

Appendix 2 Stormwater Definitions

The following terms shall have the stated meanings when used in these Regulations or in documents prepared or reviewed under this Code:

Agricultural activities means the activities of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

Base flow means the stream discharge from groundwater runoff.

Blind drain means a drain consisting of an excavated trench refilled with previous materials, such as coarse sand gravel or crushed stone through which water percolates and flows toward an outlet, often referred to as a French drain.

Building footprint means that two-dimensional plane area of a building or structure which results when the height dimension is removed and which shows an aerial view of said building or structure including garages, shed, porches, eaves, covered breezeways, entryways and other similar attached appurtenances.

Catch basin means an inlet structure for the collection of stormwater from impervious surfaces designed with a sump to trap sediment.

Department means the Department of Environmental Conservation of the State of New York.

Detention means the practice and procedures associated with the delayed release of stormwater so as to reduce peak flow, maintain base flow, increase opportunity for recharge to groundwater, and reduce opportunity for surface runoff and soil erosion.

Detention structure means a permanent structure for the temporary storage of runoff, which is designed so as not to create a permanent pool of water.

Develop land means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial or institutional construction or alteration.

Development means any building, construction, expansion, alteration, modification, demolition or other activity, including land clearing, land disturbance, grading, roadway construction or expansion, mining or mineral extraction which, materially changes the use or appearance of land or a structure, or the intensity of the use of land, or the creation of a subdivision which may result in such activity, but not including interior renovations to a structure, a change in use of a structure which results in no land disturbance, or the construction or modification of a dock, wharf, or mooring.

Development area or site means any parcel of property or lot or combination of contiguous lots which (a) are in common ownership, or (b) are in diverse ownership where development is to occur in common, For the purposes of this Ordinance, contiguous lands shall include those separated by a public highway.

Disturbed area means that part of a development site area where actual land disturbance, vegetation removal, or construction of buildings, structures, or utilities will occur or has occurred.

Drainage area means all of the area of land contributing runoff flow to a single, point.

Erosion means the wearing away of the land surface by water, wind, or ice or the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

Filter strip means a strip of permanent vegetation above ponds, diversion terraces and other structures to retard flow of runoff, causing deposition of transported material, thereby reducing sediment flow.

Flow attenuation means prolonging the flow time of runoff to reduce the peak discharge.

Hydrograph means a graph showing variation in stage (depth) or discharge of a stream of water over a period of time.

Impervious area means an area covered by pavement, rooftops, and/or other structures or materials, which is either impervious to water or which substantially prevents the infiltration of water into the soil at that location.

Infiltration means the downward movement of water from the surface to the subsoil. Infiltration rate is typically expressed as inches per hour.

Infiltration device means a stormwater recharge area, drywell, recharge basin, retention basin or any other engineered structure designed to infiltrate stormwater.

Infiltration rate means a soil characteristic determining or describing the maximum rate at which water can enter the soil under specified conditions, including the presence of an excess of water.

Land disturbance or land clearing means grading, digging, cutting, scraping, excavating, removing of soil, placement of fill, paving or otherwise covering ~ construction, substantial removal of natural or human-made vegetation, replacement of natural vegetation with lawn or other human-made vegetation, demolition or other removal of human-made features, or any activity which bares soil or rock. For the purposes of calculating the square footage affected by any development in order to determine a project's classification, all affected areas of the development site shall be considered in aggregate whether or not the affected areas are contiguous.

Mulch means a natural or artificial layer of plant residue or other material such as sand or paper, on the soil surface, which reduces erosion, maintains soil moisture, and facilitates seed germination.

Municipality means the Town of North Elba and/or Lake Placid Village.

Nonpoint source means any source from which pollutants are, or may be, discharged which is not a point source.

Offering plan means a prospectus as required by §352-e of the General Business Law.

Peak flow means the maximum instantaneous flow of water from a given condition at a specific location.

Person means any individual, firm, partnership, club, trust, company, association, cooperative, corporation (including a government corporation), municipal or the State or Federal government and any agency thereof.

Pollution means the condition caused by the presence in the environment of substances of such character and in such quantities that the quality of the environment is impaired or rendered offensive to live. .

Pollution source controls means the structures and practices used in reducing contaminants from point and/or nonpoint sources.

Porous pavement means an open graded paving material, which allows water to pass through it.

Predevelopment means those site conditions, which legally existed prior to the commencement of any activity regulated by this Ordinance.

Project means any land use or development activity proposed by an applicant, which is subject to this Subpart.

Project life means the anticipated or actual time a project will be used or remain in functional existence.

Rainfall intensity means the rate at which rain is falling at any given instant, usually expressed in inches per hour.

Rational method means a widely accepted method for calculating stormwater runoff, volume and rates of flow for stormwater shed areas up to twenty acres.

