

**TOWN OF DANBY, TOMPKINS COUNTY, NEW YORK**

**LOCAL LAW NUMBER 1 OF 2010  
STORMWATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL**

Be it enacted by the Town Board of the Town of Danby as follows:

**TOWN OF DANBY STORMWATER MANAGEMENT, EROSION AND SEDIMENT  
CONTROL LAW**

**Article 1. General Provisions.**

A. **Definitions:** The following terms (and the singular and plural variations thereof) have the following meanings when used in this Local Law:

**Agricultural Activity** - the pre-existing activities and Building(s) of an active farm or ranch. Agricultural Activity includes grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but does not include the operation of a dude ranch (or similar operation) or the construction of any new Buildings associated with an Agricultural Activity.

**Applicant** - a property owner or Developer, or agent or representative of a property owner or Developer, who has filed an application or requested any preliminary or developer's conference in relation to a Land Development Activity or an application under or related to this Local Law.

**BASIC SWPPP** – a Stormwater Pollution Prevention Plan that includes all requirements for erosion and sediment control, but does not require post construction water quality and quantity controls.

**Building** - any structure, either temporary or permanent, having a roof and designed for the shelter or use of any person, animal, property, or agricultural and/or business operation, and containing or sheltering 100 square feet or more of surface area.

**BZA** – the Board of Zoning Appeals of the Town of Danby.

**Channel** - a natural or artificial watercourse with a definite bed and bank(s) that conducts continuously or periodically flowing water.

**Clearing** - any activity, including but not limited to grubbing, wasting, and razing that removes pre-existing vegetative surface cover and/or related root structures

from a Parcel.

**Construction Materials** - construction and construction related materials and waste materials, including construction chemicals.

**Dedication** - the deliberate appropriation of, and/or transfer of rights in or to, a Parcel or a portion of a Parcel by its owner to the Town for an improvement district or for general public use or welfare.

**Department or DEC** - the New York State Department of Environmental Conservation.

**Design Manual** - the current or most recent version of the New York State Stormwater Design Manual, including applicable updates, which herein serves as the official guide for Stormwater Control principles, methods, and practices.

**Design Storm** – an engineering specification that applies to the Stormwater Runoff potential of a meteorological event, such as a “ten-year storm” or a “hundred-year storm,” which may precipitate a specific and measurable quantity of water in either a liquid or solid state upon a Parcel during a specified length of time.

**Developer** - any person or entity that undertakes a Land Development Activity.

**EPA** – the United States Environmental Protection Agency.

**Erosion** – a process, usually environmental in origin and/or effect, caused and contributed to by the elements and Stormwater Runoff and Sedimentation.

**Erosion Control Manual** - the most recent or current version of the New York Standards and Specifications for Erosion and Sediment Control manual, commonly known as the “Blue Book”.

**Erosion Control Facility** – a Sedimentation Containment Facility, a Stormwater Control Facility, or any combination thereof that is installed within or in association with any Land Development Activity.

**FULL SWPPP** – a Stormwater Pollution Prevention Plan that includes all requirements for erosion and sediment control, and also post construction water quality and quantity controls.

**Grading** - excavation and/or fill of rock, soil, or other material(s), including the resulting conditions thereof.

**Impaired Water** – Water whose purity has been diminished by pollution and/or Sedimentation, including waters and Surface Waters upon the DEC Section 303 (d) List.

**Impervious Cover** - any surface, improvement, structure and/or Building (i) that prevents or substantially reduces Infiltration or any soil's ability to effectively infiltrate Stormwater, and/or (ii) that otherwise acts to increase Stormwater Runoff or other water accumulating conditions. This includes, but is not limited to, paved, concrete, and gravel surfaces, building rooftops, decks, and miscellaneous impermeable structures such as patios, pools, and sheds.

**Industrial Stormwater Permit** - a New York State Pollutant Discharge Elimination System ("SPDES") permit, issued to a commercial industry or group of industries, that (i) regulates pollutant levels associated with industrial stormwater discharges, or (ii) specifies on-site pollution control facilities or on-site pollution control strategies.

**Infiltration** - the process by which Stormwater or other water percolates into soil or subsoil.

**Land Development Activity** – all activities including Clearing, grubbing, Grading, excavating, stockpiling, placement of fill, paving, installation of utilities, and construction of Buildings or structures that result in soil disturbance.

**Landowner** - the legal or beneficial owner of one or more Parcels, including those persons or companies who hold the right to purchase or lease or develop a Parcel, or any other person or company who holds proprietary rights in a Parcel.

**Larger Common Plan of Development or Sale** – a plan, undertaken by a single project site owner or a group of project site owners acting in concert, to offer lots for sale or lease where such land is contiguous, or is known, designated, purchased or advertised as a common unit or by a common name. The term also includes phased construction activity by a single entity for its own use. For discrete construction projects that are located within a larger common plan of development or sale that are at least ¼ mile apart, each project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline, or utility project that is part of the same "common plan" is not concurrently being disturbed.

**Maintenance Agreement** - a legally recordable document that acts as a property deed restriction and which provides for the long-term maintenance of Stormwater Management Practices, whether through covenants, obligations, promises,

easements, rights-of-way, or otherwise.

**Nonpoint Source Pollution** - pollution that originates from any source other than from any specific, discernible, confined, and/or distinct source. Nonpoint Source Pollution includes, but is not limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal, and industrial and urban surface and subsurface water runoff sources.

**Operator** – each Person or entity that owns, leases, develops, or engages in construction activities upon any property or Parcel upon which any Land Development Activity occurs.

**Parcel** – a distinct tract, lot, portion, or piece of land upon which an Applicant, Developer, Landowner, Operator, or other person or entity conducts or proposes to conduct a Land Development Activity.

**Phasing** – means either: (i) the Clearing of a Parcel in distinct pieces or parts, with the stabilization of each piece or part completed before the Clearing of the next piece or part, or (ii) any Land Development Activity built or constructed in phases separated by time, conditions, or contingencies, planned or occurring.

**Planning Board** – the Planning Board of the Town of Danby, New York.

**Point Source Pollution** - a specific, discernible, confined, and/or distinct Land Development Activity or other land use that generates concentrations of liquids or solids, including but not limited to organic and inorganic chemicals, hydrocarbons, trace metals, heavy metals, metal deposits, Construction Materials, hazardous materials, toxicants, bio-masses, carcasses, tires, discards, waste, by-products, litter and other pollutants recognized and/or regulated by the EPA and/or the DEC.

