

**MONDAY, SEPTEMBER 25, 2006
FOGELBERG AUDITORIUM – BHS**

At 7:15 P.M., the members of Precincts 1 and 5 assembled to fill the vacancies created by the recent resignations of E. Murphy, C. Entwistle, and R. Burkhart.

Present and voting Precinct 1 (2 seats): N. Glantz, D. Gregorio, J. Ivas, B. Morey, J. O’Keefe, J. Perdichizzi, C. Phillips, M. Ryan

Nominations for the 1st seat were:
Gene Rossi, 174 Winn St.
Brad Bond, 8 Mulberry Ln.
Fred Halterman, 15 Wildwood St.
Nicholas Rosato, 88 Mill St.
Don Barrucci, 11 Mallard Way

By a vote of Bond seven votes and Rossi one vote. Mr. Bond was elected to fill the 1st position until the next town election.

Nominations for the 2nd seat were:
Same as above minus the winner of the 1st seat.

By a vote of Barrucci five, Rosato one, Halterman one, and Rossi one. Mr. Barrucci was elected to fill the 2nd position until the next town election.

Present and voting Precinct 5 (1 seat): P. Angelo, E. Carpenter, M. DeCost, A. Gerbrands, C. Hartling, N. Hofferty, V. Igo, C. Murphy, P. Roussell, D. Squeri, D. Tait, J. Towle, R. Wing.

Nominations were: Joanne Kinchla, 8 Arnold Terrace.
Unanimously voted to fill the position until the next town election.

**ADJOURNED (THIRD) TOWN MEETING
MONDAY, SEPTEMBER 25, 2006
FOGELBERG AUDITORIUM – BHS**

A quorum being present, the meeting was called to order at 7:40 P.M. with a salute to the flag. A motion to adjourn to Wednesday, September 27, 2006 to complete the warrant, if necessary, was moved, seconded and so voted. The reading of the Warrant and Constable’s Report was waived upon unanimous consent.

ARTICLE 1 RE: Reports of Town Officers & Committees

To hear and act on the reports of the Town Officers and Committees, or to act in any other manner in relation thereto.

The Moderator announced that he received a Resolution regarding the Lahey Clinic parking garage which will be taken up after all other articles have been acted upon.

The Ways & Means addressed the membership regarding the town’s financial situation. The N.E. Executive Park Committee provided an update.

The Moderator announced that further committee reports would be heard when respective articles were discussed.

ARTICLE 2 RE: Additional Professional Staff and Supplies at Memorial School

To see if the Town will vote to raise and appropriate, transfer from available funds, borrow or otherwise provide the sum of \$72,900 or any other sum, for the purpose of funding an additional Kindergarten Classroom Teacher, Kindergarten Instructional Assistant and required supplies including the payment of all costs incidental and related, same to be spent under the direction of the School Committee, or to act in any other manner in relation thereto.

MAIN MOTION: To see if the Town will vote to raise and appropriate the sum of \$72,900 for the purpose of funding an additional Kindergarten Classroom Teacher, Kindergarten Instructional Assistant and required supplies including the payment of all costs incidental and related, same to be spent under the direction of the School Committee.

Recommendations: Ways & Means voted 6-3-0 in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 3 RE: Tower Ladder Truck

To see if the Town will vote to raise and appropriate, or transfer from available funds, the sum of \$900,000 or any other sum, for the purpose of purchasing a new tower ladder truck for use at the Fire Department, same to be spent under the direction of the Board of Selectmen, or to act in any other manner in relation thereto.

MAIN MOTION: To see if the Town will transfer the sum of \$265,500 from the Stabilization Account fund for the purchase of the Fire Department Ladder Truck; or to act in any other manner in relation thereto.

Recommendations: Ways & Means voted 9-0 in favor. Capital Budget voted 5-0 in favor.

ACTION: UNANIMOUSLY APPROVED MAIN MOTION

ARTICLE 4 RE: Plan Imaging/Building Department Revolving Account

To see if the Town will vote to reauthorize revolving funds for certain Town departments under Massachusetts General Laws Chapter 44, Section 53E½ for the fiscal year beginning July 1, 2007, or to act in any other manner in relation thereto.

Revolving Account	Spending Authority	Revenue Source	Allowed Expenses	Expenditure Limits	Year End Balance
Plan Imaging	Building Dept	2% of Building Dept Fees Not to exceed \$15,000 annually	Archival imaging of building permit drawings & specs	\$15,000	Available for expenditure next year

MAIN MOTION: As printed in the Warrant

Recommendations: Ways & Means voted 7-2 in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 5 RE: MWRA Decrease in Assessment

To see if the Town will vote to reduce the amount previously voted under article 43 of the May 2006 annual Town Meeting to fund the MWRA Fiscal Year 2007 sewer assessment from \$3,900,000 to \$3,700,000 and to act in any other manner in relation thereto

MAIN MOTION: As printed in the Warrant

Recommendations: Ways & Means voted 9-0 in favor.

ACTION: UNANIMOUSLY APPROVED MAIN MOTION

ARTICLE 6 RE: Purchase of Conservation Land on Sawmill Road

To see if the Town will vote to:

a) raise, appropriate, transfer from available funds, accept gifts and grants or borrow the sum of \$343,500 for the purpose of acquiring, for conservation and passive recreation purposes, the fee ownership interest in properties, or in a portion of properties, located on Sawmill Road, Burlington, Middlesex County, shown as Assessor’s Parcels 98, 99 & 100 on Map 13, and consisting of approximately 3.2 acres, said property now or formerly owned by the Sawmill Farm Realty Trust, William Galvin, trustee; and Assessor’s Parcel 93 on Map 13, and consisting of approximately 2.0 acres, said property now or formerly owned by the Forbes Living Trust, Pauline St. Aubin, trustee

b) authorize the Conservation Commission to acquire the fee ownership interest in said property, or in a portion of said property, for conservation and passive recreation purposes subject to the protections of Article 97 of the Amendments of the Massachusetts Constitution, upon such terms and conditions as the Conservation Commission, with the approval of the Board of Selectmen, shall determine to be appropriate, and that said interests in said property be conveyed to the Town under the provisions of Massachusetts General Laws, Chapter 40, section 8C, as it may hereafter be amended, and other Massachusetts

statutes relating to conservation, to be managed and controlled by the Conservation Commission; and

c) authorize the Conservation Commission to submit on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Executive Office of Environmental Affairs and under any state and/or federal programs including those in aid of conservation land acquisition and to receive and accept such grants or reimbursement for this purpose, and/or any others in any way connected with the scope of this Article, and that the Board of Selectmen and/or the Conservation Commission be authorized to enter into all agreements and execute any and all instruments, as may be necessary on behalf of the Town to effect said purchase or obtain such grant; and

d) authorize the Conservation Commission, the Board of Selectmen, and Town officers to take all related actions necessary or appropriate to carry out this acquisition or act or transact anything in relation thereto.

MAIN MOTION: To fund the purchase of the Sawmill Road property through transfer from the Conservation Account Fund, transfer from the Stabilization Account Fund and raise and appropriate as follows:
 \$343,400 (cost of land)
 \$ 22,500 (transfer from Conversation Account)
 \$128,596 (transfer from Stabilization Account Funds)
 \$192,304 (raise and appropriate)

The purchase will take place contingent upon the awarding of the self-help grant in the amount of \$192,304; that "raise and appropriate" amount will be returned to the General Funds -- leaving final amount of \$128,596 taken from the Stabilization Account;

and to authorize the Conservation Commission to acquire the fee ownership interest in said property, or in a portion of said property, for conservation and passive recreation purposes subject to the protections of Article 97 of the Amendments of the Massachusetts Constitution, upon such terms and conditions as the Conservation Commission, with the approval of the Board of Selectmen, shall determine to be appropriate, and that said interests in said property be conveyed to the Town under the provisions of Massachusetts General Laws, Chapter 40, section 8C, as it may hereafter be amended, and other Massachusetts statutes relating to conservation, to be managed and controlled by the Conservation Commission;

and to authorize the Conservation Commission to submit on behalf of the Town any and all applications deemed necessary for grants and/or reimbursements from the Executive Office of Environmental Affairs and under any state and/or federal programs including those in aid of conservation land acquisition and to receive and accept such grants or reimbursement for this purpose, and/or any others in any way connected with the scope of this Article, and that the Board of Selectmen and/or the Conservation Commission be authorized to enter into all agreements and execute any and all instruments, as may be necessary on behalf of the Town to effect said purchase or obtain such grant;

AND TO authorize the Conservation Commission, the Board of Selectmen, and Town officers to take all related actions necessary or appropriate to carry out this acquisition, or act or transact anything in relation thereto.

Recommendations: Ways & Means voted 9-0 in favor. Land Use Committee voted 8-0 in favor. Capital Budget voted 5-0 in favor.

ACTION: UNANIMOUSLY APPROVED MAIN MOTION

ARTICLE 7 RE: Acceptance of Erosion and Sedimentation Control Bylaw

To see if the Town will enact the following proposed bylaw:

BURLINGTON STORM WATER MANAGEMENT BYLAW GOVERNING EROSION AND SEDIMENTATION CONTROL FOR NEW AND REDEVELOPMENT PROJECTS DURING CONSTRUCTION AND POST-CONSTRUCTION PERIODS.

SECTION 1. PURPOSE

Regulation of discharges to the municipal separate storm sewer system (MS4) is necessary for the protection of Burlington's water bodies and groundwater, and to safeguard the public health, safety,

welfare and the environment. Increased and contaminated storm water runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater.

- A. The harmful impacts of soil erosion and sedimentation are:
1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and
 2. contamination of drinking water supplies;
 3. alteration or destruction of aquatic and wildlife habitat;
 4. flooding;
 5. erosion of stream channels; and
 6. overloading or clogging of municipal catch basins and storm drainage systems.

Therefore, this bylaw establishes storm water management standards for the temporary and final conditions that result from development and redevelopment projects to minimize adverse impacts offsite and downstream which would be born by abutters, townspeople and the general public.

- B. The objectives of this bylaw are to:
1. Protect ground water and surface water to prevent degradation of drinking water supply
 2. Require practices that eliminate soil erosion and sedimentation and control the volume and rate of storm water runoff resulting from land disturbing activities;
 3. Promote infiltration and the recharge of groundwater;
 4. Ensure that soil erosion and sedimentation control measures and storm water runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
 5. Require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at a construction site that may cause adverse impacts to water quality;
 6. To prevent pollutants from entering the Burlington municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
 7. To ensure adequate long-term operation and maintenance of structural storm water best management practices so that storm water structures work as designed;
 8. Comply with state and federal statutes and regulations relating to storm water discharges; and
 9. Establish Burlington's legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

SECTION 2. DEFINITIONS

ABUTTER: The owner(s) of land abutting the activity.

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff from a pre-activity condition. Such changes from a pre-activity condition may include: change from distributed runoff to confined discrete point discharges, change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

APPLICANT: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sedimentation control permit for proposed land-disturbance activity.

AUTHORIZED ENFORCEMENT AGENCY: The Conservation Commission, its employees or agents, and the Planning Board, its employees or agents are designated to enforce this bylaw.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff. It also includes schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems.

THE BOARD – Town of Burlington Planning Board

THE COMMISSION – Town of Burlington Conservation Commission

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

CLEARING: Any activity that removes the vegetative surface cover.

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

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

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

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

EROSION AND SEDIMENTATION CONTROL PERMIT: A permit with conditions upon a proposed land disturbing activity issued by either the Conservation Commission or Planning Board under this bylaw.

EROSION AND SEDIMENTATION CONTROL APPLICATION PACKAGE. The application materials consisting of a Storm Water Management Plan, an Erosion and Sedimentation Control Plan, and an Operation and Maintenance Plan submitted to either the Conservation Commission or Planning Board (as stipulated within this bylaw) requesting an Erosion and Sedimentation Control Permit.

GRADING: Changing the level or shape of the ground surface contour by means of excavation, fill, in-place ground modification, or any combination thereof, including the establishment of a grade following demolition of a structure.

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

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to clearing, grading, filling and excavation. Landscaping activities which involve greater than or equal to 500 ft² are considered a land disturbing activity and may be the subject of enforcement action under this bylaw. Routine landscaping activities which involve less than 500 ft² are not considered a land-disturbing activity for the purposes of this bylaw.

LAND IN AGRICULTURAL USE: Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.4, are exempt from this bylaw.

MASSACHUSETTS STORM WATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 §. 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses storm water impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or municipal storm drain system: The system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Burlington.

OPERATION AND MAINTENANCE PLAN: A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a storm water management system to insure that it continues to function as designed.

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

PRE-CONSTRUCTION: All activity in preparation for construction.

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

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

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

SEDIMENTATION: The process or act of deposition of sediment.