Redevelopment means any activity which alters a previously developed site.

Retention means any activity, which alters a previously developed site.

Retention pond means a recharge basin, which is designed to infiltrate all of the stormwater it receives and which normally has no outflow.

Revegetation means the natural or artificial replacement of vegetation on a project site to reduce erosion, decrease runoff, improve water quality and improve aesthetic qualities of exposed soils.

Runoff controls means those structures and/or devices, including, but not limited to, dry wells, porous pavements, ditches, wetlands, holding ponds, recharge areas, and retention/detention basins which recharge groundwater and provide for peak flow attenuation.

Significant habitat means that area or region important in fulfilling the daily or seasonal habitat requirements of any species of plant or animal designated as endangered, threatened, rare, or of special concern by the Department pursuant to ECL Sections 11-0535 and 9-1503 and the Department's regulations thereunder, or by any individual species or any group of natural community of nonlisted plants and animals of significant economic, recreational, aesthetic, ecological or scientific importance.

Siltation trap means a structure designed to trap sand and silt-sized particulate matter from stormwater.

Site -(see Development Area)

Stormwater means water produced by precipitation including snow melt which does not evaporate and which flows over a natural or human-made surface or into a natural or human-made channel.

Stormwater Concept Plan or SCP means a report prepared in accordance with Schedule B of this Ordinance or on behalf of a project sponsor which includes analysis of a site's environmental characteristics, potential impacts of the development on water resources and the effectiveness and acceptability of the proposed stormwater management system in order to determine the types of stormwater measures necessary for the proposed development.

Stormwater control measures means all those natural and man-made structures, infiltration devices, erosion controls, systems, facilities, agreements, institutional arrangements, and financial provisions to manage stormwater including, but not limited to, any of the following: dry wells, pits of crushed rock, infiltration trenches, retention ponds, detention ponds, blind ditches, swales, pipes, culverts, natural depressions, porous paving, recharge areas, and basins.

Stormwater Control Report or SCR means a report prepared in accordance with Schedule B of this Ordinance or on behalf of a project sponsor which evaluates the quantity and quality of stormwater runoff resulting from the proposed project. The report shall include a set of drawings and other documents to provide all the necessary information and specifications pertaining to stormwater management and associated pollution control for a particular site. The SCR is intended to implement the SCP.

Stormwater design plan means the written narrative, maps, and diagrams prepared for the purpose of runoff control on a specific development site, based upon survey and analysis of the site.

Stormwater management means: (I) for quantitative control, a system of vegetative and structural measures that control the increased volume and rate of surface runoff caused by human-made changes to the land; and (ii) for qualitative control, a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

Stormwater Management Maintenance Agreement means an agreement between the project sponsor and some other entity to ensure adequate maintenance and repair of the stormwater management system over the life of the project.

Stormwater Management Plan or Plan means a local stormwater management plan adopted by a municipality pursuant to this Subpart and ECL Section 43-0112.

Stormwater recharge area means an area of land used for the purpose of infiltrating stormwater.

Stormwater Regulatory Program or Program means a local stormwater regulatory control program adopted by a municipality pursuant to 6NYCRR 646-4 and ECL Section 43-0112.

Stormwater runoff means any surface water runoff or runoff in channels which results directly either from a rainstorm or from the melting of snowpack.

Stream shall include any permanent or intermittent watercourse.

Stream corridor means that area within one hundred (100) feet of the high water mark of any stream or river protected and/or regulated by New York State Department of Environmental Conservation, or wetlands adjacent thereto.

Subcatchment means an identifiable drainage area contained within a large watershed or drainage area.

Subdivision means a division of any land into two or more lots, parcels, or sites, whether the new lots are adjoining or not, for the purpose of sale, lease, license, or any form of separate ownership or occupancy by an person, including the conveyance of lands in common ownership which are divided only by a road or utility right-of-way. Creation of a condominium or townhouse project shall be considered a subdivision. This definition shall not apply to conveyances of small parcels of land to correct a boundary of a lot, so long as such conveyance does not create additional lots.

Surface water runoff means water which flows over the land and does not percolate into the soil, and which may run off as a sheet, rill, or stream flow.

Time of concentration means the time required for water to flow from the most remote point of a watershed, in a hydraulic sense, to the outlet.

Water body means any lake, pond, river, stream, intermittent stream, or wetland.

Water table means the upper surface or top of the saturated portion of the soil or bedrock layer, indicating the upper extent of groundwater.

Watershed means the total drainage area contributing runoff to a single point.