**Pollutant of Concern** – Erosion, Sediment, and/or any form of regulated pollution that is generated by a Land Development Activity and discharged into any Surface Waters.

**Recharge** - the replenishment of water reserves, either above or under the ground.

**Sediment** – any chemical, mineral, metal, rock, soil and/or compound, or mixture thereof, that has been exposed and/or eroded and that is subject to transport from one location to another by means of water, ice, wind, gravity or other naturally occurring means.

**Sedimentation** – the process by which Sediment is transported from one location

to another by means of water, ice, wind, gravity or other naturally occurring means.

**Sedimentation Containment** – a practice, methodology, measure, act, design, or any combination thereof, that reduces or prevents Sedimentation.

**Sedimentation Containment Facility** – a physical application of Sedimentation Containment that reduces or prevents Sedimentation. A Sedimentation Containment Facility may include, but is not limited to, a Building, a facility, a planting, a control, a device, whether structural or nonstructural, or any combination thereof. A Sedimentation Containment Facility may be utilized and/or built in conjunction with an Erosion Control Facility or a Stormwater Control Facility, and may be a part or component of any thereof.

**Sensitive Areas** – any fisheries, shellfish beds, swimming beaches, groundwater recharge areas, Wetlands, water supply reservoirs and/or other land or habitats for wildlife or any threatened, endangered, or special concern species.

**SIMPLE SWPPP** – A Stormwater Pollution Prevention Plan that includes an erosion and sediment control plan appropriate for small areas of disturbance.

**Site Impervious Cover** – any and all Impervious Cover that is built, attached, or deposited upon a Parcel.

**SPDES** – an acronym for “State Pollutant Discharge Elimination System”.

**SPDES General Permit for Construction Activities GP-02-01** or “**SPDES GP-02-01**” - A SPDES permit that acts to regulate an Applicant’s, Developer’s, Landowner’s, or Operator’s Land Development Activity.

**SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems GP-02-02** or “**SPDES GP-02-02**” - A permit issued under SPDES to municipalities that acts to regulate discharges from municipal separate stormwater sewer systems in order to comply with EPA water quality standards and/or to specify Stormwater control standards in the State.

**Stabilization** – a physical and tangible effort made in order to stabilize soil and vegetation upon a Parcel that acts to reduce or prevent Erosion, Sedimentation, or Stormwater Runoff.

**State** – the State of New York

**Stop Work Order** - any order issued that requires that most or all construction

and Land Development Activities occurring upon a Parcel cease and be stopped.

**Stormwater** - rainwater, surface runoff, snowmelt, icemelt, drainage, and related naturally occurring surface water and accumulation(s).

**Stormwater Control** - a practice, methodology, measure, act, design or any combination thereof that reduces or prevents Stormwater Runoff.

**Stormwater Control Facility** – a physical application of Stormwater Control that reduces or prevents Stormwater Runoff, and which may include, but is not limited to, a building, a facility, a planting, a control, a device, whether structural or nonstructural, or any combination thereof. A Stormwater Control Facility may be utilized and/or built in conjunction with any other Stormwater Management Practice and may be a part or element thereof.

**Stormwater Hotspot** – any Land Development Activity or land use activity that generates higher Sedimentation or higher concentrations of hydrocarbons, trace metals, or toxicants than are found in typical Stormwater Runoff, based upon monitoring studies.

**Stormwater Management Officer** or **SMO** - an employee, agent, or officer appointed by the Town to (i) accept, review, and forward Stormwater Pollution Prevention Plans to the Town; and (ii) inspect Stormwater Management Practices within the Town; and (iii) to interpret and enforce the provisions and requirements of this Local Law.

**Stormwater Management Practice** – any Erosion Control Facility, Stormwater Control Facility, Stormwater Control, Sedimentation Containment Facility, Watercourses, Waterways, Surface Waters, Channels, ditches, drains, culverts, ponds, retaining facilities, plantings, berms, swales, pipes, and other structures and appurtenances built, used, or intended to be utilized to protect and/or control Stormwater, Stormwater Hotspots, Sediments, Sedimentation, Erosion, Stormwater Runoff, Infiltration, Recharges, Sensitive Areas, Point Source Pollution, Nonpoint Source Pollution, Pollutants of Concern, Impaired Waters, Stabilization, Surface Waters, Channels, Waterways, and Watercourses, including, but not limited to, buildings, facilities, plantings, controls, protocols, designs, practices, methodologies, measures, acts, and devices, whether structural or nonstructural, or any combination thereof.

**Stormwater Pollution Prevention Plan** or **SWPPP** - a plan for controlling Sedimentation, Erosion, pollutants, and Stormwater Runoff from a Parcel during and following Land Development Activities.

**Stormwater Runoff** - Stormwater flow and precipitation upon or under the surface of the ground, including above or below ground flow(s) in any Channel, Watercourse, or Waterway.

**Surface Waters** - lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, 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), that are wholly or partially within or bordering the Town, or within or subject to its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons, that may meet the criteria of this definition are not Surface Waters unless they were created in natural Surface Waters or resulted from the impoundment of Surface Waters.

**Town** – the Town of Danby, New York.

**Town Board** – the Town Board of the Town of Danby.

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

**Waterway** - a channel that directs surface water or runoff to a Watercourse or to a storm drain.

**Wetland** – any area which meets one or more of the following criteria: (i) lands and waters that meet the definition provided in New York State Environmental Conservation Law, Article 24, the “Freshwater Wetlands Act” - the approximate boundaries of such lands and waters as are indicated on the official wetlands map promulgated by the Commissioner of the New York State Department of Environmental Conservation, as periodically amended and updated; and/or (ii) areas which meet the definition used by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency (40 C.F.R. § 230.3), specifically including areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, generally including swamps, marshes, bogs, and similar areas.