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

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

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

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

STANDARD EROSION AND SEDIMENTATION CONTROL PERMIT: An permit issued under this bylaw containing a standard set of conditions requiring that best management practices be implemented to prevent erosion and sedimentation from the site. This permit applies to sites proposing a land disturbing activity of greater than 10,000 ft² but less than 20,000 ft².

STORM WATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

STORM WATER MANAGEMENT PLAN: A plan showing existing and proposed features on a site. This is required as part of the application for a Erosion and Sedimentation Control Permit. See Section 8.

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

TSS: Total Suspended Solids.

WATERCOURSE: A natural or man-made channel through which water flows or a stream of water, including a river, brook, or underground stream (both intermittent and continuous).

WETLAND RESOURCE AREA: Areas specified in either the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 or in Burlington's Wetland Bylaw (Article XIV).

WETLANDS: Areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and streams), common names include marshes, swamps and bogs.

SECTION 3. AUTHORITY

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

SECTION 4. APPLICABILITY

A. No person may undertake a construction activity which includes clearing, grading and/or excavation that results in a land

disturbing activity that will disturb equal to or greater than 10,000 ft² of land (or will disturb less than 10,000 ft² of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than 10,000 ft² of land) that drains to the Burlington municipal separate storm sewer system, onto an adjacent property, into a municipal / private street, or into a wetland / stream, without an Erosion and Sedimentation Control Permit from either the Conservation Commission or Planning Board.

B. Exemptions From Requirement to Obtain Permit (under this bylaw)

Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;

Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling disturbing less than 10000 ft²;

The construction of fencing that will not substantially alter existing terrain or drainage patterns;

Construction of utilities other than drainage (gas, water, electric, cable, telephone, etc.) which will not alter terrain or drainage patterns;

As authorized in the Phase II Small MS4 General Permit for Massachusetts, storm water discharges resulting from the activities identified in Section 4 that are wholly subject to jurisdiction under either the Wetlands Protection Act or activities which are subject to Burlington Bylaw Article XIV and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission are exempt from compliance with this bylaw.

SECTION 5. RESPONSIBILITY FOR ADMINISTRATION

A. Responsibility. The Burlington Conservation Commission and the Burlington Planning Board shall have joint responsibilities to administer and implement this bylaw. Any powers granted to or duties imposed upon either the Conservation Commission or the Planning Board may be delegated to their respective employees and/or their agents, and with mutual concurrence these duties may be delegated to each other's respective employees and/or their agents.

B. Waiver. The Conservation Commission will be the lead agency to grant a waiver to compliance with this bylaw. The Commission with input from the Planning Board, may waive strict compliance with any requirement of this bylaw or the rules and regulations promulgated hereunder, where:

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

C. Rules and Regulations. The Conservation Commission will be the lead agency to initiate a change to this bylaw. The Conservation Commission working with input from the Planning Board may adopt, and periodically amend rules and regulations to effectuate the purposes of this bylaw, by majority vote of the Conservation Commission, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) days prior to the hearing date.

Failure by The Conservation Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

SECTION 6. PERMITS and PROCEDURES

A. Application. Where a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume is proposed, the site owner or his/her agent shall file with the Conservation Commission, eleven(11) copies of a completed application package with a cover sheet specified by the Commission (available from the Commission office or the Commission's web site) (one for each Commissioner, 2 office copies, and 2 for distribution to other Boards (Board of Health and Planning Board) for an Erosion and Sedimentation Control Permit. Permit issuance is required prior to any site altering activity. While the applicant can be a representative of the site owner, the permittee must be the owner of the site.

The Conservation Commission (through its agent, the Conservation Commission Administrator) may, at its discretion, elect to delegate its authority to the Planning Board to issue an Erosion and Sedimentation Control Permit, in order to expedite the permitting process for an applicant who must appear before the Planning Board for other matters in connection with the proposed work.

Within 7 days of the filing date, the Conservation Commission (through its agent) will make a determination on whether to schedule a formal hearing before the Commission or delegate its authority under this bylaw to the Planning Board. This determination will be made based on an assessment of the potential for sedimentation and erosion from the proposed land disturbing activity (including grubbing, clearing and/or grading). The Commission's agent will give consideration to the original and proposed grading of the site, existing slopes, the presence of intermittent streams or channels, the size of the site, and/or other factors which may contribute to runoff and erosion potential. Proposed projects where routine erosion and sedimentation controls are needed, will be referred to the Planning Board for a simultaneous hearing for this permit with other matters in connection with this project.

If the Conservation Commission or its agent delegates its authority under this bylaw to the Planning Board, the staff of the Conservation Commission will transfer the original application package (and associated copies) to the Planning Board office and notify the applicant in writing of the Commission's decision to refer this application to the Planning Board and that the hearing under this bylaw will be scheduled before the Planning Board within twenty-one (21) days of the receipt of a complete application or at a time to coincide with other regulatory matters which are being heard by the Board on the same project.

For sites where a land disturbing activity of greater than or equal to 10,000 ft² but less than 20,000 ft² is proposed, the site owner or his/her agent shall file (at their option) with either the Conservation Commission or the Planning Board, two (2) copies of a completed application package for a Standard Erosion and Sedimentation Control Permit. Permit issuance is required prior to any site altering activity. While the applicant can be a representative of the site owner, the permittee must be the owner of the site.

Within 7 days of the filing date, the agent of either the Conservation Commission or Planning Board will issue a Standard Erosion and Sedimentation Control Permit under this bylaw. No public meeting or hearing will be required for sites in this category. For sites in this size category that are not adequately covered by the Standard Erosion and Sedimentation Control Permit, additional special conditions may be appended by the issuing Board or Commission. The issuing Board or Commission may extend the 7 day turnaround time for issuing the Standard Erosion and Sedimentation Control Permit for reasons of insufficient information of which the applicant has been notified in writing.

The Erosion and Sedimentation Control Application package (for sites which propose a land disturbing activity of 20,000 ft² or greater) shall include:

1. a completed Application Form with original signatures of all owners;
2. a list of abutters, certified by the Assessors Office;
3. eleven (11) copies of the Storm Water Management Plan and project description referenced in Section 7. of this bylaw;
4. eleven (11) copies of the Erosion and Sediment Control Plan as referenced in Section 8 of this bylaw;
5. eleven (11) copies of the Operation and Maintenance Plan as referenced by Section 9 of this bylaw;
6. payment of the application and review fees.

The Standard Erosion and Sedimentation Control Application package (for sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft²) is an application package consisting of an abbreviated Storm Water Management Plan, abbreviated Erosion and Sediment Control Plan, and an abbreviated Operations and Maintenance plan as referenced in Section 10 of this bylaw.

B. Entry. Filing an application for a permit grants the issuing Board or Commission and its agents permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

C. Coordination between Planning Board and Conservation Commission. For sites which propose a land disturbing activity

equal to or greater than 10,000 ft² but less than 20,000 ft², the Conservation Commission shall give one copy of the application package to the Planning Board for their records. If the Planning Board is the issuing agency, then the Planning Board shall give one copy of the application package to the Conservation Commission for their records.

D. Fee Structure. For sites which propose a land disturbing activity equal to or greater than 20,000 ft², the issuing Board / Commission shall obtain with each submission an Application Fee established by the Conservation Commission with input from the Planning Board to cover expenses connected with the public hearing and application review for the Erosion and Sedimentation Control Permit and a technical Review Fee (if requested by the Commission/Board) sufficient to cover professional technical review, if needed. The Commission / Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the issuing Commission/Board on any or all aspects of these plans as provided by G.L.c. 44, Section 53G. Applicants must pay all review fees due before a permit will be issued. The Commission/Board will not be subject to final action deadlines if the appropriate fees have not been paid.

For sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft², a reduced fee schedule will be established by the Commission.

E. Public Hearing. For sites which propose a land disturbing activity equal to or greater than 20,000 ft², the issuing Commission/Board shall hold a public hearing within twenty-one (21) days of the receipt of a complete application (or as mutually agreed upon) and shall take final action within either within twenty-one (21) days from the time of the close of the hearing or within such time period mutually agreed to by both the Commission / Board and the applicant to coincide with other regulatory decisions on the same project. Notice of the public hearing shall be given by publication and posting and by first-class mailings to abutters (owners of land within three hundred feet from the boundary of the site) at least seven (7) days prior to the hearing. The issuing Commission/Board shall make the application available for inspection by the public during business hours at the issuing Commission/Board office.

F. Information requests. The applicant shall submit all additional information requested by issuing Commission/Board to issue a decision on the application.

G. Action by the Issuing Commission/Board.

For sites which propose a land disturbing activity equal to or greater than 20,000 ft², the issuing Commission/Board may:

1. Issue an Erosion and Sedimentation Control Permit based upon determination that the proposed plan meets the Standards in or referenced by Section 7 and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this bylaw;
2. Issue an Erosion and Sedimentation Control Permit subject to any conditions, modifications or restrictions required by the issuing Commission/Board which will ensure that the project meets the Standards in or referenced by Section 7 and adequately protect water resources, set forth in this bylaw;
3. Disapprove the issuance of an Erosion and Sedimentation Control Permit based upon a determination that the proposed plan, as submitted, does not meet the Standards in referenced by Section 7 or adequately protect surface and/or ground water resources, as set forth in this bylaw.

H. Failure of the issuing Commission/Board to take final action. Failure of the Issuing Commission/Board to take final action upon an Application for a land disturbing activity equal to or greater than 20,000 square feet within either within twenty-one (21) days from the time of the close of the hearing or within such time period mutually agreed to by both the Commission / Board and the applicant to coincide with other regulatory decisions on the same project after the hearing is closed, shall be deemed to be approval of said Application.

I. Project Changes. The permittee must notify the issuing Commission/Board in writing of any drainage change or alteration in the system authorized in a Erosion and Sedimentation Control Permit before any change or alteration is made. If the issuing Commission/Board determines that the change or alteration is significant, based on the Storm Water Management Standards in Section 7.C of this bylaw and accepted construction practices, the issuing Commission/Board may require that an amended

application be filed and a public hearing held. The issuing Commission/Board may also require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

J. Project Completion. At completion of the project, the permittee shall submit as-built record drawings of all structural storm water controls and best management practices implemented for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a Registered Professional Engineer.

SECTION 7. STORM WATER MANAGEMENT PLAN

A. For sites which propose a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume, the application for a Erosion and Sedimentation Control Permit shall consist of submittal of a Storm Water Management Plan initially to the Conservation Commission. This Storm Water Management Plan shall contain sufficient information for the issuing Commission/Board to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from storm water. The Plan shall be designed to meet the Massachusetts Storm Water Management Standards (or as revised), the DEP Storm Water Management Handbook Volumes I and II (or as revised), and any specific regulations promulgated under this bylaw.

B. Plan Content. The Storm Water Management Plan (for sites which propose a land disturbing activity of 20,000 ft² or greater) shall fully describe the project in drawings, and narrative. The Storm Water Management Plan shall conform to any detail provided in either regulations or policies promulgated under this bylaw. The Conservation Administrator may (at his/her discretion) waive some detail requirements described below as long as in his/her opinion, the goals and objectives of this bylaw are not compromised.

C. Standards. Projects shall meet the current Standards of the Massachusetts Storm Water Management Policy. When one or more of the Standards cannot be met, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

SECTION 8. EROSION AND SEDIMENTATION CONTROL PLAN

A. Application. For sites which propose a land disturbing activity of 20,000 ft² or greater or a land disturbing activity of 500 yd³ or greater of earth volume, the Erosion and Sedimentation Control Plan contained within the Storm Water Management Plan shall contain sufficient information to describe the proposed erosion and sedimentation controls. The applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements referenced in Section 8B. below. The Conservation Administrator may (at his/her discretion) waive some detail requirements described below as long as in his/her opinion, the goals and objectives of this bylaw are not compromised.

B. Design. The design requirements of the Erosion and Sedimentation Control Plan must conform to any regulations and policies promulgated under this bylaw.

C. Erosion and Sedimentation Control Plan Content. The Plan shall at a minimum contain the following information:

1. Names, addresses, and telephone numbers of the owner, applicant, and person(s) or firm(s) preparing the plan;
2. Title, date, north arrow, names of abutters, scale, legend, and locus map;
3. Location and description of natural features The Erosion and Sedimentation Control Plan must conform to the details of any regulations and policies promulgated under this bylaw.

SECTION 9. OPERATION AND MAINTENANCE PLANS

For sites which propose a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume, an Operation and Maintenance plan (O&M Plan) is required as part of the Storm Water Management Plan at the time of application for all projects. Upon request by the applicant, the issuing Commission/Board may delay the completion date of the O&M plan, but in all cases, the O&M Plan must be submitted and approved prior to the completion of the project and before any occupancy takes place.

