

A Regular Meeting of the Board of Trustees of the Village of Port Washington North was held on Monday, **February 26, 2007** at 7:30 pm at the Village Hall, 71 Old Shore Road, Port Washington, New York.

Present:	Deputy Mayor	-	Michael Schenkler
	Trustees	-	Steven Cohen
		-	Daria Hoffman
		-	Michael Malatino
	Attorney	-	Stephen Limmer
	Clerk	-	Palma Torrisi
	Public Stenographer	-	Robert Pollack

Excused: Mayor Weitzner

1. Public Hearings

A. Bill 1C of 2007 – Prohibiting Illicit Discharges of Non-Stormwater

Deputy Mayor Schenkler opened the public hearing, duly advertised in the February 12, 2007 Port Washington News, to consider the adoption of Bill 1B of 2007, to amend the Code of the Village of Port Washington North to Prohibit Illicit Discharges of Non-Stormwater. A stenographic transcript of the hearing is on file with the Village Clerk. All those present wishing to speak having been heard, the Deputy Mayor closed the hearing. On motion of Trustee Malatino, seconded by Trustee Hoffman, it was RESOLVED that Bill 1C of 2007 be and hereby is adopted as Local Law 2 of 2007 to read as follows:

Local Law 2 of the year 2007

A local law amending the Code of the Village of Port Washington North to prohibit illicit discharges.

Be it enacted by the Board of Trustees of the Village of Port Washington North

Section 1. The Code of the Village of Port Washington North is hereby amended to add a new chapter, Chapter 108, Illicit Discharges, to read as follows:

“Chapter 108

Illicit Discharges

§ 108-1. Legislative intent.

The purpose of this local law is to provide for the health, safety, and general welfare of the residents of the Village through the regulation of connections to MS4s and the regulation of non-stormwater discharges to MS4s to the maximum extent practicable as required by federal and state law. This local law establishes methods for controlling the introduction of pollutants into MS4s in order to comply with requirements of the DEC SPDES General Permit (GP-02-02) for MS4s. The objectives of this local law are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, as amended and revised;
- B. To regulate the contribution of pollutants to MS4s, since such systems are not designed to accept, process, or discharge non-stormwater wastes;

- C. To prohibit unauthorized and illicit connections, activities, and discharges to the Village's MS4;
- D. To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this local law; and
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, and other pollutants into MS4s.

§ 108-2. Definitions.

Unless otherwise expressly stated, the following words shall, for the purposes of this chapter, have the meanings herein indicated:

BEST MANAGEMENT PRACTICES - Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention, educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage, leaks, sludge, water disposal, and drainage from raw materials storage.

BMPs - best management practices.

CLEAN WATER ACT - The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), as amended and revised.

CONSTRUCTION ACTIVITY - Activities requiring authorization under a DEC SPDES permit for stormwater discharges from construction activity, GP-02-01, as amended and revised, or activities covered by erosion and sediment control or pollution prevention plan laws, rules, or regulations of the Village. Such activities include construction projects resulting in land disturbance of one or more acres. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

COUNTY - The County of Nassau.

DEC – The State Department of Environmental Conservation.

DESIGN PROFESSIONAL – A State licensed professional engineer or registered architect.

HAZARDOUS MATERIALS - Any material, including any substance or waste, or combination thereof, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment.

ILLICIT ACTIVITY - Any action or condition, active or passive, which results in non-stormwater entering the Village's MS4 or into an MS4 that flows into the Village's MS4.

ILLICIT CONNECTION - Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the Village's MS4 or into an MS4 that flows into the Village's MS4, including, but not limited to:

- A. Any conveyances which allow any non-stormwater discharge including, but not limited to, treated or untreated sewage, process wastewater, and wash water to enter the Village's MS4, and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency;
- B. Any drain or conveyance connected from a commercial or industrial land use to the Village's MS4 which has not been documented in plans, maps, or equivalent records and approved by the Village;
- C. Any building or other structure's floor drain or trench drain; and
- D. Any unauthorized connection as defined elsewhere in this chapter.

ILLICIT DISCHARGE - Any discharge through an unauthorized connection, and any direct or indirect non-stormwater discharge to the Village's MS4 or into an MS4 that flows into the Village's MS4, except as exempted in §108-5(B) of this chapter.

INDIVIDUAL SEWAGE TREATMENT SYSTEM - A facility serving one or more parcels of land or residential households, or a private, commercial, or institutional facility that treats sewage or other liquid wastes for discharge into the groundwaters of the State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

INDUSTRIAL ACTIVITY – Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended and revised.

MS4 – A Municipal Separate Storm Sewer System.

POLLUTANT – Any of the following which may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the pertinent standards promulgated by the federal government, the State, the Village, or any other municipality or department thereof, having legal jurisdiction to impose such standards: dredged spoil; filter backwash; solid waste; incinerator residue; treated or untreated sewage, garbage, and sewage sludge; munitions; chemical wastes; biological, radioactive, and hazardous materials; heat; wrecked or discarded equipment; industrial, municipal, and agricultural waste; ballast discharged into water; paints, varnishes, and solvents; oil and other automotive fluids; hazardous and non-hazardous liquid and solid wastes; yard wastes, including branches, grass clippings, and leaves; refuse, rubbish, garbage, litter, and other discarded or abandoned objects and accumulations so that same may cause or contribute to pollution; discharges of soaps, detergents, and floatables; pesticides, herbicides, and fertilizers; sewage, fecal coliforms, and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building, structure, or site improvements; cement, rock, gravel, sand, silt, mud, other soils; and all other noxious or offensive matter of any kind.

PREMISES - Any lot, parcel of land, or portion of land whether improved or unimproved, and all of the buildings and other structures thereon, including adjacent sidewalks and parking strips.

SPDES - State pollutant discharge elimination system.

SPECIAL CONDITIONS.

- A. Discharge Compliance with Water Quality Standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under its MS4 SPDES permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) Listed Waters. The condition in an MS4 SPDES permit that applies where the MS4 discharges to a DEC 303(d) listed water. Under this condition the MS4's stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. TMDL Strategy. The condition in an MS4 SPDES permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the MS4 was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
- D. The condition in an MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under this condition the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within 6 months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE - State of New York.

SPDES STORMWATER DISCHARGE PERMIT - A permit issued by DEC that authorizes the discharge of pollutants to waters of the State.

STORMWATER - Rainwater, surface runoff, subsurface drainage, and snowmelt.

SUPERINTENDENT - The Village Superintendent of Public Works or his/her authorized deputies, agents, or representatives, or such other person or persons as may, from time to time, be designated by the Mayor or the Board of Trustees to perform the duties of the Superintendent pursuant to this chapter.

303(d) LIST - A list of all surface waters in the State for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial) are impaired by pollutants, prepared periodically by DEC as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes, and streams that fall short of state surface water quality standards and are not expected to improve within the next 2 years.

TMDL - Total Maximum Daily Load.

