

## 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.<sup>5</sup> 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 Wyoming 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.

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<sup>5</sup> 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.*

### MUNICIPALITIES OF THE SILVER LAKE WATERSHED

#### **Castile – Perry Planning Area (including the Town and Village of Castile and the Village of Perry**

*Zoning Regulations for the Castile-Perry Planning Area* (1996) take several aspects of thorough erosion and sediment control into account. Chapter IV § 4.4 regarding “excavation and topsoil removal” clearly states the policy: “No person shall remove topsoil or alter topography for any purpose...” without first obtaining an Excavation Permit from the appropriate body. While equivalency generally requires the law to explicitly state that it is applicable to all construction activities that disturb one acre or more, this local law refers to all activities that disturb soil, regardless of area. This section of local law therefore appears to meet equivalency to § 4.1 (Applicability) of the NYS Sample Stormwater Management Local Law.

Chapter IV § 4.7 (re: permits) goes on to state the local requirements for obtaining an excavation permit. These include basic pieces of information that would be necessary to determine potential impacts of the an excavation, including an “operations map” and a “restoration plan.” Monitoring plans for pre- and post-construction site remediation measures is a core component of local erosion and sediment control. The NYS Sample Law, however, requires a Stormwater Pollution Prevention Plan (SWPPP) to be submitted to and approved by appropriate boards prior to construction. A SWPPP, by definition, contains sixteen individual components, including plans for construction site waste control, spill prevention and waste material control plans, and other detailed plans covering all activities that may take place on a construction site from the initial tree cutting and clearing to the final seeding and planting of the site. In order to meet equivalency to the NYS Sample Law, a municipality must have all sixteen components within its local law (refer to the NYS Sample Law, Appendix B-93, Section 2 for a list of all 16 components).

Equivalency to the NYS Sample Stormwater Management Local Law was also found under Article III of the local law, which deals with enforcement, compliance and penalties. Each of these sections meets equivalency with Article 6 of the NYS Sample Law.

Given that only a few of the provisions in the *Preliminary Local Codes Assessment Worksheet* appear in the *Zoning Regulations for the Castile-Perry Planning Area*, significant amendments to this law local law would be necessary in order to fully comply with the NYS Sample Stormwater Management Local Law. If local officials wanted to comply with the NYS Sample Law, they may find it most advantageous to

simply adopt the full language of the Sample Local Law. There are currently no state or federal requirements for municipalities in Wyoming County to pass such a law. However, local officials may nonetheless want to consider incorporating certain aspects of the NYS Sample Law into current zoning language in an effort to promote statewide consistency and to ensure comprehensive protection from erosion and sedimentation emanating from new construction activities.

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.

### **Town of Perry**

A thorough review of the Town of Perry's applicable local laws (Town of Perry Zoning Regulations, (2000), Subdivision Regulations: Castile – Perry Planning Area (2000) and Comprehensive Plan for the Town and Village of Perry) 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 Perry's Zoning Regulations 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 Perry body of local laws, 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. Furthermore, page 28 of the Comprehensive Plan contains language indicating a desire to maintain proper drainage and avoid possible problems related to stormwater. The NYS Sample Law, if passed and properly enforced, would be an excellent mechanism for meeting this stated goal.

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.

## MUNICIPALITIES OF WESTERN WYOMING COUNTY

### **Town of Arcade**

A thorough review of the Town of Arcade's applicable local laws (Zoning (2000) and Comprehensive Plan (1996)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. While Zoning, Article 700 § 706 "Top Soil" (re: top soil removal) has similar intent to an erosion and sediment control ordinance, it falls far short of meeting the requirements of the NYS Sample 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 Arcade's Zoning Regulations 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 Arcade body of local laws, 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. Furthermore, Section IV B-2, “Goals and Objectives” of the Comprehensive Plan contains language indicating a desire to minimize erosion from construction activities and stormwater runoff. Other sections of the Comprehensive Plan (see the Town of Arcade worksheet for references) go on to reflect these sentiments. The NYS Sample Law or portions thereof, if passed and properly enforced, would be an excellent mechanism for meeting these stated goals.

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.

#### **Village of Arcade**

A thorough review of the Village of Arcade’s applicable local laws (Zoning (2003), Subdivision (2004) and Comprehensive Plan (1996)) 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 Arcade’s Zoning Regulations 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 Arcade body of local laws, 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. Furthermore, Section IV B-2, “Goals and Objectives” of the Comprehensive Plan contains language indicating a desire to minimize erosion from construction activities and stormwater runoff. Other sections of the Comprehensive Plan (see the Village of Arcade worksheet for references) go on to reflect these sentiments. The NYS Sample Law or portions thereof, if passed and properly enforced, would be an excellent mechanism for meeting these stated goals.

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.

