

TOWN OF LANSING

LOCAL LAW NUMBER 1 OF 2005

STORMWATER AND EROSION CONTROL

The Town Board of The Town of Lansing, New York, pursuant to a Resolution dated January 19, 2005, does hereby pass a Local Law as follows:

**Article 1. General Provisions**

**Section 1.A. Definitions:** The following terms have the following meanings when used in this Local Law:

**Agricultural Activity** - the pre-existing activities and Building(s) of an active farm or ranch. Agricultural Activity includes grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but does not include the operation of a dude ranch (or similar operation) or the construction of any new Buildings associated with an Agricultural Activity.

**Applicant** - a property owner or agent of a property owner who has filed an application for a proposed Land Development Activity.

**Building** - any structure, either temporary or permanent, having a roof and designed for the shelter or use of any person, animal, property or agricultural and/or business operation, and containing or sheltering 100 square feet or more of surface area.

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

**Clearing** - any activity, including but not limited to grubbing, wasting, and razing, that removes pre-existing vegetative surface cover and/or related root structures from a Parcel.

**Construction Materials** - construction and construction related materials and waste materials.

**Dedication** - the deliberate appropriation of a Parcel or a portion of a Parcel by its owner to the Town for general public use and/or welfare.

**Department or "DEC"** - the New York State Department of Environmental Conservation.

**Design Manual** - the current or most recent version of the New York State Stormwater Design Manual, including applicable updates, which herein serves as the official guide for Stormwater Control principles, methods, and practices.

**Design Storm** - an engineering specification that applies to the Stormwater Runoff potential of a meteorological event, such as a “ten-year storm,” or a “hundred-year storm,” which may precipitate a specific and measurable quantity of water in either a liquid or solid state upon a Parcel during a specified length of time.

**Developer** - any person or company who undertakes a Proposed Project.

**EPA** - The United States Environmental Protection Agency.

**Erosion** - Stormwater Runoff and Sedimentation

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

**Erosion Control Facility** - a Sedimentation Containment Facility, a Stormwater Control Facility, or any combination thereof that is installed within a Proposed Project.

**Erosion Control Officer (“ECO”)** - an employee, agent, or officer appointed by the Town to accept and review and forward Stormwater Pollution Prevention Plans (“SPPP”) to the Town and to inspect Erosion Control Facilities within the Town.

**Grading** - excavation and/or fill of rock, soil, or other material(s), including the resulting conditions thereof.

**Impaired Water** - Water whose purity has been diminished by pollution and/or Sedimentation.

**Impervious Cover** - any surface, improvement, structure and/or Building that prevents or substantially reduces an underlying soil’s ability to effectively infiltrate Stormwater and otherwise acts to increase Stormwater Runoff or other water accumulating conditions.

**Industrial Stormwater Permit** - a New York State Pollutant Discharge Elimination System (“SPDES”) permit, issued to a commercial industry or group of industries, that regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site Pollution Control Facilities.

**Infiltration** - the process by which Stormwater or other water percolates into the soil or subsoil.

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

**Land Development Activity** - any construction activity, including but not limited to Clearing, Grading, excavating, soil disturbance, or placement of fill that results in land disturbance of: (i) equal to or greater than one acre; or (ii) less than one acre, but part of a larger common plan of development or sale, even though multiple, separate and distinct Land Development Activities may occur upon the land at different times and/or upon separate schedules; or (iii) less than one acre, but part of a prior project not previously subject to this Local Law.

**Landowner** - the legal or beneficial owner of one or more Parcels, including those persons or companies who hold the right to purchase or lease a Parcel, or any other person or company who holds proprietary rights in a Parcel.

**Large Project** - a Land Development Activity that occurs upon a Parcel located within the Town.

**Large Project Phasing** - conducting Large Projects upon a Parcel or several Parcels in distinct phases, pieces, or parts, with the construction of Erosion Control Facilities upon each Parcel commenced and/or completed prior to conducting Large Projects upon proximate Parcels.

**Maintenance Agreement** - a legally recorded document that acts as a property deed restriction, and which provides for the long-term maintenance, whether through easements and rights-of-way, or otherwise, of a developed Parcel’s Erosion Control Facilities.

**Nonpoint Source Pollution** - pollution that originates from any source other than from any specific, discernible, confined, and/or distinct source. Nonpoint Source Pollution includes, but is not limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal, industrial and urban surface and subsurface water sources that cannot be specifically traced to their points of origin.

**Operator** - each person or entity that owns or leases the property or Parcel upon which any Land Development Activity occurs.

**Parcel** - a distinct tract, lot, portion, or piece of land upon which an Applicant, Developer, Landowner, Operator, or other person or entity conducts or proposes to conduct a Land Development Activity.