The maintenance plan shall be designed to ensure compliance with the Permit, this Bylaw and that the Massachusetts Surface Water Quality Standards, 314, CMR 4.00 are met in all seasons and throughout the life of the system. The issuing Commission/Board shall make the final decision of what maintenance option is appropriate in a given situation. The issuing Commission/Board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of storm water management structures, and potential need for ongoing maintenance activities when making this decision.

The Operation and Maintenance Plan shall remain on file with the issuing Commission/Board and shall be an ongoing requirement in perpetuity.

The O&M Plan shall, at a minimum, include:

- A. The name(s) of the owner(s) for all components of the system
- B. Detail of maintenance agreements
- C. Detail on storm water management easement(s)

The details of the Operation and Maintenance Plan shall conform to the requirements of any regulations and policies promulgated under this bylaw.

D. Changes to Operation and Maintenance Plans

1. The owner(s) of the storm water management system must notify the issuing Commission/Board of changes in ownership or assignment of financial responsibility.

2. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this bylaw by mutual agreement of the issuing Commission/Board and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

SECTION 10. STANDARD EROSION AND SEDIMENTATION CONTROL PERMIT

The Standard Erosion and Sedimentation Control Application package (for sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft²) is an application package consisting of an abbreviated Storm Water Management Plan, abbreviated Erosion and Sediment Control Plan, and an abbreviated Operations and Maintenance plan as referenced in Section 10 of this bylaw.

The abbreviated Storm Water Management Plan shall at a minimum contain sufficient information to describe the existing and proposed features of the land (including structures, vegetation, and drainage), and anticipated maintenance requirements of structures. The abbreviated Storm Water Management Plan shall conform to any detail provided in either regulations or policies promulgated under this bylaw.

The Board / Commission and/or its agents may waive any portion of these submission requirements if in their opinion, sufficient information exists on which to base the issuance of a Standard Erosion and Sediment Control Permit.

SECTION 11. INSPECTION AND SITE SUPERVISION

A. Pre-construction Meeting. Prior to starting clearing, excavation, construction, or land disturbing activity, the applicant, the applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet, if requested, with the issuing Commission/Board, to review the permitted plans and their implementation.

B. Commission/Board Inspections. The issuing Commission/Board or its designated agents shall make inspections as needed and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sedimentation Control Permit as approved. If the work conducted to date is approved, an inspection report issued during the inspection will bear the signature of approval of the issuing Commission/Board or its agents that the work may continue. This site inspection report shall be maintained at the site during the progress of the work.

In order to obtain inspections, the permittee shall notify the issuing Commission/Board at least two (2) working days before each of the following events if required by the Commission/Board:

1. Erosion and sediment control measures are in place and stabilized;

2. Site Clearing has been substantially completed;
3. Rough Grading has been substantially completed;
4. Final Grading has been substantially completed;
5. Close of the Construction Season; and
6. Final Landscaping (permanent stabilization) and project final completion.

C. Permittee self-inspections. The permittee or his/her agent shall conduct and document inspections of all control measures) no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit monthly reports to the issuing Commission/Board or designated agent in a format approved by the issuing Commission/Board, which may include the signature of the Professional Engineer if required by the issuing Commission/Board.

D. Access Permission. To the extent permitted by state law, or if authorized by the owner or other party in control of the property, The issuing Commission/Board, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the issuing Commission/Board deems reasonably necessary to determine compliance with the permit.

SECTION 12. SURETY

As part of any Erosion and Sedimentation Control Permit, the issuing Commission/Board may require the permittee to post before the start of land disturbing activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by the issuing Commission/Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the issuing Commission/Board may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the issuing Commission/Board has received the final report as required by Section 12 and issued a certificate of completion.

SECTION 13. FINAL REPORTS

Upon completion of the work and if required by the issuing Commission/Board, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

SECTION 14. ENFORCEMENT

A. The Planning Board and Conservation Commission and their employees and agents shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Persons subject to enforcement under this bylaw include:

- all permittees who have been issued an Erosion and Sedimentation Control Permit (for project sites which propose a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume)
- all permittees who have been issued a Standard Erosion and Sedimentation Control Permit (for project sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft²)
- all other persons who have engaged in a Land Disturbing Activity (as defined in this bylaw as greater than 500 ft²), who have caused substantial erosion and sedimentation due to Alteration of Drainage Characteristics, Grading, Grubbing, Clearing, and/or Stripping of soil.

B. Orders

1. The issuing Commission/Board or an authorized agent of the issuing Commission/Board may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include:

- (a) a requirement to cease and desist from the land-disturbing activity until there is compliance with this bylaw and its provisions of any permit issued.
- (b) maintenance, installation or performance of additional erosion and sediment control measures;

- (c) monitoring, analyses, and reporting
- (d) remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.

2. If the enforcing Board / Commission or its agents determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Board / Commission may, under this bylaw and subsequent regulation promulgated hereunder, may impose a fine on a daily basis until such time as the abatement or remediation of erosion and sedimentation has been completed. The Town of Burlington, at its option, may seek a court order requiring the property owner to perform the work.

C. Criminal Penalty. Any person who violates any provision of this bylaw, regulation, order or permit issued there under, shall be punished by a fine of not more than \$500. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, Burlington may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.. 40, in which case the Conservation Administrator of Burlington shall be the enforcing person. The penalty for the 1st violation shall be \$100. each day or part thereof that such violation occurs. The penalty for the 2nd violation shall be \$300. each day or part thereof that such violation occurs. The penalty for the 3rd and subsequent violations shall be \$300. each day or part thereof for every day that such violation occurs. For the purposes of issuing a non-criminal disposition penalty, both the Planning Board Director and Conservation Commission Administrator are named as the specific enforcing agents.

E. Appeals. The decisions or orders of issuing Commission/Board shall be final. Further relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive. The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

SECTION 15. FILING WITH REGISTRY OF DEEDS

The applicant must file the issued Erosion and Sedimentation Control Permit with the Middlesex Registry of Deeds within 21 days from issuance.

SECTION 16. CERTIFICATE OF COMPLETION

The issuing authority will issue a letter certifying completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this bylaw, noting any exceptions and to which permit condition these exceptions apply. This Certificate of Completion will be filed by the applicant at the Middlesex Registry of Deeds within 21 days.

SECTION 17. SEVERABILITY

If any provision, paragraph, sentence, or clause of this bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect, or to act in any other manner in relation thereto.

MAIN MOTION: BURLINGTON STORM WATER MANAGEMENT BYLAW GOVERNING EROSION AND SEDIMENTATION CONTROL FOR NEW AND REDEVELOPMENT PROJECTS DURING CONSTRUCTION AND POST-CONSTRUCTION PERIODS.

6.0 Erosion and Sedimentation Control

6.1 PURPOSE AND OBJECTIVE

Regulation of discharges to the municipal separate storm sewer system (MS4) is necessary for the protection of Burlington’s water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated storm water runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater.

A. The harmful impacts of soil erosion and sedimentation are:

- 1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
- 2. contamination of drinking water supplies;
- 3. alteration or destruction of aquatic and wildlife habitat;
- 4. flooding;
- 5. erosion of stream channels; and
- 6. overloading or clogging of municipal catch basins and storm drainage systems.

This bylaw establishes storm water management standards for the temporary and final conditions that result from development and redevelopment projects to minimize adverse impacts offsite and downstream which would be born by abutters, townspeople and the general public. This bylaw complies with EPA regulations [National Pollutant Discharge Elimination System](#) (NPDES) Phase II final rule (Dec 8, 1999) requiring regulated municipalities reduce the discharge of pollutants in stormwater to the maximum extent practicable and adopt bylaws to address the control of sources of pollutants entering the municipal storm drain system.

B. The objectives of this bylaw are to:

- 1. Protect ground water and surface water to prevent degradation of drinking water supply
- 2. Require practices that eliminate soil erosion and sedimentation and control the volume and rate of storm water runoff resulting from land disturbing activities;
- 3. Promote infiltration and the recharge of groundwater;
- 4. Ensure that soil erosion and sedimentation control measures and storm water runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
- 5. Require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at a construction site that may cause adverse impacts to water quality;
- 6. To prevent pollutants from entering the Burlington municipal separate storm sewer system (MS4) and to minimize discharge of pollutants from the MS4;
- 7. To ensure adequate long-term operation and maintenance of structural storm water best management practices so that storm water structures work as designed;
- 8. Comply with state and federal statutes and regulations relating to storm water discharges; and
- 9. Establish Burlington’s legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

6.2 DEFINITIONS

ABUTTER: The owner(s) of land abutting the activity.

ALTERATION OF DRAINAGE CHARACTERISTICS: Any activity on an area of land that changes the water quality, force, direction, timing or location of runoff from a pre-activity condition. Such changes from a pre-activity condition may include: change from distributed runoff to confined discrete point discharges, change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

APPLICANT: Any person, individual, partnership, association, firm, company, corporation, trust, authority, agency, department, or political subdivision, of the Commonwealth or the Federal government to the extent permitted by law requesting a soil erosion and sedimentation control permit for proposed land-disturbance activity.

AUTHORIZED ENFORCEMENT AGENCIES: The Conservation Commission is the lead agency with authority given by this bylaw to promulgate regulations and policies that support the goals and objectives of this bylaw. The Conservation Commission, its employees or agents, and the Planning Board, its employees or agents will share the administration and enforcement of this by-law as detailed herein.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff. It also includes schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems.

THE BOARD – Town of Burlington Planning Board

THE COMMISSION – Town of Burlington Conservation Commission

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

CLEARING: Any activity that removes the vegetative surface cover.

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

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

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

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

EROSION AND SEDIMENTATION CONTROL PERMIT: A permit with conditions upon a proposed land disturbing activity issued by either the Conservation Commission or Planning Board under this bylaw.

EROSION AND SEDIMENTATION CONTROL APPLICATION PACKAGE. The application materials consisting of a Storm Water Management Plan, an Erosion and Sedimentation Control Plan, and an Operation and Maintenance Plan submitted to either the Conservation Commission or Planning Board (as stipulated within this bylaw) requesting an Erosion and Sedimentation Control Permit.

GRADING: Changing the level or shape of the ground surface contour by means of excavation, fill, in-place ground modification, or any combination thereof, including the establishment of a grade following demolition of a structure

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

LAND-DISTURBING ACTIVITY: Any activity that causes a change in the existing soil cover which includes the position or location of soil, sand, rock, gravel, or similar earth material. Land-disturbing activities include, but are not limited to clearing, grading, filling and excavation. Landscaping activities which involve greater than or equal to 500 ft² are considered a land disturbing activity and may be the subject of enforcement action under this bylaw. Routine landscaping activities which involve less than 500 ft² are not considered a land-disturbing activity for the purposes of this bylaw.

LAND IN AGRICULTURAL USE: Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.4, are exempt from this bylaw.

MASSACHUSETTS STORM WATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 §. 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The Policy addresses storm water impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The municipal storm drain system is the system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir,

and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Burlington.

OPERATION AND MAINTENANCE PLAN: A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a storm water management system to insure that it continues to function as designed.

OWNER: A person with a legal or equitable interest in property.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

PRE-CONSTRUCTION: All activity in preparation for construction.

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

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

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

SEDIMENTATION: The process or act of deposition of sediment.

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

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

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

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

STANDARD EROSION AND SEDIMENTATION CONTROL PERMIT: An permit issued under this bylaw containing a standard set of conditions requiring that best management practices be implemented to prevent erosion and sedimentation from the site. This permit applies to sites proposing a land disturbing activity of greater than 10,000 ft² but less than 20,000 ft².

STORM WATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

STORM WATER MANAGEMENT PLAN: A plan showing existing and proposed features on a site. This is required as part of the application for a Erosion and Sedimentation Control Permit .See Section 6.8

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

TOTAL SUSPENDED SOLIDS (TSS): Total Suspended Solids is a water quality measurement that includes particles suspended in water that will not pass through a filter.

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

WETLAND RESOURCE AREA: Areas specified in either the Massachusetts Wetlands Protection Act G.L. c. 131, § 40 or in Burlington's Wetland Bylaw (Article XIV).

WETLANDS: Areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and streams), common names include marshes, swamps and bogs.

6.3 AUTHORITY

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

6.4 APPLICABILITY

A. No person may undertake a construction activity that results in a land disturbing activity that will disturb equal to or greater than 10,000 ft² of land (or will disturb less than 10,000 ft² of land but is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than 10,000 ft² of land) that drains to the Burlington municipal separate storm sewer system, onto an adjacent property, into a municipal / private street, or into a wetland / stream, without an Erosion and Sedimentation Control Permit from either the Conservation Commission or the Planning Board.