B. **Findings of Fact:** It is hereby determined that:

1. Land Development Activities and increases in Site Impervious Cover within the Town adversely impact the hydrologic responses of the Town’s watershed and increase Sedimentation and Erosion rates and volumes, flooding, and stream channel Erosion; and

2. Erosion increases the quantities of water-borne pollutants that adversely impact the environment; such water-borne pollutants include, but are not limited to, the diminution or destruction of the size and/or quality of Sensitive Areas; and
3. Land Development Activity acts to increase Erosion and Sedimentation and contributes to the loss of native vegetation and vegetative diversity necessary and useful for terrestrial and aquatic habitat, such as Sensitive Areas and Wetlands; and
4. Improper design and construction of Erosion Control Facilities acts to increase the rate of Erosion within the Town; and
5. Impervious Covers act to increase Erosion and to decrease the rates of Infiltration, groundwater Recharge, and stream base flow within the Town; and
6. Land Development Activities, Impervious Cover and the improper design, construction and implementation of Erosion Control Facilities, Sediment Containment Facilities, Stormwater Control Facilities, Stormwater Management Practices, act to create economic and ecological losses by adversely impacting the soil and waters of the Town; and
7. Erosion, Sedimentation, Point Source Pollution, and Nonpoint Source Pollution may be partially controlled and minimized through the effective design, construction and implementation of Stormwater Management Practices; and
8. Town regulation of Land Development Activities is in the public interest, will act to minimize adverse impacts upon the environment, will act to promote the public health, welfare and safety, will act to control and minimize increases in Erosion, Sedimentation, Point Source Pollution and Nonpoint Source Pollution, and will protect and enhance valuable Town resources, including, but not limited to Surface Waters and Wetlands; and
9. Town regulation of Land Development Activities by establishing performance and other standards governing Stormwater Management Practices will act to mitigate the adverse effects of Erosion, Sedimentation, Point Source Pollution, and Nonpoint Source Pollution that may result from Land Development Activities.

C. **Purpose:** The purpose of this Local Law is to establish minimum Stormwater management requirements and standards, including, as applicable, Land Development Activity and Stormwater Management Practice requirements and standards necessary to minimize potential harm to the environment, to promote public health, welfare, and



safety, and to control and minimize the adverse effects associated with Erosion, Sedimentation, unregulated Stormwater, Point Source Pollution, and Nonpoint Source Pollution, and to address the other findings of fact stated above, by achieving the following objectives:

1. Meeting the minimum requirements set by measures 4 and 5 of SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit no. GP-02-02, as amended or revised; and
2. Requiring Land Development Activities to conform to the substantive requirements of the SPDES General Permit for Construction Activities GP-02-01, as amended or revised; and
3. Minimizing increases in Stormwater Runoff and Erosion generated by Land Development Activities in order to, among other things, reduce flooding, reduce siltation, reduce increases in stream temperatures, reduce Erosion, and maintain the integrity of stream and other Watercourse and Waterway channels and Channels and Surface Waters; and
4. Minimizing increases in water pollution caused by Stormwater Runoff and Erosion generated by Land Development Activities in order to preserve local water quality; and
5. Minimizing the total annual volume of Stormwater Runoff and Erosion that is generated by Parcels during and following Land Development Activities; and
6. Reducing Erosion, Sedimentation, Point Source Pollution and Nonpoint Source Pollution, wherever possible, through Stormwater Management Practices; and to ensure that the Stormwater Management Practices within the Town are properly maintained on a perpetual basis and eliminate threats to public safety; and
7. To maintain the Town's water bodies, streams, wetlands, groundwater, and aquifers as essential resources, and to protect them from excessive turbidity from Sediments, Pollutants of Concern, the effects of Erosion and Stormwater Runoff, and other deleterious effects from untreated Stormwater, including, but not limited to, phosphorous and other pollutant loadings, whether organic or otherwise.

D. **Statutory Authority:** In accordance with Section 10 of the Municipal Home Rule Law of the State of New York, the Town Board has the authority to enact and amend local laws for the purpose of promoting the health, safety, or general welfare of the Town, and to protect and enhance the Town's physical environment. As part of such local laws,

the Town Board may appoint municipal officers, employees, or independent contractors to effectuate, administer and enforce such laws.

**E. Applicability:**

1. This Local Law shall be applicable to all Land Development Activities that exceed any one of the thresholds below, unless exempt as provided herein. No person may undertake a Land Development Activity without first meeting the requirements of this Local Law.

2. This Local Law defines three levels of applicability. Depending on the area of disturbance and other criteria listed below, Land Development Activities will require either:

- a. a FULL SWPPP with both erosion and sediment controls and post construction water quality and quantity controls;
- b. a BASIC SWPPP with erosion and sediment control; or
- c. a SIMPLE SWPPP, with a generic small site erosion and sediment control plan.

3. Any of the following activities require a FULL SWPPP with Erosion and Sediment Controls and post construction water quality and quantity controls:

- a. Any Land Development Activity with an area of disturbance greater than or equal to 5 acres; or
- b. Any Land Development Activity, exclusive of the construction of single family residences and construction activities at agricultural properties, with an area of disturbance greater than or equal to 1 acre; or
- c. Any Land Development Activity with an area of disturbance greater than or equal to one acre that has, may have, or will have, in the determination of the SMO:
  - (i) the potential to discharge a Pollutant of Concern to either an Impaired Water identified in the New York State 303(d) list of impaired waters or a Total Maximum Daily Load (TDML) designated watershed for which pollutants in Stormwater have been identified as the source of the impairment; or
  - (ii) required or require an Industrial Stormwater Permit; or

(iii) due to discharges, Sedimentation, or Erosion, a potential to be classified as a Point Source Pollution source; or

(iv) without permanent Stormwater Management Practices, a potential to produce excess Erosion or Sedimentation; or

(v) need or requirement for a SPDES Permit GP-02-01 or GP-02-02; or

(vi) characteristics that create, contribute to, or has the potential to become a Stormwater Hotspot; or

d. Any Land Development Activity that is part of a Larger Common Plan of Development or Sale which in total exceeds any of the above thresholds; or

e. Any Land Development Activity, regardless of size, that the SMO determines is likely to cause an adverse impact or excess Sedimentation, Erosion, Stormwater Runoff, or as may affect Recharge Rates, including, but not exclusively based upon, characteristics of slope, soil erodibility, proximity to a sensitive area, or proximity to another stormwater structure or facility, including any Stormwater Control Facility.