TOTAL MAXIMUM DAILY LOAD - The maximum amount of a pollutant allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

UNAUTHORIZED CONNECTION - A permanent or temporary unapproved direct or indirect conveyance to the Village's MS4. Any connection, pipe, hose, or other conveyance, whether permanent or temporary, that is not documented on plans, maps, or equivalent records signed by the Superintendent, or that is not approved by a permit issued by the Superintendent, is considered unauthorized regardless of whether the discharge is otherwise allowed by this chapter.

UNCONTAMINATED – Not having any pollutants.

WASTEWATER - Water that is not stormwater, is contaminated with pollutants and is, or will be, discarded.

§ 108-3. Applicability.

This chapter shall apply to discharge connections to the Village's MS4. This includes activities that result in discharge, seepage, or deposition into the Village's MS4, and all water entering the Village's MS4 generated on any premises unless explicitly exempted by an authorized enforcement agency and allowed by a discharge or connection permit or other document approved by the Superintendent. This chapter shall also apply to discharges and connections entering another MS4 that flows to the Village's MS4.

§ 108-4. Responsibility for administration.

The Superintendent shall administer, implement, and enforce the provisions of this chapter.

§ 108-5. Discharge prohibitions.

A. Prohibition of Illegal Discharges.

- (1) No person shall discharge or cause to be discharged into the Village's MS4 any illicit discharge or any other materials other than stormwater, except as provided in subsection B hereof.
- (2) No person shall permit, tolerate, or allow to be discharged from his/her premises into the Village's MS4 any illicit discharge or any other materials, other than stormwater, except as provided in subsection B hereof.

B. Exceptions:

- (1) The following discharges are exempt from discharge prohibitions established by this chapter, unless they are subsequently determined to be substantial contributors of pollutants: water line flushing, or flushing from other potable water sources, uncontaminated landscape irrigation, lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water from foundation or footing drains, uncontaminated crawl space or basement sump pump discharges, air conditioning condensate, uncontaminated irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants. When deemed appropriate by the Superintendent, such exempt discharges shall be made in accordance with a plan for reducing pollutants.
- (2) Discharges approved in writing by the Superintendent to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws, rules, and regulations, and further provided that such discharges may be permitted for a specified time period and under such conditions as the Superintendent may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this chapter.
- (3) Dye testing in compliance with applicable State and local laws, rules, and regulations is an allowable discharge, but requires a verbal notification to the Superintendent prior to the time of the test.
- (4) Any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of DEC, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws, rules, and regulations, and provided that written approval has been granted for any discharge to the Village's MS4 by the Superintendent.

§ 108-6. Prohibition of unauthorized connections.

A. Connections to the Village's MS4 without a permit are prohibited.

- (1) The construction, use, maintenance, or continued existence of an unauthorized connection to the Village's MS4 is prohibited.
- (2) The prohibitions in this section expressly include not only future connections, but also, without limitation, connections made in the past, regardless of whether the connection was permissible under law, rule, regulation, or practice applicable or prevailing at the time of the connection.

- (3) The connection of interior floor drains and trench drains at the entrances to buildings or other structures is prohibited.
- B. No person shall, or shall cause another, to construct, use, maintain, or continue to use or maintain an unauthorized connection to the Village's MS4.
- C. No person shall permit, tolerate, or allow an unauthorized connection from his/her premises to the Village's MS4.

§ 108-7. Prohibition against failing individual sewage treatment systems.

No persons shall operate a failing individual sewage treatment system in areas that flow to the Village's MS4. A failing individual sewage treatment system is one which has one or more of the following conditions:

- A. The backup of sewage into a structure.
- B. Discharges of treated or untreated sewage onto the ground surface.
- C. A connection or connections to a separate stormwater sewer system.
- D. Liquid level in the septic tank above the outlet invert.
- E. Contamination of off-site groundwater.
- F. Structural failure of any components of the individual sewage treatment system that could lead to any of the other failure conditions as noted above in this section.

§ 108-8. Prohibition against activities contaminating stormwater or maintaining or using an unauthorized connection to the Village's MS4.

- A. Activities that are subject to the requirements of this section are those types of activities that:
 - (1) Cause or contribute to a violation of the Village's MS4 SPDES permit.
 - (2) Cause or contribute to the Village being subject to Special Conditions.
 - (3) Cause or contribute to the Village's MS4 receiving pollutants.
 - (4) Cause, or contribute to the Village's MS4 receiving discharges from an unauthorized connection.
- B. Such activities include failing individual sewage treatment systems as defined in § 108-7 of this chapter, improper management of pet waste, and any other activity that causes or contributes to violations of the Village's MS4 SPDES permit authorization.
- C. Upon notification to a person that he/she is engaged in activities that cause or contribute to violations of the Village's MS4 SPDES permit authorization, or cause or contribute to pollutants being discharged into the Village's MS4, that person shall immediately take all reasonable and necessary actions to correct such activities and thereafter continue to use due diligence to correct such activities so that he/she no longer causes or contributes to violations of the Village's MS4 SPDES permit authorization or causes or contributes to pollutants to be discharged or deposited into the Village's MS4.

§ 108-9. Requirement to prevent, control, and reduce stormwater pollutants by the use of BMPs.

- A. BMPs. Where the Superintendent has identified illicit discharges or activities contaminating stormwater, the Superintendent may require implementation of BMPs to control those illicit discharges and activities.
- (1) The owner, tenant, and operator of a commercial or industrial establishment shall each be responsible, jointly and severally, for assuring that provision is made for reasonable protection from the discharge, accidental or otherwise, of pollutants or other prohibited materials or wastes into the Village's MS4 through the use of structural and non-structural BMPs.
 - (2) The owner, tenant, and any other person responsible for premises, which are or may be the source of an illicit discharge or an activity contaminating stormwater, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutants to the Village's MS4 in the most practicable and expeditious manner under the circumstances.
 - (3) Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section.
- B. Individual sewage treatment systems. Where individual sewage treatment systems are contributing to the Village's MS4 being subject to Special Conditions, the owner, tenant, and operator of the premises upon which such individual sewage treatment system is located or which are otherwise being serviced by such individual sewage treatment systems, shall be required to:
- (1) Maintain and operate individual sewage treatment systems as follows:
 - (a) Inspect the septic tank annually to determine scum and sludge accumulation. Septic tanks must be pumped out whenever the bottom of the scum layer is within 3 inches of the bottom of the outlet baffle or sanitary tee, or the top of the sludge is within 10 inches of the bottom of the outlet baffle or sanitary tee.
 - (b) Avoid the use of septic tank additives.
 - (c) Avoid the disposal of excessive quantities of detergents, kitchen wastes, laundry wastes, and household chemicals.
 - (d) Avoid the disposal of cigarette butts, disposable diapers, sanitary napkins, trash, and other such items.
 - (2) Repair or replace individual sewage treatment systems as follows:
 - (a) Individual sewage treatment systems shall be repaired or replaced in accordance with 10 NYCRR Appendix 75A or, if applicable, the Nassau County Department of Health's Manual of On Site Sewage Disposal, as amended and revised, to the maximum extent practicable.
 - (b) A design professional shall prepare design plans for any type of absorption field that involves:

- [1] Relocating or extending an absorption area to a location not previously approved for such.
 - [2] Installation of a new subsurface treatment system at the same location.
 - [3] Use of an alternate system or an innovative system design or technology.
- (c) A written certificate of compliance shall be submitted by the design professional to the Village at the completion of construction of the repair or replacement system.

