

**Stormwater Management,  
Sediment and Erosion Control Model Ordinances**

Sample Local Law for Stormwater Management and Erosion & Sediment Control (NYS DEC)

Erosion & Sediment Control with Riparian Protections (Town of Geneseo, NY)\*

\*As included in the *Protecting Water Resources through Local Controls and Practices: An Assessment Model for New York Municipalities* Guide, prepared by the Genesee Finger Lakes Regional Planning Council. Appropriate for a non-MS4 Community.

## Sample Local Law for Stormwater Management and Erosion & Sediment Control *(Revised 3/06)*

This model local law is intended to be a guidance tool for communities that are subject to the Municipal Separate Storm Sewer System (MS4) Phase II stormwater management requirements of the National Pollutant Discharge Elimination System (NPDES) regulations, administered by New York State through the State Pollutant Discharge Elimination System (SPDES) regulations. The goal of providing this model law is to assist communities in amending existing laws and ordinances and/or adopting new provisions of local law to meet the new federal and state guidelines for stormwater control. In designing a model stormwater law for a New York State audience, we include suggestions for standard language and concepts that we believe a good stormwater management program should contain. This local law should not be construed as an exhaustive listing of all the language needed for a local law, but represents a good base that communities can build upon and customize to be consistent with the local conditions and staff resources available in their municipality.

Throughout the local law, there are sections in which you must insert the name of your municipality and the agency that you have given regulatory power over stormwater management issues. These sections are denoted by **bold** text placed in brackets. By using this document and customizing these sections, you can create a viable local law with minimal editing. Municipalities should work with their municipal attorney throughout the process.

Italicized text with this symbol ➤ should be interpreted as comments, instructions, or information to assist the local law writer. This text *should not appear* in your final local law.

The contents of this local law are as follows:

Local Law title and enacting clause	2
Article 1 - General Provisions	2
Article 2 - Amendment to Zoning Law	4
Article 3 - Amendment to Subdivision Law	12
Article 4 - Amendment to Site Plan Review Law	13
Article 5 - Amendment to Erosion & Sediment Control Law	13
Article 6 - Administration and Enforcement	13
Schedule A - Stormwater Management Practices Acceptable for Water Quality	18
Schedule B - Sample Stormwater Control Facility Maintenance Agreement	19

## **Sample Local Law for Stormwater Management and Erosion & Sediment Control**

A local law to amend the (**Zoning Law/Subdivision Law/Site Plan Review Law/Erosion and Sediment Control Law**) of the ((**City/Town/Village**) of \_\_\_\_\_), Local law Number \_\_\_\_\_ of the Year \_\_\_\_\_.

*☞Article 1 and Article 2 must be adopted for proper implementation. The municipality and its legal counsel, after reviewing their local codes and this model language, should pick additional provisions from Articles 3, 4, 5 and 6 to ensure review and enforcement of stormwater pollution prevention plans at the local level.*

Be it enacted by the (**City Council/Town Board/Village Board of Trustees**) of the ((**City/Town/Village**) of \_\_\_\_\_) as follows:

### **Article 1. General Provisions**

#### **Section 1. Findings of Fact**

It is hereby determined that:

- 1.1 Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- 1.2 This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- 1.3 Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- 1.4 Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- 1.5 Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- 1.6 Substantial economic losses can result from these adverse impacts on the waters of the municipality;
- 1.7 Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- 1.8 The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety.
- 1.9 Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

#### **Section 2. Purpose**

The purpose of this local law is to establish minimum stormwater management requirements and controls to

protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in Section 1 hereof. This local law seeks to meet those purposes by achieving the following objectives:

- 2.1 Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02 or as amended or revised;
- 2.2 Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;
- 2.3 Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- 2.4 Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- 2.5 Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- 2.6 Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

*∩ The above list is a general set of objectives to reduce the impact of stormwater on receiving waters. Section 2.1 applies to regulated MS4s; a municipality not currently under this program may wish to leave this objective out, although the community may become regulated in the future. The advantage to adopting a local law for all municipalities is that the local government then has control over review and approval of Stormwater Pollution Prevention Plans (SWPPPs) during subdivision and site plan review. The local government may also wish to set some more specific objectives, based on priority water quality (refer to New York State 303 (d) list of priority waters at [www.dec.state.ny.us/website/dow/303dcalm.html](http://www.dec.state.ny.us/website/dow/303dcalm.html)) and habitat problems (e.g., to reduce phosphorus loads being delivered to recreational lakes, to sustain a Class TS trout fishery).*

### **Section 3. Statutory Authority**

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the **(City Council/Town Board/Village Board of Trustees of \_\_\_\_\_)** has the authority to enact local laws and amend local laws and for the purpose of promoting the health, safety or general welfare of the **((City/Town/Village) of \_\_\_\_\_)** and for the protection and enhancement of its physical environment. The **(City Council/Town Board/Village Board of Trustees of \_\_\_\_\_)** may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

### **Section 4. Applicability**

- 4.1 This local law shall be applicable to all land development activities as defined in this local law, Article 2, Section 1.
- 4.2 The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The

Stormwater Management Officer may (1) review the plans, (2) upon approval by the ((City Council/Town Board/Village Board of Trustees) of the (Town/Village/City) of \_\_\_\_\_), engage the services of a registered professional engineer to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board, or (3) accept the certification of a licensed professional that the plans conform to the requirements of this law.

- 4.3 All land development activities subject to review and approval by the (**applicable board of the (City/Town Village) of \_\_\_\_\_**) under (**subdivision, site plan, and/or special permit**) regulations shall be reviewed subject to the standards contained in this local law
- 4.4 All land development activities not subject to review as stated in section 4.3 shall be required to submit a Stormwater Pollution Prevention Plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this law.

## **Section 5. Exemptions**

The following activities may be exempt from review under this law.

☞ *The municipality may elect to include some or all of the exemptions in Section 5.*

- 5.1 Agricultural activity as defined in this local law.
- 5.2 Silvicultural activity except that landing areas and log haul roads are subject to this law.
- 5.3 Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- 5.4 Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- 5.5 Any part of a subdivision if a plat for the subdivision has been approved by the ((**City/Town/Village of \_\_\_\_\_**)) on or before the effective date of this law.
- 5.6 Land development activities for which a building permit has been approved on or before the effective date of this law.
- 5.7 Cemetery graves.
- 5.8 Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- 5.9 Emergency activity immediately necessary to protect life, property or natural resources.
- 5.10 Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for use by that person and his or her family.
- 5.11 Landscaping and horticultural activities in connection with an existing structure.