4. Any of the following activities require a BASIC SWPPP with Erosion and Sediment Control, unless already subject to a FULL SWPPP as described above:

a. Any Land Development Activity with an area of disturbance greater than or equal to 1 acre;

b. Any Land Development Activity with an area of disturbance of less than two acres that is part of a Larger Common Plan of Development or Sale that will ultimately disturb one or more acres of land; excluding routine maintenance activities that are performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility, including any Stormwater Control Facility.

c. Any Land Development Activity, regardless of size, that the SMO determines is likely to cause an adverse impact or excess Sedimentation, Erosion, Stormwater Runoff, or as may affect Recharge Rates, including, but not exclusively based upon, characteristics of slope, soil erodibility, proximity to a sensitive area, or proximity to another stormwater structure or facility, including any Stormwater Control Facility.

5. Any of the following activities require a SIMPLE SWPPP, unless already subject to a BASIC SWPPP or FULL SWPPP, as described above;

a. Any Land Development Activity with an area of disturbance less than 1 acre and greater than ½ acre;

b. Any Land Development Activity, regardless of size, within 50 feet of any Surface Waters, Wetland, Watercourse or Waterway.

c. Any Land Development Activity, regardless of size, that the SMO determines is likely to cause an adverse impact or excess Sedimentation, Erosion, Stormwater Runoff, or as may affect Recharge Rates, including, but not exclusively based upon, characteristics of slope, soil erodibility, proximity to a sensitive area, or proximity to another stormwater structure or facility, including any Stormwater Control Facility.

F. **Exemptions:** The following activities are exempt from review under this Local Law:

1. Agricultural Activities, as defined herein;

2. Silvicultural activities, except that landing areas, skid pads, and log haul roads are subject to the requirements of this Local Law as Land Development Activities;

3. 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 an existing facility or structure, including highways and any Stormwater Control Facility;

4. Repairs to any Stormwater Control Facility deemed necessary by the SMO;

5. Cemetery graves;

6. Installation of fences and signs, and installation of telephone, electrical, and other kinds of posts or poles which no not exceed 40 feet in height;

7. Emergency activities (as determined by the SMO) made in order to protect against immediate threats to life, property, or the environment within the Town;

8. Activities of persons who engage in home gardening by growing flowers,

vegetable and other plants primarily for use by those persons and their family;

9. Landscaping and horticultural activities performed in connection with an existing Building;

10. Subdivision plats approved by the Town before the effective date of this law, except individual building permits applied for on or after the effective date of this Local Law are subject to this Local Law;

11. Land Development activities for which a building permit has been approved before the effective date of this Local Law, although the provisions of this Local Law may be applied to permit renewals or any substantial modifications to the original proposal if occurring on or after the effective date of this Local Law.

**Article 2. Administration.**

A. The Town Board shall appoint one (or more) SMOs to administer, implement, and enforce the provisions of this Local Law. This appointment shall be renewed annually. Qualification will be based upon, but not limited to, familiarity with applicable stormwater regulations and practices, an understanding of stormwater hydrology and water quality, and/or familiarity with Town code enforcement procedures. In the case that there are multiple SMOs appointed, one person shall be designated as a manager with primary responsibilities for overall program oversight.

B. The SMO shall receive and review all proposed SWPPPs for accuracy, completeness, and compliance with this Local Law and applicable State regulations. When required, the SMO shall forward such plans to the applicable Town board. The SMO may, upon approval by the Town Board, (a) engage the services of a registered professional engineer or other certified professional to review the plans, specifications, and related documents submitted in connection with any SWPPP; (b) accept the certification of said professionals or qualified inspectors that the proposed SWPPP and the Land Development Activity conducted therein conforms to the requirements of this Local Law; and (c) conduct inspections and undertake other acts and actions as allowed or permitted by this Local Law.

C. All Land Development Activities subject to review and approval by the Town Board or Planning Board under Zoning, Rezoning, Subdivision, Site Plan, and Special Permit laws, rules, ordinances or regulations shall be reviewed subject to the standards contained in this Local Law.

D. Any Land Development Activity, SWPPP, or other or related plan or proposal that envisions or purports to transfer, sell, assign, or grant to the Town any rights in and to any Parcel, or any interest therein, including but not limited to the dedication of any part of a

Parcel, or the granting of rights-of-way or easements therein, shall be subject to the final review and approval of the Town Board.

E. All Land Development Activities not subject to review by the Planning Board or Town Board are required to submit SWPPPs to the SMO, who shall approve or reject such SWPPPs according to the requirements of this Local Law before issuing any required permits.

F. Prior to beginning any Land Development Activity, unless exempt as provided herein, the applicant must submit to the SMO a completed "Notice of Ground Disturbance." This information must be submitted along with the initial application requiring a Town permit or approval. This form will enable the SMO to assist in determining what kind of SWPPP is required, if any. No Land Development Activity may be commenced until the SMO has approved the SWPPP required for the particular Land Development Activity.

G. The applicant must also meet the current requirements of the DEC's SPDES General Permit for Construction Activities.

**Article 3. Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control.**

All Land Development Activities subject to this Local Law are subject to the following performance and design criteria:

A. **Technical Standards:** For the purpose of this Local Law, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater Management Practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this Local Law:

1. The Design Manual, as promulgated by DEC, or the most current version or successor thereof;
2. The Erosion Control Manual, being the New York Standards and Specifications for Erosion and Sediment Control, promulgated by the Empire State Chapter of the Soil and Water Conservation Society, 2004, or the most current version or successor thereof.

B. **Equivalence to Technical Standards:** Where Stormwater Management Practices are not in accordance with technical standards, the applicant must demonstrate equivalence to the technical standards set forth above, and the SWPPP must be prepared and certified by a licensed or certified professional.

C. **Water Quality Standards:** Any Land Development Activity shall not cause or contribute to a violation of water quality standards in surface waters of the State. The standards are contained in Parts 700 through 705 of Title 6 of the Official Compilation of Codes, Rules, and regulations of the State of New York, and include, but are not limited to the following requirements:

1. There shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions;
2. There shall be no increase in suspended, colloidal, and settleable solids that will cause deposition or impair the waters for their best usages; and
3. There shall be no residue from oil and floating substances, visible oil film, or globules of grease.

These standards apply whether or not a project is subject to this local law, and whether or not a project meets the requirements of this law. These standards are enforceable by the DEC under the Environmental Conservation Law.

