other employees or agents of the Town authorized by the Planning Board or the Planning Department to enter onto the Property for the purpose of verifying the information in the application or inspecting for compliance with permit conditions at any time between submission of the Application and approval of the final as-built plan.
- 4.3. All applications for Planning Board permits and approvals for the same project shall be submitted at the same time to allow coordinated review of the applications. Upon request of the Applicant providing good cause for the request, this requirement may be waived at the sole discretion of the Planning Department.
- 4.4. After receiving the Application, Planning Department staff shall review the Application and determine whether all required elements (as set forth in Section 4.1 and the Bylaw) have been included. Planning Department staff shall either notify the Applicant by e-mail that the Application is incomplete (specifying what required elements are missing) or that the Application is administratively complete.
- 4.5. Upon determination that the Application is administratively complete, Planning Department staff shall:

- 4.5.1. Select a Consultant to review the Application and forward a copy of the Application to the Consultant;
 - 4.5.2. Set a date for the public hearing on the Application;
 - 4.5.3. Submit a public notice of the hearing to a newspaper (to be published at least one week before the hearing);
 - 4.5.4. Mail notice of the public hearing to the certified list of abutters (at least one week before the hearing);
 - 4.5.5. Send notice of the hearing to other Town departments as appropriate; and
 - 4.5.6. Forward a copy of the Application to each member of the Planning Board.
- 4.6. The Planning Department and the Town Clerk shall each make a copy of the Application available for public review during business hours and shall, if feasible, post a copy of the Application on the Town website.

5. PLANNING BOARD REVIEW

- 5.1. The Planning Board shall hold a public hearing on the Application. The hearing may be combined with the hearing for any other permit or approval for the same project that is within the jurisdiction of the Planning Board. The Planning Board shall accept comments from the public in writing and at the hearing.
- 5.2. The Applicant shall submit all additional information requested by the Board to issue a decision on the Application.
- 5.3. The Planning Board may:
- 5.3.1. Approve the Application and issue a Stormwater Permit if it finds that the proposed plans will protect water resources and meet the objectives and requirements of the Bylaw;
 - 5.3.2. Approve the Application and issue a Stormwater Permit with conditions, modifications or restrictions that the Board determines are required to ensure that the project will protect water resources and meet the objectives and requirements of this Bylaw; or
 - 5.3.3. Disapprove the Application and deny a Stormwater Permit if it finds that the proposed plans will not protect water resources or fail to meet the objectives and requirements of the Bylaw.
- 5.4. Conditions that may be imposed by the Planning Board in a Stormwater Permit include, but are not limited to, the following:
- 5.4.1. A requirement to notify the Planning Board before significant site milestones, such as installation of erosion and sediment control measures or completion of site clearing.

- 5.4.2. A requirement to periodically conduct and document inspections of all control measures (before, during and/or after construction) and submit reports to the Board.
- 5.4.3. A requirement to post, before the start of land disturbance activity, cash bond to secure the performance of the Permittee's obligations under the Stormwater Permit.
- 5.5. The Planning Board shall include permit conditions that survive the approval of the final as-built plan and are sufficient to ensure adequate long-term operation and maintenance of stormwater control measures, including both structural and nonstructural controls. These may include, but are not limited to:
 - 5.5.1. A requirement to record notice of the Operation & Maintenance Plan with the Registry of Deeds (or the Land Court for registered land).
 - 5.5.2. A requirement to submit an annual certification documenting the work that has been done over the last 12 months to properly operate and maintain the stormwater control measures.
 - 5.5.3. A requirement to establish a dedicated source of funding for long-term operation and maintenance of stormwater control measures.
- 5.6. Conditions of the Stormwater Permit apply to the Permittee and all owners of the Property.
- 5.7. The Permittee shall notify the Planning Department in writing of any change or alteration of a land-disturbing activity authorized in a Stormwater Permit before the change or alteration occurs. If the proposed change or alteration is minor, Planning Department staff may authorize such change or alteration in writing with a copy to the Planning Board. Otherwise, Planning Department staff shall forward the notification of change or alteration to the Board. If the Planning Board determines that the change or alteration is significant, the Board may require the Permittee to apply for an amendment to the Stormwater Permit.
- 5.8. All land disturbance authorized by the Stormwater Permit must be completed within three years of the date of issuance, unless otherwise specified by the Board.
- 5.9. The Planning Board may, upon application by the Permittee, amend a Stormwater Permit. Any such amendment shall conform to the requirements of the Bylaw and these Regulations.

6. AS-BUILT PLAN

- 6.1. Within 60 days of the completion of construction of the project, the Permittee shall submit to the Planning Board a record plan detailing the actual stormwater management system as installed and noting any deviations from the approved plans (the "as-built plan"). The as-built plan must depict all on-site controls, both structural and non-structural, designed to manage the stormwater associated with the completed site. The as-built plan shall also include a delineation of the drainage area for each point at which stormwater from the site discharges to the municipal storm drain system or a surface water body. Such plan shall be provided both in hard copy and as an electronic file

complying with the requirements of Chapter 138 of the Code of the Town of Littleton, as follows:

- 6.1.1. The electronic digital file shall comply with Level III of the current version of the MassGIS “Standard for Digital Plan Submission to Municipalities” (hereafter “the standard”), available at <http://www.mass.gov/mgis>. The vertical datum shall be the North American Vertical Datum 1988.
- 6.1.2. Upon written request accompanied by an explanation of the justification for the request, the Planning Board may waive the requirement for complying with Level III of the standard and may instead allow submission of an electronic digital file that complies with Level I of the standard.
- 6.2. Upon review of the as-built plan, the Planning Board may approve it or may direct the Permittee to take any actions necessary to correct the plan or to comply with any outstanding requirements of the Stormwater Permit.

7. SURETY

- 7.1. Pursuant to G.L. c. 44, § 53G½, if the Planning Board requires that a Permittee post a cash bond to secure the performance of its obligations under a Stormwater Permit, the Board shall specify the amount of such cash bond based on an estimate of the cost to perform such obligations. Before commencing construction, the Permittee shall deposit such sum with the Town Treasurer. The Town Treasurer shall deposit such sum in a special account in the municipal treasury and shall be kept separate and apart from all other monies. Any interest earned on the account shall be added to the funds in the account.
- 7.2. At the time that the cash bond is deposited, the Permittee shall also submit to the Planning Board an authorization signed by all Property owners for the Planning Board or any Town employee or agent authorized by the Planning Board to enter onto the property, after providing written notice as set forth below, to complete any requirements of the Stormwater Permit.
- 7.3. Upon fulfillment of all requirements of the Stormwater Permit (except those that survive the submission of the as-built plan) and submission of the as-built plan to the Planning Board, the Permittee may submit a written request to the Planning Board for return of the cash bond.
- 7.4. The Planning Board shall review such written request and shall make a determination as to whether all requirements of the Stormwater Permit (except those that survive the submission of the as-built plan) have been met. If so, the Planning Board shall authorize the Treasurer to return the cash bond, plus any interest earned, to the Permittee. If the Planning Board determines that any requirements of the Stormwater Permit have not been met, the Board may authorize the expenditure of all or portion of the cash bond to complete such requirements. The Planning Board shall return to the Permittee any portion of the special account monies that remain after completion of all requirements.

- 7.5. The Planning Board may, in its sole discretion, release a portion of a cash bond upon written request by the Permittee after partial completion of a phased project.
- 7.6. If, at any time after issuance of a Stormwater Permit, the Planning Board determines that the Permittee has not timely completed requirements of the Stormwater Permit, it may issue a written order to the Permittee to complete specified requirements by a specified deadline. The Board shall provide a copy of such written order to the Property owner(s). If the Permittee does not complete such requirements by the deadline, the Planning Board or any Town employee or agent authorized by the Planning Board may enter onto the Property to complete such requirements. The Planning Board may authorize the expenditure of all or a portion of the cash bond to perform this work.

8. WAIVER

- 8.1. The Planning Board may waive strict compliance with any requirements of these Regulations, where such action is allowed by federal, state and local law and the Town's NPDES stormwater discharge permit, is in the public interest, and is not inconsistent with the purpose and intent of the Bylaw and these Regulations.

9. APPEALS

- 9.1. Appeals from decisions of the Planning Board shall be to a court of competent jurisdiction.

**LITTLETON PLANNING BOARD
STORMWATER MANAGEMENT AND EROSION CONTROL REGULATIONS**

APPENDIX A: STORMWATER PERMIT FEE SCHEDULE

1. Municipal projects (carried out by or for the Town of Littleton): No fee
2. All other projects: \$500.00

Fees may be waived or reduced for government agencies or qualified non-profit organizations at the discretion of the Planning Board.