## **Article 2. Zoning Law Amendment: Stormwater Control**

☞ *Municipalities that do not have zoning should add the language in Article 2 to Article 3 (Subdivision Regulation Amendment) or Article 4 (Site Plan Review Law Amendment) as applicable for their municipality.*

The Zoning Law is hereby amended to include Article \_\_\_\_, a new supplemental regulation titled Stormwater Control.

## **Section 1. Definitions**

The terms used in this local law or in documents prepared or reviewed under this local law shall have the meaning as set forth in this section.

☞ *Definitions should be incorporated into the appropriate section of the municipality's zoning law which contains definitions.*

**Agricultural Activity** - the activity of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

**Applicant** - a property owner or agent of a property owner who has filed an application for a land development activity.

**Building** - any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

**Channel** - a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

**Clearing** - any activity that removes the vegetative surface cover.

**Dedication** - the deliberate appropriation of property by its owner for general public use.

**Department** - the New York State Department of Environmental Conservation

**Design Manual** - the *New York State Stormwater Management Design Manual*, most recent version including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

**Developer** - a person who undertakes land development activities.

**Erosion Control Manual** - the most recent version of the "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book".

**Grading** - excavation or fill of material, including the resulting conditions thereof.

**Impervious Cover** - those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

**Industrial Stormwater Permit** - a State Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

**Infiltration** - the process of percolating stormwater into the subsoil.

**Jurisdictional Wetland** - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

**Land Development Activity** - construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre (*see* ☞ *Note*), or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

☞ *A community should review the local site plan, subdivision, zoning and erosion & sediment control laws and ordinances to see if there are minimum land disturbance requirements already specified in those laws. To meet the SPDES guidelines under GP-02-02, the municipality must require SWPPPs for construction activities that result in land disturbance equal to or greater than one acre, or activities disturbing less than one acre if they are part of a larger common plan of development or sale or in a specified watershed. The municipality may wish to reduce this threshold to a lesser amount of disturbance to conform to local standards which may be stricter than the standards set forth in the state regulations. Many communities regulate land disturbance activities of more than 5000 square feet (1/8 acre), with an exemption if the amount of impervious cover created does not exceed 1000 square feet.*

**Landowner** - the legal or beneficial owner of land, including those holding the right to purchase or lease the

land, or any other person holding proprietary rights in the land.

**Maintenance Agreement** - a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

**Nonpoint Source Pollution** - pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

**Phasing** - clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

**Pollutant of Concern** - sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

**Project** - land development activity

**Recharge** - the replenishment of underground water reserves.

**Sediment Control** - measures that prevent eroded sediment from leaving the site.

**Sensitive Areas** - cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

**SPDES General Permit for Construction Activities GP-02-01** - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

**SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02** - A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards

**Stabilization** - the use of practices that prevent exposed soil from eroding.

**Stop Work Order** - an order issued which requires that all construction activity on a site be stopped.

**Stormwater** - rainwater, surface runoff, snowmelt and drainage

**Stormwater Hotspot** - a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

**Stormwater Management** - the use of structural or non-structural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

**Stormwater Management Facility** - one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

**Stormwater Management Officer** - an employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices

*⤴The Stormwater Management Officer would likely be the Code Enforcement Officer or his/her staff. A consultant cannot be appointed as Stormwater Management Officer. Plan reviews and site inspections may be delegated to a consultant paid for through the applicant's escrow account, however the final approval must be made by a municipal employee or board member.*

**Stormwater Management Practices (SMPs)** - measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**Stormwater Pollution Prevention Plan (SWPPP)** - a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

**Stormwater Runoff** - flow on the surface of the ground, resulting from precipitation

**Surface Waters of the State of New York** - lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

**Watercourse** - a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

**Waterway** - a channel that directs surface runoff to a watercourse or to the public storm drain.

## **Section 2. Stormwater Pollution Prevention Plans**

### **2.1. Stormwater Pollution Prevention Plan Requirement**

No application for approval of a land development activity shall be reviewed until the appropriate board has received a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the specifications in this local law.

### **2.2 Contents of Stormwater Pollution Prevention Plans**

2.2.1 All SWPPPs shall provide the following background information and erosion and sediment controls:

1. Background information about the scope of the project, including location, type and size of project.
2. Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);

*☞ Site map should be at a scale no smaller than 1"=100' (e.g. 1"=500' is smaller than 1"=100')*

3. Description of the soil(s) present at the site;
4. Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved SWPPP.

*☞ A municipality may choose to reduce the amount of land that may be exposed at any one time.*

5. Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in

stormwater runoff;

6. Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill-prevention and response;
7. Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
8. A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
9. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
10. Temporary practices that will be converted to permanent control measures;
11. Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
12. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
13. Name(s) of the receiving water(s);
14. Delineation of SWPPP implementation responsibilities for each part of the site;
15. Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
16. Any existing data that describes the stormwater runoff at the site.

2.2.2 Land development activities as defined in Section 1 of this Article and meeting Condition “A”, “B” or “C” below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Section 2.2.3 below as applicable :

Condition A - Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department’s 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

Condition B - Stormwater runoff from land development activities disturbing five (5) or more acres.

Condition C - Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.

2.2.3 SWPPP Requirements for Condition A, B and C:

1. All information in Section 2.2 .1 of this local law
2. Description of each post-construction stormwater management practice;
3. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
4. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms
5. Comparison of post-development stormwater runoff conditions with pre-development conditions

6. Dimensions, material specifications and installation details for each post-construction stormwater management practice;
7. Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
8. Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.
9. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Article 2, Section 4 of this local law.
10. For Condition A, the SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.<sup>1</sup>

### **2.3 Other Environmental Permits**

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

### **2.4 Contractor Certification**

- 2.4.1 Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity : “I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”
- 2.4.2 The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- 2.4.3 The certification statement(s) shall become part of the SWPPP for the land development activity.

**2.5** A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

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<sup>1</sup>Revised 3/06 - formerly Section 2.3. This section was moved under Section 2.2.3 to more closely meet the New York State requirements for Condition A in Section 2.2.2. The NY SPDES General Permit for Stormwater Runoff from Construction Activities (GP-02-01) requires that SWPPPs be prepared by a licensed professional for land development activities discharging a pollutant of concern to an impaired water identified on the Department’s 303(d) list of impaired waters or to a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

### **Section 3. Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control**

All land development activities shall be subject to the following performance and design criteria:

#### **3.1 Technical Standards**

For the purpose of this local law, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this law:

- 3.1.1 The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual)
- 3.1.2 New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual).