#### **Article 4. Stormwater Pollution Prevention Plans (SWPPP).**

A. **Notice of Ground Disturbance:** No Land Development Activity subject to this local law shall be commenced until the SMO has approved a SWPPP. The applicant shall submit to the SMO, on a form to be supplied by the SMO, a Notice of Ground Disturbance prepared in accordance with the requirements of this local law. The Notice of Ground Disturbance shall include the following:

1. Contact Information including: Owner's and Developer's name, address, project address, phone numbers, Tax Parcel Number, and other contact information;
2. A brief description of the Land Development Activity, including a sketch, which may be combined with other drawings required for a building permit or other application, specifically showing existing drainage features and vegetation on the site;
3. A description of the proposed project phases;
4. The ground area in square feet or acres that will be disturbed for each phase and for all phases of the project. The areas to be measured include but are not limited to: driveways, parking areas, buildings, septic systems, wells, grading and clearing, lawns, ditches, drainage structures, utilities, stockpiles, etc.,

including the total project area of disturbance, total parcel acreage, area of existing impervious surface, total area of impervious surface expected at completion, and total connected impervious area;

5. A description of the distance(s) from the areas of ground disturbance on any part of the site to the edge of any perennial or intermittent stream, pond, lake, Waterway, Watercourse, or Wetland on or in the vicinity of the site;
6. Any mapped or other indicators of Wetlands on the site or adjacent to the site;
7. A description of the slope(s) of the site in numerical or descriptive format;
8. A description of any linear excavations greater than or equal to 500 feet long and 3 feet wide;
9. A description of any activities that may involve the fill or excavation or greater than 250 cubic yards of soil;
10. A list of and brief description of any other permits or approvals required for the project;
11. A description by name, address, and contact information for each contractor or subcontractor working at the site or building or assisting in the construction or completion of any Stormwater Management Practice, together with such contractor's certification, when required by this Local Law or the SMO;
12. A description of each, all and any other permits necessary in connection with the project or Land Development Activity; and
13. Any additional details requested by the SMO.

**B. Contents of a SIMPLE Stormwater Pollution Prevention Plan (SIMPLE SWPPP):** The Owner, Developer or Applicant shall supply a completed Notice of Ground Disturbance. Thereafter, the SMO will provide a generalized plan describing the Erosion Control Facilities to be used to minimize the impacts of the Land Development Activity appropriate for the site, based upon the guidelines in the DEC Erosion Control Manual or as developed by the Town for this purpose. Measures may include, but are not limited to:

1. Stabilized construction entrance(s);
2. Stabilization of exposed soils;



3. Protection of adjacent properties, Waterways, and natural areas;
4. Management of concentrated flow areas; and
5. Maintenance during construction.

**C. Contents of a BASIC Stormwater Pollution Prevention Plan (BASIC SWPPP) (to address Erosion and Sediment Control):**

1. A completed Notice of Ground Disturbance;
2. Site maps and construction drawing(s), including a general location map. At a minimum, a site map must show or account for the total site area; all proposed improvements; areas of land disturbance; areas of land that will not be disturbed; areas of pre-existing and proposed vegetative cover; locations of on-site and adjacent off-site Surface Water(s); a delineation of watershed boundaries; areas of Wetlands and drainage patterns that could be affected by the Land Development Activity; areas of existing and proposed final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the proposed Stormwater Management Practices and their related discharge(s), if any. Generally, site maps should not be scaled smaller than 1"=100';
3. A description of the pre-existing soil, vegetative surface cover, and Site Impervious Cover present;
4. A Land Development Activity phasing plan describing the intended sequence of construction activities, including Phasing, Clearing and Grading, utility and infrastructure installation, and any other activity at the site that results in soil disturbance;
5. A description of the measures that will be used to minimize, control, prevent and/or dispose of Construction Materials, Sediment, and Point Source Pollution and/or Nonpoint Source Pollution;
6. A description of the types, quantities, sizes and disposal methods concerning Construction Materials expected to be stored on-site, with updates as appropriate, and a description of the measures taken to reduce the release, discharge or effluence of pollutants from the Construction Materials, including, but not limited to (i) Pollutants of Concern, (ii) the construction and/or utilization of temporary or permanent storage facilities to minimize exposure of such Construction Materials to the environment, and to prevent pollution spills and the release, discharge, or effluence, if any, from such Construction Materials, and (iii)

proposed the response measures to be taken by the Developer in the event that any spill, release, discharge, or effluence takes place with respect to the Construction Materials;

7. The temporary and permanent structural and vegetative measures to be used for Stabilization, from initial Clearing to project close-out;

8. A site map/construction drawing(s) specifying the location, size and expected life-span of each Stormwater Management Practice;

9. The dimensions, material specifications, and installation details for each Stormwater Management Practice, including siting and sizing;

10. A list of each Stormwater Management Practice that will be converted from temporary to permanent;

11. An implementation schedule, including the timing of initial placement and the duration for staging of each temporary Stormwater Management Practice;

12. A list of the maintenance and operating procedures as well as the schedule necessary to ensure the effective operation of each permanent Stormwater Management Practice;

13. The name(s) of any Surface Water(s) or Waterway that will receive Stormwater Runoff and/or Sedimentation;

14. A Delineation of SWPPP implementation responsibilities for each Phase and each part of the Parcel;

15. A Description of the Stormwater Management Practices built to divert Stormwater Runoff away from exposed soils, to store Erosion flows, or otherwise limit the discharge of Stormwater and pollutants, or to limit the processes of Sedimentation and Erosion; and

16. Data that accurately reflects current and projected future Stormwater Runoff and Erosion rates.

**D. Contents of a FULL Stormwater Pollution Prevention Plan (FULL SWPPP)** (with Post-Construction Water Quality and Quantity Controls): A FULL SWPPP shall be prepared by a landscape architect, a licensed professional (such as a Certified Professional in Erosion & Sediment Control - "CPESC"), or a professional engineer, and must be signed by the professional preparing the plan, who shall certify that the design of all Stormwater Management Practices meet the requirements of this Local Law. A FULL

SWPPP shall also contain:

1. All information required for the BASIC SWPPP;
2. A description of each post-construction Stormwater Management Practice;
3. A site map and construction drawing(s) showing the specific location(s) and size(s) of each post-construction Stormwater Management Practice;
4. Hydrologic and hydraulic analyses concerning all structural components of the Stormwater Management Practice and related systems necessary to physically control Erosion, Sedimentation and Stormwater Runoff caused by a Design Storm;
5. A comparison of post-development Stormwater Runoff conditions with pre-development Stormwater Runoff conditions;
6. The dimensions, material specifications, and installation details for each post-construction Stormwater Management Practice;
7. A maintenance schedule to ensure continuous and effective operation of each post-construction Stormwater Management Practice;
8. The maintenance easements and rights-of-way necessary to ensure access to, and rights to inspect, repair, replace and improve all Stormwater Management Practices upon the Parcel. Such easements shall be in a recordable form acceptable to the Town and recorded on the plan and upon any approved plat, and shall remain in effect with any transfer of title to the Parcel;
9. Inspection and maintenance agreement(s) binding on all subsequent Landowners served by the on-site Stormwater Management Practices.