Appendix 3 Stormwater Engineering Specifications for Design Professionals

I. Content of Stormwater Concept Plan:

- A. A Stormwater Concept Plan (SCP), if required, shall include sufficient information to evaluate the environmental characteristics of the project site, the potential impacts of the proposed development on water resources and the effectiveness and acceptability of measures proposed for managing stormwater runoff. Sufficient engineering analysis shall be performed and provided to show that the stormwater control measures in the Plan are viable and capable of managing runoff from the site in compliance with these regulations and the municipality's Stormwater Management Plan and Regulatory Program. All anticipated development of the site and phases of the project, both present and future, shall be addressed in the SCP. The intent of this conceptual planning process is to determine the type of stormwater measures necessary for the proposed project. The SCP shall include any modifications to the proposed project necessary to achieve the required level of stormwater management. In order to ensure adequate planning for management of runoff from future development, a municipality may also require any SCP to consider the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.
- B. For development or redevelopment occurring on a site where development has previously occurred, an applicant shall be required to include within the stormwater concept plan measures for controlling existing stormwater runoff discharges from the site in accordance with the standards of this Ordinance to the maximum extent practicable. Such measures shall also include those measures reasonable and necessary to, at a minimum, infiltrate the runoff from the first one-half inch of precipitation from any storm event for all areas within the site, which have previously been developed.

II. Content of the Storm Water Control Report

A Stormwater Control Report (SCR) shall be submitted which evaluates the quantity and quality of stormwater runoff resulting from the proposed project for all phases, both present and future, and if required, for the maximum potential runoff from the site if it were to be developed to its maximum potential under existing zoning. The Stormwater Control Report shall be consistent with, and shall be reviewed on the basis of the approved SCP. Contents of Stormwater Control Report (SCR). A SCR shall contain, at the minimum, the following information:

- A. A description of the project site and surrounding area within five hundred (500) feet as it exists prior to the commencement of the project; a location map; description of the watershed of the subcatchment and its relation to the project site; soil types and descriptions on the site and surrounding area; topography of the project site and surrounding area; surface characteristics including percent cover by asphalt, concrete, crushed stone, grasses, brush, and trees; current land use including all structures, and characteristics of the shoreline and its development, if applicable; drainage patterns including streams, ponds, culverts, ditches, and wetlands; and locations of utilities, roads, and easements.
- B. A detailed description of the proposed project including surface characteristics; proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading; and construction cost estimates of stormwater management structures.
- C. Hydrologic and hydraulic computations of stormwater volume and flow for existing and proposed conditions shall be performed. Such computations shall include:
 - 1. Description of the design storm frequency, intensity and duration

2. Time of concentration
 3. Soil curve numbers or runoff coefficients
 4. Peak runoff rates and total runoff volumes for each watershed area or subcatchment area
 5. Infiltration rates
 6. Culvert capacities
 7. Flow velocities
 8. Data on the increase and volume of runoff for the 10-year storm and on the change in the rate of runoff from the 2, 10' 50, and 100 year storms
 9. Documentation of sources for all computation methods and field test results
 10. Sufficient information to demonstrate that the proposed development, with its necessary stormwater controls, has been designed to preserve and maintain the base flow in all streams passing through, adjoining or receiving runoff from the site.
- D. A description of how the stormwater control measures for the project will provide the best available pollutant removal technology.
- E. A detailed description of, and plans of, stormwater and erosion control measures including:
1. Proposed containment facilities and structures
 2. Calculations of infiltration area required
 3. Calculation of retention and/or detention/retention storage requirements and storage volume provided
 4. Calculation or documentation of infiltrations rate
 5. Calculation for release rate controls (orifice or pipe size)
 6. Description of pollution control measures such as filter strips, sand, filters, and/or infiltration
 7. Provision for emergency overflow
 8. Measures taken to obviate or reduce the need for runoff control such as use of porous pavement or crushed stone, or the minimization of land clearing or paving.
- F. Drainage maps at a scale specified by the municipality showing existing and proposed conditions and contours, including the watershed area and subcatchment boundaries, acreage, inlet and outlet points of streams, culverts and drainage ditches, surface features, existing and proposed structures, buildings, pavement, flow directions, existing and proposed storm sewers, streams and other drainage channels, water quantity and quality control structure including retention basins and infiltration trenches, and a location map at a scale specified by the municipality showing the entire watershed area and indicating the project site.
- G. A certification that the stormwater control measures as designed and presented in the SCR will function adequately, will not adversely affect adjacent or downstream waters or properties, and has been designed in accordance with this Ordinance. The report and plans shall bear the stamp and signature of the licensed professional engineer or architect or exempt land surveyor executing the above certification.
- H. A project schedule which shall indicate the proposed starting and completion dates for all major work phases including but not limited to clearing and grading, road construction, utility placement, septic systems, stormwater control measures, wharf construction, pouring or laying of footings and foundations, building construction, and interim and permanent revegetation. Particular emphasis shall be placed on those elements of the schedule relating to stormwater runoff and erosion control. In general, the control facilities shall be installed first in the construction stages of a project to minimize the impacts associated with construction. Further, the project schedule shall take into account appropriate seasonal limitations for temperature and weather sensitive operations. Special

measures or procedures may be required to undertake land disturbance activities occurring between October 15 and April 15. A.