§ 108-10. Suspension of access to the Village’s MS4.

- A. Suspension due to imminent and substantial danger. The Superintendent may, without prior notice, suspend a person’s access to the Village’s MS4 when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, to the health, safety, or welfare of persons, to property, or to the Village’s MS4. The Superintendent shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the Superintendent may take such steps as he/she deems necessary, in his/her sole discretion, to prevent or minimize damage to the environment, persons, property, or the Village’s MS4.
- B. Suspension due to the detection of illicit discharge or unauthorized connection. Any person discharging to the Village’s MS4 in violation of this chapter may have its access to the Village’s MS4 terminated if such termination would abate or reduce an illicit discharge, or result in the remedy of an unauthorized connection. The Superintendent shall notify a violator in writing of the proposed termination of its access to the Village’s MS4 and the reasons therefore. The violator may petition the Superintendent for a reconsideration and hearing. Access may be granted by the Superintendent if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence, or that the discharger has obtained proper permission for the connection. Access may be denied if the Superintendent determines in writing that the illicit discharge has not ceased, or is likely to recur, or the unauthorized connection has not been remedied. A person commits an additional offense if the person reconnects access to the Village’s MS4 after such connection had been terminated pursuant to this section if such reconnection is without the prior approval of the Superintendent.

§ 108-11. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Superintendent prior to the allowing of discharges to the Village’s MS4.

§ 108-12. Connection permits.

- A. General. Any connection to the Village’s MS4 requires a permit issued by the Superintendent. Applications for permits shall be made on forms provided by the Superintendent. Permit applications shall be supplemented by any plans, specifications, analyses, calculations, or other information considered pertinent by the Superintendent. The Village considers connection to the Village’s MS4 as a

last resort to solve flooding problems. Before approving a connection, the Village may require that applicants use on-site BMPs to handle stormwater and other authorized non-stormwater discharges to the maximum extent practicable. The Superintendent may assess the adequacy of the applicant's on-site stormwater disposal BMPs and require additional practices if he/she deems it advisable.

B. Permit Types.

- (1) General Permit. An authorization for a connection permit and the discharge of stormwater, or authorized non-stormwater, pursuant to § 108.5(B)(1) of this Chapter, from properties occupied by private dwellings.
- (2) Connection Permit. An authorization for a connection and a discharge, pursuant to § 108.5(B)(4) of this Chapter. A connection permit may be subject to special terms and conditions by the Superintendent. The permit will expire on, or before the expiration of the DEC SPDES permit, waiver, or order, or upon a change of ownership or use of the premises.
- (3) Special Permit. An authorization for a connection permit and the discharge of stormwater, or authorized non-stormwater, pursuant to § 108.5(B)(1) of this Chapter, from all properties occupied by other than private dwellings.

C. Permit Fees. Permit fees shall be set from time to time by resolution of the Board of Trustees.

D. Inspection. All connections to the Village's MS4 shall be subject to the approval and inspection by the Superintendent. The applicant must notify the Superintendent at least 48 hours prior to commencing work and at least 48 hours prior to final restoration.

E. Indemnification.

- (1) To the fullest extent permitted by law, the owner and the applicant, if different from the owner, shall, jointly and severally, indemnify and hold harmless the Village, the Mayor, the Board of Trustees and all of the Village's other elected and appointed officials, employees, agents, representatives, and volunteers (collectively, the "Indemnitees") from and against all claims, damages, losses, costs, and expenses, including, but not limited to, attorneys and expert witnesses' fees, arising out of or resulting from its installation and connection to the Village's MS4. Such obligation shall not be construed to negate, abridge, or to otherwise reduce any other right or obligation of indemnity which would otherwise exist to an Indemnitee.
- (2) Nothing in this section shall be deemed to provide indemnification which is otherwise prohibited by Article 5 of the General Obligations Law.
- (3) In any and all claims against the Indemnitees by any employee of the owner or the applicant, if different from the owner, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation pursuant to this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the owner or the applicant, if different from the owner, under any workers compensation acts, disability acts, or other employee benefit acts.

- F. Acknowledgement. The owner and the applicant, if different from the owner, in making their application, acknowledge that the Village makes no guarantee that the Village's MS4 will not become surcharged or otherwise overburdened and that water from the Village's MS4 will not back-up through the connection onto the owner's premises. By making a connection, the owner and the applicant, if different from the owner, assume all of the risk and liability to their premises that may arise from their connection to the Village's MS4.
- G. Permit Transfers. General permits may be transferred with the sale of residential premises, provided the use does not change. The new owner of the premises shall comply with the terms and conditions of the transferred permit. Special permits are not transferable without the approval of the Superintendent.
- H. Work within Village Roads. Any connection made within or involving work within a Village road must also comply with and be subject to any and all applicable laws, rules, and regulations pertaining to permits for work on and within Village roads. A permit under this chapter shall not relieve the applicant from the obligation to obtain all necessary permits under the foregoing laws, rules, and regulations.
- I. Other Permits Required. A connection permit issued pursuant to this chapter does not relieve the applicant from obtaining any and all other applicable permits and permissions, nor from compliance with all other applicable laws, rules, and regulations.
- J. Permit Rules and Regulations. The Superintendent may promulgate rules and regulations for the permitting process set forth within, and subject to the constraints of, this chapter.

§ 108-13. Access and monitoring of discharges.

- A. Applicability. This section applies to all facilities that the Superintendent is required or authorized to inspect in order to enforce the provisions of this chapter, and whenever the Superintendent has reason to believe that there may exist a condition that constitutes a violation of this chapter.
- B. Access to Facilities.
 - (1) The Superintendent shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be reasonable or necessary to determine compliance with this chapter. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Superintendent.
 - (2) Facility operators shall allow the Superintendent ready access to all parts of their premises for the purposes of inspection, sampling, examination, and copying of records as may be required to implement this chapter.
 - (3) The Village shall have the right to set up on any facility subject to this chapter, such devices as are necessary, in the discretion of the Superintendent, to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The Superintendent has the right to require the facilities subject to this chapter to install monitoring equipment as is reasonably necessary to

determine compliance with this chapter. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

- (5) Unreasonable delays in allowing the Village access to a facility subject to this chapter are a violation of this chapter. A person who is the operator of a facility subject to this chapter commits an offense if the person denies the Superintendent reasonable access to the facility for the purpose of conducting any activity authorized, or required by this chapter.
- (6) If the Superintendent has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter, or any order issued hereunder, then the Superintendent may seek issuance of a search warrant from the Village Court or any other court of competent jurisdiction.

