

Section 646-4.1 is amended to read as follows:

Environmental Conservation Law section 43-0112 directs the Lake George Park Commission ("commission") to develop regulations to guide preparation of local stormwater management plans and regulatory programs. The statutory provisions state that municipalities within the Lake George Park shall develop and implement the plans and programs consistent with the regulations and subject to the approval of the commission not later than eighteen (18) months from the effective date of the regulations. If the commission determines that a municipality has failed to develop a plan or program or fails to implement an approved plan or program, then the commission shall assume the authority of the municipality to do so. The regulations are contained in this Subpart and they first became effective on September 19, 1990. The regulations provide that the commission prepare a model ordinance as an aid to local government and a means to streamline review of local regulatory programs. The Model Ordinance was completed and provided to each municipality on December 15, 1990. The commission also prepared and established additional aids for the municipalities. On April 17, 1992, following expiration of the 18-month statutory time frame, the commission assumed jurisdiction over stormwater in three municipalities which had determined not to develop a plan or regulatory program. Before the commission approved any local regulatory program or stormwater plan in municipalities which had determined to develop a plan or regulatory program, the regulations were amended. This section was added to put these amendments in context. The purpose of the amendments was to reduce procedural and regulatory inconsistencies which had been identified during the review of several preliminary local stormwater regulatory programs and which had a direct bearing on decisions affecting municipal programs which had been submitted for approval. The timing of the amendments was such that the revisions would be in place prior to review and approval of local regulatory programs and stormwater management plans. Thus, no local plan or regulatory program was approved prior to the referenced amendments. Accordingly, the amendments include a provision which affords additional time for municipalities to complete action on local programs and plans. In the interest of ensuring that the water quality

protection benefits of improved stormwater management not be unduly delayed, the amendments set a time period of nine months from notice of the effective date of the amendments to this Subpart within which the municipalities must act to complete and implement a stormwater management plan and regulatory program. Once the nine-month period has passed and a municipality is not in compliance with the time limit set forth in this Subpart, the regulations provide that the commission shall assume jurisdiction over stormwater in such a municipality.

Subdivision (a) of section 646-4.3 is amended to read as follows:

(a) General applicability. This Subpart shall apply to any municipality lying wholly or partially within the park, the commission and all development within said municipalities except development which is expressly exempt pursuant to section 646-4.[5] 6 of this Subpart. Stormwater management plans and [S]stormwater [R]regulatory programs shall apply to all land within the park. Their application to other areas within a municipality is encouraged in order to protect other water resources, but is not required by this Subpart.

Subdivision (c) of section 646-4.3 is amended to read as follows:

(c) Applicability under commission jurisdiction. In any municipality where the commission has assumed jurisdiction over stormwater management pursuant to Environmental Conservation Law, section 43-0112(3) and sections 646-4.5 and 646-4.[6] 14 of this Subpart, a permit from the commission shall be required in accordance with sections 646-4.5, 646-4.[12] 7 and 646-4.[13] 8 of this Subpart. The design standards for stormwater controls contained in this Subpart shall be applicable in the review of permit applications. Permit applications shall be processed in accordance with the provisions of Subpart 645-5 [of this Title] except that the project classifications contained herein shall govern.

Paragraph (1), subdivision (b) of section 646-4.4 is amended to read as follows:

(1) Agricultural activities means the activities of an active farm including grazing and watering livestock, irrigating crops, harvesting crops, and 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.

Paragraph (11), subdivision (b) of section 646-4.4 is amended to read as follows:

(11) 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].

Paragraphs (16) – (17), subdivision (b) of section 646-4.4 are renumbered (17) through (18) and a new paragraph (16) is added to read as follows:

(16) Fertilizer means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, agricultural liming material, wood ashes, gypsum and other products exempted by regulation of the Commissioner of Agriculture and Markets.

Paragraphs (18)-(23), subdivision (b) of section 646-4.4 are renumbered (20) through (25) and a new paragraph (19) is added to read as follows:

(19) High traffic area means a road, parking area, or driveway used for motorized vehicular travel, except those servicing four (4) or fewer residential lots or units.

Newly renumbered paragraph (21), subdivision b of section 646-4.4 is amended to read as follows:

(21) [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.] Impervious area means all impermeable surfaces that cannot effectively infiltrate rainfall. This

includes paved, concrete, packed earth and gravel surfaces (i.e. parking lots, driveways, roads, runways and sidewalks); building rooftops and other miscellaneous impermeable structures such as patios, pools, and sheds.