I. A maintenance schedule, which includes:

1. The construction costs related to stormwater control
2. The proposed stormwater control maintenance program and annual costs of implementing such
3. Identification of the party or parties responsible for maintenance of the system over the life of the project
4. A copy of any maintenance agreement (see Appendix 4)
5. Identification of the party or parties responsible for correcting failures or inadequate function of stormwater control measures and responsible for assuming control of the systems in the event of failure to properly maintain the system.

Each application shall contain the written consent of the landowner that the municipality may conduct site inspections, tests, and evaluations as are deemed necessary by the municipality to verify site data contained in the application. Such data shall include, but is not necessarily limited to soil type, topography, depth to seasonal high groundwater, depth to bedrock and distance from bodies of water. During the site inspection one or more deep test holes and percolation test may be required by the municipality to be performed by the applicant.

III. Methodologies For Determining Runoff Volumes

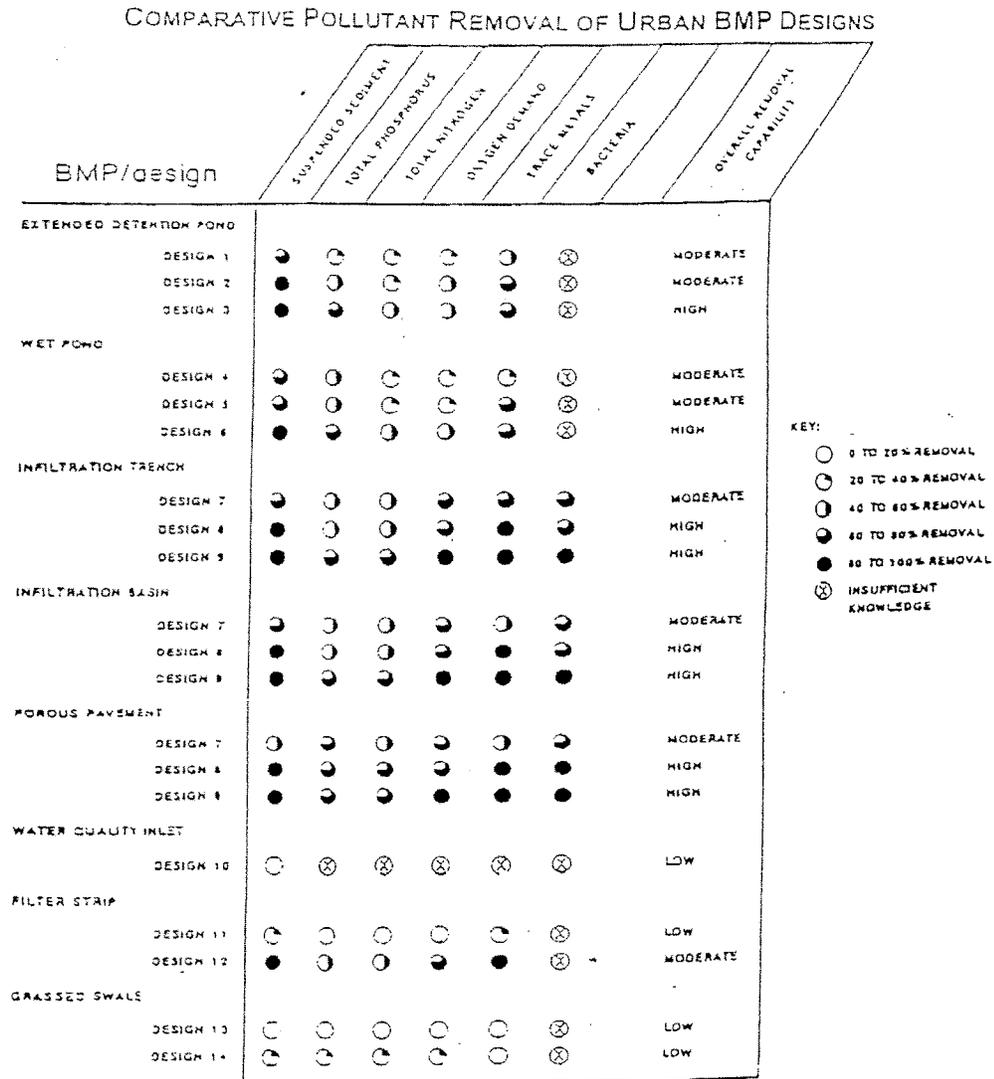
Stormwater volumes and rates of flow shall be calculated using the following methods:

- A. For small watershed areas (up to 20 acres), the Rational Method may be used
- B. For larger watershed areas (up to 2,000 acres), and as the overall preferred method, The United States Department of Agriculture Method shall be used, (this method described in "Urban Hydrology for Small Watersheds- Technical Release 55")
- C. Any other equivalent and widely accepted method may be used.

