

VI. ASSESSMENT AND GAP ANALYSIS OF LOCAL LAWS

A. EXPLANATION OF WORKSHEET METHOD

The assessment and gap analysis of local laws and practices evolved from the recognition for a need to strengthen local controls regarding stormwater management and erosion and sediment control. While many communities across New York State recognize that water resources are important, and nonpoint water pollution remains a huge threat to those resources, it can be a daunting task to review local laws and practices to evaluate their ability to protect water quality. The Preliminary Local Codes Assessment Worksheets that follow sets the course for accomplishing this goal.

The Worksheets assess the degree to which local code addresses New York State GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity.⁵ This law represents the most comprehensive regulatory procedure to date addressing environmental degradation associated with stormwater and erosion and sedimentation stemming from new construction activities that disturb an area of one acre or more. While municipalities in Seneca County are not required to pass a law relative to GP 02-01 at this point in time, the regulation nonetheless serves as a useful benchmark that municipalities across New York State can use to compare and contrast their own local laws.

As explained in detail in Appendix A, the New York State Department of State and Department of Environmental Conservation prepared a Sample Stormwater Management Local Law. This model law contains all the provisions needed to comply with GP 02-01. It is designed to be used with any existing configuration of local land use regulatory provisions. The adoption and enforcement of this model law would provide the municipalities with a tool for comprehensive protection from erosion and sedimentation caused by new construction activities that disturb one acre or more of land. The law would also require, however, a commitment of resources from the municipality for the provision of a designated official (sometimes referred to as a “drainage officer”) for the purposes of reviewing and enforcing Stormwater Pollution Prevention Plans (SWPPPs), site inspection and record keeping. This official would preferably be trained in erosion and sediment control in order to perform these duties properly and efficiently.

If this law were adopted, the local code enforcement officer, in most instances, would be called upon to perform these duties. This situation can produce a considerable workload, however, when attempting to balance routine code enforcement duties with those required of a drainage officer. However, this depends on local rates of development, individual staff workloads and available supporting staff, such as administrative professionals, consulting engineers or legal council. In some instances, local municipalities find it beneficial to utilize the services and staff of Soil and Water Conservation Districts to perform some of these functions on behalf of the municipality.

Local board members (typically Zoning Board of Appeals and Planning Boards) would also require routine training in the regulations and procedures of GP 02-01. This can be satisfied by semi-annual training sessions which generally last between 3 to 6 hours.

Some municipalities may ask, “*Why doesn’t the county simply adopt a Stormwater Management and Erosion Control Law on its own?*” The answer is that such a law regulates land use and most land use regulation (aside from agriculture) is the responsibility of local government in New York State.

⁵ See page 11 for further explanation of GP 02-01.

Furthermore, some municipalities may ask, “*Why adopt a local Stormwater Management and Erosion Control Law if there are State regulations already in place?*” The answer is that some municipalities, particularly those that are seeing development pressure in sensitive areas (such as along lakeshores), want

Whether a municipality should adopt a local erosion and sediment control law depends, in large part, upon local conditions, especially the rate and type of new development. In some cases, the primary sources of erosion and sedimentation in a municipality may be caused by activities that local government has little or no control over (i.e. agricultural activities). In such cases, it may be more beneficial to develop solutions with local landowners rather than enact local laws.

B. PRELIMINARY LOCAL CODES ASSESSMENT: EXPLANATION OF FINDINGS

The following section provides short explanations of the findings garnered from the Preliminary Local Codes Assessment Worksheet(s) in Appendix A of this report.

1. Town of Covert

A thorough review of the Town of Covert’s applicable local laws (Land Subdivision Regulations (1981), Land Management Ordinance, Mobile Home Ordinance, et al.) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. Several components of the Town’s current Subdivision Regulations do mirror the general framework of the Sample Local Law; however, a number of key components are absent.

Given that there is currently little to no reference to stormwater and erosion and sediment control procedures in the Town of Covert, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. This law can be adopted with little alteration to the current laws that are in place. If a municipality adopts this local law, it enhances the level of enforcement through its local code enforcement staff. If municipalities find that they lack the resources to enforce the various components of this law, there are several ways that it can still maximize the law’s potential and success. Municipalities can benefit by simply referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.

2. Town of Fayette

A thorough review of the Town of Fayette’s applicable local laws (Zoning (1976), Subdivision Regulations (1977)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. While Article V of the Town’s Subdivision Regulations cite several necessary components which are similar to those required in the *NYS Sample Local Law*, most of the key components are absent. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with inspection, enforcement and penalty procedures. Current procedures cited in the Town of Fayette’s Zoning and Subdivision Ordinance would likely meet equivalency in this area.

Given that there is currently little to no reference to stormwater and erosion and sediment control procedures in the Town of Fayette, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. This law can be adopted with little alteration to the current laws that are in place. If a municipality adopts this local law, it enhances the level of enforcement through its local code enforcement staff. If municipalities find that they lack the resources to enforce the

various components of this law, there are several ways that it can still maximize the law's potential and success. Municipalities can benefit by simply referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.

3. Village of Interlaken

No local laws were found to be present.

4. Town of Junius

No local laws were found to be present.

5. Town of Lodi

No local laws were found to be present.

6. Village of Lodi

No local laws were found to be present.

7. Town of Ovid

No local laws were found to be present.

8. Village of Ovid

No local laws were found to be present.

