

LAKE GEORGE PARK COMMISSION REGULATIONS
PART 645
Procedural Regulations

Subpart 645-1	General Provisions	645-6.5	Rights of Parties
Sec. 645-1.1	Purpose and Intent	645-6.6	Issues Conference
645-1.2	Severability	645-6.7	Conduct of Hearing
Subpart 645-2	Definitions	645-6.8	Subpoenas
Sec. 645-2.1	Definition of Terms	645-6.9	Stipulations
Subpart 645-3	State Environmental Quality Review	645-6.10	Record of Hearing
Sec. 645-3.1	Purpose and Intent	645-6.11	Evidence and Burden of Proof
645-3.2	Relation to Part 617	645-6.12	Official Notice
645-3.3	Cooperative Agreements	645-6.13	Communication with Hearing Officer or Commission in Absence of Other Parties (Ex Parte Rule)
645-3.4	Environmental Review Procedures	645-6.14	Payment of Hearing Costs
645-3.5	Type I Actions	645-6.15	Final Decision
645-3.6	Type II Actions	645-6.16	Joint Hearings
645-3.7	Criteria for Determining Significance	645-6.17	Special Provisions
645-3.8	Critical Environmental Area		
Subpart 645-4	Uniform Enforcement Procedures	Subpart 645-7	Regulatory Fees
Sec. 645-4.1	Applicability	Sec. 645-7.1	Purpose and Intent
645-4.2	Notice and Complaint	645-7.2	Persons Required to Pay
645-4.3	Answer	645-7.3	When Regulatory Fees must be Paid
645-4.4	Amendment of Pleadings	645-7.4	Penalty for Nonpayment
645-4.5	Service of Papers	645-7.5	Procedures to Challenge a Regulatory Fee
645-4.6	Discovery	645-7.6	Dock, Mooring and Wharf Fees
645-4.7	Motions and Requests	645-7.7	Boat Fees
645-4.8	Stipulations and Consent Orders	645-7.8	Exemptions
645-4.9	The Hearing	Subpart 645-8	Variance Procedures
645-4.10	Report	Sec. 645-8.1	Applicability
645-4.11	Final Determination and Order	645-8.2	Procedure
645-4.12	Uniform Appearance Tickets	645-8.3	Standard
645-4.13	Summary Abatement	645-8.4	Conditions
645-4.14	Penalties and Sanctions		
645-4.15	Waiver of Rules		
645-4.16	Consistency with Other Laws		
Subpart 645-5	Permit Application Requirements		
Sec. 645-5.1	Applicability		
645-5.2	General Requirements for Applications		
645-5.3	Applications for Specific Permits		
645-5.4	Commission Action on Applications		
645-5.5	Public Notice and Comment		
645-5.6	Determination to Conduct a Public Hearing		
645-5.7	Final Decisions on Applications		
645-5.8	Optional Preapplication Conferences		
645-5.9	Applications for Permit Renewals or Modifications		
645-5.10	Permit Modifications, Suspensions or Revocations		
645-5.11	Special Provisions		
Subpart 645-6	Permit Hearing Procedures		
Sec. 645-6.1	Applicability		
645-6.2	Hearing Officer		
645-6.3	Notice of Hearing		
645-6.4	Hearing Participation		

PART 646

Substantive Regulations

Subpart 646-1	Docks, Wharfs, Moorings and Marinas	Regulatory Programs
Sec. 646-1.1	Docks, Wharfs and Moorings	646-4.18 Variances from Stormwater Regulatory Programs
646-1.2	Class A Marinas	
646-1.3	Class B Marinas	
646-1.4	Special Permits for Recreational Uses	<i>Appendix A. Model Stormwater Management Ordinance</i>
646-1.5	General Provisions Applicable to Special Permits	<i>Appendix B Rainfall Intensity Curves for Lake George, NY</i>
646-1.6	Miscellaneous Provisions	
646-1.7	Exemptions	
		Subpart 646-5 Stream Corridor Control (Reserved)
		Subpart 646-6 Tree Cutting Restrictions (Reserved)
Subpart 646-2	Special Navigational Rules	Subpart 646-7 Signs
Sec. 646-2.1	General Purpose	Sec. 646-7.1 Purpose and Intent
646-2.2	Applicability	646-7.2 Exemptions
646-2.3	Definitions	646-7.3 Signs for which Permits will not be Granted
646-2.4	Permits	646-7.4 Signs for which Permits are Required
646-2.5	Regulation of Specific Recreational Activities	646-7.5 Applications for Permits
646-2.6	Miscellaneous Provisions Relating to Certain Recreational Activities	646-7.6 Size, Placement, Number and Height Limitations of Permitted Signs
646-2.7	Speed Limits	646-7.7 Permitted Signs on Leased Property
646-2.8	Noise Limits	646-7.8 Material, Shapes, Lettering, Colors and Decorative Elements of Permitted Signs
646-2.9	Restricted Use Zones	646-7.9 Text on Permitted Signs
		646-7.10 Illumination of Permitted Signs
Subpart 646-3	Wastewater Management (Reserved)	646-7.11 Recognition Emblems of National Quality Organizations
		646-7.12 Criteria for Action in Approving or Denying Applications
Subpart 646-4	Stormwater Management	646-7.13 Structural Safety and Maintenance of Permitted Signs
Sec. 646-4.1	Purpose and Intent	646-7.14 Approval, Review and Revocation of Permits
646-4.2	Applicability	646-7.15 General Provisions
646-4.3	Definitions	
646-4.4	Stormwater Management Plans and Stormwater Regulatory Programs Required	
646-4.5	Commission Approval of Stormwater Management Plans and Stormwater Regulatory Programs	
646-4.6	General Requirements for Stormwater Management Plans	
646-4.7	Stormwater Management Plan Requirements for Development Areas	
646-4.8	Stormwater Management Plan Requirements for Developed Areas	
646-4.9	General Requirements for Stormwater Regulatory Programs	
646-4.10	Project Classification in Stormwater Regulatory Programs	
646-4.11	Permit Application Procedures in Stormwater Regulatory Programs	
646-4.12	Design Requirements and Performance Standards in Stormwater Regulatory Programs	
646-4.13	Vegetative Cutting and Clearing Restrictions in Stormwater Regulatory Programs	
646-4.14	Maintenance of Stormwater Control Facilities Under Stormwater Regulatory Programs	
646-4.15	Criteria for Issuance of Permits in Stormwater Regulatory Programs	
646-4.16	Variances from Stormwater Regulatory Programs	
646-4.17	Criteria for Issuance of Permits in Stormwater	

PART 645
PROCEDURAL REGULATIONS

(Statutory authority: Environmental Conservation Law Sections 8-0113, 43-0107, 43-0125, 71-3303, 71-3305 and 71-3307; State Administrative Procedure Act Section 305)

SUBPART 645-1

GENERAL PROVISIONS

Sec.

645-1.1 Purpose and intent

645-1.2 Severability

Section 645-1.1 Purpose and Intent. The purpose of these regulations is to implement ECL, articles 43 and 71, title 33, to establish a comprehensive set of procedural and substantive regulations to implement the substantive authority granted to the commission by such statutes. In furtherance thereof, it is hereby declared to be the purpose and intent to carry out to the fullest extent authorized by the Legislature the authority granted to the commission to preserve, protect and enhance the resources of the park and the natural and scenic beauty of Lake George and its surrounding environs.

Section 645-1.2 Severability. If any provision of Part 645 or Part 646, or its application to any person or circumstance, is held invalid, it is hereby expressly declared to be the intent of the commission that the remainder of Part 645 and/or Part 646, and the application thereof to any persons or circumstances, shall not be affected thereby.

SUBPART 645-2

DEFINITIONS

Sec.

645-2.1 Definition of terms.

Section 645-2.1 Definition of terms. The following terms shall have the stated meanings when used in Parts 645 and 646 and/or documents prepared or reviewed by the commission:

(a) *Applicant* means the person who has applied for one or more permits from the commission.

(b) *APA* means the Adirondack Park Agency.

(c) *Area of sign* means that area determined by circumscribing the exterior limits of the mass of each display erected on one sign structure with a circle, triangle or quadrangle connecting all extreme points. The structure supporting a sign is not included in determining the area of a sign unless the structure is designed in a way to form an integral background for the display. Only one face of a double-face sign is included in computing the area of a sign.

(d) *Association dock, wharf or mooring* means a dock, wharf or mooring, or any portion thereof, to which a person has deeded or contractual access from a residential unit owned by the same person and located within the Lake George Park.

(e) *Boat launch* means a place or facility, including beaches, ramps, dock structures, derricks, railways, hoists, trailers, or other devices from which or by which vessels are put or placed into or removed from the waters of Lake George, but shall not include such facilities, devices or structures used exclusively as part of a residential or association dock by the owner or the owner's family.

(f) *Class A marina* means any facility located in whole or in part within the park which provides services or berthing places for vessels by engaging in any of the following:

(1) the sale of marine products or services, except for such sale as part of a dry land facility which does not quick launch vessels or regularly service vessels berthed on the waters of Lake George;

(2) the sale, lease, rental or charter of vessels of any type;

(3) the operation of a boat launch;

(4) the offering of rides, instruction or water-based recreation for a fee;

(5) the operation of a quick launch facility servicing the waters of Lake George regardless of the location where the vessels are stored; or

(6) the storage, berthing or mooring of two or more motorized vessels and/or non-motorized vessels 18 feet in length or more not registered to the owner of the property, regardless of remuneration or profit, except:

(i) the use of residential or association docks, wharfs or moorings by the owner of the facility, the owner's family or the owner's gratuitous guest, or such use by a person as part of the single family residential rental of a residence or a residential unit which includes the use of a dock, wharf or mooring;

(ii) docks, wharfs and moorings used as an accessory use to a hotel, motel, inn, housekeeping cottage, campground or recreational vehicle park, used exclusively by registered guests;

(iii) docks, wharfs, and moorings used as an accessory use to a restaurant, used exclusively by patrons while dining at such restaurant; and

(iv) docks, wharfs and moorings used exclusively by persons engaged in the sale of fishing products or the sale and service of SCUBA products. The exceptions provided herein shall not apply to facilities which are otherwise engaged in any of the services or activities set forth in paragraphs (1) - (5) of this subdivision.

(g) *Class B marina* means any dock, wharf or mooring made available for use by any person as a berthing place for one motorized vessel or one nonmotorized vessel 18 feet in length or more not registered to the owner of the property, regardless of remuneration or profit, except:

(1) the use of residential or association docks, wharfs or moorings by the owner of the facility, the owner's family or the owner's gratuitous guest, or such use by a person as part of the single family residential rental of a residence or a residential unit which includes the use of a dock, wharf or mooring;

(2) docks, wharfs used as an accessory use to a hotel, motel, inn, housekeeping cottage, campground or recreational vehicle park, used exclusively by registered guests;

(3) docks, wharfs, and moorings used as an accessory use to a restaurant, used exclusively by patrons while dining at such restaurant; and

(4) docks, wharfs and moorings used exclusively by persons engaged in the sale of fishing products or the sale and service of SCUBA products.

(h) *Commercial use or purpose* means the use of lands or the waters of Lake George, including structures thereon, for any purpose from which a profit or any form of remuneration is or may be derived, but shall not include the lease or rental of residential property, including all appurtenances thereto, for single private family residential purposes.

(i) *Commercial dock, wharf or mooring* means a dock, wharf or mooring which is:

(1) used as or is an accessory use to a commercial use;

(2) a Class A marina; or

(3) a Class B marina. The use of any portion of an association or residential dock, wharf or mooring as a commercial dock, wharf or mooring shall render the entire structure or complex commercial.

(j) *Commission* means the Lake George Park Commission.

(k) *Commission staff* or *staff* means persons employed by the commission, but shall not include the counsel to the commission.

(l) *Complete application* means an application which is determined to be complete under the provisions of section 645-5.2 of this Part for the purpose of commencing commission review of the application. (The review of an application subsequent to a determination of completeness may reveal that additional supporting information is required.)

(m) *CPLR* refers to the Civil Practice Law and Rules.

(n) *DEIS* means a draft environmental impact statement prepared pursuant to the requirements of article 8 of the Environmental Conservation Law.

(o) *Department* means the Department of Environmental Conservation of the State of New York.

(p) *Dock* means a wharf or portion of a wharf extending from or along the lakefront.

(q) *Double-face sign* means any sign designed to be viewed from two directions and which at no point is thicker than 24 inches measured from the exterior surface of each face, with the two faces of the sign being either parallel or with angle between them being 30 degrees or less.

(r) *Dwelling unit* means a building or portion thereof providing complete housekeeping facilities for one family.

(s) *EAF* means an environmental assessment form prepared pursuant to the requirements of SEQR.

(t) *ECL* means the Environmental Conservation Law of the State of New York.

(u) *Environmental Notice Bulletin* or *ENB* means the publication of the department published pursuant to section 3-0306 of the Environmental Conservation Law.

(v) *Erect* means to build, construct, attach, hang, place, suspend or affix, and shall also include the painting of wall signs.

(w) *Evidence* means sworn testimony of a witness, physical objects, documents, records or photographs representative of facts which have been admitted into the record by the hearing officer.

(x) *Existing dock, wharf, mooring or marina* means a dock, wharf, mooring or marina registered or for which a permit has been issued pursuant to the provisions of Subpart 646-1 and its predecessor. A dock, wharf, mooring or marina which came into existence prior to the effective date of these regulations but which was not registered with the department pursuant to predecessor Part 646, shall not be considered an existing dock, wharf, mooring or marina.

(y) *Family* means one or more persons living together in one dwelling unit, maintaining a single housekeeping unit, subject to a limit of not more than three unrelated persons, 18 years of age or over.

(z) *FEIS* means the final environmental impact statement prepared pursuant to the requirements of SEQR.

(aa) *Flashing sign* means an illuminated sign in or on which the artificial light is not maintained at a constant intensity.

(ab) *Free-standing sign* means a sign which is not portable and which is supported by one or more uprights, poles or braces, or by a base of wood, stone or cement, in or upon the ground.

(ac) *Gratuitous guest* means a person who is staying overnight at a residence or a residential unit, without charge.

(ad) *Hearing officer* means the person designated by the commission as its representative for the purpose of conducting a hearing.

(ae) *Hearsay* means a statement, other than one made by a witness testifying at the hearing, offered in evidence to prove the truth of the matter asserted.

(af) *Illuminated sign* means any sign containing electrical wiring or lighted by an exterior or interior light source.

(ag) *Lake* means Lake George.

(ah) *Lakefront* means the number of feet of land along the waters of Lake George, excluding streams flowing into Lake George and wetlands, measured as a line along the mean high-water mark. For the purpose of computing the amount of lakefront, individual rocks and minor projections or indentations shall be disregarded. In any case where the measurement of the lakefront exceeds 110 percent of the chord distance between the points where the property lines intersect the mean high-water mark of the lot, parcel or property in question, a survey prepared by a licensed land surveyor shall be submitted to the commission to justify the measurement of lakefront.

(ai) *Lateral projection or finger* means any portion of a dock or wharf extending from a dock or wharf to expand the capacity of the structure to serve as a berthing place for additional vessels.

(aj) *Major project* means any action requiring a permit identified in section 645-5.3 of this Part, which is not specifically defined as a minor project.

(ak) *Mean high-water mark* means 320.2 feet above mean sea level.

(al) *Mean low-water mark* means 317.74 feet above mean sea level.

(am) *Minor project* means actions listed as minor in section 645-5.3 of this Part. All actions identified as Type II in Subpart 645-3 of this Title are minor. Minor projects are projects which by their nature and with respect to their location will not have a significant effect on the environment.

(an) *Mobile sign* is a sign attached to or suspended from a vehicle or a trailer.

(ao) *Mooring* means any anchor, chair, or buoy, pennant or other floating object, including rafts, by which a vessel can be secured to the lake bottom at one or more points.

(ap) *Navigable waters* means waters which are navigable in fact or upon which vessels are operated.

(aq) *On-premises sign* means any sign which advertises goods sold, manufactured or produced, services or uses rendered on the property upon which such sign is located.

(ar) *Open-crib* means the placement of a crib member in such a manner that there is vertical spacing between the timbers which provides for a partial exchange of water through the crib structure itself.

(as) *Outfitted for overnight use* means a vessel equipped with on-board sanitary facilities and sleeping accommodations, whether or not a portable marine toilet has been removed from the vessel.

(at) *Parcel of property or lot* means any real property shown on the latest county tax roll as a unit, or as contiguous units under common ownership. For the purposes of this Part, all contiguous parcels of real property owned by the same owner, and all parcels separated only by a public highway and owned by the same owner, shall be deemed to be one single parcel of real property.

- (au) *Park* means the Lake George Park as defined in ECL, section 43- 0103 (1).
- (av) *Party* means the commission and all persons designated as petitioner, respondent or intervenor in any administrative proceeding convened by the commission.
- (aw) *Permit* means any permit, certificate, license or other form of commission approval.
- (ax) *Permitted sign* means any advertising sign or advertising structure or device of any kind erected or maintained within the boundaries of the Lake George Park for which a written permit has been issued by the commission.
- (ay) *Person* means any individual, firm, partnership, club, trust, company, association, cooperative, corporation (including a government corporation), municipality, the State or Federal government and any agency thereof.
- (az) *Pier* means a portion or component of a dock or wharf.
- (ba) *Pleading* means a notice of hearing, complaint, uniform administrative complaint, or answer.
- (bb) *Portable free-standing sign and/or "A" type sign* means a sign that is designed to be movable and is not structurally attached to the ground, a building, a structure or any other sign. Such sign may be in the configuration of an "A".
- (bc) *Portable marine toilet* means a toilet used on a vessel that may be removed from the vessel for disposal of the toilet waste.
- (bd) *Project* means the physical activity or undertaking for which one or more permits or approvals are required from the commission.
- (be) *Quick launch* means a facility or an activity whereby vessels are stored on land and periodically launched for use during a single boating season. The periodic storage, launching and storage of a vessel by the same person at the same location shall be presumed to be a quick launch facility; provided, however, that the storage of a vessel on residential property for use by the owners or lessees of that property shall not be a quick launch facility regardless of the number of times the vessel is launched and stored during a single boating season.
- (bf) *Registered guests* means a person who pays a fee and is actually staying overnight in a unit in a hotel, motel, inn, housekeeping cottage, campground or recreational vehicle park licensed by the State of New York.
- (bg) *Relevant evidence* means evidence supporting or refuting the existence of any fact that is of consequence or material to the commission's decision on a permit.
- (bh) *Report* means the hearing officer's summary of the hearing record, including any findings of fact, conclusions and recommendations.
- (bi) *Renewal* means the renewal, reissuance, recertification or extension of any permit.
- (bj) *Residence* means any noncommercial structure designed for occupancy by one family.
- (bk) *Residential dock, wharf or mooring* means a dock, wharf or mooring, other than an association or commercial dock, wharf or mooring or a Class A or Class B marina, which is used as an accessory use to a residence or residential unit.
- (bl) *Residential unit* means a unit for occupancy by one family in a multiple family complex containing two or more dwelling units, but shall not include a unit in a hotel, motel, inn, housekeeping cottage, campground, recreational vehicle park or similar commercial use designed for transient occupancy.
- (bm) *Resources of the park* means the natural, scenic, aesthetic, cultural, historical and recreational resources of the park.

- (bn) *Respondent* means the party charged in an administrative enforcement proceeding with one or more violations of ECL, articles 43 and 71, title 33, or the rules and regulations promulgated thereunder, or any permit, certificate or order issued by the commission.
- (bo) *Right-of-way* means the parcel of land open to the public or to identified persons for vehicular or pedestrian traffic.
- (bp) *SEQR* means the State Environmental Quality Review Act, which is article 8 of the ECL and Part 617 of this Title.
- (bq) *Setback* means the distance from a point to another point in which no part of a structure shall extend.
- (br) *Setback from the lakeshore* means the distance from the mean high-water mark as the same follows the shoreline.
- (bs) *Sign* means and shall include every sign, billboard, mobile sign, free-standing sign, portable free-standing sign, wall sign, window sign, illuminated sign, vending machine sign, and temporary sign, located out-of-doors, and shall include any announcement, declaration, demonstration, device, display illustration, or insignia used to advertise or promote the interest of any businesses or commercial enterprises when the same is placed so that it is clearly visible to the general public.
- (bt) *Sign structure* means the standards, supports, uprights, braces and framework of the sign.
- (bu) *Stipulation* means an agreement between two or more parties to a hearing, entered into the hearing record, concerning one or more issues of fact or law which are the subject of the hearing.
- (bv) *Structure* means anything constructed, erected or placed on, under or above the waters of the park, or any object constructed, installed or placed on land to facilitate land use and development or the subdivision of land, such as buildings, sheds, single family dwellings, mobile homes, signs, tanks, fences, poles, docks, wharfs, piers, moorings, and any fixtures, appurtenances, additions and/or alterations thereto.
- (bw) *Subpoena* means a legal document that requires a person to appear at a hearing and testify and/or bring documents or physical objects.
- (bx) *Uniform administrative complaint* or *UAC* means a simplified complaint on such forms as the commission may prescribe, which must contain sufficient allegations to plead a cause of action.
- (by) *Vending machine sign* means an advertising sign on a machine or device designed to dispense a product or a service, when it is located out-of-doors and contains advertising material which is clearly visible to the public.
- (bz) *Verified* means signed and acknowledged in the presence of a notary public. Persons who file verified documents which contain false information shall be held responsible to the full extent permissible under the Penal Law.
- (ca) *Vessel* means a boat and/or every description of water craft, with or without a motor, including seaplanes, used or capable of being used as a means of transportation on water or for the purpose of recreating in or on water.
- (cb) *Walkway* means that portion of a dock or wharf placed over the shoreline to a dock or wharf and intended to be used as access to a dock or wharf.
- (cc) *Wall sign* means any sign attached to, painted upon, or erected against or on a wall, roof or marquee of a building or structure, and not extending more than six inches beyond the eaves, the building face, the marquee, or the highest point on the roof.
- (cd) *Waters of Lake George* means Lake George and its navigable tributaries.

(ce) *Wetland* means an area designated or mapped as a freshwater wetland by the APA.

(cf) *Wharf* means any structure or device built or used as a berthing place for vessels, including any dock, pier, pile, lateral projection, walkway, quick launch facility, or structure or area used for the dry storage of vessels as part of a quick launch facility.

(cg) *Window sign* means a sign maintained in or painted upon a window which is clearly visible to the general public from the out-of-doors.

SUBPART 645-3

STATE ENVIRONMENTAL QUALITY REVIEW

Sec.

645-3.1 Purpose and intent

645-3.2 Relation to Part 617

645-3.3 Cooperative agreements

645-3.4 Environmental review procedures

645-3.5 Type I actions

645-3.6 Type II actions

645-3.7 Criteria for determining significance

645-3.8 Critical environmental area

Section 645-3.1 Purpose and intent. The purpose of this Subpart is to implement the provisions of SEQR relative to actions directly undertaken, funded or approved by the commission, other than exempt or excluded actions, and to otherwise implement SEQR to the fullest extent possible to ensure that the resources of the park are protected to the maximum extent possible.

Section 645-3.2 Relation to Part 617.

(a) Unless otherwise specifically defined in Subpart 645-1, the terms utilized in this Subpart shall have the same meaning as defined in Part 617 of this Title.

(b) Unless specifically provided herein, SEQR shall be administered in accordance with Part 617 of this Title.

Section 645-3.3 Cooperative agreements.

(a) The commission shall offer assistance to local agencies within the park regarding the implementation of SEQR.

(b) In order to carry out the purposes and objectives of SEQR to the fullest extent possible, and to encourage the orderly administration of SEQR where the implementation of SEQR involves more than one agency, the commission may enter into cooperative agreements with other agencies regularly involved in carrying out or approving the same actions or classes of actions. No such agreement shall provide for the delegation to or from the commission of any duty imposed upon the commission or another agency to make its own independent SEQR determinations, but may include an agreement as to lead agency status among involved agencies regarding particular actions or classes of actions.

Section 645-3.4 Environmental review procedures.

(a) As early as is possible in the commission's formulation of an action it proposes to undertake, or as early as is possible after the commission receives an application for funding or approval of an action, the commission shall fulfill all of its responsibilities under SEQR.

(b) No application for a permit or an approval from the commission which is subject to the provisions of SEQR shall be complete until:

(1) a short or long EAF is filed with the commission, as required by SEQR;

(2) the lead agency has been designated pursuant to SEQR, if required;

(3) it has been determined whether or not the action may have a significant effect on the environment and a positive or negative declaration has been issued; and

(4) if it has been determined that a project may have a significant effect on the environment, a DEIS has been accepted by the lead agency.

(c) All actions shall be processed in accordance with the procedures specified in Part 617 of this Title.

(d) If the commission determines to conduct a public hearing in accordance with the requirements of section 617.8 (d) of this Title, the hearing shall be coordinated with any hearing held pursuant to the requirements of Subpart 645-5.

Section 645-3.5 Type I actions. Type I actions shall include all actions designated as Type I in section 617.12 of this Title.

Section 645-3.6 Type II actions. Type II actions shall include those actions listed in section 617.13 of this Title, and the following:

(a) any annual registration with the commission;

(b) the construction of a single residential dock, wharf or mooring and construction which alters, modifies, enlarges or expands an existing dock, wharf or mooring, provided that the structure is not located in a wetland, fish spawning area, an area of significant wildlife habitat, or an area of unique scenic, historic or natural significance;

(c) the erection of a sign;

(d) issuance of a wastewater system inspection compliance permit;

(e) issuance of a permit to operate a wastewater system;

(f) issuance of an interim permit to operate a wastewater system;

(g) issuance of a permit to construct a wastewater system;

(h) issuance of special permits for tour boats, parasails and seaplane berthing when such were in continuous use prior to January 1, 1991; and

(i) issuance of stormwater management permits for minor projects as defined in section 646-4.10 (a) of this Title.

Section 645-3.7 Criteria for determining significance. The criteria for determining the significance of the action shall be those specified in section 617.11 of this Title. In addition, the commission shall evaluate potential cumulative impacts of an action upon the resources of the park in relation to established uses and foreseeable uses of those resources. The evaluation of cumulative impacts shall include, but not be limited to, the consideration of foreseeable impacts on water quality (including ground water which flows into the waters of the park), air quality, traffic and congestion (both land and water based), and the aesthetic impacts of actions, including such impacts as may be visible from the waters of Lake George.