IV. Soil Evaluation Methods

The design infiltration rate shall be based on the results of hydrogeologic studies performed by the applicant during preparation of the Stormwater Control Report. The studies shall include test pits or borings located to present a clear picture of geologic and hydrologic conditions existing at the site and the areas, both on and off the site, affecting, or to be affected by, the development. A minimum of three subsurface excavations shall be conducted and the results shall be included in the SCR. Interpretive logs of all excavations shall be submitted with the report. Hydrogeologic interpretations and conclusions shall be developed by qualified persons only. Following design of infiltration devices, additional subsurface investigations to confirm soil and groundwater conditions will be required in the areas proposed for infiltration devices. The design of any project or development shall ensure that the ability to manage stormwater is not affected by the placement of structures on those soils or locations best suited for stormwater management purposes.

Comparative Pollutant Removal of Urban BMP Designs Chart

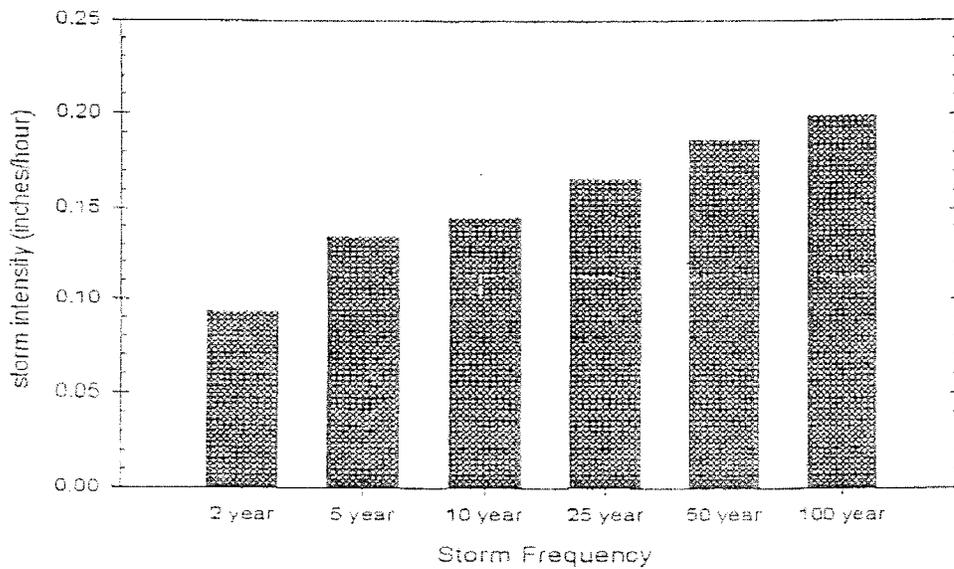
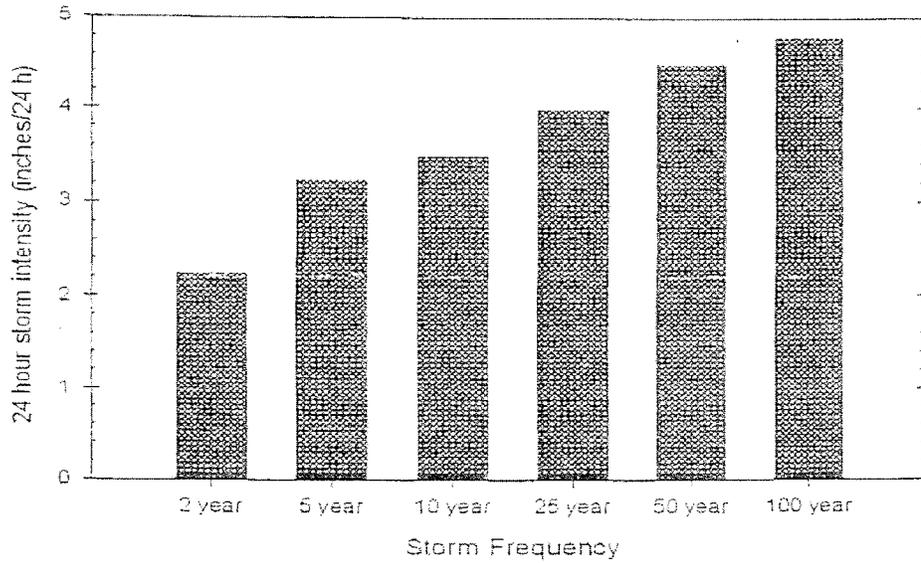


