

DRAFT FOR PUBLIC REVIEW 10/21/16**Sample Local Law for Stormwater Management and Erosion & Sediment Control with Additional Provisions for Community Resiliency****Benefits of Local Stormwater Management**

As communities develop their land, increases in impervious surfaces prevent stormwater from being absorbed into the ground. This can cause an increase in runoff rate and volume leading to local flooding, streambank erosion, property damage in large storm events, and water quality degradation from stormwater pollutants. Climate change impacts may exacerbate these negative impacts on communities and their natural resources.

Communities can utilize a number of local land use tools to address potential impacts from climate change. The comprehensive plan should provide the foundation for a community's land use controls by outlining the community's natural, cultural and economic resources and the agreed-upon goals for resource management, development, and community resiliency. Watershed management plans allow communities to integrate water resource protection and restoration with growth management at the local level, balancing environmental and economic factors. Zoning, site plan and subdivision laws should reflect the community's natural resources such as shorelines, stream corridors, wetlands and floodplains by incorporating mapping and performance standards in the development review process. Some communities may find that a local law to protect these natural resources, heightened floodplain development standards, or a coastal shoreline protection law is the best way to manage their water resources and potential impacts from development combined with climate change. The Department of State is developing a model local law publication that will address sea level rise, storm surges, and flooding and will include examples of relevant local laws.

A local stormwater law is another tool that communities can use in combination with the basic land use tools described above. A stormwater law provides regulations for new development and redevelopment that require control of stormwater to reduce its negative impacts and take advantage of the use of clean stormwater as a resource, recharging local groundwater supplies, lakes, ponds and wetlands. This model local law includes a review process requiring green infrastructure planning as a regular component of development approval. It also encourages the use of large and small-scale green infrastructure to manage stormwater, including stream buffers, floodplain protection and conservation of natural areas, rain gardens, vegetated swales, and green roofs.

Purpose of this Model Local Law

This model local law is intended to be a guidance tool for municipalities interested in adopting a local stormwater law that includes additional provisions to encourage site planning for green infrastructure, prevent flooding impacts, increase community resilience, and address the potential impacts of climate change. The model stormwater law includes both standard language and concepts that we believe a good stormwater management program should contain, as well as resiliency provisions identified with a footnote to explain the purpose and/or source of the added language.

Note for Municipal Separate Storm Sewer System (MS4) Communities: Alternate Model Available with Plug-in Sections for Impaired Waters and Phosphorus Removal Watersheds

MS4 communities may either use this model local law or "Sample Local Law for Stormwater Management and Erosion & Sediment Control with Plug-in Provisions for Impaired Waters and Enhanced Phosphorus Removal Watersheds," a separate document, as a basis for their model law. However, if a municipality that contains impaired waterbodies or enhanced phosphorus removal watersheds as identified by the New York State Department of Environmental Conservation uses this Model law with resiliency provisions as a basis, they should ALSO cut and paste the applicable water quality provisions from the "Sample Local Law for Stormwater Management and Erosion & Sediment Control with Plug-in Provisions for Impaired Waters and Enhanced Phosphorus Removal

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Watersheds,” to ensure compliance with permit requirements. Alternatively, a municipality that uses the “Sample Local Law for Stormwater Management and Erosion & Sediment Control with Plug-in Provisions for Impaired Waters and Enhanced Phosphorus Removal Watersheds” as a basis for their local law can add additional provisions from this model law for green infrastructure planning, preventing flood impacts, and community resilience as desired.

How to Use this Document

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

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DRAFT FOR PUBLIC REVIEW 10/21/16**Sample Local Law for Stormwater Management and Erosion & Sediment Control with Additional Provisions for Community Resiliency**

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

Note: 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, which may cause 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 and an increase in water temperature which are detrimental to 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 the adverse impacts of stormwater runoff 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 which is more 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;
- 1.10 Climate change and the increased risk of severe storms with the capacity to increase stormwater runoff and soil erosion pose a significant threat to a community's sustainability and the safety of its citizens through

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potential increases in pollution of its waterways and damage to infrastructure, economic assets, and natural resources;

- 1.11** Green infrastructure is an effective and desirable method to reduce impacts from stormwater runoff and should be implemented in order to restore natural hydrologic regimes, increase infiltration, slow runoff, and protect communities from the risks associated with stormwater runoff and soil erosion;
- 1.12** Stream buffers and vegetated floodplains treat stormwater, improve water quality, reduce floodwater velocity, and provide a right-of-way for flood events;¹ and
- 1.13** Fitting the development design to the terrain and avoiding steep slopes, floodplains, and wetlands helps to preserve the natural hydrology and drainage ways of a site; reduces the need for grading and land disturbance, and provides a framework for site design and layout.²

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** 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;
- 2.2** Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- 2.3** Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable;
- 2.4** Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure these management practices are properly maintained and eliminate threats to public safety;
- 2.5** Encourage the use of green infrastructure practices to control stormwater runoff such as protecting natural areas, reducing impervious cover, maintaining natural hydrology, and using runoff reduction techniques to the maximum extent practicable;³
- 2.6** Adapt to current and projected climate change impacts, decrease risk of storm-related flooding, and increase resilience to severe storm surge;⁴ and
- 2.7** Reduce the impact on the environment, protect water quality, reduce the potential for erosion and protect sensitive habitats by locating development away from floodplains, ecologically sensitive areas, and permeable soils, and limiting the amount of clearing and grading.⁵

Note: The above list is a general set of objectives to reduce the impact of stormwater on receiving waters. Sections 2.8 and 2.9 below should be added for regulated MS4s; a municipality not currently under this program may wish to leave these objectives 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.