Newly renumbered paragraph (23), subdivision b of section 646-4.4 is amended to read as follows:

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

Newly renumbered paragraph (25), subdivision b of section 646-4.4 is amended to read as follows:

(25) 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, however the calculation shall not include areas used for (i) approved wastewater treatment systems, (ii) stormwater retrofit projects, or (iii) infiltration devices for new development. Infiltration devices located in areas that would otherwise be impacted by development activity shall be considered in the calculation of land disturbance (eg. porous pavement, infiltration chambers beneath a parking lot).

Paragraphs (24)-(35), subdivision (b) of section 646-4.4 are renumbered (28) through (39) and new paragraphs

(26) and (27) are added to read as follows:

(26) Landscaped area means an area of vegetation which has been actively maintained as a lawn, garden, hedge, planting bed or rain garden.

(27) Lawn means any non-crop land area that is covered by any grass species. Lawn or non-agricultural turf does not mean flower or vegetable gardens, pasture, hayland, trees, shrubs, turf grown on turf farms, or any form of agricultural production.

Newly renumbered paragraph (37), subdivision b of section 646-4.4 is amended to read as follows:

(37) Pre-development means those site conditions which existed prior to the commencement of any activity regulated by this Subpart.

Paragraphs (36)-(38), subdivision (b) of section 646-4.4 are renumbered (41) through (43) and new paragraph (40) is added to read as follows:

(40) Qualified stormwater professional is a person that is knowledgeable in the principles and practices of stormwater management and treatment, such as a licensed Professional Engineer, Registered Landscape Architect or other commission endorsed individual(s). Individuals preparing stormwater design plans must have an understanding of the principles of hydrology, water quality management practice design, water quantity control design, and, in many cases, the principles of hydraulics.

Paragraphs (39)-(44), subdivision (b) of section 646-4.4 are renumbered (45) through (50) and new paragraph (44) is added to read as follows:

(44) Residential firewood harvesting means the removal and processing of trees to be used as a heating fuel source, with such harvesting activity not to result in the removal of greater than five (5) full cords of firewood during any calendar year; and further not to include the sale or export of any firewood or wood products. Residential firewood harvesting shall not include (a) the creation of a wood road, log landing, or skid trail, (b) stump removal, brush removal, or grubbing, or (c) road construction, excavation, land clearing or land disturbance for development.

Paragraph (45), subdivision (b) of section 646-4.4 is renumbered (52) and a new paragraph (51) is added to read as follows:

(51) Silviculture activity means the practice of controlling the establishment, composition, constitution, and growth of forests. Silvicultural activities include: site preparation for forest regeneration; reforestation

(including subsequent cultural treatment); thinning; prescribed burning; pest and fire control; harvesting operations; surface drainage; harvest related road/trail construction and maintenance; and nursery operations.

Tree removal in preparation for development or other conversion to a non-forestry use is not silviculture.

Paragraphs (46)-(55) are renumbered (54) through (63) and a new paragraph (53), subdivision (b) of section 646-4.4 is added to read:

(53) Soil conservation plan means a document, which identifies best management practices regarding erosion and sediment controls to be employed for a proposed agricultural or silviculture activity. The plan shall include such form(s) as may be provided by the Commission. The plan shall include a scaled map of the project site depicting all waterbodies onsite and within 35' of all areas to be disturbed, and all proposed land disturbances including proposed stream crossings, agricultural fields, and areas proposed for silviculture including logging roads and landings.

Newly renumbered paragraphs (55) & (57), subdivision b of section 646-4.4 are amended to read as follows:

(55) Stormwater concept plan or SCP means a report prepared in accordance with section 646-[4.13]4.8(b) of this Subpart by 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.

(57) Stormwater control report or SCR means a report prepared in accordance with section 646-[4.13]4.8(b) of this Subpart by 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.

Paragraph (56) is renumbered (65), subdivision (b) of section 646-4.4, and a new paragraph (64), subdivision

(b) of section 646-4.4 is added to read:

(64) Stormwater retrofit project is an activity undertaken for the purpose of reducing stormwater runoff volume, velocity, and/or pollutants generated from pre-development conditions, and which is undertaken or approved by the municipality in which the project is located, the county Soil and Water Conservation District, the Commission, or an entity approved by the Commission.

Paragraphs (57) – (58) are deleted.

