

TOWN OF EASTHAM



STORMWATER MANAGEMENT REGULATIONS

ENACTED BY THE TOWN OF EASTHAM SELECT BOARD

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SECTION 1 – GENERAL

1.01 Purpose and Objectives

1. To protect and enhance the public health, safety, environment, and general welfare of the citizens of the Town of Eastham through the regulation and elimination of Illicit Discharges to the Eastham Stormwater System
2. To control the detrimental effects of Erosion and Sedimentation deriving from Construction Site Stormwater Runoff, and require the development of Post-Construction Stormwater Management plans to ensure proper functioning and maintenance of Stormwater infrastructure
3. To ensure the Town of Eastham’s compliance with the Environmental Protection Agency’s National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) General Permits of 2003 and 2016, as well as all other applicable Federal and State Laws
4. To develop comprehensive stormwater management regulations that are congruent with existing Town of Eastham Bylaws and Regulations, to establish the Massachusetts Stormwater Standards and the MassDEP Stormwater Handbook as the governing regulatory standard for project design, review, construction and facility operation, to encourage groundwater recharge and the use of stormwater best management practices for the protection of our aquifer

1.02 Authority

These Regulations are adopted by the Town of Eastham’s Select Board pursuant to Massachusetts General Laws c. 83, §10, and the regulations of the Federal Clean Water Act found at 40 CFR 122.34. Nothing in these regulations is intended to replace the requirements of the Town of Eastham Wetlands Protection Bylaw, Zoning Bylaw, Subdivision Rules and Regulations, Board Of Health Regulations, or of any other bylaw that may be adopted by the Town of Eastham, or any state or federal requirement, law, regulation or policy. Any activity subject to the provisions of these regulations must comply with all other applicable Town, State or Federal requirements.

1.03 Definitions

ABUTTING PROPERTY — Land sharing one or more common boundaries with the project area.

ADVERSE IMPACT — An activity that has a deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

AGRICULTURAL ACTIVITIES – 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.

ALTERATION — Any activity, which will change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, 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. Examples of alterations include, but are not limited to, earthmoving, paving, and modification of existing vegetation.

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, applying for a permit with the Town of Eastham.

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

BUILDING COMMISSIONER — The Town of Eastham Building Commissioner or his/her designee.

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

CLEAN WATER ACT – The Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.) as amended.

CLEARING – Any activity that removes the vegetative surface cover.

CONSTRUCTION AND WASTE MATERIALS – 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.

CONSTRUCTION SITE — Any site where activity is proposed or occurs that involves the alteration of more than one acre of land.

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

DIRECT DISCHARGE – Any pipe, open channel, or concentrated flow path where stormwater runoff is conveyed directly to a water body without prior stormwater treatment or volume reduction.

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.

DISTURBANCE – Any activity that causes a temporary or permanent change in the position or location of soil, vegetation, impervious cover, or other land surface that exposes soils to potential erosion, changes the ability of a ground surface area to absorb water, increases polluted runoff, and/or changes the existing surface drainage patterns.

DPW – Eastham Department of Public Works.

ENFORCEMENT ORDER – A written order issued by the Select Board in order to enforce the provisions of these regulations.

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.

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

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

GROUNDWATER – Water beneath the surface of the ground.

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

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

ILLCIT DISCHARGE – Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 2.04. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Section 2.04 of these regulations.

IMPERVIOUS SURFACE – Any material or structure that either prevents or slows the entry of water into the underlying soil or causes water to runoff in greater quantities or at an increased rate of flow. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots, storage areas, concrete or asphalt paving, and gravel or dense-graded crushed stone areas.

IMPERVIOUS COVER – Any material or structure on or above the ground that prevents water from infiltrating through the underlying soil. Impervious cover includes, without limitation, paved parking lots, roads, sidewalks, driveways, patios, roof tops, and swimming pools. Gravel and dirt surfaced roads and parking areas that have become compacted by vehicles and heavy equipment are considered impervious. Permeable pavers and porous pavements designed to prevent compaction are not considered impervious. The term “impervious cover” shall include “impervious area” and “impervious surface.”

INFILTRATION – The act of conveying precipitation or runoff into the ground to permit groundwater recharge and the reduction of surface runoff from a project site.

LOW IMPACT DEVELOPMENT (LID) – An approach to land development design and stormwater management that attempts to mimic the natural hydrology of the site by avoiding, reducing and mitigating impacts with natural, non-structural and structural measures.

