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ORDINANCE NO. 23-02

TOWN OF SCITUATE

AN ORDINANCE AMENDING CHAPTER 12, SOIL EROSION AND
SEDIMENTATION CONTROL

SECTION 1. The Town Council of the Town of Scituate hereby ordains that Chapter 12 (“Soil Erosion and Sedimentation Control”), of the Code of Ordinances, Town of Scituate is hereby amended as follows:

Note: Words set as ~~strikeover~~ are to be **deleted** from the ordinance; words set in underline are to be **added** to the ordinance.

~~ARTICLE I.~~ ~~IN GENERAL~~

~~Sec. 12-1.~~ ~~Definitions.~~

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Applicant* means any person proposing a development which would involve disturbance to the natural terrain.~~

~~*Cut* means an excavation, the difference between a point on the original ground and a designated point of lower elevation on the final grade. Also, the material removed in excavation.~~

~~*Development project* means any construction, reconstruction, demolition, or removal of structures, roadways, parking, or other paved areas; utilities, or other similar facilities, including any action requiring permit by the town.~~

~~*Erosion* means the removal of mineral and/or organic matter by the action of wind, water, and/or gravity.~~

~~*Excavate* means any act by which earth, sand, gravel, rock, or any other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated, or bulldozed, and shall include the conditions resulting therefrom.~~

~~*Fill* means any act by which earth, sand, or other material is placed or moved to a new location aboveground. The fill is also the difference in elevation between a point or existing undisturbed ground and a designated point of higher elevation of the final grade.~~

45 ~~Land-disturbing activity means any physical land development activity which included~~
46 ~~such actions as clearance of vegetation; moving or filling of land; removal or excavation~~
47 ~~of soil or mineral resources; or similar activities.~~

48
49 ~~Runoff means the surface water discharge or rate of discharge of a given watershed after a~~
50 ~~fall of rain or snow and including seepage flows that do not enter the soil but run off the~~
51 ~~surface of the land. Also, that portion of water that is not absorbed by the soil, but runs~~
52 ~~off the land surface.~~

53
54 ~~Sediment means solid material, both mineral and/or organic, that is in suspension, is~~
55 ~~being transported, or has been moved from its site of origin by wind, water and/or gravity~~
56 ~~as a product of erosion.~~

57
58 ~~Soil erosion and sediment control plans means the approved document required before~~
59 ~~any person may cause a disturbance to the natural terrain within the town as herein~~
60 ~~regulated. Also, herein referred to as erosion and sediment control plan, approved plan.~~

61
62 **Sec. 12-2. Purpose.**

63
64 ~~(a) The town council hereby finds that excessive quantities of soil are eroding~~
65 ~~from certain areas that are undergoing development for nonagricultural uses~~
66 ~~such as housing developments, industrial areas, recreational facilities and~~
67 ~~roads. This erosion makes necessary costly repairs to gullies, washed out fills,~~
68 ~~roads, and embankments. The resulting sediment clogs the storm sewers, road~~
69 ~~ditches and muddies streams, leaves deposits of silt in ponds and reservoirs~~
70 ~~and is considered a major water pollutant.~~

71
72 ~~(b) The purpose of this chapter is to prevent soil erosion and sedimentation from~~
73 ~~occurring as a result of nonagricultural development within the town by~~
74 ~~requiring proper provisions for water disposal, and the protection of soil~~
75 ~~surfaces during and after construction, in order to promote the safety, public~~
76 ~~health and general welfare of the town.~~

77
78 **Sec. 12-3. Application.**

79
80 ~~This chapter shall be applicable in any situation involving any disturbance to the natural~~
81 ~~terrain, topsoil or vegetative ground cover upon any property within the town except as~~
82 ~~so specified in section 12-31, including but not limited to the following specific~~
83 ~~situations:~~

84
85 ~~(1) For any development project subject to the obtaining of a building permit~~
86 ~~pursuant to the building code.~~

87
88 ~~(2) For any development project subject to the approval of a subdivision plan~~
89 ~~pursuant to the subdivision regulations; however, the preliminary and final~~
90 ~~plats approved by the town planning commission shall constitute the plan.~~

91
92 (3) ~~All plans for projects undertaken by the town through private contractors~~
93 ~~shall include in the specifications and in the contract documents the~~
94 ~~requirements of this chapter.~~

95
96 (4) ~~All projects undertaken directly by the department of public works and by its~~
97 ~~several divisions shall be undertaken in accordance with the performance~~
98 ~~principles provided for in section 12-59 and such standards and definitions as~~
99 ~~may be adopted to implement such performance principles.~~

100
101 **Sec. 12-4. – Penalty for violation.**

102
103 ~~In addition to any other provision of this chapter, whenever there is a failure to comply~~
104 ~~with the provisions of this chapter, the town shall have the right to notify the~~
105 ~~applicant/owner that it has five (5) days from the receipt of notice to temporarily correct~~
106 ~~the violations and thirty (30) days from receipt of notice to permanently correct the~~
107 ~~violations. Should the applicant/owner fail to take the temporary corrective measures~~
108 ~~within the five-day period and the permanent corrective measures within the thirty-day~~
109 ~~period, the town shall then have the right to take whatever actions it deems necessary to~~
110 ~~correct the violations and to assert a lien on the subject property in an amount equal to the~~
111 ~~costs of remedial actions. The imposition of any penalty shall not exempt the offender~~
112 ~~from compliance with the provisions of this chapter, including revocation of the~~
113 ~~performance bond or assessment of a lien on the property by the town.~~

114
115 **Sec. 12-5. – Liability.**

116
117 ~~Neither approval of an erosion and sediment control plan nor compliance with any~~
118 ~~condition of this chapter shall relieve the owner/applicant from any responsibility for~~
119 ~~damage to persons or property, nor impose any liability upon the town for damages to~~
120 ~~persons or property.~~

121
122 **Sec. 12-6. – Approval; expiration, renewal.**

123
124 (a) ~~Every approval granted pursuant to this chapter shall expire at the end of the~~
125 ~~time period set forth in the conditions. The developer shall fully perform and~~
126 ~~complete all of the work required within the specified time period.~~

127
128 (b) ~~If the developer is unable to complete the work within the designated time~~
129 ~~period, he shall, at least thirty (30) days prior to the expiration date, submit a~~
130 ~~written request for an extension of time to the building official, setting forth~~
131 ~~the reasons underlying the requested time extension. If the extension is~~
132 ~~warranted, the building official may grant an extension of time up to a~~
133 ~~maximum of one (1) year from the date of the original deadline. Subsequent~~
134 ~~extensions under the same conditions may be granted at the discretion of the~~
135 ~~building official.~~

137 **Sec. 12-7. -- Maintenance of measures.**

138

139 Maintenance of all erosion sediment control devices under this chapter shall be the
140 responsibility of the owner. Such erosion sediment control devices shall be maintained in
141 good condition and working order on a continuing basis. Watercourses originating and
142 located completely on private property shall be the responsibility of the owner to their
143 point of open discharge at the property line or at a communal watercourse within the
144 property.

145

146 **Sec. 12-8. -- Periodic inspections.**

147

148 The provisions of this chapter shall be administered and enforced by the building official
149 or his designated representative. All work shall be subject to periodic inspections by the
150 building officials, or his authorized agent. All work shall be performed in accordance
151 with an inspection and construction control schedule approved by the building official or
152 his designated representative, who shall maintain a permanent file on all of its
153 inspections. Upon completion of the work, the developer or owner shall notify the
154 building official that all grading, drainage, erosion and sediment control measures and
155 devices, and vegetation and ground cover planting has been completed in conformance
156 with the approval, all attached plans, specifications, conditions, and other applicable
157 provisions of this chapter.

158

159 **Sec. 12-9. -- Final inspections.**

160

161 (a) Upon notification of the completion of work under this chapter by the owner,
162 the building official or his authorized agent shall make a final inspection of
163 the site in question and shall prepare a final summary inspection report of his
164 findings which shall be retained in the department of inspections and in the
165 department of public works permanent inspections file.

166

167 (b) After the final site inspection has been completed and approved, the
168 applicant/owner may request a release of his performance bond by the
169 building official. In the instance where the performance bond has been posted
170 with the recording of a final subdivision, the bond shall be released after the
171 building official has been notified by the plan commission of successful
172 completion of all plat improvements by the applicant/owner.

173

174 **Sec. 12-10. -- Noncompliance.**

175

176 If, at any stage, the work in progress and/or completed under the terms of an approved
177 erosion and sediment control plan does not conform to such plan, a written notice from
178 the building official to comply shall be transmitted to the owner. Such notice shall set
179 forth the nature of corrections required and the time limit within which corrections shall
180 be completed. Failure to comply with the required corrections within the specified time
181 limit shall be considered in violation of this chapter, in which case the performance bond
182 or cash or negotiable securities deposit shall be subject to notice of default, in accordance
183 with section 12-61.

184

185 **Sec. 12-11. -- Revocation or suspension of approval.**

186

187 The approval of an erosion and sediment control plan under this chapter may be revoked
188 or suspended and work initiated under the plan halted for an indefinite time period by the
189 building official or his authorized agent after written notification is transmitted to the
190 developer for one (1) or more of the following reasons:

191

192 (1) Violation of any condition of the approved plan, conditions or specifications
193 pertaining thereto;

194

195 (2) Violation of any provision of this chapter or any other applicable law,
196 ordinance, rule or regulation related to the work or site of work; and

197

198 (3) The existence of any condition or the performance of any act constituting or
199 creating a nuisance, hazard, or endangerment to human life or the property of
200 others, or contrary to the spirit or intent of this chapter.

201

202 **Secs. 12-12 -- 12-30. -- Reserved.**

203

204 **ARTICLE II. -- PERMIT**

205

206 **Sec. 12-31. -- Required.**

207

208 It shall be unlawful for any person to disturb any existing vegetation, grades, and
209 contours of land without first applying for and receiving a permit from the building
210 official.

211

212 **Sec. 12-32.-- Exceptions.**

213
214 No permit shall be required under this article for the following:

- 215
216 ~~(1) The construction, alteration or use of a single-family residential structure or~~
217 ~~appurtenance or a two-family residential structure or structures accessory~~
218 ~~thereto, which is or are to be constructed, altered or used individually and not~~
219 ~~as part of a development, provided such construction, including land~~
220 ~~distribution activities, does not occur within one hundred (100) feet of any~~
221 ~~watercourse and has no slopes greater than ten (10) feet horizontal or ten (10)~~
222 ~~percent;~~
223
224 ~~(2) Development projects where less than one-half acre is to be disturbed during~~
225 ~~one (1) planting season, and which disturbance of soil is not within one~~
226 ~~hundred (100) feet of any watercourse, has no slope greater than ten (10)~~
227 ~~percent, and where in the opinion of the building official, no soil erosion will~~
228 ~~occur; and~~
229
230 ~~(3) Accepted agricultural management practices such as seasonal tilling and~~
231 ~~harvest activities associated with property utilized for private or commercial~~
232 ~~agricultural or silvacultural purposes;~~
233
234 ~~(4) An excavation which exhibits all of the following characteristics:~~
235
236 ~~a. Is less than four (4) feet in vertical depth at its deepest point as~~
237 ~~measured from the average elevation of the natural ground surface.~~
238
239 ~~b. Does not result in a total displacement of more than one hundred (100)~~
240 ~~cubic yards of material on any lot, land, parcel or subdivision.~~
241
242 ~~c. Has no slopes steeper than ten (10) feet vertical in one hundred (100)~~
243 ~~feet horizontal or approximately ten (10) percent.~~
244
245 ~~d. Has all disturbed surface areas promptly and effectively protected to~~
246 ~~prevent soil erosion and sedimentation from occurring including~~
247 ~~seeding or sodding, and provided that all disturbed surface areas which~~
248 ~~will be exposed for a period of time in excess of thirty (30) days shall~~
249 ~~be covered with a suitable temporary protective ground cover until~~
250 ~~permanent ground cover is in place.~~
251
252 ~~(5) Grading, as a maintenance measure, or for landscaping purposes on existing~~
253 ~~developed land parcels or lots, provided that all of the following conditions~~
254 ~~are met:~~
255
256 ~~a. The aggregate of areas affected or stripped at any one (1) time does~~
257 ~~not exceed ten thousand (10,000) square feet.~~

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~~b. The change of elevation does not exceed two (2) feet at any point.~~

~~c. All bare surface area is promptly seeded, sodded, or otherwise effectively protected from erosive actions.~~

~~d. The grading does not involve a quantity of material in excess of five hundred (500) cubic yards.~~

~~(6) Grading, filling, removal or excavation activities and operations undertaken by the town under the direction and supervision of the director of public works for work on streets, roads or rights of ways dedicated to public use; provided, however, that adequate and acceptable erosion and sediment controls are incorporated in engineering plans and specifications and employed. Appropriate controls shall apply during construction as well as after the completion of such activities.~~

~~**Sec. 12-33. -- Submission of plan -- Generally.**~~

~~To obtain approval for a permit under the provisions of this article, an applicant shall first file an erosion and sediment control plan signed by the owner of the property, or authorized agent, on which the work subject to approval is to be performed. The plan or drawings, as described in section 12-56, shall include proposed erosion and sediment control measures to be employed by the applicant or his agent.~~

~~**Sec. 12-34. -- Same -- Freshwater wetlands permit.**~~

~~Where any portion of a proposed development requires approval under the Rhode Island Freshwater Wetlands Act (General Laws section 2-1-15 et seq.), as amended, and where such approval contains provisions for *soil* erosion and sediment controls, that approved plan shall be a component of the overall *soil* erosion and sediment control plan required hereunder for the development.~~

~~**Sec. 12-35. -- Building permit fees.**~~

~~Where a building permit is required under the building code, the site plans shall include all the requirements of this chapter and the building permit fee shall be based on the entire cost of the building plus improvements required by this chapter. Application of such fees shall apply to all land disturbing activities; for example, subdivisions, except as provided for under section 12-32.~~