Paragraphs (59)-(65) are renumbered (66) through (72), subdivision (b) of section 646-4.4

A new paragraph (73), subdivision (b) of section 646-4.4 is added to read:

(73) Wetland means an area designated as a freshwater wetland by the New York State Adirondack Park Agency.

Subdivisions (a), (b) & (c) of section 646-4.5 are amended to read as follows:

(a) Wherever the commission has assumed jurisdiction for stormwater management within the Lake George Park pursuant to section 43-0112(3) of the Environmental Conservation Law and unless otherwise exempted herein, no person shall [build, construct, erect, expand or enlarge any building or structure or place or construct] cause or create any new impervious surface such as pavement, blacktop, macadam, packed earth and crushed stone without first receiving a permit issued by the commission pursuant to this Subpart.

(b) No person or owner of real property located within the Lake George Park shall create or maintain a condition, which due to a human disturbance of land, vegetative cover, or soil, may result[s] in the erosion of soil from the site or into any water body. The commission shall notify a property owner of such condition on his property and shall afford a reasonable time period to correct any such condition before a violation shall be deemed to exist.

(c) Except for the activities exempted [herein] pursuant to section 646-4.6 of this Subpart, no person shall [operate a land clearing machine such as a backhoe, grader, or plow or similar device so as to clear, grade, or

otherwise remove vegetative cover or soil or to overlay natural vegetative cover with soil or other materials when such activity involves an area of land] cause or create a land disturbance [greater than 5,000 square feet] without first receiving a permit from the commission pursuant to this Subpart.

Subdivision (f) of section 646-4.5 is repealed, subdivisions (d) & (e) are renumbered (e) & (f), and a new subdivision (d) is added to read as follows:

(d) No person shall fail to comply with conditions and plans of a stormwater management permit authorized by the commission pursuant to this Subpart.

Renumbered subdivisions (e) & (f) of section 646-4.5 are amended to read as follows:

(e) No person shall cause or create a condition of flooding, erosion, siltation or ponding resulting from failure to maintain previously approved stormwater control measures where such condition is injurious to the health, welfare or safety of individuals residing in the park or injurious to any land within the park. The commission shall notify a property owner of such condition on his property and prescribe measures necessary to reestablish effective performance of the approved stormwater control measures. The commission shall afford such property owner a reasonable time period in which to correct any such condition, before a violation is deemed to exist.

(f) No person shall build, alter or modify a stormwater control measure without first receiving a permit from the commission. [Such building, alteration and/or modification does not include the ordinary maintenance, cleaning and/or repair of stormwater control measures.]

New subdivision (g) of section 646-4.5 is added to read as follows:

(g) No person shall apply or authorize the application of lawn fertilizers within fifty (50) feet of any water body, except for newly established lawns during their first growing season or situations in which a reliable soil test indicates a need for the addition of fertilizer.

Sections 646-4.6 – 646-4.11 are renumbered 646-4.14 – 646-4.19 and a new section 646-4.6 is added to read as

follows:

Section 646-4.6. Permit Exemptions

(a) The following activities are exempt from the permit requirements of section 646-4.5

(1) emergency repairs and the ordinary maintenance, cleaning, and/or repair to any stormwater control measure;

(2) land disturbance and land clearing of less than 5,000 square feet on a site;

(3) creation of new impervious areas of less than 1,000 square feet on a site;

(4) maintenance of landscaped areas

(5) agricultural activity which is consistent with a soil conservation plan developed in accordance with the New York State Soil and Water Conservation Committee's "Agricultural Best Management Practice Systems Catalogue", which plan has been provided to the Commission not less than 15 calendar days in advance of any related land disturbance;

(6) silvicultural activity which is consistent with a soil conservation plan developed in accordance with the NYS Forestry Best Management Practices for Water Quality and which plan is provided to the commission not less than 15 calendar days in advance of any related land disturbance

(7) residential firewood harvesting that is compliant with Stream Corridor Regulations at 646-5 and NYS Forestry Best Management Practices

(8) any building, construction or land clearing occurring outside the drainage basin of Lake George from which all stormwater discharged from the development site is discharged outside of the basin;

(9) activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family; and

(10) construction of an approved wastewater treatment system.

Sections 646-4.12 through 646-4.18 of Subpart 646-4 are renumbered 646-4.7 through 646-4.13.