**Planning Board** - the Planning Board of the Town of Lansing, New York.

**Point Source Pollution** - a specific, discernible, confined, and/or distinct Land Development Activity or other land use that generates concentrations of liquids or solids, including but not limited to: organic and inorganic chemicals, hydrocarbons, trace metals, heavy metals, metal deposits, Construction Materials, hazardous materials, toxicants, bio-masses, carcasses, tires, discards, waste, by-products, litter and other pollutants recognized by the EPA and/or the DEC.

**Pollutant of Concern** - any Erosion and/or pollution that is generated by a Proposed Project and that is subsequently discharged into any Surface Waters.

**Proposed Project** - either a Large Project or a Small Project that is presented to the Town for approval.

**Recharge** - the replenishment of water reserves, either above or under the ground.

**Sediment** - any chemical, mineral, metal, rock, soil and/or compound, or mixture thereof, that has been exposed and/or eroded and that is subject to transport from one site to another by means of water, ice, wind, gravity or other naturally occurring means.

**Sedimentation** - the process by which Sediment is transported from a Parcel and deposited upon another Parcel by means of water, ice, wind, gravity or other naturally occurring means.

**Sedimentation Containment** - a practice, methodology, measure, act, design, or any combination thereof that reduces or prevents Sedimentation.

**Sediment Containment Facility** - a physical application of Sedimentation Containment that reduces or prevents Sedimentation away from a Proposed Project. A Sedimentation Containment Facility may include, but is not limited to: a building, a facility, a planting, a control, a device, whether structural or nonstructural, or any combination thereof. A Sedimentation Containment Facility may be utilized and/or built in conjunction with a Stormwater Runoff Facility.

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

**Site Impervious Cover** - any and all Impervious Cover that is built, attached or deposited upon a Parcel.

**Small Project** - any construction activity, including but not limited to: Clearing, Grading, excavating, soil disturbance or placement of fill that results in land disturbance of less than one acre, that is not part of a larger common plan of development or an actual larger development, and that occurs upon a Parcel located within the Town.

**SPDES General Permit for Construction Activities GP-02-01 ("SPDES GP-02-01")** - A SPDES permit that acts to regulate an Applicant's, Developer's, Landowner's, or Operator's Land Development Activity.

**SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02 ("SPDES GP-02-02")** - A permit issued under SPDES to municipalities that acts to regulate discharges from municipal separate stormwater sewer systems in order to comply with EPA water quality standards and/or SPDES specified stormwater control standards in the State.

**Stabilization** - a physical, tangible effort made in order to stabilize soil and vegetation upon a Parcel that acts to reduce or prevent Sedimentation or Stormwater Runoff, such as an Erosion Control Facility.

**State** - the State of New York

**Stop Work Order** - any order issued that requires that all construction activity occurring upon a Parcel cease and be stopped.

**Stormwater** - rainwater, surface runoff, snowmelt, icemelt, and related naturally occurring surface water accumulation.

**Stormwater Control** - a practice, methodology, measure, act, design or any combination thereof that reduces or prevents Stormwater Runoff.

**Stormwater Control Facility** - a physical application of Stormwater Control that reduces or prevents Stormwater Runoff away from a Proposed Project. A Stormwater Runoff Facility may include, but is not limited to: a building, a facility, a planting, a control, a device, whether structural or nonstructural, or any combination thereof. A Stormwater

Runoff Facility may be utilized and/or built in conjunction with a Sedimentation Containment Facility.

**Stormwater Pollution Prevention Plan ("SPPP")** - a plan for controlling Sedimentation and Stormwater Runoff from a Parcel during and following Land Development Activities.

**Stormwater Runoff** - Stormwater flow upon or under the surface of the ground, including above or below ground flow in any Channel, Watercourse, or Waterway.

**Surface Waters** - lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, 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), that are wholly or partially within or bordering the Town, or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons, that may meet the criteria of this definition are not Surface Waters unless they were created in natural Surface Waters or resulted from the impoundment of Surface Waters.

**Town** - The Town of Lansing, New York.

**Town Board** - The Town Board of the Town of Lansing.

**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 a storm drain.

**ZBA** - the Zoning Board of Appeals of the Town of Lansing.

**Section 1.B. Findings of Fact:** It is hereby determined that:

**1.B.1.** Land Development Activities and increases in Site Impervious Cover within the Town adversely impact the hydrologic responses of the Town's watershed and increase Sedimentation and Erosion rates and volumes, flooding, and stream channel Erosion;