Section 645-3.8 Critical environmental area. The commission hereby designates the waters of Lake George, all land lying under such waters and within 500 feet of the mean high-water mark of such waters, and wetlands located adjacent to the waters of Lake George and all land within 500 feet of such wetlands to be a critical environmental area pursuant to section 617.4 (h) of this Title.

SUBPART 645-4

UNIFORM ENFORCEMENT PROCEDURES

Sec.

- 645-4.1 Applicability
- 645-4.2 Notice and complaint
- 645-4.3 Answer
- 645-4.4 Amendment of pleadings
- 645-4.5 Service of papers
- 645-4.6 Discovery
- 645-4.7 Motions and requests
- 645-4.8 Stipulations and consent orders
- 645-4.9 The hearing
- 645-4.10 Report
- 645-4.11 Final determination and order
- 645-4.12 Uniform appearance tickets
- 645-4.13 Summary abatement
- 645-4.14 Penalties and sanctions
- 645-4.15 Waiver of rules
- 645-4.16 Consistency with other laws

Section 645-4.1 Applicability. This Part shall apply to all civil administrative enforcement proceedings brought by the commission. Whenever the commission determines, after investigation, that any person has violated ECL articles 43 and 71, title 33, or rules or regulations promulgated thereunder, or any permits, certificates or orders issued by the commission, the commission may proceed as provided herein.

Section 645-4.2 Notice and complaint.

(a) All civil enforcement proceedings shall be initiated by service upon the respondent of a notice of hearing and a complaint or a uniform administrative complaint (UAC). The complaint or UAC shall contain a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and rules involved, and a short and plain statement of the matters asserted.

(b) The notice of hearing shall specify the time and place of the hearing, and shall set a date for a hearing not earlier than 20 days after service of the notice and complaint. In lieu of a hearing date, a notice of hearing may set a return date not less than seven days after service, at which time a hearing date will be set if the matter is not disposed of at that time.

(c) Service of the notice of hearing and a complaint or a UAC shall be by any method authorized by the CPLR, or by certified mail. Where service is by certified mail, service shall be complete when the notice of hearing and complaint or UAC is received by the respondent.

Section 645-4.3 Answer.

(a) Within 20 days of receipt of the complaint or UAC, but no later than 5 days before the date of the hearing, whichever is shorter, the respondent shall serve upon the commission an answer, signed by the respondent or the respondent's attorney.

(b) The respondent shall specify in the answer which allegations are admitted, which allegations are denied and which allegations the respondent lacks sufficient information upon which to form an opinion as to the allegation.

(c) The respondent's answer may contain affirmative defenses; in which event the answer shall contain a statement of any facts which constitute the grounds of the affirmative defense.

(d) If the complaint or UAC is so vague or ambiguous that respondent cannot reasonably be required to frame an answer, the respondent may move for a more definite statement within 10 days of receipt of service. If the motion is denied, the respondent shall answer within 10 days of receipt of notice that the motion is denied. If the motion is granted, the commission shall serve an amended complaint or UAC within 10 days of receipt of notice that the motion is granted, and the respondent shall answer pursuant to subdivisions (a) through (c) of this section.

(e) The failure to file an answer or the failure by the respondent to appear on the return date or at the hearing shall constitute a default and a waiver of hearing upon proof of service of a notice of hearing and a complaint or a UAC.

Section 645-4.4 Amendment of pleadings. Any party may amend a pleading at any time prior to the submission of the hearing officer's report to the commission, by leave of the hearing officer or the commission on good cause shown.

Section 645-4.5 Service of papers. All notices, papers and intermediate process connected with a hearing, other than the notice of hearing and complaint or UAC, subpoenas served upon persons who are not a part to the proceeding, and the order containing the final determination of the commission, may be served by ordinary mail. Except where otherwise specifically provided, service by ordinary mail shall be complete when mailed.

Section 645-4.6 Discovery.

(a) *Scope.* The scope of discovery shall be governed by the CPLR.

(b) *Notice to produce.* A party to a hearing under this Part, upon receipt of notice to produce documents and things from any other party, shall furnish all such requested items relevant to the proceeding within 10 days of receipt of such notice.

(c) *Protective order.* A party who is served with a notice to produce documents and things may move for a protective order within 10 days of receipt of such notice and shall specify his objections thereto. Such order may also be made by the hearing officer on his own initiative. A protective order shall be designed to avoid unnecessary delay of the hearing or to prevent unreasonable annoyance, expense, embarrassment, or prejudice to any party.

(d) *Subpoenas.* Consistent with the CPLR, any attorney of record in a proceeding under this Part, the commission, or any person designated by the commission for this purpose shall have the power to issue subpoenas. A party who is not represented by an attorney may request the hearing officer to issue a subpoena by submitting a petition stating the items or witnesses needed by the party to present its case.

(e) *Limits on discovery.* Bills of particulars shall be allowed. Depositions and written interrogatories shall only be allowed with leave of the hearing officer where the hearing officer finds their use to be in the interest of justice and where such process is likely to expedite the proceeding.

Section 645-4.7 Motions and requests.

(a) All motions and requests prior to the hearing shall be submitted in writing to the hearing officer or, where no hearing officer has been designated, to the commission. Copies of motion papers shall be served upon all parties. Motions made during the course of a hearing may be stated orally and shall be made a part of the record.

(b) The hearing officer shall rule upon all motions and requests prior to the submission of his report to the commission. The commission shall rule upon all motions and requests submitted prior to designation of a hearing officer or after receipt of the hearing officer's report.

Section 645-4.8 Stipulations and consent orders.

(a) At any time prior to the final determination by the commission, the executive director, with the advice and consent of the counsel to the commission, may enter into a stipulation to resolve an issue of fact or law pending in

a proceeding initiated by the commission.

(b) At any time, the commission may enter into a consent order with a respondent, whereby the latter agrees to discontinue the acts or practices which violate ECL, articles 43 and 71, title 33, or rules or regulations promulgated thereunder, or any permit, certificate or order issued by the commission, and provide such other and further relief to which the respondent may agree. Such consent order shall be admissible as evidence to provide the basis for a finding or fact in any subsequent proceeding brought by the commission against such respondent involving the same or similar violation(s).

Section 645-4.9 The hearing.

(a) *Referral to the department.* All proceedings where the administrative penalty sought by the commission exceeds \$5,000 shall be referred to the Department for processing in accordance with the procedure specified in ECL, section 71-1709; provided, however, that following the processing of such proceedings, the commission shall make appropriate determinations and issue an order in lieu of action by the department.

(b) *Hearing officer.*

(1) All proceedings where the administrative penalties sought are less than or equal to \$5,000 may either be referred to the department, as provided above, or the commission may appoint a hearing officer who must be an attorney admitted to practice law in the State of New York, who shall preside over such a hearing and report to the commission regarding the hearing.

(2) A person may not serve as a hearing officer if such person:

(i) has any financial interest, direct or indirect, in any matter involved in the proceedings;

(ii) is related by blood or marriage to any party;

(iii) has participated in any investigation with respect to the subject matter of the hearing or in the development of evidence introduced at the hearing; or

(iv) has any personal interest in the matter involved in the proceeding.

(3) The hearing officer shall conduct the hearing in a fair and impartial manner.

(4) Subject to review by the commission upon receipt of the hearing officer's report, the hearing officer shall have power to:

(i) rule upon motions and requests;

(ii) set the time and place of hearing;

(iii) administer oaths and affirmations;

(iv) issue subpoenas requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers and other evidence;

(v) summon and examine witnesses;

(vi) admit or exclude evidence;

(vii) hear argument on facts or law;

(viii) do all acts and take all measures necessary for the maintenance of order and efficient conduct of the hearing.

(5) Upon being notified that a hearing officer declines or fails to serve, or in the case of death, resignation or removal of the hearing officer, or on its own initiative, the commission may designate a successor hearing officer who may continue with the proceeding. Any party may file with the commission a motion, together with a supporting affidavit, no later than five days prior to the date set for hearing in the notice of hearing, that the hearing officer be removed on the basis of personal bias.

(6) The designation of a hearing officer shall be in writing and filed with the commission.

(c) *Appearances.*

(1) A party may appear in person and/or by counsel. If an attorney represents a party, all service of papers not required by law to be served personally upon such party shall be made upon the party's attorney.

(2) Any person appearing on behalf of a party in a representative capacity may be required to show his authority to act in such capacity.

(3) If a party who answers the complaint or UAC fails to appear at the hearing, issues on which that party has the burden of proof shall be resolved against the non-appearing party. The party who is present may elect, subject to the discretion of the hearing officer, to present all or part of his evidence by affidavit rather than oral testimony.

(4) The hearing officer may open a default or relieve any party of the consequences of a default upon good cause shown.

(5) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the final determination and order, and to proceed otherwise in any manner prescribed by law.

(d) *Consolidation, nonjoinder, misjoinder and severance.*

(1) In a proceeding which involves common questions of fact, the hearing officer, upon his own initiative or upon motion of any party, to avoid unnecessary delay and cost, may order a consolidation of actions or a joint hearing of any or all issues.

(2) Nonjoinder of a necessary party, as necessary party is defined by the CPLR, is a ground for dismissal of the hearing without prejudice, unless the hearing officer, in the interest of justice, allows the hearing to proceed without such party or such party is joined.

(3) Misjoinder of parties is not a ground for dismissal of the hearing. Parties may be added or dropped by the hearing officer, on motion of any party or on his own initiative, at any stage of the hearing and upon such terms as may be just.

(4) The hearing officer, to avoid prejudice or for convenience, may order a severance of the hearing and hear separately any issue or any party to the proceeding.

(e) *Evidence.*

(1) Each witness shall, before testifying, be sworn or make affirmation.

(2) Prefiled, written testimony may be presented by any party with permission of and subject to the discretion of the hearing officer or may be required upon motion of any party by written directive of the hearing officer. Such permission shall be freely granted in the interest of expediting the proceeding. Prefiled testimony shall be sworn to by the witness and subject to cross-examination.

(3) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the amount of corroborative or cumulative testimony.

(4) The rules of evidence shall not be strictly applied; provided, however, the hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence and shall give effect to the rules of privilege recognized by law.

(5) Every party shall have the right to present evidence and cross-examine witnesses.

(6) The hearing officer may take official notice of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the commission.

(7) Samples may be displayed at the hearing and may be described for purposes of the record, but need not be admitted in evidence as exhibits.

(8) Oral argument may be permitted by the hearing officer within his discretion and shall be recorded.

(9) All written statements, charts, tabulations and similar data offered in evidence at the hearing shall, upon a showing satisfactory to the hearing officer of their authenticity, relevancy and materiality, be received in evidence and shall constitute a part of the record.

(10) Where the testimony of a witness refers to a statute, report or document, the hearing officer shall, after satisfying himself of the identify of such statute, report or document, determine whether the same shall be produced at the hearing and physically made a part of the record or shall be incorporated in the record by reference.

(11) A hearing shall be conducted as nearly as practicable in the manner of a trial in a court of law.

(f) *Adjournment.* A request for an adjournment of the hearing shall be in writing and submitted to the hearing officer prior to the hearing.

(g) *Record.*

(1) Testimony given and other proceedings had at a hearing shall be recorded verbatim. For this purpose, and consistent with respondent's rights, the commission may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or recording devices.

(2) The record of the hearing shall include: the notice of hearing, the complaint or UAC and any other pleadings; motions and requests submitted, and rulings thereon; the transcript or recording of the testimony taken at the hearing; exhibits submitted and filed therein; stipulations, if any; a statement of matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; the hearing officer's report; and any brief submitted in connection with the hearing.

(3) A copy of the stenographic transcript of the hearing or, if the hearing is recorded, a copy of the tape or a transcript of the recording, shall be available to any party upon request to the stenographer or the commission, as appropriate, and upon payment of the fees allowed by law.

Section 645-4.10 Report. Following the close of the record, including receipt of the transcript, if any, the hearing officer shall prepare and submit to the commission a hearing report, which shall become part of the record.

Section 645-4.11 Final determination and order.

(a) After receipt of the hearing officer's report, the commission shall make a final determination based upon the record.

(b) The final determination shall be embodied in a final order which shall contain findings of fact and conclusions of law or reasons for the final determination, and which may provide for:

(1) the dismissal of charges;

- (2) an assessment of penalties consistent with applicable provisions of the ECL articles 43 and 71, title 33;
- (3) a direction for abatement;
- (4) a combination of any or all of the foregoing; or

(5) any determination deemed appropriate under the circumstances, consistent with applicable provisions of the ECL, articles 43 and 71, title 33, or the rules and regulations promulgated thereunder, or any permits, certificates or orders issued by the commission.

(c) A copy of the final determination and order shall be served on the parties in the same manner as is provided in section 645-4.2 (c) of this Subpart for the service of a notice of hearing and complaint or UAC.

Section 645-4.12 Uniform appearance tickets.

(a) In lieu of proceeding by administrative process, the commission patrolmen or any law enforcement officer may proceed by uniform appearance ticket regarding any violation of ECL, article 43 or 71, title 33, or rules or regulations promulgated thereunder, against any person having the culpable mental states defined in section 15.05 of the Penal Law.

(b) In such case, the procedures and forms specified in Part 640 of this Title shall apply.

Section 645-4.13 Summary abatement.

(a) Whenever the commission finds, after investigation, that any person is causing, engaging in or maintaining a condition or activity which, in the judgement of the commission:

(1) presents an imminent danger to the health or welfare of the people of the State, or results in or is likely to result in irreversible or irreparable damage to the resources of the park; and

(2) relates to the prevention and abatement powers of the commission in that the condition or activity pertains to or affects any of the objectives or goals of ECL, articles 43 and 71, title 33, rules or regulations promulgated thereunder, or any permits, certificates or orders issued by the commission, so that it appears to be prejudicial to the interest of the people of the State to delay action until an opportunity for hearing can be provided, the commission may, without prior hearing or notice, order such person to discontinue, abate or alleviate such condition or activity.

(b) Such order shall be in writing and shall state the grounds upon which the order is based.

(c) Upon receipt of the commission's summary abatement order, it shall thereafter be the duty of the respondent to immediately discontinue, abate or alleviate such condition or activity pursuant to the terms of said order. Failure to do so shall constitute a violation of the order and of these regulations.

(d) The commission shall schedule a hearing promptly, at a time and place determined by the commission not to exceed 10 days from the date when the summary abatement order is given. Notice of such hearing shall be given with the written summary abatement order.

(e) The respondent may waive, in writing, the hearing provided by law and these regulations. The failure of the respondent to appear at the time, date and place set forth in the summary abatement order for a hearing, shall constitute a waiver of the requirement that a hearing be held.

(f) The hearing shall be processed in accordance with the hearing procedures specified in this Subpart.

(g) The hearing officer shall, to the extent practicable, and without prejudice to the respondent's right to have a public hearing concerning the issuance of a summary abatement order within 10 days from the date the order is given, consolidate the hearing on the issuance of the summary abatement order with any hearing to be held on account of respondent's violation of ECL, article 43 or 71, title 33, or the rules or regulations promulgated

thereunder, or any permits, certificates or orders issued by the commission.

Section 645-4.14 Penalties and sanctions. Any final order issued by the commission pursuant to the procedures specified in this Subpart may include civil penalties and administrative sanctions to the full extent provided by ECL, section 71-3303.

Section 645-4.15 Waiver of rules. Any of the foregoing rules may be waived by stipulation of the parties with consent of the commission or, if a hearing officer has been appointed, with consent of the hearing officer.

Section 645-4.16 Consistency with other laws. Nothing herein is intended to limit the rights of any party in an enforcement proceeding pursuant to the ECL. The statutory provisions of the ECL and the State Administrative Procedure Act shall control over an inconsistent provision in this Subpart.

SUBPART 645-5

PERMIT APPLICATION REQUIREMENTS

Sec.

- 645-5.1 Applicability
- 645-5.2 General requirements for applications
- 645-5.3 Applications for specific permits
- 645-5.4 Commission action on applications
- 645-5.5 Public notice and comment
- 645-5.6 Determination to conduct a public hearing
- 645-5.7 Final decisions on applications
- 645-5.8 Optional preapplication conferences
- 645-5.9 Applications for permit renewals or modifications
- 645-5.10 Permit modifications, suspensions or revocations
- 645-5.11 Special provisions

Section 645-5.1 Applicability. This Subpart applies to applications for all permits which are issued by the commission or its designee. The commission may designate the executive director of the commission as its agent to issue permits of a ministerial nature.

Section 645-5.2 General requirements for applications. The following are general requirements for all applications for permits subject to this Subpart.

(a) *General requirements for a complete application.* In order to be determined complete for the purpose of commencing review, the application for a permit must meet the following criteria:

(1) The application must include a complete application on such form as the commission may prescribe, where applicable.

(2) The application must be accompanied by the appropriate fee as specified in paragraph (b) of this section. Subsequent review by the commission may require the imposition of a special review fee pursuant to paragraph (c) of this section

(3) If a project requires more than one commission permit, the applicant must simultaneously submit all the necessary applications, or demonstrate to the commission's satisfaction that such is not necessary.

(4) When a project also requires related permits from any other agency or government, the application must include a list of such permits which the applicant knows to be required, and a statement of the status of approval and SEQR review of each at the time of filing the application with the commission.

(5) The application for a project subject to the provisions of SEQR shall not be complete until:

(i) a short or long EAF is filed with the commission, as required by SEQR;

(ii) a lead agency has been designated pursuant to SEQR;

(iii) it has been determined whether the action may or will not have a significant effect on the environment, pursuant to SEQR; and

(iv) if it has been determined that the project may have a significant effect on the environment, a DEIS has been accepted by the lead agency which meets the requirements of SEQR.

(6) If a project is subject to the provisions of the New York State Historic Preservation Act of 1980 (article 14 of the Parks, Recreation and Historic Preservation Law), the application is not complete until the process of consultation with the State Office of Parks and Recreation is complete, if required.

(7) If a project is subject to review by the Adirondack Park Agency, the New York State Department of Health, and/or the Department, the application for a commission permit shall not be considered complete until the applicant has submitted to all agencies applications for all required permits or demonstrates good cause to the commission's satisfaction that such is not necessary. The commission may require the applicant to submit copies of such applications to the commission.

(b) Every person applying to the commission for a permit, permit modification, or permit renewal shall pay, at the time the permit application is submitted to the commission, a non-refundable basic application review fee in accordance with the following schedule:

(1) permit for erection of a sign	\$ 50.00
(2) permit for a Class A Marina	\$100.00
(3) special permit for a new recreational use, seaplane, tour boat or parasail	\$100.00
(4) permit for the construction or placement of a mooring	\$100.00
(5) permit for the construction of a wharf as follows:	
(i) modification to the size, shape or location of an existing wharf	\$ 50.00
(ii) construction of new wharf(s)	\$200.00
(6) permit to construct a new or replacement wastewater treatment system	\$100.00
(7) annual inspection and certification permit for wastewater treatment system as follows:	
(i) systems with a DAF <1,000 gallons	\$ 40.00
(ii) systems with DAF >1,000 - < 3,000 gallons	\$ 80.00
(iii) systems with a DAF >3,000 - <5,000 gallons	\$120.00
(iv) systems with a DAF >5,000 gallons	\$160.00
(8) Stormwater management permit as follows:	
(i) minor project	\$100.00
(ii) major project	\$200.00
(9) Renewal and modification of any permit issued	\$ 50.00

(c) In addition to the fees provided in paragraph (b) of this section, the commission may charge a special review fee, not to exceed the amounts specified in section 617.17 of this Title. A special review fee may be assessed whether the commission acts as lead agency or not, or otherwise acts under SEQR, but shall not be assessed unless the commission determines that the proposed activity will require excessive staff resources or professional assistance to properly review the application. Upon such a determination, the commission may condition its review of a permit application upon the payment of an appropriate sum for such purpose.

(d) *General conditions regarding fees.* The following general conditions are applicable to fees for all permits included in this Subpart:

(1) Applications must be accompanied by a check, money order or voucher, made payable to the "Lake George Park Commission," for the total amount of all application fees. Payment in cash will not be accepted in person.

(2) If an application is withdrawn at any time, the basic application fee shall not be returned, but any unused portion of any special application fee shall be returned.

(3) When a project involves two or more applications for which fees are required, the applicant shall pay a separate basic application fee for each such application.

(4) When an application is resubmitted in response to a notice of incompleteness, and no substantial changes in project nature and scope are involved, the resubmission shall not require any additional application fees.

(5) An applicant may modify an application any time prior to the issuance of a permit. When an application is revised, either in response to a notice of incompleteness or at the applicant's initiative, and the revision involves substantial change in the nature and/or scope of the project, it shall be treated as a new application requiring new application fees.

(6) No fees shall be charged for applications related to activities and projects of departments and divisions of the New York State government or a municipality acting in a governmental capacity.

(e) *General conditions regarding minor projects.*

(1) The commission has identified certain activities as minor, as listed in section 645-5.3 of this Subpart. Minor projects usually have an insignificant environmental impact. However, it is necessary to regulate such activities due to the potential for abuse of the resources of the park, the necessity for monitoring related activities, and the possible cumulative effect of minor actions which individually are environmentally insignificant.

(2) Minor projects are not normally subject to the public notice requirements, and may be processed faster than major projects.

(3) If it is determined that a minor project may have a significant effect on the environment under SEQR or otherwise, the project shall be processed as a major project under this Subpart.

(4) When a project involves simultaneous permit applications for both major and minor activities, all are processed under the major project procedures of this Subpart.

(5) When a project involves simultaneous permit applications for multiple activities, all of which are minor, all are processed as minor projects unless it is determined that the project may have a significant effect on the environment under SEQR or otherwise.

(f) *Joint proceedings.* In some instances, government agencies other than the commission may have concurrent jurisdiction over a project. The commission may enter into agreement with such agencies for joint processing of the application, including provision for joint notices and hearings.

(g) *Enforcement actions.* If an enforcement action is initiated, pending or outstanding (including the failure of the applicant to comply with the requirements of any outstanding order of the commission) against the applicant or any agent, affiliate or predecessor of the applicant, for a violation of ECL, articles 43 and 71, title 33, or the rules or regulations promulgated thereunder, or any permits, certificates or orders issued by the commission, the commission may suspend all further processing and review of the application pending final resolution of such action. Written notice of such action shall be given to the applicant.

Section 645-5.3 Applications for specific permits.

(a) The following permits shall be required from the commission:

- (1) permits to construct or operate a Class A marina pursuant to section 646-1.2 of this Title;
- (2) permits to construct a dock, wharf or mooring pursuant to section 646-1.1 of this Title;
- (3) sign permits issued pursuant to Subpart 646-7 of this Title;
- (4) permits for wastewater system inspection compliance pursuant to Subpart 646-3 of this Title;
- (5) permits to operate a wastewater system pursuant to Subpart 646-3 of this Title;
- (6) permits to construct a wastewater system pursuant to Subpart 646-3 of this Title;

(7) stormwater management permits issued pursuant to Subpart 646-4 of this Title; and

(8) special permits for new recreational uses, tour boats, seaplanes and parasailing issued pursuant to Subpart 646-1 of this Title.

(b) The following projects shall be considered minor projects:

(1) the construction of a single residential dock, wharf or mooring and construction which alters, modifies, enlarges or expands an existing dock, wharf or mooring, provided the structure is not located in a wetland, fish spawning area, an area of significant wildlife habitat, or an area of unique scenic, historic or natural significance;

(2) the erection of a sign;

(3) permits for wastewater system inspection compliance;

(4) permits to operate a wastewater system;

(5) interim permits to operate a wastewater system;

(6) permits to construct a wastewater system;

(7) special permits for tour boats, parasails and berthing of seaplanes when such were in continuous use prior to January 1, 1991; and

(8) stormwater management permits for minor projects as defined in section 646-4.10 (a) of this Title.

(c) All other projects shall be considered major projects.

Section 645-5.4 Commission action on applications.

(a) Following its review of an application, the commission shall mail notice of its determination of completeness or incompleteness to the applicant.

(b) If the application is determined to be incomplete, the notice shall include a brief statement indicating all identifiable areas of incompleteness.

(c) If the application is determined to be complete, the notice shall state:

(1) the applicant's name;

(2) a brief description of the proposed project and its location, including the real property map section, block and lot;

(3) whether the project is major or minor;

(4) a list of all commission permits for the project for which application has been made, and identification numbers for those applications;

(5) the name and telephone number of the commission representative and, where applicable, of any lead agency representative to contact for further information;

(6) the status of environmental reviews undertaken under SEQR, including identification of lead agency, a positive or negative determination of significance, and whether the action is Type I, unlisted, Type II, exempt, or excluded, as defined in 6 NYCRR Part 617 or Subpart 645-3 of this Part; and

(7) if public notice is required, the deadline (not less than 15 calendar days after the date of publication) for submission of written comments on the application, and the deadline (not less than 30 calendar days after publication) for submission of comments on the DEIS if one has been prepared.

Section 645-5.5 Public notice and comment.

(a) Where the commission staff determines that it will assist the review of a proposed project or activity, the staff may, prior to determining the completeness of an application, prepare and cause the applicant to publish, in such manner as the staff may reasonably prescribe, a notice of application. The notice of application shall include all of the information required by section 645-5.4 (c) (1) - (6) of this Subpart, as is then available to staff.

(b) Immediately upon determining that an application is complete and is for a major project or a minor project where the commission staff determines that public notice is appropriate, the commission shall provide notice to the chief executive officer of the municipality in which the proposed project is to be located, and to any person who has previously expressed in writing interest in receiving such notification. The commission staff shall also publish notice of complete application in the *Environmental Notice Bulletin*, after providing the notice to the applicant. The notice shall be of the form specified in section 645-5.4 (c) of this Subpart.

(c) The commission may require the applicant to provide other reasonable public notice of a complete application and opportunity for public comment. Such notice may include, but is not limited to the notification of neighboring property owners and/or publication in a newspaper of general circulation in the areas in which the proposed project is to be located.

Section 645-5.6 Determination to conduct a public hearing.

(a) After the permit application for project is complete and following the close of the public comment period, if required, the commission shall evaluate the application and any comments received on it to determine whether a public hearing should be held. If a hearing should be held, the applicant and all persons who have filed comments shall be notified by mail. The determination to hold a hearing shall be based upon: whether, in the commission's judgment, the application or public comments raise substantive and significant issues relating to any findings or determinations the commission is required to make pursuant to the ECL, article 43 or 71, title 33, or rules or regulations promulgated thereunder, including the reasonable likelihood that a permit applied for will be denied or can be granted only with major modifications to the project because the project, as proposed, may not meet statutory or regulatory criteria or standards. Where any comments received from members of the public or otherwise raise substantive and significant issues relating to the application, and the resolution of any such issue may result in denial of the permit application, or the imposition of significant conditions thereon, the commission shall hold a public hearing on the application.

