

**TOWN OF EVANS  
PROPOSED LOCAL LAW NO. 6 OF THE YEAR 2007**

A LOCAL LAW amending Chapter 178, Subdivision of Land; and Chapter 200, Zoning, of the Code of the Town of Evans, in relation to stormwater pollution prevention.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF EVANS AS FOLLOWS:

**Section 1.**

STATUTORY AUTHORITY. In accordance with Section 10 of the Municipal Home Rule Law of the State of New York, the Town Board of the Town of Evans has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare of the Town of Evans and for the protection and enhancement of its physical environment. In addition, Section 10 of the Municipal Home Rule Law of the State of New York grants the Town Board of the Town of Evans the authority to exercise any of the powers granted to it in the Statute of Local Governments, including the power to adopt, amend, or repeal zoning regulations, through the enactment of local laws or the amendment of local laws. In any such local law, the Town Board may provide for the appointment of any municipal officer, employee, or independent contractor to effectuate, administer and enforce such local law.

Additions to the Code of the Town of Evans are reflected by underlining.

Deletions to the Code of the Town of Evans are reflected by ~~striketroughs~~.

**Section 2.**

Chapter 200, Zoning, of the Code of the Town of Evans, is hereby amended by adding the following definitions to § 200-7:

AGRICULTURAL ACTIVITY – 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.

APPLICANT – a property owner or agent of a property owner who has filed an application for a land development activity.

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

CLEARING - any activity that removes the vegetative surface cover.

DEDICATION - the deliberate appropriation of property by its owner for general public use.

DEPARTMENT - the New York State Department of Environmental Conservation.

DESIGN MANUAL - the *New York State Stormwater Management Design Manual* (New York State Department of Environmental Conservation), most recent version or its successor, including applicable updates, which serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER - a person who undertakes land development activities.

EROSION CONTROL MANUAL - the *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, commonly known as the *Blue Book*.

GRADING - excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER - those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT - a State Pollutant Discharge Elimination System (SPDES) 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.

INFILTRATION - the process of percolating stormwater into the subsoil.

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

LAND DEVELOPMENT ACTIVITY - 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 disturbing one acre or more in the aggregate, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER - 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.

LICENSED PROFESSIONAL – a landscape architect or professional engineer licensed to practice his or her profession in New York State.

MAINTENANCE AGREEMENT - a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

NONPOINT SOURCE POLLUTION - 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.

PHASING - clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN - 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.

PROJECT – a development activity.

RECHARGE - the replenishment of underground water reserves.

SEDIMENT CONTROL - measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS - cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, or habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 - 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.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02 - 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.

STABILIZATION - the use of practices that prevent exposed soil from eroding.

STOP WORK ORDER - an order issued which requires that all construction activity on a site be stopped.

STORMWATER - rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT - 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.

STORMWATER MANAGEMENT FACILITY - one or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO) - an employee or officer of the Town of Evans designated by the Town Board to accept and review Stormwater Pollution Prevention Plans (SWPPPs), forward the plans to such employee, agency or board of the Town of Evans which may be reviewing any application for a construction activity requiring submission of a SWPPP, and inspect stormwater management practices.

STORMWATER MANAGEMENT PRACTICES (SMPs) - 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.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) - a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF - flow on the surface of the ground, resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK - 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.

TOWN BOARD – the Town Board of the Town of Evans, Erie County, New York.

TOWN CODE – the Code of the Town of Evans, Erie County, New York

WATERCOURSE - a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY - a channel that directs surface runoff to a watercourse or to the public storm drain.

### **Section 3.**

Chapter 200, Zoning, of the Code of the Town of Evans is hereby amended by adding a new Article XII, entitled Stormwater Management, to read as follows:

## **ARTICLE XII Stormwater Management**

### **§ 200-60. Findings; purpose.**

A. Findings. It is hereby determined that:

- (1) 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 transport and deposition;
- (2) This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native

vegetation necessary for terrestrial and aquatic habitat;

- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (6) Substantial economic losses can result from these adverse impacts on the waters of the Town;
- (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (8) 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 public health and safety; and
- (9) 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.

B. Purpose. The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 200-61A of this article. This article seeks to meet those purposes by achieving the following objectives:

- (1) Meet the requirements of minimum measures 4 and 5 of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02 or as amended or revised;
- (2) Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. GP-02-01 or as amended or revised;
- (3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- (4) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- (5) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- (6) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.