- 1.B.2. Erosion increases the quantities of water-borne pollutants that adversely impact the environment; such water-borne pollutants include, but are not limited to, the diminution or destruction of the size and/or quality of Sensitive Aquatic Areas;
- 1.B.3. Land Development Activity acts to increase Erosion and contributes to the loss of native vegetation and vegetative diversity necessary and useful for terrestrial and aquatic habitat, such as Sensitive Aquatic Areas;
- 1.B.4. Improper design and construction of Erosion Control Facilities acts to increase the rate of Erosion within the Town;
- 1.B.5. Impervious Covers act to increase Erosion and to decrease the rates of groundwater Recharge and stream base flow within the Town;
- 1.B.6. Land Development Activities, Impervious Covers and the improper design, construction and implementation of Erosion Control Facilities act to create economic and ecological losses by adversely impacting the soil and waters of the Town;
- 1.B.7. Erosion, Point Source Pollution, and Nonpoint Source Pollution may be partially controlled and minimized through the effective design, construction and implementation of Erosion Control Facilities;
- 1.B.8. Town regulation of Erosion from Proposed Projects is in the public interest, will act to minimize adverse impacts upon the environment, will act to promote the public health, welfare and safety and will act to control and minimize increases in Erosion, Point Source Pollution and Nonpoint Source Pollution, and;
- 1.B.9. Town regulation of Proposed Projects by establishing performance standards governing Erosion Control Facilities will act to mitigate the adverse effects of Erosion that may result from Proposed Projects.

**Section 1.C. Purpose:** The purpose of this Local Law is to establish Erosion Control Facility requirements and standards necessary to minimize potential harm to the environment, to promote the public health, welfare and safety and to control and minimize the adverse effects associated with Erosion, Point Source Pollution and Nonpoint Source Pollution, and to address the other findings of fact stated in Section 1.B., above, by achieving the following objectives:

- 1.C.1. Meeting the minimum requirements set by measures 4 and 5 of SPDES General Permit for Stormwater Discharges from Municipal

Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02, as amended or revised;

- 1.C.2. Requiring Large Projects to conform to the substantive requirements of the SPDES General Permit for Construction Activities GP-02-01, as amended or revised;
- 1.C.3. Minimizing increases in Erosion generated by Proposed Projects;
- 1.C.4. Minimizing increases in water pollution caused by Erosion generated by Proposed Projects in order to preserve local water quality;
- 1.C.5. Minimizing the total annual volume of Erosion that is generated by Parcels during and following Land Development Activities; and
- 1.C.6. Reducing Erosion, Point Source Pollution and Nonpoint Source Pollution, wherever possible, through Erosion Control Facilities and to ensure that the Erosion Control Facilities within the Town are properly maintained on a perpetual basis.

**Section 1.D. Statutory Authority:** In accordance with Article 10 of the Municipal Home Rule Law of the State of New York, the Town Board has the authority to enact and amend local laws for the purpose of promoting the health, safety or general welfare of the Town and to protect and enhance the Town's physical environment. As part of such local laws, the Town Board may appoint municipal officers, employees, or independent contractors to effectuate, administer and enforce such laws.

**Section 1.E. Application:** In applying this Local Law, each of the following shall apply:

- 1.E.1. This Local Law shall be applicable to all Proposed Projects as defined in section 1.A., above.
- 1.E.2. The Town shall designate an Erosion Control Officer ("ECO"), who shall receive and review all proposed Large Projects and their related Stormwater Pollution Prevention Plans ("SPPPs") and forward such proposed Large Projects and SPPPs to the Town Board. The ECO may (a) review the proposed Large Projects and SPPPs; and (b) upon approval by the Town Board, engage the services of the Town engineer to review the proposed Large Projects and SPPPs and related documents; or (c) accept the certification of licensed professionals that the proposed Large Projects and SPPPs conform to the requirements of this Local Law.



- 1.E.3. All proposed Large Projects and related SPPPs are subject to review and approval by the Planning Board, and shall be reviewed subject to the standards contained in this Local Law.
- 1.E.4. All proposed Small Projects that are not subject to review by the Planning Board, as stated in Section 1.E.3, above, are required to submit Small Project SPPPs to the ECO, who shall approve or reject such SPPPs according to the requirements of this Local Law.
- 1.E.5. Any Land Development Activity, SPPP, or other or related plan or proposal that envisions or purports to transfer, sell, assign, or grant to the Town any rights in and to any Parcel, or any interest therein, including but not limited to the dedication of any part of a Parcel, or the granting of rights-of-way or easements therein, shall be subject to the final review and approval of the Town Board.

**Section 1.F. Exemptions:** The following activities are exempt from review under this Local Law:

- 1.F.1. Agricultural Activities as defined in Section 1.A above.
- 1.F.2. Logging activity undertaken pursuant to an approved timber management plan prepared or approved by the County Soil & Water Conservation District or the New York State Department of Environmental Conservation, except that landing areas and log haul roads are subject to the requirements of this Local Law as Proposed Projects.
- 1.F.3. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of pre-existing Buildings and/or any Site Impervious Cover attached to or contiguous to such Buildings.
- 1.F.4. Repairs to any Stormwater Control Facility ordered by the ECO.
- 1.F.5. Cemetery graves.
- 1.F.6. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- 1.F.7. Emergency activities (as determined by the ECO) made in order to protect against immediate threats to life, property, or the environment within the Town.