(b) Mere expressions of general opposition to a project are insufficient grounds for holding a public hearing on a permit application. In order to raise substantive and significant issues, written comments expressing objection or opposition to an application must explain the basis of that opposition and identify the specific grounds which could lead the commission to deny or impose significant conditions on the permit.

(c) The commission will not usually require public hearings in connection with applications for minor projects, as defined in section 645-5.3 of this Subpart. If a permit for a minor project or any project that was not subject to a public hearing is denied, or is issued with significant conditions attached, the applicant may request that a public hearing be held. Such a request must be made within 15 calendar days of the date of denial or issuance of the permit with conditions.

(d) The hearing shall be held in accordance with the provisions of Subpart 645-6 of this Part.

Section 645-5.7 Final decisions on applications. The commission shall mail to the applicant, and to the applicant's attorney, if known, a decision in the form of a permit, a permit with conditions or, if applicable, a statement that the permit applied for has been denied, with an explanation for the denial.

Section 645-5.8 Optional preapplication conferences. Any applicant may request a preapplication conference with appropriate commission staff as a means of clarifying application procedures. Such a request

should be made at the earliest possible stage of the applicant's project planning. At the conference, the proposed project will be informally discussed, permits required will be identified, and the applicant will be provided with guidance in the mechanics of the application and review process based on information provided by the applicant.

Section 645-5.9 Applications for permit renewals or modifications.

(a) A permittee may apply to the commission for renewal or modification of a permit. Such application shall:

- (i) provide information supporting the action sought;
- (ii) shall include the payment of any fees required; and
- (iii) if for a modification, shall include a statement of necessity or reasons for the modification.

(b) The commission may determine that any application for renewal or modification shall be treated as a new application for a permit if:

- (i) the application involves a material change in existing permit conditions or in the scope of the permitted actions;
- (ii) there has been a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit; or
- (iii) an opportunity for public comment and/or hearing is required by law or is deemed necessary by the commission. In such cases, the commission shall mail to the applicant notice of such determination and process the application as a new application.

(c) The commission shall notify the applicant by mail of its decision. If the decision is to deny the application, the applicant may, within 15 calendar days of the date of the denial, request that a hearing be held.

Section 645-5.10 Permit modifications, suspensions or revocations.

(a) Permits may be modified, suspended or revoked at any time by the commission, either at the request of any interested party or upon the commission's initiative, for any of the grounds set forth below. All such requests must be in writing and must contain facts or reasons supporting the request. If the commission decides the request is not justified, it will send the person initiating the request a brief written response giving the reason(s) for the decision. Denials of requests for modification, suspension or revocation are not subject to public notice, comment or hearings. The grounds for modification, suspension or revocation are:

- (1) materially false or inaccurate statements in the application or supporting papers;
- (2) failure by the permittee to comply with any terms or conditions of the permit;
- (3) exceeding the scope of the project as described in the application;
- (4) newly discovered information or significant physical changes since the permit was issued; or

(5) noncompliance with any provisions of ECL articles 43 and 71, title 33, or rules or regulations promulgated thereunder, or any permits, certificates or orders issued by the commission directly related to the permitted activity.

(b) The commission shall give notice of intent to modify, suspend or revoke a permit to the permittee by certified mail, return receipt requested, or by personal service. The notice shall state the alleged facts of conduct which appear to warrant the intended action.

(c) Within 10 calendar days of receiving a notice of intent, the permittee may submit a written statement to the commission, giving reasons why the permit should not be modified, suspended or revoked, or requesting a

hearing, or both. The failure by the permittee to timely submit a statement or to request a hearing, or both, shall result in the commission action becoming effective on the date specified in the notice of intent.

(d) At the next regular meeting of the commission following receipt of the permittee's statement or request for a hearing, the commission shall either:

(1) if only a statement is submitted, rescind or confirm the notice of intent based on the information provided by the permittee; or

(2) if a hearing has been requested, or if the commission determines that a hearing is warranted, notify the permittee of a date and place for a hearing.

(e) In the event such a hearing is held, the commission shall issue a decision which:

(1) continues the permit in effect as originally issued;

(2) modifies the permit;

(3) suspends the permit for a stated period of time or upon stated conditions; or

(4) revokes the permit, including, where ordered by the commission, the removal or modification of all or any portion of a project, whether completed or not.

(f) Notice of such decision, stating the findings and reasons therefor, shall be mailed to the permittee, certified mail, return receipt requested.

(g) Nothing in this Part shall preclude or affect the commission's authority to issue summary abatement orders under section 71-0301 of the ECL, or to take emergency actions summarily suspending a permit under subdivision 3 of section 401 of the State Administrative Procedure Act.

Section 645-5.11 Special provisions.

(a) Any time period specified in this Subpart may be extended for good cause, by mutual written consent of the applicant and the commission or the executive director acting with the advice and consent of counsel.

(b) At any time during the review of an application for a permit or renewal, the commission may request in writing any additional information which is reasonably necessary to make any findings or determinations required by law. Such a request shall be explicit, and shall indicate the reasonable date by which the commission is to receive the information. Failure to provide such information by the date specified in the request may be grounds for denial of the application.

(c) The commission may issue general permits to allow work to eliminate damage caused by natural disasters or extraordinary weather, including the repair or replacement in site and in kind of facilities which existed prior to the damage. Processing of such permits need not follow the full procedural requirements of this Subpart.

(d) The commission may require, as a condition to a permit and prior to commencement of work, that the permittee post a bond of specified amount with the commission. The bonds shall be required in an amount to ensure faithful compliance with the terms and conditions of the permit, and is used for the indemnification of the State for any costs which might result from failure to so comply. Such bond may also be utilized by the commission to implement performance of conditions upon the failure of a permittee to properly implement any such conditions. The bond shall remain in effect until the work is completed to the satisfaction of the commission.

(e) Where this regulation requires exchange of written materials within specified time periods, postmark dates shall satisfy the requirements, when not otherwise specifically provided.

(f) In rendering a decision on an application for a permit, the commission may assess the cumulative impact of the project or activity upon the resources of the park.

SUBPART 645-6

PERMIT HEARING PROCEDURES

Sec.

- 645-6.1 Applicability
- 645-6.2 Hearing officer
- 645-6.3 Notice of hearing
- 645-6.4 Hearing participation
- 645-6.5 Rights of parties
- 645-6.6 Issues conference
- 645-6.7 Conduct of hearing
- 645-6.8 Subpoenas
- 645-6.9 Stipulations
- 645-6.10 Record of hearing
- 645-6.11 Evidence and burden of proof
- 645-6.12 Official notice
- 645-6.13 Communication with the hearing officer or the commission in absence of other parties (ex parte rule)
- 645-6.14 Payment of hearing costs
- 645-6.15 Final decision
- 645-6.16 Joint hearings
- 645-6.17 Special provisions

Section 645-6.1 Applicability. This Subpart applies to hearings conducted by the commission on applications for any permits required pursuant to Subpart 645-5 of this Part, or other proceedings processed as a permit application.

Section 645-6.2 Hearing officer.

(a) Upon a determination by the commission to conduct a public hearing on a permit application, or if a public hearing is requested or required, the commission shall appoint a hearing officer who shall supervise all aspects of the hearing process.

(b) A hearing officer shall be appointed in accordance with the procedures specified in section 645-4.9 (b) of this Part.

(c) The hearing officer shall have power to:

- (1) rule upon all motions and requests;
- (2) set the time and place of the hearing and recesses and adjournments;
- (3) administer oaths and affirmations;
- (4) issue subpoenas;
- (5) summon and examine witnesses;

(6) establish rules for and direct disclosure at the request of any party or upon the hearing officer's own motion consistent with the general principles of article 31 of the CPLR if, in the discretion of the hearing officer, such disclosure will aid in narrowing the issues and not unduly delay the proceedings. However, in view of the fact-finding nature of the proceedings, the exemption from disclosure contained in CPLR section 3101 (d) (material prepared for litigation) shall not be applicable to the preparation and exchange of the following when ordered by the hearing officer:

(i) witness lists, including the names and address of all witnesses, the scope and content of each witness's proposed testimony and, for expert witnesses, their education and any published works;

- (ii) prefiled written testimony, which shall be attested to at the hearing and the witness shall be available to be cross-examined on the testimony unless otherwise stipulated by the parties;
 - (iii) lists of documentary or physical evidence to be offered at the hearing;
 - (iv) written interrogatories; or
 - (v) other disclosure devices contained in article 31 of the CPLR. Failure by a party to adhere to the hearing officer's disclosure order may result in preclusion of evidence, the loss of party status, opportunity to be heard, or denial of the permit;
- (7) admit or exclude evidence, including the exclusion of evidence on grounds of privilege or confidentiality;
 - (8) hear and determine arguments on fact or law and require written briefs on issues which cannot be resolved at the issues conference;
 - (9) preclude irrelevant or unduly repetitious, tangential or speculative testimony or argument;
 - (10) take any measures necessary for maintaining order and the efficient conduct of the hearing; and
 - (11) report to the commission in accordance with the requirements of this Subpart.

Section 645-6.3 Notice of hearing.

- (a) The commission shall publish notice of the hearing in the ENB, and shall provide notice to the applicant not less than 21 calendar days prior to the hearing date. The applicant shall provide for and bear the cost of publication of the notice in a newspaper having general circulation in Warren, Washington and Essex Counties, and such other notice as the commission may reasonably require within the area where the proposed project is located. The newspaper notice shall be published at least once and not less than 21 calendar days prior to the hearing date.
- (b) The notice shall be as specified by the commission and shall contain the following information:
 - (1) the date of issuance of the notice and reference to any prior notice of application;
 - (2) the date, time, location and purpose of the hearing and any prehearing conference, if scheduled;
 - (3) the name and address of the applicant;
 - (4) the permits or approvals sought and citations of applicable statutes and regulations;
 - (5) a brief description of the proposed project and its location, including the real property map section, block and lot;
 - (6) where the commission is lead agency pursuant to SEQRA and a DEIS is among the subjects of the hearing, an indication that comments on the DEIS may be received at the hearing and information relative to the availability of the DEIS for review by the public; and
 - (7) instructions for filing for party status.
- (c) The notice may also specify the issues of concern to the commission and the public.
- (d) Individual copies of the notice shall also be sent, not less than 21 calendar days prior to the hearing date, to the chief executive officer of any municipality in which the project is located, and such other persons as the commission deems to have an interest in the application.

Section 645-6.4 Hearing participation. Participation in the hearing may be full or limited, depending upon the degree of interest and involvement sought in the proceeding. Members of the public who do not intend to introduce evidence but who wish to have their arguments recorded shall only be permitted to make a limited appearance.

(a) The parties to a hearing shall be:

- (1) the applicant;
- (2) the commission staff; and
- (3) other interested persons who meet the requirements in subdivision (b) of this section.

(b) To obtain party status, a person must file, in writing and by the date set in the notice of hearing, a statement of position which identifies:

- (1) the person's grounds of support or opposition to the project, including a demonstration of the social, economic or environmental interests of the person which are likely to be affected by the proposed project; and
- (2) the nature of the argument and evidence which the person intends to present, and any other matter believed relevant.

(c) If a sufficient filing is not made, the hearing officer has discretion to deny party status or require additional information from the person requesting party status. The hearing officer's ruling on party status shall be based upon a finding that sufficient interest, as described in paragraph (b) (1) of this section, has been demonstrated.

(d) The hearing officer may limit the participation of a party to those areas in which its identified interest may be affected, or in which its expertise would prove beneficial to the development of a factual record.

(e) The hearing officer may allow any person meeting the requirements of paragraph (b) of this section to become a party at any time during the hearing if it is shown:

- (1) that good cause exists for failure to file on time;
- (2) that no party will be unreasonably disadvantaged or otherwise prejudiced; and
- (3) that the person's participation will materially contribute to a complete record.

(f) Any ruling of the hearing officer denying or limiting party status may, within seven days of the ruling, be appealed in writing to the commission which shall decide the appeal at its next regular meeting following receipt of all papers filed in connection with the appeal. Notice of the appeal and a copy of all briefs submitted in support thereof shall be presented to the commission. Upon receipt of an appeal, the hearing officer shall decide whether to adjourn the hearing or to make such other order protecting the interests of the parties and the person initiating the appeal as justice requires, including an order that witnesses may be recalled should the decision be reversed.

(g) A person who is not a party may make a limited appearance by either submitting a written statement to the hearing officer at the hearing or requesting, at or prior to the opening of the hearing, to make an oral statement. Such a person shall have the right to present unsworn written and oral statements on issues of law and fact relevant to the hearing at such times and to the extent as established by the hearing officer. Such statements:

- (1) do not have the weight or importance of sworn statements or other evidence; and
- (2) shall be appropriately considered by the hearing officer and the commission in weighing the evidence and in making statutory and regulatory conclusions of law.

(h) *Consolidation of parties.* If a hearing involves numerous parties, some or all of whom have similar viewpoints and input, in order to avoid repetitious testimony or argument the hearing officer may:

- (1) limit the number of witnesses on a given issue or subject, in order to avoid needless presentation of duplicative evidence;
- (2) limit the scope of cross-examination to matters not previously subject to cross-examination;
- (3) limit the number of rebuttal witnesses and the scope of their testimony;
- (4) limit the time for oral argument and/or require written briefs or submission;
- (5) utilize a panel of witnesses for purposes of direct testimony or cross-examination; and
- (6) take other reasonable measures to minimize repetitious testimony or argument.

Section 645-6.5 Rights of parties. Consistent with the hearing officer's rulings on the extent of participation, the rights of parties are as follows:

- (a) A party desiring to participate at the hearing may do so in person, by attorney or by representative presenting written authorization to represent that party.
- (b) A party shall have the right to present relevant written and oral argument on issues on law and fact, to present relevant evidence and to cross-examine witnesses of other parties.
- (c) Any party initiating motions, requests, briefs or other written material in connection with the hearing shall serve such material on every other party unless otherwise directed by the hearing officer.
- (d) A party must be present on a timely basis to present evidence, cross-examine witnesses or receive notice of scheduling of subsequent sessions. Failure to be present at a hearing session shall not be deemed a waiver of the right to receive any written notice of adjournment, decisions on motions and requests, or the final decision.

Section 645-6.6 Issues conference.

- (a) An issues conference will be scheduled when possible in advance of the public hearing. The function of the conference is, as far as possible, to narrow or resolve issues raised by the parties concerning the permit application and to define and limit the scope of issues remaining as subjects for the adjudicatory hearing sessions. At the issues conference, the hearing officer may rule on party status, direct disclosure between the parties, and outline the conduct of the hearing.
- (b) Where a DEIS accompanies an application, the conference shall also focus on whether and to what extent significant impact, alternatives, mitigation measure or social and economic considerations identified in the DEIS, or raised in comments on the DEIS, should be addressed in the adjudicatory session of the hearing, particularly where there is a reasonable likelihood that the issues arising from the DEIS might lead to the denial of the permit or the issuance of significant permit conditions.
- (c) Following the conference, the hearing officer will determine and advise the parties of the issues to which testimony and other evidence in the adjudicatory session will be limited or will determine that the hearing is to be adjourned or canceled. The hearing officer's determination shall be based upon whether the issues raised are substantive and significant, and resolution of such issues may result in permit denial, require major modification to the project or the imposition of significant permit conditions. The hearing officer will enter his determination on the record.
- (d) The ruling of the hearing officer setting forth the issues for the hearing may, within seven days of the ruling, be appealed in writing to the commission, which shall decide the appeal at its next regular meeting following the receipt of all papers filed in connection with the appeal. Other parties may submit briefs in support of or in opposition to the hearing officer's ruling. Notice of the appeal and a copy of all briefs submitted in support thereof shall be given to the hearing officer and all parties to the hearing. Upon receipt of notice of an appeal, the hearing officer shall decide whether to adjourn or continue the hearing or to make such other order protecting the interests of the parties as justice requires.

(e) The hearing officer shall summarize the record, the action taken at the conference and incorporate into the record any admissions, stipulations or agreements which were made by the parties.

Section 645-6.7 Conduct of hearing.

(a) *Order of events.* The hearing officer shall have discretion to adjust the order of events and establish procedures to promote the conduct of a fair and efficient hearing. In general, the order of events at a hearing shall be as follows:

(1) Formal opening. The hearing officer shall convene the hearing by opening the record, identifying the applications involved, and making appropriate procedural announcements as necessary.

(2) Noting appearances. The hearing officer shall call the name of each person who has properly filed for status as a party and announce the rulings on the extent of each party's participation. The hearing officer shall establish procedures for receiving the statements of others making a limited appearance.

(3) Legislative hearing sessions and comments on the DEIS (where applicable). The hearing officer shall hear and receive the unsworn statements of persons other than parties as they relate to the permit application(s), and to the DEIS where it is among the subjects of the hearing. The hearing officer may require that lengthy statements be submitted in writing and summarized for oral presentation. If the applicant has prepared the DEIS, it shall prepare a written response to comments received and shall file it as an exhibit to the hearing record. Other parties shall be afforded opportunity to contest the response to comments prior to the close of the hearing record.

(4) Reconvening the issues conference. At the discretion of the hearing officer, the issues conference may be reconvened to consider additional issues raised during the legislative hearing session, if one has been held (or, if not previously held, initiated) at this time.

(5) Opening statements. Prior to the commencement of the adjudicatory session, each party will be called upon to offer a brief opening statement of position on the application.

(6) Admission of evidence. The applicant will present its direct case first and will start by identifying all documents which constitute and support the applications and the DEIS (where applicable) which are relevant to the issues to be adjudicated. A panel of witnesses may be used for presenting testimony or for cross-examination at the hearing officer's discretion. Cross-examination will be conducted by parties in a sequence to be established by the hearing officer, which normally will be the sequence in which the parties will present their direct cases. The evidence will be confined to that which is relevant in the hearing officer's determination to the issues identified following the issues conference.

(7) Closing statements and briefs. Closing statements will be allowed in the same manner as opening statements. At the concluding session of the hearing, the hearing officer will determine whether to allow the submission of written post-hearing briefs and proposed findings of fact. The hearing record will be officially closed upon the receipt of the stenographic record by the hearing officer, the receipt of additional technical data or other material agreed upon at the hearing to be made available after the hearing, or the submission of briefs and reply briefs, proposed findings of fact, conclusions of law, memoranda, and exceptions, if any, by the various parties, whichever occurs later. The hearing officer shall notify the applicant and all other parties by regular mail, immediately upon official closing of the hearing record.

(b) *Motions.* Motions and requests may be made at any time during the course of a hearing and shall be part of the record.

(c) *Proposed findings of fact and conclusions of law.* The hearing officer shall make findings of fact and conclusions based on the record and shall forward a hearing report to the commission for final decision. Where necessary, the report shall include the FEIS for the project. Where the commission is lead agency, the DEIS, any response to comments and the hearing officer's report shall constitute the FEIS. Where the hearing officer has permitted parties to submit proposed findings of fact, the hearing report shall include a proposed ruling on each proposed finding.

(d) *Service of papers.* Except as specified elsewhere in this Subpart, all papers connected with a hearing and the final decision of the commission may be served by ordinary mail.

Section 645-6.8 Subpoenas.

(a) In the case of parties not represented by an attorney:

(1) a subpoena for a witness during the course of a hearing shall be issued at the discretion of the hearing officer; and

(2) a subpoena involving specified records (subpoena duces tecum) shall be issued by the hearing officer only when the party applying for such subpoena provides a written showing of necessity. Such a subpoena shall designate as specifically as possible the books, papers or other materials to be produced by the party against whom the subpoena is served.

(b) The service of a subpoena shall be the responsibility of the party requesting the subpoena.

(c) If a party or witness fails to respond to a subpoena personally served, the default shall be noted in the hearing record. If the testimony involved is essential for the completion of a party's case, the hearing may be adjourned until the party requesting or issuing the subpoena has had a reasonable opportunity to obtain compliance with the subpoena in accordance with applicable law.

(d) Nothing in this Part shall affect the authority of an attorney of record for any party to issue subpoenas under the provisions of CPLR section 2302.

Section 645-6.9 Stipulations.

(a) At any time after publication of a notice of hearing, the hearing officer may request that the parties attempt to stipulate to an agreement that will resolve specified issues and result in withdrawal of objections, limiting the scope of the subject matter, or in the discontinuance of the hearing.

(b) Such stipulations shall be incorporated into the record of the hearing or agreed to in writing by the involved parties and filed with the hearing officer.

(c) Such stipulations do not alter the responsibility of the commission to make a determination on the application consistent with all applicable laws and regulations.

Section 645-6.10 Record of hearing.

(a) All proceedings at a hearing shall be stenographically reported.

(b) The hearing officer may arrange for a certified reporter to produce a stenographic transcript of the hearing, or may permit the applicant to make such arrangements. When a stenographic transcript is made, an original and two copies of the transcript shall be delivered to the hearing officer at the expense of the applicant.

(c) The transcript of testimony introduced at the hearing shall be delivered to the hearing officer as soon as practicable.

(d) The hearing officer shall file with the commission a report (including a FEIS where required) and a complete record of the hearing which shall include:

(1) the application (including DEIS where applicable) and all notices (including the notice of hearing) and motions;

(2) any affidavit of publication of the notice of hearing;

(3) the transcript of the testimony taken at the hearing and the exhibits entered into evidence;

- (4) any letters, statements, petitions or comments;
- (5) any admissions, agreements or stipulations;
- (6) a statement of matters officially noticed;
- (7) offers of proof, objections thereto and rulings thereon; and
- (8) proposed findings of fact, conclusions of law and exceptions, if any.

Section 645-6.11 Evidence and burden of proof.

- (a) All evidence submitted must be relevant. However, other legal rules of evidence observed in a court of law need not be strictly applied. Hearsay evidence may be admitted if a reasonable degree of reliability is shown.
- (b) Although relevant, evidence may be excluded if its value as proof is substantially outweighed by the potential for unfair prejudice, confusion of the issues, undue delay, waste of time or needless presentation of repetitious or duplicative evidence.
- (c) Where a part of a document is offered as evidence by one party, any party may offer the entire document as evidence.
- (d) Whenever possible, an object which is the subject of testimony shall be exhibited at the hearing. It shall be properly identified as relevant, and it must be shown that it has not changed substantially due to the passage of time or any other reason.
- (e) Each witness shall be sworn or make affirmation before testifying. Opening, closing and other unsworn statements are not evidence but shall be considered as arguments bearing on evidence.
- (f) The applicant shall have the burden of demonstrating by a preponderance of the relevant evidence that the proposed activity will be in compliance with all applicable laws.
- (g) The burden of proof to sustain a motion shall be on the party making the motion.
- (h) All decisions, determinations or orders shall be made upon consideration of the entire record and as supported by substantial evidence.

Section 645-6.12 Official notice.

- (a) The hearing officer or the commission may take official notice of a fact not subject to reasonable dispute if it is either generally known or can be accurately and readily verified in generally accepted references prior to or following the close of the hearing record.
- (b) If the hearing officer or the commission intends to take official notice of a material fact not appearing in the hearing record and of which judicial notice could not be taken, every party shall be given notice and an opportunity to dispute the fact and its materiality.

Section 645-6.13 Communication with the hearing officer or the commission in absence of other parties (ex parte rule).

- (a) At all times following the determination to conduct a public hearing, no party shall, directly or through a representative, communicate with the hearing officer, the commission, or any member of the commission in connection with any issue without providing notice and an opportunity for all parties to participate.
- (b) At all times following the determination to conduct a public hearing, the hearing officer, the commission, or any member of the commission shall not, directly or through a representative, communicate with any party in connection with any issue without providing notice and an opportunity for all parties to participate; provided,

however, that any party may ask for a clarification of procedures from the commission, and the hearing officer, the commission, or any member of the commission may request aid and advice from any member or employee of the commission other than the staff acting as a party to the case.

(c) Nothing herein shall preclude counsel to the commission from giving legal advice to the commission, regardless of whether the counsel to the commission is involved in the presentation by the staff of a case which involves a commission decision.

Section 645-6.14 Payment of hearing costs.

(a) Within 30 days of the last day of the hearing, the applicant shall pay for the cost of:

- (1) physical accommodations, if not held in commission facilities;
- (2) publishing any required notices; and
- (3) any necessary stenographic transcriptions.

(b) The hearing officer may require that the applicant post a bond or other acceptable financial guarantee for the costs of the hearing. Such guarantee shall be provided to the commission prior to commencing the hearing, or the hearing will be adjourned until the guarantee is made available.

(c) There shall be no charge to the applicant for the services of the hearing officer designated by the commission to conduct the hearing, unless otherwise agreed.

(d) A final decision will not be issued until the applicant has paid the costs of the hearing referred to in subdivision (a) of this section.

Section 645-6.15 Final decision.

(a) The final decision of the commission may include a ruling upon any matter brought before or decided by the hearing officer, except for those matters for which an interim appeal is provided under sections 645-6.4 (f) and 645-6.6 (d) of this Subpart. The commission's decision shall be made after the official closing of the hearing record and shall be mailed to the applicant and the applicant's attorney of record (if any) by certified mail and to all other parties by ordinary mail.

(b) The commission's decision shall be made upon consideration of the report and the complete record, supported by substantial evidence, and shall be in writing stating the reasons for the action taken. Where applicable, the commission shall take into account any FEIS prepared for the proposed project, and shall include a statement of findings pursuant to SEQR.

Section 645-6.16 Joint hearings.

(a) A project may require submission of applications for more than one permit, or to more than one government agency, and public hearings may be required for more than one purpose. Whenever practicable, they shall be consolidated into a single public hearing.

(b) If the commission is the lead agency for purposes of SEQR, the permit hearing may be consolidated with any hearing on the DEIS.

Section 645-6.17 Special provisions.

(a) Any time period specified in this Subpart may be extended for good cause by written mutual consent of the applicant and the commission.

(b) At any time prior to issuing the final decision on the application, the hearing officer or the commission may direct that the hearing record be reopened. This may be done to secure additional information or data, or to consider significant new evidence or major permit application alterations.

(c) Tape recording or televising of a hearing for rebroadcast is prohibited by section 52 of the Civil Rights Law.

(d) Unless otherwise specified in this section, all notice and papers connected with a hearing may be served by ordinary mail.

SUBPART 645-7
REGULATORY FEES

Sec.

