**(HISTORY: Adopted May 9, 2016 ATM Article 33; Approved by Attorney General
July 15, 2016)**

STORMWATER MANAGEMENT AND EROSION CONTROL BYLAW

1. PURPOSE

1.1 To acknowledge and address the fact that the United States Environmental Protection Agency has identified sedimentation and polluted stormwater runoff from

land disturbance activities and polluted stormwater runoff from land development as major sources of water pollution, impacting drinking water supplies, natural habitats, and recreational resources;

1.2 To provide for the health, safety, and general welfare of the citizens of the Town of Dunstable through the protection of water bodies and groundwater resources by the regulation of activities that result in disturbance of land and the creation of stormwater runoff;

1.3 To establish the Town of Dunstable's legal authority to ensure compliance with the provisions of this Bylaw through the establishment of stormwater management standards and conditions that result in the minimization of offsite and downstream adverse impacts from development and redevelopment projects to abutters, townspeople and the general public;

2. OBJECTIVES

2.1 To comply with state and federal statutes and regulations relating to stormwater discharges and to ensure compliance with the provisions of this Bylaw through inspections, monitoring and enforcement by:

(A) Protecting water resources;

(B) Preventing pollutants from entering the Municipal Storm Drain System;

(C) Controlling the volume and rate of stormwater runoff resulting from land disturbance activities in order to minimize potential impacts of flooding;

(D) Requiring practices to manage and treat stormwater runoff generated from new development and redevelopment;

(E) Protecting groundwater and surface water from degradation or depletion;

(F) Promoting infiltration and the recharge of groundwater;

(G) Requiring practices that minimize soil erosion and sedimentation;

(H) Preventing flooding and erosion on abutting properties;

(I) Ensuring that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into

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 or area of property where land-disturbing activities are, were, or will be performed.

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

SOIL: Earth materials including duff, humic materials, sand, rock, silt, clay and gravel.

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

STORMWATER MANAGEMENT PLAN: A document containing narrative, drawings and details prepared by a Massachusetts licensed qualified Professional Engineer (PE) which includes structural and non-structural best management practices to manage and treat stormwater runoff generated from regulated development activity. A Stormwater Management Plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural best management practices.

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

WETLAND RESOURCE AREA: Areas specified in the Massachusetts Wetlands Protection Act M.G.L. c. 131, s.40 and regulations promulgated thereunder, and in the Town of Dunstable Wetlands Protection Bylaw and regulations promulgated thereunder.

WETLANDS: As defined in the Dunstable Wetlands Protection Bylaw and Conservation Commission regulations.

4. AUTHORITY

This Bylaw 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 40 CFR 122.34.

5. APPLICABILITY

5.1 This Bylaw shall apply to all development and redevelopment operations, to all water entering directly or indirectly into the Municipal Storm Drain System on public or ways within the Town, and to any direct discharge into the surface waters, ground waters and watercourses within the Town. Except in accordance with a Land Disturbance Permit issued pursuant to this Bylaw, no person shall perform any Land Disturbance that results in one or more of the Regulated Activities defined in Section 5.2 that is not an Exempt Activity listed in Section 8.1.

5.2 Regulated Activities subject to a Land Disturbance Permit shall include two tiers of permitting:

(A) Tier I

i. Land Disturbance of 22,000 square feet or more of land, associated with development or redevelopment of a site; or
ii. Development or Redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs 22,000 square feet or more of land; or
iii. Paving or other change in surface material that will create or disturb 22,000 square feet or more of Impervious Surface; or
iv. Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of 22,000 square feet or more of land; or
v. Any other activity altering the surface of an area of 22,000 square feet or more that will, or may, result in increased stormwater runoff flowing from the Site into a public way or the Municipal Storm Drain System.

(B) Tier II

i. Land Disturbance of 40,000 square feet or more of land, associated with development or redevelopment of a site; or
ii. Development or Redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs 40,000 square feet or more of land; or
iii. Paving or other change in surface material that will create or disturb 40,000 square feet or more of Impervious Surface; or
iv. Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of 40,000 square feet or more of land; or
v. Any other activity altering the surface of an area of 40,000 square feet or more that will, or may, result in increased stormwater runoff flowing from the Site into a public way or the Municipal Storm Drain System; or

vi. Land Disturbance where there is a 15% or greater slope and where the Land Disturbance is greater than or equal to 200 square feet within the sloped area.

6. ADMINISTRATION

6.1**.** The Planning Board, shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon the Planning Board in this Bylaw may be delegated in writing to a Designated Agent upon a majority vote of the Planning Board and approval by the Board of Selectmen.