- 1.F.8. Activities of persons who engage in home gardening by growing flowers, vegetable and other plants primarily for use by those persons and their families.
- 1.F.9. Landscaping and horticultural activities performed in connection with an existing Building.

## **Article 2. Construction with Zoning Laws**

**Section 2.A. 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 Section 1.A. above.

### **Section 2.B. Stormwater Pollution Prevention Plans (SPPPs):**

**2.B.1. Stormwater Pollution Prevention Plan Requirements:** No application for approval of proposed Large Projects, including their related SPPPs, shall be reviewed by the Town Board or the Planning Board until the ECO receives, reviews and forwards such proposals to the Town Board or the Planning Board, which, respectively, shall approve or reject such Large Project SPPPs according to the requirements of this Local Law. Proposals concerning Small Projects, including their related SPPPs, shall be received and reviewed by the ECO, who shall approve or reject such SPPPs according to the requirements of this Local Law.

### **2.B.2. Contents of Stormwater Pollution Prevention Plans (SPPPs).**

**2.B.2.1.** Each SPPP shall contain the following information concerning a Proposed Project's Erosion Control Facilities:

- (a) Background information concerning the scope of each Proposed Project, including the location, type, physical size, estimated cost, duration of the Land Development Activity, and the anticipated life-span of the Proposed Project;
- (b) Site maps and construction drawing(s) for each Proposed Project, including a general location map. At a minimum, a site map must show or account for the total site area; all proposed improvements; areas of land disturbance; areas of land that will not be disturbed; areas of pre-existing and proposed vegetative cover; locations of on-site and adjacent off-site Surface Water(s); a delineation of watershed boundaries within which the Proposed Project is located; areas of wetlands and drainage patterns that could be

affected by the Land Development Activity; areas of existing and proposed final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the proposed Erosion Control Facilities and their related discharge(s), if any;

- (c) A description of the pre-existing soil, vegetative surface cover and Site Impervious Cover present at the Proposed Project;
- (d) A Land Development Activity phasing plan describing the intended sequence of construction activities, including Clearing and Grading, utility and infrastructure installation, and any other activity at the site that results in soil disturbance. No more than 1 acre may be disturbed with respect to a Large Project unless disturbed pursuant to an approved SPPP;
- (e) A description of the measures that will be used to minimize, control, prevent and/or dispose of Point Source Pollution and/or Nonpoint Source Pollution created, discovered, or exposed as a result of the Proposed Project;
- (f) A description of the types, quantities, sizes and disposal methods concerning Construction Materials expected to be stored on-site with updates as appropriate, and a description of the measures taken to reduce the release, discharge or effluence of pollutants from the Construction Materials, including but not limited to the construction and/or utilization of temporary or permanent storage facilities to minimize exposure of such Construction Materials to the environment, and to prevent pollution spills and the release, discharge or effluence, if any, from such Construction Materials and the response measures to be taken by the Developer in the event that any spill, release, discharge or effluence takes place with respect to the Construction Materials;
- (g) The temporary and permanent structural and vegetative measures to be used for Stabilization and Erosion Control concerning each stage of a Proposed Project, from initial Clearing to project close-out;
- (h) A site map/construction drawing(s) specifying the location, size and expected life-span of each Erosion Control Facility;

- (i) The dimensions, material specifications, and installation details for each Erosion Control Facility within a Proposed Project, including the siting and sizing of any temporary Sediment and Stormwater Runoff catch basins;
- (j) A list of each Erosion Control Facility within a Proposed Project that will be converted from temporary to permanent condition;
- (k) An implementation schedule, including the timing of initial placement and the duration for staging, of each temporary Erosion Control Facility within a Proposed Project;
- (l) A list of the maintenance and operating procedures as well as the schedule necessary to ensure the effective operation of each permanent Erosion Control Facility within a Proposed Project;
- (m) The name(s) of any Surface Water(s) that will receive Stormwater Runoff and/or Sedimentation from the Proposed Project;
- (n) A Delineation of SPPP implementation responsibilities for each part of the Proposed Project;
- (o) A Description of the Erosion Control Facilities built to divert Erosion flows from exposed soils, to store Erosion flows, or otherwise limit the discharge of Erosion and pollutants from the Proposed Project site; and
- (p) Data that accurately reflects (i) the current and projected Erosion rates generated by the Parcel, and (ii) current and projected Erosion rates to be generated in the future by the Proposed Project.

**2.B.2.2.** Land Development Activities that meet any of Conditions "A", "B", or "C" below shall also include water quantity and water quality controls (post-construction Erosion Control Facilities) as set forth in Section B.2.3, below, as applicable:

- (a) Condition A - Large Projects discharging a Pollutant of Concern to either (1) an Impaired Water identified on the DEC's 303(d) list of Impaired Waters or (2) a DEC Total Maximum Daily Load (TMDL) designated watershed for which pollutants in Stormwater Runoff have been identified as a source causing the condition of the Impaired Waters.