299 **Sec. 12-36.-- Plan review.**
300

- 301 (a) ~~Within five (5) working days of the receipt of a completed plan, the building~~
302 ~~official shall send a copy of the plan to the public works department and the~~
303 ~~plan commission for the purpose of review and comment. The building~~
304 ~~official may also within the above time frame submit copies of the plan to~~
305 ~~other local departments or agencies, including the conservation district that~~
306 ~~services their county, in order to better achieve the purposes of this chapter.~~
307
308 (b) ~~The time allowed for plan review shall be commensurate with the proposed~~
309 ~~development project, and shall be done simultaneously with other reviews.~~
310

311 **Sec. 12-37.-- Plan approval.**
312

- 313 (a) ~~The building official shall take action in writing either approving or~~
314 ~~disapproving the plan with reasons stated within ten (10) days after he has~~
315 ~~received the written opinion of the public works director and the plan~~
316 ~~commission. Failure of the public works director or the plan commission to~~
317 ~~respond within twenty one (21) days of the receipt of the plan shall be deemed~~
318 ~~as no objection to the plan as submitted.~~
319
320 (b) ~~In approving a plan, the building official may attach such conditions deemed~~
321 ~~reasonably necessary by the director of public works and the plan commission~~
322 ~~to further the purposes of this chapter. Such conditions pertaining to erosion~~
323 ~~and sediment control measures and/or devices, may include, but are not~~
324 ~~limited to, the erection of walls, drains, dams and structures, planting~~
325 ~~vegetation, trees, shrubs, furnishings, necessary easements and specifying a~~
326 ~~method of performing various kinds of work, and the sequence or timing~~
327 ~~thereof. The applicant/owner shall notify the building inspector in advance of~~
328 ~~this intent to begin clearing and construction work described in the erosion~~
329 ~~and sediment control plan. The applicant shall have the erosion and sediment~~
330 ~~control plan on the site during grading and construction.~~
331

332 **Sec. 12-38.-- Appeals.**
333

- 334 (a) ~~If the ruling made by the building official is unsatisfactory to the~~
335 ~~applicant/owner, the applicant/owner may file a written appeal. The appeal of~~
336 ~~the plan for a building permit shall be to the building appeals board. The~~
337 ~~appeal of a plan for a subdivision shall be as provided for in section 45-23-14~~
338 ~~of the General Laws.~~
339
340 (b) ~~Appeal procedures shall follow current requirements for appeal to either of the~~
341 ~~two (2) boards above.~~
342

343 (e) However, under any appeal proceedings, the building official shall notify the
344 conservation commission of the appeal and the time, date, and place of the
345 hearing. The conservation commission shall submit written comments on the
346 appeal, and such comments, together with the written decision of the building
347 official, shall be read into the official record of the hearing.

348
349 (d) During the period in which the request for appeal is filed, and until such time
350 as a final decision is rendered on the appeal, the decision of the building
351 official shall remain in effect.

352
353 **Sec. 12-39. -- Expert opinion.**

354 The building inspector, the building appeals board, or the plan commission of review
355 may seek technical assistance on any *soil* erosion and sediment control plan. Such expert
356 opinion must be made available in the office of the building inspector as a public record
357 prior to the appeals hearing.

358
359
360 **Secs. 12-40 — 12-55. -- Reserved.**

361 **ARTICLE III. -- EROSION AND SEDIMENT CONTROL PLAN**

362
363
364 **Sec. 12-56. -- Preparation.**

365
366 (a) The erosion and sediment control plan shall be prepared by a registered
367 engineer or land surveyor on standard eight and one half inch by eleven inch,
368 eleven inch by seventeen inch or twenty four inch by thirty six (36) inch
369 sheets at a suggested scale of one (1) inch equals forty (40) feet. A key sheet
370 shall be included if a plan consists of more than two (2) sheets.

371
372 (b) The erosion and sediment control plan shall include sufficient information
373 about the proposed activities and land parcels to form a clear basis for
374 discussion and review and to ensure compliance with all applicable
375 requirements of this chapter.

376
377 **Sec. 12-57. -- Number of copies.**

378
379 A minimum of three (3) copies of the erosion and sediment control plan, plus any
380 additional copies that may be required by the building inspector, shall be submitted.

381
382 **Sec. 12-58. -- Contents.**

383
384 The following information may be drafted on the erosion and sediment control plan or
385 may be included as attachments and shall consist of the following:

386
387 (1) Locus plan.

- 388 ~~(2) The name and address of the owner of the site, and, if different, the applicant,~~
389 ~~the designer, and the developer.~~
- 390 ~~(3) The location, extent, and type of all proposed work to be performed, including~~
391 ~~all existing and proposed buildings, structures, utilities, sewers, water mains,~~
392 ~~and storm drains on the site.~~
- 393 ~~(4) Topographic mapping with elevations keyed to the municipal base showing~~
394 ~~existing contours at intervals of not more than two (2) feet and contours at~~
395 ~~two-foot intervals of the finished grade of all disturbed land areas at the~~
396 ~~conclusion of the construction and/or land disturbance activities.~~
- 397 ~~(5) A description of the general topographic and soil conditions at the project site,~~
398 ~~including all significant limitations such as rock, outcrops, existing alterations~~
399 ~~to natural drainage, and any other site characteristics pertinent to the work to~~
400 ~~be performed.~~
- 401 ~~(6) The location and size of all parking and loading areas and driveways, both~~
402 ~~public and private.~~
- 403 ~~(7) The location of all existing and proposed buildings or structures, utilities~~
404 ~~including drainage facilities, and all significant natural features within one~~
405 ~~hundred (100) feet of the proposed work to be performed.~~
- 406 ~~(8) The name, location, right-of-way width, and pavement width of all streets,~~
407 ~~roads and highways within one hundred (100) feet of the site.~~
- 408 ~~(9) The location and names, if applicable, of any streams, wetlands, water bodies,~~
409 ~~drainage swales, watercourses, and areas subject to periodic flooding, both on~~
410 ~~and within one hundred (100) feet of the site on which the work is to be~~
411 ~~performed. Included shall be a delineation of any areas designated as flood~~
412 ~~hazards by the federal emergency management agency or other state or federal~~
413 ~~agency.~~
- 414 ~~(10) The names and addresses of all owners of abutting parcels and the location~~
415 ~~of all adjoining lot boundaries according to the latest assessor's records.~~
- 416 ~~(11) The approximate total quantity of earthwork involved in the proposed~~
417 ~~work, with appropriate breakdown as to cut and fill.~~
- 418 ~~(12) The location and extent of the removal of existing topsoil, trees, and other~~
419 ~~vegetation; quantities and location of any material to be removed from the~~
420 ~~site.~~
- 421 ~~(13) The estimated time of exposure for all disturbed land areas on the site~~
422 ~~prior to the completion of effective temporary and/or permanent erosion and~~
423 ~~sediment control measures and facilities. This shall include planting and~~
424 ~~seeding dates and application rates, and the phasing plan indicating the~~
425 ~~anticipated starting and completion dates of all phases of proposed site work.~~
- 426 ~~(14) Details of all proposed drainage provisions to be employed on the site~~
427 ~~including the location and type of all proposed erosion and sediment control~~
428 ~~measures and stormwater runoff controls of both a permanent and temporary~~
429 ~~nature and specifications for the maintenance of each.~~
- 430 ~~(15) The type, location, and extent of all proposed temporary and permanent~~
431 ~~vegetation and mulching that will be used to protect exposed areas of the~~
432 ~~project site.~~

433 (16) — Prompt submittal of such other information or construction plans and
434 details as deemed necessary by the building official or his designated agent for
435 a thorough review of the plan prior to action being taken as prescribed in this
436 chapter. Withholding or delay of such information may be reason for the
437 building official to judge the application as incomplete and grounds for
438 disapproval.
439

440 **Sec. 12-59. — Performance principals.**
441

442 (a) ~~The contents of the erosion and sediment control plan shall clearly~~
443 ~~demonstrate how the principles, outlined below, have been met in the design~~
444 ~~and are to be accomplished by the proposed development project.~~
445

446 (1) ~~The site selected shall show due regard for natural drainage characteristics~~
447 ~~and topography.~~
448

449 (2) ~~Areas with slopes exceeding ten (10) percent shall be avoided.~~
450

451 (3) ~~The grade of slopes created shall be minimized.~~
452

453 (4) ~~When downstream capacities prove to be inadequate, any increase in~~
454 ~~storm runoff shall be controlled on-site to minimize downstream impact.~~
455 ~~This increased storm runoff shall be retained and recharged as close as~~
456 ~~feasible to its place of origin by means of detention ponds or basins,~~
457 ~~seepage areas, subsurface drains, porous paving, or similar technique.~~
458

459 (5) ~~Original boundaries, alignment and slope of watercourses within the~~
460 ~~project locus shall be preserved to the greatest extent feasible.~~
461

462 (6) ~~In general, drainage shall be directed away from structures intended for~~
463 ~~human occupancy, municipal or utility use, or similar structures.~~
464

465 (7) ~~All drainage provisions shall be of such a design and capacity so as to~~
466 ~~adequately handle stormwater runoff, including runoff from tributary~~
467 ~~upstream areas which may be outside the locus of the project.~~
468

469 (8) ~~Drainage facilities shall be installed as early as feasible during~~
470 ~~construction, prior to site clearance, if possible.~~
471

472 (9) ~~Fill located adjacent to watercourses shall be suitably protected from~~
473 ~~erosion by means of rip-rap, gabions, retaining walls, vegetative~~
474 ~~stabilization, or similar measures.~~
475

- 476 (10) ~~Temporary vegetation and/or mulching shall be used to protect~~
477 ~~bare areas and stockpiles from erosion during construction; the smallest~~
478 ~~areas feasible shall be exposed at any one (1) time; disturbed areas shall be~~
479 ~~protected during the nongrowing months, November through March.~~
480
481 (11) ~~Permanent vegetation shall be placed immediately following fine~~
482 ~~grading.~~
483
484 (12) ~~Trees and other existing vegetation shall be retained whenever~~
485 ~~feasible; the area beyond the dripline shall be fenced or roped off to~~
486 ~~protect trees from construction equipment.~~
487
488 (13) ~~Areas damaged during construction shall be resodded, reseeded, or~~
489 ~~otherwise restored. Monitoring and maintenance schedules, where~~
490 ~~required, shall be predetermined.~~
491
492 (b) ~~In order to comply with the principles set forth above, the building official~~
493 ~~shall use as a reference in determining the suitability and adequacy of erosion-~~
494 ~~sediment plans the publication entitled, "Rhode Island Erosion and Sediment~~
495 ~~Control Handbook," U.S. Department of Agriculture. *Soil Conservation*~~
496 ~~Service and Rhode Island State Conservation Committee, 1980, or its most~~
497 ~~recent addition.~~
498

499 **Sec. 12-60. Performance bond Required.**
500

- 501 (a) ~~Before approving an erosion sediment control plan, the building official may~~
502 ~~require the applicant/owner to file a surety company performance bond or~~
503 ~~deposit of money or negotiable securities. When any land disturbing activity~~
504 ~~is to take place within one hundred (100) feet of any watercourse or within an~~
505 ~~identified flood hazard district, or on slopes in excess of ten (10) percent, the~~
506 ~~filing of a performance bond shall be required. The amount of such bond, as~~
507 ~~determined by the public works department, shall be sufficient to cover the~~
508 ~~cost of implementing all erosion and sediment control measures as shown on~~
509 ~~the plan.~~
510
511 (b) ~~The bond or negotiable security filed by the applicant shall be subject to~~
512 ~~approval of the form, content, amount and manner of execution by the public~~
513 ~~works director and the town solicitor.~~
514
515 (c) ~~A performance bond for an erosion sediment control plan for a subdivision~~
516 ~~may be included in the performance bond of the subdivision. The posting of~~
517 ~~such bond as part of the subdivision performance bond does not, however,~~
518 ~~relieve the owner of any requirement of this chapter.~~
519

520 **Sec. 12-61. -- Same -- Notice of default.**

521
522 (a) ~~Performance secured by bond.~~ Whenever the building official shall find that a
523 default has occurred in the performance of any term or condition of the bond
524 or in the implementation of measures secured by the bond, written notice
525 thereof shall be made to the applicant and to the surety of the bond by the
526 town solicitor. Such notice shall state the nature of default, work to be done,
527 the estimated cost thereof, and the period of time deemed by the building
528 official to be reasonably necessary for the completion of such work.

529
530 (b) ~~Failure to comply.~~ Failure of the applicant to acknowledge and comply with
531 the provisions and deadlines outlined in such notice of default shall mean the
532 institution, by the town solicitor, without further notice of proceedings
533 whatsoever, of appropriate measures to utilize the performance bond to cause
534 the required work to be completed by the town, by contract or by other
535 appropriate means as determined by the town solicitor.

536
537 (c) ~~Performance secured by cash or negotiable securities deposit.~~ If a cash or
538 negotiable securities deposit has been posted by the applicant, notice and
539 procedure shall be the same as provided for in the preceding (a) and (b) above.

540
541 **Sec. 12-62. -- Same -- Release.**

542
543 ~~The performance bonding requirement shall remain in full force and effect until~~
544 ~~satisfactory completion of the work.~~

545
546 **ARTICLE I – SOIL EROSION AND SEDIMENT CONTROL (“SESC”) PLAN**

547
548 **Section 12.1.1 Purpose.**

549
550 The Scituate Town Council hereby finds that excessive quantities of soil are eroding from
551 certain areas that are undergoing development for nonagricultural uses such as housing
552 development, industrial areas, recreational facilities, and roads. This erosion makes
553 necessary costly repairs to gullies, washed out fills, roads, and embankments. The resulting
554 sediment clogs the storm sewers, road ditches, and muddies streams, leave deposits of silt
555 in ponds and reservoirs and is considered a major water pollutant.

556 The purpose of this ordinance is to control the discharge of construction waste and prevent
557 soil erosion and sedimentation from occurring as a result of nonagricultural development
558 within the Town of Scituate by requiring the use of appropriate best management practices
559 (BMP’s) and proper provisions for water disposal, construction waste management, and
560 the protection of soil surfaces during and after construction to reduce or eliminate the
561 pollutants in stormwater discharges, in order to promote the safety, public health and
562 general welfare of the Town.