*↻ The New York State technical guidance documents may be ordered from The Department. An order form as well as downloadable versions of the Manuals are available on the Internet at;*

<http://www.dec.state.ny.us/website/dow/toolbox/escstandards/index.html>

<http://www.dec.state.ny.us/website/dow/toolbox/swmanual/>

#### **3.2 Equivalence to Technical Standards<sup>2</sup>**

Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Article 2, Section 3.1 and the SWPPP shall be prepared by a licensed professional.

#### **3.3 Water Quality Standards**

Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the state of New York.

### **Section 4. Maintenance, Inspection and Repair of Stormwater Facilities<sup>3</sup>**

#### **4.1 Maintenance and Inspection During Construction<sup>4</sup>**

- 4.1.1 The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this local law. Sediment shall be removed from sediment

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<sup>2</sup>Added 3/06 to ensure that the local law addresses the New York State requirement for applicants to demonstrate through preparation by a licensed professional that stormwater management practices that are not prepared in accordance with NYSDEC technical standards will work in the field to prevent soil erosion and maintain water quality.

<sup>3</sup> Revised 3/06 to add the word "Inspection" to the title to more closely reflect the content of the section.

<sup>4</sup> Revised 3/06 to add the word "Inspection" to the title to more closely reflect the content of the section.

traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent.

4.1.2 For land development activities as defined in Section 1 of this Article and meeting Condition A, B or C in Section 2.2.2, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. Inspection reports shall be maintained in a site log book.<sup>5</sup>

4.1.3 *The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.*<sup>6</sup>

☞ *4.1.3 is an optional clause for municipalities that are interested in requiring more oversight by the developer during construction activities.*

## **4.2 Maintenance Easement(s)**

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the **((City/Town/Village) of \_\_\_\_\_)** to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the **((City/Town/Village) of \_\_\_\_\_)**.

## **4.3 Maintenance after Construction**

The owner or operator of permanent stormwater management practices installed in accordance with this law shall ensure they are operated and maintained<sup>7</sup> to achieve the goals of this law. Proper operation and maintenance also includes as a minimum, the following:

4.3.1 A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.

4.3.2 Written procedures for operation and maintenance and training new maintenance personnel.

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<sup>5</sup> Revised 3/06. This clause was rewritten to more closely meet the New York State requirements for Conditions A, B and C in Section 2.2.2. The NY SPDES General Permit for Stormwater Runoff from Construction Activities (GP-02-01) requires that inspections be conducted every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more for all projects that are required to prepare full SWPPPs as stated in Conditions A, B and C, and to copy such reports to a site log book.

<sup>6</sup> Revised 3/06. Originally part of 4.1.2, this clause was relocated as a separate section to show that it is optional.

<sup>7</sup> Revised 3/06 to correct a grammatical error.

4.3.3 Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Article 2, section 3.3.

#### 4.4 Maintenance Agreements

The ((City/Town/Village) of \_\_\_\_\_) shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this local law entitled Sample Stormwater Control Facility Maintenance Agreement. The ((City/Town/Village) of \_\_\_\_\_), in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

### Section 5. Severability and Effective Date

#### 5.1 Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this local law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this local law.

#### 5.2 Effective Date

This Local Law shall be effective upon filing with the office of the Secretary of State.

Approved by: \_\_\_\_\_ Date \_\_\_\_\_

### Article 3. Subdivision Regulation Amendment

Sections \_\_\_ and \_\_\_ of the Subdivision Regulations of the ((City/Town/Village) of \_\_\_\_\_) are hereby amended by adding the following to the information requirements:

A. *For Preliminary Subdivision Plat add: Stormwater Pollution Prevention Plan:* A Stormwater Pollution Prevention Plan (SWPPP) consistent with the requirements of Article 1 and 2 of this local law shall be required for Preliminary Subdivision Plat approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved Preliminary Subdivision Plat shall be consistent with the provisions of this local law.

B. *For Final Subdivision Plat approval add: Stormwater Pollution Prevention Plan:* A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1 and 2 of this local law and with the terms of preliminary plan approval shall be required for Final Subdivision Plat approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved Final Subdivision Plat shall be consistent with the provisions of this local law.

☞ *If the municipality has only one requirement for a final plan (no preliminary) then use Paragraph A language only.*

## **Article 4. Site Plan Review Regulation Amendment**

Sections \_\_\_ and \_\_\_ of the Site Plan Review regulations of the ((City/Town/Village) of \_\_\_\_\_) are hereby amended by adding the following to the information requirements:

*For Site Plan Approval add: Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1 and 2 of this local law shall be required for Site Plan Approval. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved Site Plan shall be consistent with the provisions of this local law.*

## **Article 5. Erosion & Sediment Control Law Repeal or Amendment<sup>8</sup>**

### **Repeal:**

The Erosion & Sediment Control Law of the ((City/Town/Village) of \_\_\_\_\_) is hereby repealed.

*☞ By adopting Articles 1 and 2 (and 3, 4 and 6 where necessary) of the Model Local Law for Stormwater Management and Erosion & Sediment Control, the municipality will have regulatory authority for both erosion & sediment control and post-construction stormwater management so a separate erosion & sediment control law is not needed.*

**OR**

### **Amendment:**

Section \_\_\_\_\_ of the Erosion & Sediment Control Law of the ((City/Town/Village) of \_\_\_\_\_) is hereby amended by adding the following clause: Stormwater Pollution Prevention Plan: A Stormwater Pollution Prevention Plan consistent with the requirements of Article 1 and 2 of this local law shall be required. The SWPPP shall meet the performance and design criteria and standards in Article 2 of this local law. The approved erosion control permit shall be consistent with the provisions of this local law.

*☞ The municipality must also adopt Articles 1, 2, 3 and 4 (as applicable for their municipality) in order to address post-construction stormwater runoff control in stormwater pollution prevention plans.*

## **Article 6. Administration and Enforcement**

*☞The following provisions for construction inspection, performance guarantees and bonds, and enforcement are important to include in a stormwater control program, but may already exist in local law. Therefore the municipality and its counsel should review their existing provisions for these activities, compare them with the following provisions, and consider whether revisions or amendments are necessary to achieve the purposes of this local law.*

### **Section 1. Construction Inspection**

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<sup>8</sup> Revised 3/06 to clarify that adoption of this Sample Local Law provides all the required language for local regulation of erosion & sediment control, therefore repeal of an existing erosion & sediment control law and replacement with the Sample Local Law may be the best option for many municipalities.