- (b) Condition B - Large Projects disturbing 5 or more acres of land.
- (c) Condition C - Land Development Activities disturbing between 1 and 5 acres of land during the course of Large Projects, exclusive of the construction of single-family residences that result in the disturbance of less than 1 acre.

**2.B.2.3.** SPPP Requirements Necessary to Meet Conditions 2.B.2.2 (a), (b) and (c), above:

- (a) All information required in Section 2.B.2.1, above;
- (b) A description of each post-construction Erosion Control Facility;
- (c) A site map and construction drawing(s) showing the specific location(s) and size(s) of each post-construction Erosion Control Facility;
- (d) Hydrologic and hydraulic analyses concerning all structural components of the Erosion Control System necessary to physically control the Erosion caused by a Design Storm;
- (e) A comparison of post-development Erosion conditions with pre-development conditions;
- (f) The dimensions, material specifications, and installation details for each post-construction Erosion Control Facility;
- (g) A maintenance schedule to ensure continuous and effective operation of each post-construction Erosion Control Facility;
- (h) The maintenance easements and rights-of-way necessary to ensure access to all Erosion Control Facilities upon the Parcel for the purpose of inspection and repair. Such easements shall be recorded on the plan, on any approved plat, and shall remain in effect with transfer of title to the Parcel;
- (i) The inspection and maintenance agreement(s) binding on all subsequent Landowners served by the on-site Erosion Control Facilities in accordance with Article 2, Section D, below.

**2.B.3. Plan Certification:** The SPPP shall be prepared by a licensed landscape architect, a licensed professional engineer, or a Certified Professional in Erosion & Sediment Control (“CPESC”), and must be signed by the professional preparing the plan, who shall certify that the design of all Erosion Control Facilities within the Proposed Project meets the requirements of this Local Law.

**2.B.4. Other Environmental Permits:** The Developer shall assure that all applicable environmental permits have been or will be acquired for the Land Development Activity to occur. No final Erosion Control plan may be approved without possession of each, any and all required permits.

**2.B.5. Contractor Certification**

**2.B.5.1.** Each contractor and subcontractor identified in the SPPP who will be involved in Land Development Activity and/or Erosion Control Facility 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 attached Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards established by the State of New York, the County of Tompkins, and/or the Town of Lansing.”

**2.B.5.2.** The above certification must include the name and title of the person executing the certification as well as the signature, address, and telephone number of the contracting firm; the address (or other identifying description) of the Proposed Project site; and the date the certification is made.

**2.B.5.3.** The above certification statement(s) shall become part of the SPPP concerning the Proposed Project.

**2.B.6.** A copy of the SPPP shall be retained at the site of the Proposed Project during construction, from the date of initiation of construction activities to the date of final close-out.

**Section 2.C. Performance and Design Criteria for Stormwater Control and Erosion and Sediment Containment Facilities:** All Large Projects shall be subject to the following performance and design criteria:

**2.C.1. Technical Standards:** For the purpose of this Local Law, the following documents shall serve as the official guides and specifications for Erosion Control Facilities. Erosion Control Facilities that are designed and constructed in accordance with these technical documents may be presumed to meet the standards imposed by the Design Manual and the Erosion Control Manual.

**2.C.2. Water Quality Standards:** A Large Project shall not decrease the quality of the Surface Waters by any measurement in excess of 1/10 of 1% over any given one-year period. A Small Project shall not decrease the quality of the Surface Waters by any measurement in excess of 1/100 of 1% over any given one-year period. These target percentages are, in part, designed to prevent increases in turbidity that contrast with natural Surface Waters conditions. In the event of likely or actual turbidity increases, the ECO may impose more stringent standards, subject to review by the Town Board.

## **Section 2.D. Maintenance and Repair of Erosion Control Facilities:**

### **2.D.1. Maintenance During Construction:**

**2.D.1.1.** The Developer of the Proposed Project shall at all times properly operate and maintain all Erosion Control Facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Developer to achieve compliance with the requirements of this Local Law. Sediment shall be removed from Sediment traps or Sediment ponds whenever their design capacity has been reduced by 50 percent.

**2.D.1.2.** The Developer or its representative shall be on site at all times when Land Development Activity takes place and shall inspect and document the effectiveness of all Erosion Control Facilities. Inspection reports shall be completed and recorded at least every 7 days, and within 24 hours of any storm event that generates 0.5 inches or more of rain or Stormwater. The reports shall be copied to the Proposed Project site construction log book, and delivered to the ECO at any time upon the demand of the ECO, with or without cause. All such reports, and all Proposed Project site construction logs, books, and log books shall be preserved, protected, and retained for a minimum period of 3 years after final project completion.

