

A. Local Law 3 of 2007 & Nassau County Planning Commission

Based upon the recommendation of the Nassau County Planning Commission, Local Law 3 of 2007 was readopted as Local Law of 2007 with a modification of the introductory language in Section 1. On motion of Trustee Schenkler, seconded by Trustee Cohen, it was RESOLVED that Bill 2E of 2007 be and hereby is enacted as Local Law 4 of 2007 to read as follows:

Local Law 4 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. It is the intent of this legislation to adopt a comprehensive stormwater management and erosion and sediment control plan to the Village Code that will satisfy the relevant part of the Phase II stormwater regulations adopted by DEC. In order to do so, 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)

- 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)

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.