#### **§ 200-61. General provisions.**

A. Applicability. This article shall be applicable to all land development activities within the Town.

B. Exemptions. The following activities shall be exempt from review under this article:

- (1) Agricultural activity;

- (2) Silvicultural activity except that landing areas and log haul roads are subject to this article;
- (3) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility;
- (4) Repairs to any stormwater management practice or facility deemed necessary by the SMO;
- (5) Land development activities for which a building permit has been approved on or before the effective date of this article;
- (6) Cemetery graves;
- (7) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
- (8) Emergency activity immediately necessary to protect life, property or natural resources;
- (9) Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family; and
- (10) Landscaping and horticultural activities in connection with an existing structure.

C. Conflict. Where the conditions imposed by any provisions of this article are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

**§ 200-62. Procedure.**

A. The Town shall designate an SMO who shall accept and review all SWPPPs. The SMO may:

- (1) Review the SWPPPs;
- (2) Upon approval by the Town Board, engage the services of a New York State licensed professional engineer to review the SWPPPs, specifications and related documents at a cost not to exceed a fee schedule established by the Town Board; or
- (3) Accept the certification of a licensed professional that the SWPPPs conform to the requirements of this article.

B. For all land development activities subject to review and approval by the Building Inspector, Minor Subdivision Review Committee, Planning Board, or Town Board of the Town under subdivision or site plan regulations, the applicant or developer shall be required to submit a SWPPP that complies with the requirements of this article to the SMO, and the land development activity shall be reviewed subject to the standards contained in this article.

- (1) Initial Review by SMO. Within 45 days of receipt of a SWPPP, the SMO shall forward the SWPPP, together with his or her written recommendation to approve, approve with modifications, or disapprove the SWPPP, to such employee, officer, committee or board of the Town which is reviewing an application for approval of a land development activity requiring submission of a SWPPP. A recommendation of approval shall only be given if the SWPPP complies with the requirements of this article. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision in writing.
- (2) Review by Final Reviewing Body. The employee, officer, committee or board of the Town reviewing the application for approval of a land development activity shall review the SWPPP and recommendation of the SMO and shall act to approve, approve with modifications, or disapprove the SWPPP. Such reviewing body shall not act to approve the SWPPP unless it complies with the requirements of this article. If the reviewing

body acts to approve with modifications or disapprove the SWPPP, the reasons for the decision shall be stated in writing. In order to be approved, the applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the reviewing body and shall submit the revised SWPPP to such body for review.

C. For all land development activities not subject to review as provided in § 200-62B of this article, the applicant or developer shall be required to submit a SWPPP that complies with the standards contained in this article to the SMO. Within 45 days of receipt of a SWPPP, the SMO shall approve, approve with modifications, or disapprove the SWPPP. Approval shall only be given if the SWPPP complies with the requirements of this article. In approving with modifications or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

### **§ 200-63. Stormwater Pollution Prevention Plans.**

A. Stormwater Pollution Prevention Plan Requirement. No application for approval of a land development activity shall be reviewed and no land development activity shall be commenced until the SMO or such officer, employee, committee or board of the Town reviewing an application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP that complies with the specifications in this article.

B. Contents of Stormwater Pollution Prevention Plans.

(1) All SWPPPs shall provide the following background information and erosion and sediment controls:

- (a) Background information about the scope of the project, including the location, type and size of the project;
- (b) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
- (c) Description of the soil(s) present at the site;
- (d) 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 Erosion Control Manual, not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

- (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
  - (j) Temporary practices that will be converted to permanent control measures;
  - (k) 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;
  - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
  - (m) Name(s) of the receiving water(s);
  - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
  - (o) 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
  - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities 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 § 200-63B(3) of this article as applicable:
- (a) Condition A - Stormwater runoff from land development activity 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.
  - (b) Condition B - Stormwater runoff from land development activity disturbing five (5) or more acres.
  - (c) 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.
- (3) SWPPP Requirements for Condition A, B or C (post-construction stormwater runoff controls):
- (a) All information in § 200-63B(1) of this article;
  - (b) Description of each post-construction stormwater management practice;
  - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
  - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
  - (e) Comparison of post-development stormwater runoff conditions with pre-development conditions;
  - (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice;
  - (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
  - (h) 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;
  - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 200-65 of this article; and

(4) The SWPPP shall be prepared by a licensed professional and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this article.

C. 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.

D. 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 be included with and become part of the SWPPP for the land development activity.

E. 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.

#### **§ 200-64. 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:

A. Technical Standards. For the purposes of this article, 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 article:

(1) The Design Manual; and

(2) The Erosion Control Manual.

B. Equivalence to Technical Standards. Where stormwater management practices are not in accordance with the technical standards set forth in § 200-64A of this article, the applicant or developer must demonstrate equivalence to such technical standards.