Paragraph (c) of subparagraph (ii) of paragraph (2) of subdivision(b) of renumbered section 646-4.7 is amended

to read as follows:

(c) a designated stream corridor, See 6 NYCRR 646-5;

Paragraph (2), subdivision (b) of renumbered section 646-4.8 is amended to read as follows:

(2) [For development or redevelopment occurring on a site where development has previously occurred] On a site with pre-development, 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 Subpart 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.

Paragraph (2), subdivision (c) of renumbered section 646-4.8 is amended to read as follows:

(2) The SCP and SCR shall be prepared by a [professional engineer or architect or exempt land surveyor licensed to practice under the laws of the State of New York] qualified stormwater professional, who shall be employed by the applicant or developer to design and supervise the installation of all stormwater management facilities. Stormwater management shall be within the area of expertise of the particular individual or firm performing the design and construction supervision, and if requested, that individual or firm shall furnish a listing and description of all stormwater management projects designed or supervised by them within the past five years.

Subparagraph (viii), paragraph (3), subdivision (d) of renumbered section 646-4.8 is amended to read as follows:

(viii) data on the increase in rate and volume of runoff for the 10-year storm and on the change in the rate of runoff for the 2-, 10-, 25-, 50- and 100-year storms;

Subparagraph (viii), paragraph (5), subdivision (d) of renumbered section 646-4.8 is amended to read as follows:

(viii) 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.

Paragraph (7), subdivision (d) of renumbered section 646-4.8 is amended to read as follows:

(7) 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 have been designed in accordance with these regulations and the provisions of Environmental Conservation Law section 43-0112. The report and plans shall bear the [stamp and] signature of the [licensed professional engineer or architect or exempt land surveyor] qualified stormwater professional executing the above certification.

Paragraph (1), subdivision (a) of renumbered section 646-4.9 is amended to read as follows:

(1) Stormwater shall be managed on-site using stormwater control measures designed to afford optimum protection of ground and surface waters. Stormwater control measures shall be selected by giving preference to the best management practices for pollutant removal and flow attenuation [in accordance with the chart found in subparagraph (b)(4)(i) of this section]. Stormwater may be calculated in accordance with the methodology in paragraph(b)(1) and subparagraph (b)(3)(i) of this section or, in the alternative, at a flat rate of 1.5 gallons of stormwater for every square foot of net increase in impervious area. Net increase is the difference between pre-development and post-development conditions. All water from newly created impervious areas which would otherwise runoff the parcel shall be directed to an infiltration device. Location of the infiltration device shall be determined based upon soil test results.

Paragraph (3), subdivision (a) of renumbered section 646-4.9 is amended to read as follows:

(3) Infiltration devices shall not be installed up gradient within 20 feet of the subsurface treatment system of a wastewater treatment system. [Infiltration devices for roadways, parking lots, and other areas subject to vehicle and traffic shall not be installed within 100 feet of any water well, wetland or water body.]

Paragraph (7), subdivision (a) of renumbered section 646-4.9 is amended to read as follows:

(7) Stormwater control measures proposed to be installed at locations with slope > 15 percent before grading, soil percolation rate slower than 60 minutes per inch or which require placement of fill to meet [horizontal] vertical distance separations specified in this Subpart shall be designed by a [licensed professional engineer, architect or exempt land surveyor.] qualified stormwater professional.

Subdivision (b) of renumbered section 646-4.9 is amended to read as follows:

(b) Major projects. The following additional requirements shall apply to major projects:

Subparagraph (i), paragraph (2), subdivision (b) of renumbered section 646-4.9 is amended to read as follows:

(i) Erosion control shall be provided for all disturbed areas in accordance with [sections 3, 4, 5, 6 and 7 of the New York Guidelines for Urban Erosion and Sediment Control which is a publication of the Empire State Chapter of the Soil and Water Conservation Society, P.O. Box 1686, Syracuse, NY 13201-1686 and dated April 1997. This document is available for public inspection and copying at the Office of the Lake George Park Commission, Fort George Road, Lake George, NY and is available through the New York State Department of State, Office of Information Services, 41 State Street, Albany, New York.] with the most recently published New York State Standards and Specifications for Erosion and Sediment Control. The temporary erosion control measures shall be maintained continuously until permanent control measures are in service. Infiltration devices shall be protected from siltation during the period of construction and until the site is successfully revegetated by use of silt screens, inlet protection devices, sediment detention ponds or other suitable erosion control measures.