6.2 The Planning Board shall promulgate the Regulations to implement this Bylaw and shall establish fees and penalties to enforce this Bylaw. The Planning Board may periodically amend the Regulations, fees, and penalties as needed to effectuate the purposes of this Bylaw. Adoption of and revisions to regulations may only be made after conducting a public hearing to receive comments on any proposed regulations or revisions. Such hearing dates shall be advertised once in a newspaper of general circulation in Dunstable, at least 14 days before the hearing date. Such hearing shall comply with all aspects of the Massachusetts Open Meeting Law.

6.3 In promulgating the Regulations under this Bylaw, the Planning Board shall, at a minimum, follow and utilize the specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook as amended and issued by Massachusetts Department of Environmental Protection, or any successor publication so issued in this context.

6.4 Failure on the part of the Planning Board to promulgate the Regulations authorized by this Bylaw or fee and penalty structures shall not have the effect of suspending or invalidating this Bylaw.

6.5 The Planning Board or its Designated Agent shall review all applications for a Land Disturbance Permit, conduct inspections, issue a final permit and conduct any necessary enforcement action, as set forth herein:

6.5.1 Land Disturbance Permits shall be issued as follows:

(A) Tier I Land Disturbance Permits shall be issued by the Planning Board's Designated Agent and shall not require review by the Planning Board.
(B) Tier II Land Disturbance Permits shall be issued by the Planning Board.

6.5.2 Following receipt of a completed application, the Planning Board or its Designated Agent shall seek review and comments from the Road Commissioners and Town Engineer. The Planning Board or its Designated Agent shall not make a decision

on the pending permit until it has received comments from the Road Commissioners and the Town Engineer or until these entities have allowed thirty (30) calendar days to elapse after receipt of the application materials without submission of comments.

6.5.3 When issuing a decision on an application, the Planning Board or its Designated Agent shall:

6.5.3.1 Approve the application and issue a Land Disturbance Permit upon finding that the proposed stormwater controls meet the objectives and requirements of this Bylaw and the Regulations;

6.5.3.2 Approve the application and issue a Land Disturbance Permit with conditions necessary to ensure that the project's stormwater controls will meet the objectives and requirements of this Bylaw and the Regulations;

6.5.3.3 Disapprove the application and deny a permit if it finds (a) that the proposed stormwater controls fail to meet the objectives and requirements of this Bylaw or the Regulations, or (b) that the information submitted with the application was insufficient to allow one of the determinations set forth Section 6.5.3.1 or Section 6.5.3.2.

6.5.4 The Planning Board or its Designated Agent shall take final action on an application within sixty (60) days of date the application was filed with the Town. A copy of the final action shall be filed with the Town Clerk. Certification by the Town Clerk that the allowed time has passed without final action being taken shall be deemed a grant of the Land Disturbance Permit.

6.6 The filing of an application for a Land Disturbance Permit required under this Bylaw shall constitute a grant of permission to the Planning Board and/or its Designated Agent to enter the site in order to verify the information in the application and to inspect for compliance with permit conditions.

6.7 Appeals: A decision on an application for a Land Disturbance Permit by the Planning Board shall be final. Further relief from a decision by the Planning Board made under this Bylaw shall be reviewable in the Superior Court pursuant to M.G.L. c. 249, § 4. The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

6.8 Any action by the Designated Agent of the Planning Board may be appealed to the Planning Board.

7. PROHIBITED ACTIVITIES

7.1 Illicit Discharges: No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the Municipal Storm Drain System or

the surface and ground waters and watercourses within the Town of Dunstable except as noted in Section 8 of this Bylaw.

7.2 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.

7.3 Obstruction – Storm Drainage Systems: No person shall obstruct or interfere with the normal flow of stormwater in or out of the Municipal Storm Drain System without prior written approval from the Planning Board or its Designated Agent.

8. EXEMPTIONS

8.1 Flow from the following sources are exempt from the provisions of this Bylaw:

(A) Municipal waterline flushing;

(B) Flow from potable water sources;
(C) Springs;

(D) Natural flow from riparian habitats and wetlands;

(E) Diverted stream flow;

(F) Rising groundwater;

(G) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005 (2), or uncontaminated pumped groundwater;

(H) Water from the exterior foundation drains, roof drains, footing drains (not including active ground water dewatering systems), or air conditioning condensation;

(I) Discharge from landscape irrigation or lawn watering;

(J) Water from residential activities, including, but not limited to, car washing, washing walkways, patios, house siding, windows, or similar exterior structure related washing activities;

(K) Discharge from de-chlorinated swimming pool water(less than one ppm total 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;

(L) Discharge from street sweeping;

(M) Uncontaminated groundwater discharge from a sump pump;

(N) Discharges or flows resulting from fire-fighting activities;

(O) Dye testing, provided verbal notification is given to the Planning Board or its Designated Agent prior to the time of the test and providing resulting concentrations are not at levels detrimental to resident aquatic organisms;

(P) Non-storm water 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 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

(Q) Discharge for which advanced written approval is received from the Planning Board or its Designated Agent as necessary to protect public health, safety, welfare or the environment.