§ 108-14. Notification of spills.

- A. Illegal discharges. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or other pollutants discharging into the Village's MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
- B. Release of hazardous materials. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services, and, immediately thereafter, the Superintendent, the Village Police Department, and the Village Clerk.
- C. Release of nonhazardous materials. In the event of a release of nonhazardous materials, said person shall notify the Superintendent in person, by telephone or by facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Superintendent within 3 business days of the in person or by telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years.

§ 108-15. Enforcement.

- A. Notice of Violation. When the Superintendent finds that a person has violated a prohibition or failed to meet a requirement of this chapter or of a permit issued pursuant to this chapter, he/she may order compliance by written notice of violation to the responsible person. Such notice shall be sent by Certified Mail Return Receipt Requested and by first class mail to the last know owner of the premises based upon the Village's latest assessment records and, in the event that there is a permittee different from such owner, to the permittee in the same manner, and shall be posted upon the premises. Such notice may require, without limitation, any or all of the actions listed below, and/or such other action as the Superintendent, in his/her own discretion, may deem appropriate:

- (1) That a proper permit be obtained;
 - (2) The elimination of illicit or unauthorized connections or discharges;
 - (3) That violating discharges, practices, operations, activities, or connections shall cease and desist;
 - (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected premises;
 - (5) The performance of monitoring, analyses, and reporting;
 - (6) Payment of a fine and/or restitution for the damages that have occurred as a result of the violation or failure; and
 - (7) The implementation of source control or treatment BMPs.
- B. Abatement and restoration. If abatement of a violation and/or restoration of affected premises are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work may be performed by the Village and the expense thereof shall be charged to the violator and, if unpaid within 30 days, become a lien upon the violating premises and collected in the same manner as Village real property taxes.
- C. Penalties. In addition to, or as an alternative to, any penalty provided herein or otherwise by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine of not more than two thousand dollars, or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of 5 years, punishable by a fine of not more than five thousand dollars, or imprisonment for a period not to exceed 15 days, or both; and upon conviction for a third, or subsequent offense all of which were committed within a period of 5 years, punishable by a fine of not more than ten thousand dollars, or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation.

§ 108-16. Appeal of notice of violation.

Any person receiving a Notice of Violation may appeal within ten calendar days of its issuance. The Superintendent shall hear the appeal within thirty days after the filing of the appeal, and within five days of making his/her decision, issue a decision by certified mail to the discharger. The Superintendent may conduct the hearing and take evidence, or may designate another officer or employee of the Village to do so.

§ 108-17. Corrective measures.

- A. If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation or, in the event of an appeal, within five business days of the decision of the Superintendent, or in the event that access is permitted to the Superintendent pursuant to the provisions of this chapter, then the Superintendent shall request the owner's permission to take any and all measures reasonably necessary to abate the violation and/or restore the premises.
- B. If refused access to the premises, the Superintendent may seek a warrant in the Village Court or another court of competent jurisdiction to be authorized to enter

upon the premises to determine whether a violation is occurring or is reasonably likely to occur if immediate action is not taken. Upon determination that a violation has occurred or is reasonably likely to occur if immediate action is not taken, the Village may seek a court order permitting the Village to take any and all measures reasonably necessary to abate the violation and/or to prevent the violation from occurring and/or to restore the premises. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger. In any such action, the Village shall be entitled to its legal costs and expenses, including the fees of attorneys and witnesses, as may be awarded by the Court.

§ 108-18. Public nuisance and injunctive relief.

- A. It shall be unlawful for any person to violate any provision, or fail to comply with any of the requirements of this chapter.
- B. Any condition caused or permitted to exist in violation of any of the requirements of this chapter is a threat to the public health, safety, and welfare, and is declared and deemed a public nuisance.
- C. If a person has violated or continues to violate the provisions of this chapter, the Village may petition for a temporary restraining order, preliminary injunction, and/or permanent injunction restraining the person from activities which would create further violations, or compelling the person to perform abatement, or remediation of the violation. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger. In any such action, the Village shall be entitled to its legal costs and expenses, including the fees of attorneys and witnesses, as may be awarded by the Court.

§ 108-19. Alternative remedies.

- A. Where a person has violated a provision of this chapter, he/she may be eligible for alternative remedies in lieu of a fine, upon recommendation of the prosecuting attorney for the Village and with the concurrence of the Superintendent, where:
 - (1) The violation was unintentional.
 - (2) The violator has no history of significant previous violations of this chapter.
 - (3) Environmental damage was minimal.
 - (4) The violator acted quickly to remedy violation.
 - (5) The violator cooperated in the investigation and resolution.
- B. Alternative remedies may consist of one, or more of the following:
 - (1) Attendance at compliance workshops.
 - (2) Storm drain stenciling or storm drain marking.
 - (3) River, stream, or creek cleanup activities.
 - (4) Such other appropriate remedy to which the prosecuting attorney, Superintendent, violator, and the court may agree.

§ 108-20. Remedies not exclusive.

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Superintendent and of the Village to seek cumulative remedies.”

Section 2. Severability.

The provisions of this local law are hereby declared to be severable. If any provision, paragraph, clause, or sentence of this local law, or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect any other provision, paragraph, clause, or sentence of this local law, or the application thereof to any other person, establishment, or circumstance.

Section 3. Effective date.

This local law shall take effect immediately.

Vote was recorded as follows: Trustee Cohen-aye, Trustee Hoffman-aye, Trustee Malatino-aye, Deputy Mayor Schenkler-aye. Motion carried.

B. Bill 2D of 2007 – Stormwater Management and Erosion & Sediment Control

Deputy Mayor Schenkler opened the public hearing, duly advertised in the February 12, 2007 Port Washington News, to consider the adoption of Bill 2C of 2007, to amend the Code of the Village of Port Washington North with regard to Stormwater Management and Erosion and Sediment Control. A stenographic transcript of the hearing is on file with the Village Clerk. All those present wishing to speak having been heard, the Deputy Mayor closed the hearing. On motion of Trustee Malatino, seconded by Trustee Cohen, it was RESOLVED that Bill 2D of 2007 be and hereby is adopted as Local Law 3 of 2007 to read as follows:

Local Law 3 of the year 2007

A local law amending the Code of the Village of Port Washington North with regard to stormwater management and erosion and sediment control

Be it enacted by the Board of Trustees of the Village of Port Washington North

Section 1. The Code of the Village of Port Washington North is hereby amended to add a new chapter, Chapter 142, Stormwater Management Program, to read as follows:

“Chapter 142

**STORMWATER MANAGEMENT AND
EROSION AND SEDIMENT CONTROL**

§ 142-1. Findings of Fact and purpose.

A. It has been determined by the DEC that:

- (1) Projects 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, and/or sediment

transport and deposition.