- Design 1: First-flush runoff volume detained for 6-12 hours.
- Design 2: Runoff volume produced by 1.0 inch, detained 24 hours.
- Design 3: As in Design 2, but with shallow marsh in bottom stage.
- Design 4: Permanent pool equal to 0.5 inch storage per impervious acre.
- Design 5: Permanent pool equal to 2.5 (Vr); where Vr=mean storm runoff.
- Design 6: Permanent pool equal to 4.0 (Vr); approx. 2 weeks retention.
- Design 7: Facility exfiltrates first-flush; 0.5 inch runoff/imperv. acre.
- Design 8: Facility exfiltrates one inch runoff volume per imperv. acre.
- Design 9: Facility exfiltrates all runoff, up to the 2 year design storm.
- Design 10: 400 cubic feet wet storage per impervious acre.
- Design 11: 20 foot wide turf strip.
- Design 12: 100 foot wide forested strip, with level spreader.
- Design 13: High slope swales, with no check dams.
- Design 14: Low gradient swales with check dams.

(Source MWCG, 1987)

SCHEDULE D

STORM INTENSITY GRAPHS FOR NORTH ELBA, NEW YORK



Appendix 4: Sample Stormwater Control Facility Maintenance Agreement

Whereas, the Municipality of _____ ("Municipality") and the _____ ("Facility owner") want to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Municipality for the below named project, and

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

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

9. If ever the Municipality determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake the corrective action specified by the Municipality or by the inspection engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.

This agreement is effective as of _____.

APPENDIX 5 – SEQR GUIDE

I. Introduction

This Appendix is intended for use only as a limited guide to the Review Board and the Board of Appeals as to their respective responsibilities in regard to the "State Environmental Quality Review Regulations" {6NYCRR PART 617}. The Boards in their review of Applications should refer to "The SEQR Handbook" and the "SEQR Cookbook" (Appendix 6) both of which are published by the New York State Department of Environmental Conservation.

II. Applicability

A. Local government decisions which are subject to SEQR:

1. Adoption of Zoning Ordinances
2. Zoning changes
3. Conditional Use Approvals
4. Subdivision Approvals

B. The SEQR process should be integrated with other project review procedures. SEQR should be handled as expeditiously as possible by combining public review periods and hearings with other required reviews. The following principles, based on rules of reason and supported by numerous court decisions, should be applied when integrating SEQR with other established local Land Use and Development review procedures:

1. Look at the entire action
2. Coordinate review with all other involved agencies
3. Initiate review processes as early as possible and before any commitments are made / determined regarding the project/use
4. Interrupt timeframes for other mandatory review procedures when necessary in order to complete the SEQR process
5. Integrate those aspects of other review procedures which are common with SEQR so that all may be carried out as expeditiously as possible

III. Type I Projects

The following example of actions is to identify, for the Boards, project sponsors, and the Public those actions and projects that are more likely to require the preparation of an EIS.

The following are examples of actions that require the preparation of an EIS:

- A. Construction of new residential units that meet or exceed the following thresholds:
 - 1. 50 units not to be connected [at the commencement of habitation] to existing public water and sewerage systems
 - 2. 250 units to be connected [at the commencement of habitation] to existing public water and sewerage systems.
- B. Activities, other than the construction of residential facilities, that meet or exceed the following thresholds:
 - 1. A project or action that involves the physical alteration of 10 acres
 - 2. A facility with more than 100,000 gross feet of floor area

IV. Type II Projects

The following examples of actions have been determined not to have a significant impact on the environment or are otherwise precluded from environmental review under Environmental Conservation Law, Article 8.

The following are not subject to environmental review:

- A. Maintenance or repair involving no substantial changes in an existing structure or facility;
- B. Replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading buildings to meet building or fire codes {unless such actions exceeds the thresholds in Section 617.4 of the SEQRLaw}.
- C. Agricultural, farm management practices, including construction, maintenance and repair of farm buildings and structures and land use changes consistent with generally accepted principals of farming.
- D. Maintenance of existing landscaping or natural growth. Construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in Zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities.
- E. Construction or expansion of a 1, 2 or 3 family residence on an approved lot including provision of necessary utility connections and the installation, maintenance and/or upgrade of a drinking water well and a septic system.
- F. Construction, expansion or placement of minor carports, patios, decks, swimming pools, tennis courts, satellite dishes, fences, barns, storage sheds or other buildings not changing land use or density.
- G. Granting of individual setback and lot line variances.
- H. Granting of an area variance[s] for a 1, 2 or 3 family residence.

- I. Minor temporary uses of land having negligible or no permanent impact on the environment .
- J. Official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or non-compliance with the relevant local building code.
- H. Interpreting an existing code, rule or regulation.

V. SEQR and the Review Process

A. Application

SEQR applies to subdivision and site plan/conditional use review. Discretionary approvals of land subdivisions are subject to review under SEQR. Site Plan/Conditional Use approvals are also subject to review via SEQR.