C. Water Quality Standards. 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.

#### **§ 200-65. Maintenance, Inspection and Repair of Stormwater Facilities.**

A. Maintenance and Inspection During Construction.

(1) The applicant or developer of the land development activity or their representative 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 article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent.

(2) For land development activities meeting Condition A, B or C in § 200-63B(2) of this article, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven (7) days and within twenty-four (24) hours of any storm event producing 0.5 inches of precipitation or more. Inspection reports shall be maintained in a site log book.

B. 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 Town to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town.

C. Maintenance after Construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also includes as a minimum, the following:

(1) 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 article.

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

(3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 200-64 of this article.

(4) Maintenance Agreements. The Town shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the 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 Appendix A of this chapter entitled "Sample Stormwater Control Facility Maintenance Agreement." The Town, 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 article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

## **§ 200-66. Administration and Enforcement.**

### **A. Construction Inspection.**

(1) Erosion and Sediment Control Inspection. The SMO may require such inspections as necessary to determine compliance with this article 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 article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:

(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; or

(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 SMO.

- (2) Stormwater Management Practice Inspections. The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit “as built” plans for any SMPs 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.
- (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.
- (4) Submission of Reports. The SMO may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article.
- (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 Town the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § 200-66A(3) of this article.

#### B. Performance Guarantee.

- (a) 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 Town in its approval of the SWPPP, the Town 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 Town as the beneficiary. The security shall be in an amount to be determined by the Town 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 Town, 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 Town. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- (b) 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 Town 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 Town may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

(c) Recordkeeping. The Town may require entities subject to this article to maintain records demonstrating compliance with this article.

C. Enforcement and Penalties.

(1) Notice of Violation. When the Town determines that a land development activity is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. 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 article 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; and

(f) A statement that the determination of violation may be appealed to the Town by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

(2) Stop Work Orders. The Town may issue a stop work order for violations of this article. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the Town confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.

(3) Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.

(4) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article 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 article 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.

(5) Withholding of Certificate of Occupancy. If any building or land development activity is installed or conducted in violation of this article, the SMO may prevent the occupancy of said building or land.

(6) Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

D. Fees for Services. The Town may require any person undertaking land development activities regulated by this article to pay fees, as set by the Town Board from time to time, for review of SWPPPs, inspections, or SMP maintenance performed by the Town or performed by a third party for the Town.

### **Section 3.**

Section 200-42B of Chapter 200, Zoning, of the Code of the Town of Evans is hereby amended to read as follows:

B. Site plan; required information. The content of the site plan shall be approved by the Building Inspector prior to filing. The approved submission shall be filed with the Town Clerk, who, upon payment of the required fees, shall transmit it to the Building Inspector for distribution to such officials and agencies as he may deem appropriate for their review, report and recommendation. The site plan shall include or be accompanied by the following information, prepared by a licensed engineer, architect, landscape architect, surveyor or attorney as appropriate. The number of copies shall be determined by the Building Inspector.

- (1) Title of drawing, including name of development, name and address of applicant and person who prepared the drawing.
- (2) North point, scale and date.
- (3) Location of survey data.
- (4) A survey platted to scale of the proposed development, including its acreage and a legal description thereof.
- (5) The lines and names of existing and proposed streets and sidewalks immediately adjoining and within the proposed site.
- (6) Layout, number and dimension of lots.
- (7) Location, proposed use, height and floor plan of all nonresidential and all residential structures containing three or more dwelling units; location of all parking, loading and stacking areas with access drives.
- (8) Location and proposed development of all open spaces, including parks, playgrounds and open reservations.
- (9) Existing and proposed watercourses and direction of flow.
- (10) Topographic map and drainage plan showing existing and finished grades, engineering calculations and the impact on the entire watershed.
- (11) Water supply plan, including location of fire hydrants.
- (12) Paving, including typical cross sections and profiles of proposed streets, pedestrian walkways, bikeways and parking lots.
- (13) Sewage disposal plans.
- (14) A landscape plan indicating location, type and size of existing trees and vegetation, identifying those to be preserved, and location, type and size of trees, vegetation and other amenities to be provided.
- (15) Location and design of lighting facilities, fences, walls and signs.
- (16) Location and dimension of all signs for which use permits are required under this chapter.
- (17) Proposed easements, restrictions, covenants and provisions for homeowners' associations and common ownerships.
- (18) A SWPPP, if required for the proposed development under Article XII of this chapter, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 200-62B of this chapter.