## **1.1 Erosion and Sediment Control Inspection**

The ((City/Town/Village) of \_\_\_\_\_ ) Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the ((City/Town/Village) of \_\_\_\_\_) enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:

- 1.1.1 Start of construction
- 1.1.2 Installation of sediment and erosion control measures
- 1.1.3 Completion of site clearing
- 1.1.4 Completion of rough grading
- 1.1.5 Completion of final grading
- 1.1.6 Close of the construction season
- 1.1.7 Completion of final landscaping
- 1.1.8 Successful establishment of landscaping in public areas.

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

## **1.2 Stormwater Management Practice Inspections**

The ((City/Town/Village) of \_\_\_\_\_) Stormwater Management Officer, is responsible for conducting inspections of stormwater management practices (SMPs). All applicants are required to submit “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.

## **1.3 Inspection of Stormwater Facilities After Project Completion**

Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

*Inspections may be performed by local government staff or the local government may designate an inspector required to have a Professional Engineer’s (PE) license or Certified Professional in Erosion and Sediment Control (CPESC) certificate, as long as the designated inspector is required to submit a report.*

#### **1.4 Submission of Reports**

The ((City/Town/Village) of \_\_\_\_\_) Stormwater Management Officer may require monitoring and reporting from entities subject to this law as are necessary to determine compliance with this law.

#### **1.5 Right-of-Entry for Inspection**

When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the ((City/Town/Village) of \_\_\_\_\_) the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in paragraph 1.3.

### **Section 2. Performance Guarantee**

#### **2.1 Construction Completion Guarantee**

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the ((City/Town/Village) of \_\_\_\_\_) in its approval of the Stormwater Pollution Prevention Plan, the ((City/Town/Village) of \_\_\_\_\_) may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the ((City/Town/Village) of \_\_\_\_\_) as the beneficiary. The security shall be in an amount to be determined by the ((City/Town/Village) of \_\_\_\_\_) based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the ((City/Town/Village) of \_\_\_\_\_), provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the ((City/Town/Village) of \_\_\_\_\_). Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

#### **2.2 Maintenance Guarantee**

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the ((City/Town/Village) of \_\_\_\_\_) with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the ((City/Town/Village) of \_\_\_\_\_) may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

#### **2.3 Recordkeeping**

The ((City/Town/Village) of \_\_\_\_\_) may require entities subject to this law to maintain records demonstrating compliance with this law.

### **Section 3. Enforcement and Penalties**

### **3.1 Notice of Violation.**

When the ((City/Town/Village) of \_\_\_\_\_) determines that a land development activity is not being carried out in accordance with the requirements of this local law, it may issue a written notice of violation to the landowner. The notice of violation shall contain :

- 3.1.1 the name and address of the landowner, developer or applicant;
- 3.1.2 the address when available or a description of the building, structure or land upon which the violation is occurring;
- 3.1.3 a statement specifying the nature of the violation;
- 3.1.4 a description of the remedial measures necessary to bring the land development activity into compliance with this local law and a time schedule for the completion of such remedial action;
- 3.1.5 a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- 3.1.6 a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

### **3.2 Stop Work Orders**

The ((City/Town/Village) of \_\_\_\_\_ ) may issue a stop work order for violations of this law. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the ((City/Town/Village) of \_\_\_\_\_ ) confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this local law.

### **3.3 Violations**

Any land development activity that is commenced or is conducted contrary to this local law, may be restrained by injunction or otherwise abated in a manner provided by law.

### **3.4 Penalties**

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law shall be guilty of a violation punishable by a fine not exceeding three hundred fifty dollars (\$350) or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars nor more than seven hundred dollars (\$700) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars nor more than one thousand dollars (\$1000) or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

### **3.5 Withholding of Certificate of Occupancy**

If any building or land development activity is installed or conducted in violation of this local law the Stormwater Management Officer may prevent the occupancy of said building or land.

### **3.6 Restoration of lands**

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the ((City/Town/Village) of \_\_\_\_\_) may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

## **Section 4. Fees for Services**

The ((City/Town/Village) of \_\_\_\_\_) may require any person undertaking land development activities regulated by this law to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the ((City/Town/Village) of \_\_\_\_\_) or performed by a third party for the ((City/Town/Village) of \_\_\_\_\_).

## Schedule A

<b>Stormwater Management Practices Acceptable for Water Quality</b> <i>(From: New York State Stormwater Management Design Manual, Table 5.1)</i>		
<b>Group</b>	<b>Practice</b>	<b>Description</b>
<b>Pond</b>	Micropool Extended Detention Pond (P-1)	Pond that treats the majority of the water quality volume through extended detention, and incorporates a micropool at the outlet of the pond to prevent sediment resuspension.
	Wet Pond (P-2)	Pond that provides storage for the entire water quality volume in the permanent pool.
	Wet Extended Detention Pond (P-3)	Pond that treats a portion of the water quality volume by detaining storm flows above a permanent pool for a specified minimum detention time.
	Multiple Pond System (P-4)	A group of ponds that collectively treat the water quality volume.
	Pocket Pond (P-5)	A stormwater wetland design adapted for the treatment of runoff from small drainage areas that has little or no baseflow available to maintain water elevations and relies on groundwater to maintain a permanent pool.
<b>Wetland</b>	Shallow Wetland (W-1)	A wetland that provides water quality treatment entirely in a shallow marsh.
	Extended Detention Wetland (W-2)	A wetland system that provides some fraction of the water quality volume by detaining storm flows above the marsh surface.
	Pond/Wetland System (W-3)	A wetland system that provides a portion of the water quality volume in the permanent pool of a wet pond that precedes the marsh for a specified minimum detention time.
	Pocket Wetland (W-4)	A shallow wetland design adapted for the treatment of runoff from small drainage areas that has variable water levels and relies on groundwater for its permanent pool.
<b>Infiltration</b>	Infiltration Trench (I-1)	An infiltration practice that stores the water quality volume in the void spaces of a gravel trench before it is infiltrated into the ground.
	Infiltration Basin (I-2)	An infiltration practice that stores the water quality volume in a shallow depression before it is infiltrated into the ground.
	Dry Well (I-3)	An infiltration practice similar in design to the infiltration trench, and best suited for treatment of rooftop runoff.
<b>Filtering Practices</b>	Surface Sand Filter (F-1)	A filtering practice that treats stormwater by settling out larger particles in a sediment chamber, and then filtering stormwater through a sand matrix.
	Underground Sand Filter (F-2)	A filtering practice that treats stormwater as it flows through underground settling and filtering chambers.
	Perimeter Sand Filter (F-3)	A filter that incorporates a sediment chamber and filter bed as parallel vaults adjacent to a parking lot.
	Organic Filter (F-4)	A filtering practice that uses an organic medium such as compost in the filter in place of sand.
	Bioretention (F-5)	A shallow depression that treats stormwater as it flows through a soil matrix, and is returned to the storm drain system.
<b>Open Channels</b>	Dry Swale (O-1)	An open drainage channel or depression explicitly designed to detain and promote the filtration of stormwater runoff into the soil media.
	Wet Swale (O-2)	An open drainage channel or depression designed to retain water or intercept groundwater for water quality treatment.