- 2.8** Meet the requirements of minimum measures 4 and 5 of the most current version of the New York State

¹ Finding for increasing community resiliency and addressing climate change.

² Finding for increasing community resiliency and addressing climate change.

³ Added 11/1/10 to meet green infrastructure requirements in GP-0-10-002.

⁴ Purpose for increasing community resiliency and addressing climate change.

⁵ Purpose for increasing community resiliency and addressing climate change.

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Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s);⁶

- 2.9** Require land development activities to conform to the substantive requirements of the most current version of the SPDES General Permit for Stormwater Discharges from Construction Activities;⁷

Note: 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 <http://www.dec.ny.gov/chemical/31290.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 2, Section 10 of the Municipal Home Rule Law of the State of New York, the **(City Council/Town Board/Village Board of Trustees)** of the **((City/Town/Village) of _____)** has the authority to enact local laws and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government, 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 the **((City/Town/Village) 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, “Land Development Activity”.
- 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.

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

⁶ For the most current version see the New York State Department of Environmental Conservation’s MS4 Toolbox at: <http://www.dec.ny.gov/chemical/8695.html>

⁷ For the most current version see the New York State Department of Environmental Conservation’s Construction Stormwater Toolbox at: <http://www.dec.ny.gov/chemical/8694.html>

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- 5.1 Agricultural activity as defined in this local law.
- 5.2 Exempt silvicultural activity as defined in this local law.
- 5.3 Routine maintenance activities that disturb less than (insert #) acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

Note: The purpose of section 5.3 is to provide an exemption for roadway and utility maintenance activities. The municipality may choose an acreage limit to allow the exemption for based on local circumstances.

- 5.4 Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.

Note: The municipality should select a date that is approved by the municipal attorney.

- 5.5 Cemetery graves.
- 5.6 Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- 5.7 Emergency activity immediately necessary to protect life, property or natural resources.
- 5.8 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.
- 5.9 Landscaping and horticultural activities in connection with an existing structure.

Article 2. Erosion and Sediment Control and Stormwater Management

This can be used as part of a stand-alone stormwater law or to amend the Zoning Law.

If used in zoning – also include the following language:

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

Note: Municipalities that do not have zoning and are not using Article 2 in a stand-alone law 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.

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.

Note: 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, the construction of a barn or other agricultural building, silo, stockyard or pen, or structural practices identified in Table II in the Agricultural Management Practices Catalog for Nonpoint Source Pollution in New York State.

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.

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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.⁸

Erosion Control Manual - the most recent version of the “New York State Standards and Specifications for Erosion and Sediment Control” manual, commonly known as the “Blue Book”.⁹

Floodplain - Land area adjacent to a river, stream, lake, estuary, or other water body that is subject to flooding. This area, if left undisturbed, acts to store excess floodwater.

Floodplain, 100-year – The area adjoining a river, stream, or watercourse covered by water in the event of a 100-year flood. The 100-year flooding event is the flood having a 1 percent chance of being equaled or exceeded in magnitude in any given year.

Floodplain, 500-year - The area adjoining a river, stream, or watercourse covered by water in the event of a 500-year flood. The 500-year flooding event is the flood having a 0.2% percent chance of being equaled or exceeded in magnitude in any given year.

Floodway - The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

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

Green Infrastructure - Green infrastructure approaches infiltrate, evapotranspire or reuse stormwater, using soils and vegetation rather than hardscape collection, conveyance and storage structures. Common green infrastructure approaches include green roofs, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, vegetated median strips, reforestation, and protection and enhancement of riparian buffers and floodplains.¹⁰

Hydrologic Soil Group (HSG) – A Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups.¹¹

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.

Land Development Activity - construction activity including clearing, grading, excavating, regulated silvicultural activity¹², 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 are part of a larger common plan of

⁸ For the most recent version see the New York State Department of Environmental Conservation’s Construction Stormwater Toolbox at: <http://www.dec.ny.gov/chemical/8694.html>

⁹ For the most recent version see the New York State Department of Environmental Conservation’s Construction Stormwater Toolbox at: <http://www.dec.ny.gov/chemical/8694.html>

¹⁰ Added 11/1/10 to meet green infrastructure requirements in GP-0-10-002

¹¹ Added 11/6/15 to reflect requirements in GP-0-15-002.

¹² Added 4/27/16 to incorporate stronger protections for certain silvicultural activities that have more potential to cause soil erosion.

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development or sale, and will occur under one plan.¹³

[Alternate] Land Development Activity - construction activity including clearing, grading, excavating, regulated silvicultural activity, soil disturbance or placement of fill that results in land disturbance of equal to or greater than 5,000 square feet (*see Note*), and activities disturbing less than 5,000 square feet of total land area that are part of a larger common plan of development or sale, and will occur under one plan.¹⁴

Note: 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. For municipalities that must meet the SPDES guidelines under the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), most current version, 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 (equal to or greater than 5,000 square feet in the New York City Watershed East of the Hudson River). 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. Some communities regulate all land disturbance activities, 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.

