

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 Yates 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 Barrington

A thorough review of the Town of Barrington’s applicable local laws (Zoning (1996), Comprehensive Plan (1976), Local Law #1 of 1993 (Wastewater Management)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. 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 Barrington Zoning Code would likely meet equivalency in this area.

Given that there is currently no reference to stormwater and erosion and sediment control procedures in the Town of Barrington, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. 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 Benton

A thorough review of the Town of Benton’s applicable local laws (Zoning (2004) Site Plan Review (2004), Comprehensive Plan (2001)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. There were several sections of the Town’s Site Plan Review that were found to be similar in scope and intent to the language of the *NYS Sample Stormwater Management Local Law* (see sections 4.3: SWPPP Review Requirement, 2.1: Stormwater Pollution Prevention Plan, and Section 2.2.2.1: Contents of Stormwater Pollution Prevention Plans). However, none of the sections listed above met the requirements to be granted equivalency to GP 02-01. In order to attain equivalency, the local law must fully accomplish the same objectives of GP 02-01. 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 Barrington Zoning Code would likely meet equivalency in this area.

Current Site Plan Review requirements in the Town of Benton with regard to Development Standards are likely adequate for preventing excessive erosion and sedimentation resulting from new construction activities. Consultation with the SWCD regarding drainage and erosion control procedures has been written into Site Plan Review (Article IX Development Standards for Site Plan Review), which should provide adequate professional oversight of new developments. Town officials can further 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. Town of Italy

A thorough review of the Town of Italy's applicable local laws (Zoning (draft), Comprehensive Plan (2004), Flood Ordinance (1992), Disaster Response Plan (2002), Hazardous Materials Emergency Response Plan, and Uniform Docking and Mooring Law (2003)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with enforcement and penalty procedures. Current procedures cited in the Town of Italy Zoning Code would likely meet equivalency in this area.

Given that there is currently no reference to stormwater and erosion and sediment control procedures in the Town of Italy, the most prudent course of action would be to adopt the *NYS Sample Stormwater Management Local Law*, or portions thereof. 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.

4. Town of Jerusalem

A thorough review of the Town of Jerusalem's applicable local laws (Zoning (1995), Comprehensive Plan (1992)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. The only section where equivalency was found was under Sample Local Law, Article 6, which deals with enforcement and penalty procedures. Current procedures cited in the Town of Jerusalem Zoning Code would likely meet equivalency in this area.

While Article XVIII "Road Specifications for Dedicated Highways §160-84B lists a "stormwater management, erosion and sedimentation control plan" as a requirement for submission with the overall highway plan, this does not meet equivalency for two key reasons: (1), the plan is not referred to specifically as a Stormwater Pollution Prevention Plan (SWPPP); and (2), the section only pertains to highways rather than all developments disturbing one acre or more of land. Nonetheless, its inclusion within the zoning code is a positive step.

For comprehensive coverage regarding stormwater and sediment and erosion control from new construction, the Town of Jerusalem may want to consider reviewing the *NYS Sample Stormwater Management Local Law* for possible inclusion within the local code. 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.

5. Town of Middlesex

A thorough review of the Town of Middlesex's applicable local laws (Zoning (2004), Site Plan Review (2004), Stormwater Management and Erosion Control Law, et al.) revealed a number of components of local law that would very likely meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity.

The Town has clearly identified stormwater and erosion and sediment control as a priority, as evidenced by the passage of the Stormwater Management and Erosion Control Law. It is important to note, however, that because the local stormwater law was developed in advance of the *NYS Sample Stormwater Management Local Law*, it would be necessary to make extensive revisions to the local code in order to meet full equivalency with the state model. Indeed, there are several components of the local law that are similar in scope and intent of the state model; these, however, do not meet equivalency when evaluated under strict legal scrutiny.

In the future, the Town of Middlesex may want to do a full assessment of the local stormwater law in order to evaluate its effectiveness and comprehensiveness in comparison to the state model. In doing so, the Town will be given a better indication of whether the current Stormwater Management and Erosion Control Law is adequate and satisfactory in comparison to the state model.