E. **Other Environmental Permits:** The Landowner or Developer shall assure that all applicable environmental permits have been or will be acquired for the Land Development Activity to occur. No final Stormwater Management Practices and no SWPPP may be approved without possession of each, any, and all required permits.

F. **Contractor Certification:** Each contractor and subcontractor identified in the SWPPP who will be involved in a Land Development Activity or the construction or installation of any Stormwater Management Practice shall sign and date a copy of the following certification statement before undertaking any work: “I certify under penalty of law that I understand and agree to comply with the terms and conditions of the attached Stormwater Pollution Prevention Plan. I also understand that it is unlawful for

any person to cause or contribute to a violation of water quality standards established by the State of New York, the County of Tompkins, and/or the Town of Danby.” The above certification must include the name and title of the person executing the certification as well as the signature, address, and telephone number of the contracting firm; the address (or other identifying description) of the Land Development Activity and/or Stormwater Management Practice site; and the date the certification is made. All certification statements shall become part of each SWPPP.

**G. SWPPP Retention on Site:** A copy of the SWPPP shall be retained at the site of the Land Development Activity and/or Stormwater Management Practice during construction from the date of initiation of construction activities to the date of final close-out.

**Article 5. Maintenance, Inspection and Repair of Stormwater Management Practices:**

**A. Maintenance During Construction:**

1. The Owner and/or Developer of a Parcel or of a Land Development Activity shall at all times properly operate and maintain all Stormwater Management Practices. Sediment shall be removed from Sediment traps or Sediment ponds whenever their design capacity has been reduced by 50%.

2. For Land Development Activities subject to a FULL SWPPP, the Developer or Applicant shall have a qualified professional, certified inspector, or person working under the direction and supervision of a licensed professional, conduct site inspections and document the effectiveness of all Stormwater Management 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 a log book. Such log book shall be produced and made available for inspection by the SMO upon request. All such reports, logs, and books shall be preserved, protected, and retained for a minimum period of 3 years after final project completion.

3. In the case of a phased project subject to a FULL SWPPP, inspections may be waived with SMO approval when the project is between phases, as long as the project meets DEC requirements for “Final Stabilization” during this interim period.

4. In the case of a wintertime pause to construction, the DEC guidelines for temporary suspension of soil disturbance activities may be followed with the advance approval of the SMO.

**B. Maintenance After Construction:** The Developer, Owner, Landowner, or

Operator of permanent Stormwater Management Practices shall operate and maintain all facilities and practices to achieve the goals of this Local Law. Proper operation and maintenance includes, but is not limited to, the following:

1. A preventative/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the Developer, Owner, Landowner, or Operator to meet the requirements and achieve the goals of this Local Law; and
2. Written procedures for the operation and maintenance of any facilities, together with written procedures for the training of new maintenance personnel; and
3. Designs and procedures guaranteeing that discharges from any Stormwater Management Practices shall not exceed design criteria or cause or contribute to water quality standard violations.

C. **Maintenance Agreements:** Any Applicant, Operator, Developer, or Landowner must receive the Town Board's approval of a formal maintenance agreement for Stormwater Management Practices that is (1) binding on all subsequent Landowners served by the Stormwater Management Practice, and (2) recorded in the office of the County Clerk as a deed restriction on the Parcel, prior to receiving final SWPPP approval. The Town, in lieu of a maintenance agreement and in the Town's sole discretion, may accept the dedication of any existing or future Stormwater Management Practices, or any portion thereof, provided (i) such Stormwater Management Practices, or portions thereof, meet the requirements of this Local Law and include adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, improvement, and regular maintenance, and (ii) the Developer (and/or Applicant, Landowner, or Operator) proposes and the Town accepts a special benefit drainage district for the inspection, maintenance, and, when necessary, modification or expansion of any facilities and appurtenances.

D. **Maintenance Easement(s) and Rights-of-Way:** Prior to the issuance of any final approval of any SWPPP or Stormwater Management Practice, the Applicant, Developer, Landowner, Operator, or other person or entity conducting or proposing to conduct a Land Development Activity, shall execute an inspection, repair, upgrade and maintenance easement and right-of-way agreement that shall be binding on all subsequent Landowners served by the Stormwater Management Practices. The easement and right-of-way shall provide for access inspection and maintenance by the Town to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Local Law. This easement and right-of-way shall be recorded by the grantor in the office of the Tompkins County Clerk, after review and approval by the Town Board. The Town reserves the power to (i) require

enforcement and charge-back of expense powers in any such easement or right-of-way, and (ii) to assign any or all of such easements or rights-of-way to any then existing or future drainage or other improvement district.

**Article 6. Construction with the Subdivision and Land Division Regulations of the Town of Danby:**

A. **Preliminary Plats:** For all Preliminary Subdivision Plats a SWPPP is required, and the SMO shall determine what type of SWPPP is so required. Each such SWPPP shall meet the applicable performance and design criteria and standards set forth in this Local Law. The approved Preliminary Subdivision Plat shall be consistent with the requirements of this Local Law.

B. **Final Plats:** For all Final Subdivision Plats a final approved SWPPP shall be required. The SWPPP shall meet the performance and design criteria and standards in this Local Law. The approved Final Subdivision Plat shall be consistent with the requirements of this Local Law.

**Article 7. Construction with Site Plan Regulations:** Whenever the provisions of the Zoning Ordinance of the Town of Danby require that a Site Plan be submitted and approved, a SWPPP is required and the SMO shall determine what type of SWPPP is so required. Each such SWPPP shall meet the applicable performance and design criteria and standards set forth in this Local Law. The approved Site Plan shall be consistent with the provisions of this Local Law.