## Schedule B

### SAMPLE STORMWATER CONTROL FACILITY MAINTENANCE AGREEMENT

Whereas, the Municipality of \_\_\_\_\_ ("Municipality") and the \_\_\_\_\_ ("facility owner") want to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the below named project, and

Whereas, the Municipality and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Municipality and the facility owner agree as follows:

1. This agreement binds the Municipality and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, not less than once in every five year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Municipality within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Municipality.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Municipality or in accordance with the recommendations of the inspecting engineer.
7. The facility owner shall provide to the Municipality within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of ( a Bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the County Clerk, County of \_\_\_\_\_ together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to \_\_\_\_\_.
9. If ever the Municipality determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective \_\_\_\_\_ .

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*From: Lake George Park Commission Model Stormwater Management Ordinance, Schedule E*

## Sediment and Erosion Control Law With Riparian Protection

History: Adopted by the Town Board of the Town of Geneseo 4-11-2002 by L.L. No. 2-2002.  
Proposed revisions noted in *italics*.

### 54-1

This chapter shall be known as the “Erosion and Sediment Control Law of the Town of Geneseo.”

### 54-2. Findings of fact.

The town board of the town of Geneseo finds that uncontrolled drainage and runoff associated with land development has a significant impact upon the health, safety and welfare of the community by potentially causing substantial recreational, aesthetic, environmental and economic losses resulting from adverse impacts on community waters specifically:

- A. Construction requiring land clearing and the alteration of natural topography tends to increase erosion;
- B. Storm water runoff can carry pollutants into receiving water bodies, degrading water quality;
- C. Improper design and construction of erosion control devices can increase the velocity of runoff thereby increasing stream bank erosion and sedimentation;
- D. Improper design and construction of erosion control devices can increase the velocity of runoff thereby increasing stream bank erosion and sedimentation;
- E. Siltation of water bodies resulting from increased water, interferes with navigation , and harms flora and fauna;
- F. Development as defined in this chapter and activities associated with development, as well as land grading and earth moving can have a significant and potentially adverse impact on the environment.
- G. *Riparian areas require protection to stabilize banks, limit erosion, reduce flood size flows and filter and settle out runoff pollutants.*

### 54-3. Purpose

The Purpose of this local regulation is to safeguard persons, protect property, prevent damage to the environment of the Town of Geneseo, including the Village of Geneseo and Conesus Lake, as well as all bodies of water or watercourses in the Town of Geneseo, and promote the public welfare by guiding and regulating the design, construction, and maintenance of any development or other activity which disturbs or breaks the topsoil or results in the movement of earth on land in the Town of Geneseo.

### 54- 4. Statutory authority

In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the Town Board has the authority to enact local laws for the purpose of promoting the health, safety or general welfare of the Town.

#### **54-5. Conformance required.**

All site preparation, construction and development activities as defined hereinafter occurring in the Town of Geneseo shall be in conformance with the provisions set forth herein.

#### **54-6. Word Usage.**

A. Unless specifically defined below, words or phrases shall be interpreted so as to give them the meanings they have in common usage and to give this chapter its most effective application. Words used in the singular shall include the plural and the plural and the singular; words used in the present tense shall include the future tense. The word “shall” connotes mandatory and not discretionary; the word “may” is permissive.

B. As used in this chapter, the following terms shall have the meanings indicated:

**AGRICULTURAL OPERATIONS (AS DEFINED IN ARTICLE 25AA OF THE NYS AGRICULTURE AND MARKETS LAW)** – Land and on-farm buildings, equipment and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise.

**CERTIFICATE OF COMPLIANCE** ---- A written certificate that is issued to the applicant by the Code Enforcement Officer after all final grading and seeding is completed and all permanent erosion control measures are established as specified in the erosion control permit and the satisfaction of the Code Enforcement Officer.

**CERTIFIED PROFESSIONAL** ---- A licensed architect, a licensed engineer, a licensed landscape architect, or an International Erosion Control Association (IECA) certified professional in erosion and sediment control.

**DEVELOP** ---- Any physical alteration of a site or area, including, but not limited to, providing access to a site, clearing of vegetation, grading, earth moving, providing utilities and other services such as parking facilities, stormwater management and erosion control systems, and sewage disposal systems, altering landforms, or construction of a structure on the land.

**EROSION** ---- The removal of soil particles by the action of the water, wind, ice or other geological agents.

**EROSION CONTROL PLAN** ---- A document prepared by a certified professional that identifies predevelopment and post development conditions on a site and outlines the erosion control measures that will be used on a site. This document is required for projects exposing more than 10,000 square feet of soil.

**FLOOD PLAIN** ---- For a given flood event, that area of land temporarily covered by water which adjoins a watercourse.

**GARDEN** ---- A plot of ground where herbs, fruits, flowers, or vegetables are cultivated, excluding agricultural operations as defined herein.

**GABION** ---- A galvanized wire basket filled with stone used for structural purposes. When they are fastened together, they are used as retaining walls, slope protection and similar structures.

**GRADING** ---- Excavation or fill of material, including the resulting conditions thereof.

**NATURAL DRAINAGE CHANNEL** ---- A swale, watercourse in a gully, or an unprotected stream.

**PERFORMANCE STANDARDS** ---- The set of standards outlining the erosion control requirements for construction and soil disturbing activities.

**PERIMETER CONTROL** ---- A barrier that prevents sediment from leaving a site either by filtering sediment laden runoff, or diverting it to a sediment trap or basin.

**PHASING** ---- Clearing a parcel of land in distinct phases, with the stabilization of each phase occurring before the clearing of the next.

*RIPARIAN AREA* ---- Areas that extend beyond stream banks and are at least periodically influenced by flooding. When managed properly riparian areas help to stabilize banks, limit erosion, reduce flood size flows and filter and settle out runoff pollutants.

*RIPARIAN SETBACK* ---- Distance lines set back from each bank of a stream to protect the riparian area and stream from impacts of development, and streamside residents from the impacts of flooding and land loss from erosion.

**RIPRAP** ---- A combination of large stone, cobbles and boulders used to line channels, stabilize stream banks, and reduce run off velocities.