563

564 **Section 12.1.2. Findings.**

- 565
- 566 1. The Town Council finds that excessive quantities of soil are eroding from certain
- 567 areas of the Town which are undergoing development for certain nonagricultural
- 568 uses such as housing developments, industrial areas, recreational facilities,
- 569 commercial facilities, and roads.
- 570
- 571 2. Soil erosion occurring in areas undergoing nonagricultural development makes
- 572 costly repairs necessary to gullies, washed-out fills, roads, and embankments. The
- 573 resulting sediment clogs storm sewers and road ditches, and deposits silt into ponds,
- 574 rivers, streams, and brooks.
- 575
- 576 3. Silt resulting from erosion threatens the water supply, as well as the recreational,
- 577 aesthetic, and wildlife habitat values associated with these waters.
- 578
- 579 4. Construction debris, litter and spills also clog the storm water management system
- 580 and contaminate surface and ground water. Other construction wastes including
- 581 construction debris and chemicals, concrete truck washout, oil and grease, litter and
- 582 sanitary waste may cause adverse impacts to water quality when discharged from a
- 583 construction site.
- 584

585 **Section 12.1.3. Authority.**

586

587 The Town Council shall grant the Building Official and/or the Zoning Official and/or the

588 Town Engineer and/or his or her designee the authority necessary to administer this chapter

589 under the provisions of G.L. 1956, § 45-46-1 et seq., Soil Erosion and Sediment Control.

590

591 **Section 12.1.4. Applicability.**

592

593 This ordinance is applicable to any situation involving any disturbance to the terrain,

594 topsoil or vegetative ground cover upon any property within the Town of Scituate after

595 determination of applicability by the Building Official or his or her designee based upon

596 criteria outlined below. This section shall not apply to existing quarrying operations

597 actively engaged in excavating rock. Compliance with the requirements as described herein

598 shall not be construed to relieve the owner/applicant of any obligations to obtain necessary

599 state or federal permits. Projects requiring review and approval from the Planning and/or

600 Zoning Board shall receive Final approvals from the appropriate board prior to

601 commencement of any land disturbing activities as described above.

602

603 **Section 12.1.5. Determination of applicability.**

604

605 It is unlawful for any person to disturb any existing vegetation, grades, and contours of

606 land in a manner which may increase the potential for soil erosion and affect the quality

607 and quantity of stormwater discharges associated with both the construction and

608 postconstruction activity, without first applying for a determination of applicability from

609 the Building Official or his or her designee, except that the following activities shall be

610 determined to be subject to the requirements of this ordinance: all activities disturbing a
611 total area equal to or greater than one acre, including disturbances less than one acre if part
612 of a larger common plan; and any activity that requires permit approval by the Rhode Island
613 Department of Environmental Management (RIDEM). Upon determination of
614 applicability, the owner/applicant shall submit a Soil Erosion and Sediment Control SESC
615 Plan for approval by the Building Official or his or her designee. The application for
616 determination of applicability shall describe the location, nature, character, and time
617 schedule of the proposed land disturbing activity in sufficient detail to allow the Building
618 Official or his or her designee to determine the potential for soil erosion and sedimentation
619 resulting from the proposed project.

620
621 In determining the applicability of this Section to a particular land disturbing activity, the
622 Building Official or his or her designee shall consider site topography, drainage patterns,
623 soils, proximity to watercourses, and other such information as deemed appropriate by the
624 Building Official or his or her designee.

625
626 **Where less than a total of one acre is disturbed,** a particular land disturbing activity shall
627 not be subject to the requirements of this ordinance if the Building Official or his or her
628 designee finds that erosion resulting from the land disturbing activity is insignificant and
629 represents no threat to adjacent properties or to the quality of any watercourse, as defined
630 herein. The most current “Rhode Island Soil Erosion and Sediment Control Handbook”
631 prepared by the U.S. Department of Agriculture Natural Resources Conservation Service,
632 R.I. Department of Environmental Management, and R.I. State Conservation Committee
633 shall be consulted in making this determination.

634
635 In making this determination, the building official will also take into consideration the
636 sensitivity of the waterbody to which the site drains. A waterbody and its watershed will
637 be considered sensitive if a Total Maximum Daily Load or Special Area Management Plan
638 is written or under development for it, or it is included on RIDEM’s 303(d) list, or is
639 included on RIDEM’s list of Special Resource Protection Waters (Appendix D of the Water
640 Quality Regulations), or has been noted by the municipality to be of special concern.

641
642 The Building Official or his or her designee shall accept satisfactory evidence in writing
643 from persons who have been conducting excavation and sand and gravel operations for
644 more than one (1) year prior to the date of the determination of applicability. The evidence
645 shall show that the excavation and the sand and gravel operations have been actively
646 operating for five (5) years and that the procedures followed at the existing operations
647 accomplish the objectives of the statute as such procedures prevent soil erosion and
648 sedimentation from occurring and procedures regarding water disposal and soil surfaces
649 promote the safety, public health and general welfare of the Town.

650
651 Exemptions. No determination of applicability is required for the following:

- 652
653 (1) A valid RIDEM FWW or RIPDES Permit for the project.

654

- 655 (2) Construction, alteration, or use of any additions to existing single-family or
656 duplex homes or related structures, provided the grounds coverage of such
657 addition is less than 1,000 square feet; such construction, alteration, and use
658 does not occur within 100 feet of any watercourse or coastal feature; and the
659 slopes at the site of land disturbance do not exceed 10%.
660
- 661 (3) Use of a home garden in association with on-site residential use.
662
- 663 (4) Accepted agricultural management practices such as seasonal tilling and
664 harvest activities associated with property utilized for private and/or
665 commercial agricultural or silvacultural purpose.
666
- 667 (5) Excavations for improvements, other than those described elsewhere in this
668 section, which exhibit all of the following characteristics:
669
- 670 (a) Does not result in a total displacement of more than 50 cubic yards of
671 material.
672
- 673 (b) Has no slopes greater than 10%.
674
- 675 (c) Has all disturbed surface areas promptly and effectively protected to
676 prevent soil erosion and sedimentation.
677
- 678 (6) Grading, as a maintenance measure, or for landscaping purposes on existing
679 developed land parcels or lots provided that all bare surface is immediately
680 seeded, sodded or otherwise protected from erosive actions and all of the
681 following conditions are met:
682
- 683 (a) The aggregate areas of such activity do not exceed 2,000 square feet.
684
- 685 (b) The change of elevation does not exceed two feet at any point.
686
- 687 (c) The grading does not involve a quantity of fill greater than 18 cubic yards
688 except where excavated from another portion of the same parcel, and the
689 quantity does not exceed 50 cubic yards.
690
- 691 (d) When the preexisting use is a gravel extraction operation, the property
692 owner shall conduct the operation in a manner so as not to devalue abutting
693 properties, to protect abutting property from wind erosion and soil erosion,
694 from increased runoff, sedimentation of reservoirs and drainage systems,
695 and to limit the depth of extraction so as not to interfere with the nearby
696 water table. Where any portion of a proposed development requires
697 approval under the Rhode Island Freshwater Wetlands Act (G.L. § 2-1-15
698 et seq. 2.), as amended, and where said approval contains provision for soil
699 erosion and sediment controls, that approved plan shall be a component of
700 the overall SESC required hereunder for the development.

701
702 (7) Grading, filling, removal, or excavation activities and operations undertaken by
703 the Town under the direction of the Director of Public Works for work on
704 streets, roads, or rights-of-way dedicated to public use; provided, however, that
705 adequate and acceptable erosion and sediment controls and controls for other
706 construction wastes, are incorporated in engineering plans and specifications,
707 are followed and employed. Appropriate controls shall apply during
708 construction as well as after the completion of these activities. All such work
709 shall be undertaken in accordance with the performance principles provided for
710 in Section 12.1.11, and such standards and definitions as may be adopted to
711 implement such performance principles.
712

713 **Section 12.1.6. Provisions of plan - Procedures**
714

715 (1) To obtain approval for a land disturbing activity as found applicable by the building
716 official or his or her designee under Article III, if the site is less than one (1) acre
717 in size, an applicant shall file an erosion and sediment control plan.
718

719 If the site is a total of one (1) acre or greater in size, they shall submit a Soil Erosion
720 and Sediment Control Plan (SESC), signed by the owner of the property, or
721 authorized agent, on which the work subject to approval is to be performed. The
722 plan or drawings, as described in Article V, shall include proposed erosion and
723 sediment control and waste management measures to be employed by the applicant
724 or the applicant's agent.
725

726 (2) R.I. Freshwater Wetlands Permit: Where any portion of a proposed development
727 requires approval under any provision of the general laws approved by the general
728 assembly or where the approval contains provisions for soil erosion and sediment
729 controls, that approved plan shall be a component of the overall Soil Erosion and
730 Sediment Control Plan (SESC) required under this ordinance for the development
731

732 (3) Construction General Permit: In those cases where a SESC is submitted, the
733 applicant will also submit a copy of the Notice of Intent.
734

735 **Section 12.1.7. Fees.**
736

737 (1) The Town may collect fair and reasonable fees from each applicant requesting
738 approval of a SESC for the purpose of administering this ordinance.
739

740 (2) At the time of submission of a SESC to the Office of the Building Official or his or
741 her designee, the applicant shall pay a filing fee. This fee is in addition to any
742 required by the R.I. Freshwater Wetlands Act.
743

744 (3) The Building Official or his or her designee may waive the filing fee for an
745 applicant who demonstrates that imposition of the filing fee will result in substantial
746 hardship, or that the imposition of the filing fee will make unnecessarily difficult a

747 project which should enjoy routine approval or which could be beneficial to soil,
748 water, or land resources. Any such determination of waiving a filing fee shall be
749 based upon documentation provided to the Building Official or his or her designee
750 prior to the application for plan approval.

751
752 (4) The Building Official or his or her designee may waive the filing fee for an
753 application or request filed by a Town office or agency.

754
755 (5) The Building Official or his or her designee may draw upon the fees for costs and
756 expenses in processing applications, plans, and requests; copying plans, technical
757 reports, and other documents for review; advertising, circulating, or otherwise
758 publishing notices and information regarding applications and other matters
759 pending; conducting hearings, meetings, field inspections and other professionally
760 contracted reviews; and communicating with federal and state agencies, consultants
761 and engineers, provided that only those costs and expenses are reasonably
762 attributable to review, approval, disapproval, or other action on plans and
763 determinations of applicability.

764
765 (6) This filing fee schedule (see Sec. 12.1 – Appendix A) has been determined by the
766 Town to be commensurate with the expenses of providing these municipal services
767 to applicants.

768

769 **Section 12.1.8. Plan review.**

770

771 Within ten (10) days of the receipt of a completed SESC, the Building Official or his or
772 her designee shall send a copy of the plan to the review authorities which shall include the
773 Public Works Department, the Planning Board, or Planning Department and Conservation
774 Commission for the purpose of review and comment.

775

776 The Building Official or his or her designee shall also within the above time frame submit
777 copies of the SESC to other local departments or agencies, including the Northern Rhode
778 Island Conservation District, in order to better achieve the purposes of this section. Failure
779 of the aforementioned review authorities to respond within forty-five (45) days of their
780 receipt of the plan shall be deemed as no objection to the plan as submitted.

781

782 The time allowed for plan review shall be commensurate with the proposed development
783 project, and shall be done simultaneously with other reviews.

784

785 **Section 12.1.9. Plan approval.**

786

787 The Building Official or his or her designee shall take action in writing either approving or
788 disapproving the SESC with reasons stated within ten (10) days after the Building Official
789 or his or her designee has received the written opinion of the aforementioned review
790 authorities.

791

792 In approving a SESC, the Building Official or his or her designee may attach such
793 conditions deemed reasonably necessary by the aforementioned review authorities to
794 further the purposes of this ordinance. The conditions pertaining to control measures and/or
795 devices, may include, but are not limited to, the erection of walls, drains, dams, and
796 structures, planting vegetation, trees and shrubs, furnishings, necessary easements, good
797 housekeeping and spill prevention measures for construction waste; and specification of
798 the methods for performance and timing of various kinds of work. The applicant/owner
799 shall notify the Building Official or his or her designee in advance of his or her intent to
800 begin clearing and construction work described in the SESC. The applicant shall have the
801 SESC on the site during grading and construction.

802
803 Following receipt of a permit, the applicant/owner shall notify the Building Official or his
804 designee at least 72 hours in advance of his intent to begin clearing and construction work
805 on the site as described within the approved SESC.

806
807 Projects requiring review and approval from the Planning and/or Zoning Board shall
808 receive Final approvals from the appropriate board prior to commencement of any land
809 disturbing activities as described above.

810
811 The applicant shall have an approved copy of the SESC on site for the duration of the
812 project and it shall be made available upon request.

813
814 **Section 12.1.10. Appeals.**

815
816 Administrative procedures. If the finding made by the Building Official or his or her
817 designee is unsatisfactory to the applicant/owner, the applicant/owner may file a written
818 appeal. The appeal of plans for SESC shall be in the Zoning Board of Review. Appeal
819 procedures shall follow current requirements for appeal to boards above. During the period
820 in which the request for appeal is filed, and until such time as a final decision is rendered
821 on the appeal, the decision of the Building Official or his or her designee shall remain in
822 effect.

823
824 Expert opinion. The official or his/her designee and/or the Zoning Board of Review may
825 seek technical assistance on any SESC. The expert opinion must be made available in the
826 office of the Building Official or his or her designee as a public record prior to the appeals
827 hearing.

828
829 **Section 12.1.11. Soil Erosion and Sediment Control Plan.**

830
831 Upon determination of applicability by the Building Official or his or her designee, the
832 erosion and sediment control plan and/or SESC shall be prepared by a registered engineer,
833 or landscape architect or a Certified Erosion, Sediment and Stormwater Inspector (by
834 CPESC, Inc) and copies of the plan shall be submitted to the Building Official or his or her
835 designee.