- 1. SEQR does not apply to the Sketch Plan review process. However, the reviewing board at the Sketch Plan stage should preliminarily classify the action, provide the Applicant with an EAF (Environmental Assessment Form) and identify other involved agencies.
- 2. The reviewing board should also alert the Applicant to any potential environmental concerns including site limitations.
- 3. The reviewing board does not, at the Sketch Ptan Phase, make decisions in regard to Lead Agency status or make determinations of significance.

B. SEQR Incorporation into the Subdivision Review Process

1. Subdivision Preliminary Plat Phase - An essential part of the Application is a completed Part I of an EAF. Based on the information in the Application and the EAF the reviewing board must make a decision if coordinated review is required and must further:

- a. Establish Lead Agency status.
- b. Make a determination of "significance".
- c. Items 2 and 3 of Section A above are to be addresses before a decision is made regarding the completeness of the Application.

2. The determination of 'complete application' is a critical decision that results in the start of the Subdivision approval time clock.

- a. If the reviewing board determines that the subdivision will not have a significant environmental impact, a negative declaration is issued and SEQR compliance {process} is complete.
- b. If all other parts of the Application are complete/adequate, the reviewing board can determine the Application complete and proceed with its decision on the preliminary plat.
- c. If the reviewing board determines that the development may have a significant environmental impact, a 'positive declaration' is issued and the preliminary plat

application may not be deemed, complete until the reviewing board, acting as the lead agency has accepted a draft EIS {Environmental Impact Statement}.

3. Subdivision Final Plat Review

- a. If the preliminary plat approval is based on a negative declaration or a final EIS, there is no further SEQR review required for the final plat decision.
- b. If a draft EIS is used for preliminary approval, a final EIS must be prepared before the final plat is approved and findings made.

C. SEQR Integration with Site Plan Review.

1. Site Plan procedures are similar to the one-step subdivision review procedure. However, informal preliminary review may also be used. The same three initial SEQR steps should also be used with Site Plans as detailed above.
2. No final approval of a Site Plan approval may be given until either a Negative Declaration or a Final EIS and findings are made.
3. The Site Plan review should cover all environmental issues under SEQR, which are applicable to the application under review.

D. Compliance

Compliance with the SEQR process is one element of subdivision or site plan application completeness.

1. If the reviewing board, acting as the Lead Agency determines that the subdivision or site plan development will not result in a significant environmental impact, a Negative Declaration is prepared and SEQR compliance is complete. If all of the other components of a subdivision plat or site plan application are acceptable, the reviewing board can then determine the application is complete and make decisions on the preliminary and final plats and/or site plan without further SEQR activity. This applies to both to approval of preliminary and final plats and plans.
 2. If the reviewing board, acting as the Lead Agency, determines that the development of the subdivision and /or the site plan may have a significant impact on the environment, the plat /site plan application is not complete until a Draft EIS has been accepted.
 3. The reviewing board integrates SEQR and the time frames for subdivision and site plan review.
- E. SEQR regulations do not require hearings; hearings are optional. If an EIS is prepared for the applications under review, a combined Public Hearing on both the Application and the EIS may be held. SEQR guidelines recommend that separate hearings for the Application and the EIS should be avoided if at all possible.
- F. In the event that another agency is the Lead Agency, the reviewing board may not make a decision to approve the subdivision plat or the site plan application until either a negative declaration has been made or a final EIS has been accepted by the Lead Agency.

- G. Any modifications to the preliminary plat and/or site plan require that a new determination of environmental significance be made by the reviewing board. Should significant environmental impacts be determined by the Review Board, a supplemental EIS will be required and additional findings will be determined by that Board

If no supplemental EIS is required, a supplemental findings statement is prepared which sets forth the basis for the conclusion that no significant adverse impacts will occur.

VI. SEQR, Zoning, and Zoning Variances

- A. Local government decisions to adopt Zoning Ordinances, to create new Zones or to modify the allowable uses or configurations of existing zoning are subject to review under SEQR.
- B. Actions to grant variances are subject to review under SEQR.
- C. Actions to create Planned Development Districts are subject to review under SEQR.
- D. Interpretations by local officials are not subject to review under SEQR.
- E. Zoning related decisions for lot line and set back variances are predetermined never to have significant environmental impacts and once identified, require no further application of SEQR.
- F. Interpretations of the Zoning Ordinance and review of decisions of the Enforcement Officer are not decisions subject to SEQR due to the fact that these actions are "legal functions" and do not result in a decision to approve an action and are Type II actions which are "administrative"
- G. Use Variance requests: The standards for granting Use Variances require an applicant to show that [1] applications of the Zoning Regulations would deprive the applicant of all economic use or benefit from the property; [2] the alleged hardship is unique to that property; [3] that the variance, if granted, will not alter the essential character of the neighborhood; [4] that the alleged hardship is not self-created. Should the Board of Appeals find that the tests 1, 2 and 4 are met, it must apply SEQR before applying test 3, determining what constitutes the minimum necessary variance and determining what conditions should be applied.
- H. Area Variances for individual {single} lots are similar in nature and effect to setback and lot line variances and may reasonably be interpreted as being Type II. For other Area Variances, SEQR should be applied before making a decision whether to approve the variance; the minimum necessary variance, and what conditions should be applied.