Subparagraphs (ii), & (iii) of paragraph (3), subdivision (b) of renumbered section 646-4.9 are amended to read as follows:

(ii) For storm events exceeding the 10-year design storm, the stormwater control measures shall function to attenuate peak runoff flow rates for a 25-year/24 hour frequency storm to be equal to or less than predevelopment flow rates. For development greater than five acres, [consistent with New York State

Guidelines,] stormwater control measures shall function to attenuate peak runoff flow rates for a 100-year/24 hour, storm to be equal to or less than pre-development flow rates. Attenuation of the 100-year storm is intended to reduce the rate of runoff from development to prevent expansion of the 100-year flood plain so as to alleviate flooding of improved properties and roadways. The minimum requirement for peak flow attenuation can be waived for the 100-year storm event where it can be proven that downstream flooding is not a concern, such as where excess stormwater runoff is discharged to Lake George or to a regional stormwater facility designed to handle additional volume and peak discharge. The cumulative effect of all proposed development projects within the watershed should be considered in making this determination. Rainfall intensity curves for Lake George, NY shall be used in the design of these stormwater control measures. [These curves are annexed to this Subpart in section 646-4.18, Appendix B, entitled Rainfall Intensity Curves. Additionally, for development greater than five acres, coverage is required under a State pollutant discharge elimination system (SPDES) general stormwater permit administered by the department.]

(iii) Infiltration devices shall be designed such that the bottom of the system will be a minimum of two feet above the seasonal high groundwater level and bedrock to be realized following development. Where compliance with this requirement would prevent compliance with subparagraph [(vi)] (b)(3)(v) of this paragraph, compliance with this requirement may be waived. This provision shall not apply to wet ponds and similar stormwater control measures which are designed to be built in the saturated soil zone.

Subparagraphs (iv) of paragraph (3) of subdivision (b) of renumbered section 646-4.9 is renumbered paragraph (2) of subdivision (c) of renumbered section 646-4.9 and a new subparagraph (iv) is added as follows:

(iv) Stormwater recharge areas shall be located a minimum of 100 feet from the subsurface treatment system of a wastewater treatment system unless it is demonstrated that a lesser separation will not adversely affect the functioning of such leach fields.

The portion of paragraph (4), subdivision (b) of renumbered section 646-4.9 reading: “(4) Additional requirements for major projects”, the chart entitled “Comparative Pollutant Removal of Urban BMP Designs”, and subparagraph (i), paragraph (4), subdivision (b) are repealed and subparagraphs (ii)-(v) of the former paragraph (4) are renumbered as subparagraphs (vii) – (x) of paragraph (3), subdivision (b) of renumbered section 646-4.9.

Subparagraph (vi), paragraph (4), subdivision (b) of renumbered section 646-4.9 is deleted.

Paragraphs (1) through (4) of subdivision (c) of renumbered section 646-4.9 are renumbered as paragraphs (3) through (6) and new paragraph (1) is added to read as follows:

(1) Projects shall comply with stream corridor standards at 646-5.

Newly renumbered paragraph (2) of subdivision (c) of renumbered section 646-4.9 is amended as follows:

(2) Infiltration devices [for major projects] shall be located a minimum of [100] 35 feet from Lake George and any downgradient drinking water supply [, lake, river, protected stream, water well, pond, wet land;] or waterbody. [a separation of more than 100 feet may be required in cases where contamination of the water supply is possible due to highly permeable soils, shallow groundwater and similar situations.] Infiltration devices for high traffic areas shall be located a minimum of 100 feet from Lake George and any downgradient drinking water supply or water body. A separation of more than 100 feet may be required in cases where contamination of the water supply is possible due to highly permeable soils, shallow groundwater and similar situations. The separation distance for infiltration devices servicing high traffic areas shall be minimum of 50 feet from upgradient water supplies. Designs shall mitigate the possible adverse effects that groundwater recharge will have on adjacent wells, water supplies, wastewater treatment systems, buildings, roadways, properties and stormwater control measures. [Stormwater recharge areas shall be located a minimum of 100 feet from the subsurface treatment system of a wastewater treatment system unless it is demonstrated that a lesser separation will not adversely affect the functioning of such leach fields.] This design requirement shall not

prohibit the creation of up to 400 square feet of pervious hardscape (i.e. porous pavers) for non-high traffic areas within 35 feet of Lake George and any downgradient drinking water supply or waterbody.

New paragraph (7) of subdivision (c) of the renumbered section 646-4.9 is added to read as follows:

(7) Development that involves structural components, such as retaining walls or dams, may require design and certification by a licensed professional engineer.