- 645-7.1 Purpose and intent
- 645-7.2 Persons required to pay
- 645-7.3 When regulatory fees must be paid
- 645-7.4 Penalty for nonpayment
- 645-7.5 Procedures to challenge a regulatory fee
- 645-7.6 Dock, mooring and wharf fees
- 645-7.7 Boat fees
- 645-7.8 Exemptions

Section 645-7.1 Purpose and intent. The purpose of this Part is to collect regulatory fees, in accordance with the requirements of ECL section 43-0125, to fund the costs of regulation, management and conservation activities which assure the protection and continued beneficial use of the resources of the park.

Section 645-7.2 Persons required to pay. Regulatory fees must be paid by each person not specifically exempted herein who:

- (a) owns or constructs a dock, mooring or wharf within the park, exclusive of Trout Lake; and
- (b) uses on the waters of Lake George any mechanically propelled boat or vessel with a motor of ten horsepower or more or any non-mechanically propelled boat or vessel eighteen feet or more in length.

Section 645-7.3 When regulatory fees must be paid.

- (a) Except as hereinafter expressly provided, regulatory fees required pursuant to this Part shall be due and payable April 1st of each calendar year and shall be deemed timely paid if paid on or before that date.
- (b) For the calendar year 1988, the commission may, by order, extend the date when the regulatory fees are due and payable.
- (c) Regulatory fees shall be paid to the "Lake George Park Commission" at the following address or at such place as the commission may designate:

P.O. Box 749
Fort George Road
Lake George, New York 12845

Section 645-7.4 Penalty for nonpayment.

- (a) Any person failing to pay to the commission an annual regulatory fee, or any installment thereof, within 30 days of the date from which such fee is due and payable, must pay a penalty.
- (b) The penalty assessed under this section shall be two percent of the deficiency per month or any part of a month.
- (c) The penalty required pursuant to this section shall not be imposed during the period in which a regulatory fee is being disputed pursuant to the procedures provided in this Part, provided that the entire undisputed portion of the regulatory fee is paid in full within 30 days after the regulatory fee becomes due and payable. If a person disputing a regulatory fee fails to pay the undisputed portion of the fee, then a penalty shall be assessed for the entire amount of the fee which is determined to be due and payable.

(d) In the event that a person pays the undisputed portion of a penalty pending a request for reconsideration of the fee, no penalty shall be assessed on the disputed amount until 30 days after the request for redetermination is finally determined by the commission. For the purpose of this section, the matter shall be deemed finally determined when the procedures provided for in section 645-7.5 of this Subpart have been exhausted.

(e) The penalty assessed pursuant to this section is final and irrevocable unless:

(1) the person against whom the penalty was assessed mails by certified mail or hand delivers to the commission within 30 days of the date of the assessment a written request for reconsideration of the penalty; or

(2) the commission independently redetermines the penalty. Any such request must set forth the basis for the failure to pay the fee. The commission shall have the authority to rescind or reduce a penalty upon a finding that the failure to pay the fee was based upon reasonable cause, and was not willful, due to neglect or other reasonable cause.

Section 645-7.5 Procedures to challenge a regulatory fee.

(a) Any person having a question about the basis for an annual regulatory fee or how it was calculated, may contact the commission staff to request an explanation. The commission staff shall promptly explain the computation of the regulatory fee.

(b) Any person wishing to challenge the amount of a regulatory fee must make a request for redetermination on such forms as the commission may prescribe. Such a request shall be mailed by certified mail or hand delivered to the commission within 30 days of the date when any such fee became due and payable. The failure to make such a request within 30 days from the date when the fee became due and payable shall bar further consideration of that fee unless changed circumstances require reconsideration of that fee in a subsequent fee year. The failure of the commission staff to explain the basis for the fee in accordance with paragraph (a) of this section shall not be grounds for the extension of the 30-day period provided herein.

(c) Any request for reconsideration must, at a minimum, be accompanied by an explanation of why a reduction in the amount of the regulatory fee imposed is appropriate, a statement of what the revised regulatory fee should be, and appropriate documentary evidence to support the claim. Any evidence submitted relative to the size or configuration of a dock or wharf shall be verified by either the owner or the owner's agent, or shall be based upon a survey prepared by a licensed land surveyor.

(d) The commission shall not consider any request for redetermination if a person fails to:

(1) make the request within the 30 day time period provided herein; and

(2) make payment in full of the undisputed amount of the regulatory fee.

(e) Upon receipt of a request for redetermination, the commission staff shall determine whether the initial determination should be revised. The staff determination shall be made within 30 days of receipt of the request for redetermination, unless the staff shall determine that it has insufficient information to act upon the request for redetermination. In such an event, the staff shall, within such 30 day period, mail to the person initiating the request for redetermination a request for further information, specifying the nature of the information that must be submitted. The staff determination shall be made within 30 days following receipt of all of the requested information. In the event that any person initiating a request for a determination shall fail to respond to a request for further information within 30 days from the request by staff, the commission may deem the request for redetermination abandoned and assess a penalty on the disputed amount from the date the 30 day period expired.

(f) A person shall have a right to appeal to the commission from any determination issued by the staff in response to a request for redetermination. Such an appeal must be initiated within 30 days following the mailing by staff of the determination rendered pursuant to paragraph (e) of this section. The appeal shall be made in writing, and shall be mailed by certified mail or hand delivered to the commission within 30 days from the receipt of the staff determination. Such an appeal must be accompanied by an explanation as to why a reduction in the regulatory fee is appropriate, a statement of what the revised regulatory fee should be, appropriate verified

documentary

evidence, together with an explanation of why the commission staff has not properly responded to the issues raised in support of the initial request for redetermination.

(g) The commission staff shall have 30 days to respond in writing to any such appeal. The appeal and the response of commission staff shall be presented to the commission at the next regular meeting following either the response by staff or the expiration of 30 days following the initiation of the appeal, whichever occurs first. The commission shall, by order of the Chairman or two members of the commission, determine whether to allow an oral presentation in connection with the appeal. In such an event, the person initiating the appeal shall be notified of such fact not less than 5 business days prior to the meeting of the commission.

(h) Following the initiation of an appeal, no party shall directly or indirectly through a representative communicate with the commission or any member of the commission relative to any issue pending in the appeal without providing notice and an opportunity for all parties to participate.

(i) If any issues of fact are required to be determined on such an appeal, the commission may, in its discretion, refer the appeal to a hearing officer, who shall conduct a hearing on said issues in accordance with Subpart 645-6 of this Part. In such event, the appeal shall be heard by the commission at the next regular meeting following the delivery to the commission of the hearing officer's report.

(j) The commission shall render a decision regarding any such appeal no later than the next regular meeting following the date on which the appeal is heard. Any such decision shall be in writing, shall be mailed to the appellant and any attorney of record by certified mail, and shall take effect 5 days from the date of mailing. The commission's decision must be made upon consideration of the complete record, must be supported by substantial evidence and shall state the reasons for the decision. Any such decision may be reviewed pursuant to Article 78 of the CPLR.

Section 645-7.6 Dock, mooring and wharf fees.

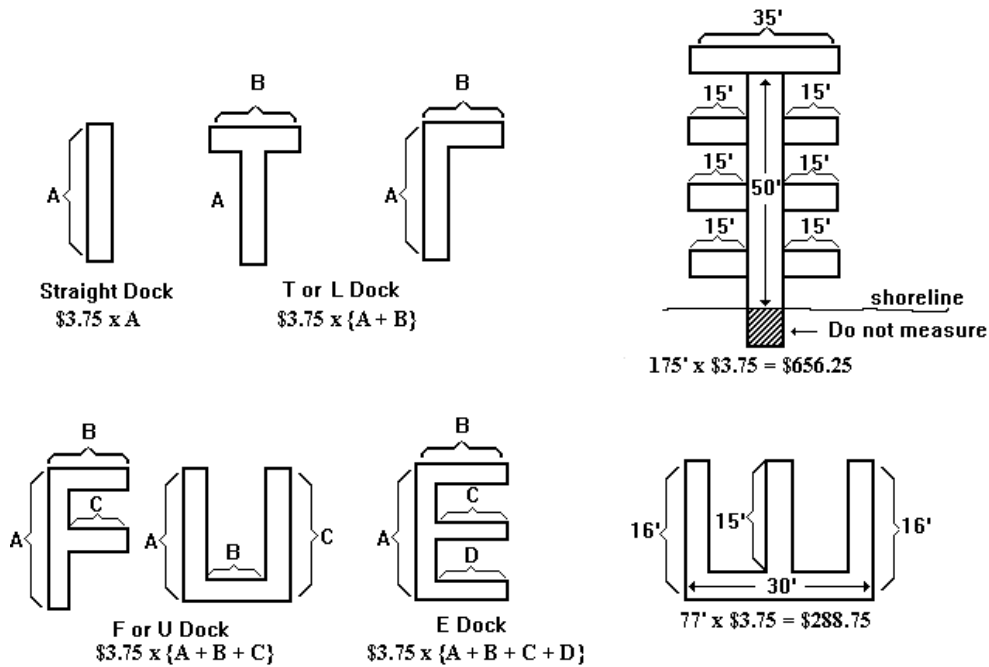
(a) No person shall use or construct a dock, wharf or mooring on the waters of the park without paying the fee required by this section.

(b) The owner of a dock, wharf or mooring used for residential purposes shall pay an annual fee of \$37.50 for each such dock, wharf or mooring.

(c) The owner of an association dock, wharf or mooring shall pay an annual fee in the amount of \$37.50 times the total number of units with deeded or contractual access to the association docks, wharfs or moorings, or the actual number of vessels capable of being docked or moored at the association docks, wharfs or moorings, whichever is less.

(d) The owner of a dock or wharf used for commercial purposes shall pay an annual fee of three dollars and seventy-five cents (\$3.75) per useable linear foot for each such dock or wharf. Useable linear footage shall be measured as the distance along the longest side of any structure used as a dock or wharf, together with the length of the longest side of all lateral structures which extend from the dock or wharf and which are capable of sustaining foot traffic for access to and from vessels and/or for berthing vessels. No linear distance shall be counted twice for the purpose of determining the fee required pursuant to this paragraph. Docks or wharfs which connect to shore shall be measured from the point where the decking or walkway intersects the shore, but in no event beyond the mean high- water mark. For the convenience of the regulated community, examples of typical dock configurations and the applicable fees are provided in this Subdivision.

CALCULATING A COMMERCIAL DOCK FEE



(e) The owner of a mooring used for commercial purposes shall pay an annual fee of \$75.00 for each such mooring.

(f) The owner of a dock or wharf constructed on or after January 1, 1988 used for commercial purposes shall pay a first time fee of \$7.50 per useable linear foot for each such dock or wharf. Useable linear footage shall be calculated in accordance with paragraph (d) of this section. Such fee shall be payable prior to the issuance of a permit to construct the dock or wharf and shall be in lieu of the fee assessable pursuant to paragraph (d) of this section for the calendar year in which such a permit is issued. Each successive year thereafter, the owner shall pay the fee required by paragraph (d) of this section. This provision shall not apply to the replacement in kind of an existing dock or wharf, but shall apply to any modification, extension, or expansion of an existing dock or wharf.

(g) The owner of each quick launch facility shall, in addition to the fees assessable pursuant to other paragraphs of this section, pay an annual fee of \$3.75 per useable linear foot for the total useable linear footage of dry storage capacity at the quick launch subject to the following:

(1) Where the quick launch facility uses wet storage capacity exclusively for vessels which are quick launched, the total useable linear footage of such capacity shall be subtracted from the total useable linear footage of dry storage capacity to prevent the double assessment of storage capacity which is used by the same vessels; and

(2) Where a quick launch facility does not use a rack storage or other system where the useable linear footage of storage capacity is measurable, the owner shall pay an annual fee based upon the total estimated linear footage of the vessels to be stored during a calendar year. Such owners shall, prior to April 1st of each year, estimate the total linear footage of vessels to be stored during that calendar year and shall pay the fee required by this subparagraph based upon that estimate. The estimate required herein shall not be less than the total linear footage of vessels stored during the previous calendar year, unless the owner demonstrates why the amount should be less. The commission shall not be bound by such an estimate if its staff determines it to be unreasonable, in which event the staff may calculate the estimated fee. Any person who is required to pay a

regulatory fee based upon an estimate shall, on or before October 1st of the year in which such an estimate is given, report to the commission on such forms as the commission may prescribe the actual linear footage vessels stored during that calendar year. Such reports shall be verified by the owner or operator. Any amount which is disclosed to be due and payable to the commission shall be due and payable on October 1st of such year and shall be subject to a penalty in accordance with the provisions of section 645-7.4 of this Subpart if not paid within 30 days of such date. Any excess amount shall be credited against the regulatory fee due and payable for the next succeeding fiscal year. Any dispute over the computation of such a recalculated fee shall be resolved under the procedures of section 645-7.5 of this Subpart.

(h) Upon the registration of a dock, wharf or mooring, the owner shall affix the registration placard provided by the commission to the structure in a manner that makes it visible from the lake, if possible.

Section 645-7.7 Boat fees.

(a) No person shall use a vessel subject to a fee pursuant to this section on the waters of Lake George without registering the vessel with the commission and paying the fee imposed by this section. The registration and fees required by this section shall be in addition to the registration fees otherwise provided by law.

(b) Any mechanically propelled boat or vessel with a motor of ten horsepower or more and any non-mechanically propelled boat or vessel eighteen feet or more in length used on the waters of Lake George shall be registered with the commission and the owner or operator shall pay an annual registration fee as follows:

(1) for boats less than twenty-one feet in length - \$30.00;

(2) for boats twenty-one to twenty-five feet in length - \$37.50;

(3) for boats over twenty-five feet in length - \$37.50 and \$7.50 for each foot or part thereof by which the length exceeds twenty-five feet; and

(4) for boats over twenty-five feet in length which are outfitted for overnight use - \$37.50 and \$30.00 for each foot or part thereof by which the overall length exceeds twenty-five feet.

(c) Boat length shall be the length overall of the boat measured as the distance from the transom to the bow.

(d) The owner or operator of any vessel which is berthed, used or operated on Lake George for less than 21 consecutive days and which is subject to annual registration and a fee pursuant to this section may, in lieu of annual registration register the vessel with the commission for a single day and pay a fee of \$7.50 for each day. Alternatively, any such person may, in lieu of annual registration register the vessel with the commission for seven consecutive days and pay a fee of \$11.25. Any person may convert a day registration into a weekly registration and may convert either a day registration or a weekly registration into an annual registration. Upon any such conversion and proof of payment, the person shall be given credit for any fee paid for that vessel during the same calendar year.

(e) No person shall operate a vessel on the waters of Lake George which is subject to a fee pursuant to this section without affixing the sticker provided by the commission as proof of payment of such fee on the vessel in such a place as the commission may prescribe.

(f) The application for boat registration shall be on such forms as the commission may prescribe and contain a statement setting forth the location where the boat will be docked or stored for the boating season and the name of the owner of said location.

Section 645-7.8 Exemptions. The state or any agency of the state, and any municipality acting in a governmental capacity, shall be exempt from the fee requirements of this Subpart.

SUBPART 645-8
VARIANCE PROCEDURES

Sec.

645-8.1 Applicability

645-8.2 Procedure

645-8.3 Standard

645-8.4 Conditions

Section 645-8.1 Applicability. This Subpart shall apply to all applications to the commission for a variance from any substantive requirement imposed by Part 646 of this Title. In no event shall a variance be granted where the granting of the variance will relieve an applicant from a standard or duty imposed upon the applicant by statute, or which will substantially vary the purpose and intent of any substantive regulation adopted by the commission.

Section 645-8.2 Procedure.

(a) Any person seeking a variance from the commission shall submit an application for a variance to the commission on such form as the commission may prescribe. The application for a variance shall be processed as a permit application in accordance with the procedures specified in Subpart 645-5 of this Part.

(b) At a minimum, any application for a variance must:

(1) identify the specific provisions of the regulations of the commission from which a variance is sought;

(2) demonstrate that compliance with the identified provisions would, on the basis of conditions unique and peculiar to the applicant's particular situation, impose a substantial technological, financial or safety burden upon the applicant or the public; and

(3) demonstrate that the proposed activity will have no adverse impact on the public health, safety or welfare, the environment or the natural resources of the park.

Section 645-8.3 Standard.

(a) No variance shall be granted under this Subpart unless the applicant shall establish by substantial, credible evidence unnecessary hardship.

(b) In order to establish unnecessary hardship, an applicant must demonstrate:

(1) unique and peculiar conditions to the applicant's particular situation which impose a substantial technological, financial or safety burden upon the applicant or the public;

(2) that because of such uniqueness, there is no reasonable possibility that the applicant's property or, if no property is involved, the continuation of the application's business, enterprise, use or activity will bring a reasonable return following conformity with the regulations of the commission;

(3) that the proposed activity will have no adverse impact on the public health, safety or welfare, the environment or the resources of the park; and

(4) that the granting of a variance will not alter the essential character of the area in which the proposed use or activity is located, and will not lead to congestion in the park.

Section 645-8.4 Conditions. In granting any variance, the commission may impose specific conditions upon the proposed use or activity necessary to assure that the use or activity will have no adverse impacts upon the public health, safety or welfare, the environment or the resources of the park. Such conditions may be imposed without regard to whether the commission could otherwise impose such conditions pursuant to the substantive authority of the commission under ECL, articles 43 and 71, title 33, or the rules or regulations promulgated by the

commission thereunder.

PART 646

SUBSTANTIVE REGULATIONS

Statutory authority: Environmental Conservation Law Sections 43-0107 (8)&(32), 43-0115 (3), and 43-0117 (4), Navigation Law Section 44-a (not subdivided)

SUBPART 646-1

DOCKS, WHARFS, MOORINGS AND MARINAS

Sec

- 646-1.1 Docks, wharfs and moorings
- 646-1.2 Class A marinas
- 646-1.3 Class B marinas
- 646-1.4 Special permits for recreational uses
- 646-1.5 General provisions applicable to special permits
- 646-1.6 Miscellaneous provisions
- 646-1.7 Exemptions

Section 646-1.1 Docks, wharfs and moorings.

(a) *General prohibitions:*

(1) No person shall construct, erect, place, alter, modify, enlarge, or expand any dock, wharf or mooring on waters of Lake George without having first obtained a permit from the commission; and

(2) No person shall use or maintain a dock, wharf or mooring on waters of Lake George unless the dock, wharf or mooring is registered with the commission, and the fees required pursuant to Subpart 645-7 are paid in full when due.

(b) *Annual registration.* Each dock, wharf and mooring shall, on or before April 1 of each year, be registered with the commission on such forms as the commission may prescribe. Such forms shall include certification by the owner or operator of the number of vessels to be berthed at the facility and the names of the owners thereof, including the vessels that will be registered to the owner or the owner's immediate family, and the vessels that will be registered to other persons.

(c) *Special requirements.* All new docks, wharfs and moorings shall comply with the provisions of this paragraph:

(1) No dock or wharf shall be constructed in a configuration other than a straight pier, T, L, U, E or F-shaped. For the convenience of the regulated community, the following specific configurations are authorized configurations:

Permitted Dock Configurations



(These configurations shall not be interpreted to indicate which side of the structure should be connected to land.)

(2) No dock or wharf shall be constructed so as to exceed the following offshore distance criteria:

(i) No dock or wharf may extend offshore for more than forty feet beyond the mean low-water mark where the wharf intersects the mean low-water mark;

(ii) In streams, no dock or wharf may extend more than 20 percent of the width of the stream at the point of construction; and

(iii) No dock, wharf or mooring shall be constructed or placed so as to extend offshore more than 100 feet from the mean high water mark.

(3) No dock, wharf or mooring shall be constructed or placed so as to interfere with normal navigation or reasonable access to adjacent docks, wharfs, moorings or lands.

(4) The maximum surface area of any dock or wharf shall be 700 square feet, including any walkway. For the purpose of computing the maximum surface area, no portion of the structure shall be included within the computation which extends upland of the mean high water mark, and the minimum allowable width of any dock, wharf, pier, lateral projection or finger shall be two feet.

(5) The maximum width of any pier shall be eight feet.

(6) The maximum width of any dock or wharf, including all lateral projections, shall be 40 feet.

(7) The maximum number of docks, wharfs or moorings permitted per lakefront lot or parcel shall be limited as follows:

(i) 45 to 65 feet of lakefront - one dock or wharf constructed as a straight pier (a minimum of 45 feet is required for the construction of a wharf);

(ii) 66 to 150 feet of lakefront - one dock or wharf constructed as a straight pier, T, L or U-shaped, plus one mooring;

(iii) 151 to 250 feet of lakefront - two docks or wharfs constructed in any combination of straight pier, T, F, L or U-shaped, or one E shaped wharf, plus two moorings;

(iv) 251 to 500 feet of lakefront - three docks or wharfs constructed of any combination of straight pier, T, L, U, or F-shaped, or two E-shaped wharfs, plus three moorings; or

(v) 501 or more feet of lakefront - four docks or wharfs constructed as a straight pier, T, F, E, L or U-shaped wharf, plus four moorings, and one additional dock or wharf plus one additional mooring for each additional 150 feet of lakefront.

In determining the maximum number of permitted docks, wharfs or moorings, the commission may review any subdivision of land created on or after the effective date of these regulations which involved the lot or parcel in issue to determine the maximum number of docks, wharfs or moorings permitted and base such number upon the total footage of lakefront prior to the subdivision.

(8) No structure shall be constructed on a dock, wharf or mooring which exceeds 16 feet in height above the mean high water mark and which is not in compliance with local zoning.

(9) All crib wharfs shall be of the open crib type.

(10) No dock or wharf shall be constructed unless designed to withstand forces of flowing water and wave washes.

(11) Every dock or wharf constructed shall have a minimum setback of 20 feet from the adjacent property line extended into the lake on the same axis as the property line runs onshore where it meets the lake, or at a right angle to the mean high-water mark, whichever results in the greater setback. This provision shall control over the provisions of section 646-1.6 (k) of this Subpart.

(12) Moorings shall be placed so that vessels moored to them, at the full swing of their mooring or anchor line, will be no closer than 20 feet to the projection of the property lines extended into the lake along the axis of the property lines as they intersect the lake, or a line extended at a right angle to the mean high-water mark, whichever results in the greater setback. Moorings shall not be placed so that the full swing of the vessel extends more than 100 feet offshore from the mean high-water mark.

Section 646-1.2 Class A marinas. In addition to the requirements of other sections of this Subpart, all Class A marinas servicing the waters of Lake George shall comply with the following:

(a) *General requirements.*

(1) No person shall construct, expand, or operate a Class A marina servicing the waters of Lake George, or alter or expand the number or type of services or recreational activities offered without obtaining a permit from the commission, or if a permit has been issued for the subject facility, a modification to the permit for that facility which authorizes the new or expanded services or recreational uses. Permits shall be issued for a maximum of five years.

(2) No permit shall be issued for the construction, operation or expansion of a quick launch facility which was not in existence and operating, or for which no permit was issued, prior to the effective date of these regulations.

(3) Permits issued pursuant to section 646-1.2 (a) (1) of this Title may be issued only to the owner of the facility or in the alternative to a lessee of the facility and shall authorize activities and uses at that facility. A permit may not be relocated to other facilities unless a permit for the different facility has been issued by the commission. Marina permits will be modified to reflect a sale or transfer of the facility to another owner subject to a determination by the commission that the facility is in accordance with the requirements of this Subpart and permits issued in accordance with this Subpart. Lakefront marina facilities at separate locations under common ownership shall require separate permits pursuant to section 646-1.2 (a) (1) of this Title.

(4) Special permits. A special permit is a permit granted by the commission to operate any new recreational activity as defined in section 646-2.4 (1) of this Title or the recreational activities or uses contained in section 646-1.4 of this Subpart. Special permits are not transferrable to another location and shall not be leased or transferred to another location, facility or operator.

(b) *Specific requirements:* No Class A marina shall be constructed, expanded or operated without providing the following:

(1) Restrooms, including toilet facilities, for the use by customers, which shall be available at all times from May 1 to October 31 of each year.

(2) One on-site parking space or adequate off-site parking for each vessel berthed. Where the Class A marina offers rides, instruction or water-based recreation for a fee, adequate parking must be provided for customers of the Class A marina.

(3) An adequate storage area for trailers or the storage of trailers shall be prohibited.

(4) Where applicable, proof of compliance with New York State fire code standards and DEC bulk storage standards for the storage of gasoline and hazardous materials. If applicable, no permit application shall be complete until proof of compliance is submitted to the commission.

(5) For each Class A marina with a petroleum sales facility, a plan relative to the inspection and maintenance of petroleum storage facilities and all associated equipment, and appropriate measures relative to spill prevention and countermeasures. Such plan shall include:

(i) the inspection of all plumbing and related pumping equipment, not less than daily, to guard against leakage of petroleum products into the waters of the park;

(ii) the training of each person pumping motor fuels in procedures to guard against the spillage of such motor fuels into the waters of the park and procedures to respond to a spill; and

(iii) the maintenance, in close proximity to the pumping facilities, of such equipment as is necessary to respond to any spill of petroleum products into the waters of the park or on to land or structures where it may flow into the waters of the park.

(6) Adequate garbage and debris disposal facilities with leakproof containers, which must be properly maintained.

(7) Facilities for the disposal of sanitary wastes from vessels with on-board sanitary equipment including:

(i) on-site pumpout facilities, or proven access to pumpout facilities, for use by vessels which use the services of the Class A marina; and

(ii) facilities for the disposal of waste from portable marine toilets, or proven access to such facilities, for use by vessels which use the services of the Class A marina. Such facilities shall be designed, installed, operated and maintained to prevent the discharge of contaminants from marine toilets to the waters of the park or the ground from which they may flow into the waters of the park. For the purposes of this paragraph, vessels using the services of the Class A marina shall include vessels which moor, dock or are quick launched by the marina. Written proof of access to disposal facilities for a period equal to the life of the permit shall be required. Off-site facilities must be located within a reasonable distance from the Class A marina.

(8) A boat cleaning area that is designed, operated and maintained in such a manner to prevent contamination of the waters of the park shall be provided, or boat cleaning shall be prohibited.

(9) All Class A marina owners or operators engaged in the rental of personal watercraft (PWC) as that term is defined in section 646- 2.3 (a) (3) of this Title upon the waters of Lake George shall in addition to the regulations governing PWC contained in Subpart 646-2 of this Title comply with the following regulations:

(i) The owner or operator of a PWC shall ensure that prior to operation all users of PWC have read the rules and regulations governing their operation as contained in this Subpart, as well as Subpart 646-2 of this Title. All users shall sign a form prepared by the owner or operator that indicates the user has read said rules and regulations. The owner or operator shall maintain written records that the above requirements have been complied with. The records are subject to inspection by the commission upon reasonable notice.

