



# Village of Fort Edward

118 Broadway, P.O. Box 345, Fort Edward, N.Y. 12828

Phone (518) 747-4023

## RESOLUTION NUMBER 47

MOTION BY \_\_\_\_\_ Trustee Forte \_\_\_\_\_

SECONDED BY \_\_\_\_\_ Trustee Boucher \_\_\_\_\_

### **RESOLUTION ADOPTING A LOCAL LAW PROVIDING STORMWATER MANAGEMENT AND EROSION & SEDIMENT CONTROL IN THE VILLAGE OF FORT EDWARD**

**WHEREAS**, in accordance with New York State Department of Environmental Conservation General State Pollution Discharge Elimination System (SPDES) General Permit No. GP-02-01, the Village of Fort Edward was required to adopt stormwater regulations which would require the preparation of Stormwater Pollution Prevention Plans for certain regulated development activities in the Village of Fort Edward; and

**WHEREAS**, a proposed Local Law has been drafted regarding such Stormwater Regulations; and

**WHEREAS**, the Village Board of Trustees of the Village of Fort Edward held a public hearing on the proposed local law on December 3, 2007 whereat members of the public were permitted the opportunity to be heard on said Local Law; and

**WHEREAS**, the Village Board of Trustees has, prior to the consideration of this resolution, reviewed the potential adverse environmental impacts of this Local Law and the proposed Local Law prohibiting illicit discharges considered herewith.

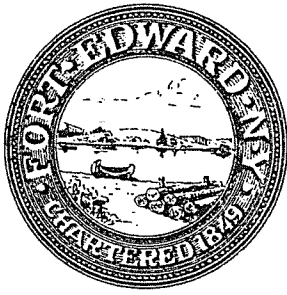
#### **NOW THEREFORE BE IT RESOLVED THAT:**

Section 1. The Village Board of Trustees, upon due deliberation of the proposed Local Law and the comments presented at the public hearing, finds that the adoption of the same shall be in the best interests of the Village.

Section 2. The Proposed Local Law, a copy of which is attached hereto, shall be adopted as Local Law 3 of 2007.

Section 3. Pursuant to and in accordance with the Municipal Home Rule Law the Village Clerk is hereby directed to enter said Local Law 3 of 2007 into the minutes of this meeting and file the same with the Office of the Secretary of State of the State of New York.

Section 4. This resolution shall take effect immediately.



# Village of Fort Edward

118 Broadway, P.O. Box 345, Fort Edward, N.Y. 12828

Phone (518) 747-4023

November 7, 2007

Dear Mindy,

Could you please publish the following in the Legal Ad section of the Post Star on November 23, 2007.

Thank you,

Daniel Smatko  
Clerk-Treasurer

## VILLAGE OF FORT EDWARD NOTICE OF PUBLIC HEARING

TAKE NOTICE, the Fort Edward Village Board will be conducting a Public Hearing on Monday, December 3, 2007 at 6:00 P.M. for the purpose of receiving comment on a proposed Local Law providing for stormwater management and erosion and sediment control in the Village of Fort Edward.

A copy of the proposed Local Law is on file in the office of the village clerk and may be inspected during normal business hours.

PUBLISH: 11/23/2007

Daniel Smatko  
Clerk-Treasurer  
Village of Fort Edward

FAX TRANSMITTAL		# of pages
To: <i>MINDY</i>	From: <i>DAN SMATKO</i>	1
Co. <i>POST STAR</i>	Co. <i>Village of Fort Edward</i>	
Dept. <i>LEGAL AD</i>	Phone # <i>(518) 747-4023</i>	
Fax # <i>798-5738</i>	Fax # <i>(518) 747-4397</i>	

**A LOCAL LAW  
PROVIDING STORMWATER MANAGEMENT  
AND EROSION & SEDIMENT CONTROL  
IN THE VILLAGE OF FORT EDWARD**

Be it enacted by the Village Board of Trustees of the Village of Fort Edward, in the County of Washington, State of New York, as follows:

**ARTICLE I- GENERAL PROVISIONS**

**Section 1. Findings**

The Village Board of Trustees of the Village of Fort Edward finds that land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transportation and deposition; that stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species; that clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat; that improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation; that impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow; that substantial economic losses can result from these adverse impacts on the waters of the Village of Fort Edward and State of New York; that stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities; that 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 the public's health and safety; and that regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

**Section 2. Purpose**

The purpose of this Local Law is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the Village of Fort Edward and to address the findings of fact noted in Section 1 above. This Local Law seeks to meet these purposes by achieving the following objectives.

(a) Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Stormwater Sewer Systems (MS4s), Permit No. GP-02-02 or as amended or revised;

(b) Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination Discharge Elimination System (SPDES) General Permit for Construction Activities GP-02-01 or as amended or revised;

(c) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;

(d) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;

(e) Minimize the total annual volume of stormwater runoff which flows from any specific site during following development to the maximum extent practicable; and

(f) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

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

This Local Law is adopted pursuant to the authority granted to the Village Board under Section 10 of the Municipal Home Rule Law of the State of New York.