- (2) 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 SMPs 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 the adverse impacts on the waters of the State from stormwater runoff.
- (7) Stormwater runoff, soil erosion, and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from projects.
- (8) The regulation of stormwater runoff discharges from projects 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.
- (9) Regulation of projects 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. The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the Village and to address DEC's findings of fact in subsection A of this section. This chapter seeks to meet those purposes by achieving the following objectives:

- (1) Meet the requirements of minimum measures 4 and 5 of DEC's SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, as amended and revised;
- (2) Require projects to conform to the substantive requirements of the DEC's SPDES General Permit for Construction Activities GP-02-01, as amended and revised;
- (3) Minimize increases in stormwater runoff from projects in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels, watercourses, and waterways;
- (4) Minimize increases in pollution caused by stormwater runoff from projects 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 projects to the maximum extent practicable; and

- (6) Reduce stormwater runoff rates and volumes, soil erosion, and nonpoint source pollution, wherever possible, through SMPs, devices, and/or structures, and to ensure that these management practices, devices, and/or structures are properly maintained and eliminate threats to public safety.

§ 142-2. Applicability.

- A. This chapter shall be applicable to all projects.
- B. The Superintendent shall accept and provide for the appropriate review and/or certification of all SWPPPs. The Superintendent may:
 - (1) review the plans, and/or, if the Superintendent deems it reasonable, appropriate, and/or necessary,
 - (2) forward the plans to the Village's consulting engineers, for their review, the cost of which to be charged to the applicant, or
 - (3) accept the certification of a licensed/certified professional, engaged and paid for by the applicant, that the plans conform to the requirements of this chapter.
- C. All projects subject to review and approval under subdivision, land development, site plan, and/or special permit regulations shall be reviewed and approved subject to the standards contained in this chapter.
- D. All projects not subject to review as stated in subsection C of this section shall be required to submit a SWPPP to the Superintendent who shall review and approve the SWPPP if, pursuant to subsection B, he or she determines that it complies with the requirements of this chapter.

§ 142-3. Exemptions.

The following activities are exempt from review under this chapter.

- A. Agricultural activity as defined in this chapter.
- B. Silvicultural activity, other than landing areas and log haul roads.
- C. Routine maintenance activities that disturb less than one acre and are performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.
- D. Repairs to any SMP or facility deemed necessary by the Superintendent.
- E. Any part of a subdivision if a final plat for the subdivision has been approved by the Village on or before the effective date of this chapter.
- F. Projects for which a building permit has been approved on or before the effective date of this chapter.
- G. Cemetery graves.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- I. Emergency activity immediately necessary to protect life, property, or natural resources.
- J. Activities of an individual engaging in home gardening by growing flowers, vegetables, and/or other plants primarily for use by that person and his or her family.

K. Landscaping and horticultural activities in connection with an existing structure.

The inclusion of any “activities” as “exempt” in this section shall not be deemed permission for such activities in a zoning district for which such activities are not an expressly permitted use.

§ 142-4. Definitions.

Unless otherwise expressly stated, the following words shall, for the purposes of this chapter, have the meanings herein indicated:

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 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 project.

BUILDING - Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

CLEARING - Any activity that removes any vegetative surface cover.

COUNTY CLERK – The County Clerk of the County of Nassau, of the State.

DEC – The State Department of Environmental Conservation.

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

DEVELOPER - A person who undertakes projects.

EPA – The United States Environmental Protection Agency.

EROSION – The removal of soil particles by the action of water, wind, ice, or other geological agents.

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).

INFILTRATION - The process of percolating stormwater into the subsoil.

LANDOWNER - The legal and/or beneficial owner of land, including those holding the right to purchase or lease the land, and any other person holding proprietary rights in the land.

LICENSED/CERTIFIED PROFESSIONAL – A person licensed to practice engineering in the State or Certified Professional in Erosion and Sediment Control.

MAINTENANCE AGREEMENT - A legally recorded document that acts as a property deed restriction and provides for long-term maintenance of SMPs.

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.

PLANNING BOARD – The Village Planning Board.

POLLUTANT – Any of the following which may cause or might reasonably be expected to cause pollution of the waters of the State in contravention of the pertinent standards promulgated by the federal government, the State, the Village, or any other municipality or department thereof, having legal jurisdiction to impose such standards: dredged spoil; filter backwash; solid waste; incinerator residue; treated or untreated sewage, garbage, and sewage sludge; munitions; chemical wastes; biological, radioactive, and hazardous materials; heat; wrecked or discarded equipment; industrial, municipal, and agricultural waste; ballast discharged into water; paints, varnishes, and solvents; oil and other automotive fluids; hazardous and non-hazardous liquid and solid wastes; yard wastes, including branches, grass clippings, and leaves; refuse, rubbish, garbage, litter, and other discarded or abandoned objects and accumulations so that same may cause or contribute to pollution; discharges of soaps, detergents, and floatables; pesticides, herbicides, and fertilizers; sewage, fecal coliforms, and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building, structure, or site improvements; cement, rock, gravel, sand, silt, mud, other soils; and all other noxious or offensive matter of any kind.

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 project.

PROJECT – 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 either are part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules or, which, in the opinion of the Building Inspector, because of the nature of the activity, the topography of the land, and/or the proximity of the activity to the boundary lines of the premises should be subjected to the implementation of the stormwater management provisions set forth in this chapter. Projects include both land development and land redevelopment.

RECHARGE - The replenishment of underground water reserves.

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

SMP - Stormwater management practice.

SPDES - State Pollutant Discharge Elimination System.

SPDES GENERAL PERMIT – Either a SPDES General Permit For Construction Activities GP-02-01 or a SPDES General Permit For Stormwater Discharges From Municipal Separate Stormwater Sewer Systems GP-02-02.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01 - A SPDES permit 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 SPDES permit issued to municipalities to regulate discharges from municipal

separate storm sewers for compliance with EPA and/or DEC established water quality standards and/or to specify stormwater control standards.

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

STATE – New York State.

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

STORMWATER - Rainwater, surface runoff, drainage, and snowmelt.

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 SMPs installed, stabilized, and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT PRACTICE – A measure, either structural or nonstructural, that is 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 - 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.

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

SUPERINTENDENT - The Village Superintendent of Public Works or his or her authorized deputies, agents, or representatives, or such other person or persons as may, from time to time, be designated by the Mayor or the Board of Trustees to perform the duties of the Superintendent pursuant to this chapter.

SURFACE WATERS OF THE STATE - 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, 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.

SWPPP - Stormwater pollution prevention plan.

303(d) LIST - A list of all surface waters in the State for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial) are impaired by pollutants, prepared periodically by DEC as required by Section 303(d) of the federal Clean Water Act. 303(d) listed waters are estuaries, lakes, and streams that fall short of State surface water quality standards and are not expected to improve within the next 2 years.

TMDL - Total Maximum Daily Load.

TOTAL MAXIMUM DAILY LOAD - The maximum amount of a pollutant allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

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

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

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.

§ 142-5. SWPPPs.

A. SWPPP Requirement.

No application for approval of a project shall be reviewed until the Planning Board or Superintendent has received a SWPPP prepared in accordance with the specifications in this chapter.