Mean High Water Mark – the average annual high water level.¹⁵

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.

Ordinary High Water Mark - that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.¹⁶

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.

Qualified Inspector - a person that is knowledgeable in the principles and practices of erosion and sediment control, such as a licensed Professional Engineer, Certified Professional in Erosion and Sediment Control (CPESC), Registered Landscape Architect, or other Department endorsed individual. It can also mean someone working the direct supervision of, and at the same company as, the licensed Professional Engineer or Registered Landscape Architect, provided that person has received Department-endorsed training in the principles and practices of erosion and sediment control.¹⁷

Recharge - the replenishment of underground water reserves.

¹³ Revision 3/1/16 to meet NYSDEC requirements.

¹⁴ Alternate definition that could be used by communities interested in regulating a smaller minimum area to increase community resiliency and address climate change.

¹⁵ Definition from Adirondack Park Agency Act section 802.

¹⁶ Definition from U.S. electronic code of federal regulations 33 CFR 328.3(e).

¹⁷ Added 11/1/10 to meet inspector requirements in GP-0-08-001 and GP-0-10-001. Revised 11/12/15 to meet GP-0-15-002.

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Riparian – Belonging or related to the bank of a water body, including rivers, streams, wetlands, lakes, ponds, or impoundments.¹⁸

Riparian Buffer – A vegetated area, including trees, shrubs, and herbaceous vegetation, adjacent to a water body.

Runoff Reduction Volume (RRv) - Reduction of the total Water Quality Volume (WQv) by application of runoff reduction techniques and standard Stormwater Management Practices (SMPs) with RRv capacity to replicate predevelopment hydrology.¹⁹

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, wetlands, habitats for threatened, endangered or special concern species, highly erodible soils and/or soils with slopes greater than 15 percent, 100- and 500-year floodplains, unique geological features, mature forests.

Note: The sensitive resources listed here should be recognized in the community’s comprehensive plan and reflected in zoning, subdivision and site plan review laws. A more effective method for protecting some of these resources (e.g., wetlands) may be a stand-alone law specifically designed for this purpose. The Department of State has developed a model local law publication that addresses sea level rise, storm surges, and flooding and includes examples of relevant local laws.

Silvicultural Activity - Exempt - activities related to the dedicated and cyclic use of land for the periodic production of timber that have limited potential to cause soil disturbance, including tree nursery operations, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control.

Silvicultural Activity - Regulated - activities related to the dedicated and cyclic use of land for the periodic production of timber that have the potential to cause soil disturbance, including harvesting operations such as felling, skidding, and clear-cutting; surface drainage; harvest related road construction and maintenance; site preparation for forest regeneration; or the processing, sorting, or storing of harvested timber which has been transported from one or more active harvesting sites. Tree removal in preparation for development or other conversion to a non-forestry use is not silviculture.

Note: The Silviculture definition has been separated into exempt and regulated activities to reflect the purpose of this local law to incorporate stronger protections for certain silvicultural activities that have more potential to cause soil erosion in order to give communities the tools to protect and manage forested areas to provide flood reduction and water quality benefits.

SPDES General Permit for Stormwater Discharges from Construction Activities - 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, most current version.

SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems - 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, most current version.

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.

¹⁸ Optional definitions of Riparian and Riparian Buffer are for communities interested in adding the additional language in Article 2, section 2.2.3.2 to emphasize use of riparian buffers to reduce flooding impacts, increase community resilience and address climate change. From, “Riparian Buffer Protection via Local Government Regulation: A Guide and Model Ordinance for Pennsylvania Municipalities”, Pennsylvania Land Trust Association, 2014.

¹⁹ Definition added to support the additional language in 2.2.3.2 to emphasize use of green infrastructure to increase community resiliency and address climate change.

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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 appointed or 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.

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.

Temporarily Ceased - means that an existing disturbed area will not be disturbed again within 14 calendar days of the previous soil disturbance.²⁰

Trained Contractor - an employee from the contracting (construction) company that will be responsible for implementing the SWPPP, who has received four (4) hours of Department endorsed training in proper erosion and sediment control principles. After receiving the initial training, the trained contractor shall receive four (4) hours of training every three (3) years. It can also mean an employee from the contracting (construction) company that meets the qualified inspector qualifications.²¹

Water Quality Volume (WQv) - The storage needed to capture and treat 90% of the average annual stormwater runoff volume.

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.

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, and is regulated by federal, state or local laws.

Section 2. Stormwater Pollution Prevention Plans

2.1. General Stormwater Pollution Prevention Plan Requirements

- 2.1.1 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.

²⁰ Added 10/5/15 to meet requirements in GP-0-15-002.

²¹ Added 11/1/10 to meet requirements in GP-0-10-001.