B. Exemptions From Requirement to Obtain Permit (under this bylaw)

Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulation 310 CMR 10.04;

Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling disturbing less than 10000 ft²;

The construction of fencing that will not substantially alter existing terrain or drainage patterns;

Construction of utilities other than drainage (gas, water, electric, cable, telephone, etc.) which will not alter terrain or drainage patterns;

As authorized in Burlington's Phase II Small MS4 General Permit, storm water discharges resulting from the activities identified in Section 6.4 that are wholly subject to jurisdiction under either the Wetlands Protection Act or activities which are subject to Burlington's Bylaw Article XIV and demonstrate compliance with the Massachusetts Storm Water Management Policy as reflected in an Order of Conditions issued by the Conservation Commission, are exempt from compliance with this bylaw.

6.5 RESPONSIBILITY FOR ADMINISTRATION

A. Responsibility. The Burlington Conservation Commission shall be the lead agency that may grant waivers and promulgate regulations to support this bylaw as specified in Sections 5B and 5C below. The Conservation Commission and the Burlington Planning Board shall have shared responsibilities to administer and implement this bylaw. Any powers granted to or duties imposed upon either the Conservation Commission or the Planning Board may be delegated to their respective employees and/or their agents, and with mutual concurrence these duties may be delegated to each other's respective employees and/or their agents.

B. Waiver. The Conservation Commission will be the lead agency to grant a waiver to compliance with this bylaw. The Commission with input from the Planning Board, may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder, where:

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

C. Rules and Regulations. The Conservation Commission will be the lead agency to initiate a change to this bylaw. The Conservation Commission working with input from the Planning Board may adopt, and periodically amend rules and regulations to effectuate the purposes of this by-law, by majority vote of the Conservation Commission, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) days prior to the hearing date.

Failure by The Conservation Commission to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

6.6 PERMITS and PROCEDURES

A. Application. Where a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume is proposed, the site owner or his/her agent shall file with the Conservation Commission, eleven(11) copies of a completed application package with a cover sheet specified by the Commission (available from the Commission office or the Commission's web site) (one for each Commissioner, 2 office copies, and 2 for distribution to other Boards (Board of Health and Planning Board) for an Erosion and Sedimentation Control Permit. Permit issuance is required prior to any site altering activity. While the applicant can be a representative of the site owner, the permittee must be the owner of the site.

The Conservation Commission (through its agent, the Conservation Commission Administrator) may, at its discretion, elect to delegate its authority to the Planning Board to issue an Erosion and Sedimentation Control Permit, in order to expedite the permitting process for an applicant who must appear before the Planning Board for other matters in connection with the proposed work.

Within 7 days of the filing date, the Conservation Commission (through its agent) will make a determination on whether to schedule a formal hearing before the Commission or delegate its authority under this bylaw to the Planning Board. This determination will be made based on an assessment of the potential for sedimentation and erosion from the proposed land disturbing activity (including grubbing, clearing and/or grading). The Commission's agent will give consideration to the original and proposed grading of the site, existing slopes, the presence of intermittent streams or channels, the size of the site, and/or other factors which may contribute to runoff and erosion potential. Proposed projects where routine erosion and sedimentation controls are needed, will be referred to the Planning Board for a simultaneous hearing for this permit with other matters in connection with this project.

If the Conservation Commission or its agent delegates its authority under this bylaw to the Planning Board, the staff of the Conservation Commission will transfer the original application package (and associated copies) to the Planning Board office and notify the applicant in writing of the Commission's decision to refer this application to the Planning Board and that the hearing under this bylaw will be scheduled before the Planning Board within twenty-one (21) days of the receipt of a complete application or at a time to coincide with other regulatory matters which are being heard by the Board on the same project..

For sites where a land disturbing activity of greater than or equal to 10,000 ft² but less than 20,000 ft² is proposed, the site owner or his/her agent shall file (at their option) with either the Conservation Commission or the Planning Board, two (2) copies of a completed application package for a Standard Erosion and Sedimentation Control Permit. Permit issuance is required prior to any site altering activity. While the applicant can be a representative of the site owner, the permittee must be the owner of the site.

Within 7 days of the filing date, the agent of either the Conservation Commission or Planning Board will issue a Standard Erosion and Sedimentation Control Permit under this bylaw. No public meeting or hearing will be required for sites in this category. For sites in this size category that are not adequately covered by the Standard Erosion and Sedimentation Control Permit, additional special conditions may be appended by the issuing Board or Commission. The issuing Board or Commission may extend the 7 day turnaround time for issuing the Standard Erosion and Sedimentation Control Permit for reasons of insufficient information of which the applicant has been notified in writing.

The Erosion and Sedimentation Control Application package (for sites which propose a land disturbing activity of 20,000 ft² or greater) shall include:

1. a completed Application Form with original signatures of all owners;
2. a list of abutters, certified by the Assessors Office;
3. eleven (11) copies of the Storm Water Management Plan and project description referenced in Section 6.7. of this bylaw.;
4. eleven (11) copies of the Erosion and Sediment Control Plan as referenced in Section 6.8 of this bylaw;
5. eleven (11) copies of the Operation and Maintenance Plan as referenced by Section 6.9 of this bylaw;
6. payment of the application and review fees.

The Standard Erosion and Sedimentation Control Application package (for sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft²) is an application package consisting of an abbreviated Storm Water Management Plan, abbreviated Erosion and Sedimentation Control Plan, and an abbreviated Operations and Maintenance plan as referenced in Section 6.10 of this bylaw.

B. Entry. Filing an application for a permit grants the issuing Board or Commission and its agents permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

C. Coordination Between Planning Board and Conservation Commission. For sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft², the Conservation Commission shall give one copy of the application package to the Planning Board for their records. If the Planning Board is the issuing agency, then the Planning Board shall give one copy of the application package to the Conservation Commission for their records.

D. Fee Structure. For sites which propose a land disturbing activity equal to or greater than 20,000 ft², the issuing Board / Commission shall obtain with each submission an Application Fee established by the Conservation Commission with input from the Planning Board to cover expenses connected with the public hearing and application review for the Erosion and Sedimentation Control Permit and a technical Review Fee (if requested by the Commission/Board) sufficient to cover professional technical review, if needed. The Commission / Board is authorized to retain a Registered Professional Engineer or other professional consultant to advise the issuing Commission/Board on any or all aspects of these plans as provided by G.L.c. 44, Section 53G. Applicants must pay all review fees due before a permit will be issued. The Commission/Board will not be subject to final action deadlines if the appropriate fees have not been paid.

For sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft², a reduced fee schedule will be established by the Commission.

E. Public Hearing. For sites which propose a land disturbing activity equal to or greater than 20,000 ft², the issuing Commission/Board shall hold a public hearing within twenty-one (21) days of the receipt of a complete application (or a greater timeframe as mutually agreed upon) and shall take final action within either twenty-one (21) days from the time of the close of the hearing or within such longer time period mutually agreed to by both the Commission / Board and the applicant to coincide with other regulatory decisions on the same project. Notice of the public hearing shall be given by publication and posting, and by first-class mailings to abutters (owners of land within three hundred feet from the boundary of the site) at least seven (7) days prior to the hearing. The issuing Commission/Board shall make the application available for inspection by the public during business hours at the issuing Commission/Board office.

F. Information requests. The applicant shall submit all additional information requested by issuing Commission/Board to issue a decision on the application.

G. Action by the Issuing Commission/Board.

For sites which propose a land disturbing activity equal to or greater than 20,000 ft², the issuing Commission/Board may:

1. Issue an Erosion and Sedimentation Control Permit based upon determination that the proposed plan meets the Standards in or referenced by Section 6.7 and will adequately protect the water resources of the community and is in compliance with the requirements set forth in this by-law;
2. Issue an Erosion and Sedimentation Control Permit subject to any conditions, modifications or restrictions required by the issuing Commission/Board which will ensure that the project meets the Standards in or referenced by Section 6.7 and adequately protect water resources, set forth in this by-law;
3. Disapprove the issuance of an Erosion and Sedimentation Control Permit based upon a determination that the proposed plan, as submitted, does not meet the Standards in referenced by Section 6.7 or adequately protect surface and/or ground water resources, as set forth in this by-law.

H. Failure of the issuing Commission/Board to take final action. Failure of the Issuing Commission/Board to take final action upon an Application for a land disturbing activity equal to or greater

than 20,000 square feet within either within twenty-one (21) days from the time of the close of the hearing or within such longer time period mutually agreed to by both the Commission / Board and the applicant to coincide with other regulatory decisions on the same project, shall be deemed to be approval of said Application.

I. Project Changes. The permittee must notify the issuing Commission/Board in writing of any drainage change or alteration in the system authorized in a Erosion and Sedimentation Control Permit before any change or alteration is made. If the issuing Commission/Board determines that the change or alteration is significant, based on the Storm Water Management Standards in Section 6.7 C of this bylaw and accepted construction practices, the issuing Commission/Board may require that an amended application be filed and a public hearing held. The issuing Commission/Board may also require the installation of interim erosion and sedimentation control measures before approving the change or alteration.

J. Project Completion. At completion of the project, the permittee shall submit as-built record drawings of all structural storm water controls and best management practices implemented for the site. The as-built drawing shall show deviations from the approved plans, if any, and be certified by a Registered Professional Engineer.

6.7 STORM WATER MANAGEMENT PLAN

A. For sites which propose a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume, the application for a Erosion and Sedimentation Control Permit shall consist of submittal of a Storm Water Management Plan initially to the Conservation Commission. This Storm Water Management Plan shall contain sufficient information for the issuing Commission/Board to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from storm water. The Plan shall be designed to meet the Massachusetts Storm Water Management Standards (or as revised), the DEP Storm Water Management Handbook Volumes I and II (or as revised), and any specific regulations promulgated under this bylaw.

B. Plan Content. The Storm Water Management Plan (for sites which propose a land disturbing activity of 20,000 ft² or greater) shall fully describe the project in drawings, and narrative. The Storm Water Management Plan shall conform to any detail provided in either regulations or policies promulgated under this bylaw. The Conservation Administrator may (at his/her discretion) waive some detail requirements described below as long as in his/her opinion, the goals and objectives of this bylaw are not compromised.

C. Standards. As stated in Section 6.7A, the Storm Water Management Plan shall meet the current Standards of the Massachusetts Storm Water Management Policy. When one or more of the Standards cannot be met, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

6.8 EROSION AND SEDIMENTATION CONTROL PLAN

A. Application. For sites which propose a land disturbing activity of 20,000 ft² or greater or a land disturbing activity of 500 yd³ or greater of earth volume, the Erosion and Sedimentation Control Plan contained within the Storm Water Management Plan shall contain sufficient information to describe the proposed erosion and sedimentation controls. The applicant shall submit such material as is necessary to show that the proposed development will comply with the design requirements referenced in Section 6.8 B. below. The Conservation Administrator may (at his/her discretion) waive some detail requirements described below as long as in his/her opinion, the goals and objectives of this bylaw are not compromised.

B. Design. The design requirements of the Erosion and Sedimentation Control Plan must conform to any regulations and policies promulgated under this bylaw.

C. Erosion and Sedimentation Control Plan Content. The Plan shall at a minimum contain the following information:

1. Names, addresses, and telephone numbers of the owner, applicant, and person(s) or firm(s) preparing the plan;
2. Title, date, north arrow, names of abutters, scale, legend, and locus map;

3. Location and description of natural features The Erosion and Sedimentation Control Plan must conform to the details of any regulations and policies promulgated under this bylaw.

6.9 OPERATION AND MAINTENANCE PLANS

For sites which propose a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume, an Operation and Maintenance plan (O&M Plan) is required as part of the Storm Water Management Plan at the time of application for all projects. Upon request by the applicant, the issuing Commission/Board may delay the completion date of the O&M plan, but in all cases, the O&M Plan must be submitted and approved prior to the completion of the project and before any occupancy takes place.

The O&M plan shall be designed to ensure compliance with the Permit, this Bylaw and that the Massachusetts Surface Water Quality Standards, 314, CMR 4.00 are met in all seasons and throughout the life of the system. The issuing Commission/Board shall make the final decision of what maintenance option is appropriate in a given situation. The issuing Commission/Board will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of storm water management structures, and potential need for ongoing maintenance activities when making this decision.

The O&M Plan shall remain on file with the issuing Commission/Board and shall be an ongoing requirement in perpetuity.

The O&M Plan shall, at a minimum, include:

- A. The name(s) of the owner(s) for all components of the system
- B. Detail of maintenance agreements
- C. Detail on storm water management easement(s). The details of the Operation and Maintenance Plan shall conform to the requirements of any regulations and policies promulgated under this bylaw.
- D. Changes to Operation and Maintenance Plans
 1. The owner(s) of the storm water management system must notify the issuing Commission/Board of changes in ownership or assignment of financial responsibility.
 2. The maintenance schedule in the Maintenance Agreement may be amended to achieve the purposes of this by-law by mutual agreement of the issuing Commission/Board and the Responsible Parties. Amendments must be in writing and signed by all Responsible Parties. Responsible Parties shall include owner(s), persons with financial responsibility, and persons with operational responsibility.