MASSDEP – Massachusetts Department of Environmental Protection

MASSDEP STORMWATER HANDBOOK – MassDEP’s published guidelines to assist with compliance with the Massachusetts Stormwater Management Standards

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS – The Standards as further defined by the Massachusetts Stormwater Handbook, issued by the Department of Environmental Protection, and as amended, coordinating the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 §. 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Standards address 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, without limitation, 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, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Eastham.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT – A permit issued by United States Environmental Protection Agency or jointly with the Massachusetts Department of Environmental Protection that authorizes the discharge of pollutants to waters of the United States.

NON-STORMWATER DISCHARGE – Discharge to the municipal storm drain system not composed entirely of stormwater.

NEW DEVELOPMENT – Any construction or land disturbance on a lot, or portion of a lot, or linear right-of-way or easement that is currently in a vegetated state.

OPERATION AND MAINTENANCE (O&M) 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.

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.

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

POLLUTANT – Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any storm sewage treatment works or waters of the Commonwealth.

POLLUTANT (cont.) – Pollutants shall include without limitation: 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, ordnances, accumulations and floatables; pesticides, herbicides, and fertilizers; hazardous materials and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; rock, sand, salt, soils; construction wastes and residues; and noxious or offensive matter of any kind.

POST-CONSTRUCTION or POST-DEVELOPMENT – The conditions expected to exist after completion of the proposed development activity in accordance with approved plans on a specific site or tract of land, and does not refer to or include the construction phase of a project.

PRE-CONSTRUCTION – All activity in preparation for construction.

PRE-DEVELOPMENT – The conditions that exist prior to the proposed development. Where phased development or plan approval occurs (e.g., preliminary grading, roads, and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

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.

PROJECT AREA – The portion of a parcel of land being developed or redeveloped.

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

REDEVELOPMENT – Any construction, alteration, improvement, repaving, or resurfacing on a site that contains impervious cover, provided the activity does not increase net impervious cover. Portions of a project that increase impervious cover will be treated as new development.

REVIEWING AGENT – Any Town Employee, board or agent delegated in writing by the Select Board to administer, implement, and enforce the Stormwater Management Regulations.

ROAD IMPROVEMENTS – For the purposes of these regulations, work on existing roads that trigger stormwater management compliance include resurfacing projects when the sub-base is intersected, the road is being widened, or when the project includes direct drainage to a beach, pond, tributary or wetland, except as exempted in Section 3.04.

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 deposition of sediment.

SITE - Any lot or parcel of land where land-disturbing activities are, were, or will be performed. A parcel of land being developed or redeveloped.

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

SOIL – Any earth, sand, rock, gravel, loam, or similar material.

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

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

STORMWATER MANAGEMENT – Using engineered structures and non-structural (e.g., site design, vegetation) measures to reduce runoff volume and rates, remove pollutants, promote infiltration, or minimize sources of pollution.

STRIP – Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil or other surficial organic material.

SURFACE WATER DISCHARGE PERMIT – A permit issued by the Massachusetts Department of Environmental Protection (MassDEP) pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

TOXIC OR HAZARDOUS MATERIAL or WASTE – Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive, biological, or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000. TSS: Total Suspended Solids.

WASTEWATER – Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

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

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, and groundwater.

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

Terms not defined shall be construed according to their customary and usual meaning, unless the context indicates a special or technical meaning. Words used in the present tense include the future; words in the singular number include the plural and words in the plural number include the singular; and the word "shall" is mandatory and not a suggestion. Additional definitions may be adopted by separate regulation.

SECTION 2 – ILLICIT DISCHARGE DETECTION AND ELIMINATION

2.01 Applicability

These regulations shall apply to any and all illicit discharges entering the municipally owned storm drainage system.

2.02 Responsibility for Administration

1. The Eastham Select Board shall administer, implement and enforce these regulations. Any powers granted to, or duties imposed upon, the Board may be delegated in writing by the Board to any employees or agents of the Town, including but not limited to the Health Agents, DPW Superintendent or the Eastham Police Department.
2. The Select Board may amend these rules and regulations after holding a public hearing. Notice of the time, place and subject matter shall be published in a newspaper of general circulation in The Town of Eastham once, not less than 14 days before the day of such a hearing.