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2.1.2 The applicant or developer must keep the SWPPP current so that it at all times accurately documents the erosion and sediment controls practices that are being used or will be used during construction, and all post-construction stormwater management practices that will be constructed on the site. At a minimum, the applicant or developer shall amend the SWPPP:

1. Whenever the current provisions prove to be ineffective in minimizing pollutants in stormwater discharges from the site;
2. Whenever there is a change in design, construction, or operation at the construction site that has or could have an effect on the discharge of pollutants; and
3. To address issues or deficiencies identified during an inspection by the qualified inspector, the Department or other regulatory authority.

2.2 Contents of Stormwater Pollution Prevention Plans²²

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) and classification information if available; 100-year floodplain and floodway boundaries; wetlands and drainage patterns that could be affected by the construction activity; existing and final contours; location of different soil types with boundaries; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s); and construction staging areas. To the extent practicable construction staging areas should be limited to previously disturbed areas or areas with compacted or poorly infiltrating soils;
3. The site map shall also identify sensitive areas including slopes greater than 15 percent; 500-year floodplains; unique geological features; locations of significant natural communities including endangered, threatened or rare plant and animal species; mature forests; and a tree conservation plan identifying all existing trees 12" diameter at breast height (dbh) or greater and identifying the extent of tree clearing and preservation measures;²³

Note: The community may refer to a local natural resource inventory, comprehensive plan, open space plan, biodiversity assessment, or other planning document to identify additional sensitive areas to include in this section. The site map should be at a scale no smaller than 1"=100' (e.g. 1"=500" is smaller than 1"=100").

4. Description of the soil(s) present at the site, including an identification of the hydrologic soil group (HSG) and soil erosion factor;
5. Construction phasing plan and sequence of operations describing the intended order 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 State 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 the ((City/Town/Village) of _____) has approved the SWPPP and provided written authorization to the applicant or developer for the disturbance;

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

6. 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;
7. Description of the minimum erosion and sediment control practices to be installed or implemented

²² Language added 11/6/15 to 2.2.1.2, 3 and 4 to meet requirements in GP-0-15-002.

²³ Section 2.2.1.3 is adapted from the Albany County Stormwater Coalition Green Infrastructure Model Local Law Project Summary Report (2013).

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for each construction activity that will result in soil disturbance. Include a schedule that identifies the timing of initial placement or implementation of each erosion and sediment control practice and the minimum time frames that each practice should remain in place or be implemented;

8. Temporary and permanent soil stabilization plan that meets the requirements of the most current version of the Erosion Control Manual for each stage of the project, including initial land clearing and grubbing to project completion and achievement of final stabilization;
9. A site map/construction drawing(s) showing the specific location(s), size(s) and length(s) of each erosion and sediment control practice;
10. Dimensions, material specifications, installation details and operation and maintenance requirements for all erosion and sediment control practices. Include the location and sizing of any temporary sediment basins and structural practices that will be used to divert flows from exposed soils;
11. Maintenance inspection schedule for the contractor(s) that will be responsible for installing, constructing, repairing, inspecting and maintaining the erosion and sediment control practices in the SWPPP to ensure continuous and effective operation of the practices. The maintenance inspection schedule shall be in accordance with the most current version of the Erosion Control Manual;
12. Description and location of any stormwater discharges associated with industrial activity at the site including, but not limited to, stormwater discharges from asphalt plants and concrete plants located on the construction site;
13. Identification of any elements of the design that are not in conformance with design criteria in the most current version of the Erosion Control Manual. Include the reason for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is equivalent to the technical standard; and
14. If 5 acres or more will be disturbed at any one time, the SWPPP must include a phasing plan that defines maximum disturbed area per phase and shows required cuts and fills.

2.2.2 Land development activities as defined in Section 1 of this Article that disturb one or more acres of land and are listed in sub-sections 1 through 24 below²⁴ shall also include water quantity and water quality controls (post-construction stormwater runoff controls) designed in accordance with the most current version of the New York State Stormwater Management Design Manual:

1. Single-family residential subdivisions that involve soil disturbances of between one (1) and five (5) acres of land with greater than 25% total impervious cover at total site build-out;
2. Single-family residential subdivisions that involve soil disturbances of five (5) or more acres of land, and single-family residential subdivisions that involve soil disturbances of less than five (5) acres that are part of a larger common plan of development or sale that will ultimately disturb five or more acres of land;

Note: Sections 2.2.2 #1 and #2 above represent the minimum New York State requirements. A municipality may wish to require post-construction stormwater controls for a smaller area or smaller impervious cover percentage, or simply require post-construction controls for all single-family residential subdivisions. In deciding on a threshold level communities should consider development pressure, current and potential flooding and water quality impacts, and other considerations in their watershed. Watershed planning can provide background data on which to base recommended actions.

3. Multifamily residential developments, including townhomes, condominiums, senior housing complexes, apartment complexes, and mobile home parks;
4. Airports;
5. Amusement parks;
6. Campgrounds;
7. Cemeteries that include the construction or reconstruction of impervious area that is greater than 5% of the disturbed area, or alter the hydrology from pre- to post- development conditions;

²⁴ Revised this section 11/6/15 to reflect GP-0-15-002. This format was used in the Town of Somers Stormwater Law.