**2.D.2. Maintenance Easement(s) and Rights-of-Way:** Prior to the issuance of any Town Board or ECO approval that lists an Erosion Control Facility as one of the requirements, the Developer shall execute an inspection and maintenance easement and right-of-way agreement that

shall be binding on all subsequent Landowners served by the Erosion Control Facility. The easement and right-of-way shall provide for access to the Erosion Control Facility at reasonable times for periodic inspection and maintenance by the Town to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Local Law. This easement and right-of-way shall be recorded by the grantor in the office of the Tompkins County Clerk, after review and approval by the counsel for the Town.

**2.D.3. Maintenance After Construction:** The Developer, owner, Landowner, or Operator of permanent Erosion Control Facilities installed in accordance with this Local Law shall operate and maintain such facilities to achieve the goals of this Local Law. Proper operation and maintenance of permanent Erosion Control facilities includes, but is not limited to the following:

**2.D.3.1.** A preventative/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the Developer, owner, Landowner, or Operator of the Erosion Control Facilities in order to achieve the requirements of this Local Law.

**2.D.3.2.** Written procedures for the operation and maintenance of any facilities, together with written procedures for the training of new maintenance personnel.

**2.D.3.3.** Discharges from an Erosion Control Facility shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Section 2.C.2, above.

**2.D.4. Erosion Control Facility Maintenance Agreements:** Any Applicant, Operator, Developer, or Landowner must receive the Town Board's approval of a formal maintenance agreement for Erosion Control Facilities within a Proposed Project that is (1) binding on all subsequent Landowners, and (2) recorded in the office of the County Clerk as a deed restriction on the Parcel, prior to receiving final SPPP approval from the Planning Board. The Town, in lieu of a maintenance agreement and in the Town's sole discretion, may accept the dedication of any existing or future Erosion Control Facility, or any portion thereof, provided (i) such Erosion Control Facility, or portion thereof, meets the requirements of this Local Law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance, and (ii) the Developer (and/or Applicant, Landowner, or Operator) proposes and the Town accepts a special benefit drainage district for the inspection, maintenance, and, when necessary, expansion, of any facilities.



**Article 3. Construction with Subdivision Regulations:**

**Section 3.A. Preliminary Plats:** For all Preliminary Subdivision Plats, a SPPP that is consistent with Articles 1 and 2 of this Local Law is required. The SPPP shall meet the performance and design criteria and standards set forth in Article 2 of this Local Law. The approved Preliminary Subdivision Plan shall be consistent with the requirements of this Local Law.

**Section 3.B. Final Plats:** For all Final Subdivision Plats, a SPPP that is consistent with the requirements of Articles 1 and 2 of this Local Law, and with the terms of preliminary plan approval, shall be required for Final Subdivision Plat approval. The SPPP 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 requirements of this Local Law.

**Article 4. Construction with Site Plan Review Regulations:** For all Site Plan applications and approvals, a SPPP that is consistent with the requirements of Articles 1 and 2 of this Local Law shall be required. The SPPP shall meet the performance and design criteria and standards in Article 2 of this Local Law. The approved Site Plan shall be consistent with the provisions of this Local Law.

**Article 5. Prior Laws or Ordinances:** Any prior erosion or sediment containment law, ordinance, or regulations of the Town are hereby repealed. This Local Law shall take precedence over any other inconsistent requirement of any local law, ordinance, or regulation of the Town.

**Article 6. Administration and Enforcement:**

**Section 6.A. Construction Inspection:**

**6.A.1. Erosion and Sediment Containment Facility Inspection:** The ECO may require such inspections as are or may be deemed necessary to determine compliance with this Local Law, and may either approve that portion of the work completed or notify the applicant when the work fails to comply with the requirements of this Local Law and/or the approved SPPP. To obtain inspections, the applicant shall notify the ECO at least 48 hours before any of the following:

- 6.A.1.1.** Start of construction
- 6.A.1.2.** Installation of Sediment and erosion control measures
- 6.A.1.3.** Completion of site clearing
- 6.A.1.4.** Completion of rough grading

- 6.A.1.5. Completion of final grading
- 6.A.1.6. Close of the construction season for the Project
- 6.A.1.7. Completion of final landscaping
- 6.A.1.8. Successful establishment of landscaping in public areas

If any violations are found, the Applicant, Developer, Landowner and/or Operator shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted, except for site Stabilization, until each, any and all violations are corrected and all work previously completed has received approval by the ECO.

**6.A.2. Stormwater and Erosion Control Facility Inspections:** The ECO is responsible for conducting inspections of all Stormwater Control Facilities and all Erosion Control Facilities. All Applicants, Developers, Landowners and/or Operators shall submit to the ECO all “as built” plans for any Stormwater Control Facilities and Erosion Control Facilities located on-site or upon the Parcel after final construction is completed. The plan must show the final design specifications for all Stormwater Control Facilities and all Erosion Control Facilities and must be certified by a professional engineer.