### **Section 4. Applicability**

**4.1** This Local Law shall be applicable to all land development activities as defined in this Local Law except for the following:

(a) Agricultural activities as defined in this Local Law.

(b) Silvicultural activities, except for landing areas and logging roads which shall be subject to this Local Law.

(c) Routine maintenance activities that disturb less than one acre and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.

(d) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.

(e) Any part of a subdivision if a plat for the subdivision has been approved by the Village of Fort Edward Planning Board on or before the effective date of this Local Law.

(f) Land development activities for which a building permit has already been approved on or before the effective date of this Local Law.

(g) Cemetery graves.

(h) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(i) Emergency activity immediately necessary to protect life, property or natural resources.

(j) 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.

(k) Landscaping and horticultural activities in connection with an existing structure.

## **Section 5. Reference**

This Local Law shall be known as the “Village of Fort Edward Stormwater Regulations.”

## **ARTICLE II- STORMWATER MANAGEMENT, EROSION AND SEDIMENT CONTROLS**

### **Section 1. Definitions**

Whenever used in this law, unless a different meaning is stated in a definition applicable to only a portion of this law, the following terms will have meanings set forth below:

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

(b) “Applicant” shall mean a property owner or agent of a property owner who has filed an application for a land development activity.

(c) “Building” shall mean 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.

(d) “Channel” shall mean a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

(e) “Clearing” shall mean any activity that removes the vegetative surface cover.

(f) “Dedication” shall mean the deliberate appropriation of property by its owner for general public use.

(g) “Department” shall mean the New York State Department of Environmental Conservation.

(h) “Design Manual” shall mean 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.

(i) “Developer” shall mean a person who undertakes land development activities.

(j) “Erosion Control Manual” shall mean the most recent version of the “New York Standards and Specifications for Erosion and Sediment Control” manual, commonly known as the “Blue Book”.

(l) “Grading” shall mean excavation or fill of material, including the resulting conditions thereof.

(m) “Impervious Cover” shall mean those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

(n) “Industrial Stormwater Permit” shall mean 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.

(o) “Infiltration” shall mean the process of percolating stormwater into the subsoil.

(p) “Jurisdictional Wetland” shall mean 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.

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

(r) “Landowner” shall mean 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.

(s) "Maintenance Agreement" shall mean a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

(t) "Nonpoint Source Pollution" shall mean 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.

(u) "Phasing" shall mean clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

(v) "Pollutant of Concern" shall mean 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.

(w) "Project" shall mean a land development activity.

(x) "Recharge" shall mean the replenishment of underground water reserves.

(y) "Sediment Control" shall mean measures that prevent eroded sediment from leaving the site.

(z) "Sensitive Areas" shall mean cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

(aa) "SPDES General Permit for Construction Activities GP-02-01" shall mean 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.

(bb) "SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02" shall mean 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.

(cc) "Stabilization" shall mean the use of practices that prevent exposed soil from eroding.

(dd) "Stop Work Order" shall mean an order issued which requires that all construction activity on a site be stopped.

(ee) "Stormwater" shall mean - rainwater, surface runoff, snowmelt and drainage.

(ff) “Stormwater Hotspot” shall mean 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.

(gg) “Stormwater Management” shall mean 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.

(hh) “Stormwater Management Facility” shall mean one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

(ii) “Stormwater Management Officer” An employee, the municipal engineer or other public official(s) designated by the Village of Fort Edward to enforce this Local Law. The SMO may also be designated by the Village to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices. Unless otherwise designated by resolution of the Village Board of Trustees of the Village of Fort Edward, the SMO for the Village of Fort Edward shall be same individual serving as the Code Enforcement Officer of the Village of Fort Edward.

(jj) “Stormwater Management Practices (SMPs)” shall mean 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.

(kk) “Stormwater Pollution Prevention Plan (SWPPP)” shall mean a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

(ll) “Stormwater Runoff” shall mean flow on the surface of the ground, resulting from precipitation.

(mm) “Surface Waters of the State of New York” shall mean 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.

(nn) “Watercourse” shall mean a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(oo) “Waterway” shall mean a channel that directs surface runoff to a watercourse or to the public storm drain.

## **Section 2. Responsibility for Administration**

### **2.1 Stormwater Management Officer(s)**

The Stormwater Management Officer(s) (SMO(s)) shall administer, implement, and enforce the provisions of this Law.

## **Section 3. Stormwater Pollution Prevention Plans**

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

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

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

(a) 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 shall show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent offsite surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s); and be at a scale of no smaller than 1" = 100'.
3. Description of the soil(s) present at the site;
4. Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for

Erosion and Sediment Control (Erosion Control Manual), not more than one (1) acres shall be disturbed at any one time unless pursuant to an approved SWPPP;

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

(b) Land development activities as defined in Section 1 of this Article and meeting Condition “A”, “B” or “C” below shall also include water quantity and water quality controls

(post-construction stormwater runoff controls) as set forth in Section 2.2(c) below as applicable:

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

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

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

(c) SWPPP Requirements for Condition A, B and C:

1. All information in Section 2.1 of this Local Law;
2. Description of each post-construction stormwater management practice;
3. Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
4. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
5. Comparison of post-development stormwater runoff conditions with pre-development Conditions;
6. Dimensions, material specifications and installation details for each post-construction stormwater management practice;
7. Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.
8. Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.

9. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Article 2, Section 4 of this Local Law.

### **3.3 Plan Certification**

The SWPPP shall be prepared by a landscape architect, certified professional or professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this Local Law.

### **3.4 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.

### **3.5 Contractor Certification**

(a) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity : “I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”

(b) 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.

(c) The certification statement(s) shall become part of the SWPPP for the land development activity.

### **3.6 Copy of SWPPP**

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

## **Section 4. 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:

## **4.1 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:

(a) 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);

(b) New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the Erosion Control Manual).

## **4.2 Water Quality Standards**

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

## **Section 5. Maintenance and Repair of Stormwater Facilities**

### **5.1 Maintenance During Construction**

(a) 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.

(b) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.

### **5.2 Maintenance Easement(s)**

Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility.

The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village of Fort Edward 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 Washington County Clerk's Office after approval by the counsel for the Village of Fort Edward.

### **5.3 Maintenance after Construction**

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

(a) 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.

(b) Written procedures for operation and maintenance and training new maintenance personnel.

(c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Article II, section 3.2.

### **5.4 Maintenance Agreements**

The Village of Fort Edward shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the Washington County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this Local Law entitled Sample Stormwater Control Facility Maintenance Agreement. The Village of Fort Edward, 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.

## **ARTICLE III- ADMINISTRATION AND ENFORCEMENT**

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

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

The Stormwater Management Officer may require such inspections as necessary to determine compliance with this law and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this law and the

stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Stormwater Management Officer at least 48 hours before any of the following as required by the Stormwater Management Officer:

- (a) Start of construction;
- (b) Installation of sediment and erosion control measures;
- (c) Completion of site clearing;
- (d) Completion of rough grading;
- (e) Completion of final grading;
- (f) Close of the construction season;
- (g) Completion of final landscaping;
- (h) Successful establishment of landscaping in public areas.

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

## **1.2 Stormwater Management Practice Inspections**

The 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.

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

The 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 Village of Fort Edward 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 Village of Fort Edward in its approval of the Stormwater Pollution Prevention Plan, the Village of Fort Edward 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 Village of Fort Edward as the beneficiary. The security shall be in an amount to be determined by the Stormwater Management Officer 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 Village of Fort Edward, 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 Village of Fort Edward. 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 Village of Fort Edward 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 Village of Fort Edward may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

## **2.3 Recordkeeping**

The landowner or operator of the property shall maintain records showing compliance with this Local law and the Stormwater Pollution Prevention Plan for a period of seven (7) years, measured from the first year applicable to such Plan or other document, including any annual compliance reports required to show continued compliance with any SWPPP.

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

### **3.1 Notice of Violation**

When the SMO 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 may include a provision requiring the persons receiving such notice of violation to halt all land development activities, except those activities that address the violations leading to the notice of violation. The notice of violation shall contain:

- (a) The name and address of the landowner, developer or applicant;
- (b) The address when available or a description of the building, structure or land upon which the violation 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 shall or may be assessed against the person to whom the notice of violation is directed;
- (f) That the landowner, developer or applicant has forty eight (48) hours to remedy the violation contained therein; and
- (g) 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.

The notice of violation shall be in effect until the SMO confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address

a notice of violation within the time frame set forth therein may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this local law.

### **3.2 Appeal of Notice of Violation or Stop Work Order**

Any person receiving a Notice of Violation may appeal the determination of the SMO to the Village Board of Trustees of the Village of Fort Edward within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and within five days of making its decision, file its decision in the office of the municipal clerk and mail a copy of its decision by certified mail to the discharger.

### **3.3 Corrective Measures After Appeal**

(a) If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 5 business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

(b) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

### **3.4. Injunctive Relief**

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

### **3.5. Alternative Remedies**

(a) Where a person has violated a provision of this Law, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Code Enforcement Officer, where:

- (1) The violation was unintentional;
- (2) The violator has no history of previous violations of this Law;
- (3) Environmental damage was minimal;

- (4) Violator acted quickly to remedy violation; and
  - (5) Violator cooperated in investigation and resolution.
- (b) Alternative remedies may consist of one or more of the following:
- (1) Attendance at compliance workshops.
  - (2) Storm drain stenciling or storm drain marking.
  - (3) River, stream or creek cleanup activities.

### **3.6. Violations Deemed a Public Nuisance**

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

### **3.7. Remedies Not Exclusive**

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

### **3.8 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.

### **3.9 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.

### **3.10 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 Village of Fort Edward may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

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

The Village of Fort Edward 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 Village of Fort Edward or performed by a third party for the Village of Fort Edward.

## **ARTICLE IV- MISCELLANEOUS PROVISIONS**

### **Section 1. Severability**

If any provisions of this Local Law are held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this Local Law shall remain in effect.

### **Section 2. Effective Date**

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.