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8. Commercial developments;
9. Churches and other places of worship;
10. Construction of a barn or other agricultural building (e.g., silo) and structural practices as identified in Table II in the Agricultural Management Practices Catalog for Nonpoint Source Pollution in New York State that include the construction or reconstruction of impervious area, excluding projects that involve soil disturbances of less than five acres;
11. Golf courses;
12. Institutional facilities, including hospitals, prisons, schools and colleges;
13. Industrial facilities, including industrial parks;
14. Landfills;
15. Municipal facilities; including highway garages, solid waste transfer stations, office buildings, sewage treatment plants and water treatment plants;
16. Office complexes;
17. Sports complexes;
18. Racetracks, includes racetracks with earthen (dirt) surface;
19. Road construction or reconstruction;
20. Parking lot construction or reconstruction;
21. Athletic fields (natural grass) that include the construction or reconstruction of impervious area (greater than 5% of disturbed area) or alter the hydrology from pre-development to post-development conditions;
22. Athletic fields with artificial turf;
23. Permanent access roads or parking areas surfaced with impervious cover, and substations constructed as part of an overhead electric transmission line project, wind power project or cell tower project; and
24. All other construction activities, not listed above, that include the construction or reconstruction of impervious area and alter the hydrology from pre-development to post-development conditions.

2.2.3 Requirements for SWPPPs that include post-construction stormwater controls:

1. All information in Section 2.2 .1 of this local law;
2. Documentation that the stormwater management planning process using green infrastructure has been followed as required in the Design Manual using the stormwater management practices in Schedules A1, A2 and A3. The planning process steps are as follows:²⁵
 - i. Prepare an initial site plan and conceptual design that preserves natural features and reduces impervious cover by incorporating green infrastructure practices listed in Schedule A1 as appropriate to achieve runoff reduction goals and using the evaluation process in the Design Manual;
 - ii. Determine the Water Quality Volume (WQv) using the sizing criteria in the Design Manual;
 - iii. Apply runoff reduction techniques to reduce total WQv using the green infrastructure practices in Schedule A2 and standard stormwater management practices with runoff reduction capacity as described in Schedule A3 and using the sizing and performance criteria in the Design Manual;
 - iv. Determine the minimum runoff reduction volume (RRv) needed using the sizing criteria in the Design Manual;
 - v. Apply standard stormwater management practices in Schedule A3 to address remaining WQv using the sizing and performance criteria in the Design Manual; and
 - vi. Apply volume and peak rate control practices only if still needed to meet the requirements in the Design Manual.

²⁵ This section emphasizes the green infrastructure planning process at the local level by including these steps and using Schedules A1-A3. These steps are taken directly from the 2015 Stormwater Design Manual.

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[Alternate - The following language is an alternate version of section 2.2.3.2 i – vi for communities interested in emphasizing protection of riparian buffers, floodplains, and coastal areas to increase community resiliency and address climate change. A community that adopts this alternate version of 2.2.3.2 should also recognize these resources in the comprehensive plan and amend their zoning, site plan review, and subdivision laws to include these requirements. Another, perhaps more effective, method for protecting these resources would be a stand-alone law specifically designed for this purpose. The Department of State has developed a model local law publication that addresses sea level rise, storm surges, and flooding and includes examples of relevant local laws.

The planning process steps are as follows:²⁶

- i. Prepare an initial site plan that preserves natural features, reduces impervious cover, and avoids siting land development activities in riparian buffers, floodplains, wetlands, shorelines, coastal erosion hazard areas, and on steep slopes using the green infrastructure practices in Schedule A1 and the evaluation process in the Design Manual. Delineate riparian buffers according to the following criteria: The riparian buffer area shall extend a minimum total width of one hundred (100) feet from the edge of a water body as shown by the **(ordinary high water mark/mean high water mark)**, or shall equal the extent of the 100-year floodplain, whichever is greater.²⁷
 - a. Delineate 100-year and 500-year floodplains as shown on the most recent maps prepared by the Federal Emergency Management Agency as refined by more detailed studies that may have been conducted by state, regional or local agencies
 - b. Delineate Coastal Erosion Hazard Areas as shown on the most recent maps prepared by the NYS Department of Environmental Conservation.
- ii. Determine the Water Quality Volume (WQv) using the sizing criteria in the Design Manual;
- iii. Apply runoff reduction techniques to reduce total WQv using the green infrastructure practices in Schedule A2 and standard stormwater management practices with runoff reduction capacity as described in Schedule A3 and using the sizing and performance criteria in the Design Manual;
- iv. Determine the minimum runoff reduction volume (RRv) needed using the sizing criteria in the Design Manual;
- v. Apply standard stormwater management practices in Schedule A3 to address remaining WQv using the sizing and performance criteria in the Design Manual;
- vi. Apply volume and peak rate control practices only if still needed to meet the requirements in the Design Manual.]

ALL municipalities - continue with provisions #3 – 24 below:

3. Description of each post-construction stormwater management practice to be constructed as part of the project. Include the dimensions, material specifications and installation details for each post-construction stormwater management practice;
4. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
5. Stormwater modeling and analysis report that includes:

²⁶ Alternate section for communities interested in emphasizing protection of riparian buffers, floodplains, and coastal areas to increase community resiliency and address climate change. The steps are taken from the design manual with the addition of the words, “and avoids siting land development activities in riparian buffers, floodplains, wetlands, shorelines, coastal erosion hazard areas, and on steep slopes” to section 2.2.3.2.i.