**6.A.3. Inspection of Stormwater and Erosion Control Facilities After Large 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 notices 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 Control Facilities. Inspections may be performed by the ECO, or by a professional engineer or CPESC Inspector designated by the Town. All inspections shall be memorialized in writing, and all such writings shall be supplied to the ECO.

**6.A.4. Submission of Reports:** The ECO may require monitoring and reporting from entities subject to this Local Law as are necessary to determine compliance with this Local Law.

**6.A.5. Right-of-Entry for Inspection:** When any new Erosion Control Facility or Stormwater Control Facility is installed on private property, or when any new connection is made between private property and the public storm water system or any Watercourse, Waterway or Surface Waters, the Landowner shall grant to the Town an easement and permanent right-of-way to enter the Parcel at reasonable times and in a reasonable manner for the purpose of inspection as specified in paragraph 6.A.3. above.

## **Section 6.B. Performance Guarantee:**

**6.B.1. Construction Completion Guarantee:** In order to ensure the full and faithful completion of all Large Projects in compliance with all terms and conditions set forth in the SPPP and all requirements of this Local Law, the Town may require the Applicant, Developer, Landowner, and/or Operator to provide, prior to the commencement of any Clearing, Grading, or construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution that guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town Board or the Planning Board based upon 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 Town Board, provided that (1) such period shall not be less than one year from (i) the date of final completion, or (ii) the date of final acceptance, or (iii) such other final determination or certification that the facilities have been constructed in accordance with the approved plans and specifications, whichever shall last occur, and (2) that a one year inspection has been conducted and the facilities have been found to be acceptable to the Town. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

**6.B.2. Maintenance Guarantee:** When Stormwater Control Facilities, Erosion Control Facilities, and/or Sediment Containment Facilities are to be operated and maintained by any person or entity other than the Town, the Applicant, Developer, Landowner, or Operator may be required to

provide the Town with an irrevocable letter of credit from an approved financial institution or surety prior to the commencement of any Clearing, Grading, or construction, to ensure proper operation and maintenance of all Stormwater Control Facilities, Erosion Control Facilities, and/or Sediment Containment Facilities both during and after construction, and until the facilities are removed from operation. If the Applicant, Developer, Landowner, and/or Operator fail(s) to properly operate and maintain Stormwater Control Facilities, Erosion Control Facilities, and/or Sediment Containment Facilities, the Town may draw upon the account to cover the costs of proper operation and maintenance, including engineering, legal, and inspection costs.

**6.B.3. Recordkeeping:** The Town may require entities subject to this Local Law to maintain records demonstrating compliance with this Local Law.

### **Section 6.C. Enforcement and Penalties:**

**6.C.1. Notice of Violation:** When the ECO determines that a Land Development Activity is not being carried out in accordance with the requirements of this Local Law, the ECO may issue a written notice of violation to the Operator. Such notice of violation shall be served upon each person or entity to whom it is addressed. Delivery of the notice of violation by certified mail shall be deemed sufficient “service” of the notice of violation. The notice of violation shall contain:

- (a) The name and address of the Landowner, Developer, Operator, and/or Applicant;
- (b) The address, when available, or a description of the building, structure or Parcel upon which the violation occurred or is occurring;
- (c) A statement specifying the nature of the violation;
- (d) 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;
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed;
- (f) A statement that the determination of violation may be appealed by filing a written notice of appeal within 10 days

of service of notice of violation. Such notice of appeal shall be filed with the Town Clerk, and shall be directed to the attention of the Town Board.

**6.C.2. Stop Work Orders:** The ECO may issue a stop work order for violations of this Local Law. Any persons or entity receiving a stop work order shall be required to halt all Clearing, Grading, and construction, except for those activities that address the violations leading to the stop work order, and except for such work as may be necessary to mitigate or control Stormwater and Erosion. The stop work order shall be and remain in effect until the ECO confirms that the Land Development Activity is in compliance and the violation has been satisfactorily addressed.

**6.C.3. Violations:** In addition to any other right or remedy allowed by law or in equity, the Town Board may also maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision or requirement of this Local Law. Any Land Development Activity that is commenced or is conducted contrary to, in violation of, or in non-compliance with this Local Law may be restrained by injunction, or otherwise abated in any manner provided by law.