2.03 Prohibitive Activities

1. Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm drain system (MS4), into a watercourse, or into the waters of the Commonwealth, or into abutting property.
2. 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.
3. Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Board.
4. Pumping of Water. No person shall direct, discharge, lead, or pump water, clear or otherwise, including groundwater and/or rooftop runoff, onto any public ways or streets, adjacent property, into the Town's municipal separate storm drain system, or into any watercourse or waters of the Commonwealth. Any pumping of groundwater shall be done in such a way that the water is contained in its entirety on the originating property and shall not create a public nuisance to the Town or abutting properties.
5. Discharging of Pool Water. No person shall pump pool water, dechlorinated or otherwise, onto any public ways or streets, adjacent property, into the Town's municipal separate storm drain system, or into any watercourse or waters of the Commonwealth. Any pumping of pool water shall be done in such a way that the water is contained in its entirety on the originating property and shall not create a public nuisance to the Town or abutting properties.

2.04 Exemptions

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

1. Discharge or flow resulting from firefighting activities;
2. Waterline flushing;
3. Flow from potable water sources;
4. Springs;
5. Natural flow from riparian habitats and wetlands;
6. Diverted stream flow;
7. Uncontaminated groundwater infiltration directly into the drainage system and/or MS4 as defined in 40 CFR 35.2005(20);
8. Incidental discharges from landscape irrigation or lawn watering;
9. Water from individual residential car washing;
10. Discharge from street sweeping of minor amounts of water during operations;
11. Dye testing activity in relation with a municipal operation. For private operations, if verbal notification is given to the Board prior to the time of the test;
12. Non-stormwater discharge permitted under an 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 Massachusetts Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
13. Discharges for which advanced written approval is received from the Board as necessary to protect public health, safety, welfare or the environment.

2.05 Enforcement

1. The Board or an authorized agent of the Board shall enforce these regulations, orders, violation notices, and enforcement orders, and may pursue all civil and non-criminal remedies for such violations.
2. Civil Relief. If a person violates the provisions of these regulations, permit, notice, or order issued thereunder, the Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
3. Orders. The Board or an authorized agent of the Board may issue a written order to enforce the provisions of these regulations, which may include:
 - (1) Elimination of illicit connections or discharges to the MS4;
 - (2) Performance of monitoring, analyses, and reporting;
 - (3) That unlawful discharges, practices, or operations shall cease and desist; and
 - (4) Remediation of contamination in connection therewith.
4. If the enforcing person determines that abatement or remediation of contamination 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 Eastham may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

5. Within thirty (30) days after completing all measures necessary 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 Eastham 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 MGL c. 59, § 57, after the 31st day at which the costs first become due.
6. Civil Penalty. Any violation of any provision of these regulations, order or permit issued thereunder shall be punishable by a civil penalty of not more than \$100 per violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
7. Non-Criminal Disposition. As an alternative to civil action, the Town of Eastham may elect to utilize the non-criminal disposition procedure set forth in MGL c. 40, § 21D, and Chapter I, Article I, of the Town of Eastham Bylaws. The fine for the first violation shall be \$100. The fine for the second violation shall be \$200. The fine for the third and all subsequent violations shall be \$300. Each day or part thereof that such violation(s) occurs or continues shall constitute a separate offense. The Town of Eastham may also impose additional penalties for reimbursement of labor and/or materials used to temporarily remedy the violation.
8. Entry to Perform Duties Under these regulations. 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 privately owned property for the purpose of performing their duties under these regulations and may make or cause to be made such examinations, surveys or sampling as the Board deems reasonably necessary.
9. Appeals. The decisions or orders of the Board shall be final. Further relief shall be to a court of competent jurisdiction.
10. Remedies Not Exclusive. The remedies listed in these regulations are not exclusive of any other remedies available under any applicable federal, state or local law.

2.06 Severability

The provisions of these regulations are hereby declared to be severable. If any provision, paragraph, sentence, or clause, of these regulations 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 these regulations.

SECTION 3 – CONSTRUCTION EROSION AND SEDIMENT CONTROL, AND POST-CONSTRUCTION STORMWATER MANAGEMENT

3.01 Preamble

Construction site stormwater runoff and post-construction stormwater discharges can adversely affect public safety, public and private property, surface water, groundwater resources, drinking water supplies, recreation, aquatic habitats, fish and other aquatic life, property values and other uses of land and water. It is in the public interest to regulate construction site stormwater runoff and post-construction stormwater discharges in order to minimize the impacts identified above.