9. Town of Seneca Falls

A thorough review of the Town of Seneca Falls' applicable local laws (Zoning (1998), Subdivision Regulations, Joint Town/Village Comprehensive Plan (1969)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. While Article II §86-6 and §86-7 of the Town's Subdivision Regulations cite several necessary documents which are similar to those required in the *NYS Sample Local Law*, most of the key components are absent. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with inspection, enforcement and penalty procedures. Current procedures cited in the Town of Seneca Falls Zoning and Subdivision Ordinance would likely meet equivalency in this area.

Given that there is currently little to no reference to stormwater and erosion and sediment control procedures in the Town of Seneca Falls, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. This law can be adopted with little alteration to the current laws that are in place. If a municipality adopts this local law, it enhances the level of enforcement through its local code enforcement staff. If municipalities find that they lack the resources to enforce the various components of this law, there are several ways that it can still maximize the law's potential and success. Municipalities can benefit by simply referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.

10. Village of Seneca Falls

A thorough review of the Village of Seneca Falls' applicable local laws (Zoning (1984), Subdivision Regulations (1969), Site Plan Review, Flood Damage Prevention (1987), Joint Village/Village Comprehensive Plan (1969) et al.) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. While §207.10-E of the

Village's Subdivision Regulations cite several necessary documents that are similar to those required in the *NYS Sample Local Law*, most of the key components are absent. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with inspection, enforcement and penalty procedures. Current procedures cited in the Village of Seneca Falls Zoning and Subdivision Ordinance would likely meet equivalency in this area.

Given that there is currently little to no reference to stormwater and erosion and sediment control procedures in the Village of Seneca Falls, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. This law can be adopted with little alteration to the current laws that are in place. If a municipality adopts this local law, it enhances the level of enforcement through its local code enforcement staff. If municipalities find that they lack the resources to enforce the various components of this law, there are several ways that it can still maximize the law's potential and success. Municipalities can benefit by simply referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.

11. Town of Tyre

A thorough review of the Town of Tyre's applicable local laws (Zoning (1991), Comprehensive Plan (draft)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. While §207.10-E of the Village's Subdivision Regulations cite several necessary documents which are similar to those required in the *NYS Sample Local Law*, most of the key components are absent. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with inspection, enforcement and penalty procedures. Current procedures cited in the Town of Tyre Zoning would likely meet equivalency in this area.

Given that there is currently little to no reference to stormwater and erosion and sediment control procedures in the Town of Tyre, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. This law can be adopted with little alteration to the current laws that are in place. If a municipality adopts this local law, it enhances the level of enforcement through its local code enforcement staff. If municipalities find that they lack the resources to enforce the various components of this law, there are several ways that it can still maximize the law's potential and success. Municipalities can benefit by simply referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.

12. Town of Waterloo

A thorough review of the Town of Waterloo's applicable local laws (Zoning (2000), Subdivision (draft) Site Plan Review (part of Zoning) and Comprehensive Plan (2000)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. This is not to imply, however, that the Town did not have adequate provisions written into local law to account for erosion and sediment control. Notably §79-6 and §79-7 of the Town's Zoning – Site Plan Review puts forth specific standards relevant to drainage, erosion, impermeable surfaces, flood zones and pre/post construction stabilization practices. Measures for inspection and penalties are clearly in place and also meet equivalency with the *NYS Sample Local Law*.

Therefore, while the Town of Waterloo's current local laws do not meet full equivalency with the *NYS Sample Local Law*, if applications are provided strict scrutiny by applicable boards and plans are being

properly enforced by the Code Enforcement Officer, baseline protection from erosion and sedimentation stemming from construction activities appears to be in place.

In the future, the Town of Waterloo may want to do a full assessment of its local laws in order to evaluate their effectiveness and comprehensiveness in comparison to the state model. In doing so, the Town will be given a better indication of whether the current specifications listed within the local code are adequate and satisfactory in comparison to the state model. The Town may also want to consider referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.

13. Village of Waterloo

A thorough review of the Village of Waterloo's applicable local laws (Zoning (1996), Site Plan Review (part of Zoning) and Flood Ordinance (1987)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with inspection, enforcement and penalty procedures. Current procedures cited in the Village of Waterloo's Zoning would likely meet equivalency in this area.

Given that there is currently little to no reference to stormwater and erosion and sediment control procedures in the Village of Waterloo, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. This law can be adopted with little alteration to the current laws that are in place. If a municipality adopts this local law, it enhances the level of enforcement through its local code enforcement staff. If municipalities find that they lack the resources to enforce the various components of this law, there are several ways that it can still maximize the law's potential and success. Municipalities can benefit by simply referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.

14. Town of Varick

A thorough review of the Town of Varick's applicable local laws (Zoning (2003), Subdivision (1997)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with inspection, enforcement and penalty procedures. Current procedures cited in the Town of Varick's Zoning would likely meet equivalency in this area.

Given that there is currently little to no reference to stormwater and erosion and sediment control procedures in the Town of Varick, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. This law can be adopted with little alteration to the current laws that are in place. If a municipality adopts this local law, it enhances the level of enforcement through its local code enforcement staff. If municipalities find that they lack the resources to enforce the various components of this law, there are several ways that it can still maximize the law's potential and success. Municipalities can benefit by simply referencing the importance of and requirements associated with the Statewide Phase II Construction Permit within their local zoning, site plan review and subdivision regulations, thereby requiring developers to provide proof of compliance with the Phase II Construction Permit.