**STABILIZATION** ---- The use of practices that prevent exposed soil from eroding.

**START OF CONSTRUCTION** ---- The first land disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets, driveways, parking areas and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

**STEEP SLOPE** ---- Grade change of 15% or more.

**STOP-WORK ORDER** ---- A written order issued by the Code Enforcement Officer to cease and desist all activity and development on a site until such time as the violation is corrected.

**STREAM** ---- *A surface watercourse with a well-defined bed and bank either natural or artificial which confines and conducts continuous or periodic flowing water in such a way that terrestrial vegetation cannot establish roots within the channel.*

**STREAM CORRIDOR** ---- The landscape features on both sides of a stream, including soils, slope and vegetation, whose alteration can directly impact the stream's physical characteristics and biological properties.

**SWALE** ---- A natural or man-made depression or wide shallow ditch used to temporarily route or filter runoff.

**UTILITIES** ---- Public and private services, including but not limited to, public water and sewer connection, private wells and septic systems, and telephone, natural gas, electric, and cable television services.

**WATERSHED** ---- A region or area bounded by a greater elevation and draining ultimately to a particular body of water.

#### **54-7. Applicability of provisions.**

- A. This chapter shall apply to all development, as defined herein, which involves the uncovering, exposure or disturbance of 500 or more square feet of soil. Excepted herefrom are agricultural operations, whether or not within an agricultural district, as defined in Article 25AA of the New York State Agriculture and Market Laws, and private gardens.
- B. No person, corporation, entity, organization, or public agency shall initiate any development activities, land clearing, land grading, or earthmoving activities (hereinafter also collectively referred to as "land disturbance activity") unless in conformity with the regulations of this chapter.
- C. No person, agency, corporation or other entity shall commence any development or land disturbing activities without obtaining an erosion control permit issued by the Town Enforcement Officer.
- D. No person shall be granted an erosion control permit for land disturbing activity that would require the disturbance or uncovering of 10,000 or more square feet without the approval of an erosion control plan by the Town Planning board.
- E. *No person shall develop land within any riparian area using riparian setbacks as defined below:*
  - (1) *300 feet on each side of all streams draining an area greater than 300 sq. mi.*
  - (2) *100 feet on each side of all streams draining an area greater than 20 sq miles up to 300 sq. mi.*
  - (3) *75 feet on each side of all streams draining an area greater than 0.5 sq mi (320 Acres) up to 20 sq mi.*
  - (4) *50 feet on each side of all streams draining an area greater than 0.05 sq mi.(32 acres) up to 0.5 sq mi (320 Acres).*

- (5) 30 feet on each side of all streams draining an area less than 0.05 sq mi. (32 acres)
- (6) If the 100-year floodplain is wider than the designated setback, the setback width will increase to meet the 100-year floodplain.

F. Exemptions. The following activities are exempt from the erosion control plan requirement but must comply with the performance standards listed in \* 54-11 and have the applicable erosion control measures approved by the Code Enforcement Officer:

- (1) Development or land disturbing activities involving at least 500 square feet of soil, but less than 10,000 square feet of soil;
- (2) Development of one single family residential structure or one dupe unit and accessory structures and utilities thereto;
- (3) The installation of a lawn for one single-family residential structure; and
- (4) The installation of a driveway for one single-family residential structure.
- (5) The installation of all septic systems which are subject to the review, inspection and/or approval of the Livingston County Department of Health. [**Amended 8-8-2002 by L.L. No. 4-2002**]

**54-8. Erosion control permit; inspections; certificate of compliance; certificate of occupancy.**

A. Erosion control permit.

- (1) An applicant shall submit an erosion control permit application to the Code Enforcement Officer, who shall inform the applicant within seven days if the application is incomplete.
- (2) The Code Enforcement Officer shall refer all complete erosion control permit applications for lands within the Conesus Lake Watershed District to the Conesus Lake Watershed Inspector within seven days of receipt for review and comment.
  - (a) The Watershed Inspector shall have 14 days to comment on the application and return those comments to the Code Enforcement Officer; and
  - (b) The Code Enforcement Officer shall consider comments from the Watershed Inspector if the comments are received within this period of time.
- (3) If an erosion control plan is not required, the Code Enforcement Officer shall review the application to determine whether the proposed erosion control measures comply with the performance standards outlined in \* 54-11 of this chapter and approve or deny the erosion control permit based on that review. A preconstruction meeting with the Code Enforcement Officer, the Conesus Lake Watershed Inspector, and the applicant may be required prior to the issuance of an erosion control permit.
- (4) If an erosion control plan is not required, an erosion control permit must be approved or denied within 60 days of receipt of a complete erosion control application by the Code Enforcement Officer.
- (5) Issuance of an erosion control permit does not authorize development of the site unless and until all other applicable permits or approvals, including a building permit are issued pursuant to federal, state and local law.

- B. Inspections. The applicant shall arrange with the Code Enforcement Officer for scheduling inspections of the site. The Code Enforcement Officer shall inspect the work and either approve it or notify the applicant in writing of any failure to comply with the requirements of the approved erosion control plan and/ or erosion control permit. The Code Enforcement Officer and the Watershed Inspector may conduct inspection at reasonable times to ensure effective control of erosion and sedimentation during all phases of construction. The Code Enforcement Officer may have the Town Engineer consulted for an inspection, the applicant shall be responsible for the cost of such consultation, pursuant to Article VI of Chapter 106 of the Code of the Town of Geneseo.
- C. A certificate of compliance shall be issued by the Code Enforcement Officer after all final grading and seeding are completed and all permanent erosion control measures are established as specified in the erosion control permit and to the satisfaction of the Code Enforcement Officer.
- D. A Permanent certificate of occupancy shall not be issued until a certificate of compliance is issued for the satisfactory installation and/ or completion of erosion control measures.

#### **54-9. Contents of erosion control plan.**

- A. Erosion control plans shall be prepared by a certified professional. Plans must contain the information set forth in this section to enable the Town Planning Board to determine whether the plan will prevent the development from adversely affecting the water quality of the surface water due to erosion. In making this determination, plans shall be evaluated pursuant to the performance standards in \* 54-11 hereof, and must therefore contain sufficient information to permit such evaluation.
- B. The erosion control plan shall contain the name, address, and telephone number of the owner, contractor, and developer. In addition, the legal description of the property shall be provided, and its location with reference to such landmarks as major water bodies, adjoining roads, railroads, subdivisions, or towns shall be clearly identified on a map.
- C. The structure and content of the erosion control plan shall be as follows:
  - (1) Background information.
    - (a) Project description which shall include, but not be limited to, a sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings, and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of clearing, installation of temporary erosion and sediment measures, and establishment of permanent vegetation.
    - (b) Existing (predevelopment) conditions, including but not limited to, an identification of soils, slopes, and existing vegetative cover and drainage conditions.
    - (c) Proposed future (development) conditions, including, but not limited to, an identification of drainage conditions and changes in vegetative cover anticipated to result from the proposed activity.
  - (2) Erosion and sediment control.