8.2 The following Land Disturbing Activities are exempt from the provisions of this Bylaw:

(A) Normal maintenance and improvement of land in Agricultural Use as defined in the Massachusetts Wetlands Protection Act regulations 310 CMR 10.04;

(B) Maintenance of existing landscaping, stone walls, retaining walls, gardens or lawns associated with a single family residence;

(C) Construction of utilities other than drainage systems that will not alter terrain, ground cover or drainage patterns;

(D) Emergency repairs to any stormwater management facility or practice that poses a threat to public health, safety, welfare or the environment;

(E) Repair of septic systems when required by the Board of Health for the protection of public health;

(F) Any work or projects for which all necessary local approvals and permits have been issued prior to the effective date of this Bylaw;

(G) Any land disturbance that results in a cumulative land disturbance of less than 22,000 square feet, provided that appropriate erosion and sedimentation controls are in place and properly maintained;

(H) The construction of fencing that will not alter existing terrain or drainage patterns; and

(I) The construction, improvement and maintenance of Town public ways and appurtenances.

8.3 When there is any question as to whether an activity is exempt from this Bylaw and the Regulations, the Planning Board shall make a definitive ruling as to the applicability of this Bylaw and the Regulations to the activity in question.

9. PERMIT PROCEDURES

Permit procedures and requirements, including permit submittals, right-of-entry, fee schedule (including requirements to post acceptable security), fine schedule, and public hearing process, shall be defined and included as part of the Regulations.

10. FEES

The Planning Board shall establish fees to cover expenses connected with application review and monitoring permit compliance. The fees shall be sufficient to cover Town secretarial staff and professional staff. The Planning Board is also authorized to retain and charge the Applicant fees to cover the cost for a Massachusetts licensed Professional Engineer or other professional consultant to advise the Planning Board or its Designated Agent on any or all aspect of the project. The Applicant for a Land Disturbance Permit may be required to establish and maintain an escrow account to cover the costs of said consultants. Applicants must pay review fees to the Town before the review process may begin.

11. SURETY

The Planning Board or its Designated Agent may require the Permittee to post before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by Town Counsel, and be in an amount deemed sufficient to insure that the work will be completed in accordance with the permit. If the project is phased, the Planning Board or tis Designated Agent 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 Planning Board or its Designated Agent has received the final report as required in the Regulations and issued a Certificate of Completion.

12. PERFORMANCE STANDARDS

Criteria for erosions and sediment control and post-construction stormwater management, including stormwater performance standards, shall be defined and included as part of Regulations.

13. ENFORCEMENT

13.1 The Planning Board or its Designated Agent shall enforce this Bylaw, its Regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations including injunctive relief and monetary damages and costs of litigation and attorney fees for such violations and for abatement and mitigation and compliance actions.

13.2 The Planning Board or its Designated Agent may issue a written order to enforce the provisions of this Bylaw or the Regulations thereunder, which may include:

(A) A requirement to cease and desist from the land-disturbing activity until there is compliance with this Bylaw or provisions of the land-disturbance permit;
(B) Maintenance, installation or performance of additional erosion and sediment control measures;
(C) Monitoring, analyses, and reporting;
(D) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity; and
(E) Compliance with the Operation and Maintenance Plan.

13.3 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 Dunstable may, at its option, undertake such work, and the property owner shall reimburse the Town's expenses.

13.4 Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator (if different than the property owner) and the property owner shall be notified of the costs incurred by the Town of Dunstable, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Planning Board within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Planning Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall begin to accrue interest at the rate

provided in M.G.L. 59, § 57, after the thirty-first day following the day on which the costs were due. Said costs and interest may be secured through a municipal charges lien on the property, pursuant to M.G.L. c. 40, § 58.

13.5 Criminal Penalty. Any person who violates any provision of this Bylaw, Regulation, order or permit issued there under, shall be punished by a fine of not more than $300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

13.6 Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Dunstable may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D, which has been adopted by the Town in the Town of Dunstable Non-Criminal Disposition Bylaw, in which case the Planning Board or its Designated Agent shall be the enforcing person. The penalty for each violation shall be $300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

14. WAIVERS

14.1 The Planning Board may grant a waiver from the provisions of this Bylaw at its discretion and after due consideration and consultation with the Board of Selectmen, Conservation Commission, Board of Health, Road Commissioners and Town Engineer where it makes a written finding that such action is:

(A) Allowed by federal, state and local statutes and/or regulations;
(B) In the public interest; and
(C) Consistent with the purpose and intent of this Bylaw.

14.2 No waiver shall be granted unless the Applicant demonstrates that the enforcement of this Bylaw would be manifestly unjust and the Applicant has established that a level of protection for public health, safety, welfare or the environment at least equivalent to that provided under this Bylaw can be achieved without strict application of this Bylaw and/or the Regulations.

15. SEVERABILITY

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