6.10 STANDARD EROSION AND SEDIMENTATION CONTROL PERMIT

The Standard Erosion and Sedimentation Control Application package (for sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft²) is an application package consisting of an abbreviated Storm Water Management Plan, abbreviated Erosion and Sediment Control Plan, and an abbreviated Operations and Maintenance plan as referenced in Section 6.10 of this bylaw.

The abbreviated Storm Water Management Plan shall at a minimum contain sufficient information to describe the existing and proposed features of the land (including structures, vegetation, and drainage), and anticipated maintenance requirements of structures. The abbreviated Storm Water Management Plan shall conform to any detail provided in either regulations or policies promulgated under this bylaw.

The Board / Commission and/or its agents may waive any portion of these submission requirements if in their opinion, sufficient information exists on which to base the issuance of a Standard Erosion and Sediment Control Permit.

6.11 INSPECTION AND SITE SUPERVISION

A. Pre-construction Meeting. When requested, prior to starting clearing, excavation, construction, or land disturbing activity, the applicant, the applicant's technical representative, the general contractor or any other person with authority to make changes to the project, shall meet with the issuing Commission/Board, to review the permitted plans and their implementation.

B. Commission/Board Inspections. The issuing Commission/Board or its designated agents shall make inspections as needed and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sedimentation Control Permit as approved. If the work conducted to date is approved, an inspection report issued during the inspection will bear the signature of approval of the issuing Commission/Board or its agents that the work may continue. This site inspection report shall be maintained at the site during the progress of the work.

In order to obtain inspections, the permittee shall notify the issuing Commission/Board at least two (2) working days before each of the following events if required by the Commission/Board:

1. Erosion and sediment control measures are in place and stabilized;
2. Site Clearing has been substantially completed;
3. Rough Grading has been substantially completed;
4. Final Grading has been substantially completed;
5. Close of the Construction Season; and
6. Final Landscaping (permanent stabilization) and project final completion.

C. Permittee self-inspections. The permittee or his/her agent shall conduct and document inspections of all control measures) no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit monthly reports to the issuing Commission/Board or designated agent in a format approved by the issuing Commission/Board, which may include the signature of the Professional Engineer if required by the issuing Commission/Board.

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

6.12 SURETY

As part of any Erosion and Sedimentation Control Permit, the issuing Commission/Board may require the permittee to post before the start of land disturbing activity activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by town counsel, and be in an amount deemed sufficient by the issuing Commission/Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the issuing Commission/Board may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the issuing Commission/Board has received the final report as required by Section 6.12 and issued a certificate of completion.

6.13 FINAL REPORTS

Upon completion of the work and if required by the issuing Commission/Board, the permittee shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, certifying that all erosion and sediment control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved permit. Any discrepancies should be noted in the cover letter.

6.14 ENFORCEMENT

A. The Planning Board and Conservation Commission and their employees and agents shall enforce this by-law, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Persons subject to enforcement under this bylaw include:

- all permittees who have been issued an Erosion and Sedimentation Control Permit (for project sites which propose a land disturbing activity of 20,000 ft² or greater OR a land disturbing activity of 500 yd³ or greater of earth volume)
- all permittees who have been issued a Standard Erosion and Sedimentation Control Permit (for project sites which propose a land disturbing activity equal to or greater than 10,000 ft² but less than 20,000 ft²)

- all other persons who have engaged in a Land Disturbing Activity (as defined in this bylaw as greater than 500 ft²), who have caused substantial erosion and sedimentation due to Alteration of Drainage Characteristics, Grading, Grubbing, Clearing, and/or Stripping of soil.

B. Orders

1. The issuing Commission/Board or an authorized agent of the issuing Commission/Board may issue a written order to enforce the provisions of this by-law or the regulations thereunder, which may include:

- (a) a requirement to cease and desist from the land-disturbing activity until there is compliance with this bylaw and its provisions of any permit issued.
- (b) maintenance, installation or performance of additional erosion and sediment control measures;
- (c) monitoring, analyses, and reporting
- (d) remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.

2. If the enforcing Board / Commission or its agents determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Board / Commission may, under this bylaw and subsequent regulation promulgated hereunder, may impose a fine on a daily basis until such time as the abatement or remediation of erosion and sedimentation has been completed. The Town of Burlington, at its option, may seek a court order requiring the property owner to perform the work.

C. Criminal Penalty. Any person who violates any provision of this by-law, regulation, order or permit issued there under, shall be punished by a fine of not more than \$500. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, Burlington may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch.. 40, in which case the Conservation Administrator of Burlington shall be the enforcing person. The penalty for the 1st violation shall be \$100. each day or part thereof that such violation occurs. The penalty for the 2nd violation shall be \$300. each day or part thereof that such violation occurs. The penalty for the 3rd and subsequent violations shall be \$300. each day or part thereof for every day that such violation occurs. For the purposes of issuing a non-criminal disposition penalty, both the Planning Board Director and Conservation Commission Administrator are named as the specific enforcing agents.

E. Appeals. The decisions or orders of issuing Commission/Board shall be final. Further relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive. The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

6.15 FILING WITH REGISTRY OF DEEDS

The applicant must file the issued Erosion and Sedimentation Control Permit with the Middlesex Registry of Deeds within 21 days from issuance.

6.16 CERTIFICATE OF COMPLETION

The issuing authority will issue a letter certifying completion upon receipt (with appropriate continuing requirements) and approval of the final reports and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this bylaw, noting any exceptions and to which permit condition these exceptions apply. The Certificate of Compliance will stipulate that the permit holder is to remove required erosion controls (unless changed or waived by the Conservation Administrator) within 60 days of the date on the Certificate. This Certificate of Completion will be filed by the applicant at the Middlesex Registry of Deeds within 21 days.

6.17 SEVERABILITY

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

Recommendations: Bylaw Review Committee voted 5-0 in favor. Planning Board voted unanimously in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

App'd. A.G. . Adv. Daily Times .

ARTICLE 8 RE: Acceptance of Illicit Discharges and Detection Bylaw

To see if the Town will enact the following proposed bylaw:

BYLAW GOVERNING ILLICIT DISCHARGES AND DETECTION WITHIN THE MUNICIPAL STORM DRAIN SYSTEM -

SECTION 1 PURPOSE/INTENT

The purpose of this bylaw is to protect Burlington's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. Increased and contaminated storm water runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

This bylaw establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) general permit. The objectives of this bylaw are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system;
3. To require the removal of all such illicit connections;
4. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this bylaw; and
5. To establish the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

SECTION 2 DEFINITIONS

For the purposes of this bylaw, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY: The Board of Health and its Agents are designated to enforce this bylaw. Solely for the purposes of enforcing this bylaw, Agents of this Board includes the Director of Public Health, Health Agent, Environmental Engineer, Town Engineer, the Superintendent of Public Works, and the Inspector of Buildings.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff. It also includes schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems.

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

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

GROUNDWATER: Water beneath the surface of the ground.

HAZARDOUS MATERIALS AND WASTES: Any liquid, gaseous, solid or radioactive, material, including any substance, waste, or combination thereof, which because of its quantity

and/or concentration of the material and/or of its constituents, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous materials and wastes shall include without limitation:

1. paints, varnishes, and solvents;
2. oil and other automotive fluids;
3. solid wastes and yard wastes;
4. refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
5. pesticides, herbicides, and fertilizers;
6. hazardous materials and wastes;
7. dissolved and particulate metals;
8. animal wastes;
9. rock, sand, salt, soils;
10. construction wastes and residues;
11. industrial or commercial waste,
12. runoff, leachate, heated effluent; and
13. noxious or offensive matter of any kind.

ILLICIT CONNECTION: A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this bylaw. An illicit connection is 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 an authorized enforcement agency.

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of storm water, except as exempted in Section 6.8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 6.8 of this bylaw.

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

INDUSTRIAL ACTIVITY: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Burlington.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NON-STORM WATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of storm water.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POLLUTANT: Any element or property of hazardous materials, hazardous wastes or sewage from residential, agricultural, industrial or commercial sources whether originating at point or non-point sources, that is or may be introduced into the storm water system of the Town of Burlington. Pollutants, for the purposes of this bylaw, include (but not limited to) dredged soil, solid waste, incinerator residue, garbage, wastewater, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, sediment, nutrients, toxic

substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance, and oxygen-demanding material.

PREMISES: Any building, lot, parcel of land, or portion of land whether improved or unimproved.

PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

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

SEWAGE: The waste and wastewater produced by residential and commercial sources and discharged into sewers. A substance that contains the waste products or excrement or other discharge from the bodies of human beings or animals. Sewage contains pathogens and fecal coliform that is harmful to the public health, to animal or aquatic life or to the use of water for domestic water supply or for recreation.

STORM DRAINAGE SYSTEM: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORM WATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

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

STORM WATER POLLUTION PREVENTION PLAN: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm water, Storm water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

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

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

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, and groundwater.

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

SECTION 3 APPLICABILITY

This bylaw shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 4 AUTHORITY

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act and G.L. c. 83, Sect. 1 and Sect. 10, as amended by St. 2004, c. 149, sections 135 - 140, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

SECTION 5 RESPONSIBILITY FOR ADMINISTRATION

The Board of Health and its Agents shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon these Boards may be delegated in writing by these Boards to persons or entities acting in the beneficial interest of or in the employ of these agencies.

SECTION 6 REGULATIONS

The Board of Health is authorized to promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Board of Health to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

SECTION 7 PROHIBITED ACTIVITIES

A. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants or non-storm water discharge that cause or contribute to a violation of applicable water quality standards, other than storm water into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

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

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

SECTION 8 EXEMPTIONS

Discharges from fire-fighting activities are exempt from the provisions of this bylaw, except when fire water has accumulated and is contaminated with hazardous materials. If such determination has been made, then disposition of such water shall be made by the Board of Health or its Agents.

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

1. Waterline flushing;
2. Flow from potable water sources;
3. Springs;
4. Natural flow from riparian habitats and wetlands;
5. Diverted stream flow;
6. Rising groundwater;
7. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- 8.. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than one ppm chlorine) and the pool is drained in such a way as not to cause a nuisance;
12. Dye testing, provided verbal notification is given to the Board of Health prior to the time of the test;
13. Non-storm water discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
14. Discharge for which advanced written approval is received from the Board of Health as necessary to protect public health, safety, welfare or the environment.

SECTION 9 EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

A. Suspension due to Illicit Discharges in Emergency Situations. The Board of Health and its Agents designated to enforce this bylaw may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare

of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this bylaw may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the Board of Health for a reconsideration and hearing.

A person commits an offense of this bylaw if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

SECTION 10 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Board of Health and its Agents designated to enforce this bylaw prior to the allowing of discharges to the MS4.

SECTION 11 NOTIFICATION OF SPILLS

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release (as defined in 310 CMR 40.0352 and 310 CMR 40.1600) of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release.

In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and Board of Health. In the event of a release of non-hazardous material, the reporting person shall notify the Board of Health no later than the next business day. The reporting person shall provide to the Board of Health written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

SECTION 12 ENFORCEMENT

The Board of Health and its Agents shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations as noted below:

A. Civil Relief. If a person violates the provisions of this bylaw, regulations, permit, notice, or order issued thereunder, this Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

B. Orders. The Board of Health and its Agents designated to enforce this bylaw may issue a written order to enforce the provisions of this bylaw or the regulations thereunder.

Orders of this Board may include:

- (a) elimination of illicit connections or discharges to the MS4;
- (b) performance of monitoring, analyses, and reporting;
- (c) that unlawful discharges, practices, or operations shall cease and desist; and
- (d) remediation of contamination in connection therewith.

The issuance of an enforcement order by a Board of Health Agent without a prior vote of the Board of Health to address conditions that require immediate attention, is subject to ratification by the Board of Health at its next regularly scheduled meeting.

The party responsible for completing monitoring, abatement or remediation must contract a person licensed to conduct such work, as necessary. During and upon completion of the work, the

professional opinion of this licensed person and a final report will be required to be submitted to the Board of Health in summary and certification of said work being accomplished.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Burlington may, at its option, seek a court order requiring the property owner to perform the work.

C. Criminal Penalty. Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$ 500. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Burlington may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, S21D in which case the Environmental Engineer is authorized to be the enforcing person designated to issues non-criminal disposition penalties. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$300. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Appeals. The enforcement decisions or orders of the Board of Health and its Agents shall be final unless modified or reversed in a public meeting of the Board of Health. Persons aggrieved by an enforcement action by the Board of Health and/or its Agents designated to enforce this bylaw may request a public meeting with the Board of Health within 7 days of written enforcement action to review the circumstances and decisions related to the enforcement action. At this hearing, any affected party has the right to appear, and have the right to inspect and obtain copies of all relevant inspection and investigation reports, orders, notices, and other documentary evidence. If further relief by aggrieved persons is desired, such relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive. The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local bylaw.