3.02 Purpose and Objectives

The purpose of these regulations is to establish minimum requirements and controls to protect and safeguard the environment, natural resources, general health, safety, and welfare of the public residing in the Town of Eastham from the adverse impacts of soil erosion, sedimentation, and stormwater runoff. This section seeks to meet that purpose through the following objectives:

1. Eliminating or reducing the adverse effects of soil erosion and sedimentation;
2. Minimizing stormwater runoff from any development;
3. Minimizing nonpoint source pollution caused by stormwater runoff from development;
4. Providing for groundwater recharge where appropriate;
5. Ensuring controls are in place to respond to the aforementioned objectives and that these controls are properly operated and maintained.
6. Establishing provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
7. Encouraging the use of nonstructural stormwater management practices or "low-impact development" practices, i.e. grass swales, rain gardens and other BMPs; and
8. Establishing administrative procedures, fees and fines for violations for the submission, review, approval or disapproval of applications for stormwater management permits, and for the inspection of approved active projects, and long-term follow up.
9. Ensuring development adheres to MassDEP's Stormwater Handbook and Stormwater Standards

3.03 Applicability and Exemptions

These regulations shall apply to all activities that result in:

1. A land disturbance activity of one or more acres of land, or that will disturb less than one acre of land but are part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre of land

2. No person shall perform any activity that results in a land disturbance activity of an acre or more of land without an approved soil erosion and sediment control plan and stormwater management plan
3. The following exemptions from these regulations apply:
 - (1) Any land disturbance of less than one acre of land;
 - (2) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation, 310 CMR 10.04;
 - (3) In addition, as authorized in the Phase II Small MS4 General Permit for Massachusetts, stormwater discharges resulting from the above activities that are subject to jurisdiction under the Wetland Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Standards as reflected in an order of conditions issued by the Town of Eastham Conservation Commission are deemed to be in compliance with these regulations
 - (4) Emergency activities necessary to protect public health or safety, so long as all necessary emergency permits or emergency certifications have been or will be obtained, including emergency repairs to roads or their drainage systems as per the Massachusetts Stormwater Handbook and Stormwater Standards;
 - (5) Normal maintenance and improvements of Town of Eastham publicly owned roads, including but not limited to asphalt resurfacing, road reclamation, regrading of existing gravel roads and any other minor activities as described by 310 CMR 10.02 (2)(b) 2;
 - (6) Any work or projects for which all necessary approvals and permits have been issued before the effective date of these regulations.

3.04 Soil Erosion and Sediment Control

1. An erosion and sedimentation control plan review is triggered by a site development plan and/or a building permit application or other activity that falls within the jurisdiction of these regulations.
2. Applicants shall be referred by the permit-issuing agency (Planning Board, Zoning Board of Appeals, Building Department, etc.) to the Department of Public Works to conduct the soil erosion and sediment control plan review.
3. Activities that fall within the jurisdiction of this bylaw that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek a soil erosion and sediment control plan review directly from the Department of Public Works.
4. The Superintendent of Public Works may take any of the following actions as a result of their review: approval, approval with conditions, disapproval, or disapproval without prejudice.
5. The Building Commissioner shall administer, implement and enforce these regulations. Any powers granted to or duties imposed upon the Building Commissioner may be delegated by the Building Commissioner to his/ her designee, including but not limited to the DPW Superintendent.

6. The 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, and proposed erosion and sedimentation controls which include BMPs appropriate to site conditions, including efforts to minimize the areas of land disturbance. The plan shall also describe measures to control construction wastes including but not limited to construction materials, concrete truck wash out chemicals, litter, and sanitary waste.
7. Stormwater systems shall be designed to avoid disturbances of areas susceptible to erosion and sediment loss. This means avoiding to the greatest extent practicable: the damaging of large forest stands; building on steep slopes (15% or greater); and disturbing land in wetland buffer zones and floodplains.