**Article 8. Prior Laws, Ordinances, or Regulations:** This Local Law shall take precedence over any other inconsistent requirement of any local law, ordinance, or regulation of the Town.

**Article 9. Administration and Enforcement:**

A. **Construction Inspection:**

1. **Erosion and Sediment Control Inspection:** The SMO may require such inspections as are or may be deemed necessary to determine compliance with this Local Law, and may either approve that portion of the work completed or give notice when the work fails to comply with the requirements of this Local Law and/or the approved SWPPP. To obtain inspections, the Applicant shall notify the SMO at least 48 hours before any of the activities listed below, or as required by the SMO or the SWPPP. Additionally, the SMO may develop an inspection schedule specific to an individual project.

- a. Start of construction; and
- b. Installation of Sediment and erosion control measures; and

- c. Completion of site clearing; and
- d. Completion of rough grading; and
- e. Completion of final grading; and
- f. Close of the construction season for the Project; and
- g. Completion of final landscaping; and
- h. Successful establishment of landscaping in public areas.

Additionally, the Town may conduct inspections at any time. If any violations are found, the Applicant, Developer, Landowner and/or Operator shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted, except for Stabilization, until each, any, and all violations are corrected and all work previously completed has received an approval from the SMO.

2. **Stormwater Management Practices Inspections:** For Land Development Activities requiring FULL SWPPP's, the Applicant, Developer, Landowner and/or Operator shall have a qualified professional or qualified inspector conduct site inspections as described in Article 5. In addition, the SMO is responsible for conducting inspections of all Stormwater Management Practices. All Applicants, Developers, Landowners and/or Operators shall submit to the SMO all "as built" plans for any Stormwater Management Practices after final construction is completed. The plan must show the final design specifications for all Stormwater Management Practices and must be certified by a professional engineer.

3. **Inspection Programs:** Inspection programs shall be established upon any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notices of possible violations; inspection of drainage basins or areas identified as higher than typical sources of Sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or Sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in

drainage control facilities; and evaluating the condition of drainage control facilities and other Stormwater Management Practice areas, structures and appurtenances. Inspections may be performed by the SMO, or by a qualified professional or certified inspector designated by the Town. All inspections shall be memorialized in writing, and all such writings shall be supplied to the SMO.

4. **Designation of Inspectors.** Inspections will be performed by the SMO or the SMO may designate a qualified professional, certified inspector, or person working under the direction and supervision of a licensed professional. A designated inspector is required to submit a report to the SMO.

5. **Submission of Reports:** The SMO may require monitoring and reporting from entities subject to this Local Law as are or may be necessary to determine compliance with this Local Law.

6. **Right-of-Entry for Inspection:** When any Stormwater Management Practice is installed or implemented upon private property, or when any new connection is made between private property and the public storm water system or any Watercourse, Waterway, or Surface Waters, the Landowner shall grant to the Town an easement and permanent right-of-way in a form acceptable to the Town Board for the purpose of inspections as specified in Article 5.

B. **Performance Guarantees:**

1. **Construction Completion Guarantee:** In order to ensure the full and faithful completion of all Land Development Activities in compliance with all terms and conditions set forth in the SWPPP and all requirements of this Local Law, the Town may require the Applicant, Developer, Landowner, and/or Operator to provide, prior to the commencement of any Clearing, Grading, or construction, a performance bond, cash escrow, or irrevocable letter of credit (or similar instrument acceptable to the Town Board) from an appropriate financial or surety institution that guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town Board based upon submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town Board, provided that (1) such period shall not be less than two years from (i) the date of final completion, or (ii) the date of final acceptance, or (iii) such other final determination or certification that the facilities have been constructed in accordance with the approved plans and specifications, whichever shall last occur, and (2) that prior to such surety release a final inspection has been conducted and the facilities have been found to be acceptable to the Town. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released



from liability.

2. **Recordkeeping:** Persons subject to this law are required to maintain records demonstrating compliance with this law. Such records must be provided to the SMO upon request.

C. **Enforcement and Penalties:**

1. **Notice of Violation:** When the SMO determines that a Land Development Activity is not being carried out in accordance with the requirements of this Local Law, the SMO may issue a written notice of violation. Such notice of violation shall be served upon each person or entity to whom it is addressed. Delivery of the notice of violation by certified mail shall be deemed sufficient “service” of the notice of violation. The notice of violation shall contain:

- a. The name and address of the Landowner, Developer, Operator, and/or Applicant;
- b. The address, when available, or a description of the Building, structure, or Parcel upon which the violation occurred or is occurring;
- c. A statement specifying the nature of the violation;
- d. A description of the remedial measures necessary to bring the Land Development Activity into compliance with this Local Law or the SWPPP, and a time schedule for the completion of such remedial action;
- e. A statement of the penalty or penalties that may be assessed against any Person or entity to whom the notice of violation is directed;
- f. A statement that the determination of violation may be appealed by filing a written notice of appeal within 10 days of service of notice of violation. Such notice of appeal shall be filed with the Town Clerk and shall be directed to the attention of the Town Board.

2. **Stop Work Orders:** The SMO may issue a stop work order for violations of this Local Law. Any person or entity receiving a stop work order shall be required to halt all Clearing, Grading, and construction, except for those activities that address the violations leading to the stop work order and except for Stabilization and such work as may be necessary to mitigate or control Stormwater Runoff and Erosion. The stop work order shall be and remain in effect until the SMO confirms that the Land Development Activity is in

compliance and the violation has been satisfactorily addressed.

3. **Violations:** In addition to any other right or remedy allowed by law or in equity, the Town may also maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision or requirement of this Local Law. Any Land Development Activity that is commenced or is conducted contrary to, in violation of, or in non-compliance with this Local Law or any approved SWPPP may be restrained by injunction, or otherwise abated in any manner provided by law.