SECTION 13 MONITORING OF DISCHARGES

A. Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities. Access to facilities shall be governed by the following:

1. To the extent permitted by state law and if probable cause exists, or if authorized by the owner or other party in control of property which is not permitted with an NPDES Permit, the Board of Health and its Agents may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Board of Health deems reasonably necessary. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

2. Under the conditions for access stated in Part (a) above, facility operators shall allow the Board of Health and its Agents designated to enforce this bylaw, ready access to all parts of the premises for a facility not already regulated with a NPDES Permit for the purposes of inspection, sampling, examination and copying of records relating to the discharge of storm water that may contain sewage, hazardous materials or wastes, or other pollutants, and the performance of any additional duties as defined by state and federal law. For NPDES permit holders, the Town of Burlington will contact the appropriate U.S. Environmental Protection Agency enforcing agents to inform them of suspected violations of an NPDES permit for discharges from that facility.

3. The Board of Health and its Agents designated to enforce this bylaw shall have the right to set up on any non-NPDES facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

4. The Board of Health and its Agents designated to enforce this bylaw has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Board of Health and its Agents designated to enforce this bylaw and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. If the Board of Health and its Agents designated to enforce this bylaw has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this bylaw, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 14 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The Board of Health designated to enforce this bylaw may adopt requirements identifying Best Management Practices for any activity, operation, or non-NPDES permitted facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S.

Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

For NPDES permitted facilities, compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. In the event that the Board of Health determines that additional BMPs may be required for NPDES permitted facilities, the Board of Health may at its option, ask for EPA to review the terms of the facility's NPDES permit to determine if additional best management practices may be required.

In the event that said person responsible for a non-NPDES property or premise, believes that said compliance with additional BMPs is not required, the Board of Health may issue an enforcement order requiring such compliance. If said person refuses to comply with such order for implementing additional BMPs, then the Town of Burlington may seek a court order requiring such implementation.

Compliance with this bylaw, its regulations or BMPs, or policies promulgated under this bylaw does not imply that there will be no contamination, pollution, nor unauthorized discharge of pollutants. Compliance with this bylaw, its regulations or BMPs, or policies promulgated under this bylaw also does not relieve a person from being subject to such enforcement actions as may be required to correct contamination, pollution, and/or unauthorized discharge of pollutants.

SECTION 15 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 16 SEVERABILITY

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

SECTION 17 TRANSITIONAL PROVISIONS

Residential property owners shall have 60 days from the effective date of the bylaw to comply with its provisions provided good cause is shown for the failure to comply with the bylaw during that period.

SECTION 18 REMEDIES NOT EXCLUSIVE

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

MAIN MOTION:

7.0 Illicit Discharges and Detection

7.1 PURPOSE/INTENT

The purpose of this bylaw is to protect Burlington's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. Increased and contaminated storm water runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

This bylaw establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) general permit. The objectives of this bylaw are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system;
3. To require the removal of all such illicit connections;
4. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this bylaw; and
5. To establish the legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

7.2 DEFINITIONS

For the purposes of this bylaw, the following shall mean:

AUTHORIZED ENFORCEMENT AGENCY: The Board of Health and its Agents are designated to enforce this bylaw. Solely for the purposes of enforcing this bylaw, Agents of this Board includes the Director of Public Health, Health Agent, Environmental Engineer, Town Engineer, the Superintendent of Public Works, and the Inspector of Buildings.

BEST MANAGEMENT PRACTICE (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff. It also includes schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems.

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

DISCHARGE OF POLLUTANTS: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

GROUNDWATER: Water beneath the surface of the ground.

HAZARDOUS MATERIALS AND WASTES: Any liquid, gaseous, solid or radioactive, material, including any substance, waste, or combination thereof, which because of its quantity and/or concentration of the material and/or of its constituents, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise

managed. Hazardous materials and wastes shall include without limitation:

1. paints, varnishes, and solvents;
2. oil and other automotive fluids;
3. solid wastes and yard wastes;
4. refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
5. pesticides, herbicides, and fertilizers;
6. hazardous materials and wastes;
7. dissolved and particulate metals;
8. animal wastes;
9. rock, sand, salt, soils;
10. construction wastes and residues;
11. industrial or commercial waste,
12. runoff, leachate, heated effluent; and
13. noxious or offensive matter of any kind.

ILLICIT CONNECTION: A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this bylaw. An illicit connection is 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 an authorized enforcement agency.

ILLICIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of storm water, except as exempted in Section 7.8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from fire fighting activities exempted pursuant to Section 7.8 of this bylaw.

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

INDUSTRIAL ACTIVITY: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Burlington.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

NON-STORM WATER DISCHARGE: Discharge to the municipal storm drain system not composed entirely of storm water.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POLLUTANT: Any element or property of hazardous materials, hazardous wastes or sewage from residential, agricultural, industrial or commercial sources whether originating at point or non-point sources, that is or may be introduced into the storm water system of the Town of Burlington. Pollutants, for the purposes of this bylaw, include (but not limited to) dredged soil, solid waste, incinerator residue, garbage, wastewater, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, sediment, nutrients, toxic substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance, and oxygen-demanding material.

PREMISES: Any building, lot, parcel of land, or portion of land whether improved or unimproved.

PROCESS WASTEWATER: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

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

SEWAGE: The waste and wastewater produced by residential and commercial sources and discharged into sewers. A substance that contains the waste products or excrement or other discharge from the bodies of human beings or animals. Sewage contains pathogens and fecal coliform that is harmful to the public health, to animal or aquatic life or to the use of water for domestic water supply or for recreation.

STORM DRAINAGE SYSTEM: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORM WATER: Storm water runoff, snow melt runoff, and surface water runoff and drainage.

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

STORM WATER POLLUTION PREVENTION PLAN: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm water, Storm water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

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

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

WATERS OF THE COMMONWEALTH: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

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

7.3 APPLICABILITY

This bylaw shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

7.4 AUTHORITY

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act and G.L. c. 83, Sect. 1 and Sect. 10, as amended by St. 2004, c. 149, sections 135 - 140, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

7.5 RESPONSIBILITY FOR ADMINISTRATION

The Board of Health and its Agents shall administer, implement and enforce this bylaw. Any powers granted to or duties imposed upon these Boards may be delegated in writing by these Boards to

persons or entities acting in the beneficial interest of or in the employ of these agencies.

7.6 REGULATIONS

The Board of Health is authorized to promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Board of Health to promulgate such rules and regulations shall not have the effect of suspending or invalidating this bylaw.

7.7 PROHIBITED ACTIVITIES

A. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants or non-storm water discharge that cause or contribute to a violation of applicable water quality standards, other than storm water into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

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

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

7.8 EXEMPTIONS

Discharges from fire-fighting activities are exempt from the provisions of this bylaw, except when fire water has accumulated and is contaminated with hazardous materials. If such determination has been made, then disposition of such water shall be made by the Board of Health or its Agents.

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

1. Waterline flushing;
2. Flow from potable water sources;
3. Springs;
4. Natural flow from riparian habitats and wetlands;
5. Diverted stream flow;
6. Rising groundwater;
7. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
8. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than one ppm chlorine) and the pool is drained in such a way as not to cause a nuisance;
12. Dye testing, provided verbal notification is given to the Board of Health prior to the time of the test;
13. Non-storm water discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
14. Discharge for which advanced written approval is received from the Board of Health as necessary to protect public health, safety, welfare or the environment.

7.9 EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

A. Suspension due to Illicit Discharges in Emergency Situations. The Board of Health and its Agents designated to enforce this bylaw may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the

MS4 or Waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this bylaw may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the Board of Health for a reconsideration and hearing.

A person commits an offense of this bylaw if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

7.10 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Board of Health and its Agents designated to enforce this bylaw prior to the allowing of discharges to the MS4.

7.11 NOTIFICATION OF SPILLS

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release (as defined in 310 CMR 40.0352 and 310 CMR 40.1600) of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release.

In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and Board of Health. In the event of a release of non-hazardous material, the reporting person shall notify the Board of Health no later than the next business day. The reporting person shall provide to the Board of Health written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

7.12 ENFORCEMENT

The Board of Health and its Agents shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations as noted below:

A. Civil Relief. If a person violates the provisions of this bylaw, regulations, permit, notice, or order issued thereunder, this Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

B. Orders. The Board of Health and its Agents designated to enforce this bylaw may issue a written order to enforce the provisions of this bylaw or the regulations thereunder.

Orders of this Board may include:

- (a) elimination of illicit connections or discharges to the MS4;
- (b) performance of monitoring, analyses, and reporting;
- (c) that unlawful discharges, practices, or operations shall cease and desist; and
- (d) remediation of contamination in connection therewith.

The issuance of an enforcement order by a Board of Health Agent without a prior vote of the Board of Health to address conditions that require immediate attention, is subject to ratification by the Board of Health at its next regularly scheduled meeting.

The party responsible for completing monitoring, abatement or remediation must contract a person licensed to conduct such work, as necessary. During and upon completion of the work, the professional opinion of this licensed person and a final report will be required to be submitted to the Board of Health in summary and certification of said work being accomplished.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Burlington may, at its option, seek a court order requiring the property owner to perform the work.

C. Criminal Penalty. Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$ 500. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition. As an alternative to criminal prosecution or civil action, the Town of Burlington may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, S21D in which case the Environmental Engineer is authorized to be the enforcing person designated to issues non-criminal disposition penalties. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$300. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

E. Appeals. The enforcement decisions or orders of the Board of Health and its Agents shall be final unless modified or reversed in a public meeting of the Board of Health. Persons aggrieved by an enforcement action by the Board of Health and/or its Agents designated to enforce this bylaw may request a public meeting with the Board of Health within 7 days of written enforcement action to review the circumstances and decisions related to the enforcement action. At this hearing, any affected party has the right to appear, and have the right to inspect and obtain copies of all relevant inspection and investigation reports, orders, notices, and other documentary evidence. If further relief by aggrieved persons is desired, such relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive. The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local bylaw.

7.13 MONITORING OF DISCHARGES

A. Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities. Access to facilities shall be governed by the following:

1. To the extent permitted by state law and if probable cause exists, or if authorized by the owner or other party in control of property which is not permitted with an NPDES Permit, the Board of Health and its Agents may enter upon privately owned property for the purpose of performing their duties under this bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Board of Health deems reasonably necessary. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.
2. Under the conditions for access stated in Part (a) above, facility operators shall allow the Board of Health and its Agents designated to enforce this bylaw, ready access to all parts of the premises for a facility not already regulated with a NPDES Permit for the purposes of inspection, sampling, examination and copying of records relating to the discharge of storm water that may contain sewage, hazardous materials or wastes, or other pollutants, and the performance of any additional duties as defined by state and federal law. For NPDES permit holders, the Town of Burlington will contact the appropriate U.S. Environmental Protection Agency enforcing agents to inform them of suspected violations of an NPDES permit for discharges from that facility.
3. The Board of Health and its Agents designated to enforce this bylaw shall have the right to set up on any non-NPDES facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Board of Health and its Agents designated to enforce this bylaw has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper

operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Board of Health and its Agents designated to enforce this bylaw and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. If the Board of Health and its Agents designated to enforce this bylaw has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this bylaw, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this bylaw or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

7.14 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The Board of Health designated to enforce this bylaw may adopt requirements identifying Best Management Practices for any activity, operation, or non-NPDES permitted facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S.

Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

For NPDES permitted facilities, compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. In the event that the Board of Health determines that additional BMPs may be required for NPDES permitted facilities, the Board of Health may at its option, ask for EPA to review the terms of the facility's NPDES permit to determine if additional best management practices may be required.

In the event that said person responsible for a non-NPDES property or premise, believes that said compliance with additional BMPs is not required, the Board of Health may issue an enforcement order requiring such compliance. If said person refuses to comply with such order for implementing additional BMPs, then the Town of Burlington may seek a court order requiring such implementation.

Compliance with this bylaw, its regulations or BMPs, or policies promulgated under this bylaw does not imply that there will be no contamination, pollution, nor unauthorized discharge of pollutants. Compliance with this bylaw, its regulations or BMPs, or policies promulgated under this bylaw also does not relieve a person from being subject to such enforcement actions as may be required to correct contamination, pollution, and/or unauthorized discharge of pollutants.

7.15 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

7.16 SEVERABILITY

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

7.17 TRANSITIONAL PROVISIONS

Residential property owners shall have 60 days from the effective date of the bylaw to comply with its provisions provided good cause is shown for the failure to comply with the bylaw during that period.

7.18 REMEDIES NOT EXCLUSIVE

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

Recommendations: Bylaw Review Committee voted 5-0 in favor. Planning Board voted unanimously in favor.