3.05 Post-Construction Stormwater Management

1. A stormwater management plan review is triggered by a site development plan and/or a building permit application or other activity that falls within the jurisdiction of these regulations.
2. Applicants shall be referred by the permit-issuing agency (Planning Board, Zoning Board of Appeals, Building Department, etc.) to the Department of Public Works to conduct the stormwater management plan review
3. Activities that fall within the jurisdiction of this bylaw that do not require a permit from any Town department are not exempt from this provision. In this situation, the applicant must seek stormwater management plan review directly from the Director.
4. An operation and maintenance plan (O&M Plan) is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with the permit in all seasons and throughout the life of the system.
5. The Superintendent of Public Works shall make the final decision of what maintenance option is appropriate in a given situation. The Superintendent 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.
6. The O&M Plan shall identify and include all required documents, including, but not limited to, maintenance agreements and stormwater management easements. All documents may be submitted to Town Counsel for review
7. As-Builts. Permittees shall submit as-built plans prepared and certified by a Massachusetts Professional Land Surveyor no later than one year after completion of construction projects to be included with the Stormwater Management Plan. The As-Built plans must depict all on site structural and non-structural controls design to manage stormwater associated with the completed site. The plan set must include design specifications of all stormwater management controls prepared and certified by a Massachusetts Professional Engineer
8. The operation and maintenance plan shall remain on file with the Department of Public Works and shall be an ongoing requirement
9. Stormwater Management Systems disturbing a minimum 1 acre of land (or projects that are part of a common plan of development that disturb a minimum 1 acre of land total) must adhere to the following performance standards:

- (1) All Stormwater Management Systems must be designed in compliance with the latest version of the Massachusetts Stormwater Handbook.
- (2) All Stormwater Management Systems must be designed to achieve the following reduction in Total Phosphorous and Total Suspended Solids (TSS) from post-construction stormwater runoff from new and redevelopment:
 - a. New development: 90% removal of average annual load of TSS and 60% removal of average annual load of Total Phosphorus
 - b. Redevelopment: 80% removal of average annual load of TSS and 50% removal of average annual load of Total Phosphorus

3.06 Enforcement

1. The Building Commissioner and the Department of Public Works shall make inspections of all sites covered under these regulations within the Town and may, for these purposes, enter upon the premises where such operations are carried on at all reasonable times.
2. The Select Board, acting through the Building Commissioner, DPW Superintendent, or an authorized employee or agent, shall enforce these regulations, orders, violation notices, and enforcement orders, and may pursue all civil remedies for such violations.
3. Civil Relief. If a person violates the provisions of these regulations, permit, notice, or order issued thereunder, the Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
4. Orders. The Board or an authorized agent of the Board may issue a written order to enforce the provisions of these regulations, which may include:
 - (1) That practices, or operations, in defiance of these regulations shall cease and desist; and
 - (2) Remediation of erosion, removal of sedimentation spilled beyond approved limits, in connection therewith;
 - (3) Provision of maintenance to stormwater system in accordance with approved O&M plan
5. Suspension of construction or site alteration activity. In the event that the activity at a site violates the conditions as stated or shown on the approved soil erosion and sediment control plan or stormwater management plan in such a manner as the enforcing agent determines to adversely affect the environment, public welfare/health and municipal facilities, then the agent may suspend work until the violation is corrected.
6. If the enforcing person determines that abatement or remediation of contamination 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 Eastham may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
7. Within thirty (30) days after completing all measures necessary 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 Eastham 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 MGL c. 59, § 57, after the 31st day at which the costs first become due.

8. Civil Penalty. Any violation of any provision of these regulations, order or permit issued thereunder shall be punishable by a civil penalty of not more than \$100 per violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
9. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Eastham may elect to utilize the non-criminal disposition procedure set forth in MGL c. 40, § 21D, and Chapter I, Article I, of the Town of Eastham Bylaws. The fine for the first violation shall be \$100. The fine for the second violation shall be \$200. The fine for the third and all subsequent violations shall be \$300. Each day or part thereof that such violation(s) occurs or continues shall constitute a separate offense. The Town of Eastham may also impose additional penalties for reimbursement of labor and/or materials used to temporarily remedy the violation.
10. Entry to Perform Duties Under these regulations. 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 privately owned property for the purpose of performing their duties under these regulations and may make or cause to be made such examinations, surveys or sampling as the Board deems reasonably necessary.
11. Appeals. The decisions or orders of the Board shall be final. Further relief shall be to a court of competent jurisdiction.
12. Remedies Not Exclusive. The remedies listed in these regulations are not exclusive of any other remedies available under any applicable federal, state or local law.

3.07 Severability

The Town of Eastham Select Board shall adopt, and may periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), fines and penalties, application requirements, design standards, procedures and administration of these regulations, after conducting a public hearing to receive comments on any proposed rules and regulations, or revisions thereto. Failure by the Town of Eastham Select Board to promulgate such rules and regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of these regulations