836

837 The SESC shall include sufficient information about the proposed activities and land
838 parcel(s) to form a clear basis for discussion and review and to assure compliance with all
839 applicable requirements of this section. The SESC for proposed activities disturbing a total
840 of one (1) acre or greater shall be prepared in conformance with the requirements for a Soil
841 Erosion and Sediment Control Plan (SESC), as provided in the RI Department of
842 Environmental Management’s General Permit for Storm Water Discharge Associated with
843 Construction Activity. For sites disturbing less than one acre, the plan shall be consistent
844 with the data collection, data analysis, and plan preparation guidelines in the current
845 “Rhode Island Soil Erosion and Sediment Control Handbook”, prepared by the U.S.
846 Department of Agriculture, Natural Resources Conservation Service, R.I. Department of
847 Environmental Management and R.I. State Conservation Committee, and at a minimum,
848 shall contain:

- 849
- 850 (1) A brief narrative describing the proposed land disturbing activity and the soil
851 erosion and sediment control measures, waste management measures, and
852 stormwater management measures to be installed to control erosion and mitigate
853 any change in water quality and quantity that could result from the proposed
854 activity. Supporting documentation, such as a drainage area, existing site, and soil
855 maps shall be provided as required by the Building Official or his or her designee.
856
 - 857 (2) Construction drawings in detail commensurate with the size of the project,
858 sensitivity of the potentially impacted waterbody and distance to water and/or storm
859 water system. These drawings will illustrate existing and proposed contours,
860 drainage features and vegetation; limit of clearing and grading, the location of soil
861 erosion and sediment control and storm water management measures, detail
862 drawings of measures; stock piles and borrow areas; waste collection and burial
863 areas; concrete truck wash out sites; sequence and staging of land disturbing
864 activities; and other such information needed for construction.
865
 - 866 (3) A schedule showing the sequence of construction and inspection and maintenance
867 of erosion and sediment control and waste control measures.
868
 - 869 (4) All applicants shall provide other information or construction plans and details as
870 deemed necessary by the Building Official or his or her designee for thorough
871 review of the plan prior to action being taken as prescribed in this section.
872
 - 873 (5) Withholding or delay of this information in whole or in part may be reason for the
874 Building Official or his or her designee to judge the application as deficient and
875 shall serve as grounds for disapproval.
876
 - 877 (6) If the application is deemed to be incomplete by the Building Official or his
878 designee, he shall send a letter of deficiency to the applicant within 14 (fourteen)
879 days, 25 (twenty-five days) for subdivisions greater than 25 lots and land
880 development projects greater than 21 acres from the date of submission citing those
881 sections of the application which are incomplete.
882

- 883 (7) Erosion and sediment controls. A description, including construction details
884 appropriate to the site, for both vegetative and structural practices. Vegetative
885 BMPs are designed to preserve existing vegetation where attainable and revegetate
886 open areas as soon as practicable after grading or construction. Structural BMPs
887 divert flows from exposed soils, filter runoff, store flows or otherwise limit runoff
888 from coming into contact with exposed, unvegetated areas of the site and to prevent
889 sediments and/or other pollutants from leaving the site.
890
- 891 (8) Post-construction stormwater management. A description of measures that will be
892 installed during the construction project to control pollutants in stormwater
893 discharges that will occur at the site after the construction operations have been
894 completed. These measures shall reflect best practices as described in the most
895 recent RIDEM Stormwater Design and Installation Standards Manual.
896 Maintenance activities for these measures shall be described in accordance with
897 Subsection 12.1.15 below.
898
- 899 (9) Other controls:
900
- 901 (a) Waste disposal: A description of the other controls, including construction
902 details appropriate for the site, to eliminate the discharge of other construction
903 wastes found on the construction site. All types of waste generated at the site
904 shall be disposed of in a manner consistent with state law and/or regulations.
905
- 906 (b) Good housekeeping: Good housekeeping measures to provide for the
907 minimization of exposure of construction debris to precipitation and for the
908 proper disposal of such debris shall be specified.
909
- 910 (c) Spill prevention: Areas where potential spills can occur shall be identified. The
911 potential for spills to enter the stormwater drainage system shall be eliminated
912 wherever feasible.
913
- 914 (d) Maintenance: A description of procedures to maintain, in good and effective
915 operating condition, vegetation, stormwater control measures, and other
916 protective measures, identified in the site plan.
917
- 918 (e) Cost estimate: A description of the cost required to implement all control
919 measures as shown on the plan.
920
- 921 (f) Other information: Other information or construction plans and details as
922 deemed necessary by the Building Official or his designee for thorough review
923 of the plan prior to action being taken as prescribed in this article.
924

925 **Section 12.1.12. Performance principles.**

926
927 The contents of the SESC shall clearly demonstrate how the principles, outlined below,
928 have been met in the design and are to be accomplished by the proposed development
929 project.

- 930
931 (1) Pursue Low Impact Design (LID) to the maximum extent possible. LID site
932 planning and design strategies must be used to the maximum extent possible in
933 order to reduce the generation of water runoff volumes for both new and
934 redevelopment projects. In the event any of the following LID strategies are
935 rejected as infeasible at a site, the specific rationale for rejection must be provided
936 by the applicant. LID design includes the following:
937
938 a. Protect as much undisturbed open space as possible to maintain predevelopment
939 hydrology and allow precipitation to naturally infiltrate into the ground.
940 b. Maximize the protection of natural drainage areas, streams, surface waters, and
941 wetlands;
942 c. Minimize land disturbance including clearing and grading;
943 d. Minimize soil compaction;
944 e. Provide low-maintenance landscaping that encourages retention and planting of
945 native vegetation and minimizes the use of lawns, fertilizers, and pesticides;
946 f. Minimize impervious surfaces;
947 g. Minimize the decrease in the “time of concentration” from pre-construction to
948 post construction, where “time of concentration” means the time it takes for
949 runoff to travel from the hydraulically most distant point of the drainage area to
950 the point of interest within a watershed;
951 h. Infiltrate precipitation as close as possible to the point it reaches the ground
952 using vegetated conveyance and treatment systems;
953 i. Break up or disconnect the flow of runoff over impervious surfaces; and
954 j. Provide source controls to prevent or minimize the use of exposure of pollutants
955 into stormwater runoff at the site in order to prevent or minimize the release of
956 those pollutants into stormwater runoff.
957
958 (2) The site selected shall show due regard for natural drainage characteristics and
959 topography.
960
961 (3) To the extent possible, steep slopes shall be avoided.
962
963 (4) The grade of slopes created shall be minimized.
964
965 (5) Post-development runoff rates should not exceed pre-development rates, consistent
966 with other storm water requirements which may be in effect. Any increase in storm
967 water runoff shall be retained and recharged as close as feasible to its place of origin
968 by means of detention ponds or basins, seepage areas, subsurface drains, porous
969 paving, or similar technique.
970

- 971 (6) Original boundaries, alignment, and slope of watercourses within the project locus
972 shall be preserved to the greatest extent feasible.
973
- 974 (7) In general, drainage shall be directed away from structures intended for human
975 occupancy, municipal or utility use, or similar structures.
976
- 977 (8) All drainage provisions shall be of such a design and capacity so as to adequately
978 handle storm water runoff, including runoff from tributary upstream areas which
979 may be outside the locus of the project.
980
- 981 (9) Drainage facilities shall be installed as early as feasible during construction prior
982 to site clearance, if possible.
983
- 984 (10) Fill located adjacent to watercourses shall be suitably protected from
985 erosion by means of rip-rap, gabions, retaining walls, vegetative stabilization, or
986 similar measures.
987
- 988 (11) Temporary vegetation and/or mulching shall be used to protect bare areas
989 and stock-piles from erosion during construction; the smallest areas feasible shall
990 be exposed at any one time; disturbed areas shall be protected during the non-
991 growing months, November through March.
992
- 993 (12) During the growing season, April through October, permanent vegetation
994 shall be placed immediately following fine grading.
995
- 996 (13) Trees and other existing vegetation shall be retained whenever feasible; the
997 area beyond within the dripline shall be fenced or roped off to protect trees from
998 construction equipment.
999
- 1000 (14) Construction wastes will be managed to reduce the potential for stormwater
1001 runoff to mobilize them and contaminate surface or ground water. The storage,
1002 disposal, or use as fill of material containing asphalt, concrete, construction debris
1003 or stumps, even if determined to be non-hazardous, is prohibited.
1004
- 1005 (15) All areas damaged during construction shall be resodded, reseeded, or
1006 otherwise restored. Where soil compaction has occurred through storage of
1007 materials or use of equipment, soil infiltration shall be restored through use of soil
1008 amendments or other means. Monitoring and maintenance schedules, where
1009 required, shall be predetermined.
1010
- 1011 (16) All controls installed or used to achieve compliance with this SESC must
1012 be properly operated and maintained at all times.
1013
- 1014 (17) Sediment controls, stormwater measures, and other controls shall protect
1015 downstream water bodies from adverse water quality and quantity impacts resulting
1016 from the construction activities.

- 1017
1018 (18) Groundwater recharge: Stormwater must be recharged to maintain baseflow
1019 at predevelopment recharge levels to the maximum extent practicable.
1020
1021 (19) Water quality: Stormwater runoff from a site must be adequately treated
1022 before discharge.
1023
1024 (20) Pollution prevention: All development sites require the use of source control
1025 and pollution prevention measures to minimize the impact that the land use may
1026 have on stormwater runoff quality.
1027

1028 **Section 12.1.13. Performance bond.**
1029

1030 Before approving a SESC, the Building Official or his or her designee may require the
1031 applicant/owner to file a surety company performance bond or deposit of money or
1032 negotiable securities or other method of surety, as specified by the Building Official or his
1033 or her designee. When any land disturbing activity is to take place within one hundred feet
1034 (100') of any watercourse or within an identified flood hazard district, or on slopes in
1035 excess of ten percent (10%), the filing of a performance bond or deposit of money or
1036 negotiable securities or other method of surety as specified by the Building Official or his
1037 or her designee shall be required. The amount of the bond, as determined by the Public
1038 Works Department, or in its absence, the Building Official or his or her designee, shall be
1039 sufficient to cover the cost of implementing all control measures as shown on the plan.
1040

1041 The bond or negotiable security filed by the applicant shall be subject to approval of the
1042 form, content, amount, and manner of execution by the Public Works Director and the
1043 Town Solicitor.
1044

1045 A performance bond for a SESC for a subdivision may be included in the performance
1046 bond of the subdivision. The posting of the bond as part of the subdivision performance
1047 bond does not, however, relieve the owner of any requirement(s) of this ordinance.
1048

1049 **Section 12.1.14. Notice of default on performance secured by bond.**
1050

- 1051 (1) Whenever the Building Official or his or her designee shall find that a default has
1052 occurred in the performance of any term(s) or condition(s) of the bond or in the
1053 implementation of measures secured by the bond, written notice thereof shall be
1054 made to the applicant and to the surety of the bond by the Town Solicitor. The
1055 notice shall state the nature of default, work to be done, the estimated cost thereof,
1056 and the period of time deemed by the Building Official or his or her designee to be
1057 reasonably necessary for the completion of the work.
1058
1059 (2) Failure of the applicant to acknowledge and comply with the provisions and
1060 deadlines outlined in such notice of default shall mean the institution, by the Town
1061 Solicitor, without further notice of proceedings whatsoever, of appropriate
1062 measures to utilize the performance bond to cause the required work to be

1063 completed by the Town, by contract or by other appropriate means as determined
1064 by the Town Solicitor.

1065
1066 Notice of default on performance secured by certified check. If a certified check
1067 has been posted by the applicant, notice and procedure shall be the same as
1068 provided for in the preceding Section 12.1.13.

1069
1070 Release from performance bond conditions. The performance bonding requirement
1071 shall remain in full force and effect for twelve (12) months following completion
1072 of the project, or longer if deemed necessary by the Building Official or his or her
1073 designee.

1074
1075 **Section 12.1.15. Approval-Expiration-Renewal.**

1076
1077 A. Expiration. Every approval granted herein shall expire at the end of the time period
1078 set forth in the conditions. The developer shall fully perform and complete all of
1079 the work required within the specified time period.

1080
1081 B. Renewal. If the developer is unable to complete the work within the designated time
1082 period, he or she shall, at least thirty (30) days prior to the expiration date, submit
1083 a written request for an extension of time to the Building Official or his or her
1084 designee, setting forth the reasons underlying the requested time extension. If the
1085 extension is warranted, the Building Official or his or her designee may grant an
1086 extension of time up to a maximum of one year from the date of the original
1087 deadline. Subsequent extensions under the same conditions may be granted at the
1088 discretion of the Building Official or his or her designee.

1089
1090 **Section 12.1.16. Maintenance of measures.**

1091
1092 Maintenance of all erosion-sediment control devices under this ordinance shall be the
1093 responsibility of the owner. The erosion-sediment control measures and controls for other
1094 wastes shall be maintained in good condition and working order on a continuing basis.
1095 Watercourses originating and located completely on private property shall be the
1096 responsibility of the owner to their point of open discharge at the property line or at a
1097 communal watercourse within the property.

1098
1099 **Section 12.1.17. Liability of applicant.**

1100
1101 Neither approval of a SESC nor compliance with any condition of this Section shall relieve
1102 the owner/applicant from any responsibility for damage to persons or property, nor impose
1103 any liability upon the Town for damages to persons or property.

1104

1105 **Section 12.1.18. Inspections.**

1106

1107 **Section 12.1.18.1. Periodic inspections.**

1108

1109 The provisions of this ordinance shall be administered and enforced by the Building
1110 Official or his or her designee. All work shall be subject to periodic inspections by the
1111 Building Official or his or her designee. All work shall be performed in accordance with
1112 an inspection and construction control schedule approved by the Building Official or his
1113 or her designee, who shall maintain a permanent file on all of his or her inspections.