ACTION: MAJORITY APPROVED THE MAIN MOTION

App'd. A.G. . Adv. Daily Times .

ARTICLE 9 RE: Amend General Bylaw, Article I/General Provisions, Section 4.0 Penalties – Non-Criminal Disposition

TO see if Town Meeting will vote to amend Articles I of the General Bylaw, as follows:

TO amend Section 4.0 "Penalties – Non-Criminal Disposition", in the first paragraph, by adding "Planning Director, Town Engineer & Director of Public Health" such that the resulting lines read as follows

4.0 Penalties - Non-Criminal Disposition

Any Bylaw of the Town of Burlington, or rule or regulation of its boards and commissions, the violation of which is subject to a specific penalty, may, in the discretion of the Town Official who is the appropriate enforcing person, be enforced by the method provided in Section 21D of Chapter 40 of the General Laws. "Enforcing Person" as used in this section shall mean the Animal Control Officer, Conservation Administrator, Health Agent, Environmental Engineer, Building Inspector, **Planning Director, Town Engineer & Director of Public Health**, Plumbing and Gas Inspector, Wiring Inspector, any police officer, Fire Chief and/or Fire Inspector, Superintendent of Public Works, and such other officials as the Board of Selectmen may from time to time designate, each with respect to violation of Bylaws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto. A police officer may enforce any and all of these Bylaws and rules and regulations.

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following Bylaws and sections of Bylaws or rules or regulations are to be included within the scope of this subsection and that the specific penalties as listed here shall apply in such cases. Each day on which any violation exists shall be deemed a separate offense:

AND further to amend Section 4.0 schedule of fines to include in the list of penalties the Stormwater, Sedimentation and Erosion Control and Illicit Discharge and Detection Bylaw proposed fines, by adding the following line items "Article XIV, Section 14.5 Stormwater, Sedimentation and Erosion Control, First offense \$100, Second Offense \$300", "Article XIV, Section 14.6 Illicit Discharge and Detection I, First offense \$100, Second Offense \$300". And to further to amend Section 4.0 penalty schedule in the line item "Article XIV, Section 1.9 Wetlands" by replacing \$100 with \$300 to be consistent with Article XIV, Section 1.9 of the Wetlands Bylaw, such that the resulting lines read as follows:

Article XIII, Section 2.0; Control of Dogs:	
First offense, within preceding twelve-month period	\$ 15.00
Second offense, within preceding twelve-month period	\$ 25.00
Third offense, within preceding twelve-month period	\$ 35.00
Fourth or subsequent offense within the preceding twelve months	\$ 50.00
For an unlicensed dog as of July 1st of any year	\$ 50.00
Article XIII, Section 1.23.4 Littering	\$100.00
Article XIV, Section 14.2.8 Earth Removal, Earth Moving, and Addition of Fill	
First Offense	\$ 50.00
Second Offense	\$100.00
Subsequent Offense	\$200.00
Article IX, Section 1.1 Retail Sales	\$ 50.00
Article XIII, Section 1.36 Alcoholic Beverages	\$ 50.00
Article XIII, Section 1.37 Nuisance to Health and Safety	\$ 50.00
Article XIII, Section 1.37.4 Trash	\$ 50.00

Article XIII, Section 1.37.6 Conservation Land	\$ 50.00
Article XIV, Section 2.12 Control of Toxic and Hazardous Materials	\$200.00
Article XIV, Section 14.6 Illicit Discharge and Detection	
First offense	\$ 100.00
Second offense	\$ 300.00
Article XIV, Section 3.2.3 Signs	\$100.00
Article XIV, Section 2.0 Litter Control	\$ 50.00
Article XIV, Section 2.14 Recycling	\$ 25.00
Article XIV, Section 1.9 Wetlands	\$300.00
Burlington Zoning Bylaws	\$ 50.00
Massachusetts State Building Codes	\$ 50.00
Board of Health Rules and Regulations	\$ 50.00
Conservation Commission Bylaws and Rules and Regulations	\$ 50.00
Article XIV, Section 14.5 Stormwater, Sedimentation and Erosion Control	
First offense	\$ 100.00
Second offense	\$ 300.00
Board of Fire Prevention Rules and Regulations, MGL c. 148 and CMR 527, State Fire Laws:	
First offense	\$ 25.00
Second offense	\$ 50.00
Subsequent offenses	\$100.00
Park and Recreation Rules and Regulations	\$ 50.00
Adult Entertainment	
First offense	\$100.00
Second offense	\$200.00
Subsequent offenses	\$300.00

This Bylaw is to be enforced as set forth in a detailed statement of said Bylaw on file at the office of the Selectmen of the Town and said statement to be available for inspection there, or to act in any other manner in relation thereto.

MAIN MOTION: To see if Town Meeting will vote to amend Articles I of the General Bylaw, as follows:

To amend Section 4.0 "Penalties – Non-Criminal Disposition", in the first paragraph, by adding "Planning Director, Town Engineer & Director of Public Health" such that the resulting lines read as follows

4.0 Penalties - Non-Criminal Disposition

Any Bylaw of the Town of Burlington, or rule or regulation of its boards and commissions, the violation of which is subject to a specific penalty, may, in the discretion of the Town Official who is the appropriate enforcing person, be enforced by the method provided in Section 21D of Chapter 40 of the General Laws. "Enforcing Person" as used in this section shall mean the Animal Control Officer, Conservation Administrator, Health Agent, Environmental Engineer, Building Inspector, **Planning Director, Town Engineer & Director of Public Health**, Plumbing and Gas Inspector, Wiring Inspector, any police officer, Fire Chief and/or Fire Inspector, Superintendent of Public Works, and such other officials as the Board of Selectmen may from time to time designate, each with respect to violation of Bylaws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto. A police officer may enforce any and all of these Bylaws and rules and regulations.

Without intending to limit the generality of the foregoing, it is the intention of this provision that the following Bylaws and sections of Bylaws or rules or regulations are to be included within the scope of this subsection and that the specific penalties as listed here shall apply in such cases. Each day on which any violation exists shall be deemed a separate offense:

AND further to amend Section 4.0 schedule of fines to include in the list of penalties the Stormwater, Sedimentation and Erosion Control and Illicit Discharge and Detection Bylaw proposed fines, by adding the following line items "Article XIV, Section 6.14 Stormwater, Sedimentation and Erosion Control, First offense \$100, Second Offense \$300", "Article XIV, Section 7.12 Illicit Discharge and Detection I, First offense \$100, Second Offense \$300". And to further to amend Section 4.0 penalty schedule in the line item "Article XIV, Section 1.9 Wetlands" by replacing \$100 with \$300 to be consistent with Article XIV, Section 1.9 of the Wetlands Bylaw, such that the resulting lines read as follows:

Article XIII, Section 2.0; Control of Dogs:	
First offense, within preceding twelve-month period	\$ 15.00
Second offense, within preceding twelve-month period	\$ 25.00
Third offense, within preceding twelve-month period	\$ 35.00
Fourth or subsequent offense within the preceding twelve months	\$ 50.00
For an unlicensed dog as of July 1st of any year	\$ 50.00
Article XIII, Section 1.23.4 Littering	\$100.00
Article XIV, Section 14.2.8 Earth Removal, Earth Moving, and Addition of Fill	
First Offense	\$ 50.00
Second Offense	\$100.00
Subsequent Offense	\$200.00
Article IX, Section 1.1 Retail Sales	\$ 50.00
Article XIII, Section 1.36 Alcoholic Beverages	\$ 50.00
Article XIII, Section 1.37 Nuisance to Health and Safety	\$ 50.00
Article XIII, Section 1.37.4 Trash	\$ 50.00
Article XIII, Section 1.37.6 Conservation Land	\$ 50.00
Article XIV, Section 2.12 Control of Toxic and Hazardous Materials	\$200.00
Article XIV, Section 7.12 Illicit Discharge and Detection	
First offense	\$ 100.00
Second offense	\$ 300.00
Article XIV, Section 3.2.3 Signs	\$100.00
Article XIV, Section 2.0 Litter Control	\$ 50.00
Article XIV, Section 2.14 Recycling	\$ 25.00
Article XIV, Section 1.9 Wetlands	\$300.00
Burlington Zoning Bylaws	\$ 50.00
Massachusetts State Building Codes	\$ 50.00
Board of Health Rules and Regulations	\$ 50.00
Conservation Commission Bylaws and Rules and Regulations	\$ 50.00
Article XIV, Section 6.14 Stormwater, Sedimentation and Erosion Control	
First offense	\$ 100.00
Second offense	\$ 300.00
Board of Fire Prevention Rules and Regulations, MGL c. 148 and CMR 527, State Fire Laws:	
First offense	\$ 25.00
Second offense	\$ 50.00
Subsequent offenses	\$100.00
Park and Recreation Rules and Regulations	\$ 50.00
Adult Entertainment	
First offense	\$100.00
Second offense	\$200.00
Subsequent offenses	\$300.00

This Bylaw is to be enforced as set forth in a detailed statement of said Bylaw on file at the office of the Selectmen of the Town and said statement to be available for inspection there, or to act in any other manner in relation thereto.

Recommendations: Bylaw Review Committee voted 4-0-0 in favor. Planning Board voted in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

App'd. A.G. . Adv. Daily Times .

ARTICLE 10 RE: Acceptance of Reduction in Interest for Senior Property Taxes/Chapter 136, Acts of 2005

To see if the Town will vote to accept Chapter 136 Section 1 of the Acts of 2005 G.L. Chapter 59, Section 5 (41A) to allow the Town to reduce the interest rate that accrues on property taxes deferred by seniors. Current rate 8% to be reduced to 4%, or to act in any other manner in relation thereto.

MAIN MOTION: As printed in the Warrant

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 11 RE: Acceptance of Real Estate Exemption Provisions/Chapter 73, Acts of 1986

To see if the Town will vote, pursuant to Chapter 73 of the Acts of 1986, as amended, to grant an additional exemption to taxpayers who otherwise qualify for an exemption under G.L. Chapter 59, Section 5, Clauses 17D, 22A, 22B, 22C, 22D, 22E, 37, 37A, 41C, 42 or 43, of 100% of said exemptions, provided however, that in no instance shall the taxable valuation of such property, after all applicable exemptions, be reduced below ten percent of its full and fair cash valuation or result in any taxpayer paying less than taxes paid in the preceding fiscal year, except through the application of G.L. Chapter 58, Section 8A, or G.L. Chapter 59, Section 5, Clause 18, or to act in any other manner in relation thereto.

MAIN MOTION: As printed in the Warrant

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 12 RE: Acceptance of Massachusetts General Laws, Chapter 39, Section 23D as Amended by Chapter 79 of the Acts of 2006/Regulating Meetings of Municipal Boards

To see if the Town will vote to accept, for all boards, committees or commissions holding adjudicatory hearings in the Town, the provisions of G.L. c.39, §23D, which provides that a member of a board, committee, or commission holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to the member's absence from one session of such hearing, provided that certain conditions are met, or to act in any other manner in relation thereto.

MAIN MOTION: As printed in the Warrant

Recommendations: Planning Board voted 7-0 in favor.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 13 RE: Set 2007 Annual Town Election Date

To see if the Town will vote to set the 2007 Annual Town Election for Saturday, April 21, 2007 or to act in any manner in relation thereto.

MAIN MOTION: As printed in the Warrant

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 14 RE: Housekeeping Amendments/Town Center Overlay

To see if Town Meeting will vote to amend Articles IV and VIII of the Zoning Bylaw, as follows:

To amend Section 4.1.1 "Symbols in Use Regulations Schedules", in the fourth and fifth lines, by deleting the words "Town Center" and substituting therefore the words "CC or CBD" in each instance.

AND further to amend Section 8.5.0 "Town Center Overlay District", by adding an "s" to the word "District", such that the title will read "Town Center Overlay Districts".

AND further to amend Section 8.5.1 to strike the words "(TC) District" from the title;

AND further to amend Section 8.5.1 to add the words "1993 Land Use Element of the" before the words "Master Plan", and the year "2004" before the words "Community Development Plan".

AND further to amend Section 8.5.2 "District Boundaries", in the first sentence by striking the words "(TC) District", and further by striking the word "an" and substituting therefore the words "two (2)", and further by striking the words "The TC District is divided into two (2) sub-districts" and substituting therefore the words "said districts to be known as", and in the second sentence by deleting the word "TC", and further by adding the letter "s" to the end of the first use of the word "District", and further by deleting the second use of the word "District" and substituting therefore the word "Map".

AND further to amend Section 8.5.3 "General Requirements and Applicability", by striking the words "Town Center" and

substituting therefore the words "Civic Center and Central Business", and striking the words "(CC & CBD)".

AND further to amend Section 8.5.5.4 "Minimum Side Yard and Rear Yard", by deleting the word "single" and substituting therefore the word "one".