**6.C.4. Penalties & Fines:** All provisions of New York law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this sub-section, and/except that each and any misdemeanor shall be deemed an unclassified misdemeanor. The following civil and criminal fines and penalties shall apply to any violation of the requirements or terms of this Local Law:

- (a) **First Violation:** Any Applicant, Developer, Landowner or Operator (hereinafter collectively and/or severally "Person") that violates any of the provisions of this Local Law shall be (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$1,500.00, or (2) subject to a civil penalty of not more than \$2,500.00 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.
- (b) **Second Violation:** Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any other violation of this Local Law shall be deemed a second violation. Any Person that commits or

permits any second violation upon the same or an adjacent Parcel shall be (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$5,000.00, or (2) subject to a civil penalty of not more than \$7,500.00 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

- (c) **Third and Subsequent Violations:** Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any second violation of this Local Law shall be deemed a third or subsequent violation, as applicable. Any Person who commits or permits a third or subsequent violation upon the same or an adjacent Parcel shall be (1) guilty of an unclassified misdemeanor and subject to a fine not more than \$10,000.00 and a period of incarceration not to exceed 120 days, or (2) subject to a civil penalty of not more than \$15,000.00 to be recovered by the Town of Lansing in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

**6.C.5. Withholding of Certificate of Occupancy:** If any building or Land Development Activity is installed or conducted in violation of this Local Law, the ECO may (1) withhold any Certificate of Compliance or Certificate of Occupancy, and/or (2) prevent the occupancy of said building or land.

**6.C.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 Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid. In addition, the Town may commence any one or more civil proceedings in the Town Court, or any other court of competent jurisdiction, to recover the costs of such restoration.

**Article 7. Fees for Services:** The Town shall require any person undertaking Large Projects regulated by this Local Law to pay reasonable costs at prevailing rates for review of SPPPs, inspections, or maintenance performed by the Town or performed by

a third party for the Town, including but not limited to engineers' or attorneys' services and fees.

**Article 8. Application Fees:** A non-refundable application fee shall be submitted with each SPPP delivered to the ECO, in an amount as the Town Board may, from time to time, establish by resolution.

**Article 9. Appeals:** Any aggrieved person or entity may, unless expressly stated otherwise in this Local Law, appeal any action or determination of the ECO, the Town Board, or the Planning Board to the ZBA by filing a written statement setting forth the reasons for such appeal. Such statement must be filed within 10 days of the delivery or filing of any action or determination from which the appeal is taken. Upon receipt of such appeal, the ZBA shall hold a hearing within 30 days and, after a review of all evidence, shall affirm, modify, or annul the appealed from action or determination.

**Article 10. Article 78:** The actions and determinations of the Town Board, the Planning Board, the ZBA, and the ECO referenced in this Local Law shall be deemed "final determinations" for purposes of Article 78 of the New York Civil Practice Laws and Rules ("CPLR"). Notwithstanding this, standing under said Article 78 of the CPLR shall only be appropriate after the exhaustion of any appeals as provided for in this Local Law.

**Article 11. Limitation upon Town Liability and Indemnity:** The Town shall not be liable or responsible for any injury to persons or damage to property due to the Town's actions, or failures to act, under or pursuant to this Local Law, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town. All owners and entities working upon or engaged in any Clearing, Grading, excavation, construction, cleanup, remediation, or restoration work shall indemnify, keep and save harmless the Town from and against any and all losses, costs, damages, expenses, judgments, claims, or liabilities of any kind whatsoever which may accrue against or be charged to or recovered from the Town from or by reason of or on account of accidents, injuries, damages, and/or losses to persons or property. This indemnity provision shall be construed and applied to the maximum extent permitted by law. The Town may require that any person or entity procure liability insurance in a minimum amount of \$1,000,000.00 per incident per person, and that the Town be named an additional insured thereunder.

**Article 12. Environmental Assessment Forms and Environmental Impact Statements:** An Environmental Assessment Form ("EAF") shall be completed and submitted with all applications pursuant to the provisions of the State Environmental Quality Review Act, 6 NYCRR Part 617 ("SEQR"). If the EAF indicates that the proposed activity may have significant environmental consequences, the Town Board shall require that a Draft Environmental Impact Statement ("DEIS") be submitted. The application shall not be considered complete until the DEIS, if one is required, has been accepted by the Town

Board. When required by law, the Town Board shall hold public hearings upon the EAF or DEIS, or as otherwise required by SEQR.

**Article 13. Waivers:** Where the Town Board finds that, due to the special circumstances of a particular case, a waiver of certain requirements is justified, a waiver may be granted. In all cases, no waiver shall be granted unless the Town Board finds and records in its minutes that: (1) granting the waiver would be keeping with the intent and spirit of this Local Law, and is in the best interests of the community; (2) there is no adverse effect upon the character, appearance, or welfare of the neighborhood and any Watercourses, Watersheds, or Surface Waters; (3) there are special circumstances involved in the particular case; (4) denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed; and (5) the waiver is the minimum necessary degree of variation from the requirements of this Local Law.

**Article 14. 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. Any such invalidity shall be confined in its operation to the clause, sentence, paragraph, section or article thereof directly involved in the controversy in which such judgment shall have been rendered.

**Article 15. Effective Date:** This Local Law shall be and become immediately effective upon filing.