1114

1115 The owner or his/her agent shall make regular inspections of all control measures in
1116 accordance with the inspection schedule outlined on the approved Erosion and Sediment
1117 Control Plan. The purpose of such inspections will be to determine the overall effectiveness
1118 of the control plan and the need for additional control measures. All inspections shall be
1119 conducted by a properly trained professional recognized as a Certified Erosion, Sediment
1120 and Storm Water Building Official or his or her designee (CESSWI) by the Certified
1121 Professional in Erosion and Sediment Control (CPESC, Inc). All inspections shall be
1122 documented in written form and submitted to the building official as requested.

1123

1124 The building official or his or her designee will perform a minimum of two (2) inspections;
1125 one during construction and one after final stabilization of the site. The developer or owner
1126 shall notify the building official of the installation of erosion and sediment control
1127 measures, in order for an inspection to be performed during the construction phase of the
1128 project. The building official or his/her designee will confirm that wastes are controlled
1129 and that the erosion and sediment control practices are installed as planned, meet the needs
1130 of the site and conform with the RI Erosion & Sediment Control Handbook.

1131

1132 **12.1.18.2. Final inspection.**

1133

1134 (1) Upon completion of all work, the developer shall notify the Building Official or his
1135 or her designee that all grading, drainage, erosion and sediment control measures
1136 and devices, vegetation and ground cover plantings, and controls for other wastes
1137 have been completed in conformity with the approval; all attached plans,
1138 specifications, and conditions; and other applicable provisions of this article.

1139

1140 (2) Upon notification of the completion by the owner, the Building Official or his or
1141 her designee shall make a final inspection of the site in question and shall prepare
1142 a final summary inspection report of its findings which shall be retained in the
1143 Office of the Building Official or his or her designee and in the Department of
1144 Public Works permanent inspections file.

1145

1146 (3) The applicant/owner may request the release of his/her performance bond from the
1147 Building Official or his or her designee twelve (12) months after the final site
1148 inspection has been completed and approved. In the instance where the
1149 performance bond has been posted with the recording of a final subdivision, the
1150 bond shall be released after the Building Official or his or her designee has been
1151 notified by the Town Planner of successful completion of all plat improvements by
1152 the applicant/owner.

1153

1154 **Section 12.1.19. Approval under state Freshwater Wetlands Act.**

1155

1156 Where any portion of a proposed development requires approval under the state Freshwater
1157 Wetlands Act and where the approval contains provisions for soil erosion and sediment
1158 controls, that approved plan shall meet the requirements of the SESC Plan required by this
1159 article for the development.

1160

1161 **Section 12.1.20. Notification, non-compliance.**

1162

1163 If, at any stage, the work-in-progress and/or completed under the terms of an approved
1164 SESC does not conform to the plan, a written notice from the Building Official or his or
1165 her designee to comply shall be transmitted by certified mail to the owner. The notice shall
1166 set forth the nature of the temporary and permanent corrections required and the time limit
1167 within which corrections shall be completed. Failure to comply with the required
1168 corrections within the specified time limit shall be considered in violation of this section,
1169 in which case the performance bond or cash or negotiable securities deposit shall be subject
1170 to notice of default.

1171

1172 **Section 12.1.21. Penalties.**

1173

1174 **Section 12.1.21.1. Revocation of suspension of approval.**

1175

1176 The approval of a SESC under this Section may be revoked or suspended by the Building
1177 Official or his or her designee and all work on the project halted for an indefinite time
1178 period by the Building Official or his or her designee after written notification is
1179 transmitted by the Building Official or his or her designee to the developer for one or more
1180 of the following reasons:

1181

1182 (1) Violation of any condition of the approved plan or specifications pertaining thereto.

1183

1184 (2) Violation of any provision of this chapter or any other applicable law, ordinance,
1185 article, rule, or regulation related to the work or site of work.

1186

1187 (3) The existence of any condition or the performance of any act constituting or
1188 creating a nuisance, hazard, or endangerment to human life or the property of others
1189 or contrary to the spirit or intent of this chapter.

1190

1191 **12.1.21.2. Other penalties.**

1192

1193 In addition, thereto, whenever there is a failure to comply with the provisions of this
1194 Section, the Town shall have the right to notify the applicant/owner that he must cease
1195 work immediately and/or has twenty-four (24) hours from the receipt of notice to
1196 temporarily correct the violations and thirty (30) days from receipt of notice to permanently
1197 correct the violations.

1198

1199 Should the applicant/owner fail to take the temporary corrective measures within the
1200 twenty-four (24) hour period and the permanent corrective measure within the thirty-day
1201 (30) period, the Town shall then have the right to take whatever actions it deems necessary
1202 to correct the violations and to assert a lien on the subject property in an amount equal to
1203 the costs of remedial actions. The lien shall be enforced in a manner provided or authorized
1204 by law for the enforcement of common law liens on personal property. The lien shall be
1205 recorded with the records of land evidence of the Town, and the lien shall incur legal
1206 interest from the date of recording. The imposition of any penalty shall not exempt the
1207 offender from compliance with the provisions of this Section, including revocation of the
1208 performance bond or assessment of a lien on the property by the Town.

1209

1210 A reinspection fee shall be required.

1211

1212 **Section 12.1.22. Definitions of Selected Terms.**

1213

1214 The following words, terms, and phrases, when used in this chapter, shall have the
1215 meanings ascribed to them in this section, except where the context clearly indicates a
1216 different meaning:

1217

1218 *Applicant:* Any person(s), corporation, or public or private organization proposing a
1219 development which would involve disturbance to the natural terrain as herein defined.

1220

1221 *Best Management Practices (“BMPs”):* Schedules of activities, prohibitions of practices,
1222 general good house keeping practices, pollution prevention and educational practices,
1223 maintenance procedures, and other management practices to prevent or reduce the
1224 discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater
1225 conveyance systems. BMPs also include treatment practices, operating procedures, and
1226 practices to control site runoff, spillage or leaks, sludge or water disposal, solid waste
1227 disposal, or drainage from raw materials storage.

1228

1229 *Construction wastes:* Solid and/or liquid wastes generated from the construction/site
1230 development process. This includes, but not limited to, discarded building materials,
1231 concrete truck washout, chemicals, litter, sanitary wastes, and fill material containing
1232 asphalt and concrete.

1233

1234 *Cut:* An excavation. The difference between a point on the original ground and a designated
1235 point of lower elevation on the final grade. Also, the material removed in excavation.

1236 Development project: Any construction, reconstruction, demolition, or removal of
1237 structures, roadways, parking, or other paved areas, utilities, or other similar facilities,
1238 including any action requiring a building permit by the Town.
1239
1240 Disturbed area: An area in which the natural vegetative soil cover has been removed or
1241 altered and, therefore, susceptible to erosion.
1242
1243 Erosion: The removal of mineral and/or organic matter by the action of wind, water, and/or
1244 gravity.
1245
1246 Excavate: Any act by which earth, sand, gravel, rock, or any other similar material is dug
1247 into, cut, removed, displaced, relocated, or bulldozed and shall include the conditions
1248 resulting therefrom.
1249
1250 Fill: Any act by which earth, sand, or other material is placed or moved to a new location
1251 aboveground. The fill is also the difference in elevation between a point of existing
1252 undisturbed ground and a designed point of higher elevation of the final grade.
1253
1254 Gabion: A rectangular or cylindrical wire mesh cage (wire basket) filled with rock and
1255 used as a protecting agent, revetment, etc., against erosion.
1256
1257 Land disturbing activity: Any physical land development activity which includes such
1258 actions as clearance of vegetation, moving or filling of land, removal or excavation of soil
1259 or mineral resources, or similar activities.
1260
1261 Limit of disturbance: Line delineating the boundary of the area to be disturbed during a
1262 development or redevelopment project. Area outside this boundary shall not be touched.
1263
1264 Multifamily: Any site, property, building, structure intended for use by more than one
1265 family, including but not limited to apartments, condominiums, duplexes, and townhouses.
1266
1267 Reinspection Fee: The fee charged to the applicant or owner for repeated inspections
1268 necessitated by any oversight in the compliance with the approved soil erosion sediment
1269 control plan.
1270
1271 Sediment: Solid material, both mineral and/or organic, that is in suspension, is being
1272 transported, or have been moved from its site or origin by wind, water, gravity or ice as a
1273 product of erosion.
1274
1275 Soil amendment: Any material, such as compost, lime, animal manures, crop residues, etc.,
1276 that is worked into the soil. Generally pertains to materials other than fertilizers.
1277
1278 Soil Erosion and Sediment Control ("SESC"): The approved document required before
1279 any person may cause a disturbance to the natural terrain within the Town as herein
1280 regulated. The document may also be referred to as "SESC Plan".

1281 Runoff: The surface water discharge or rate of discharge of a given watershed after a fall
1282 of rain or snow and including seepage flows that do not enter the soil but run off the surface
1283 to the land. Also, that portion of water that is not absorbed by the soil, but runs off the land
1284 surface.

1285
1286 Watercourse: The term watercourse shall be held to mean any tidewater or coastal wetland
1287 at its mean high water level, and any freshwater wetland at its seasonal high water level,
1288 including but not limited to, any river, stream, brook, pond, lake, swamp, marsh, bog, fen,
1289 wet meadow, or any other standing or flowing body of water. The edge of the watercourse
1290 as herein defined shall be used for delineation purposes.

1291
1292 **Section 12.1.23. Severability.**

1293
1294 If any provision of this ordinance or any rule or determination made hereunder, or
1295 application hereof to any person, agency, circumstances is held invalid by a court of
1296 competent jurisdiction, the remainder of this ordinance and its application to any person,
1297 agency or circumstances shall not be affected thereby. The invalidity of any section or
1298 section of this ordinance shall not affect the validity of the remainder of this Section.

1299
1300 **Section 12.1.A – Appendix A: Review Fee Schedule**

1301
1302 In accordance with Sec.12.1.7(6), the following shall be the fees required under this
1303 ordinance:

1304
1305 (A) Single-Family Subdivisions:

1306

<u>Number of Lots</u>	<u>Review & Filing Fee</u>
<u>1</u>	<u>\$150</u>
<u>2</u>	<u>\$200</u>
<u>3</u>	<u>\$250</u>
<u>4-8</u>	<u>\$350</u>
<u>9-15</u>	<u>\$450</u>
<u>16-25</u>	<u>\$550</u>
<u>26+</u>	<u>\$650, plus \$30 per lot over 26</u>

1307

1308 Single-Family Subdivisions shall also be subject to a \$300 per lot Inspection Fee
1309 with a maximum Inspection Fee of \$2,000 per application.

1310

1311

1312 (B) Site Plans (commercial, industrial, parking lots, pipelines, utilities, roads, public
 1313 facilities, land grading, quarrying, mining, landfills and demolition) and Multi-
 1314 Family (apartments, condominiums, townhouses, etc.):
 1315

<u>Acreage</u>	<u>Review & Filing Fee</u>
<u>Less than 1</u>	<u>\$300</u>
<u>1-1.99</u>	<u>\$400</u>
<u>2-5.99</u>	<u>\$500</u>
<u>6-10.99</u>	<u>\$600</u>
<u>11-20.99</u>	<u>\$700</u>
<u>21-50.99</u>	<u>\$800</u>
<u>51+</u>	<u>\$1000, plus \$30 per acre for each acre over 51 (rounded to the nearest full acre)</u>

1316
 1317 Site Plans and Multi-Family shall also be subject to a \$150 Inspection Fee for up
 1318 to 1 acre, plus \$30 per each additional disturbed acre beyond 1 acre (rounded to
 1319 the nearest full acre) with no maximum fee.
 1320

1321 **ARTICLE II – POST-CONSTRUCTION STORMWATER CONTROL**

1322
 1323 **Section 12.2 Post-Construction Stormwater Control Ordinance**

1324
 1325 In order to comply with the stormwater post-construction control requirements of RIPDES
 1326 Permit No. RIR040027 (Scituate coverage under the General Permit)

1327
 1328 **Section 12.2.1 Purpose**

- 1329
 1330 (a) Unmitigated storm water from areas altered by development may pose public health
 1331 and safety threats. Potential contaminants in storm water runoff may include
 1332 suspended solids, nitrogen, phosphorus, hydrocarbons, heavy metals, pathogenic
 1333 organisms (bacteria and viruses), and road salts.
 1334
 1335 (b) This article establishes the administrative mechanisms necessary for the Town to
 1336 ensure proper storm water management of runoff from new development and
 1337 redevelopment projects. The ordinance from which this article is derived is written
 1338 to work in conjunction with the Rhode Island Department of Environmental
 1339 Management's General Permit, Rhode Island Pollutant Discharge Elimination
 1340 System (RIPDES) Storm Water Discharge from Small Municipal Separate Storm
 1341 Sewer Systems and from Industrial Activity at Eligible Facilities Operated by
 1342 Regulated Small MS4s.
 1343

- 1344 (c) This ordinance is responsive to Rhode Island General Laws § 45-61.2-1 (a)
1345 Findings. The general assembly hereby recognizes and declares that:
1346
1347 (1) Stormwater, when not properly controlled and treated, causes pollution of the
1348 waters of the state, threatens public health, and damages property. Stormwater
1349 carries pollutants into rivers, streams, ponds, coves, drinking water aquifers and
1350 Narragansett Bay;
1351
1352 (2) Stormwater reaches the state's waters by streets, roads, lawns and other means.
1353 As a result, public use of the state's natural resources for drinking water,
1354 swimming, fishing, shell fishing and other forms of recreation is limited and, in
1355 some cases, prohibited;
1356
1357 (3) Development often results in increased stormwater runoff by increasing the size
1358 and number of paved and other impervious surfaces within the state, and
1359 decreasing the amount of natural surface areas that naturally control stormwater
1360 runoff through natural filtration and groundwater recharge systems;
1361
1362 (4) Development in the Town of Scituate will strive to maintain predevelopment
1363 groundwater recharge and infiltration on site to the maximum extent
1364 practicable;
1365
1366 (5) Demonstrate that post-construction stormwater runoff is controlled, and that
1367 post development peak discharge rates do not exceed pre-development peak
1368 discharge rates; and
1369
1370 (6) Use low impact-design techniques as the primary method of stormwater control
1371 to the maximum extent practicable.
1372

1373 **Section 12.2.2 Definitions.**
1374

1375 For the purposes of this section, the following words and terms shall have the meanings
1376 respectively ascribed, unless the context otherwise requires:
1377

1378 *Applicant* means any person proposing a development project in accordance with
1379 this article. The applicant must be the person who holds a valid purchase and sales
1380 agreement for the real property associated with said development project.
1381

1382 *Authorized enforcement agent* means the building official, zoning official, town
1383 engineer, or other town official authorized to enforce standards in accordance with this
1384 article.
1385

1386 Best Management Practice (“BMP”) means any structural and nonstructural means
1387 applied to a development project with the intent of controlling storm water flow and
1388 quality. Best management practices include, but are not necessarily limited to, means of
1389 storm water management described in with the Rhode Island Stormwater Design and
1390 Installation Standard Manual (“RISDISM”), as amended. Use and acceptability of best
1391 management practices is at the discretion of the town.