AND further to amend Section 8.5.5.5 "Minimum Buffer to Adjoining RO Districts", in the first sentence to insert the word "requirement" after the word "maximum", and in the second sentence to strike the words "Town Center" and substitute therefore the words "CC or CBD", and in the third sentence to strike the words "A landscaped buffer of at least 20' in depth shall be" and to substitute therefore the words "The buffer shall consist of natural vegetation and/or landscaping designed and", and further in the third sentence to insert words "within the CC or CBD Districts" after the word "use", and in the fourth sentence to add the words "but subject to a minimum 20' setback for bicycle paths." to the end of the sentence:

AND further to amend Section 8.5.5.7 "Maximum Building & Structure Height", in the first, second and third sentences by adding the words "and mixed use" after the word "nonresidential", and in the last sentence, by deleting the word "single" and substituting therefore the word "one".

AND further to amend Section 8.5.5.8 "Maximum feet between buildings", by deleting the words "None, but".

AND further to amend Section 8.5.5.9 "Maximum Floor Area Ratio", in the second sentence by striking the words "TC District" and substituting therefore the words "CC or CBD".

AND further to amend Section 8.5.8 "Design requirements", in the second sentence by adding the words "in accordance with Section 9.6.0 of this Bylaw, and with notice to Town Meeting Members" after the words "public hearing".

AND further to amend Section 8.5.9 "Transfer of Development Rights", in the 3rd paragraph, by inserting the following words "and recording such restriction at the South Middlesex registry of Deeds" after the word "restriction".

AND further to amend Section 8.5.10 "Criteria for Approval", in subsection 1, by inserting the words "1993 Land Use Element of the" before the words "Master Plan" and the year "2004" before the words "Community Development Plan", or to act in any other manner in relation thereto.

MAIN MOTION: As printed in the Warrant

Recommendations: Planning Board voted 6-0.

ACTION: UNANIMOUSLY APPROVED MAIN MOTION

A.G. App'd.

Adv. Daily Times

ARTICLE 15 RE: Amend Article III/Establishment of Districts and Article IV, Sections 4.2.0, 4.3.0 and 4.4.0

To see if the Town will vote to amend the Zoning Bylaw to establish an Open Space District, as follows:

To amend Article III Establishment of Districts, Section 3.1.0, to add "OS – Open Space Districts" to the list of districts.

AND further to amend Article IV, Section 4.2.0, and 4.3.0. and 4.4.0 to amend the use regulations schedule to add a new column for the Open Space District, as reflected on Exhibit "A" (start of next page), or to act in any other manner in relation thereto.

MAIN MOTION: As printed in the Warrant

Recommendations: Planning Board voted 6-0 in favor.

A motion to end debate was moved, seconded and so voted.

ACTION: UNANIMOUSLY APPROVED MAIN MOTION

A.G. App'd.

Adv. Daily Times

ARTICLE 16 RE: Rezone Parcels from RO (One Family Dwelling District) to OS (Open Space) and Amend Town of Burlington Zoning Map

To see if the Town will vote to rezone the following parcels from RO (One Family Dwelling) District to OS (Open Space) District, and amend the Town of Burlington Zoning Map accordingly, as follows:

Property known as Marvin Field, shown on Assessor's Map 54 as Parcel 12 (4.5 Ac)

Property on Olympian Way, shown on Assessor's Map 29 as Parcel 162 (0.31 Ac)

Property known as Overlook Park, shown on Assessor's Map 43 as Parcel 22 (7.6 Ac)

Property known as Pathwoods Tot lot, shown on Assessor's Map 22 as Parcel 125 (0.36 Ac)

Property known as Rahanis Park, shown on Assessor's Map 18 as Parcel 7 (12.7 Ac)

Property known as Regan Park, shown on Assessor's Map 16 as Parcel 71 (5.4 Ac)

Property known as Rotary Field, shown on Assessor's Map 54 as Parcel 14 (1.7 Ac)

Property known as Simonds Park, shown on Assessor's Map 23 as Parcel 255 (20.4 Ac)

Property known as the Town Common, shown on Assessor's Map 29 as Parcel 109 (6.7 Ac)

Property known as TRW Park, shown on Assessor's Map 41 as Parcel 128 (7.0 Ac)

Property known as Veteran's Park, shown on Assessor's Map 5 as Parcel 88 (3.6 Ac)

Property known as Wildmere Park, shown on Assessor's Map 43 as Parcel 216 (1.5 Ac) and Parcel 217 (7,500 sq. ft.)

Property known as Chadwick Conservation Area, shown on Assessor's Map 34 as Parcel 184 (3.8 Ac)

Property known as Fairfax Street Conservation Area, shown on Assessor's Map 28 as Parcel 224 (0.12 Ac)

Property known as Forest Field Conservation Area, shown on Assessor's Map 24 as Parcel 51 (4.2 Ac), Parcel 55 (3.7 Ac), Parcel 57 (4.1 Ac) and Parcel 30 (2.9 Ac)

Property known as Ipswich Conservation Area, shown on Assessor's Map 5 as Parcel 59 (3.3 Ac) and Parcel 59-9 (18,972 sq. ft.)

Property known as Litchfield Way Conservation Area, shown on Assessor's Map 31 as Parcel 119-7 (3.2 Ac)

Property known as Little Brook Conservation Area, shown on Assessor's Map 48 as Parcel 6-1 (7.6 Ac) and on Assessor's Map 49 as Parcel 84 (29.1 Ac)

Property known as Longmeadow Brook Conservation Area, shown on Assessor's Map 46 as Parcel 40-166-1 (2.0 Ac)

Property known as Lubber Brook Conservation Area, shown on Assessor's Map 2 as Parcel 13 (2.33 Ac) and Parcel 15 (3.1 Ac)

Property known as Marion Road Conservation Area, shown on Assessor's Map 21 as Parcel 235 (15.7 Ac)

Property known as Mill Pond Conservation Area, shown on Assessor's Map 18 as Parcel 98 (2.4 Ac), Parcel 97 (9.8 Ac), Assessor's Map 19 as Parcel 5 (18.0 Ac), Parcel 6 (14.1 Ac owned by NSTAR), Parcel 7 (55.7 Ac), Assessor's Map 24 as Parcel 85 (30.4 Ac), Parcel 100 (6.3 Ac), Parcel 101 (11,600 sq. ft.), Parcel 106 (34,400 sq. ft.), Parcel 107 (34,100 sq. ft.), Parcel 108 (33,900 sq. ft.), Parcel 109 (33,700 Ac), Parcel 110 (33,600 sq. ft.), Parcel 111 (20,200 sq. ft.), Parcel 119 (8.44 AC), Parcel 121 (8.4 Ac owned by NSTAR), Assessor's Map 25 as Parcel 38 (4.0 Ac), Parcel 96 (1.4 Ac), Parcel 97 (5.69 Ac), Parcel 88-1 (4.29 Ac), Parcel 149 (4.66 Ac) and Parcel 67 (20,001 sq. ft.)

Property known as Muller Road Conservation Area, shown on Assessor's Map 56 as Parcel 59-23-2 (1.1 Ac) and Assessor's Map 59 as Parcel 22-1 (2.2 Ac)

Property known as Pine Glen Conservation Area, shown on Assessor's Map 12 as Parcel 61 (5.8 Ac)

Property known as Rocky Pond Brook Conservation Area, shown on Assessor's Map 30 as Parcel 63 (1.1 Ac) and Parcel 64 (1.5 Ac) and on Assessor's Map 31 as Parcel 64 (1.4 Ac)

Property known as Sandy Brook Conservation Area, shown on Assessor's Map 28 as Parcel 108 (2.9 Ac), Parcel 109 (23,322 sq. ft.), Parcel 110 (20,365 sq. ft.), Parcel 111 (26,370 sq. ft.), Parcel 112 (22,400 sq. ft.), and on Assessor's Map 29, Parcel 48 (21,914 sq. ft.) and Parcel 49 (21,142 sq. ft.)

Property known as Saw Mill Conservation Area, shown on Assessor's Map 9 as Parcels 64 (7.0 Ac), 65 (10.8 Ac) and 66 (1.2 Ac), and on Assessor's Map 13 as Parcels 87 (2.7 Ac), 95 (3.4 Ac), 96 (3.8 Ac) and 97 (18,225 sq. ft.)

Property known as Vine Brook Conservation Area, shown on Assessor's Map 33 as Parcel 70-2 (7.48 Ac), Parcel 70-1 (12.1 Ac), and on Assessor's Map 34 as Parcel 3 (1.9 Ac), Parcel 24 (36.7 Ac), Parcel 7 (20,000 sq. ft.), Parcel 8 (21,800 sq. ft.), Parcel 9 (20,000 sq. ft.), Parcel 15 (10,500 sq. ft.) and Parcel 72 (31,560 sq. ft.)

Property known as Wildmere Conservation Area, shown on Assessor's Map 43 as Parcel 228 (26,658 sq. ft.)

Property known as the City of Boston land and/or the Cummings Estate, comprised of lands shown on Assessor's Map 54 as Parcels 16 (148.0 Ac), 13 (7.6 Ac) and 18 (4.4 Ac), or to act in any other manner in relation thereto.

MAIN MOTION: To Postpone Indefinitely

Recommendations: Planning Board hearing is still in process.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 17 RE: Acceptance of Section 8.5.1.1/Intent of Town Meeting

To see if Town Meeting will vote to amend 8.5.1.1 Intent of town Meeting. In adopting the 8.5.0 Town Center Overlay section of the Burlington Zoning Bylaw, it is the intent of the Burlington Town Meeting to allow within the Civic Center District (CC) and the Central Business District (CBD) reasonable flexibility of certain specified permitted uses and certain specified dimensional requirements detailed in this Section 8.5.0; but otherwise limited by the underlying zones which shall be controlling in the absence of a discretionary Site Plan or a discretionary Special Permit approved by the Planning Board pursuant to the required Criteria of Approval set forth in Section 8.5.10 of this Bylaw. The Burlington Town Meeting considers the specific exceptions to the underlying zoning detailed in this Section 8.5.0 to be carefully balanced with respect to: the purposes and objectives set forth in Section 8.5.1; the Design Requirements addressed in Section 8.5.8; and the required Design Review Regulations adopted by the Planning Board. Nothing contained in this Section 8.5.1.1 is intended to alter in any way the applicability of Section 10.2.0; or the authority of Section 9.5.0 of this Bylaw as it applies to the underlying zones within the Civic Center District (CC) and the Central Business District (CBD), or to act in any other manner in relation thereto.

MAIN MOTION: As printed in the Warrant

Recommendations: Planning Board voted 1-5 in opposition.

A motion to end debated was moved, seconded and so voted. There was a division of the house and tellers were appointed.

ACTION: BY A VOTE OF 40 IN FAVOR AND 25 OPPOSED, MAIN MOTION WAS DEFEATED.

Seven members stood for a roll call.

BY A ROLL CALL VOTE OF 43 IN FAVOR AND 25 OPPOSED, THE MAIN MOTION FAILED TO RECEIVE THE REQUIRED 2/3 VOTE.

ARTICLE 18 RE: Amend Wireless Communications Overlay District and/or Zoning Bylaw (off Ray Avenue)

To see if the Town will vote to amend the existing Zoning Map of the Town Burlington including the map entitled "Town of Burlington – Wireless Communications Overlay Districts" to add the property now or formerly of Boston Edison Company and Burlington Self Storage, Inc., off Ray Avenue, Right-of-Way #5, Assessor’s Map 54, Block 3, Lot 11 and establish the same as part of the Wireless Communications Overlay Districts, or to act in any other manner in relation thereto.

MAIN MOTION: To Postpone Indefinitely

Recommendations: Planning Board hearing is still in process.

ACTION: MAJORITY APPROVED MAIN MOTION

ARTICLE 19 RE: Amend Wireless Communications Overlay District (off Carol Avenue)

To see if the Town will vote to amend the existing Zoning Map of the Town Burlington including the map entitled "Town of Burlington – Wireless Communications Overlay Districts" to add the property now or formerly of Boston Edison Company, off Carol Avenue, Right-of-Way #5, Assessor’s Map 18, Lot 1, and establish the same as part of the Wireless Communications Overlay Districts, or to act in any other manner in relation thereto.

MAIN MOTION: To Postpone Indefinitely

Recommendations: Planning Board hearing is still in process.

ACTION: MAJORITY APPROVED MAIN MOTION

Resolution #1: P. Angelo, Pct. 5

That the Board of Selectmen enter into vigorous discussions with Lahey Clinic regarding the parking fee schedule, specifically a reduction in rates for the residents of the Town of Burlington, especially senior and handicapped citizens.

Resolution carried.

At 11:05 P.M., a motion to adjourn was moved, seconded and so voted.

Attest:
Jane L. Chew
Town Clerk