B. Contents of SWPPPs.

- (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (a) Background information about the scope of the project, including location, type, and size;
 - (b) Site map/construction drawings for the project, including a general location map. 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 waters; wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and locations of the stormwater discharges. The Site map should be at a scale no smaller than 1"=100';
 - (c) Description of the soils 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 "New York Standards and Specifications for Erosion and Sediment Control" manual, commonly known as the "Blue Book", as amended and revised, not more than one acre 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 specifying the locations, sizes, and lengths 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) Names of the receiving waters;
 - (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.
 - (q) The name, address, telephone and fax numbers, and email address, if any, of the applicant's representative who will be in charge of monitoring compliance with this chapter on a daily basis.
- (2) Projects meeting Condition A or B below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in subdivision 3 of this subsection B, to the extent applicable:
- (a) Condition A - Stormwater runoff from projects discharging a pollutant of concern either to an impaired water identified on the 303(d) list or in excess of a TMDL to a designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (b) Condition B - Stormwater runoff from projects disturbing one acre or more.
- (3) SWPPP Requirements for Condition A and B, to the extent applicable:
- (a) All information in subdivision 1 of this subsection B;
 - (b) Description of each post-construction SMP;
 - (c) Site map/construction drawings showing the specific locations and sizes of each post-construction SMP;
 - (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 SMP;
- (g) Maintenance schedule to ensure continuous and effective operation of each post-construction SMP;
- (h) Maintenance easements to ensure access to all SMPs at the site for the purpose of inspection and repair. Easements shall be shown on the plan and indicate that they are to run with the land and be recorded with the County Clerk;
- (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 142-7; and
- (j) For Condition A, the SWPPP shall be prepared and signed by a licensed/certified professional or landscape architect, who shall certify that the design of all of the SMPs meet the requirements in this chapter.

C. Other environmental permits.

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the project prior to approval of the final stormwater design plan.

D. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or SMP installation shall sign and date a copy of the following certification statement before undertaking any project:

“I certify under penalty of law that I understand and agree to comply with the terms and conditions of the SWPPP. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”

- (2) 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.
- (3) The certification statements shall become part of the SWPPP for the project.

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

§ 142-6. Performance and design criteria for stormwater management and erosion and sediment control.

All projects shall be subject to the following performance and design criteria:

A. Technical standards.

For the purpose of this chapter, the following documents shall serve as the official guides and specifications for stormwater management. SMPs that are designed and constructed in accordance with those technical documents shall be presumed to meet the standards imposed by this chapter:

- (1) The New York State Stormwater Management Design Manual, most current version or its successor, as amended and revised, including applicable updates, that serves as the official guide for SMPs, methods, and practices within the State.
- (2) The New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004) manual, most current version or its successor, commonly known as the “Blue Book”, as amended and revised.

B. Equivalence to technical standards.

Where SMPs are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in subsection A of this section and the SWPPP shall be prepared by a licensed/certified professional.

C. Water Quality Standards.

No project shall cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State.

§ 142-7. Maintenance, inspection, and repair of stormwater facilities.

A. Maintenance and inspection during construction.

- (1) The applicant or developer of the project 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 chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty percent.
- (2) For projects meeting Condition A or B, the applicant shall have a licensed/certified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. Inspection reports shall be maintained in an on-site log book.
- (3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.

B. Maintenance easements.

Prior to the issuance of any approval that has a stormwater management facility, as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Village to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The easement shall be in a form approved by counsel for the Village and recorded by the grantor in the office of the County Clerk. The said easement agreement may be waived by the

Superintendent and/or the Planning Board if the site is being developed for one or more single-family dwellings, or if otherwise not necessary or appropriate.

C. Maintenance after construction.

- (1) The owner or operator of permanent SMPs installed in accordance with this chapter shall ensure they are operated and maintained to achieve the goals of this chapter. Proper operation and maintenance also includes as a minimum, the following:
 - (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.
 - (b) Written procedures for operation and maintenance and training new owners, operators, and/or maintenance personnel.
 - (c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with subsection C of § 142-6 of this chapter.
- (2) Maintenance agreements.

The Village 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 in a form approved by counsel for the Village and consistent with the most stringent of the terms and conditions of the most current "Sample Stormwater Control Facility Maintenance Agreement" of the State, the County of Nassau, and the Village. The Village, 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 chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. The said maintenance agreement may be waived by the Superintendent and/or the Planning Board if the site is being developed for one or more single-family dwellings, or if otherwise not necessary or appropriate.

§ 142-8. Construction inspection.

A. Erosion and Sediment Control Inspection.

The Superintendent may require such inspections as necessary to determine compliance with this chapter 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 chapter and the SWPPP as approved. To obtain inspections, the applicant shall notify the Superintendent at least 48 hours before any of the following as required by the Superintendent:

- (1) Start of construction.
- (2) Installation of sediment and erosion control measures.
- (3) Completion of site clearing.
- (4) Completion of rough grading.
- (5) Completion of final grading.
- (6) Close of the construction season.

- (7) Completion of final landscaping.
- (8) 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 all violations are corrected and all work previously completed has received approval by the Superintendent, unless such other work is expressly approved by the Superintendent.

B. SMP inspections.

The Superintendent is responsible for conducting inspections of SMPs. Inspections may be performed by the Superintendent or the Superintendent may designate a licensed/certified professional as an inspector, as long as the designated inspector is required to submit a signed written report to the Superintendent. 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 licensed professional engineer.

C. 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 a SPDES General Permit; and joint inspections with other agencies inspecting under environmental or other 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 SMPs.

D. Submission of reports.

The Superintendent may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter.

E. 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 stormwater system, the landowner shall grant to the Village the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in subsection C of this § 142-8.

§ 142-9. Performance guarantee.

A. Construction completion guarantee.

In order to ensure the full and faithful completion of all projects related to compliance with all conditions set forth by the Village in its approval of the SWPPP, the Village may require the applicant or developer to provide, prior to construction, a cash escrow or a performance bond or irrevocable letter of credit from a financial or surety institution authorized to do business in the State, which guarantees satisfactory completion of the project and names the Village as the beneficiary, in a form approved by counsel to the Village. The security shall be in an amount to be determined by the Village based upon submission of final design

plans, with sufficient relevant information to reasonably estimate the actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Village, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facilities have been constructed in accordance with the approved plans and specifications and that an inspection, after said one-year period, has been conducted and the facilities have been found to be acceptable to the Village. At the option of the Village, cash deposits may be deposited in interest bearing accounts. In the event that the cash deposit is deposited in an interest bearing account, the interest on the cash escrow deposit shall be reinvested in the account and deemed as an additional escrow deposit until the person for whom the escrow deposit was made is released from liability or the escrow is used to complete the project. If the cash deposit in escrow is used only in part to complete the project, upon completion of the project, the balance of the deposit, including the accrued interest, if any, shall be returned to the depositor.