²⁷ Optional delineation language from, “Riparian Buffer Protection via Local Government Regulation: A Guide and Model Ordinance for Pennsylvania Municipalities”, Pennsylvania Land Trust Association, 2014, The 100’ buffer width is supported by a number of studies on this topic, summarized in “Riparian Buffer Zones: Functions and Recommended Widths”, Yale School of Forestry and Environmental Studies, 2005.

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- i. Map(s) showing pre-development conditions, including watershed/subcatchments boundaries, flow paths/routing, and design points;
 - ii. Map(s) showing post-development conditions, including watershed/subcatchments boundaries, flow paths/routing, design points and post-construction stormwater management practices;
 - iii. Results of stormwater modeling (i.e. hydrology and hydraulic analysis) for the required storm events. Include supporting calculations (model runs), methodology, and a summary table that compares pre- and post-development runoff rates and volume for the different storm events;
 - iv. Summary table, with supporting calculations, which demonstrates that each post-construction stormwater management practice has been designed in conformance with the sizing criteria included in the Design Manual;
 - v. Identification of any sizing criteria that is not required based on the requirements in the SPDES General Permit for Stormwater Discharges from Construction Activities; and
 - vi. Identification of any elements of the design that are not in conformance with the performance criteria in the Design Manual. Include the reason(s) for the deviation or alternative design and provide information which demonstrates that the deviation of alternative design is equivalent to the Design Manual.
6. Soil testing results and locations (test pits, borings);
 7. Infiltration test results, as required in the Design Manual for green infrastructure and stormwater management practices that involve infiltration;
 8. Operations and maintenance plan that includes inspection and maintenance schedules and actions to ensure continuous and effective operation of each post-construction stormwater management practice. The plan shall identify the entity that will be responsible for the long-term operation and maintenance of each SMP.
 9. 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.
 10. 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.
 11. All SWPPPs that include post-construction controls shall be prepared by a registered landscape architect, professional engineer licensed in the State of New York, or other individual endorsed by the Department that is knowledgeable in the principles and practices of stormwater management and treatment 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.²⁸
 12. If amendments or modifications are made to the post-construction controls listed in this section after the SWPPP is approved, the applicant or developer shall notify the Stormwater Management Officer in writing. The SWPPP amendments or modifications must be reviewed and accepted by the Stormwater Management Officer prior to commencing construction of the post-construction stormwater management practice.

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.

²⁸ Revised 3/06 and 11/15 - 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. Additional revisions made to reflect revised wording in GP-0-15-002.

DRAFT FOR PUBLIC REVIEW 10/21/16**2.4 Contractor Certification**

- 2.4.1 Each contractor and subcontractor identified by the applicant or developer as being responsible for installing, construction, repairing, inspecting and maintaining the erosion and sediment control practices included in the SWPPP and the post-construction 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 and agree to implement any corrective actions identified by the qualified inspector during a site inspection. 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 Document Retention

A copy of the SWPPP and all documentation necessary to demonstrate compliance with this local law shall be retained at the site of the land development activity from the date of initiation of construction activities until all disturbed areas have achieved final stabilization. The documents must be maintained in a secure location, such as a job trailer, on-site construction office, or mailbox with lock. The secure location must be accessible during normal business hours to an individual performing a compliance inspection.

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)
1. Stormwater management practices must be selected, designed, installed and maintained to meet the performance criteria in the most current version of the Design Manual using sound engineering judgment.
 2. Stormwater management practices must be designed to meet the applicable sizing criteria in the most current version of the Design Manual.
- 3.1.2 New York State Standards and Specifications for Erosion and Sediment Control, (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Erosion Control Manual).

Note: 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.ny.gov/chemical/8694.html>

3.2 Equivalence to Technical Standards²⁹

²⁹ Updated 10/5/15 to be consistent with language in GP-0-15-002.

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- 3.2.1 Where erosion and sediment control measures are not designed in conformance with the design criteria included in the Erosion Control Manual, the applicant or developer must include in the SWPPP the reason(s) for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is equivalent to the technical standards set forth in Article 2, Section 3.1.
- 3.2.2 Where post-construction stormwater management practices are not designed in conformance with the performance criteria in the Design Manual, the applicant or developer must include in the SWPPP the reason(s) for the deviation or alternative design and provide information which demonstrates that the deviation or alternative design is equivalent to the technical standard.

3.3 Performance Standards

- 3.3.1 The applicant or developer shall minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters using clean water only. Soaps, detergents and solvents shall not be used.
- 3.3.2 The applicant or developer shall minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).
- 3.3.3 The applicant or developer shall prevent the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- 3.3.4 Where soil disturbance activity has temporarily or permanently ceased, the application of soil stabilization measures must be initiated by the end of the next business day and completed within fourteen (14) days from the date the current soil disturbance activity ceased. If five acres or more have been disturbed at one time and soil disturbance activity has temporarily or permanently ceased, the application of soil stabilization measures must be initiated by the end of the next business day and completed within seven (7) days from the date the current soil disturbance activity ceased. The soil stabilization measures selected shall be in conformance with the Erosion Control Manual.

Section 4. Maintenance, Inspection and Repair of Stormwater Facilities³⁰**4.1 Maintenance During Construction**

- 4.1.1 The applicant or developer of the land development activity 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 traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent.