1392
1393 Development project means any construction, reconstruction, demolition, or
1394 removal of structures, roadways, parking, or other paved areas, utilities, or other similar
1395 facilities, including any action requiring a building permit by the town.

1396
1397 Low-impact development means a best management practice intended to maintain
1398 or replicate predevelopment hydrology through the use of site planning, source control,
1399 and small-scale structures integrated throughout the site to prevent, infiltrate and manage
1400 storm water as close to its source as possible. Low-impact development practices include,
1401 but are not necessarily limited to, those described in the state storm water design and
1402 installation standards manual, as amended. use and acceptability of low-impact
1403 development practices is at the discretion of the town.

1404
1405 Owner or operator means any person who holds legal title to any real property,
1406 development project or structural best management practice; or has possession or control
1407 of any real property, development project or structural best management practice through
1408 any agent, executor, administrator, trustee or guardian of the estate of a holder of a legal
1409 title.

1410
1411 Person shall include an individual, trust, firm, joint stock company, corporation
1412 (including a quasi-governmental corporation), partnership, association, syndicate,
1413 municipality, municipal or state agency, fire district, club, non-profit agency or any
1414 subdivision, commission, department, bureau, agency or department of state or federal
1415 government (including any quasi-governmental corporation) or of any interstate body.

1416
1417 Storm water management plan means a plan that prescribes site design elements
1418 and construction practices, that if employed, improves area water quality by preventing
1419 harmful pollutants from being carried by stormwater runoff into local water bodies.

1420
1421 Storm water means the surface discharge of water associated with a precipitation
1422 event or snowmelt.

1423
1424 **Section 12.2.3 Applicability**

1425
1426 This article shall apply to all subdivision and land development applications that disturb
1427 one (1) acre or more of land. No person shall engage in development projects without
1428 receiving approval from the building official and or Plan Commission unless specifically
1429 exempted by Section 12.2.4.

1430

1431 **Section 12.2.4 Exemptions**

1432

1433 The following development projects do not require written approval pursuant to this article:

1434

1435 (1) Construction, alteration, or use of any additions to existing single-family or two-
1436 family homes or related structures, when determined by the building official to be
1437 insignificant, and such construction, alteration and use does not exceed one (1) acre
1438 of land, does not occur within 200 feet of any watercourse or coastal feature, and
1439 the slopes at the site of land disturbance do not exceed ten percent.

1440

1441 (2) Accepted agricultural management practices such as seasonal tilling and harvest
1442 activities associated with property utilized for private or commercial agricultural or
1443 silvicultural purposes.

1444

1445 (3) An excavation which exhibits all of the following characteristics:

1446

1447 (a) Is less than four feet in vertical depth at its deepest point as measured from the
1448 average elevation of the natural ground surface.

1449

1450 (b) Does not result in a total displacement of more than 50 cubic yards of material
1451 on any lot, land, parcel or subdivision.

1452

1453 (c) Has no slopes steeper than ten feet vertical in 100 feet horizontal (ten percent).

1454

1455 (d) Has all disturbed surface areas promptly and effectively protected to prevent
1456 soil erosion and sedimentation from occurring including seeding or sodding,
1457 and provided that all disturbed surface areas which will be exposed for a period
1458 of time in excess of 30 days shall be covered with a suitable temporary
1459 protective ground cover until permanent ground cover is in place.

1460

1461 (4) Grading, as a maintenance measure, or for landscaping purposes on existing
1462 developed land parcels or lots, provided that all of the following conditions are met:

1463

1464 (a) The aggregate area of activity does not exceed 1 acre.

1465

1466 (b) All bare surface area is promptly seeded, sodded, or otherwise effectively
1467 protected from erosive actions.

1468

1469 (5) Grading, filling, removal or excavation activities and operations undertaken by the
1470 town under the direction and supervision of the Director of Public Works for work
1471 on streets, roads or rights-of-way dedicated to public use; provided, however, that
1472 adequate and acceptable erosion and sediment controls are incorporated in
1473 engineering plans and specifications and employed. Appropriate controls shall
1474 apply during construction as well as after the completion of such activities.

1475

1476 (6) Use of a home garden in association with residential use.

1477 **Section 12.2.5 Variance**

1478

1479 The building official reviewing an application under this article may:

1480

1481 (1) Vary requirements of this article when strict implementation of the requirements
1482 will create an unnecessary hardship or are not feasible.

1483

1484 (2) Allow use of an innovative management practice where strict adherence to existing
1485 criteria would be costly or of negligible environmental benefit.

1486

1487 (3) Allow use of an innovative management practice where the innovative practice is
1488 expected to have an environmental benefit, which cannot be practicably realized
1489 using standardized management practices.

1490

1491 **Section 12.2.6 Submissions and Approvals**

1492

1493 A. In accordance with this article, all persons must obtain approval from the building
1494 official prior to engaging in any development project, unless exempted by Section
1495 12.2.4. To obtain approval applicants must demonstrate compliance with all policy,
1496 standards and requirements of this article to the satisfaction of the building official.
1497 Applicants may demonstrate compliance via submission of materials and
1498 documentation including but not limited to a storm water management plan, site
1499 plan and maintenance agreement in accordance with this article. Plans will be
1500 reviewed in conjunction with site plan reviewed by the building official.

1501

1502 B. Pre-application meetings may be requested by the applicant and held at the
1503 discretion of the town for the purpose of informing the representatives of
1504 construction projects of any local requirements, state environmental permitting
1505 requirements, and any additional limitations that may be imposed.

1506

1507 **Section 12.2.7 Technical Standards**

1508

1509 All applicants are required to develop and submit a storm water management plan prepared
1510 by a professional engineer licensed in the state. All storm water management plans must
1511 address storm water management on a site-by-site basis and all requirements of this article.
1512 All storm water management practices shall be consistent with the RISDISM and the state
1513 soil erosion and sediment control handbook, as amended.

1514

- 1515 (1) Performance standards. Storm water management plans shall incorporate structural
1516 and nonstructural best management practices for water quality control, in
1517 accordance with the state storm water design and installation standards manual.
1518 Development in special resource protection waters or watersheds of impaired
1519 waters as defined pursuant to the state water quality regulations may be held to
1520 higher standards. As part of such higher standards, low-impact development shall
1521 be used as the primary method of storm water control to the maximum extent
1522 practicable to manage water quality and maintain groundwater recharge to
1523 predevelopment levels.
1524
- 1525 (2) Disallowed storm water best management practices. The placement of storm water
1526 structures within a floodplain shall be avoided. If there is no alternative, the
1527 applicant must show what effects, if any, the tailwaters created by the floodplain
1528 will have on the outflow and effective storage capacity of the storm water best
1529 management practice.
1530
- 1531 (3) Facilitation of maintenance. Facilities that require maintenance shall be designed
1532 to minimize the need for regular maintenance, facilitate required maintenance, and
1533 ensure accessibility of components that require maintenance. At a minimum, all
1534 storm water management plans must incorporate best management practices with
1535 appropriate maintenance design in accordance with the state storm water design
1536 and installation standards manual, as amended.
1537
- 1538 (4) Flood protection. Storm water management plans shall demonstrate that a proposed
1539 project provides for protection of life and property from flooding and flood flows.
1540 Water quantities must be controlled in accordance with the RISDISM, as amended,
1541 or a municipally approved regional storm water management plan for the watershed
1542 in which the project site is located. Storm water management plans shall
1543 demonstrate incorporation of the following standards into the proposed project:
1544
- 1545 (a) Control and maintenance of post-development peak discharge rates from the 1-
1546 year, 2-year, 10-year, 25-year, and 100-year storm events to predevelopment
1547 levels.
1548 (b) Downstream analysis of the 100-year storm event and control of the peak
1549 discharge rate for the 100-year storm to mitigate downstream impacts.
1550 (c) Discharge from any storm water facility must be conveyed through properly
1551 constructed conveyance system to provide for nonerosive flows during all storm
1552 events. The proposed storm water conveyance system consisting of open
1553 channels, pipes, and other conveyance devices shall at a minimum
1554 accommodate the runoff from a 25-year storm event. The storm water
1555 conveyance system must provide for nonerosive flows to receiving waters.
1556

1557 (5) Surface water and groundwater. Storm water management plans shall, in
1558 accordance with the RISDISM, as amended, demonstrate that during development
1559 and post-development, all receiving waters will be recharged in a manner closely
1560 resembling predevelopment conditions and that the developed site will retain
1561 hydrological conditions that closely resemble of those prior to disturbance. The
1562 goal of the storm water design shall be that hydrologic conditions in each
1563 subwatershed match predevelopment conditions.
1564

1565 Where practicable, development and redevelopment projects should aim to reduce runoff
1566 volumes. This may include minimizing and eliminating impervious surface areas such as
1567 roads, parking, paving or other surfaces, encouraging infiltration of noncontaminated
1568 runoff, preventing channelization, encouraging sheet flow, and where appropriate,
1569 preserving, enhancing or establishing buffers along surface water bodies and tributaries.
1570

1571 **Section 12.2.8 Stormwater Management Plans**

1572
1573 (a) Calculations. In addition to the information required for the site plan the following
1574 information must also be included with the application, where applicable:
1575

- 1576 (1) The area of each subwatershed shall be identified on final site plans.
1577
- 1578 (2) The area of impervious surfaces (including all roads, driveways, rooftops,
1579 sidewalks, etc.) for each sub-basin as identified in the state storm water
1580 design and installation standards manual, as amended.
1581
- 1582 (3) Weighted curve numbers as determined using urban hydrology for small
1583 watersheds (USDA Soil Conservation Service, 1986 or as amended).
1584
- 1585 (4) Invert elevations for inlets and outlets. In addition, invert elevations shall
1586 be provided for all basins including permanent and/or flood pool stages,
1587 including peak discharge rates for each stage.
1588
- 1589 (5) The total volume capacity for all flood control and water quality best
1590 management practices (e.g., infiltration basin, detention basins, wet ponds,
1591 etc.). Volumes must be segregated into permanent and flood pool stage
1592 volumes where applicable. Furthermore, the volumes of all sediment
1593 storage (basins, forebays, etc.) areas must also be provided.
1594
- 1595 (6) Predevelopment and post-development peak discharge rates and runoff
1596 volumes for the 1-year, 2-year, 10-year, 25-year, and 100-year frequency
1597 storm events for each subwatershed to each separate water or discharge
1598 point. The water quality volume (WQV) must also be calculated for each
1599 subwatershed. All relevant variables such as curve numbers and time of
1600 concentration, along with the supporting computations and worksheets must
1601 be included. The entire site shall be included in an evaluated subwatershed.
1602

1603 (7) Supporting calculations to demonstrate that the proposed development
1604 project will meet section 12.2.7.

1605
1606 (b) Narrative description. As part of the storm water management plan, the applicant
1607 shall include a discussion of the protection of environmental resource functions and
1608 values. The following outline is provided as guidance for preparing a narrative
1609 description for the storm water management plan. Depending on the size and scope
1610 of the proposed project, the amount of information required by the town may vary;
1611 therefore, it is advised to consult the town for specific requirements.

1612
1613 (1) Site description. General topography, soil types, current vegetative
1614 composition and relative abundance, existing infrastructure, and/or adjacent
1615 properties, identification of major resources (e.g., wetlands, groundwater,
1616 surface waters, etc.), name of receiving water(s), potential water quality
1617 and/or hydrologic impacts on resources.

1618
1619 (2) Site input data. Watershed characteristics, area of all impervious surfaces,
1620 total area of site, annual mean rainfall, runoff coefficients, curve numbers
1621 for various land uses, peak discharge rates.

1622
1623 (3) Land use planning and source control plan.

1624
1625 (4) Best management practices. Identify the type of best management
1626 practice(s) employed both during and post construction and justification for
1627 selection, including any deviation from the state storm water design and
1628 installation standards manual, as amended, and the potential effect on
1629 pollutant removal efficiency.

1630
1631 (5) Technical feasibility. Include sizing, location, hydraulic and environmental
1632 impacts. Alternatives, which were considered but determined not to be
1633 feasible, should also be discussed.

1634
1635 (6) Maintenance schedule of best management practices to be used, both during
1636 and post construction including frequency of inspection and maintenance.

1637
1638 **Section 12.2.9 Inspections for Stormwater Best Management Practices (BMPs)**

1639
1640 The Town shall have the right to inspect best management practices constructed after the
1641 passage of the ordinance from which this article is derived. Inspections shall address
1642 whether best management practices have been installed in accordance with approved storm
1643 water management plans.