B. Maintenance guarantee.

When stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Village with security in the form of a cash escrow or a maintenance bond or irrevocable letter of credit from a financial or surety institution authorized to do business in the State, naming the Village as the beneficiary, in a form approved by counsel to the Village, 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. The security shall be in an amount to be determined by the Village based upon submission of the Village's consulting engineers' estimate of the reasonable cost of such operation and maintenance for a period of one-year. If the developer or landowner fails to properly operate and maintain the stormwater management and erosion and sediment control facilities, the Village may use the security to cover the costs of proper operation and maintenance, including engineering and inspection costs. At the option of the Village, cash deposits may be deposited in interest bearing accounts. In the event that the cash deposit is deposited in an interest bearing account, the interest on the cash escrow deposit shall be reinvested in the account and deemed as an additional escrow deposit until the person for whom the escrow deposit was made is released from liability or the escrow is used to operate and maintain the stormwater management and erosion control facilities. If the cash deposit in escrow is used only in part as of the date that the facilities are removed from operation, the balance of the deposit, including the accrued interest, if any, shall be returned to the depositor. In the event that because of the failure of the owner or operator to properly operate and maintain the stormwater management and erosion control facilities, the security required hereunder is exhausted in whole or in part, the Village may require an additional or a replacement cash escrow or maintenance bond or irrevocable letter of credit in the amount of the sum expended.

C. Recordkeeping.

The Village may require entities subject to this chapter to maintain records demonstrating compliance with this chapter.

§ 142-10. Enforcement and penalties.

A. Notice of violation.

When the Village determines that a project is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to

the landowner, developer, and/or applicant for the project, if any. The notice of violation shall contain:

- (1) The name and address of the landowner, developer, and/or applicant, if any;
- (2) The address, when available, or a description of the building, structure, or land upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the project into compliance with this chapter and a time schedule for the completion of such remedial action;
- (5) 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
- (6) A statement that the determination of violation may be appealed to the Superintendent by filing a written notice of appeal within seven days of service of notice of violation.
- (7) If abatement of a violation and/or restoration of affected premises are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work may be performed by the Village and the expense thereof shall be charged to the violator and, if unpaid within 30 days, become a lien upon the violating premises and collected in the same manner as Village real property taxes.

B. Stop work orders.

The Superintendent may issue a stop work order for violations of this chapter. Persons receiving a stop work order shall be required to halt all projects, except those activities that address the violations leading to the stop work order, unless such other projects are expressly approved to continue by the Superintendent. The stop work order shall be in effect until the Village confirms that the project 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, and/or monetary penalties in accordance with the enforcement measures authorized in this chapter.

C. Injunctions.

Any project that is commenced or is conducted contrary to this chapter may be restrained by injunction or otherwise abated in a manner provided by law.

D. Penalties.

In addition to any penalty provided herein or otherwise by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine of not more than \$2,000, or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of 5 years, punishable by a fine of not more than \$5,000, or imprisonment for a period not to exceed 15 days, or both; and upon conviction for a third, or subsequent offense all of which were committed within a period of 5 years, punishable by a fine of not more than \$10,000 dollars, or imprisonment for a period not to exceed 15 days, or both. Each week's continued violation shall constitute a separate additional violation.

E. Withholding of Certificate of Occupancy.

If any building or project is installed or conducted in violation of any provision of this chapter the Superintendent may prevent the occupancy of said building or land and the Village Building Inspector may withhold or revoke any certificate of occupancy.

F. Abatement and restoration of lands.

Any violator of any provision of this chapter may be required to abate a violation and/or restore land to its undisturbed condition. If abatement of a violation and/or restoration of affected premises are required, the work may be performed by the Village and the expense thereof shall be charged to the violator and, if unpaid within 30 days, become a lien upon the violating premises and collected in the same manner as Village real property taxes.

§ 142-11. Appeal of notice of violation.

Any person receiving a Notice of Violation may appeal within seven calendar days of its issuance. The Superintendent shall hear the appeal within fifteen days after the filing of the appeal, and within five days of making his or her decision, issue a decision by certified mail to the appellant. The Superintendent may conduct the hearing and take evidence, or may designate another officer or employee of the Village to do so.

§ 142-12. Corrective measures.

- A. If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation or, in the event of an appeal, within five business days of the decision of the Superintendent, or in the event that access is permitted to the Superintendent pursuant to the provisions of this chapter, then the Superintendent may request the owner's permission to take any and all measures reasonably necessary to abate the violation and/or restore the premises. In any such case wherein the Superintendent does take such action, the expense thereof shall be charged to the violator and, if unpaid within 30 days, become a lien upon the violating premises and collected in the same manner as Village real property taxes.
- B. If refused access to the premises, the Superintendent may seek a warrant in the Village Court or another court of competent jurisdiction to be authorized to enter upon the premises to determine whether a violation is occurring or is reasonably likely to occur if immediate action is not taken. Upon determination that a violation has occurred or is reasonably likely to occur if immediate action is not taken, the Village may seek a court order permitting the Village to take any and all measures reasonably necessary to abate the violation and/or to prevent the violation from occurring and/or to restore the premises. The cost of implementing and maintaining such measures shall be the sole responsibility, jointly and severally, of the landowner, developer, and applicant, if any. In any such action, the Village shall be entitled to its legal costs and expenses, including the fees of attorneys and witnesses, as may be awarded by the Court, and, if such costs, expenses, and fees are not paid within 30 days of demand, such costs, expenses, and fees shall become a lien upon the violating premises and collected in the same manner as Village real property taxes.

§ 142-13. Remedies not exclusive.

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

§ 142-14. Fees for services.

The Village may require any person undertaking projects regulated by this chapter to pay reasonable fees and costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Village or performed by a third party for the Village.”

Section 2. Chapter 176, Zoning, of said Code, is hereby amended by adding a new article, Article XXI, Erosion and Control, to read as follows:

**“ARTICLE XXI
Erosion and Control**

§ 176-212. Compliance with chapter 142.

- A. No preliminary or final plat shall be approved which does not conform to the provisions of chapter 142 of this code.
 - (1) A storm water pollution prevention plan (“SWPPP”) consistent with the requirements of chapter 142 of this code shall be required for preliminary subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards in §142-4 of said chapter.
 - (2) A SWPPP consistent with the requirements of said chapter 142 and with the terms of the preliminary subdivision plat approval shall be required for final subdivision plat approval.

- B. No site plan shall be approved which does not conform to the provisions of chapter 142 of this code.
 - (1) A storm water pollution prevention plan (“SWPPP”) consistent with the requirements of chapter 142 of this code shall be required for preliminary subdivision plat approval. The SWPPP shall meet the performance and design criteria and standards in §142-4 of said chapter.”

Section 3. Severability.

The provisions of this local law are hereby declared to be severable. If any provision, paragraph, clause, or sentence of this local law, or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect any other provision, paragraph, clause, or sentence of this local law, or the application thereof to any other person, establishment, or circumstance.

Section 4. Effective date.

This local law shall take effect immediately.