6. Town of Milo

A thorough review of the Town of Milo's applicable local laws (Subdivision and Zoning (2000), Site Plan Review (2000), Comprehensive Plan (1997)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. 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 Milo Subdivision and Zoning Codes would likely meet equivalency in this area.

While some required components of a subdivision application are similar to the *NYS Sample Stormwater Management Local Law*, a strict comparison of the two shows that the local subdivision code falls far short of meeting equivalency.

Given that there is currently no specific reference to stormwater and erosion and sediment control procedures in the Town of Milo, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. 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.

7. Town of Potter

A thorough review of the Town of Potter's applicable local laws (Subdivision (1996), Zoning (2002), Site Plan Review (2002), Comprehensive Plan (1979) et al.) revealed several components of local law that would very likely meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges

from Construction Activity. Most notably, the local Subdivision ordinance specifically cites the need for including site drainage, erosion and sedimentation control within Construction Detail Sheets. References to controlling runoff after construction as well as citation of the DEC publication *NYS Guidelines for Urban Sediment and Erosion Control* indicate that the Town is aware of the importance of incorporating specific technical standards into the construction of new facilities.

In the future, the Town of Potter may want to do a full assessment of the 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 consistent, adequate and satisfactory in comparison to the state model.

8. Town of Starkey

A thorough review of the Town of Starkey's applicable local laws (Zoning (1993), Subdivision (1969), Comprehensive Plan (1969), Flood Damage Prevention (2003) and Watershed Ordinance (2003)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. 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 Starkey Zoning Code would likely meet equivalency in this area.

Given that there is currently no reference to stormwater and erosion and sediment control procedures in the Town of Starkey, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. 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.

9. Town of Torrey

Comprehensive Plan (1976),) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. 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 Torrey Zoning Code would likely meet equivalency in this area.

Given that there is currently no reference to stormwater and erosion and sediment control procedures in the Town of Torrey, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. 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 Dresden

A thorough review of the Village of Dresden's applicable land use documents (Comprehensive Plan (2004) and the FEMA Flood Insurance Study) revealed no sections meeting equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity.

Until the Village sees fit to establish a basic foundation of local land use codes (i.e. zoning, subdivision and/or site plan review), there is little need to pass an erosion and sediment control ordinance. If and when this occurs, the state model – or portions thereof – may provide useful guidance therein. 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. Village of Dundee

A thorough review of the Village of Dundee's applicable local laws (Zoning (1996), Subdivision (1988), Site Plan Review (1996)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. 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 Dundee Zoning Code would likely meet equivalency in this area.

Given that there is currently no reference to stormwater and erosion and sediment control procedures in the Village of Dundee, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. 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. Village of Penn Yan

A thorough review of the Village of Penn Yan's applicable local laws (Zoning (2000), Subdivision (1992), Site Plan Review (2000), Comprehensive Plan (2000), Flood Damage (1987), Design and Construction Standards (1993)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. 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 Penn Yan Zoning and Subdivision Codes would likely meet equivalency in this area.

The Village's *Design and Construction Standards for Land Development* provides highly-detailed instructions and specifications for land movement activities occurring within the village. These specifications include a detailed section specific to erosion and sediment control practices and procedures. In the absence of any state or federal mandate for the Village to revise local ordinances, or local concern regarding the effectiveness of these standards, no revision of the local law should be necessary.

13. Village of Rushville

A thorough review of the Village of Rushville's applicable local laws (Zoning (1965), Subdivision (1964), Comprehensive Plan (1965)) revealed that few sections of local law meet equivalency with GP 02-01 – SPDES General Permit for Stormwater Discharges from Construction Activity. 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 Rushville Zoning Code would likely meet equivalency in this area.

Given that there is currently no reference to stormwater and erosion and sediment control procedures in the Village of Dundee, adopting the *NYS Sample Stormwater Management Local Law*, or portions thereof, may be a prudent course of action. 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.