(ii) If the PWC is part of a rental fleet or group of PWCs, a tour guide shall operate a vessel with the fleet or group.

(iii) A fleet or group shall not consist of more than six (6) PWC. The tour guide shall guide the operations and behavior of the fleet or group. The tour guide shall not be in charge of more than one (1) fleet or group at any time.

Section 646-1.3 Class B marinas. In addition to the requirements of other sections of this Subpart, Class B marinas located on the waters of Lake George shall comply with the following:

(a) *General requirements.* The owner of any dock, wharf or mooring used as a Class B marina shall register the same with the commission on such forms as the commission may prescribe.

(b) *Specific requirements.* No Class B marina shall be operated without providing the following:

(1) a restroom, including a toilet, for use by customers, which shall be available at all times from May 1 to October 31 of each year;

(2) one on-site parking space or suitable off-site parking for each vessel berthed;

(3) adequate garbage and debris disposal facilities, which must be properly maintained; and

(4) adequate facilities, or proven access to such facilities, for the disposal of sanitary waste from vessels and waste from portable marine toilets in accordance with the requirements of section 646-1.2 (b) (7) of this Subpart, or vessels with such facilities shall be prohibited at the facility. Written proof of access to disposal facilities for the period of annual registration shall be required. Off-site facilities must be located within a reasonable distance from the site of the Class B marina.

(c) The failure to register a Class B marina or the failure to provide the services required by paragraph (b) of this section shall be a violation of this Subpart.

(d) Upon receipt of a complaint regarding a Class B marina from any nearby property owner or at the request of any municipality wherein such use is located, the commission shall, or upon its own initiative may, undertake a review of the availability and adequacy of the services required to be provided by the owner pursuant to this section.

(e) Following investigation by the commission, the commission shall render a report concerning the findings of its investigation to the complainant and the owner of the facility. Such a report shall include a finding whether the facility is in compliance with the requirements of this section. If the commission determines that the facility is not in compliance with the requirements of this section, or that the facility unreasonably impacts the resources of the park, navigation, or the character of the neighborhood, the commission may include within its report an order requiring the owner to bring the facility into compliance within a stated time period, or to cease such commercial use, or imposing upon the owner reasonable restrictions to abate any condition which the commission finds objectionable under this section.

(f) Upon receipt of such an order, the owner may either comply with the same, or request a hearing in accordance with the procedure specified in section 645-5.10 (c) of this Title, which shall be held and determined in accordance with subdivisions (d) and (e) of such section.

Section 646-1.4 Special permits for recreational uses.

(a) *New recreational activities.* No person shall operate or engage in any new recreational activity as defined in section 646-2.3 (1) of this Title or recreational use without first obtaining a special permit from the commission pursuant to this Subpart.

(b) *Seaplanes.*

(1) No person, except for a gratuitous guest, shall berth a seaplane or use any dock, wharf, mooring or ramp, or any other facility for the berthing of a seaplane without having first obtained a special permit from the commission. When issued, a special permit shall be issued to the person owning the seaplane. Special permits issued pursuant to this section are not transferrable. Discontinuation of the authorized use for a period of one (1) year or more shall result in expiration of the special permit.

(2) A special permit pursuant to this section shall be granted upon timely application and payment of any application fees, to any person owning a dock, wharf or berthing facility, mooring or ramp which has been in continual use for the berthing of a seaplane prior to the effective date of these regulations except that such permit shall be conditioned on, and each such seaplane owner shall conform with, the provisions of section 646-1.4 (b) (1) of this Subpart.

(3) The following provisions shall apply to the operation of seaplanes:

(i) Commercial use of a seaplane to or from the waters of Lake George is prohibited as provided in section 248 of the General Business Law of the State of New York.

(ii) Seaplanes shall be operated in such a manner so as not to cause unnecessary audible impacts to adjacent property owners.

(iii) All facilities used for seaplanes including any dock, wharf or mooring or other berthing facility shall conform with the provisions of this Subpart.

(iv) Seaplanes shall be berthed in accordance with the provisions of this Subpart.

(v) Issuance of a special permit pursuant to this section shall be subject to the requirements set forth in sections 646-1.2 and 646-1.5 of this Title.

(c) *Parasails.*

(1) No person shall use or operate a parasail on the waters of Lake George without first having obtained a special permit from the commission. Special permits issued pursuant to this section are not transferrable. Discontinuation of the use or operation of any parasail for a period of one (1) year or more shall result in expiration of the special permit.

(2) Whenever a parasailing operation and the facility where the parasailing operation is berthed and maintained are held in common ownership with the facilities of a Class A marina, the special permit required herein will be merged with approvals pursuant to section 646-1.2 of this Title and only one application to the commission shall be required.

(3) Existing parasail and parasail operations. The owner of any parasail or the owner of any parasail business in continuous operation prior to the effective date of these regulations and registered with the commission pursuant to Subpart 646-2 of this Title shall, upon timely filing of application and payment of any application fees, be granted a special permit subject to the requirements set forth in sections 646-1.2 and 646-1.5 of this Title.

(4) All parasail operators shall conform with the following provisions:

(i) Each parasail operator shall be limited to a maximum of two (2) take-off and landing craft and three (3) parasails in the air at any one time.

(ii) Spectators shall not be permitted on the take-off and landing craft.

(iii) Take-off and landing craft with parasails in flight shall maintain a minimum distance between the craft of one-half mile. If such distance separation is not provided by the respective parasail operators, then the commission may prescribe zones of operation and schedules for the use of such zones as part of any special permit. Such zones and schedules shall be designed to afford competing business equal access to more desirable operating areas.

(iv) Parasails shall be operated only between the hours of 8:00 a.m. to 7:00 p.m. or sunset whichever is earlier.

(v) Parasails shall not be in flight within 500 feet of shore.

(5) Staff.

(i) Each operator shall maintain a crew of at least two including a pilot and an observer on the tow craft at all times during operation. The observer on the tow craft must be at least 16 years of age. The observer must maintain visual contact with the parasail at all times while the parasail is in the air.

(ii) Drivers. All drivers of tow craft must pass the New York State written pilot-engineer examination. In addition, with the exception of pilots engaged, participating or employed in parasail operation upon the waters of Lake George prior to July 1, 1990, all pilots must log a minimum of 50 hours actual driving time accompanied by a qualified and experienced pilot. A pilot is qualified and experienced if the pilot has logged at least 200 hours of actual driving time or operated a tow craft for two full seasons on Lake George.

(iii) Raft crew members. There shall be a crew of at least two, including the driver on the raft at all times. With the exception of raft crew members engaged, participating or employed in parasailing activities upon the waters of Lake George prior to July 1, 1990 all raft crew members must log a minimum of 10 hours actual working time on Lake George with a qualified and experienced crew member present on the raft. A crew member is qualified and experienced if the crew member has 100 hours of actual crew time or has participated in a crew at least one full season on Lake George.

(iv) The owner or operator must maintain written records that the above requirements have been complied with. The records are subject to inspection by the commission upon reasonable notice.

(6) Equipment.

(i) Any parasail which contains a rip, hole, damaged line, or damaged or inoperable hardware must be immediately withdrawn from service until repaired.

(ii) All harnesses must be kept in good and working condition and be free from any damage.

(iii) All parasails, accompanying apparatus and equipment shall be inspected by the owner or operator prior to use, on a daily basis. Written records of the inspections shall be maintained by the owner or operator and made available to the commission for review upon reasonable notice.

(iv) The owner or operator shall maintain written records of the size, make and condition of the parasail and the date of purchase of the parasail. The records are subject to inspection by the commission upon reasonable notice.

(v) Rafts shall be equipped with radios which are capable of receiving and transmitting on marine channel 16.

(vi) A United States Coast Guard approved personal flotation device shall be provided for each person on the raft. All persons engaged in parasailing shall wear a United States Coast Guard approved Type III personal flotation device.

(7) Accidents. Accidents involving parasails shall be reported in writing by the owner or operator to the commission within 48 hours after such accident.

(d) *Tour boats.*

(1) No person shall construct or operate a tour boat on the waters of Lake George without first obtaining a special permit pursuant to this section. A special permit shall be granted for any tour boat which was placed into service on Lake George prior to the effective date of these regulations. Special permits shall be issued for a term not to exceed five years. Special permits are subject to the requirements set forth in sections 646-1.2 and 646-1.5 of this Title.

(2) The following provisions shall apply to the operation of existing tour boats and in the review of applications for tour boats:

(i) Tour boats shall not be berthed so as to interfere with navigation, access to adjacent property, significantly interrupt views or encroach on riparian rights of another.

(ii) All tour boats shall be designed to minimize wakes produced and shall not be operated in such a way as to produce a wake which will cause shoreline erosion or property damage or endanger the safety of others.

(iii) No tour boat shall by use of loud speakers, live music or other sound producing machines or equipment, except a horn, exceed a sound level of 86 db as measured at 50 feet from 8:00 a.m. to 7:00 p.m. or sunset whichever is earlier or 72 db as measured from any point upland of the mean high-water mark from 7:00 p.m. or sunset whichever is earlier and 8:00 a.m.

(iv) Tour boat operators shall take all necessary steps to prevent any litter or debris from being thrown or discharged from the vessel and shall announce the prohibition contained in ECL section 17-1711 against littering in Lake George by loud speaker at the beginning of each tour. Each tour boat shall be equipped with an adequate number of covered receptacles.

(v) Tour boats shall be operated from properly permitted marina facilities.

(vi) Tour boats shall provide systems for the safe removal, handling and disposal of fuel, sewage, wastewater, oil and other lubricants and solid wastes.

(vii) Whenever a tour boat and the facility where it is berthed are held in common ownership with the facilities of a Class A marina, the special permit required herein will be merged with approvals pursuant to section 646-1.2 of this Title and only one application to the commission shall be required.

Section 646-1.5 General provisions applicable to special permits.

(a) Prior to the issuance of any special permit pursuant to the provisions of this Subpart, the commission may require submission of information necessary to determine whether the proposed activity will result in overcrowding, congestion, safety hazards or impair the water quality or other environmental resources of the park. This may include, but not be limited to, specifications on the craft, its power, maneuverability, craft speed, equipment, noise output, lighting, wake, proposed operation including points of departure and landing, course, speed of operation and hours of operation.

(b) The commission may require the submission of alternative design, equipment or methods of operation to mitigate specific impacts identified by the commission.

Section 646-1.6 Miscellaneous provisions.

(a) Prior to granting any permit relative to a dock, wharf, mooring or marina, the commission shall ascertain the probable effect of the proposed facility and the operation thereof on the health, safety and welfare of the public and on the resources of the park. The commission shall also ascertain the impact of the proposed facility upon the congestion of Lake George and the probable visual, cultural and audible effects of the proposed facility on the neighborhood in which the facility is proposed and on the park. Where the commission determines that the facility will have an undue impact upon the health, safety, or welfare of the public or the resources of the park, lead to overcrowding or congestion, or cause undue visual, cultural or audible impacts on the neighborhood or the park, a permit shall be denied.

(b) Any person owning, operating, or constructing a dock, wharf or mooring, shall be responsible for the complete removal of pilings, cribs, chains and blocks, floats and/or any other related components which are abandoned or fall into disuse.

(c) All persons shall comply with all conditions issued with any permit issued for the construction, operation or use of a dock, wharf, mooring or marina. Failure to comply with any such condition shall be a violation and grounds for the immediate revocation of the permit and/or the imposition of a fine for each day from the date the violation first occurred until the violation is corrected.

(d) A permit shall not be required for maintenance and repair of an existing dock, wharf or mooring if such repairs do not alter the size or shape of the dock or wharf. All repairs must conform to the requirements of this Subpart.

(e) Any change in use of an existing marina which increases the number and/or types of vessels serviced shall require a modification to any previously issued permit.

(f) Prior to the issuance of any permit which involves the commercial use of a dock, wharf or mooring, or the registration of any such facility, the commission shall require the applicant to certify that the facilities and associated land uses are in compliance with applicable provisions of state and local laws, ordinances, rules and regulations.

(g) No person shall clean any vessel with chemicals or detergents where runoff into or contamination of the waters of the park is likely to occur.

(h) No person shall launch a vessel into or remove a vessel from the waters of the park without inspecting the vessel and its trailer, if any, to ensure the detection of marine growth, including macrophytes (weeds), or any other hull contamination, and removing said growth and disposing of it so as to ensure that it is not discharged into the waters of the park.

- (i) No person shall launch any vessel into the waters of the park, or operate a vessel on the waters of the park, which is not permanently sealed to prevent the discharge of wastewater into the waters of the park.
- (j) No permit shall be issued under sections 646-1.1 and 646-1.2 of this Subpart, and no facility shall be registered under section 646- 1.3 of this Subpart unless the applicant demonstrates that the requirements of those sections have been complied with. If, during the life of the registration or permit the dock, wharf or mooring, or marina, ceases to meet the requirements of this Subpart, the registration or permit shall be subject to immediate revocation and the owner or operator shall be subject to the imposition of a fine for each day until the violation is corrected.
- (k) No vessel shall be berthed at a dock, wharf or mooring without the prior consent of the adjoining landowner so as to encroach beyond the adjacent property line extended into the lake on the same axis as the property line runs onshore where it meets the lake, or at a right angle to the mean high-water mark, whichever results in the lesser setback.
- (l) No person shall operate or put to use a commercial dock, wharf, mooring, Class A marina or Class B marina without implementing a maintenance program sufficient to keep all docks, wharves, adjacent shoreline, water and lake bottom clean of debris.
- (m) The construction of a dock, wharf or mooring may also require a permit from other agencies, including the following: The Department; the U.S. Army Corps of Engineers, in certain locations, a wetlands permit or a land use permit from the APA; and/or municipal zoning approval.

Section 646-1.7 Exemptions. The permit application requirements of this Subpart shall not be applicable to the State, including agencies of the State, or any municipality acting in a governmental capacity.

SUBPART 646-2

SPECIAL NAVIGATIONAL RULES

(Statutory authority: Environmental Conservation Law Sections 43-0117 (4) and 43-0107 (8) and (32))

Sec.

646-2.1 General purpose

646-2.2 Applicability

646-2.3 Definitions

646-2.4 Permits

646-2.5 Regulation of specific recreational activities

646-2.6 Miscellaneous provisions relating to certain recreational activities

646-2.7 Speed limits

646-2.8 Noise limits

646-2.9 Restricted use zones

Section 646-2.1 General purpose. The purpose of this Subpart is to regulate recreational activities in or on the waters of Lake George in order to protect the public health, safety and welfare, to provide reasonable public access to Lake George without overcrowding, congestion or safety hazards, to reduce noise and to protect the resources of the park.

Section 646-2.2 Applicability. This Subpart establishes rules and guidelines for specific recreational activities, craft, vessels and devices and for all new recreational activities for both commercial and private use. Additional regulations for commercial recreational activities (all activities conducted or offered for the purpose of realizing a profit) are found in Subpart 646-1 of this Title.

Section 646-2.3 Definitions.

(a) The following terms shall have the stated meanings whenever used in this Subpart and Subpart 646-1 of this Title or in documents referenced or prepared by the commission. Other terms defined in section 645-2.1 of this Title shall have the meanings set forth in that section.

(1) *New recreational activity or use* means a recreational activity not introduced on the waters of Lake George as of January 1, 1991.

(2) *Parasailing* means the use of equipment including a parasail and or chute or similar device, harness, vest, tow craft, take-off and landing craft or similar craft for the purposes of engaging in air-sailing over the waters of Lake George.

(3) *Personal watercraft (PWC)* means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel rather than in the conventional manner of sitting or standing inside the vessel.

(4) *Scuba diving* means swimming totally submerged with the assistance of a self-contained underwater breathing apparatus and air supply.

(5) *Seaplane* means any aircraft capable of using a water surface for take-off or landing.

(6) *Take-off and landing craft* shall mean any boat, barge, raft or vessel used as a take-off or landing point for parasails or similar devices.

(7) *Tour boat* shall mean any ship, boat, vessel or craft used for the commercial purpose of conveying passengers for a fee.

(8) *Tour guide* shall mean an experienced and skilled operator of a PWC employed and empowered to direct

and command other operators who are part of a group or tour.

(9) *Tow craft* shall mean any vessel, craft or device used to pull aloft a parasail.

(10) *Towing* shall mean all those activities where a person, craft or device is pulled or drawn behind another vessel.

Section 646-2.4 Permits. No person shall operate or engage in any new recreational activity or use without first obtaining a special permit from the commission pursuant to Subpart 646-1 of this Title.

Section 646-2.5 Regulation of specific recreational activities.

(a) *Personal water craft (PWC).*

(1) All persons operating PWC upon the waters of Lake George shall comply with the following requirements in addition to all navigational laws and other regulations of the Lake George Park Commission:

(i) A PWC may be operated only between the hours of 8:00 a.m. to 7:00 p.m. or sunset whichever is earlier.

(ii) No person shall operate a PWC within 500 feet from the outer boundaries of a designated swimming or mooring area.

(iii) No person shall operate a PWC within 500 feet of shore at a speed greater than five miles per hour except that such five miles per hour speed limit shall not apply to a PWC operator operating at safe headway speed in a straight line to or from shore or to or from an area 500 feet from shore.

(iv) No person shall operate a PWC on the waters of Lake George so as to knowingly annoy, disturb, injure or endanger the health, comfort, repose or peace of another person.

(v) No person shall operate a PWC on the waters of Lake George which was manufactured on or after January 1, 1991 with an exhaust system which has been altered in any way from the original manufacturer's equipment.

(vi) On or after January 1, 1992 no person shall operate a PWC on the waters of Lake George if such PWC produces a sound level greater than that of the original manufacturers specifications for that PWC, but in no event shall a PWC operate on the waters of Lake George if such PWC exceeds the sound limits set forth in section 646-2.8 of this Title.

(2) Accidents involving PWC shall be reported in writing by the owner or operator to the commission or other law enforcement agency within 48 hours after such accident.

Section 646-2.6 Miscellaneous provisions relating to certain recreational activities.

(a) *Scuba diving.*

(1) No person shall scuba dive in a navigable channel or in any location in which it will interfere with free and safe navigation or free access to another person's property. For the purpose of these rules, navigable channels shall mean areas in which boats are restricted in operation due to passage between points of land or, areas in which navigation aids are located.

(2) No person shall scuba dive in the waters of Lake George so as to knowingly annoy, disturb, injure or endanger the health, comfort, repose or peace of another person.

(b) *Towing.*

(1) A person being towed on the surface of Lake George shall wear a United States Coast Guard approved

Type III personal flotation device.

(c) *Artifacts*. No person shall appropriate, excavate, remove, injure or destroy any historic shipwreck or artifact submerged in Lake George. This subdivision shall not apply to the State of New York or its authorized agents or representatives provided the excavation or removal is for the care and preservation of the shipwreck or artifact.

Section 646-2.7 Speed limits.

(a) Except as otherwise provided herein, no person shall operate a vessel on the waters of Lake George in excess of the following speed limits:

- (1) between the hours of 6 a.m. and 9 p.m. - 45 statute miles per hour; and
- (2) between the hours of 9 p.m. and 6 a.m. - 25 statute miles per hour.

(b) The provisions of this section shall not apply to a seaplane while taking off or landing upon the waters of Lake George.

(c) The provisions of this section shall not apply to a vessel competing in or practicing for a boat race over a specified course held by a bona fide club or racing association between the hours of 9 a.m. and 6 p.m., provided that written notice of the date of the race and scheduled practice times have been given to the commission, not less than 15 days prior to the date of any race date or scheduled practice times, and the event is registered with the commission on such forms as the commission may prescribe. Where appropriate, the commission may require that notice of the event and all scheduled practice times be given to persons who may be impacted by such activities. The commission may also require proof that a satisfactory comprehensive general liability policy is in effect covering the event and the practice times.

(d) Nothing herein shall preclude a municipality with jurisdiction over the waters of Lake George from enacting a speed limit of less than 45 statute miles per hour on all or part of such waters.

Section 646-2.8 Noise limits.

(a) No person shall operate a vessel on the waters of Lake George which is propelled wholly or partly by an engine operated by the explosion of gas, gasoline, naphtha or other substance, without having the exhaust from the engine run through an effective muffler so constructed and used as to muffle the noise of the exhaust in a reasonable manner. Dry stacks, cut outs and straight pipes are expressly prohibited.

(b) No person shall operate a vessel on the waters of Lake George which exceeds 86 db when measured at not less than 50 feet from the vessel being tested or 80 db when measured at not less than 100 feet from the vessel being tested.

(c) All decibel levels are to be measured on a decibel meter gaged to an A-weighted scale. Measurements of decibel levels shall be taken when the subject vessel is in motion or by static test when the subject vessel is stationary with engine operating at not more than 3,500 rpm.

(d) Any patrolman or law enforcement officer of the commission, the State of New York, or any political subdivision having jurisdiction of the waters of Lake George, who has reason to believe that vessel is being operated in excess of the noise levels established in this section may request the operator of the vessel to subject the vessel to a test as set forth in this section to measure noise levels, with the officer on board if the officer so requests, and the operator shall comply with such request. Failure to comply with the request shall constitute a violation of this section.

(e) The provisions of this section shall not apply to a vessel competing in or practicing for a boat race over a specified course held by a bona fide club or racing association between the hours of 9 a.m. and 6 p.m., provided the due written notice of the date of the race and scheduled practice times have been given to the commission not less than 15 days prior to the date of any such race or scheduled practice times, and the event is registered with the commission on such forms as the commission may prescribe. Where appropriate, the commission may

require that notice of the event and all scheduled practice times be given to persons who may be impacted by the event.

Section 646-2.9 Restricted use zones.

(a) No person shall anchor, moor or recreate from a vessel on the waters of Lake George in front of private property within 200 feet from the mean highwater mark of such property without the consent of the owner or lessee of such property. This paragraph shall not apply:

(1) to persons fishing from vessels, provided such fishing does not create a hazard to near-shore recreational activities such as swimming; or

(2) the emergency use of such waters.

(b) In order to prevent overcrowding and congestion, reduce noise, protect the public health, safety and welfare and preserve the resources of the park, the commission may designate restricted use zones on the Lake and adopt regulations for the usage of such zones. If permitted by the regulations for any zone, the commission may establish a system of mooring buoys for that zone. The commission may also establish marker buoys to show the limits of such zones. Within any restricted use zone established by this section no person shall operate, anchor, moor, recreate from or otherwise use a vessel, or undertake any other activity, in violation of the regulations established for such zone.

(1) Sandy Bay. That area of Sandy Bay which is below the mean high water mark and is bounded and described as follows shall be a restricted use zone: Bounded on the east by the Rockhurst Peninsula, on the south by the shore of Lake George between the Rockhurst and Cleverdale Peninsulas, on the west by the Cleverdale Peninsula and on the north by a line which runs due east to due west and is 1,800 feet north of the southernmost point on the southern boundary of the zone. Sandy Bay is located on the easterly side of the Lake, in the Towns of Queensbury and Bolton. The commission may place up to 60 mooring buoys within said zone, which shall be placed so that no vessel tied to a buoy shall come within 200 feet of the mean high water mark. Within the zone, the following regulations shall apply:

(i) No vessel shall be anchored or moored for any purpose except at a mooring buoy established by the commission, excepting that the restrictions of this paragraph shall not apply to the anchoring or mooring of a vessel for emergency purposes, or to the use of private docks, wharfs and moorings which have been duly registered with the commission.

(ii) No more than one vessel may be tied to any mooring buoy.

(iii) No vessel shall be tied to another vessel, to any marker buoy established by the commission to mark the bounds of the zone, to the shore, or to any object on the shore.

(iv) No vessel shall be beached on the shore or the bottom of the Lake excepting that the owner or lessee of private property may do so on that person's property.

(v) No vessel shall be left unattended.

(vi) No vessel shall be moored after sunset or before sunrise.

(vii) No vessel shall have more than ten feet of line between it and its mooring buoy.

(viii) Vessels in the zone and not secured to an authorized mooring shall be underway and shall not be allowed to drift or be held motionless.

(2) Paradise Bay. All of Paradise Bay shall be a restricted use zone. Paradise Bay is located in the Town of Bolton and Dresden on the eastern shore of the Lake, north of Shelving Rock. Within the zone the following regulations shall apply:

(i) No vessel shall be anchored or moored within the zone at any time for any purpose excepting that the restrictions of this paragraph shall not apply to the anchoring or mooring of a vessel for emergency purposes or to the use of docks established by the Department, provided that no more than two vessels may be tied to any such dock at a time. This provision shall not apply each year from September 15 through May 15 of the following year.

(ii) No vessel shall be tied to another vessel, to any marker buoy established by the commission to mark the bounds of the zone, to the shore, or to any object on the shore.

(iii) No vessel shall be beached on the shore or bottom of the Lake.

(iv) No vessel shall be left unattended.

SUBPART 646-3 WASTEWATER MANAGEMENT - RESERVED

SUBPART 646-4

STORMWATER MANAGEMENT

(Statutory Authority: Environmental Conservation Law Section 43-0107, Subdivisions (8) and (32), and Section 43-0112.)

Sec.

- 646-4.1 Preamble
- 646-4.2 Purpose and intent
- 646-4.3 Applicability
- 646-4.4 Definitions
- 646-4.5 Prohibitions
- 646-4.6 Stormwater management plans and stormwater regulatory programs required
- 646-4.7 Time limits for preparation and procedures for review of stormwater management plans and stormwater regulatory programs
- 646-4.8 General requirements for stormwater management plans
- 646-4.9 Stormwater management plan requirements in areas where development is occurring
- 646-4.10 Stormwater management plan requirements for developed areas
- 646-4.11 General requirements for stormwater regulatory programs
- 646-4.12 Project classification in stormwater regulatory programs for the purpose of review
- 646-4.13 Permit application procedures in stormwater regulatory programs
- 646-4.14 Design requirements and performance standards for stormwater regulation
- 646-4.15 Vegetative cutting and clearing restrictions in stormwater regulatory programs
- 646-4.16 Maintenance of stormwater control facilities under stormwater regulatory programs
- 646-4.17 Criteria for issuance of permits in stormwater regulatory programs
- 646-4.18 Variances from stormwater regulatory programs

Section 646-4.1 Preamble.

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.

Section 646-4.2 Purpose and intent.