4. **Penalties & Fines:** All provisions of New York law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this sub-section, and/except that each and any misdemeanor shall be deemed an unclassified misdemeanor. The following civil and criminal fines and penalties shall apply to any violation of this Local Law:

a. **First Violation:** Any Person or entity that violates any of the provisions of this Local Law shall be (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$1,500.00, or (2) subject to a civil penalty of not more than \$2,500.00 to be recovered by the Town in a civil action. Every such Person or entity shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

b. **Second Violation:** Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any other violation of this Local Law shall be deemed a second violation. Any person or entity that commits or permits any second violation upon the same or an adjacent Parcel shall be (1) guilty of an unclassified misdemeanor and subject to a fine of not more than \$5,000.00, or (2) subject to a civil penalty of not more than \$7,500.00 to be recovered by the Town in a civil action. Every such person or entity shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

c. **Third and Subsequent Violations:** Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any second violation of this Local Law shall be deemed a third or subsequent

violation, as applicable. Any person or entity who commits or permits a third or subsequent violation upon the same or an adjacent Parcel shall be (1) guilty of an unclassified misdemeanor and subject to a fine not more than \$10,000.00 and a period of incarceration not to exceed 120 days, or (2) subject to a civil penalty of not more than \$15,000.00 to be recovered by the Town in a civil action. Every such person or entity shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and/or be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

d. **Assessment Rolls:** Any civil penalty or criminal fine that shall be and remain unpaid for a period of time in excess of 180 days shall automatically become a lien against the Parcel, and such lien may be assessed and collected with the next year's taxes due for such Parcel, together with any incurred costs of the Town for inspection, maintenance, repair, and remediation of any Stormwater Management Practices or any violations of this Local Law.

5. **Withholding of Certificate of Occupancy:** If any Building or Land Development Activity is installed or conducted in violation of this Local Law or any approved SWPPP, the SMO may (1) withhold any Certificate of Compliance or Certificate of Occupancy, and/or (2) prevent the occupancy of said building or land.

6. **Restoration of Lands:** Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid. In addition, the Town may commence any one or more civil proceedings in the Town Court, or any other court of competent jurisdiction, to recover the costs of such restoration.

**Article 10. Fees for Services:** The Town shall require any person or entity undertaking any Land Development Activity regulated by this Local Law to pay reasonable costs at prevailing rates for the review of SWPPPs, inspections, or maintenance performed by the Town, or performed by a third party for the Town, including but not limited to engineers' or attorneys' services and fees. The Town Board may establish, by resolution, a standardized fee schedule for permits and other required reviews, inspections, and reports created, performed, or filed under, in accord with, or in furtherance of this Local Law, which fee schedule shall (i) be limited to such amounts as are reasonably estimated as the administrative and other costs and expenses incurred by the Town in connection with any matter for which a fee is scheduled, and (ii) be reviewed at least once every year by the Town Board to assure that the fees remain reasonable in light of the

Town's actual and generally incurred costs and expenses.

**Article 11. Application Fees:** A non-refundable application fee shall be submitted with each SWPPP and delivered to the SMO in an amount as the Town Board may, from time to time, establish by resolution.

**Article 12. Appeals:** Any aggrieved Person or entity may, unless expressly stated otherwise in this Local Law, appeal any action or determination of the SMO, the Town Board, or the Planning Board, to the BZA by filing a written statement setting forth the reasons for such appeal. Such statement must be filed within 10 days of the delivery or filing of any action or determination from which the appeal is taken. Upon receipt of such appeal, the BZA shall hold a hearing within 30 days and, after a review of all evidence, shall affirm, modify, or annul the appealed from action or determination.

**Article 13. Article 78:** The actions and determinations of the Town Board, the Planning Board, the BZA, and the SMO referenced in this Local Law shall be deemed "final determinations" for purposes of Article 78 of the New York Civil Practice Laws and Rules ("CPLR"). Notwithstanding this, standing under said Article 78 of the CPLR shall only be appropriate after the exhaustion of any administrative appeals as provided for in this Local Law.

**Article 14. Limitation upon Town Liability and Indemnity:** The Town shall not be liable or responsible for any injury to persons or damage to property due to the Town's actions, or failures to act, under or pursuant to this Local Law, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town. All Persons and entities working upon or engaged in any Clearing, Grading, excavation, construction, cleanup, remediation, or restoration work shall indemnify and keep and save harmless the Town from and against any and all losses, costs, damages, expenses, judgments, claims, or liabilities of any kind whatsoever which may accrue against or be charged to or recovered from the Town from or by reason of or on account of accidents, injuries, damages, and/or losses to persons or property. This indemnity provision shall be construed and applied to the maximum extent permitted by law. The Town may require that any such person or entity procure liability insurance in a minimum amount of \$1,000,000.00 per incident per person and that the Town be named an additional insured there under.

**Article 15. SEQRA:** An Environmental Assessment Form ("EAF") shall be completed and submitted with all applications pursuant to the provisions of the State Environmental Quality Review Act and its implementing Regulations at 6 NYCRR Part 617 (together herein, "SEQRA"). If the EAF indicates that the proposed activity may have significant environmental impacts or consequences, the Town Board or Planning Board, as applicable, shall require that a Draft Environmental Impact Statement ("DEIS") be submitted. The application shall not be considered complete until the DEIS, if one is required, has been accepted by the Town Board or Planning Board, as applicable. When required by law, the Town Board and/or Planning Board shall hold public hearings upon any aspect of environmental review under SEQRA.

**Article 16. Waivers:** Where the Town Board or Planning Board finds that, due to the special circumstances of a particular case, a waiver of certain requirements is justified, a waiver may be granted. In all cases, no waiver shall be granted unless the Town Board or Planning Board find and record in their minutes that: (1) granting the waiver would be keeping with the intent and spirit of this Local Law and is in the best interests of the community; (2) there is no adverse effect upon the character, appearance, or welfare of the neighborhood and any Watercourses, Watersheds, or Surface Waters; (3) there are special circumstances involved in the particular case; (4) denying the waiver would result in undue hardship, provided that such hardship has not been self-imposed; and (5) the waiver is the minimum necessary degree of variation from the requirements of this Local Law.

**Article 17. Severability:** If any clause or provision of this Local Law shall be held invalid or unenforceable by a court or tribunal of competent jurisdiction, such holding shall not affect or invalidate the remainder of this Local Law and any such invalidity or unenforceability shall be confined in its operation to the clause or provision directly involved in the controversy in which such holding shall have been rendered.

**Article 18. Effective Date:** This Local Law shall be and become immediately effective.

**Adopted by the Danby Town Board on February 8, 2010**