#### **Town of Attica**

A thorough review of the Town of Sheldon’s applicable local laws (Zoning Chapter 120 from the Code of the Town of Attica (1996), Local Law No. 1 of the year 1986 amending Local Law No. 1 for the year 1983 Providing for Flood Plain Management, and the General Land Use Plan Technical Report: Town and Village of Attica. (1972)) 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 Attica’s Zoning Regulations 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 Attica's body of local laws, 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.

### **Village of Attica**

A thorough review of the Village of Attica's applicable local laws (Village of Attica Zoning Ordinance (Date unknown), Village of Attica Comprehensive Plan (2003), and Chapter 23, Flood Damage Prevention (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 Attica's Zoning Regulations 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 Attica's body of local laws, 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.

### **Town of Bennington**

A thorough review of the Town of Bennington's applicable local laws (Zoning Law of the Town of Bennington (1986) and the Town of Bennington Comprehensive Plan (1997)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. While the Town's Zoning Law, Article V (Administration and Enforcement) § 3.1.1: *Preliminary Site Plan Requirements* lists certain contents that fall in line with the NYS Sample Law, this section does not contain all sixteen elements necessary for inclusion in a Stormwater Pollution Prevention Plan. The NYS Sample Law requires a SWPPP to be submitted to and approved by appropriate boards prior to construction. A SWPPP, by definition, contains sixteen individual components, including plans for construction site waste control, spill prevention and waste material control plans, and other detailed plans covering all activities that may take place on a construction site from the initial tree cutting and clearing to the final seeding and planting of the site. In order to meet equivalency to the NYS Sample Law, a municipality must have all sixteen components within its local law (refer to the NYS Sample Law, Appendix B-93, Section 2 for a list of all 16 components).

Equivalency to the *NYS Sample Stormwater Management Local Law* was also found under Article 6, which deals with inspection, enforcement and penalty procedures. Current procedures cited in the Town of Bennington's Zoning Regulations would likely meet partial equivalency in this area.

Given that only a few of the provisions in the *Preliminary Local Codes Assessment Worksheet* appear in the *Zoning Law of the Town of Bennington*, significant amendments to this law local law would be necessary in order to fully comply with the *NYS Sample Stormwater Management Local Law*. If local officials wanted to comply with the NYS Sample Law, they may find it most advantageous to simply adopt the full language of the Sample Local Law. There are currently no state or federal requirements for municipalities in Wyoming County to pass such a law. However, local officials may nonetheless want to consider incorporating certain aspects of the NYS Sample Law into current zoning language in an effort to promote statewide consistency and to ensure comprehensive protection from erosion and sedimentation emanating from new construction activities.

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.

#### Town of Java

A thorough review of the Town of Java's applicable local laws (*Zoning Ordinance of the Town of Java* (1998) and the *Comprehensive Plan* (1987)) revealed that few sections of local law meet equivalency with the *NYS Sample Stormwater Management and Erosion and Sediment Control Local Law*. Article II (General Provisions Applicable to All Districts) § 301 "Preservation of Natural Features, C" states: "No movement of earth, or stockpiling of soil shall be permitted at any time in any district that causes erosion, sedimentation, dust, or other conditions which create a nuisance on any other property. While equivalency generally requires the law to explicitly state that it is applicable to all construction activities *that disturb one acre or more*, this local law refers to earth movement activities in general, regardless of the total area disturbed. This section of local law therefore appears to meet equivalency to § 4.1 (Applicability) of the *NYS Sample Stormwater Management Local Law*.

The other 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 Java's Zoning Regulations would likely meet equivalency in this area.

Given that only a few of the provisions in the *Preliminary Local Codes Assessment Worksheet* appear in the *Zoning Ordinance of the Town of Java*, significant amendments to this law local law would be necessary in order to fully comply with the *NYS Sample Stormwater Management Local Law*. If local officials wanted to comply with the NYS Sample Law, they may find it most advantageous to simply adopt the full language of the Sample Local Law. There are currently no state or federal requirements for municipalities in Wyoming County to pass such a law. However, local officials may nonetheless want to consider incorporating certain aspects of the NYS Sample Law into current zoning language in an effort to promote statewide consistency and to ensure comprehensive protection from erosion and sedimentation emanating from new construction activities.

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## Gap Analysis of Local and State Stormwater Management Requirements

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*Wyoming County, New York State*

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.

### **Town of Sheldon**

A thorough review of the Town of Sheldon's applicable local laws (Zoning Ordinance of the Town of Sheldon (1999), *Requirements for Subdivision of Streets or Roads* (no date) and the Comprehensive Plan (2001)) 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 Sheldon's Zoning Regulations 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 Sheldon's body of local laws, 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. Furthermore, the action item listed on page 3-13, Section 3-O, "Properly Design and Maintain Drainage Systems" of the Comprehensive Plan contains language indicating a desire to minimize excessive erosion from construction activities and stormwater runoff as well as to maintain existing and future stormwater control structures. The NYS Sample Law or portions thereof, if passed and properly enforced, would be an excellent mechanism for meeting these stated goals.

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.