The purpose of this Subpart is to protect and safeguard the general health, safety, and welfare of the public residing in or visiting the park by preserving and protecting the quality of the ground and surface waters of the park. This Subpart has the following objectives:

prevent any increase in stormwater runoff from any development in order to reduce flooding, siltation and streambank erosion;

prevent any increase in pollution caused by stormwater runoff from development which would otherwise degrade the quality of water in Lake George and its tributaries and render it unfit for human consumption, interfere with water based recreation or adversely affect aquatic life; and

ensure that the total annual volume of surface water runoff which flows from any specific site during and following development shall not exceed that which prevailed prior to development.

Section 646-4.3 Applicability.

(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 of this Subpart. Stormwater management plans and stormwater 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.

(b) *Applicability under municipal jurisdiction.* A stormwater regulatory program is applicable to all development projects within the municipality and within the Lake George Park except for projects specifically exempted by the program. In any municipality where there is a program in effect approved pursuant to this Subpart, the rules for the applicability of the program to projects for which applications have previously been filed, or which have received other required permits, shall be set forth in the program.

(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 of this Subpart, a permit from the commission shall be required in accordance with sections 646-4.5, 646-4.12 and 646-4.13 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 except that the project classifications contained herein shall govern.

Section 646-4.4 Definitions.

(a) Terms defined in section 645-2.1 of this Title shall have the meanings set forth in that section. Terms not defined in this Subpart shall have their usual and ordinary meanings.

(b) The following terms shall have the stated meanings when used in this Subpart or in documents prepared or reviewed by the commission.

(1) *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.

(2) *Base flow* means the stream discharge from groundwater runoff.

- (3) *Blind drain* means a drain consisting of an excavated trench refilled with pervious 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.
- (4) *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, sheds, porches, eaves, covered breezeways, entryways and other similar attached appurtenances.
- (5) *Catch basin* means an inlet structure for the collection of stormwater from impervious surfaces designed with a sump to trap sediment.
- (6) *Commission* means the Lake George Park Commission.
- (7) *Department* means the Department of Environmental Conservation of the State of New York.
- (8) *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.
- (9) *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.
- (10) *Develop land* means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial or institutional construction or alteration.
- (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.
- (12) *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 Subpart contiguous lands shall include those separated by a public highway.
- (13) *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.
- (14) *Drainage area* means all of the area of land contributing runoff flow to a single point.
- (15) *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.
- (16) *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.
- (17) *Flow attenuation* means prolonging the flow time of runoff to reduce the peak discharge.
- (18) *Hydrograph* means a graph showing variation in stage (depth) or discharge of a stream of water over a period of time.
- (19) *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.
- (20) *Infiltration* means the downward movement of water from the surface to the subsoil. Infiltration rate is typically expressed as inches per hour.

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

(22) *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.

(23) *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.

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

(25) *Municipality* means a town or village located in whole or in part within the park.

(26) *Nonpoint source* means any source from which pollutants are or may be discharged which is not a point source.

(27) *Offering plan* means a prospectus as required by section 352-e of the General Business Law.

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

(29) *Point source* means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged.

(30) *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 life.

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

(32) *Porous pavement* means an open graded paving material which allows water to pass through it.

(33) *Predevelopment* means those site conditions which legally existed prior to the commencement of any activity regulated by this Subpart.

(34) *Project* means any land use or development activity proposed by an applicant which is subject to this Subpart.

(35) *Project life* means the anticipated or actual time a project will be used, utilized or remain in functional existence.

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

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

(38) *Redevelopment* means any activity which alters a previously developed site.

(39) *Retention* means the practice of holding or directing stormwater except that portion evaporated or bypassed in an emergency, in or to a given area so that all the stormwater will be infiltrated into the subsoil.

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

(41) *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.

(42) *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.

(43) *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 Environmental Conservation Law sections 11-0535 and 9-1503 and the department's regulations thereunder, or by any individual species or any group or natural community of nonlisted plants and animals of significant economic, recreational, aesthetic, ecological or scientific importance.

(44) *Siltation trap* means a structure designed to trap sand and silt sized particulate matter from stormwater.

(45) *Site* - See development area, paragraph (12) of this subdivision.

(46) *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.

(47) *Stormwater concept plan* or *SCP* means a report prepared in accordance with section 646-4.13(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.

(48) *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.

(49) *Stormwater control report* or *SCR* means a report prepared in accordance with section 646-4.13(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.

(50) *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.

(51) *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.

(52) *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.

(53) *Stormwater management plan* or *plan* means a local stormwater management plan adopted by a municipality pursuant to this Subpart and Environmental Conservation Law section 43-0112.

(54) *Stormwater recharge area* means an area of land used for the purpose of infiltrating stormwater.

(55) *Stormwater regulatory program* or *program* means a local stormwater regulatory control program adopted by a municipality pursuant to this Subpart and Environmental Conservation Law section 43-0112.

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

(57) *Stream* shall include any permanent or intermittent water course.

(58) *Stream corridor* means that area within 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.

(59) *Subcatchment* means an identifiable drainage area contained within a larger watershed or drainage area.

(60) *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 any 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.

(61) *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.

(62) *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.

(63) *Water body* means any lake, pond, river, stream, intermittent stream or wetland.

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

(65) *Watershed* means the total drainage area contributing runoff to a single point.

Section 646-4.5 Prohibitions.

(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 any 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 owner of real property located within the Lake George Park shall maintain a condition, which due to a human disturbance of land, vegetative cover, or soil, results in the erosion of soil 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, no person shall operate a land clearing machine such as a back hoe, 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 greater than 5,000 square feet without first receiving a permit from the commission pursuant to this Subpart.

(d) No person shall 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.

(e) 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.

(f) The following activities are exempt from the requirements of this Subpart:

(1) emergency repairs to any stormwater control measure;

(2) development involving land disturbance and land clearing of less than 5,000 square feet which does not result in the creation of new impervious surfaces of more than 1,000 square feet;

(3) any logging or agricultural activity which is consistent with a soil conservation plan approved by the appropriate county soil and water conservation district or a timber management plan prepared or approved by the department, as applicable;

(4) 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;

(5) 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

(6) construction of an approved wastewater treatment system and construction of a wharf, dock, boathouse and mooring.

Section 646-4.6 Stormwater management plans and stormwater regulatory programs required.

(a) Each municipality shall adopt a stormwater management plan, and a stormwater regulatory program designed to implement said plan. Stormwater management plans and regulatory programs and amendments thereto shall be consistent with the requirements of this Subpart, and subject to the approval of the commission before they are effective. Plans and programs need not be adopted at the same time.

(b) The commission shall continue the Lake George Park Local Stormwater Planning Assistance Program with so much of its funds as are available for that purpose and shall continue to comply with agreements made under that program to provide assistance for local stormwater planning.

(c) A municipality may base its stormwater regulatory program upon the Model Stormwater Management Ordinance, Appendix A (see section 6946-4.18 of this Subpart) and shall modify the ordinance, if necessary, to conform to its plan and its land use planning procedures. Where a municipality has revised the model ordinance so that it conforms to its plan and land use planning procedures, the adoption of such an ordinance by the municipality shall require commission approval in accordance with this Subpart. The adoption of the Model Stormwater Management Ordinance, without revision, by a municipality as a local ordinance or local law shall be deemed to satisfy the requirements of this Subpart and shall be deemed an approved stormwater regulatory program.

(d) The commission may enter into an agreement with any municipality for the shared implementation and enforcement of stormwater regulatory programs. Such agreements may include commission delegation of some or all of the authority assumed pursuant to Environmental Conservation Law, section 43-0112.

(e) If any municipality fails to implement a stormwater regulatory program approved in accordance with this Subpart, the commission shall assume, after providing for notice and an opportunity to be heard, by resolution, the authority to do so pursuant to section 646-4.7(k) of this Subpart. Some sections within this Subpart, referring to stormwater regulatory standards and procedures, do not identify the entity which has decision-making, implementation and enforcement authority with regard to such regulatory standards and procedures. These sections are to be read with the knowledge that the entity within such sections is either the commission or a municipality depending on who has the decision-making, implementation and enforcement authority pursuant to this Subpart.

(f) No plan or program shall be required for the Towns of Horicon, Lake Luzerne and Warrensburg. All development within those municipalities and within the park and within the lake drainage basin shall be the subject of agreements between the respective municipality and the commission pursuant to subsection (d) of this section.

Section 646-4.7 Time limits for preparation and procedures for review of stormwater management plans and stormwater regulatory programs.

(a) The commission shall mail notice to the chief executive officer of each municipality advising of the effective date of this Subpart, amendments thereto, the completion of the stormwater feasibility study prepared pursuant to Environmental Conservation Law, section 43-0112(2), the completion of a local stormwater plan or any other event which affects the content of plans or programs. The notice shall specify that the time frame within which the municipality has to prepare plans and programs or make amendments thereto has commenced.

(b) Each municipality shall be afforded a period of 90 days from the effective date of this Subpart, amendments thereto, the completion of a local stormwater plan or any other event which effects the content of plans or programs to deliver written notice of the municipality's intention to develop a plan and/or program, or to make any necessary amendments to existing and approved plans and/or programs. This intention must be adopted by the majority vote of the governing body of the municipality.

(c) The initial time period within which each municipality had to prepare a plan and program, after the effective date of this Subpart, was 18 months in accordance with Environmental Conservation Law, section 43-0112(1)(a). This 18-month time period has expired. The time limit for preparing plans and programs shall be nine months from the date of notice, as required in (a) of this section, of the 1998 amendments to this Subpart. The time limit for amending existing and approved plans or programs shall be nine months from the date of notice of any amendments to this Subpart, the completion of the study recommendations pursuant to Environmental Conservation Law section 43-0112(2) and (6), or any other event which affects the content of plans and programs.

(d) A proposed plan or program, or amendments thereto shall require the approval of the town or village board prior to submission to the commission for review under this Subpart. Copies of such proposed plan or program shall be made available to the public, and one copy of each shall be provided to the office of Region 5 of the department and to the Adirondack Park Agency.

(e) The commission shall provide for public notice of any pending action on proposed stormwater management plans, stormwater regulatory programs and amendments thereto, and shall afford an opportunity for public comment.

(f) Whenever the commission determines that the provisions of a proposed stormwater plan or program or proposed amendments to a previously approved plan or program are inconsistent with Environmental

Conservation Law section 43-0112 or with the requirements of this Subpart, it shall notify the municipality of the

inconsistent provisions and request that the appropriate changes be incorporated. Such notice shall be in writing and shall specify a time period for the municipality to decide whether to make amendments to the preliminary plan or program consistent with the commission's recommendations.

(g) After public notice of the pending decision and after affording an opportunity for the municipality to make amendments, the commission shall render a final decision to approve or deny any proposed plan or program or amendments thereto and shall promptly mail notice of its decision together with the reasons supporting it to the chief executive officer of the municipality.

(h) The commission's decision to approve or deny any proposed stormwater management plan, program or amendment thereto shall be based on the following determinations of the commission:

(1) whether the plan, program or amendment thereto complies with the requirements of Environmental Conservation Law section 43-0112 and this Subpart;

(2) whether the plan, program or amendment thereto has been amended to adequately respond to recommendations and comments of the commission; and

(3) the commission may, upon demonstration of good cause, approve a plan, program or amendment thereto which varies from the design or dimensional standards contained in this Subpart. Any such determination shall be made by the commission only upon a finding that the variance from the design or dimensional standards will not result in an adverse effect or impact upon the public health, safety, or welfare or the resources of the park.

(i) Following commission approval, a plan shall be adopted by the board of the municipality within 60 days. Following commission approval a program shall be adopted as a local ordinance or local law by the board of the municipality within 60 days. The 60-day time periods shall begin the day after commission approval of a plan and/or program.

(j) The commission may extend any time limit specified herein based upon a written request provided it is in the public interest and there is good cause demonstrated.

(k) The commission may assume a municipality's authority to regulate stormwater management and shall revoke its approval of any existing programs where the commission determines that any one of the following circumstances exist:

(1) a municipality has determined not to prepare a plan or program;

(2) a municipality has failed to adopt a plan or program; to meet any time limit for the delivery of the notice of intent, the submission or adoption of a plan or program, or the incorporation of amendments to this Subpart and recommendations made pursuant to Environmental Conservation Law, section 43-0112(2) in any existing and approved plan and/or program; or

(3) a municipality has failed to properly implement a program by failing to administer and enforce the program adequately to carry out the policies, purposes and objectives of the program.

(l) The commission shall not revoke its approval of a municipality's program without giving the municipality notice and an opportunity to be heard, but no adjudicatory hearing shall be required.

Section 646-4.8 General requirements for stormwater management plans.

Each municipality's stormwater management plan shall, at a minimum:

(a) Provide for the implementation of the plan and its integration with other components of the municipality's land use planning program, such as zoning, subdivision, sanitary and site plan review controls,

provide for the coordination of stormwater management with adjoining communities, and provide for public participation in stormwater planning and decisionmaking.

(b) Establish objectives and set policies which ensure that pollutant loads in stormwater runoff are minimized, that stormwater runoff is recharged to groundwater to the maximum extent possible, and that increases in the annual volume of stormwater runoff entering Lake George as a result of any land use or development are prevented. The objectives and policies shall also apply to new, expanded or altered development, land clearing, land grading and erosion and sedimentation control measures. Said policies and objectives shall address land use practices such as the use of pesticides and other chemicals, fertilizers, road salt, sand and other possible contaminants in maintaining or managing new or existing land resources, roads and structures, and shall establish policies and objectives for stormwater management for projects undertaken by state and local government bodies, and remediating the effects of stormwater runoff from presently existing private facilities and government facilities including highways, parking lots and buildings.

(c) Assign responsibility for stormwater management planning and regulation to one or more elected or appointed local boards, which may be a board appointed specifically for that purpose, or to qualified staff persons. Municipal authority to make stormwater-related decisions may be delegated to such a designated board or to such staff, provided the scope and limits of authority are clearly specified. The staff position or type of retained consultant who will advise the administering board shall be described, together with the qualifications which shall be required for such position. Duly qualified engineering and project review personnel or consultants shall be required for reviewing development project plans, programs, reports and construction.

(d) Establish procedures for periodically revising stormwater management plans and stormwater regulatory programs and overseeing implementation, as an on-going process, including administration of regulatory controls and execution of nonregulatory methods for accomplishing plan objectives.

(e) Outline and summarize the stormwater regulatory program to be adopted consistent with the requirements of this Subpart.

(f) Develop and implement procedures for ensuring that private and municipal stormwater control structures and natural or human-made features used to control stormwater runoff are properly and periodically maintained, and are replaced in timely fashion as may become necessary. The procedures must provide for adequate funding and administrative control in perpetuity.

(g) Consider, in determining the significance of stormwater impacts on the lake, past degradation of the lake's water quality, the cumulative impact of proposed projects and any other development or activities in the park which can be reasonably anticipated and the assimilative capacity of the lake.

(h) Provide for the application of the plan to projects undertaken or constructed by the municipality.

Section 646-4.9 Stormwater management plan requirements in areas where development is occurring.

Each stormwater management plan shall, at a minimum, include the following elements for those areas where new land use and development, including redevelopment, is occurring or where, under applicable zoning or other land use controls, new land use and development may occur in the future:

(a) Maps of individual parcels and general land areas where development is occurring or may occur in the future delineating the location and capacity of the existing stormwater infrastructure serving those parcels or areas, including community storm sewers and human-made retention and detention control structures as well as natural stormwater control features. Such maps shall also depict major roads, streams, watersheds, ponds, wetlands, land use zones, soil types and areas with slopes generally greater than 15 percent and delineate, within each watershed, lands having potential for use as dedicated stormwater recharge areas. The commission shall establish standardized map formats and uniform scales to be used by the municipalities to promote the goal of a consistent planning reference for the park.

(b) A method for evaluating potential stormwater recharge areas on the basis of existing land use, soil profile, slope and bedrock characteristics, and similar factors related to the protection of public health and safety and the maintenance of water quality.

(c) Measures that the community intends to adopt to protect potential stormwater management areas so

as to preserve such areas for treating and infiltrating stormwater runoff. These areas may be preserved and protected by fee acquisition, gifts, easements, use and density restrictions such as zoning, or other appropriate methods.

(d) A means of entering into agreements with other municipalities to use common areas within a watershed for stormwater infiltration purposes, subject to review by the commission.

(e) An evaluation of the long-term capability to control stormwater and a description of steps, including acquisition, easement or regulatory control, proposed to be undertaken to protect natural stormwater control features such as streams, ponds and wetlands.

(f) Proposed amendments to existing land use planning controls, if necessary, to ensure that permitted development is consistent with stormwater management standards set forth in this Subpart.

Section 646-4.10 Stormwater management plan requirements for developed areas.

(a) Pursuant to Environmental Conservation Law, section 43-0112(2) the commission shall prepare a study of the feasibility of reducing the impacts of stormwater runoff in areas where development has already occurred. The recommendations of such study shall be incorporated into stormwater management plans and stormwater regulatory programs. Municipalities nevertheless should identify, early in the planning process, geographic areas and land-based activities requiring attention to alleviate adverse stormwater related impacts upon water quality and erosion. Municipalities are also encouraged to begin to consider policies and methods to address such impacts prior to completion of the study.

(b) The plan may include in relation to such geographic areas and land-based activities:

(1) a description and location of major stormwater outfall points;

(2) an analysis of existing data on flows and pollutants discharged from major stormwater outfalls and an evaluation of the need to gather additional data in order to

(i) establish baseline levels of elements and compounds being discharged at major stormwater outfalls, and

(ii) rank major stormwater outfalls in order of the amount, levels and volume of stormwater and pollutant loads being discharged;

(3) specific objectives which can reasonably be expected to be undertaken by state and local government to reduce or prevent any increase in stormwater runoff and stormwater pollution from new development or redevelopment. In setting specific objectives, the plan shall evaluate the following:

(i) construction of new stormwater management facilities such as siltation traps, catch basins, and/or retention ponds, independently, or as part of any public road project or other development;

(ii) improved maintenance of existing stormwater management facilities;

(iii) targets for reduction in volume of road de-icing sand and salts;

(iv) improvements in runoff controls at road sand and salt storage areas;

(v) reduction in the volume of fertilizers and pesticides applied to public and private lands;

(vi) action to improve spring cleanup of road sand and salt including identification of suitable disposal sites;

(vii) alteration of existing stormwater facilities to reduce the volume of stormwater mixed with surface water flows from the undeveloped upland thereby reducing the volume of polluted water to be controlled;

(viii) action to stabilize eroding areas such as road banks, stream crossing sites, sand and gravel mines; and

(ix) action to improve street sweeping, litter and lawn clipping and other housekeeping measures; and

(4) an identification of ponds and wetlands and areas of watercourses now receiving stormwater and an evaluation of their potential to absorb additional stormwater flows and pollutants without undue adverse impacts to the wetland or watercourse.

Section 646-4.11 General requirements for stormwater regulatory programs.

Each municipality shall adopt a stormwater regulatory program which shall include permit requirements, standards, compliance mechanisms and enforcement provisions governing the design, construction, operation and maintenance of stormwater management facilities.

(a) Each municipality's stormwater regulatory program shall be designed to do the following:

(1) prevent any increase in stormwater runoff from any development in order to reduce flooding, siltation, and streambank erosion;

(2) prevent any increase in pollution caused by stormwater runoff from development which would otherwise degrade the quality of water in Lake George and its tributaries and render it unfit for human consumption, interfere with water based recreation or adversely affect aquatic life; and

(3) ensure that the total annual volume of surface water runoff which flows from any specific site during and following development shall not exceed that which prevailed prior to development.

(b) Each stormwater regulatory program shall be adopted as a local law or local ordinance.

(c) As set forth in section 646-4.6 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.

(d) Each program shall, at a minimum, do the following:

(1) require that all development, including subdivisions of land, control or manage the stormwater runoff flowing on and from the site of the development, and that all development, be subject to a review process which applies the minimum design and permit issuance standards specified herein;

(2) contain a statement of purpose and intent compatible with this Subpart and Environmental Conservation Law section 43-0112(b) and (c);

(3) contain a list of terms and definitions of those terms as they are used in the program;

(4) prohibit any person from commencing any project or activity subject to the provisions of the program without first obtaining a stormwater management permit from the municipality;

(5) require that applications for permits be submitted according to standard procedures utilized by the municipality and that applications contain the minimum information specified in section 646-4.13 of this Subpart;

(6) contain provisions governing public notification of permit application and action thereon which are no less restrictive than those utilized by the municipality for zoning and other land use permits;

(7) contain provisions governing modification, suspension or revocation of permits;

(8) Include a statement of the manner and frequency of notice to the commission of pending permit decisions;

(9) provide for the granting of variances from the requirements of the program in accordance with section 646-4.18 of this Subpart;

(10) require performance and maintenance guarantees and timely maintenance inspections for stormwater control structures associated with major projects;

(11) require adherence to the minimum revegetation requirements specified in this Subpart;

(12) contain provisions governing summary abatement of conditions or activities causing or likely to cause sedimentation or pollution of water bodies, which shall include a provision permitting the municipality to undertake emergency remediation measures;

(13) establish enforcement procedures and penalties for failure to comply with the requirements of the stormwater regulatory program or the terms of permits issued pursuant to the program;

(14) provide for the maintenance of appropriately detailed records of permits granted pursuant thereto for the purpose of calculating the cumulative use of the stormwater control infrastructure within the municipality and of assessing runoff resulting from new development;

(15) prohibit any person to cause or allow discharges of sediment carried by stormwater which arises from any activity undertaken on lands owned by that person into any water body within the park;

(16) provide for coordination of review with adjoining municipalities for projects located in more than one municipality and include measures to ensure that the effects of stormwater runoff in all affected municipalities are considered;

(17) ensure that any person constructing a house or undertaking any other land use or development on lands for which a stormwater management permit has previously been issued to a prior owner, or as part of the approval of a subdivision, shall comply with the terms of said permit. Any such construction, land use or development will not require an additional permit if it is in conformance with the original permit;

(18) provide that prior to the recording of any subdivision map or plat in the office of the county clerk, a certification of its approval pursuant to the stormwater regulatory program shall be affixed and signed by a duly authorized municipal official;

(19) include, if deemed desirable or necessary by the municipality for the protection of the water quality and resources of the park, provisions determining whether previously approved subdivisions must obtain stormwater management permits prior to the further sale of additional lots; and

(20) include, if deemed desirable or necessary by the municipality for the protection of water quality and the resources of the park, provisions determining whether projects which did not receive all local, Federal and State permits prior to December 2, 1988, but which have not yet been substantially constructed, must obtain stormwater management permits prior to construction.

Section 646-4.12 Project classification in stormwater regulatory programs for the purpose of review.

(a) *Minor projects.* The following development activities shall be considered to be minor projects:

(1) Any building, land clearing or development activity affecting less than 15,000 square feet.

(2) Creation of a two-lot, three-lot or four-lot subdivision which may result in the construction of no more than one single-family residential structure and related accessory structures per lot, and will require land clearing or alteration activities of less than 15,000 square feet per lot and less than 15,000 square feet total for any subdivision road.

(3) Any building, alteration or modification of a stormwater control measure, excluding maintenance, cleaning or repair of such stormwater control measure.

(b) *Major Projects.*

(1) Any project not expressly exempted from regulation or defined as a minor project shall be a major project.

(2) The following may be considered to be major projects:

on: (i) Any part of the activity listed in paragraph (a) (1), (2) or (3) of this section which occurs

(a) soils of high potential for overland or through-soil pollutant transport;

(b) an area with a slope of 15 percent or greater when measured in any direction over a distance of 100 feet from the center of the proposed building site; or

(c) an area with a soil percolation rate slower than 60 minutes per inch.

(ii) Any minor project may be treated as a major project if such treatment is desirable due to specific site limitations or constraints, anticipated environmental impacts, or the need or advisability of additional public notice and comment. When determining whether to treat a minor project as a major project, the criteria to be considered shall include, but shall not be limited to, whether the site lies within or substantially contiguous to a:

(a) a critical environmental area established pursuant to SEQR;

(b) a wetland;

(c) a stream corridor;

(d) an area of significant habitat for any wildlife or plant species; or

(e) an area of particular scenic, historic or natural significance. The project sponsor of a minor project that will be treated as a major project shall be given a written statement of the reasons for such a determination.

Section 646-4.13 Permit application procedures in stormwater regulatory programs.

Stormwater permit applications shall be processed in accordance with Subpart 645-5 of this Title.

(a) *General application requirements.* The following shall be required to be part of any application for a stormwater management permit:

(1) A complete application on such form as may be prescribed.

(2) The appropriate application fee.

(3) When a project requires a permit from any other agency, a list of all such permits which are required, a statement of the status of each such permit application, and a statement of the SEQR status of the action.

(4) Copies of applications for all required wastewater management permits, subdivision approvals, site plan review or special use permits and Adirondack Park Agency permits.

(5) The real property tax map section, block and lot number of each lot included in the proposed project.

(6) The names and legal mailing addresses of all landowners adjacent to the project site. For major projects, the names and legal mailing addresses of all landowners within 500 feet of the project site.

(7) A detailed plot plan which shows the site topography, the location and dimensions of all existing and proposed structures and impervious surfaces, water bodies, septic systems, wells, and stormwater control devices on the site and within 100 feet of the site.

(8) A general location map suitable to direct officials reviewing the application to the project site.

(b) *Optional preliminary review for major projects.* The following information may be required to be submitted for a preliminary or sketch plan review of applications for major projects:

(1) A stormwater concept plan (SCP). The SCP 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 SCP may be required 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.

(2) 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 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.

(c) *Additional requirements for major projects.* The following additional requirements are applicable to major projects.

(1) 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 if one was required.

(2) The SCP and SCR shall be prepared by an engineer or architect or exempt land surveyor licensed to practice under the laws of the State of New York, 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.

(d) *Contents of stormwater control report (SCR).* An SCR shall contain, at the minimum, the following information:

(1) A description of the project site and surrounding area within 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.

(2) 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.

(3) Hydrologic and hydraulic computations of stormwater volume and flow for existing and proposed conditions shall be performed. Such computations shall include:

(i) description of the design storm frequency, intensity and duration;

(ii) time of concentration;

(iii) soil curve numbers or runoff coefficients;

(iv) peak runoff rates and total runoff volumes for each watershed area or subcatchment area;

(v) infiltration rates;

(vi) culvert capacities;

(vii) flow velocities;

(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-, 50- and 100-year storms;

(ix) documentation of sources for all computation methods and field test results; and

(x) 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.

(4) A description of how the stormwater control measures for the project will provide the best available pollutant removal technology.

(5) A detailed description of and plans of, stormwater and erosion control measures including:

(i) proposed containment facilities and structures;

(ii) calculations of infiltration area required;

(iii) calculation of retention and/or detention/retention storage requirements and storage volume provided;

(iv) calculation or documentation of infiltration rate;

(v) calculation for release rate controls (orifice or pipe size);

(vi) description of pollution control measures such as filter strips, sand filters, infiltration;

(vii) provision for emergency overflow; and

(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.