4.2 Inspection of Land Development Activities During Construction

- 4.2.1 The applicant or developer shall have a trained contractor inspect all erosion and sediment control practices and pollution prevention measures being implemented within the active work area of the land development activity daily to ensure they are being maintained in effective operating condition at all times. If deficiencies are identified, the contractor shall begin implementing corrective actions within one business day and shall complete the corrective actions within a reasonable time frame.³¹

³⁰ Revised this section 10/4/15 to clearly delineate maintenance and inspection provisions and to add new requirements in GP-0-15-002.

³¹ Revised 11/1/10 to meet inspection requirements in GP-0-10-001 and moved to appear first to emphasize its importance. Removed sentence in italics that indicated this section was optional.

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- 4.2.2 For all land development activities except for those listed in 4.2.3 , the applicant shall have a qualified inspector conduct site inspections and document the effectiveness of all erosion and sediment control practices at least once every seven (7) calendar days. Inspection reports shall be maintained in a site log book.^{32, 33}
- 4.2.3 The following activities are subject to the requirements in 4.2.1 but are exempt from the requirements in 4.2.2:
1. Construction on agricultural property that involves soil disturbance of one (1) or more but less than five (5) acres of land.
 2. Construction of a single-family subdivision with 25% or less impervious cover at total site build-out that involves soil disturbance of one (1) or more but less than five (5) acres of land.
 3. Construction of a single-family home that involves soil disturbance of one (1) or more but less than five (5) acres of land.
- 4.2.4 Land development activities where the applicant or developer has received authorization from the Department to disturb five acres or more at any one time shall be inspected by a qualified inspector twice every 7 days.³⁴ The two inspections shall be separated by a minimum of two full calendar days.³⁵

4.3 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 _____).

4.4 Maintenance after Construction

The owner or operator of permanent stormwater management practices installed in accordance with this law shall ensure they are operated and maintained³⁶ to achieve the goals of this law. Proper operation and maintenance also includes as a minimum, the following:

- 4.4.1 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.
- 4.4.2 Written procedures for operation and maintenance and training new maintenance personnel.
- 4.4.3 Discharges from the SMPs shall not exceed design criteria.

4.5 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

³² 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.

³³ Revised 11/1/10 to meet changes in GP-0-10-001.

³⁴ Revised 11/1/10 to meet changes in GP-0-10-001.

³⁵ Added 10/5/15, language appears in both GP-0-10-001 and GP-0-15-002.

³⁶ Revised 3/06 to correct a grammatical error.

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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.*

Note: 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.*

DRAFT FOR PUBLIC REVIEW 10/21/16**Article 5. Erosion & Sediment Control Law or Stormwater Management Law Repeal or Amendment³⁷**

Repeal: The (**Erosion & Sediment Control Law/Stormwater Management Law**) of the ((**City/Town/Village**) of _____) is hereby repealed.

Note: 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, and a previously-adopted stormwater law will be replaced with updated language.

OR

If a local government seeks to retain its exiting Erosion & Sediment Control Law/Stormwater Management Law, it should be amended as follows to reference this updated Sample Local Law for Stormwater Management and Erosion and Sediment Control:

Amendment: Section _____ of the (**Erosion & Sediment Control Law/Stormwater Management 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/stormwater management**) permit shall be consistent with the provisions of this local law.

Note: 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

Note: 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**1.1 Erosion and Sediment Control Inspection**

The ((**City/Town/Village**) of _____) Stormwater Management Officer may perform inspections as necessary to determine compliance with this law. If deficiencies or violations are found, the Stormwater Management Officer shall notify the applicant and/or developer in writing of the nature of the deficiency or violation and any required corrective actions. No further work shall be conducted except for site stabilization until the deficiencies or violations are corrected and all work previously completed has received approval by the Stormwater Management Officer.

³⁷ 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.

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The applicant and/or developer 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 inspecting the land development activity and erosion and sediment controls being used.

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.

Note: Inspections must be performed by a qualified inspector as defined in Article 2, Section 1.

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)

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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.

DRAFT FOR PUBLIC REVIEW 10/21/16**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 _____).

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Schedule A1³⁸

Green Infrastructure Planning General Categories and Specific Practices (From: New York State Stormwater Management Design Manual, Table 3.1)		
Group	Practice	Description
Preservation of Natural Resources	Preservation of Undisturbed Areas	Delineate and place into permanent conservation easement undisturbed forests, native vegetated areas, riparian corridors, wetlands, and natural terrain.
	Preservation of Buffers	Define, delineate and place in permanent conservation easement naturally vegetated buffers along perennial streams, rivers, shorelines and wetlands.
	Reduction of Clearing and Grading	Limit clearing and grading to the minimum amount needed for roads, driveways, foundations, utilities and stormwater management facilities.
	Locating Development in Less Sensitive Areas	Avoid sensitive resource areas such as floodplains, steep slopes, erodible soils, wetlands, mature forests and critical habitats by locating development to fit the terrain in areas that will create the least impact.
	Open Space Design	Use clustering, conservation design or open space design to reduce impervious cover, preserve more open space and protect water resources.
	Soil Restoration	Restore the original properties and porosity of the soil by deep till and amendment with compost to reduce the generation of runoff and enhance the runoff reduction performance of practices such as grass channels, filter strips, and tree clusters.
Reduction of Impervious Cover	Roadway Reduction	Minimize roadway widths and lengths to reduce site impervious area.
	Sidewalk Reduction	Minimize sidewalk lengths and widths to reduce site impervious area.
	Driveway Reduction	Minimize driveway lengths and widths to reduce site impervious area.
	Cul-de-sac Reduction	Minimize the number of cul-de-sacs and incorporate landscaped areas to reduce their impervious cover.
	Building Footprint Reduction	Reduce the impervious footprint of residences and commercial buildings by using alternate or taller buildings while maintaining the same floor to area ratio.
	Parking Reduction	Reduce imperviousness on parking lots by eliminating unneeded spaces, providing compact car spaces and efficient parking lanes, minimizing stall dimensions, using porous pavement surfaces in overflow parking areas, and using multi-storied parking decks where appropriate.