### **Section 4.**

Section 200-42C(4) of Chapter 200, Zoning, of the Code of the Town of Evans is hereby amended by adding the following subsection:

- (e) If a SWPPP was submitted pursuant to § 200-42B(18) of the Town Code, the site plan and SWPPP comply with the performance and design criteria and standards set forth in Article XII of this chapter.

**Section 5.**

Section 178-7B of Chapter 178, Subdivision of Land, of the Code of the Town of Evans is hereby amended by adding the following subsection:

- (5) A Stormwater Pollution Prevention Plan (SWPPP), if required for the proposed subdivision under Article XII of Chapter 200, Zoning, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 200-62B of the Town Code. If a SWPPP is submitted to the Town pursuant to this section, the preliminary layout shall not be approved unless the layout and SWPPP comply with the requirements of Article XII of Chapter 200, Zoning.

**Section 6.**

Section 178-8 of Chapter 178, Subdivision of Land, of the Code of the Town of Evans is hereby amended by adding the following subsection:

- F. The final plat shall be accompanied by a Stormwater Pollution Prevention Plan (SWPPP), if required for the proposed subdivision under Article XII of Chapter 200, Zoning, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 200-62B of the Town Code. If a SWPPP is submitted to the Town pursuant to this section, the final plat shall not be approved unless the plat and SWPPP comply with the requirements of Article XII of Chapter 200, Zoning.

**Section 7.**

Section 178-9D of Chapter 178, Subdivision of Land, of the Code of the Town of Evans is hereby amended by adding the following subsection:

- D. Subdivisions shall be designed and constructed in accordance with any Stormwater Pollution Prevention Plan approved by the Town.

## **Section 8.**

Section 178-17 of Chapter 178, Subdivision of Land, of the Code of the Town of Evans is hereby amended to read as follows:

### **§ 178-17. Drainage improvements.**

- A. All storm drainage designs shall be prepared by an engineer licensed in New York State and shall conform to all applicable laws and regulations of the State of New York.
- B. For any subdivision subject to regulation under Article XII of Chapter 200, Zoning, all erosion and sediment controls, stormwater management facilities, and drainage improvements shall comply with the performance and design criteria set forth therein.
- C. For any subdivision not subject to regulation under Article XII of Chapter 200, Zoning, the following requirements shall:
  - 1B. Stormwater drainage design methodologies shall be based on the Erie and Niagara County Stormwater Design Manual, the NYSDEC Design Standards or methodologies approved by the Town Engineer and be described in an engineering report submitted with the plans.
  - 2C. Erosion and sediment control shall be based on the New York State Manual.
  - 3D. Stormwater systems shall be designed for a twenty-five-year storm (except for more restrictive requirements from other permitting agencies, i.e., County Highway or State Department of Transportation) with no increase in runoff over the existing flow from the site. Existing downstream drainage problems must also be taken into consideration.
  - 4E. All stormwater piping shall be 12 inches in diameter or larger (smaller sizes when necessary may be approved by the Town Engineer) and be at a minimum grade to provide a stormwater flow velocity in the pipe of two feet per second or greater. (Velocities greater than eight feet per second will require conduit outlet protection.)
  - 5F. Stormwater catch basins shall be located a maximum of 400 feet apart and at all low points.
  - 6G. If subsurface drainage is deemed necessary by the Planning Board, the subdivider shall provide for the same in a manner acceptable to the Town Engineer.
  - 7H. Drainpipes under streets or driveways shall be designed to withstand New York State highway loadings and be located a minimum of one foot below the subbase of the road (to top of pipe).

## **Section 9.**

SEVERABILITY. If the provisions of any article, section, subsection, paragraph, subdivision or clause of this local law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this local law.

## **Section 10.**

EFFECTIVE DATE. This local law shall be effective on the first day after it shall have been filed with the Office of the Secretary of State pursuant to Section 27 of the New York State Municipal Home Rule Law.

**CHAPTER 200, ZONING**  
**Appendix A**  
**Sample Stormwater Control Facility Maintenance Agreement**

Whereas, the Town of Evans ("Town") and the \_\_\_\_\_ ("facility owner") wish to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Town for the below named project; and

Whereas, the Town and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Town and the facility owner agree as follows:

1. This agreement binds the Town and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, not less than once in every five year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Town within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Town.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Town or in accordance with the recommendations of the inspecting engineer.
7. The facility owner shall provide to the Town within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of (a Bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the County Clerk, County of Erie together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to \_\_\_\_\_.
9. If ever the Town determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Town or by the inspecting engineer, the Town is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective \_\_\_\_\_ .

\_\_\_\_\_