VII. Concept of Reasonableness

The range of decision making and the comprehensive nature of SEQR continually present new circumstances that require judgment to implement SEQR. SEQR asks the lead agency to decide how many alternatives should be reviewed; how much information is enough; and is the proposed action really "significant"? While there cannot be black and white formula answers to such matters, there is one basic principal/rule that can be used -the **rule of reason**.

- A. The regulations provide support for basing judgments on how to manage the SEQR process choosing the reasonable approach. Starting with the determination of significance, the regulations ask the lead agency to identify and address relevant areas of environmental concern. If a potential impact is too speculative, it should not be addressed. The responsibility is to deal with impacts that are reasonably foreseeable.
- B. The full Environmental Assessment form [FEAF] also recognizes the reasonableness principal: In the Purpose statement at the beginning of the full EAF the instructions recognize that ...frequently there are aspects of a project that are subjective and unmeasurable ...yet those who determine significance may have no formal knowledge of the environment ...Given these practical limitations, SEQR asks that these decision makers identify and consider the relevant potential impacts of an action. The Part I {Project Information} instructions to the project sponsor state that it is expected that ...completion of the EAF will be dependent on information currently available and will not involve new studies, research or investigation.

However, if an impact is judged relevant and significant, a subsequent EIS may require new studies, research or investigation.

- C. The initial instruction to the lead agency in Part 2 {Analysis} of the Full EAF states that: In completing the form the reviewer should be guided by the question "have my responses and determinations been reasonable? The reviewer is not expected to be an environmental analyst. In the instructions for Part III {Evaluation} of the Full EAF, the preparer decides "if it is reasonable to conclude that this impact is important". Following that instruction, a series of questions tests the reasonableness of the decision.
- D. In the scoping procedures, the regulations speak about reasonableness in several ways. "Failure of an involved agency to participate in the scoping process will not delay completion of the written scope of issues". Non-relevant issues may reasonably be removed from further consideration. Scoping should also identify the reasonable alternative to the proposed action.
- E. When the lead agency receives a draft EIS from the project sponsor, its responsibility is to determine whether the document is adequate for public review, in terms of its scope and content. There are reasonable expectations. The regulations do not demand that the draft EIS be perfect, that would be an unreasonable expectation.
- F. In the criteria for determining significance when addressing potentially relevant long-term, short-term and cumulative effects, the lead agency is directed to consider those that are "reasonably related". The criteria also include the following reasonable qualifiers to the indicators of significance:
 - 1. A substantial adverse change
 - 2. Substantial increase or decrease
 - 3. Removal or destruction of large quantities
 - 4. Large number of people
 - 5. Material conflict
 - 6. Impairment of character or quality
 - 7. A major change
 - 8. Creation of a hazard
 - 9. Creation of a material demand
- G. The regulations require that the draft EIS address the range of reasonable alternatives to the action which are ...feasible, considering the objectives and capabilities of the project sponsor. For private applicants it may be limited to parcels owned by, or under option to, a private applicant. To demand otherwise would place an unreasonable burden on most applicants to the control of sites which they do not otherwise have option or ownership.

- H. For supplemental EIS's, the regulations limit further analysis to issues either not addressed or inadequately addressed in the EIS, and only those dealing with significant adverse impacts. To make it easy to supplement or to allow supplements to revisit all issues would be unreasonable.
- I. In preparing its SEQR findings each involved agency must apply the following tests:
 - 1. It must consider the reasonable alternatives and choose one that minimizes or avoids adverse environmental effects to the maximum extent practicable.
 - 2. The findings must incorporate conditions requiring practicable mitigation measures to ensure that the adverse environmental effects of the least damaging alternative will be minimized or avoided.
- J. The principal of reasonableness is supported by the decisions of the courts. In addressing the review of impacts the courts have limited the consideration of impacts to reasonably related potential impacts. The court decisions have also stated that not every conceivable impact needs to be considered; speculative impacts may be ignored.

VII. SEQR Reference Guides

The Review Board and the Board of Appeals should refer to the following publications:

- A. "The SEQR HANDBOOK" published by NYS Department of Environmental Conservation
- B. "The SEQR COOKBOOK: A STEP-BY-STEP DISCUSSION OF THE BASIC SEQR PROCESS" published by the NYS Department of Environmental Conservation and Appendix 6 of these Regulations