Vote was recorded as follows: Trustee Cohen-aye, Trustee Hoffman-aye, Trustee Malatino-aye, Deputy Mayor Schenkler-aye. Motion carried.

2. Clerk

A. Minutes

On motion of Trustee Cohen, seconded by Trustee Malatino, it was unanimously

RESOLVED that the reading of the minutes of the Board of Trustees meeting of December 18, 2007 and January 22, 2007 be waived and that they be and hereby are approved as prepared by Clerk Torrissi.

B. Authorization to Collect Unpaid Taxes

On motion of Trustee Cohen, seconded by Trustee Malatino, it was:

RESOLVED that this Board, pursuant to Article 14 of the Real Property Tax Law of the State of New York, determines to collect the amount of such unpaid taxes levied or assessed for the year 2006 by a tax sale in the manner and after the form and requirements as provided and prescribed by said Article and completed subsequent to the 20th day of March 2007, but not later than July 31, 2007, in accordance with Section 1452 subdivision 4 of the Real Property Tax Law; that a copy of this resolution, certified by the Clerk shall be transmitted forthwith to the Treasurer of the Village with the account, affidavit, and certificate of such unpaid taxes, and that the Village Treasurer, upon receiving such account of unpaid taxes and a certified copy of this resolution, be and hereby is authorized and directed to cause to be published in the official paper of the Village, once each week for three consecutive weeks, a list as shown in the tax list with the amount of the tax, interest, and charges thereon, excepting therefrom such parcels of property on which the Village holds and owns one or more unredeemed certificates of tax sale; and also a notice that said real estate will, on a day to be determined by said Village Treasurer and specified in said notice, be sold at public auction at a place in said Village to be designated by said Village Treasurer, to discharge the tax, interest, and charges aforesaid, which may be due thereon at the time of such sale, and that the said Village Treasurer, at the time and place specified in said notice, proceed with the sale of said real estate upon which such taxes are unpaid, as set forth below, and continue the same from day to day until the sale is completed:

<u>Year</u>	<u>Assessed To</u>	<u>Section</u>	<u>Block</u>	<u>Lot</u>	<u>\$ Amount</u>
2006	Arehmia Fidai & Michael Akerman	4	J	41	2,233.52 + Penalties
2006	Michael Orlando	4	Q	255	327.21 + Penalties
2006	Jose L. Garcia	4	51	3	520.41 + Penalties

That such real estate shall be sold subject to any unpaid assessments thereon levied by the Village of Port Washington North and also subject to any unpaid tax liens purchased and held by the Village;

And be it further RESOLVED, that in all cases where no bid shall be made on a lot or parcel of land so offered for sale for any amount sufficient to pay the said tax, fees, interest, and charges, the said premises shall be deemed to have been sold to and purchased by the said Village of Port Washington North.

Vote was recorded as follows: Trustee Cohen-aye, Trustee Hoffman-aye, Trustee Malatino-aye, Deputy Mayor Schenkler-aye. Motion carried.

County of Nassau)
 State of New York) ss:

I, Palma Torrissi, Clerk of the Village of Port Washington North, Nassau County, New York, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Board of Trustees of the Village of Port Washington North at a regular meeting of said Board held on February 26, 2007 at which a quorum was present.

Witness my hand and official seal of the said Village this 26th day of February 2007.

Seal

Palma Torrisi, Village Clerk

C. Annual Meeting Date

On motion of Trustee Cohen, seconded by Trustee Hoffman, it was unanimously

RESOLVED that the Board of Trustees will hold the Annual Meeting of the Village of Port Washington North at the Village Hall, 71 Old Shore Road, Port Washington, New York, on Monday, April 23, 2007 at 7:30 p.m.

3. Treasurer

A. On motion of Trustee Hoffman, seconded by Trustee Cohen, it was unanimously

RESOLVED that the reading of the General Fund Abstract of Vouchers # 59, totaling \$285,854.31, and the Trust & Agency Abstract of Vouchers #26, totalling \$2,975.60, be waived and that they be and hereby are approved as presented by Treasurer Stack.

B. On motion of Trustee Hoffman, seconded by Trustee Cohen, it was unanimously

RESOLVED that the Budget Report as of December 31, 2006, showing the General Fund Balance to be \$2,158,196, and the Trust & Agency Fund Balance to be \$81,020, be and hereby is accepted as prepared by Treasurer Stack.

C. On motion of Trustee Cohen, seconded by Trustee Hoffman, it was unanimously

RESOLVED that \$1,500.00 be moved in the Budget from the contingency fund to temporary help.

4. Reports

A. Building Department

On motion of Trustee Hoffman, seconded by Trustee Cohen, it was unanimously

RESOLVED that the Building Department reports for January 17 to February 14, 2007 be and hereby are accepted as submitted.

B. Environmental Commission

On motion of Trustee Cohen, seconded by Trustee Hoffman, it was unanimously

RESOLVED that the report of the Environmental Commission be and hereby is accepted.

5. Business

A. Liability Insurance & Treasurer's Bond

On motion of Trustee Cohen, seconded by Trustee Hoffman, it was unanimously
RESOLVED that the Village of Port Washington North hereby authorizes
Blaich Associates to place the following Insurance, for a premium totaling
\$21,472.92:

NYMIR Package Policy	\$10,004.96
Public Officials' Liability	6,309.60
Excess Liability	4,467.10
Auto Liability	221.10
Property Damage	272.16
Treasurer's Bond	198.00

B. Audit of Village Justice Court

On motion of Trustee Hoffman, seconded by Trustee Cohen, it was unanimously
RESOLVED that, upon the recommendation contained in the audit report,
dated October 20, 2006, for the Village Justice Court, the Village Clerk is
directed to compare the ticket numbers and dates on the "Citations Found
Matching Criteria Entered" listing with the original tickets, as received from
the Port Washington Police District, from which said listing is prepared.

C. 84 Old Shore Road

On motion of Trustee Hoffman, seconded by Trustee Cohen, it was unanimously
RESOLVED that the Board of Trustees will deliver a letter to the Board of
Appeals of the Village of Port Washington North informing the Board of
Appeals of the Board of Trustees' opposition to the application of Harbor Q
Inc. to amend a previously granted variance for the premises at 84 Old Shore
Road, and that such letter shall be prepared by counsel and approved and
signed on behalf of the Board of Trustees by Deputy Mayor Schenkler.

7. Executive Session

On motion of Trustee Malatino, seconded by Trustee Cohen, it was unanimously
RESOLVED that the Board enter into executive session to discuss real estate contract negotiations with counsel.

On motion of Trustee Malatino, seconded by Trustee Cohen, it was unanimously
RESOLVED that the executive session be adjourned and the regular meeting by and hereby is reconvened.

Deputy Mayor Schenkler announced that no action was taken in executive session.

On motion of Trustee Malatino, seconded by Trustee Cohen, it was unanimously
RESOLVED that the meeting be and hereby is adjourned at 9:45 p.m.

Palma Torrisi, Village Clerk