(6) Drainage maps at a scale specified by the commission 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 showing the entire watershed area and indicating the project site.

(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 executing the above certification.

(8) 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 stormwater control measures 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 15th and April 15th.

(9) A maintenance schedule which includes:

(i) the construction costs related to stormwater control;

(ii) the proposed stormwater control maintenance program and annual costs of implementing such;

(iii) identification of the party or parties responsible for maintenance of the system over the life of the project;

(iv) a copy of any maintenance agreement; and

(v) identification of the party or parties responsible for correcting failures or inadequate function of stormwater control measures and responsible for assuming control of the measures in the event of failure to properly maintain the system.

(e) *Application Inspections.* Each application shall contain the written consent of the landowner that site inspections, tests, and evaluations as are deemed necessary to verify site data contained in the application may be conducted. Such data shall include, but are not limited to, soil type, topography, depth to seasonal high groundwater, depth to bedrock and distance to surface bodies of water. During the site inspection one or more deep test holes and percolation tests may be required.

Section 646-4.14 Design requirements and performance standards for stormwater regulation.

Each municipality's stormwater regulatory program shall include design requirements and performance standards which shall be not less protective than the following:

(a) *Minor projects.* The following requirements shall apply to minor projects:

(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.

(2) Stormwater control measures may include, but shall not be limited to, drywells of precast concrete, pits of crushed rock lined with geotextile fabric, and infiltration trenches. Such measures may also include natural and human made landscape features such as depressions, blind ditches, retention ponds, swales and others. Inlets to infiltration devices shall be protected from sediment at all times in order to maintain their capacity.

(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 traffic shall not be installed within 100 feet of any water well, wetland or water body.

(4) Infiltration devices and buildings shall be located to maintain maximum attainable horizontal distance separation from wells, wetlands and water bodies. Pumping stormwater shall not be permitted.

(5) The bottom of any infiltration device shall be a minimum of two feet above seasonal high ground water mark and two feet above bedrock.

(6) Temporary erosion controls shall be required to prevent siltation of waterbodies during construction.

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

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

(1) Methodologies for determination of runoff volume. Stormwater volumes and rates of flow shall be calculated using the following methods:

(i) for small watershed areas (up to 20 acres), any widely accepted method including the rational method may be used; and

(ii) for larger watershed areas any widely accepted method other than the rational method may be used.

(2) Design requirements for erosion controls

(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, N Y 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, New York and is available through the New York State Department of State, Office of Information Services, 41 State Street, Albany, New York. 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.

(ii) Staging of construction to facilitate erosion control shall be required. Only those areas where construction is actively occurring shall remain open and unvegetated. All areas that are not within an active construction area shall be mulched and stabilized or shall be mulched and revegetated. An *active*

construction area is defined as one that has seen substantial construction within the past seven (7) calendar days. Mulching or revegetation for erosion control shall be completed within 10 days following the last substantial construction activity.

(3) Design requirements for stormwater control measures.

(i) Stormwater control measures shall be designed so that there will be no increase in runoff volume from a 10-year frequency/24-four hour duration storm event following development over the predevelopment volume.

(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 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, storm to be equal to or less than predevelopment 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 to be realized following development. Where compliance with this requirement would prevent compliance with subparagraph (b) (3) (vi) 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.

(iv) Infiltration devices for major projects shall be located a minimum of 100 feet from Lake George and any downgradient drinking water supply, lake, river, protected stream, waterwell, pond, wetland; 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 shall be a 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.

(v) Infiltration devices shall be designed to extend a minimum of 10 percent of the infiltration surface area below the prevailing frost depth or four feet (whichever is greater) in order to provide infiltration during winter months.

(vi) The design of all infiltration devices shall depend on the infiltration capacity of the soils present at the project site. 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.

- (4) Additional requirements for major projects.
- (i) Stormwater control measures shall be used in the following order of preference:
- (a) infiltration devices;
- (b) artificial wetlands and acceptable natural treatment systems;

(c) flow
nuation by use
open
tated swales
depressions;

(d)
mwater
ntion.
mwater control
sures shall be
cted by giving
erence to the
management
tice for
tant removal
indicated in
chart below:

COMPARATIVE POLLUTANT REMOVAL OF URBAN BMP DESIGNS

BMP/design		SUSPENDED SEDIMENT	TOTAL PHOSPHORUS	TOTAL NITROGEN	OXYGEN DEMAND	TRACE METALS	BACTERIA	OVERALL REMOVAL CAPABILITY
EXTENDED DETENTION POND								
	DESIGN 1	●	○	○	○	○	⊗	MODERATE
	DESIGN 2	●	○	○	○	○	⊗	MODERATE
	DESIGN 3	●	○	○	○	○	⊗	HIGH
WET POND								
	DESIGN 4	●	○	○	○	○	⊗	MODERATE
	DESIGN 5	●	○	○	○	○	⊗	MODERATE
	DESIGN 6	●	○	○	○	○	⊗	HIGH
INFILTRATION TRENCH								
	DESIGN 7	●	○	○	○	○	○	MODERATE
	DESIGN 8	●	○	○	○	○	○	HIGH
	DESIGN 9	●	○	○	○	○	○	HIGH
INFILTRATION BASIN								
	DESIGN 7	●	○	○	○	○	○	MODERATE
	DESIGN 8	●	○	○	○	○	○	HIGH
	DESIGN 9	●	○	○	○	○	○	HIGH
POROUS PAVEMENT								
	DESIGN 7	○	○	○	○	○	○	MODERATE
	DESIGN 8	●	○	○	○	○	○	HIGH
	DESIGN 9	●	○	○	○	○	○	HIGH
WATER QUALITY INLET								
	DESIGN 10	○	⊗	⊗	⊗	⊗	⊗	LOW
FILTER STRIP								
	DESIGN 11	○	○	○	○	○	⊗	LOW
	DESIGN 12	●	○	○	○	○	⊗	MODERATE
GRASSED SWALE								
	DESIGN 13	○	○	○	○	○	⊗	LOW
	DESIGN 14	○	○	○	○	○	⊗	LOW

KEY:

- 0 TO 20% REMOVAL
- ◐ 20 TO 40% REMOVAL
- ◑ 40 TO 60% REMOVAL
- ◒ 60 TO 80% REMOVAL
- 80 TO 100% REMOVAL
- ⊗ INSUFFICIENT KNOWLEDGE

- 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/imper. acre.
- Design 8: Facility exfiltrates one inch runoff volume per imper. 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 slop swales, with no check dams.
- Design 14: Low gradient swales with check dams.

(Source MWCG, 1987)

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(ii) All stormwater control facilities shall be designed to completely drain or return to design levels in accordance with the following: infiltration basin 5 days; infiltration trench 15 days; dry well 15 days; porous pavement 2 days; vegetated depression 1 day.

(iii) Pretreatment devices such as sediment traps, detention/stilling basins, filter strips, grassy swales, or oil/water separators shall be provided for runoff from paved areas or other areas subject to human-induced pollution including grease and oils, fertilizers, chemicals, road salt, sediments, organic materials and settleable solids, which shall be sufficient to remove pollutants from the runoff.

(iv) Stormwater control measures shall, at a minimum, incorporate the best available pollutant removal technology, which shall mean that which constitutes appropriate and cost effective means for removing pollutants from runoff so that the resulting treated stormwater will not degrade the water quality of any water body.

(v) Stormwater control measures shall be designed to preserve and maintain the base flow in all streams passing through, adjoining or receiving runoff from the site.

(vi) For development or redevelopment occurring on a site where development has previously occurred, the applicant shall be required to prepare concept plans and to develop construction cost estimates for stormwater control measures to control existing stormwater discharges from the site in accordance with the standards of this Subpart to the maximum extent practicable. At a minimum the control measures shall include those reasonable and necessary to 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. The phased implementation of such controls for previously developed areas may be authorized.

(c) *General requirements for major and minor projects.* The following requirements shall apply to major and minor projects:

(1) Stormwater control measures shall include such other measures as are deemed necessary to prevent any increase in pollution caused by stormwater runoff from development which would otherwise degrade the quality of water in Lake George and its tributaries, render it unfit for human consumption, interfere with water-based recreation or adversely affect aquatic life.

(2) Emergency overflow provisions shall be made as necessary to prevent erosion, flooding, and damage to structures, roads and stormwater control.

(3) Stormwater control measures and development shall be designed so as to minimize adverse impacts to water bodies, minimize disturbance of water bodies, minimize land clearing, minimize the creation of impervious surfaces, and to maximize preservation of natural vegetation and existing contours.

(4) Development which involves the creation of areas subject to intensive landscape maintenance such as: golf courses, public parks and botanical gardens, shall require that a pest control and fertilizer management plan shall be prepared and included with the permit application.

Section 646-4.15 Vegetative cutting and clearing restrictions in stormwater regulatory programs.

(a) No vegetation shall be felled into any lake, pond, river, stream or intermittent stream and if inadvertently felled into one of these water bodies, shall be removed immediately from the water body. The removal of dead, or dying, diseased trees or trees presenting a health or safety hazard shall not be exempt from this requirement.

(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 materials such as plastic or canvas coverings, and impervious structures.

(c) Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be revegetated within 10 days from the substantial completion of such clearing and construction. Acceptable revegetation shall consist of the following:

(1) 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) 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.

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

(d) Any area of revegetation must exhibit survival of a minimum of 75 percent of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum 75 percent survival for one year is achieved.

(e) Ground clearing or grading activities which occur during the period October 15th to April 15th, during which germination of vegetation typically will not take place, shall be required to incorporate extra measures during revegetation in order to reduce erosion and maintain water quality. These extra measures include, but are not limited to, the use of screen mesh, netting, extra mulch, and siltation fences.

Section 646-4.16 Maintenance of stormwater control facilities under stormwater regulatory programs.

Stormwater control measures shall include, at a minimum, provisions for the future maintenance of the site, consistent with the following:

(a) *Applicability.* Prior to issuance of a certificate of completion for any major project, or any minor project where it is deemed necessary, a stormwater management maintenance agreement may be required.

(b) *Purpose.* The stormwater management maintenance agreement shall ensure that stormwater control facilities are maintained in working condition throughout the life of the project.

(c) *Requirements.* The stormwater management maintenance agreement shall satisfy the following requirements:

(1) Be in writing and be executed by each owner of the project and the municipality, and shall bind the owner(s), their successors and assigns to future maintenance of stormwater control facilities serving the project.

(2) Be binding on all owners of lands within the project and all parties to the agreement, their successors and assigns for the life of the project.

(3) Include provisions to raise, maintain and expend funds for necessary maintenance and repair functions over the life of the project.

(4) Provide that if maintenance and repair activities are not performed in compliance with its terms, the municipality shall be entitled to perform or contract for the necessary services and charge the then current project owners for the cost thereof, including any related legal fees and disbursements.

(5) Provide for timely and routine inspections to be performed on all stormwater control facilities at intervals of no less than five years, and that written reports of these inspections shall be filed with the municipality and with the commission.

(d) *Notice.* 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.* 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 rebuilding, maintaining or repairing the stormwater control facilities during the first two years following the approved completion of construction.

Section 646-4.17 Criteria for issuance of permits in stormwater regulatory programs.

(a) An application may be approved, denied, or approved with modifications or conditions, including modifications to non-stormwater aspects of the development necessary to achieve the required level of stormwater management.

(b) No stormwater management permit shall be issued unless the following findings are made and are supported by substantial evidence. The facts supporting such findings shall be set forth in the decision document or permit. The issued permits shall set forth all required conditions and incorporate all necessary documents and maps.

(1) That the project meets the design requirements and performance standards set forth in Environmental Conservation Law, section 43-0112, this Subpart and the municipality's stormwater regulatory program, if applicable.

(2) That the project will not have an undue adverse impact on the health, safety and welfare of the public or on the resources of the Lake George park and will not lead to a diminution of water quality, an increase in erosion, or an increase in stormwater runoff from the site either during or following construction.

(3) That the stormwater control measures proposed for the proposed project will function as designed and that such measures represent the best possible methods and procedures for controlling stormwater runoff that is feasible and practicable at the particular project site.

(4) That adequate and sufficient measures have been taken to ensure accountability and responsibility over the life of the project should the stormwater control measures not function as intended, fail, or suffer from inadequate maintenance to ensure its proper functioning.

(5) That the proposed project will not contribute to flooding, siltation or streambank erosion and will not result in any increase, directly or indirectly, in pollution to Lake George or its tributaries from stormwater runoff.

Section 646-4.18 Variances from stormwater regulatory programs.

(a) If during the review of an application it is determined that the application of any design or dimensional requirement contained in this Subpart will result in the denial of the project, the applicant shall be afforded an opportunity to modify the project plans or in the alternative to make application for a variance. Any applicant aggrieved by a final permit decision because of the application of any design or dimensional standard contained in this Subpart may make an application for a variance.

(b) If the applicant determines that any aspect of the project cannot meet any design or dimensional

requirement contained in this Subpart, the applicant may make direct application for a variance.

(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 of this Subpart.

(d) A permit application involving a variance shall be processed in accordance with Subpart 645-5 of this Title except that no variance shall be granted unless the commission finds that the applicant has demonstrated entitlement to the variance pursuant to the criteria in section 267-b 3. (b) of New York State Town Law. The decision on a variance under municipal jurisdiction shall be in accordance with sections 267-a and 267-b of the New York Town Law in the case of a town or sections 7-712-a and 7-712-b of the New York State Village Law in the case of a village, and any amendments thereto provided, however, that the grant of any variance to the shoreline or cutting restrictions of section 806 of the Adirondack Park Agency Act (Executive Law, article 27) must be in compliance with that section and section 807 of the act, if applicable.

(e) In the granting of variances, the commission shall grant the minimum variance necessary to address the specified hardship of the applicant.

(f) In granting any variance, the commission may impose specific conditions upon the proposed use or activity necessary to assure that the use or activity will have no adverse impacts upon the public health, safety or welfare, the environment or the resources of the park. Such conditions may be imposed without regard to whether the commission could otherwise impose such conditions pursuant to the substantive authority of the commission under Environmental Conservation Law, articles 43 and 71, title 33, or the rules or regulations promulgated by the commission thereunder.

(g) No variance shall be granted by a municipality until first providing notice to the commission a minimum of 15 days in advance. The commission shall be deemed a party to the proceeding for all purposes with the right to initiate or intervene in any action or proceeding in which the grant or denial of a variance is an issue or in any proceeding involving an interpretation of the municipality's plan or program.

SECTION 1 - SHORT TITLE. This shall be known as the Model Stormwater Management Ordinance.

SECTION 2 - FINDINGS OF FACT. The municipality finds that uncontrolled drainage and runoff associated with land development has a significant impact upon the health, safety and welfare of the community for the following reasons:

- A. Stormwater can carry pollutants into receiving waterbodies and degrade water quality.
- B. The increase in nutrients in stormwater runoff accelerates eutrophication of receiving waters.
- C. Improper design and construction of drainage facilities can increase the velocity of runoff thereby increasing stream bank erosion and sedimentation.
- D. Construction requiring land clearing and the alteration of natural topography tends to increase erosion.
- E. Siltation of waterbodies resulting from increased erosion decreases the capacity of the waterbodies to hold and transport water, interferes with navigation, and harms flora and fauna.
- F. Impervious surfaces increase the volume and rate of stormwater runoff and allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow.
- G. Improperly managed stormwater runoff can increase the incidence of flooding and the level of floods which occur, endangering property and human life.
- H. Substantial economic losses can result from these adverse impacts on the waters of the municipality.
- I. Many problems can be avoided if sound stormwater runoff management practices are in effect.

SECTION 3 - EFFECTIVE DATE. The effective date of this Ordinance shall be _____.

SECTION 4 - STATUTORY AUTHORITY. Article 9 of the Town Law or Article 7 of the Village Law and Environmental Conservation Law Section 43-0112.

SECTION 5 - PURPOSE AND OBJECTIVES. The purpose of this Ordinance is to protect and safeguard the general health, safety, and welfare of the public residing in or visiting the municipality by preserving and protecting the quality of the ground and surface waters. This Ordinance has the following specific objectives:

prevent any increase in stormwater runoff from any development in order to reduce flooding, siltation, and streambank erosion,

prevent any increase in pollution caused by stormwater runoff from development which would otherwise degrade the quality of water in Lake George and its tributaries and render it unfit for human consumption, interfere with water based recreation or adversely affect aquatic life, and

prevent any increase in the total annual volume of surface water runoff which flows from any specific site during and following development over that which prevailed prior to development.

SECTION 6 - DEFINITIONS. The terms used in this Ordinance or in documents prepared or reviewed under this Ordinance shall have the meanings set forth in Schedule A of this Ordinance.

SECTION 7 - JURISDICTION. General Applicability: This Ordinance shall apply to all building, construction, land clearing and subdivision of land within the municipality and within the Lake George Park both public and private except development which is expressly exempt pursuant to Section 8 H. of this Ordinance. Permits and approvals required by this Ordinance may be incorporated into the site plan, land use or zoning approvals issued

under separate provisions of the municipality's land use program.

SECTION 8 - PROHIBITIONS.

A. Except for the activities exempted in paragraph H. of this section, no person shall build, construct, erect, expand, or enlarge any building or structure or place or construct any impervious surface such as pavement, blacktop, macadam, packed earth and crushed stone without first receiving a stormwater management permit from the municipality unless otherwise exempted herein.

B. No person shall create a subdivision of land subject to approval by the municipality until first receiving a stormwater management permit from the municipality for all buildings, structures and impervious surfaces proposed to be created except that the terms of this Ordinance shall not apply to persons engaged in activities for which required municipal permits and approvals were issued prior to the effective date of this Ordinance.

C. No owner of real property shall maintain a condition, which due to a human disturbance of land, vegetative cover or soil, results in the erosion of soil into any water body. The municipality 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.

D. Except for the activities exempted in paragraph H. of this section herein, no person shall operate a land clearing machine such as a back hoe, grader or plow or similar device so as to clear or grade land or otherwise remove vegetative cover or soil or to overlay natural vegetative cover with soil or other materials when such activities involves an area of land greater than 5000 square feet without first having received a permit under this Ordinance.

E. No person shall fail to comply with any provision or requirement of any permit issued pursuant to this Ordinance.

F. No person shall 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 Municipality 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 Municipality shall afford such property owner a reasonable time period in which to correct any such condition, before a violation is deemed to exist.

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

H. The following activities are exempt from the requirements of this Ordinance:

(1) Emergency repairs to any stormwater control measure.

(2) Development involving land disturbance and land clearing of less than 5000 square feet which does not result in the creation of new impervious surfaces of more than 1000 square feet.

(3) Any logging and agricultural activity which is consistent with a soil conservation plan approved by the appropriate County Soil and Water Conservation District or a timber management plan prepared or approved by the Department, as applicable.

(4) 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.

(5) 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.

(6) Construction of an approved wastewater treatment system and construction of a wharf, dock, boathouse, and mooring.

SECTION 9 - PROJECT CLASSIFICATION FOR STORMWATER MANAGEMENT.

A. Minor Projects. The following development activities shall be considered to be minor projects.

(1) Any building, land clearing or development activity affecting less than 15,000 square feet.

(2) Creation of a two-lot, three-lot or four-lot subdivision which may result in the construction of no more than one single-family residential structure and related accessory structures per lot, and will require land clearing or alteration activities of less than 15,000 square feet per lot and less than 15,000 square feet total for any subdivision road.

(3) Any building, alteration, or modification of a stormwater control measure, excluding maintenance, cleaning or repair of such stormwater control measure.

B. Major Projects. Any project not expressly exempted from regulation or defined as a minor project shall be a major project.

(1) The following may be considered to be major projects:

(a) Any part of the activity listed in Section 9. A. (1),(2) or (3) which occurs on (i) soils of high potential for overland or through-soil pollutant transport; (ii) an area with a slope of fifteen percent (15%) or greater when measured in any direction over a distance of one hundred (100) feet from the center of the proposed building site; (iii) or an area with a soil percolation rate slower than sixty (60) minutes per inch.

(b) Any minor project may be treated as a major project if such treatment is desirable due to specific site limitations or constraints, anticipated environmental impacts, or the need or advisability of additional public notice and comment. When determining whether to treat a minor project as a major project, the criteria to be considered shall include, but shall not be limited to, whether the site lies within or substantially contiguous to any of the following: (i) a Critical Environmental Area established pursuant to SEQR; (ii) a wetland; (iii) a stream corridor; (iv) an area of significant habitat for any wildlife or plant species; (v) or an area of particular scenic, historic or natural significance.

The project sponsor of a minor project that will be treated as a major project shall be given a written statement of the reasons for such a determination.

SECTION 10 - DESIGN REQUIREMENTS AND PERFORMANCE STANDARDS

A. Minor Projects. The following requirements shall apply to minor projects:

(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 as specified in Schedule C. Stormwater may be calculated in accordance with the methodology for determining stormwater volume and flow rates for major projects found in Schedule B, Part III or, in the alternative, at a flat rate of 1.5 gallons of stormwater for every square foot 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 run off the parcel shall be directed to an infiltration device. Location of the infiltration devices shall be determined based upon soil test results.

(2) Stormwater control measures may include, but shall not be limited to, drywells of precast concrete, pits of crushed rock lined with geotextile fabric, and infiltration trenches. Such measures may also include natural and human made landscape features such as depressions, blind ditches, retention ponds, swales and others. Inlets to infiltration devices shall be protected from sediment at all times in order to maintain their capacity.

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

(4) Infiltration devices and buildings shall be designed to maintain maximum attainable horizontal distance separation from wells, water bodies and wetlands. Pumping stormwater shall not be permitted.

(5) The bottom of any infiltration device shall be a minimum of two feet above seasonal high ground water mark and two feet above bedrock.

(6) Temporary erosion controls shall be required to prevent siltation of water bodies during construction.

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

B. Major Projects.

(1) Stormwater volumes and rates of flow shall be calculated using the methods specified in Schedule B Part III.

(2) Design Requirements for Stormwater Control Measures.

(a) Stormwater control measures shall be designed so that there will be no increase in runoff volume from a ten-year frequency/twenty-four hour duration storm event following development over the pre-development volume.

(b) 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 frequency storm to be equal to or less than predevelopment flow rates. For development greater than five (5) acres, consistent with New York State Guidelines, stormwater control measures shall function to attenuate peak runoff flow rates for a 100-year storm to be equal to or less than predevelopment 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, New York shall be used in the design of the stormwater control measures. These curves are annexed to this Ordinance as Schedule D entitled Rainfall Intensity Curves. Additionally, for development greater than five (5) acres, coverage is required under a State Pollutant Discharge Elimination System (SPDES) General Stormwater Permit administered by the Department of Environmental Conservation.

(c) 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 to be realized following development. Where compliance with this requirement would prevent compliance with subparagraph (e) of this Section, 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.

(d) Infiltration devices for major projects shall be located a minimum of one hundred (100) feet from Lake George and any downgradient drinking water supply, lake, river, protected stream, waterwell, pond, wetland; a separation of more than one hundred (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 shall be a minimum of fifty (50) feet from upgradient water supplies. Designs shall mitigate 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 one hundred (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.

(e) Infiltration devices shall be designed to extend a minimum of ten percent of the infiltration surface area below the prevailing frost depth or four feet (whichever is greater) in order to provide infiltration during winter months.

(f) Infiltration devices shall be designed based on the infiltration capacity of the soils present at the project site. Soil evaluation methods shall be in accordance with Schedule B, Part IV, Soil Evaluation Methods.

(3) Additional Requirements for Major Projects.

(a) Stormwater control measures shall be used in the following order of preference: (i) infiltration devices; (ii) artificial wetlands and acceptable natural treatment systems; (iii) flow attenuation by use of open vegetated swales and depressions; (iv) stormwater detention. Stormwater control measures shall be selected by giving preference to the best management practice for pollutant removal and flow attenuation as indicated in Schedule C.

(b) All stormwater control measures shall be designed to completely drain to return to design levels in accordance with the following: infiltration basin 5 days; infiltration trench 15 days; dry well 15 days; porous pavement 2 days; vegetation depression 1 day.

(c) Pretreatment devices such as sediment traps, detention/stilling basins, filter strips, grassy swales, or oil/water separators shall be provided for runoff from paved areas or other areas subject to human-induced pollution including grease and oils, fertilizers, chemicals, road salt, sediments, organic materials and settleable solids, which shall be sufficient to remove pollutants from the runoff.

(d) Stormwater control measures shall, at a minimum, incorporate the best available pollutant removal technology, which shall mean that which constitutes appropriate and cost effective means for removing pollutants from runoff so that the resulting treated stormwater will not degrade the water quality of any water body.

(e) Stormwater control measures shall be designed to preserve and maintain the base flow in all streams passing through, adjoining or receiving runoff from the site.

(f) For development or redevelopment occurring on a site where development has previously occurred, the applicant shall be required to prepare concept plans and to develop construction estimates for stormwater control measures to control existing stormwater discharges from the site in accordance with the standards of this Ordinance to the maximum extent practicable. At a minimum the control measures shall include those reasonable and necessary to infiltrate the runoff from the first one-half inch of precipitation from any storm event for all areas within the site which have been previously developed. The phased implementation of such stormwater control measures for previously developed areas may be authorized.

C. General Requirements For Major and Minor Projects. The following requirements shall apply to major and minor projects:

(1) Stormwater control measures shall include such other measures as are deemed necessary to prevent any increase in pollution caused by stormwater runoff from development which would otherwise degrade the quality of water in Lake George and its tributaries, render it unfit for human consumption, interfere with water-based recreation or adversely affect aquatic life.

(2) Emergency overflow provisions shall be made as necessary to prevent erosion, flooding, and damage to structures, roads and stormwater control measures.

(3) Stormwater control measures shall be designed to minimize adverse impacts to water bodies, minimize disturbance of water bodies, minimize land clearing, minimize the creation of impervious surfaces, and to maximize preservation of natural vegetation and existing contours.

(4) Development which involves the creation of areas subject to intensive landscape maintenance such as: golf courses, public parks and botanical gardens, shall require that a pest control and fertilizer management plan shall be prepared and included with the permit application.

SECTION 11 EROSION CONTROL MEASURES.

A. Temporary erosion control shall be provided for all disturbed areas in accordance with the "New York Guidelines for Urban 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.