1644

1645 **Section 12.2.10 Operation and Maintenance Requirements for BMPs**

- 1646
- 1647 A. Routine operation and maintenance and repair procedures. Routine maintenance
- 1648 shall be performed on a regular basis to ensure proper performance and may include
- 1649 such routine procedures as training of staff, periodic inspections, grass cutting
- 1650 elimination of mosquito breeding habitats, and pond maintenance in accordance
- 1651 with a storm water management plan approved pursuant to this article. Repair
- 1652 procedures may be required to correct a problem or malfunction of a best
- 1653 management practice and to restore the management practice's intended operation
- 1654 and safe condition. Repairs may include such procedures as structural repairs,
- 1655 removal of debris, sediment and trash removal, erosion repair, snow and ice
- 1656 removal, fence repair, mosquito extermination, and restoration of vegetated and
- 1657 non-vegetated linings.
- 1658
- 1659 B. General operation and maintenance standards for storm water best management
- 1660 practices. Maintenance design and maintenance procedures for all best
- 1661 management practices shall be documented in storm water management plans in
- 1662 accordance with the state storm water design and installation standards manual, as
- 1663 amended; or manufacturer's specifications. A maintenance schedule for each type
- 1664 of best management practice must be included in the storm water management plan.
- 1665 These schedules shall list the frequency and type of maintenance operations
- 1666 necessary along with the legally responsible party's name, address, and telephone
- 1667 number. The owner, as well as all future owners, shall be required to implement the
- 1668 maintenance schedule of the best management practices. If the storm water facility
- 1669 is to be deeded to the town, the applicant must obtain a letter from the town
- 1670 acknowledging maintenance responsibility and intent of ownership.
- 1671

1672 **Section 12.2.11 Maintenance Agreements**

- 1673
- 1674 (a) Maintenance agreements shall provide written, contractual documentation, which
- 1675 demonstrates compliance with this article and legal arrangements for the upkeep of
- 1676 storm water facilities to assure their proper function and safety in accordance with
- 1677 this article.
- 1678
- 1679 (b) After final construction is completed, the owner or responsible person shall
- 1680 maintain "as built" plans of storm water management practices located on site. The
- 1681 plans must show the final design specifications for all storm water management
- 1682 facilities and must be certified by a professional engineer.
- 1683
- 1684 (c) Maintenance agreements, which describe maintenance schedules and requirements,
- 1685 must be developed for each storm water management facility unless the facility is
- 1686 dedicated to and accepted by the town. Schedules shall be based on the complexity
- 1687 and frequency of maintenance needs and shall be subject to the approval of the
- 1688 town. At a minimum, maintenance frequency should be in accordance with the
- 1689 RISDISM, as amended.
- 1690

- 1691 (d) Right of entry. Upon the presentation of credentials and other documents, as may
1692 be required by law, or if authorized by the owner or other party in control of the
1693 property, the Director of Public Works, Building Official, Zoning Officer, and other
1694 town representatives designated by the Building Official, Zoning Officer, or
1695 Director of Public Works may enter upon privately owned property for the purpose
1696 of performing their duties under this article and may make or cause to be made such
1697 inspections as the town deems reasonably necessary.
1698
- 1699 (e) Record keeping for maintenance activities. Maintenance agreements shall include
1700 provisions for maintenance record keeping. All activities conducted in accordance
1701 with a maintenance agreement must be recorded in a work order and inspection log.
1702 Timely updates of the log shall be the responsibility of the storm water management
1703 facility owner or other responsible party pursuant to this article. Review of the
1704 maintenance and inspection log shall be completed by the town to determine the
1705 effectiveness of operation, maintenance and safety activities. Reviews shall occur
1706 as part of each on-site inspection. Additional reviews may be made as deemed
1707 appropriate by the town.
1708
- 1709 (f) Responsibility for maintenance to assure function and safety. Appropriate
1710 maintenance to assure function and safety of storm water management facilities
1711 shall be the responsibility the owner or may be assumed by another party via a
1712 written contractual arrangement in accordance with this article.
1713
- 1714 (g) Alterations to maintenance agreements. Any alterations in maintenance
1715 responsibility or alterations to maintenance agreements must be either reviewed and
1716 approved by the planning board (as applicable) or building official or designee. If
1717 portions of the land serviced by a storm water management facility are to be sold,
1718 written contractual arrangements shall be made to pass all responsibility of the
1719 maintenance agreement to the purchaser and shall be subject to review and approval
1720 of the department of public works or designee. All alterations to maintenance
1721 agreements shall be made and recorded in accordance with this article.
1722

Section 12.2.12 Application Fees

1723
1724
1725 The Town shall be empowered to collect fees from permit applicants, which are
1726 commensurate with the cost of administering this article.
1727

Section 12.2.13 Notification of Noncompliance

1728
1729
1730 If the authorized enforcement agent finds a violation of this article then a written notice
1731 from the authorized enforcement agent to compel correction shall be transmitted to the
1732 owner or operator. Such notice shall set forth the nature of corrections required and the
1733 time limit within which corrections shall be completed. Failure to comply with the required
1734 corrections within the specified time limit shall be considered a violation of this chapter.
1735

1736 **Section 12.2.14 Appeal of Notice of Noncompliance**

1737

1738 Any person receiving a notice of noncompliance may appeal the determination of the
1739 authorized enforcement agent. The appeal must be received within 30 days from the date
1740 of the receipt of the notice of noncompliance. The appeal shall be in writing and contain a
1741 detailed basis upon which the appeal was taken. The authorized enforcement agent shall
1742 then determine whether to accept the appeal or proceed to cause summons of the appellant
1743 in accordance with section 12.2.15.

1744

1745 **Section 12.2.15 Penalties for Violation**

1746

1747 Any person who shall violate any provision of this article shall be punished in accordance
1748 with section 12.20. The authorized enforcement agent may, at the discretion of the court,
1749 undertake measures necessary to abate the violation and restore the property at the owner
1750 or operators expense.

1751

1752 **Section 12.2.16 Cost of Abatement of the Violation**

1753

1754 Within 30 days after abatement of the violation by or under the direction of the authorized
1755 enforcement agent, the owner or operator will be notified by the authorized enforcement
1756 agent of the cost of abatement, including administrative costs. If the amount due is not paid
1757 within a timely manner as determined by the authorized enforcement agent, the charges
1758 shall become a special assessment against the property and shall constitute a lien on the
1759 property for the amount of the assessment. Any person violating any of the provisions of
1760 this section shall become liable to the Town by reason of such violation. The liability shall
1761 be paid in not more than 12 equal payments. Interest at the rate of 12 percent per annum
1762 shall be assessed on the balance beginning on the 31st day following discovery of the
1763 violation.

1764

1765 **Section 12.2.17 Revocation or Suspension of Approval**

1766

1767 The approval of a storm water management plan under this chapter may be revoked or
1768 suspended by an authorized enforcement agent and all work on the development or
1769 redevelopment project halted for an indefinite time period after written notification is
1770 transmitted by the authorized enforcement agent to the owner or operator for one or more
1771 of the following reasons:

1772

1773 (1) Violation of any condition of the approved plan, or specifications pertaining
1774 thereto.

1775

1776 (2) Violation of any provision of this article.

1777

1778 (3) The existence of any condition or the performance of any act constituting or
1779 creating a nuisance, hazard, or endangerment to human life or property of others,
1780 or contrary to the spirit or intent of this article.

1781

1782 **Section 12.2.18 Remedies not Exclusive**

1783

1784 The remedies listed in this article are not exclusive of any other remedies available under
1785 any applicable federal, state, or local law and it is within the discretion of the authorized
1786 enforcement agent to seek cumulative remedies.

1787

1788 **ARTICLE III – ILLICIT DISCHARGE OF STORMWATER**

1789

1790 **Section 12.3.1 Purpose**

1791

1792 Contaminated storm water runoff is a major cause of impairment of water quality in lakes,
1793 ponds, streams, rivers, wetlands, and groundwater; contamination of drinking water
1794 supplies; and alteration or destruction of aquatic and wildlife habitat. Regulation of illicit
1795 connections and discharges to the municipal storm drain system is necessary for the
1796 protection of Town water bodies and groundwater, and to safeguard the public health,
1797 safety, welfare, and the environment. The objectives of this ordinance are:

1798

1799 (1) To prevent, or reduce to the maximum extent practicable, pollutants from entering
1800 the Town owned storm drainage system;

1801

1802 (2) To prohibit illicit connections and unauthorized discharges to the storm water
1803 drainage system;

1804

1805 (3) To require the removal of all such illicit connections and discharges;

1806

1807 (4) To comply with state law and federal statutes and regulations relating to storm
1808 water discharges; and

1809

1810 (5) To set forth the legal authority and procedures to carry out all inspection, detection,
1811 monitoring, and enforcement activities necessary to ensure compliance with this
1812 ordinance.

1813

1814 **Section 12.3.2 Authority**

1815

1816 This ordinance is promulgated pursuant to the Rhode Island Department of Environmental
1817 Management’s (“DEM”) General Permit Rhode Island Pollutant Discharge Elimination
1818 System Storm Water Discharge from Small Municipal Separate Storm Sewer Systems
1819 (MS4) and from Industrial Activity at Eligible Facilities Operated by Regulated Small
1820 MS4s (“MS4 General Permit”) and in accordance with the Administrative Procedures Act,
1821 R.I.G.L. § 42-35-1, et seq.

1822

1823 **Section 12.3.3 Definitions**

1824

1825 The following words, terms and phrases, when used in this ordinance, shall have the
1826 meanings ascribed to them in this section:

1827

1828 Allowable Non-Storm Water Discharges- Discharges not comprised of storm water
1829 are allowed under the MS4 General Permit Part I.B.3 but are limited to the following,
1830 provided these are not significant contributors of pollutants to the MS4: discharges which
1831 result from the washdown of vehicles at retail dealers selling new and used automobiles
1832 where no detergents are used and individual residential car washing; external building
1833 washdown where no detergents are used; the use of water to control dust; fire-fighting
1834 activities; fire hydrant flushings; natural springs; uncontaminated groundwater;
1835 dechlorinated pool discharges; air conditioning condensate; lawn watering; potable water
1836 sources including waterline flushings; irrigation drainage; pavement washwaters where
1837 spills or leaks of toxic or hazardous materials have not occurred (unless all spilled materials
1838 have been removed) and where detergents are not used; discharges from foundation or
1839 footing drains where flows are not contaminated with process materials such as solvents,
1840 or contaminated by contact with soils where spills or leaks of toxic or hazardous materials
1841 have occurred; uncontaminated utility vault dewatering; dechlorinated water line testing
1842 water; hydrostatic test water that does not contain any treatment chemicals and is not
1843 contaminated with process chemicals.

1844
1845 Best Management Practices (“BMPs”)- Schedules of activities, prohibitions of
1846 practices, general good house-keeping practices, pollution prevention and educational
1847 practices, maintenance procedures, and other management practices; and structures, to
1848 prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving
1849 waters, or storm water conveyance systems. BMPs also include treatment practices,
1850 operating procedures, and practices to control site runoff, spillage or leaks, sludge or water
1851 disposal, or drainage from raw materials storage.

1852
1853 Clean Water Act (“CWA”)- The federal Water Pollution Control Act (33 U.S.C. §
1854 1251 *et seq.*), and any subsequent amendments thereto.

1855
1856 Construction Activity- Activities subject to RIPDES Construction Permits, which
1857 includes construction projects resulting in land disturbance of one acre or more; and
1858 activities resulting in land disturbance of less than one acre which are subject to Planning
1859 Board approval. Such activities include but are not limited to clearing and grubbing,
1860 grading, excavating, and demolition.

1861
1862 Director means the Director of Public Works, or his authorized deputy, agent or
1863 representative.

1864
1865 Discharger- Any person who causes, allows, permits, or is otherwise responsible
1866 for a discharge, including, without limitation, any operator of a construction site or
1867 industrial facility.

1868
1869 Hazardous Material- Any material, including any substance, waste, or combination
1870 thereof, which because of its quantity, concentration, or physical, chemical, radioactive, or
1871 infectious characteristics may cause, or significantly contribute to, a substantial present or
1872 potential hazard to human health, safety, property, or the environment when improperly
1873 treated, stored, transported, disposed of, or otherwise managed.

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1918

Illicit Connection- An illicit connection is defined as either of the following:

- (a) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Director, or,
- (b) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the Director.

Illicit Discharge- Any direct or indirect discharge to a municipal storm drainage system that is not composed entirely of storm water, except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities. Illicit discharges include, but are not limited to, discharges in the form of illegal dumping, hazardous waste/material spills, sewage and wastewater, construction waste, building material, truck washout, litter, and those allowable storm water discharges found to be a significant contributor of pollutants to the MS4.

Industrial Activity- Activities subject to RIPDES Industrial Storm Water Permits as defined in RIPDES Rule 31 (b) (15).

Municipal Separate Storm Sewer System (MS4)- A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, natural and man-made channels and watercourses, piped storm drains, retention and detention basins, and other drainage structures), owned or operated by the Town, or proposed for ownership or operation by the Town, and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage. (Also known as the 'storm drainage system'.)

Non-Storm Water Discharge- Any discharge to the storm drain system, or that has the potential to enter the storm drain system, that is not composed entirely of storm water.

Operator- The party or parties that either individually or taken together have the day-to-day operational control over the facility activities and the ability to make modifications to such activities.

Owner- The party or parties that either individually or taken together has legal title to any premise.

1919 Person- Any individual, association, organization, partnership, firm, corporation or
1920 other entity recognized by law and acting as either the owner or as the owner's agent.

1921
1922 Pollutants- Anything that causes or contributes to pollution. Pollutants may
1923 include, but are not limited to: paints, varnishes, and solvents; oil and other automotive
1924 fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage,
1925 litter, or other discarded or abandoned objects and accumulations, so that same may cause
1926 or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous
1927 substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate
1928 metals; animal and pet wastes; soil, sediment/ fines resulting from land disturbing
1929 activities; wastes and residues that result from constructing a building or structure; and
1930 noxious or offensive matter of any kind.

1931
1932 RIPDES- Rhode Island Pollution Discharge Elimination System means the Rhode
1933 Island system for issuing, modifying, revoking and reissuing, terminating, monitoring, and
1934 enforcing point source discharge permits and imposing and enforcing pretreatment
1935 requirements pursuant to Title 46, Chapter 12 of the General Laws of Rhode Island and the
1936 Clean Water Act.

1937
1938 Storm Water- Any surface flow, runoff, and drainage consisting entirely of water
1939 from any form of natural precipitation, and resulting from such precipitation.