New paragraph (8) of subdivision (c) of the renumbered section 646-4.9 is added to read as follows:

(8) On a site where pre-development exists, an applicant shall be required to undertake a stormwater retrofit project to control existing stormwater runoff discharges from the site in accordance with the major project standards of this Subpart to the maximum extent practicable. Such measures shall include, at a minimum, the infiltration of runoff from the first one-half inch of precipitation from all pre-development impervious areas within the site. The phased implementation of such controls for pre-development areas may be authorized. A variance will not be required for infiltration devices treating pre-development areas when conformance with the design standards for infiltration devices cannot be met. If the minimum one-half inch volume requirement cited herein cannot be met, the Commission may delegate the authority to issue a variance from this standard to staff.

Subdivision (b) of renumbered section 646-4.10 is amended to read as follows:

(b) Within 500 feet of the mean high water mark of any lake, pond, river, stream, or wetland, no land area, including areas stockpiled with earthen materials, which has been cleared may be made or left devoid of growing vegetation for more than 24 hours without a protective covering securely placed over the entire area and/or erosion control devices properly installed to prevent sediments from entering the water body. Acceptable protective coverings include natural mulch of a depth of two inches, rock rip-rap, [nondegradable] non-degradable materials such as plastic or canvas coverings, and impervious structures.

Paragraphs (1), (2) & (3), subdivision (c) of renumbered section 646-4.10 are amended to read as follows:

(1) [r]Reseeding with an annual or perennial cover crop accompanied by placement of straw mulch or its

equivalent of sufficient coverage, but not less than 50 percent of the total disturbed area, to control erosion until such time as the cover crop is established over 90 percent of the seeded area[;].

(2) [r]Replanting with native woody and herbaceous vegetation accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion[; and].

(3) [a]Any other recognized method which has been reviewed and approved as satisfying the intent of this requirement.

A new subdivision (f) of the renumbered section 646-4.10 is added to read:

(f) Land disturbance must be compliant with regulations for stream corridors at Section 646-5.

Subdivision (a) of the renumbered section 646-4.11 is amended to read as follows:

(a) Applicability. Where it is deemed necessary by the commission, [P]prior to issuance of a [certificate of completion] permit for any [major project, or any minor] project [where it is deemed necessary], a stormwater management maintenance agreement may be required.

Subdivisions (d) & (e) of the renumbered section 646-4.11 are amended to read as follows:

(d) Notice. Notice of [T]the stormwater management maintenance agreement shall be recorded in the office of the county clerk or its terms shall be incorporated into covenants appearing in the deed, declarations of covenants and restrictions or other such documents to ensure that record notice of its terms is provided to future owners of the site. It shall also be included in the offering plan, if any, for the project. A copy of each stormwater management maintenance agreement shall be filed with the commission, which shall be made a third-party beneficiary of all such agreements, entitled to enforce their terms.

(e) Initial maintenance security. When deemed necessary by the commission, [T]the project owner(s) or sponsor shall establish a maintenance security in the form of a bond, letter of credit, escrow account, or other acceptable security, for the purpose of building, rebuilding, maintaining or repairing the stormwater control

facilities. Terms for any maintenance security shall cover the time period beginning at the commencement of land disturbance and extend no less than [during the first] two years following the approved completion of construction. Longer durations may be required when deemed necessary.

The heading for renumbered section 646-4.13 is amended to read as follows:

Section 646-4.13 Variances from design requirements and performance standards for stormwater regulatory programs.

Subdivision (c) of renumbered section 646-4.13 is amended to read as follows:

(c) Any person seeking a variance shall submit an application for a variance on such form as may be prescribed. Any variance application shall conform with and contain the requirements set forth in section 646-[4.13] 4.8 of this Subpart.

Subdivision (h) of renumbered section 646-4.13 is renumbered as APPENDIX A to Subpart 646-4.

Subdivision (c) of renumbered section 646-4.19 is amended as follows:

(c) As set forth in section 646-4.[14] 9 of this Subpart, the adoption of the Model Stormwater Management Ordinance by a municipality as a local ordinance shall be deemed an approved stormwater regulatory program.

Paragraph (9) of subdivision (d) of renumbered section 646-4.19 is amended as follows:

(9) provide for the granting of variances from the requirements of the program in accordance with section 646-4.[13] 9 of this Subpart.