B. Staging of construction to facilitate erosion control shall be required. Only those areas where construction is actively occurring shall remain open and unvegetated. All areas that are not within an active construction area shall be mulched and stabilized or shall be mulched and revegetated. An active construction area is defined as one that has seen substantial construction within the past seven (7) calendar days. Mulching or revegetation for erosion control shall be completed within ten (10) days following the last substantial construction activity.

C. Compliance with the following restrictions shall be required.

(1) No vegetation shall be felled into any lake, pond, river, stream or intermittent stream and if inadvertently felled into one of these water bodies, shall be removed immediately from the water body. The removal of dead, or dying, diseased trees or trees presenting a health or safety hazard shall not be exempt from this requirement.

(2) Within five hundred 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 twenty-four (24) hours without a protective covering securely placed over the entire area and/or erosion control measures properly installed to prevent sediments from entering the waterbody. Acceptable protective coverings include natural mulch of a depth of two inches, rock rip-rap, nondegradable materials such as plastic or canvas coverings, and impervious structures.

(3) Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be revegetated within ten (10) days from the substantial completion of such clearing and construction. Acceptable revegetation shall consist of the following:

(a) Reseeding with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage, but not less than fifty percent (50%) of the total disturbed area, to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.

(b) 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.

(c) Any other recognized method which has been reviewed and approved by the municipality as satisfying the intent of this requirement.

(4) Any area of revegetation must exhibit survival of a minimum of seventy-five percent (75%) of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy-five percent (75%) survival for one (1) year is achieved.

(5) Ground clearing or grading activities which occur during the period October 15 to April 15, during which germination of vegetation typically will not take place, shall be required to incorporate extra measures during revegetation in order to reduce erosion and maintain water quality. These extra measures include, but are not limited to, the use of screen mesh, netting, extra mulch, and siltation fences.

SECTION 12 - MAINTENANCE OF STORMWATER CONTROL FACILITIES REQUIRED.

A stormwater permit shall include, at a minimum, provisions for the future maintenance of the site, consistent with the following:

A. Applicability. Prior to issuance of a certificate of completion for any major project, or any minor project where it is deemed necessary, the project sponsor shall provide for arrangements for the future maintenance of stormwater control measures subject to the approval of the municipality. This may include, but not be limited to, the following: approval of the by-laws and/or certificate of incorporation of a transportation corporation or Home Owners Association; posting of a performance bond; placing of funds on deposit; and a stormwater management maintenance agreement between the owner(s) of the site and the municipality consistent with the terms and conditions of Schedule E entitled Sample Stormwater Control Facility Maintenance Agreement.

B. Purpose. Stormwater management maintenance arrangements shall be those necessary to ensure that stormwater control measures are maintained in working condition throughout the life of the project.

C. Notice. 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.

D. Initial Maintenance Security. 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 rebuilding, maintaining or repairing the stormwater control facilities during the first two years following the approved completion of construction.

SECTION 13 - PERMIT APPLICATION REVIEW PROCEDURES.

A. Plan Review. It is the responsibility of the applicant to provide a detailed plot plan showing the location and dimensions of all existing and proposed structures and impervious surfaces, water courses, water bodies, wetlands, wells, septic systems, and stormwater control measures on the site and within 100 feet of the site, and a location map of the site. Applications shall be submitted on forms prescribed by the municipality and shall require an application fee, tax map number of affected parcels, a completed Part 1 Environmental Assessment Form, if required, and names and addresses of adjacent parcel owners as required.

B. Minor Projects. The zoning/land use office of the municipality shall have primary responsibility for the review, approval and issuance of stormwater management permits for minor projects. The zoning/land use office may request technical assistance from the Commission.

(1) Prior to permit decisions a test pit may need to be witnessed.

(2) The zoning/land use officer shall determine whether notice to adjacent owners is warranted by public interest or other considerations.

(3) Prior to the issuance of a permit for any project, the zoning/land use officer shall determine that the project as proposed is in accordance with the design standards of this Ordinance.

C. Major Projects. Major projects shall require site plan review in accordance with Municipality's Land Use Ordinances.

(1) Preparation of a Stormwater Control Report in accordance with Schedule B Part II is required. Preparation of a Stormwater Concept Plan in accordance with Schedule B, Part I may be required if deemed necessary by the municipality. The SCP and SCR shall be prepared by an engineer or architect or exempt land surveyor licensed to practice under the laws of the State of New York, 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 (5) years.

(2) Approval of the Stormwater Concept Plan and stormwater control report may require a public hearing if the Municipal Zoning and Subdivision Ordinances require such a hearing.

(3) The Final Subdivision Plat shall contain stormwater control measures for all commonly owned roads, buildings, parking areas and impervious areas. Approved stormwater design plans shall be filed together with the Final Subdivision Plat with the County Clerk.

(4) Prior to the approval of the Final Subdivision Plat or commonly owned facilities, it shall be first determined that there is sufficient information to support a finding that the stormwater measures subject to future approval can be designed and constructed in accordance with this Ordinance.

SECTION 14 - CRITERIA FOR ISSUANCE OF STORMWATER CONTROL PERMITS.

A. An application for a stormwater control permit may be approved, denied, or approved with modifications or conditions, including modifications to non-stormwater aspects of the development necessary to achieve the required level of stormwater management.

B. No stormwater management permit shall be issued unless the municipality makes the following findings which shall be supported by substantial evidence. The facts supporting such findings shall be set forth in the decision document or permit. The issued permits shall set forth all required conditions and incorporate all necessary documents and maps. The findings are as follows:

(1) That the project meets the design requirements and performance standards set forth in this Ordinance.

(2) That the project will not have an undue adverse impact on the health, safety and welfare of the public or on the resources of the Lake George Park and will not lead to a diminution of water quality, an increase in erosion, or an increase in stormwater runoff from the site either during or following construction.

(3) That the stormwater control measures proposed for the proposed project will function as designed and that such measures represent the best possible methods and procedures for controlling stormwater runoff that is feasible and practicable at the particular project site.

(4) That adequate and sufficient measures have been taken to ensure accountability and responsibility over the life of the project should the stormwater control measures not function as intended, fail, or suffer from inadequate maintenance to ensure its proper functioning. The municipality may require formation of a homeowner's association registered pursuant to Section 352-E of the New York State General Business Law and execution of a maintenance agreement consistent with Schedule E.

(5) That the proposed project will not contribute to flooding, siltation or streambank erosion and will not result in any increase, directly or indirectly, in pollution to Lake George or its tributaries from stormwater runoff.

SECTION 15 - VARIANCES.

A. If during the review of an application it is determined that the application of any design or dimensional requirement contained in this Ordinance will result in the denial of the project, the applicant shall be afforded an opportunity to modify the project plans or in the alternative to make application for a variance. Upon denial of any permit application for a project for failure to conform with specific provisions of this Ordinance, the applicant may make an application for a variance.

B. If the applicant determines that any aspect of the project cannot meet any design or dimensional requirement contained in this Ordinance, the applicant may make direct application for a variance to the Zoning Board of Appeals.

C. Variance applications shall be on such forms as may be prescribed and shall conform with and contain the permit application requirements set forth in this Ordinance.

D. The granting of any variance shall be done in accordance with Section 267-a and 267-b of the New York State Town Law or Section 7-712-a and 7-712-b of the New York State Village Law and any amendments thereto as appropriate provided, however, that the grant of any variance to the shoreline or cutting restrictions of §806 of the Adirondack Park Agency Act (Executive Law, Article 27) must be in compliance with that Section and §807 of the Act, if applicable.

E. No variance shall be granted by a municipality until first providing notice to the Commission a minimum of fifteen (15) days in advance. The Commission shall be deemed a party to the proceeding for all purposes with the right to initiate or intervene in any action or proceeding in which the grant or denial of a variance is an issue or in any proceeding involving an interpretation of the municipality's Plan or Program.

SECTION 16 - ENFORCEMENT AND PENALTIES. Violations. Any development activity that is commenced or is conducted contrary to this Ordinance, may be restrained by injunction or otherwise abated in a manner provided by law.

A. Civil and Criminal Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Ordinance shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000) or by imprisonment for a period not to exceed sixty (60) days, or both such fine and imprisonment. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues.

B. 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 municipality may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

C. Notice of Violation. When the municipality determines that an activity is not being carried out in accordance with the requirements of this Ordinance, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain

(1) the name and address of the owner or applicant;

(2) the street address when available or a description of the building, structure or land upon which the violation is occurring;

(3) a statement specifying the nature of the violation;

(4) a description of the remedial measures necessary to bring the development activity into compliance with this Ordinance and a time schedule for the completion of such remedial action;

(5) a statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

(6) a statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

The notice of violation shall be served upon the person(s) to whom it is directed either personally, in a manner provided for personal services of notices by the court of local jurisdiction, or by mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested to such person at his or her last-known address.

A notice of violation issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the municipality.

SECTION 17 - SEVERABILITY. Each separate provision of this Ordinance is deemed independent of all other provisions herein so that if any provision or provisions of this Ordinance be declared invalid, all other provisions shall remain valid and enforceable.

SCHEDULE A

DEFINITIONS

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

- (1) 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.
- (2) Base flow means the stream discharge from groundwater runoff.
- (3) Blind drain means a drain consisting of an excavated trench refilled with pervious 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.
- (4) 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, sheds, porches, eaves, covered breezeways, entryways and other similar attached appurtenances.
- (5) Catch basin means an inlet structure for the collection of stormwater from impervious surfaces designed with a sump to trap sediment.
- (6) Commission means the Lake George Park Commission.
- (7) Department means the Department of Environmental Conservation of the State of New York.
- (8) 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.
- (9) 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.
- (10) Develop land means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial or institutional construction or alteration.
- (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.
- (12) 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.
- (13) 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.
- (14) Drainage area means all of the area of land contributing runoff flow to a single point.

(15) 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.

(16) 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.

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

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

(19) 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.

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

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

(22) 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.

(23) 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.

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

(25) Municipality means the Town of (Village of)

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

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

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

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

(30) 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 life.

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

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

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

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

(35) Project life means the anticipated or actual time a project will be used, utilized or remain in functional existence.

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

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

(38) Redevelopment means any activity which alters a previously developed site.

(39) Retention means the practice of holding or directing stormwater except that portion evaporated or bypassed in an emergency, in or to a given area so that all the stormwater will be infiltrated into the subsoil.

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

(41) 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.

(42) 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.

(43) 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 sections 11-0535 and 9-1503 and the Department's regulations thereunder, or by any individual species or any group or natural community of nonlisted plants and animals of significant economic, recreational, aesthetic, ecological or scientific importance.

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

(45) Site - (See Development Area)

(46) 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.

(47) 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.

(48) 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.

(49) 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.

(50) 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.

(51) Stormwater management means: (1) 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 (2) for qualitative control, a system of vegetative, structural and other measures that reduce or eliminate pollutants that might otherwise be carried by surface runoff.

(52) 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.

(53) Stormwater Management Plan or Plan means a local stormwater management plan adopted by a municipality pursuant to this Subpart and Environmental Conservation Law section 43-0112.

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

(55) Stormwater Regulatory Program or Program means a local stormwater regulatory control program adopted by a municipality pursuant to 6NYCRR 646-4 and Environmental Conservation Law section 43-0112.

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

(57) Stream shall include any permanent or intermittent water course.

(58) 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.

(59) Subcatchment means an identifiable drainage area contained within a larger watershed or drainage area.

(60) 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 any 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.

(61) 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.

(62) 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.

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

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

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

SCHEDULE B

ENGINEERING SPECIFICATIONS FOR DESIGN PROFESSIONALS

PART I CONTENT OF STORMWATER CONCEPT PLAN.

(1) 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.

(2) 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.

PART II CONTENT OF THE STORMWATER 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:

(1) 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.

(2) 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.

(3) Hydrologic and hydraulic computations of stormwater volume and flow for existing and proposed conditions shall be performed. Such computations shall include (i) description of the design storm frequency, intensity and duration, (ii) time of concentration, (iii) soil curve numbers or runoff coefficients, (iv) peak runoff rates and total runoff volumes for each watershed area or subcatchment area, (v) infiltration rates, (vi) culvert capacities, (vi) flow velocities, (viii) data on the increase and volume of runoff for the 10-year storm and on the change in the rate of runoff for the 2, 10, 50 and 100 year storms, (ix) documentation of sources for all computation methods and field test results, and (x) 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.

(4) A description of how the stormwater control measures for the project will provide the best available pollutant removal technology.

(5) A detailed description of and plans of, stormwater and erosion control measures including (i) proposed containment facilities and structures, (ii) calculations of infiltration area required, (iii) calculation of retention and/or detention/retention storage requirements and storage volume provided, (iv) calculation or documentation of infiltration rate, (v) calculation for release rate controls (orifice or pipe size), (vi) description of pollution control measures such as filter strips, sand filters, infiltration, (vii) provision for emergency overflow, and (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.

(6) 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.

(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 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.

(8) 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.

(9) A maintenance schedule which includes (i) the construction costs related to stormwater control, (ii) the proposed stormwater control maintenance program and annual costs of implementing such, (iii) identification of the party or parties responsible for maintenance of the system over the life of the project, (iv) a copy of any maintenance agreement, (v) 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.

(10) Application Inspections. 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 it to verify site data contained in the application. Such data shall include, but are not limited to, soil type, topography, depth to seasonal high groundwater, depth to bedrock and distance to surface bodies of water. During the site inspection one or more deep test holes and percolation tests may be required by the municipality to be performed by the applicant.

PART III METHODOLOGIES FOR DETERMINING RUNOFF VOLUMES

Methodologies for determining runoff volume. Stormwater volumes and rates of flow shall be calculated using the following methods: (i) for small watershed areas (up to 20 acres), the Rational Method may be used, and (ii) 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 is described in "Urban Hydrology for Small Watersheds-Technical Release 55") or (iii) any other equivalent and widely accepted method may be used.

PART 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.

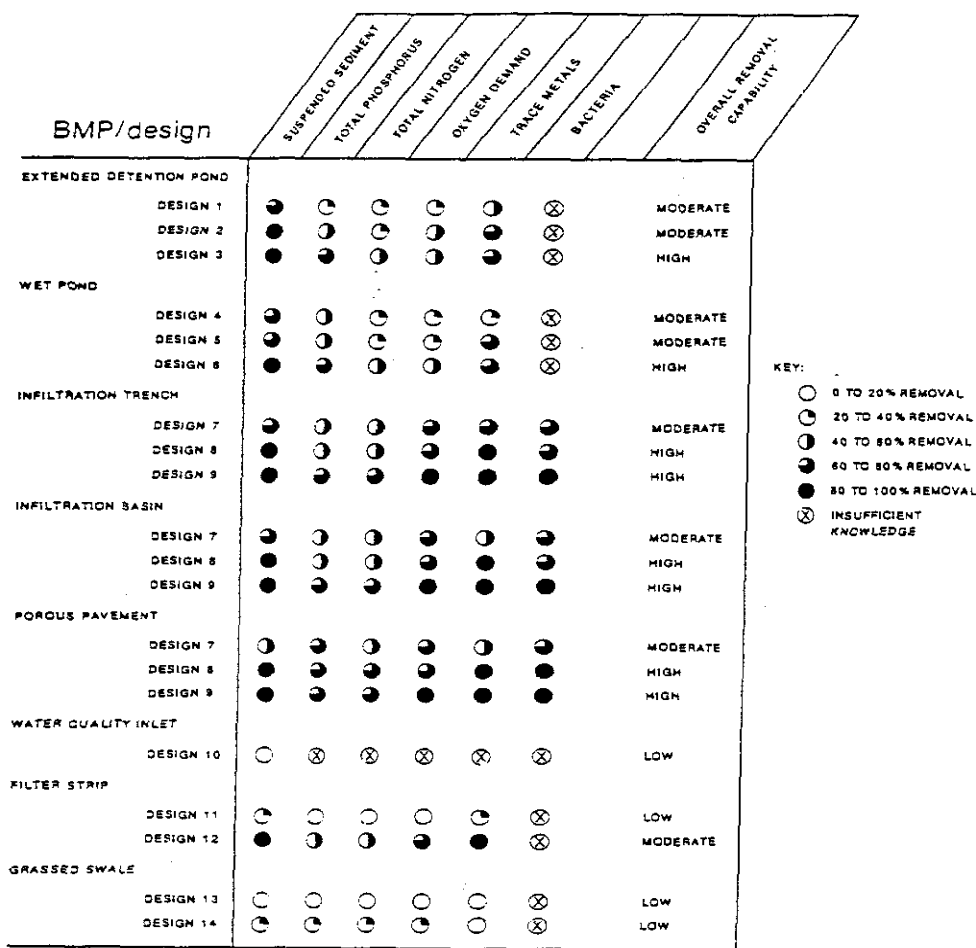
SCHEDULE C

COMPARATIVE POLLUTANT REMOVAL OF URBAN BMP DESIGNS

REDUCING THE IMPACTS OF STORMWATER RUNOFF FROM NEW DEVELOPMENT

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.
APRIL 1992. FIGURE 15

COMPARATIVE POLLUTANT REMOVAL OF URBAN BMP DESIGNS



KEY:

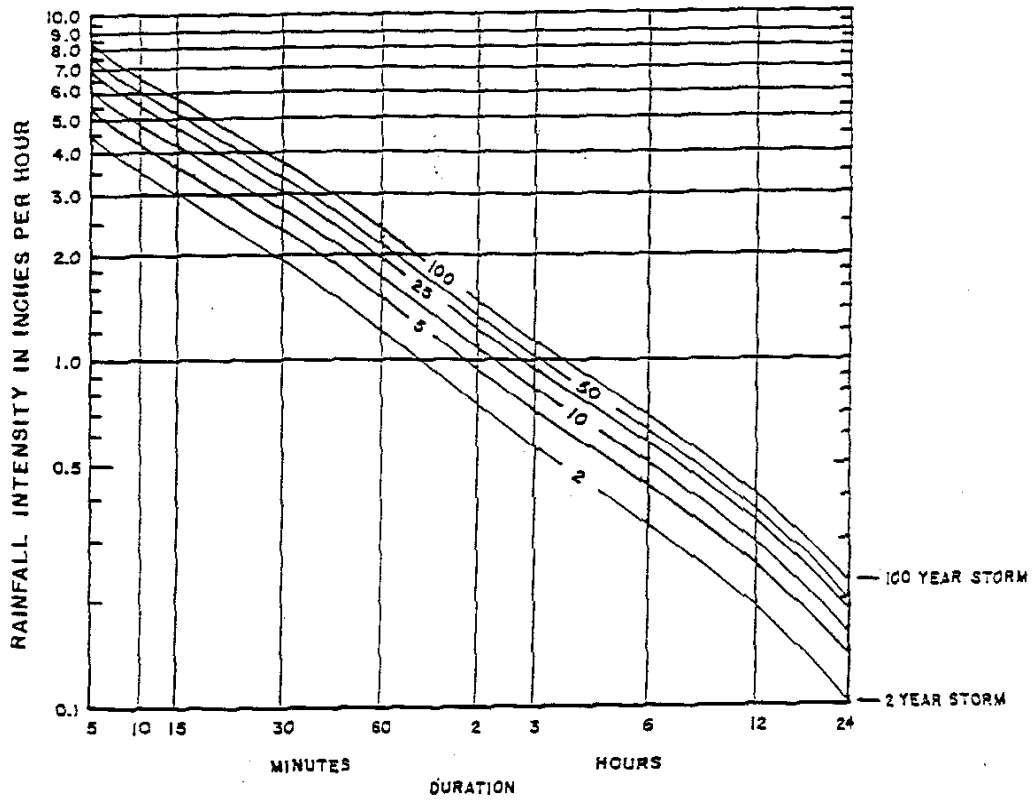
- 0 TO 20% REMOVAL
- ◐ 20 TO 40% REMOVAL
- ◑ 40 TO 60% REMOVAL
- ◒ 60 TO 80% REMOVAL
- 80 TO 100% REMOVAL
- ⊗ INSUFFICIENT KNOWLEDGE

- 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 (V_r); where V_r=mean storm runoff.
- Design 6: Permanent pool equal to 4.0 (V_r); approx. 2 weeks retention.
- Design 7: Facility exfiltrates first-flush; 0.5 inch runoff/imper. acre.
- Design 8: Facility exfiltrates one inch runoff volume per imper. 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

RAINFALL INTENSITY CURVES FOR LAKE GEORGE, NEW YORK



LAKE GEORGE, NEW YORK

REF: U.S. WEATHER BUREAU TECHNICAL PAPER NO. 40, MAY 1961 (HDM #26)
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TECHNICAL
MEMORANDUM NWS HYDRO 35, JUNE 1977 (HDM #37)

SCHEDULE E

**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

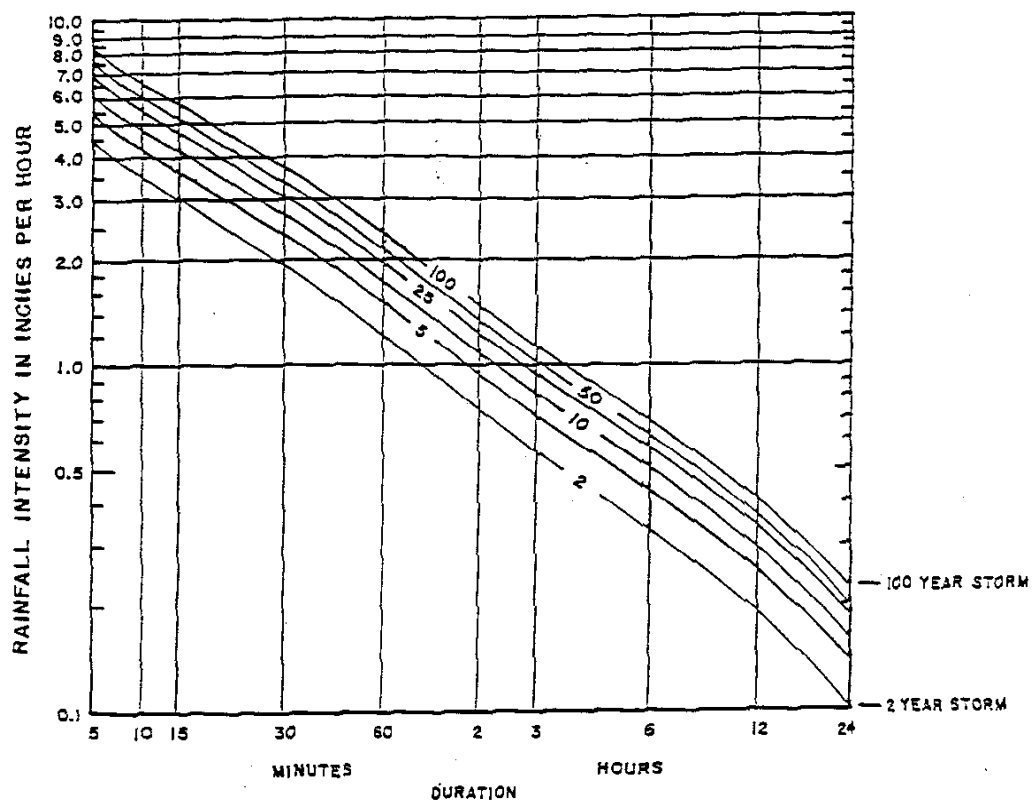
Whereas, the Municipality and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, 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, County 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 corrective action specified by the Municipality or by the inspecting 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.
10. This agreement is effective _____ .

(i) Appendix B. Rainfall intensity curves for Lake George, NY.

APPENDIX B

RAINFALL INTENSITY CURVES FOR LAKE GEORGE, NEW YORK



LAKE GEORGE, NEW YORK

REF: U.S. WEATHER BUREAU TECHNICAL PAPER NO. 40, MAY 1961 (HDM #26)
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TECHNICAL
MEMORANDUM NWS HYDRO 35, JUNE 1977 (HDM #37)

SUBPART 646-5 STREAM CORRIDOR CONTROL - RESERVED

SUBPART 646-6 TREE CUTTING RESTRICTIONS - RESERVED

SUBPART 646-7

SIGNS

Sec.

- 646-7.1 Purpose and intent
- 646-7.2 Exemptions
- 646-7.3 Signs for which permits will not be granted
- 646-7.4 Signs for which permits are required
- 646-7.5 Application for permits
- 646-7.6 Size, placement, number and height limitations of permitted signs
- 646-7.7 Permitted signs on leased property
- 646-7.8 Materials, shapes, lettering, colors and decorative elements of permitted signs
- 646-7.9 Text on permitted signs
- 646-7.10 Illumination of permitted signs
- 646-7.11 Recognition emblems of national quality organizations
- 646-7.12 Criteria for action in approving or denying applications
- 646-7.13 Structural safety and maintenance of permitted signs
- 646-7.14 Approval, review and revocation of permits
- 646-7.15 General provisions

Section 646-7.1 Purpose and intent.

The purpose of this Part is as follows:

- (a) to preserve and enhance the natural beauty of the park;
- (b) to create a restful atmosphere in keeping with the natural beauty of the lake and the surrounding Adirondack Mountains which will commend the park to vacationers;
- (c) to safeguard the general public by the elimination of advertising signs which distract the motorist and contribute to the hazards of driving;
- (d) to encourage the installation of appropriate advertising signs that harmonize with the buildings, the neighborhood and other signs in the area; and
- (e) to eliminate excessive, unsightly competition for visual attention through advertising signs.

Section 646-7.2 Exemptions.

The following signs shall be exempt from the permit requirements of this Subpart:

- (a) A sign erected or maintained within an incorporated village.
- (b) A sign erected by the State, a county, a town or an agency or department thereof.
- (c) The name plate of a professional person, such as an engineer, architect, doctor, dentist, lawyer, or the name plate of a practitioner of some home occupation such as teacher of music, dancing or art, seamstress, etc., or real estate broker, provided these signs contain no advertising matter, are not larger than two square feet, and give in words only the name and profession or vocation of the person.
- (d) Bulletin boards not over 15 square feet in area for public, charitable and religious institutions when such bulletin boards are located on the premises of said institution.
- (e) Signs advertising a principal business operated on the property where the sign is located provided all of the following conditions are met:
 - (1) that there are not more than two such signs;
 - (2) that no sign has an area of more than 48 square feet;

- (3) that no sign extends more than 20 feet above ground level;
- (4) that no sign is within 10 feet of the highway right-of-way; and
- (5) that no sign is illuminated by or contains a flashing, intermittent, rotating, or moving light or lights.

Section 646-7.3 Signs for which permits will not be granted.

- (a) Signs containing flashing, intermittent, rotating, or moving light or lights.
- (b) Signs in excess of 48 square feet in area.
- (c) