

ARTICLE XXX

Stormwater Management and Land Disturbance

Section I Purpose

1.1 Eroded soil and storm water runoff entering water resources are considered non-point sources of pollution that are responsible for the degradation of water quality and hydrology in lakes, ponds, streams, rivers, wetlands and groundwater. The United States Environmental Protection Agency (EPA) estimates that polluted storm water runoff is the leading cause of impairment to the nearly 40% of impaired water bodies in the United States. (Source: 1998 EPA 303 (d) list of impairment by category. The impacts of construction activities and post development stormwater runoff quantity and quality can adversely affect public health, land, surface and groundwater resources, drinking water supplies, recreation and aquatic life and habitat. The purpose of this section is to reduce the degradation of public health, land and the environment due to construction activities and land development from:

1. Soil erosion and sedimentation
2. Storm water runoff.

Section 2 Authority

2.1 This By-law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40CFR 122.34

Section 3 DEFINITIONS

ABUTTER: Property owner of any property having a common boundary line with the Applicant's property, or any owner of any property located adjacent to the Applicant's property on a public way or stream, or any property owner located within a distance of three hundred feet (300') of the property.

AGRICULTURE: The normal maintenance or improvement of land in agricultural or aqua cultural use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

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 disturbed 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.

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 soil erosion and sediment control permit for purposed land-disturbance activity.

AUTHORIZED ENFORCEMENT AGENCY: The Town of Merrimac Planning Board, hereafter the Board, its employees or agents designated to enforce this by-law.

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

THE BOARD: Town of Merrimac Planning Board.

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.

CONSTRUCTION AND WASTE MATERIAL: Excess or discarded building or site materials; including but not limited to concrete truck washout, chemicals, litter and sanitary waste at a construction site that may adversely impact water quality.

CONEYANCE: Any structure or device, including pipes, drains, culverts, curb breaks, paved swales, or man made swales of all types designed or utilized to move or direct stormwater runoff or existing water flow.

CLEARING: Any activity that removes the vegetative surface cover.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBACE OF LAND: Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material

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

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

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 (310CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00)

GRADING: Changing the level or shape of the ground surface.

GROUNDWATER: All water beneath any land surface including water in the soil and bedrock beneath water bodies.

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

IMPREVIOUS SURFACE: Any material or structure on or above ground tat prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

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

LAND-DISTRUBING ACTIVITY: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

MASSACHUSETTS ENDANGERED SPECIES ACT: (G.L. 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.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 Sec. 40 and Massachusetts Clean Water Act G.L. c. 21 Sec 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.

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 Merrimac.

NEW DEVELOPMENT: Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain alterations by man-made activities.

NON-POINT 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 human-made pollutants, finally depositing them into water resource areas.

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 insure that it continues to function as designed.

OUTFALL: The point at which stormwater flows out from a point source discernible, confined and discrete conveyance into waters of the Commonwealth.

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 Management Standards. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries & Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

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 or the Federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

PHASING: Clearing a parcel of land in distinct sections, with the stabilization of each section before the clearing of the next.

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.

POST-DEVELOPMENT: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

PRE-DEVELOPMENT: The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Conservation Commission or Planning Board.

PRE-CONSTRUCTION: All activity in preparation for construction.

PRIORITY HABITAT OF RARE SPECIES: Habitats delineated for rare plants and animal population protected pursuant to the Massachusetts Endangered Species Act and its regulations.

RECHARGE: The replacement of underground water reserves.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface or increase the impervious area previously developed sites.

RESOURCE AREA: Any area protected under including, without limitation: the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Town of Merrimac Wetlands Protection Regulations.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface, \.

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION: The process or act of sediment.

SITE: Any lot or parcel of land or area of property where land-disturbing are, were, or will be performed.

SLOPE: The incline of a ground surface as a ratio of horizontal distance to vertical distance.

SOIL: Any earth, sand, rock, gravel, or similar material.

STORMWATER AUTHORITY: Town of Merrimac Planning Board or its authorized agents are responsible for coordinating the review, approval and permit process as defined by this by-law.

STABILIZATION: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

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

STORMWATER MANAGEMENT PLAN: A plan required as part of the application for a Stormwater Management and Land Disturbance By-law Permit.

STRIP: Any activity which removes the vegetated ground surface cover, including tee removal, clearing, grubbing, and storage or removal of topsoil.

TSS: Total Suspended Solids.

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.

WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act G.L. c. 131 sec. 40 and Town of Merrimac Wetlands Protection Regulations.

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, as defined in the Massachusetts Wetlands Protection Act G.L. c. 131 sec. 40, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes, swamps, bogs and wet meadows.

Section 4 APPLICABILITY

4.1 No person may undertake a construction activity, including clearing, grading and excavation that results in a land disturbance that will disturb equal to or greater than 20,000 square feet of land or will disturb less than 20,000 square feet of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than 20,000 square feet of land draining to the Town of Merrimac without a Stormwater Management and Land Disturbance Permit from the Board.

4.2 In addition, as authorized in Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the above activities that are subject to jurisdiction under the Wetland Protection Act and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission and contain an approved Stormwater Pollution Prevention Plan may be exempt from compliance with the review process of this by-law, as determined by the Planning Board upon submittal of the following:

4.2.1 Two copies of a completed Application Form along with copies of the Conservation Commission's Order of Conditions. The Planning Board shall issue a Stormwater Management and Land Disturbance Permit at its next regularly scheduled meeting after receipt of said materials. The filing fee shall be waived.

Section 5 EXEMPTIONS

5.1 Normal maintenance and improvement of land in agricultural, aqua cultural, forestry, or nursery operations as permitted as a main or accessory use.

5.2 Any emergency activity which is immediately necessary for the protection of public health, property or natural resources.

5.3 Emergency repairs to any stormwater structure.

5.4 Maintenance of existing landscaping, gardens or lawn areas.

5.5 Construction of patios, walkways, driveways, fences, swimming pools and the replacement of wells or septic systems on lots having an existing dwelling.

5.6 Construction or emergency repair to any utilities other than drainage, which would not alter the ground cover or drainage patterns.

Section 6 ADMINISTRATION

6.1 The Board shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to its agent.

6.2 The Board may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:

1. such action is allowed by federal, state and local statutes and/or regulations
2. is in the public interest, and
3. is not inconsistent with the purpose and intent of this by-law.

6.3 Rules and Regulations. The Board may adopt, and periodically amend rules and regulations to effectuate the purposes of this by-law. Failure by the Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

Section 7 PERMITS AND PROCEDURE

7.1 If a project requires a Stormwater Management and Land Disturbance Permit, the applicant shall file eight (80) copies of a completed Stormwater Management and Land Disturbance Permit Application Package to the Planning Board. Review of the complete application may be conducted concurrently with other applications to the Board. The applicant shall include the following

7.1.1 Completed Application Form with original signatures.

7.1.2 A list of abutters, certified by the Assessors Office.

7.1.3 A Stormwater Management and Erosion and Sediment Control Plan as specified in Section 8 of this by-law.

7.1.4 A Stormwater Operation and Maintenance Plan (O&M) as specified in Section 8 of this by-law

7.1.5 Payment of the application and review fees as specified in Section 7 of this by-law.

7.2 Filing an application for a permit grants to the Board or its agent, permission to enter the site to verify the information and to inspect for compliance with permit conditions.

7.3 The Board shall notify the Town Clerk of receipt of the application, and shall give one copy of the application package to the Highway Department, Water Department, the Conservation Commission and the Board of Health.

7.4 Public Hearing

7.4.1 The Board shall hold a public hearing in conformance with the provisions of G.L. c. 40A, Section 9.

7.4.2 The public hearing shall be held within 65 days after the filing of the application.

7.4.3 Notice shall be given by publication and posting and by first class mailing to parties of interest as defined in G.L. c. 40A, Section 11

7.5 The applicant shall submit all additional information requested by the Board to issue a decision on the application.

7.6 The Board may:

7.6.1 Approve the Stormwater Management and Land Disturbance Permit Application and issue a permit if it finds that the proposed plan will

protect water resources and meets the objectives and requirements of this by-law.

7.6.2 Approve the Stormwater Management and Land Disturbance permit Application and issue a permit with conditions, modifications or restrictions that the Board determines are required to ensure that the project will protect water resources and meets the objectives and requirements of this by-law.

7.6.3 Disapprove the Stormwater Management and Land Disturbance Permit Application and deny the permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this by-law.

7.6.4 The decision of the Board shall be filed with the board and the Town Clerk within 90 days following the close of the public hearing.

7.6.5 Failure of the Board to act within 90 days of the close of the public hearing shall be deemed a grant of the permit applied for.

7.7 Fees. Each application must be accompanied by the appropriate application fee as established by the Board. Applicants shall pay review fees as discussed and determined by the Board sufficient to cover any expenses connected with the public hearing and review of the Stormwater Management and Land Disturbance Permit Application before the review process commences. The Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the Board on any or all aspects of the Application. The Board may require an additional fee for review of any change in or alteration from an approved permit.

The review fee collected under the by-law shall be deposited in a pass book account held by the Town of Merrimac,

Subject to applicable law, any unused portion of any review fees collected shall be returned by Planning Board to the applicant within forty-five calendar days of a written request by the applicant, unless the Planning Board decides in a public meeting that other action is necessary.

7.7.1 A non-refundable application fee of \$100 plus \$.0030 times the total square footage of the area to be altered by the project shall be due and payable to the Town of Merrimac at the time an application is filed.

7.8 Project Changes. The permittee, or their agent, must notify the Board in writing of any change or alteration of a land-disturbing activity authorized in a Stormwater Management and Land Disturbance Permit before any change or alteration occurs. If the Board determines that the change or alteration is significant, based on the design requirements listed in Section 8.2 and accepted construction practices, the Board may require that an amended Stormwater Management and Land Disturbance Permit application be filed and a public hearing held. If any change or alteration from the Stormwater Management and Land Disturbance Permit occurs during any land disturbing activities, the Board may require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

SECTION 8. STORMWATER MANAGEMENT & EROSION & SEDIMENT CONTROL

8.1 The Stormwater Management & Erosion and Sediment Control Plan shall contain sufficient information to describe the nature and purpose of the proposed

development, pertinent conditions of the site and the adjacent areas, proposed erosion and sedimentation controls and proposed stormwater management controls. The applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements listed in Section 8.2 below.

8.2 The design requirements of the Stormwater Management & Erosion and Sediment Control Plan are:

8.2.1 Minimize total area of disturbance.

8.2.2 Sequence activities to minimize simultaneous areas of disturbance.

8.2.3 Minimize peak rate of runoff in accordance with the Massachusetts Department of Environmental Protection's Stormwater Management Policy dated March 1997 as amended.

8.2.4 Minimize soil erosion and control sedimentation during construction, provided that prevention of erosion is preferred over sedimentation control.

8.2.5 Encourage the use of nonstructural stormwater management and low-impact development practices, such as reducing impervious cover, preserving green space, using bio-retention areas, rain gardens and vegetated filter strips.

8.2.6 Divert uncontaminated water around disturbed areas.

8.2.7 Maximize groundwater recharge.

8.2.8 Install and maintain all Erosion and Sediment Control measures in accordance with the manufacturer's specifications and good engineering practices.

8.2.9 Prevent off site transport of sediment.

8.2.10 Protect and manage on and off-site material storage areas (Overburden and stockpiles of dirt, borrow areas or other areas used solely by the permitted project are considered a part of the project).

8.2.11 Comply with applicable Federal, State and local laws and regulations, including waste disposal, sanitary sewer or septic system regulations, and air quality requirements, including dust control.

8.2.12 Prevent significant alteration of habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or Of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species from the proposed activities.

8.2.13 Institute interim and permanent stabilization measures, which shall be instituted on a disturbed area as soon as practicable but no more than 14 days after construction activity has temporarily or permanently ceased on that portion of the site.

8.2.14 Properly manage on-site construction and waste materials.

8.2.15 Prevent off-site vehicle tracking of sediments.

8.3 Stormwater Management & Erosion and Sediment Control Plan Content. The plan shall contain the following information.

8.3.1 Names, addresses and telephone numbers of the owner, applicant, and person (s) or firm(s) preparing the plan.

8.3.2 Title, date, north arrow, names of abutters, scale. Legend and locus map.

8.3.3 The existing zoning, and land use at the site.

8.3.4 The proposed land use.

8.3.5 Watercourses and water bodies, wetland resources areas and all floodplain information, including the 100- year flood elevation based upon the most recent Flood Insurance Rate Map, or as calculated by a professional engineer for areas not assessed on these maps.

8.3.6 Existing and proposed vegetation including tree lines, canopy layer, shrub layer, and ground cover.

8.3.7 Surveyed property lines showing distances and monument locations, all existing and proposed easements, the size of the entire parcel, and the delineation and number of square feet of the land area to be disturbed.

8.3.8 Habitats mapped by the Massachusetts Natural Heritage & Endangered Species Program as Endangered, Threatened or of Special Concern, Estimated Habitats of Rare Wildlife and Certified Vernal Pools, and Priority Habitats of Rare Species within five hundred (500) feet of any construction activity.

8.3.9 Lines of existing abutting streets showing drainage and driveway locations, curbs cuts and utilities.

8.3.10 Topographical features including existing and proposed contours at intervals no greater than two (2) feet with spot elevations provided when needed.

8.3.11 Proposed improvements including location of buildings or other structures, impervious surfaces, and drainage facilities, if applicable.

8.3.12 Existing soils, volume and nature of imported soil materials.

8.3.13 Location and details of erosion and sediment control measures with a narrative of the construction sequence/phasing of the project, including both operation and maintenance for structural and non-structural measures, interim grading, and material stockpiling areas.

8.3.14 Estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention, or infiltration.

8.3.15 A drainage area map showing pre and post construction watershed boundaries, drainage areas and stormwater flow paths.

8.3.16 Pre and post development stormwater runoff calculations in accordance with the Department of Environmental Protection's Stormwater Management Policy.

8.3.17 A description and drawings of all components of the proposed drainage system including:

- a. location, cross sections, and profiles of all brooks, streams, drainage swales and their method of stabilization.

- b. all measures for the detention, retention or infiltration of water

8.3.18 All measures for the protection of water quality.

8.3.19 The structural details for all components of the proposed drainage systems and stormwater management facilities.

8.3.20 Notes on drawings specifying materials to be used, construction specifications, and typicals.

8.3.21 Path and mechanism to divert uncontaminated water around disturbed areas, to the maximum extent practicable.

8.3.22 Location and description of industrial discharges, including stormwater discharges from dedicated asphalt plants and dedicated concrete plants, which are covered by this permit.

- 8.3.23 Location and description of and implementation schedule for temporary and permanent seeding, vegetative controls and other stabilization measures,
- 8.3.24 A description of construction and waste materials expected to be stored on-site. The Plan shall include a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater and spill prevention and response.
- 8.3.25 A description of provisions for phasing the project where one acre of area or greater is to be altered or disturbed.
- 8.3.26 Plans must be stamped and certified by a qualified Professional Engineer registered in Massachusetts and a Certified Professional in Erosion and Sediment Control (CPESC).
- 8.3.27 Timing, schedules, and sequences of development including clearing, stripping, rough grading, construction, final grading, and vegetative stabilization.
- 8.3.28 A maintenance schedule for the period of construction
- 8.3.29 Any other information requested by the Board.
- 8.3.30 An Operation and Maintenance Plan (O&M Plan) is required at the time of application for all projects. The Board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. The Operation and Maintenance Plan shall remain on file with the Board and shall be an ongoing requirement. The maintenance plan shall contain the following:
- 8.3.30.1 Designed to ensure compliance with the Permit, this By-law, and that the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 are met in all seasons and throughout the life of the system.
 - 8.3.30.2 The O&M Plan shall be prepared in conformance with the Department of Environmental Protection Stormwater Management Policy.
 - 8.3.30.3 The owner(s) of the stormwater management system must notify the Board of changes in ownership or assignment of financial responsibility.
 - 8.3.30.4 The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of the Board and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s) persons with financial responsibility, and persons with operational responsibilities.

SECTION 9 PERFORMANCE GUARANTEE

- 1.1 As a condition of a Stormwater Management and Land Disturbance Permit approval, the Planning Board may require that a performance bond, be secured by deposit of money or negotiable securities in the form elected by the Planning Board, be posted with the Town to guarantee that the work will be completed in accordance with the permit. The Board may also require that an amount must be included for land restoration not having to do with the construction of improvements. The amount of security shall be determined by an estimate from the applicant's engineer which may be confirmed or

increased by the Board. If the project is phased, the Board 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 Board has received the final report as required in Section 11 and issued a certificate of completion.

- 1.2 9.2 The Town may use the secured funds for their stated purpose in the event that the applicant does not complete all improvements in a manner satisfactory to the Board within two years from the date of approval, or the final date of the last extension of such approval, if any.

SECTION 10 INSPECTIONS

10.1 Prior to starting clearing, excavation, construction, or land disturbing activity the applicant, the applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet with the Board and its designated agent, to review the permitted plans and their implementation.

10.2 The Board or its designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the land disturbance permit as approved. The Permit and associated plans for grading, stripping, excavating, and filling work, bearing the signature of approval of the Board, shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the Board or its designated agent at least two (2) working days before each of the following events:

10.2.1 Erosion and sediment control measures are in place and stabilized, and site clearing limits are clearly marked in the field.

10.2.2 Site Clearing has been substantially completed

10.2.3 Rough Grading has been substantially completed

10.2.4 Final Grading has been substantially completed.

10.2.5 Close of the Construction Season; stabilization of the site.

10.2.6 Final Landscaping (permanent stabilization) and project final completion.

10.3 The permittee or his/her agent shall conduct and document inspections of all control measures no less than weekly or as specified in the permit, and following storm events greater than 0.5 inches. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit bi-weekly reports to the Board of designated agent in a format approved by the Board.

10.4 To the extent permitted by State law, or if authorized by the owner or other party in control of the property, the Board, its agents, officers and employees may enter upon private property for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the Board deems reasonably necessary to determine compliance with the permit.

SECTION 11 FINAL REPORTS

11.1 Upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.) or a Professional Land Surveyor (P.L.S.) and a Certified Professional in Erosion and Sediment Control (CPESC), certifying that all erosion and sediment control devices and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

11.2 The issuing authority will issue a letter certifying completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this by-law

SECTION 12 ENFORCEMENT

12.1 The Board or an authorized agent of the Board shall enforce this by-law, regulations, orders, violations notices and enforcement orders, and may pursue all non-criminal dispositions for such violations.

12.2 The Board or an authorized agent of the Board may issue a written order to enforce the provisions of this by-law or the regulations hereunder, which may include:

12.2.1 A requirement to cease and desist from the land-disturbing activity until there is compliance with the by-law and provisions of the land-disturbance permit.

12.2.2 Maintenance, installation or performance of additional erosion and sediment control measures.

12.2.3 Monitoring, analyses, and reporting

12.2.4 Remediation or erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.

12.3 If the enforcing person determines that abatement or remediation of erosion and sedimentation 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 Merrimac may, at its option, undertake such work and the property owner shall reimburse the Town of Merrimac's expenses.

12.4 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 Merrimac, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board within thirty (30) days of receipt of the notification of 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 Board affirming or reducing the costs, or from a final decision of a court competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in G.L c59, s 57, after the thirty-first day following the day on which the costs were due.

12.5 Any violation of this by-law, any regulation promulgated hereunder, or any Stormwater Management and Land Disturbance Permit, will be punishable by non-criminal disposition under G. L.c. 40, Section 21D. The Town of Merrimac, in which case, the Planning Board or authorized agent shall be the enforcing person. The penalty for the 1st violation shall be \$250. The penalty for the 2nd violation shall be \$300. 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.

SECTION 13 SEVERABILITY

13.1 If any provision, paragraph, sentence, or clause of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.

SECTION GENERAL

14.1 Any application not accompanied by the appropriate fee shall be deemed incomplete. Payment must be made to the Town of Merrimac in cash, money order, bank or certified check payable to the Town of Merrimac.

14.2 An Applicant's failure to pay additional review or inspection fee within five business days of receipt of the notice that further fees are required shall be grounds for disapproval.

14.3 The Applicant or the Applicant's representative will publish the public notice and send abutter notifications. Abutter notification shall be by certified mail-return receipt requested. The applicant shall provide the Planning Board with copies of the public notice and the return receipt cards.

14.4 Professional review fees include engineering review, legal review, and clerical fees associated with the public hearing and permit processing. A fee estimate may be provided by the Planning Board's consulting engineer. (STM10/22/07)

Section 8: Prohibited Activities

Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutants or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection

Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal drain system without prior written approval of the Board.

Section 9: Exemptions

Discharge or flow resulting from fire fighting activities

The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system.

1. Waterline flushing
2. Flow from potable water sources.
3. Springs;
4. Natural flow from riparian habitats and wetlands;
5. Diverted stream flow;
6. Rising groundwater
7. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
8. Water from exterior foundation drains, footings drains (not including active groundwater dewatering systems⁰, crawl space pumps, or air conditioning;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than 1 ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
12. Discharge from street sweeping;

13. Dye testing, provided verbal notification is given to the Board prior to the time of the test; Non-stormwater discharge permitted under NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection provided that the discharge is in full compliance with the requirements of the permit, waiver, or ordered and applicable laws and regulations.

Section 10: Emergency Suspension of Storm drainage System Access

The Board may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

Section 11: Notification of Spills

Notwithstanding other requirements of local, state, federal law, 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 to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and clean up of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and the Merrimac Highway Department. In the event of a release of non-hazardous material, the reporting person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is 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 for at least three years.

Section 12: Enforcement

12.1 The Board or an authorized agent of the Board shall enforce this by-law, regulations, orders, violation notices and enforcement orders, and may pursue all civil remedies for such violations

12.2 If an Illicit Discharge occurs or an Illicit Connection is maintained, the Board shall give or cause to be given written notice directed to the Owner of the parcel from which the Illicit Discharge is emanating, or on which the Illicit Connection is maintained, ordering an immediate cessation of any act or condition in violation of this By-law.

12.3 The Board either with such notice or at any reasonable time thereafter may order the Owner or any other person either responsible for violating this By-law to begin and thereafter diligently prosecute to compliance, such remediation efforts as the Board in its reasonable discretion may deem appropriate.

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 Merrimac may, at its option undertake such work, and expenses thereof shall be charged to the violator.

12.4 Within thirty (30) days after completing all measures to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Merrimac including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the 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 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 the statutory rate provided in G.L. 59,-57 after the thirty-first day at which the costs first become due.

12.5 Any violation of this by-law, any regulation promulgated hereunder, will be punishable by non-criminal disposition under G.L. c. 40, Sec 21D. The Town of Merrimac, in which case, the Board of Selectmen or authorized agent shall be the enforcing person. The penalty for any person or entity which causes an illicit discharge shall be subject to a fine of \$100 per day for each day that the illicit discharge continues after notice thereof is given by or at the direction of the Board. This fee may be waived by the Board to allow time for compliance.

The penalties set out herein may be assessed by the Board and are in addition to and not in substitution for any remedial action the Board may order.

Section 13: Appeals

Any person or Owner aggrieved by an action of the Board which was neither (i) the assessment of a penalty for which the provisions of M.G.L. c 40, Sec21D apply, nor (ii) an action taken by the Board at a meeting of which the aggrieved person or Owner was given notice and was afforded the opportunity to present evidence and argument with a view to causing the Board to modify its earlier action (such action being a "final action") shall, within thirty days of such Board action, request a hearing before the Board at which the aggrieved person or Owner may present evidence and argument concerning final action by the Board. The Board shall hold such hearing within thirty (30) days following said request and within thirty days thereafter shall either confirm the Board's previous action or order such other final action as it may determine.

Any person or Owner aggrieved by a decision of the Board of Selectmen under this by-law may appeal such decision to the appropriate court of competent jurisdiction.

Section 14: Severability

The provisions of this by-law are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of this by-law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this by-law.

Section 15: Transitional Provisions

Residential property owners shall have 30 days from the effective date of the by-law to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period. (STM 10/22/07)