1940
1941 Storm Water Management Program Plan ("SWMPP")- the municipal document
1942 describing a program to reduce the discharge of pollutants from the MS4 to the maximum
1943 extent practicable, protect water quality, and satisfy the water quality requirements of the
1944 Federal Clean Water Act and Rhode Island Water Quality Standards; and which includes
1945 the following six minimum control measures: Public Education and Outreach, Public
1946 Involvement/ Participation, Illicit Discharge Detection and Elimination, Construction Site
1947 Storm Water Runoff Control, Post Construction Storm Water Management, and Pollution
1948 Prevention and Good House Keeping in Municipal Operations.

1949
1950 Storm Water Pollution Prevention Plan ("SWPPP")- A document which describes
1951 the Best Management Practices and activities to be implemented by a person or business
1952 to identify sources of pollution or contamination at a site and the actions to eliminate or
1953 reduce pollutant discharges to storm water, storm water conveyance systems, and/or
1954 receiving waters to the maximum extent practicable.

1955
1956 Watercourse- A natural or man-made surface drainage channel or body of water
1957 (Including a lake or pond) through which a water flow occurs, either continuously or
1958 intermittently.

1959
1960 Waters of the State- Surface and ground waters within the boundaries of the State
1961 of Rhode Island and subject to its jurisdiction.

1962

1963 **Section 12.3.4 Discharge Prohibitions**

1964

1965 **(a) Prohibition of Illicit Discharges**

1966

1967 No person shall throw, drain, or otherwise discharge or cause to be discharged into the
1968 municipal storm drainage system any pollutant or non-storm water discharge unless such
1969 a non-storm water discharge is outlined in Part I.B.3 of the MS4 General Permit as an
1970 Allowable Non-Storm Water Discharge, or is authorized by a specific RIPDES permit. The
1971 allowable non-storm water discharges are permitted if deemed not to be a significant
1972 contributor of pollutants to the municipal storm drainage system. Allowable non-
1973 stormwater discharges will not be permitted under any circumstance when said discharge
1974 adversely affects a municipal right-of-way or stormwater system.

1975

1976 Reports of illegal dumping, hazardous waste and material spills, and other complaints will
1977 be investigated under the purview of this ordinance, and Ordinance No. 28, and other
1978 applicable State and Federal laws.

1979

1980 The commencement, conduct, or continuance of any illicit discharge to the storm drainage
1981 system is prohibited.

1982

1983 **(b) Prohibition of Illicit Connections**

1984

1985 The construction, use, maintenance or continued existence of illicit connections to the
1986 municipal storm drain system is prohibited. This prohibition expressly includes, without
1987 limitation, illicit connections made in the past, regardless of whether the connection was
1988 permissible under law or practices applicable or prevailing at the time of connection.

1989

1990 A person is considered to be in violation of this ordinance if the person connects a line
1991 conveying sewage to the MS4 or any watercourse, or allows such a connection to continue.

1992

1993 Improper connections in violation of this ordinance must be disconnected, and if necessary,
1994 redirected to an approved onsite wastewater management system upon approval of the
1995 RIDEM, or to the sanitary sewer system.

1996

1997 **Section 12.3.5 Right of Entry**

1998

1999 Entry to Perform Duties Under this Ordinance.

2000

2001 To the extent permitted by State law, or if authorized by the owner or other party in control
2002 of the property, the Director, and/or his designees may enter upon privately owned property
2003 for the purpose of performing their duties under this ordinance and may make or cause to
2004 be made such inspections, surveys, testing, or sampling as the Director deems reasonably
2005 necessary.

2006

2007 **Section 12.3.6 Inspections and Monitoring**

2008

2009 The Director shall be permitted, upon the presentation of credentials and other documents
2010 as may be required by law, to:

2011

2012 (1) Enter the dischargers premise(s) where a regulated activity is conducted, or where
2013 records must be kept related to storm water compliance;

2014

2015 (2) Have access to and copy, at reasonable times, any records related to storm water
2016 compliance;

2017

2018 (3) Inspect at reasonable times any equipment, practices, or operations related to storm
2019 water compliance; and

2020

2021 (4) Take samples, perform testing, or monitor any substances or parameters at any
2022 location, at reasonable times, for the purposes of assuring compliance with this
2023 ordinance or as otherwise authorized by the CWA or R.I. law.

2024

2025 (5) Require that the owner or occupant of the property locate any drain or conveyance
2026 that has not been documented in plans, maps or equivalent, and which may be
2027 connected to the storm drain system; and to identify the drain or conveyance as
2028 storm drain, sanitary sewer, or other, and that the outfall location or point of
2029 connection to the storm drain system, sanitary sewer system or other discharge
2030 point be identified. Results of these investigations are to be documented and
2031 provided to the Director.

2032

2033 **Section 12.3.7 Suspension of MS4 Access**

2034

2035 Suspension due to Illicit Discharges in Emergency Situations. The Director may, without
2036 prior notice, suspend MS4 discharge access to a person when such suspension is necessary
2037 to stop an actual or threatened non-storm water discharge which presents or may present
2038 imminent and substantial danger to the environment, or to the health or welfare of persons,
2039 or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order
2040 issued in an emergency, the Director may take such steps as deemed necessary to prevent
2041 or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.

2042

2043 (b) Suspension due to the Detection of Illicit Discharge. Any person discharging to the
2044 MS4 in violation of this ordinance may have their MS4 access terminated if such
2045 termination would abate or reduce an illicit discharge. The Director will notify a violator
2046 of the proposed termination of its MS4 access. A person commits an offense if the person
2047 reinstates MS4 access to premises terminated pursuant to this Section, without the prior
2048 approval of the Director.

2049 **Section 12.3.8 Requirement to Secure a RIPDES Permit**

2050

2051 The Director shall refer to RIDEM all non-storm water discharges not authorized in
2052 accordance with Part I.B.3 of the MS4 General Permit or by a specific RIPDES Permit,
2053 which the Director has deemed appropriate to continue discharging to the MS4, for
2054 consideration of an appropriate permit.

2055

2056 **Section 12.3.9 Industrial and Construction Activity Discharge.**

2057

2058 Any person subject to an industrial or construction activity RIPDES storm water discharge
2059 permit shall comply with all provisions of such permit. Proof of compliance with said
2060 permit may be required in a form acceptable to the Director prior to the allowing of
2061 discharges to the MS4, or as a condition of a subdivision map, site plan, building permit,
2062 or development or improvement plan.

2063

2064 **Section 12.3.10 Requirement to Prevent, Control and Reduce Storm Water Pollutants**
2065 **by the use of Best Management Practices**

2066

2067 Upon confirmation of a violation of this ordinance, the Director may require, in an attempt
2068 to prevent, control, and reduce storm water pollutants, any person engaged in activities or
2069 operations, or owning facilities or property which has or may result in future pollutants
2070 entering storm water, the storm drainage system, or waters of the State shall develop and
2071 implement, at their own expense, a Storm Water Pollution Prevention Plan prescribing Best
2072 Management Practices to the extent they are technologically achievable
2073 to prevent and reduce such pollutants. The owner or operator of a commercial or industrial
2074 establishment found to be in violation of this ordinance shall provide reasonable protection
2075 from accidental discharge of prohibited materials or other wastes into the municipal storm
2076 drain system or watercourses. Facilities to prevent accidental discharge of prohibited
2077 materials or other wastes shall be provided and maintained at the owner or operator's
2078 expense. The SWMPP shall be subject to review by the Town and/or RIDEM for approval,
2079 and the cost of such review shall be at the owner or operator's expense.

2080

2081 **Section 12.3.11 Notification of Spills**

2082

2083 Notwithstanding other requirements of law, as soon as any person responsible for a facility
2084 or operation, or responsible for emergency response for a facility or operation has
2085 information of any known or suspected release of materials which are resulting or may
2086 result in unauthorized discharges or pollutants discharging into storm water, the storm drain
2087 system, or waters of the State from said facility, said person shall take all necessary steps
2088 to ensure the discovery, containment, and cleanup of such release. In the event of such a
2089 release of a hazardous material said person shall immediately notify emergency response
2090 officials of the occurrence via emergency dispatch services (911). In the event of a release
2091 of non-hazardous materials, said person shall notify the Director no later than the next
2092 business day. Notifications in person or by phone shall be confirmed by written notice
2093 addressed and mailed to the Director within two (2) business days of the phone notice. If
2094 the discharge of prohibited materials emanates from a commercial or industrial

2095 establishment, the owner or operator of such establishment shall also retain an on-site
2096 written record of the discharge and the actions taken to prevent its recurrence. Such records
2097 shall be retained for at least three years. Nothing in this section shall preclude any
2098 owner/lessee from compliance with relevant provisions of the Rhode Island Clean Water
2099 Act, R.I.G.L. § 46-12-1, et seq. or other applicable laws or regulations.

2100

2101 **Section 12.3.12 Enforcement**

2102

2103 Notice of Violation: Whenever the Director finds that any person has violated a prohibition
2104 or failed to meet a requirement of this Ordinance, the Director may order compliance by
2105 written notice of violation to the land owner and/or responsible person. Such notice may
2106 require without limitation:

2107

- 2108 1. The performance of monitoring, analyses, and reporting;
- 2109 2. The elimination of illicit connections or discharges;
- 2110 3. That violating discharges, practices, or operations shall cease and desist;
- 2111 4. The abatement or remediation of storm water pollution or contamination hazards
2112 and the restoration of any affected property; and
- 2113 5. Payment of a fine to cover administrative and remediation costs; and
- 2114 6. The implementation of source control or treatment BMPs; and
- 2115 7. The development and approval of a Storm Water Pollution Prevention Plan

2116

2117 If abatement of a violation and/or restoration of affected property is required, the notice
2118 shall set forth a deadline within which such remediation or restoration must be completed.
2119 Said notice shall further advise that, should the violator fail to remediate or restore
2120 established deadline, the work will be done by a designated governmental agency or a
2121 contractor and the expense thereof shall be charged to the violator.

2122

2123 **Section 12.3.13 Administrative Orders**

2124

2125 The Director is authorized to issue the following administrative orders at any time he/ she
2126 deem such action appropriate to secure timely and effective compliance with this
2127 Ordinance or a discharge permit or order issued pursuant to this Ordinance, whether or not
2128 any previous notifications of violation have been provided to the user.

2129

2130 A. Cease and Desist Order: The Director may issue an order to cease and desist a violation
2131 or an action or inaction which threatens a violation and to direct the user to comply
2132 forthwith or to take such appropriate remedial or preventive action as may be needed to
2133 properly address the violation or threatened violation, including halting operations and
2134 terminating the discharge.

2135

2136 B. Consent Order: The Director may enter into consent orders, assurances of voluntary
2137 compliance, or other similar documents establishing an agreement with a user. Such orders
2138 shall include specific actions to be taken by the user and specific time frames to correct a
2139 violation or to remove the threat of a violation. A consent order may also direct that a user
2140 provide improved operation and maintenance of existing discharge facilities, conduct
2141 additional self-monitoring, or submit appropriate reports or management plans.

2142

2143 **Section 12.3.14 Abatement by Town**

2144

2145 If the violation has not been corrected pursuant to the requirements set forth in the Notice
2146 of Violation, than the Town or a contractor designated by the Director shall enter upon the
2147 subject private property and is authorized to take any and all measures necessary to abate
2148 the violation and/or restore the property. It shall be unlawful for any person, owner, agent
2149 or person in possession of any premises to refuse to allow the Town or designated
2150 contractor to enter upon the premises for the purposes set forth above.

2151

2152 **Section 12.3.15 Cost of Abatement of the Violation**

2153

2154 Within thirty days after abatement of the violation by or under the direction of the Director,
2155 the owner of the property will be notified by the enforcement agency or municipality of
2156 the cost of abatement, including administrative costs. If the amount due is not paid within
2157 a timely manner as determined by the Director, the charges shall become a special
2158 assessment against the property and shall constitute a lien on the property for the amount
2159 of the assessment. Any person violating any of the provisions of this section shall become
2160 liable to the Town by reason of such violation. The liability shall be paid in not more than
2161 12 equal payments. Interest at the rate of 12 percent per annum shall be assessed on the
2162 balance beginning on the first day following discovery of the violation.

2163

2164 **Section 12.3.16 Injunctive Relief**

2165

2166 It shall be unlawful for any person to violate any provision or fail to comply with any of
2167 the requirements of this Ordinance. If a person has violated or continues to violate the
2168 provisions of this ordinance, the Director may petition for a temporary, preliminary, or
2169 permanent injunction restraining the person from activities which would create further
2170 violations or compelling the person to perform abatement or remediation of the violation.

2171

2172 **Section 12.3.17 Violations Deemed a Public Nuisance**

2173

2174 In addition to the enforcement processes and penalties provided, any condition caused or
2175 permitted to exist in violation of any of the provisions of this Ordinance is a threat to public
2176 health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily
2177 abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or
2178 otherwise compel the cessation of such nuisance may be taken by the Town.

2179

2180 **Section 12.3.18 Criminal Prosecution**

2181

2182 Any person that has violated or continues to violate this Ordinance shall be liable to
2183 criminal prosecution to the fullest extent of the law, and shall be subject to a criminal
2184 penalty of \$500 dollars per violation per day and/or imprisonment for a period of time not
2185 to exceed five (5) days. The Director may recover all attorney's fees, court costs, and other
2186 expenses associated with enforcement of this Ordinance, including sampling and
2187 monitoring expenses.

2188

2189 **Section 12.3.19 Remedies Not Exclusive**

2190

2191 The remedies listed in this ordinance are not exclusive of any other remedies available
2192 under any applicable federal, state, or local law and it is within the discretion of the
2193 authorized enforcement agency to seek cumulative remedies.

2194

2195

2196 **SECTION 2.** The Town Clerk is hereby authorized to cause said changes to be made to the
2197 Town of Scituate's Code of Ordinances.

2198

2199 **SECTION 3.** This ordinance shall take effect immediately upon passage.

2200

2201 Attested To By:

Passed By Town Council On:

2202

2203

2204

Margaret M. Long, Town Clerk