- (a) Identification of temporary erosion and sediment control measures, including, but not limited to, seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, and type and quantity of mulching for both temporary and permanent vegetative control measures.
  - (b) Identification of permanent erosion and sediment control measures.
- (3) Implementation schedule and maintenance, including, but not limited to, easements and estimates of the cost of maintenance.

#### **54-10. Erosion control plan review process**

- A. The applicant shall submit a complete erosion control plan to the Code Enforcement Officer.
- B. The Code Enforcement Officer shall inform the applicant in writing within 14 days if the erosion control plan is incomplete. The erosion control plan shall automatically be deemed complete if the Code Enforcement Officer does not inform the applicant within 14 days.
- C. When the erosion control plan is determined to be complete, the Code enforcement officer shall then schedule it for review at the next available Town Planning Board meeting, to be held not later than 31 days after the erosion control plan is determined to be complete.
- D. All erosion control plans for development in the Conesus Lake Watershed must be referred to the Conesus Lake Watershed Inspector for review and comment within five days of Code Enforcement Officer receipt of the plan. Comments received from the Conesus Lake Watershed Inspector prior to the Town Planning Board meeting will be considered by the Code Enforcement Officer and the Town Planning Board.
- E. The applicant shall receive written notice of the time and place of the Town Planning Board meeting where the erosion control plan will be reviewed no less than five days prior to the Town Planning Board meeting.
- F. An erosion control plan shall also be reviewed by the Town Engineer or any other certified professional retained by the Town. The Engineer or certified professional may then recommend approval or disapproval of the plan to the Town Planning Board prior to the scheduled Planning Board meeting where the plan will be discussed. A recommendation for approval or disapproval of the plan must be based on conformance to the performance standards listed in 55-11.
- G. The Town Planning Board shall have the authority to impose reasonable condition to ensure that the objectives of this chapter are met.
- H. The Town Planning Board shall approve or disapprove the erosion control plan. Approval or disapproval of the plan must be based on conformance to the performance standards listed in 54-11, so as to protect the water quality of Conesus Lake, and should clearly identify why it does not, in the instance of a disapproval, conform to the performance standards.
- I. The Town Planning Board shall report the decision to the Code Enforcement Officer and the applicant within 10 days of approval or disapproval for the plan.

- J. If the erosion control plan is approved, the Code Enforcement Officer shall issue the applicant an erosion control permit within 10 days of receipt of the Town Planning Board decision.

#### **54-11. Performance Standards**

The following performance standards must be applied to all land disturbing activities described in this chapter, including those exempted under 54-5 hereof, as well as those for which a permit is required hereunder:

- A. Existing vegetation on a project sites shall be retained and protected as much as possible to minimize soil loss from the project site.
- B. Sediment control practices/measures shall be designed to protect the natural character of water bodies on-site as well as off-site. The practices must be in place before the start of land disturbance activities until the establishment of permanent stabilization.
- (1) The off-site impacts of erosion and sedimentation from the development site shall not be any grater during and following land disturbance activities than under predevelopment conditions.
  - (2) Water in stream reaches on-site and downstream of construction areas shall not have substantial visible contrast relative to color, taste, odor, turbidity and sediment deposition from the water in reaches upstream of the construction area.
  - (3) Sediment laden runoff shall not be allowed to enter any water body and result in deposition on the bottom of the water body, degrade its natural biological function, or be deleterious to the classified usage of the water.
- C. All erosion and sediment control measures shall be constructed prior to beginning any land disturbance activities. All runoff from disturbed areas shall be directed to sediment control devices. These devices shall not be removed until the disturbed land areas are stabilized.
- D. Specific guidance.
- (1) Exposure restrictions. No more than 10 acres of unprotected soil shall be exposed at any one time. Previous earthwork shall be stabilized in accord with approved design standards and specifications referenced in Subsection D(8) before additional area is exposed.
  - (2) Grading. Perimeter grading shall blend with adjoining properties.
  - (3) Vegetative protection. Where protection of trees and/or other vegetation is required, the location shall be shown on the erosion control plan or on the drawings for the proposed development project. The method of protecting vegetation during the construction shall conform to the design specifications reference in Subsection D(8).
  - (4) Drainage control.
    - (a) Surface runoff that is relatively clean and sediment free shall be diverted or otherwise prevented from flowing through areas of construction activity on the project site. (This will greatly reduce sediment loading in surface runoff.)
    - (b) A fill associated with an approved temporary sediment control structure or permanent stormwater management structure shall not be created which

causes water to pond off-site on adjacent property, without first having obtained ownership or permanent easement for such use from the owner of the off-site or adjacent property.

- (c) Natural drainage channels shall not be altered. Pursuant to Article 15 of the Environmental Conservation Law, a protected stream and banks thereof shall not be altered or relocated without the approval of the Department of Environmental Conservation.
- (d) Runoff from any land disturbing activity shall not be discharged or have the potential to be discharged off-site or into storm drains or into water courses unless such discharge is directed through a properly designed, installed and maintained structure, such as a sediment trap, to retain sediment on-site. Accumulated sediment shall be removed when it takes up 60% of the storage capacity of the sediment retention structure. (See Subsection D98 below for design specifications.)
- (e) For finished grading, adequate gradients shall be provided so as to prevent water from standing on the surface of lawns for more than 24 hours after the end of a rainfall, except in a swale flow area which may drain as long as 48 hours after the end of rainfall.
- (f) Permanent swales or other point of concentrate water flow shall be stabilized. Biotechnical approaches using certain types of grasses, such as reed canary grass, are preferable to using sod, gabions and riprap where water quality enhancement is a high priority and the swale design allows. However, sod, gabions, or riprap may be used to stabilize swales where soils and gradient preclude the use of grasses. Use of grasses may require an erosion control matting as provided for in the design specification reference in Subsection D(8) below.
- (g) Surface lows over cut and fill slopes shall be controlled as provided for in the design specification for vegetating waterways reference in Subsection D(8).