Detailed technical standards for each of the practices listed in this table can be found in the most current version of the New York State Stormwater Management Design Manual.

³⁸ Added 11/1/10 to highlight green infrastructure requirements in GP-0-10-002

Schedule A2³⁹

Green Infrastructure Techniques Acceptable for Runoff Reduction (From: New York State Stormwater Management Design Manual, Table 3.2)		
Group	Practice	Description
Runoff Reduction Techniques	Conservation of natural areas	Retain the pre-development hydrologic and water quality characteristics of undisturbed natural areas, stream and wetland buffers by restoring and/or permanently conserving these areas on a site.
	Sheetflow to riparian buffers or filter strips	Undisturbed natural areas such as forested conservation areas and stream buffers or vegetated filter strips and riparian buffers can be used to treat and control stormwater runoff from some areas of a development project.
	Vegetated open swale	The natural drainage paths, or properly designed vegetated channels, can be used instead of constructing underground storm sewers or concrete open channels to increase time of concentration, reduce the peak discharge, and provide infiltration.
	Tree planting / tree box	Plant or conserve trees to reduce stormwater runoff, increase nutrient uptake, and provide bank stabilization. Trees can be used for applications such as landscaping, stormwater management practice areas, conservation areas and erosion and sediment control.
	Stream daylighting for redevelopment projects	Stream daylight previously-culverted/piped streams to restore natural habitats, better attenuate runoff by increasing the storage size, promoting infiltration, and help reduce pollutant loads.
	Rain garden	Manage and treat small volumes of stormwater runoff using a conditioned planting soil bed and planting materials to filter runoff stored within a shallow depression.
	Green roof	Capture runoff by a layer of vegetation and soil installed on top of a conventional flat or sloped roof. The rooftop vegetation allows evaporation and evapotranspiration processes to reduce volume and discharge rate of runoff entering conveyance system.
	Stormwater planter	Small landscaped stormwater treatment devices that can be designed as infiltration or filtering practices. Stormwater planters use soil infiltration and biogeochemical processes to decrease stormwater quantity and improve water quality.
	Rain tank/Cistern	Capture and store stormwater runoff to be used for irrigation systems or filtered and reused for non-contact activities.
	Porous Pavement	Pervious types of pavements that provide an alternative to conventional paved surfaces, designed to infiltrate rainfall through the surface, thereby reducing stormwater runoff from a site and providing some pollutant uptake in the underlying soils.

Detailed technical standards for each of the practices listed in this table can be found in the most current version of the New York State Stormwater Management Design Manual.

³⁹ Added 11/1/10 to highlight green infrastructure requirements in GP-0-10-002.

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Schedule A3

Stormwater Management Practices Acceptable for Water Quality (From: New York State Stormwater Management Design Manual, Table 3.3)		
Group	Practice	Description
Pond	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.
Wetland	Shallow Wetland (W-1)	A wetland that provides water quality treatment entirely in a wet 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.
Infiltration	Infiltration Trench (I-1) (Runoff Reduction Capacity)	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) (Runoff Reduction Capacity)	An infiltration practice that stores the water quality volume in a shallow depression before it is infiltrated into the ground.
	Dry Well (I-3) (Runoff Reduction Capacity)	An infiltration practice similar in design to the infiltration trench, and best suited for treatment of rooftop runoff.
Filtering Practices	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 (F2)	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) (Runoff Reduction Capacity)	A shallow depression that treats stormwater as it flows through a soil matrix, and is returned to the storm drain system.
Open Channels	Dry Swale (O-1) (Runoff Reduction Capacity)	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.

Detailed technical standards for each of the practices listed in this table can be found in the most current version of the New York State Stormwater Management Design Manual.

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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, stormwater ponds and wetlands, bioretention and rain gardens, tree boxes, green roofs, stormwater planters, rain tanks and cisterns, and porous pavement.⁴⁰
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, at the frequency recommended in the Design Manual,⁴¹ 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 _____

Based on: Lake George Park Commission Model Stormwater Management Ordinance, Schedule E

⁴⁰ Revised 11/1/10 to include green infrastructure practices as required in GP-0-10-001 and GP-0-10-002.

⁴¹ Revised 11/1/10 to be consistent with the NYS Stormwater Management Design Manual.