#### (5) Timing

- (a) Except as noted below, all sites shall be seeded and mulched with erosion control materials, such as rye grass, straw mulch, jute, or excelsior (wood shavings), within 15 days of initial disturbance. Of construction has been suspended, or sections completed, areas shall be seeded immediately and stabilized with erosion control materials. Maintenance shall be performed as necessary to ensure continued stabilization.
- (b) For active construction areas, such as borrow or stockpile areas roadway improvements and areas within 50 feet of a building under construction, a perimeter sediment control system consisting, for example, of silt fencing or hay bales, shall be installed and maintained to contain soil.
- (c) On cut sides of roads, ditches shall be stabilized immediately with rock riprap or other non-erodible liners, where appropriate, vegetative measures such as sod. When seeding is approved, an anchor mulch shall be used and soil shall be limed and fertilized in accord with recommendations referenced in Subsection D(8).

- (d) Permanent seeding shall optimally be undertaken in the spring from April 1 through June 15, and in late summer from August 1 to October 15. During the peak summer months and in the fall after October 15 when seeding is found to be impracticable, an appropriate mulch shall be applied. Permanent seeding may be undertaken during summer if plans provide for adequate watering of the seedbed.
  - (e) All slopes steeper than 15%, as well as basin or tap embankments, and perimeter dikes shall, upon completion, be stabilized with sod, seed and anchored straw mulch, or other approved stabilization measures. Areas outside of the perimeter sediment control system shall not be disturbed. Maintenance shall be performed as necessary to ensure continued stabilization.
  - (f) Temporary sediment trapping devices shall be removed within 30 calendar days following establishment of permanent stabilization in all contributory drainage areas. Stormwater management structures used temporarily for sediment control shall be made permanent within this time period as well. Accumulated sediments removed from temporary sediment traps or permanent stormwater management facilities shall be disposed in a manner so as not to erode and enter a water body.
- (6) Stream corridor management. The bed and banks of all on-site and off-site streams which may be impacted by land clearing, grading, and construction activities shall be protected to prevent sedimentation, stream bank erosion, stream enlargement, or degradation or loss of fisheries habitat. Measures of protecting the bed and/or banks of a stream may include gabion baskets, riprap, log cribbing, or a vegetative measure. Whenever possible, vegetative stream bank stabilization practices, such as recommended over structural practices, such as riprap and gabion linings that may unnecessarily alter the existing stream ecosystem. Native species of vegetation shall be used for stream bank stabilization where practical. In undertaking stream bank stabilization activities for protected streams, the applicant shall comply with appropriate protection of water revisions in Article 15 of the Environmental Conservation Law of the State of New York.
- (7) Maintenance.
- (a) All points of construction ingress and egress shall be protected to prevent the deposition of materials onto traversed public thoroughfares either by installing and maintaining a stabilized construction entrance or by maintaining a vehicle wash area in a safe disposal area to wash vehicle shells and undercarriage. All materials deposited onto public thoroughfares shall be removed immediately. Proper precaution shall be taken to assure that the removal of materials deposited onto public thoroughfares will not enter catch basins, storm sewers or water bodies.
  - (b) Accumulated sediment shall be removed when 60% of the storage capacity of sediment retention structures is reached. All removed sediment shall be disposed of in a spoil area where it can be graded, mulched and seeded to prevent erosion and sedimentation.

- (8) Design specifications. The designs, standards and specifications for controlling erosion and sedimentation found in the most recent version of the following publication are acceptable for use and shall be identified and shown in the erosion control plan: New York Guidelines for Urban Erosion and Sediment Control, Urban Soil Erosion and Sediment Control Committee.

#### **54-12 Performance bond.**

- A. In order to ensure the full and faithful completion of all construction activities related to compliance with all conditions set forth by the Town Planning Board in its approval of the erosion control plan, the Town Planning Board may require the applicant and/or the applicant's contractor to provide, prior to construction, a performance bond, escrow account certification, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town Planning Board based on submission of final design plans, with reference to actual construction costs.
- B. Where erosion and sediment control facilities are to be operated and maintained by the applicant or by any person or entity that owns or manages a commercial or industrial facility, the applicant, prior to construction, may be required to provide the Town with a performance bond or an irrevocable letter of credit from an appropriate financial institution or noted surety to ensure proper operation and maintenance of all erosion control facilities for the life of the project.
- C. The performance bond or letter of credit shall remain in force until the surety is released from liability by the Town.
- D. Per annum interest on the performance bond or letter of credit shall be reinvested in the account until the surety is released from liability.
- E. If the developer or owner fails to properly operate and maintain erosion and sediment control facilities, the Town may draw upon the account or notify the surety to cover the costs of proper operation and maintenance.

#### **54-13 Enforcement.**

- A. Any development activity that is commenced without first being granted an erosion control permit, or which is conducted contrary to an approved erosion control plan, or contrary to the performance standards listed in \*54-11 hereof may be issued a notice of violation and restrained by a stop-work order issued by the Code Enforcement Officer.
- B. Service of a notice of violation shall be sufficient if directed to the owner, agent of the owner or contractor and left at his or her last known place of business or residence, if within the municipality; and if no place of business or residence can be found, then the notice shall be served by posting in a conspicuous place on the premises which is the subject of the violation.
- C. A stop-work order shall also be issued on the project if any of the following conditions are not met during development of the land:

- (1) There shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions;
  - (2) There shall be no suspended, colloidal and settleable solids that will cause deposition or impair waters in the area for their best usages; and
  - (3) There shall be no residue from oil and floating substances, visible oil film, globules, or grease (6 NYCRR, Part 703, Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations).
- D. Civil and criminal penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be punished by a fine of not less than \$200 per day nor more than \$1,000 per day or by imprisonment for a period not to exceed 60 days, or both such fine and imprisonment. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues.
- E. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

#### **54-14 Appeals**

Any person aggrieved by the action of any official charged with the enforcement of this chapter, as the result of the disapproval or approval of an erosion control permit or an alleged failure by the Code Enforcement Officer to properly enforce the chapter in regard to a specific application, shall have the right to appeal the action to the Town Zoning Board of Appeals. The appeal shall be filed in writing within 20 days of the date of official transmittal of the final decision or determination to the applicant, shall state clearly the grounds on which the appeal is based, and shall be processed in the manner prescribed for hearing administrative appeals under state/local code provisions.

#### **54-15 Variances.**

The Town Zoning Board of Appeals may grant a written variance from any requirement of this chapter using the following criteria:

- A. There are special circumstances applicable to the subject property or its intended use; and
- B. The granting of the variance shall not result in:
  - (1) An increase or decrease in the rate or volume of surface water runoff;
  - (2) An adverse impact on a wetland, watercourse or water body;
  - (3) Degradation of water quality; or
  - (4) Otherwise impair attainment of the objectives of this chapter.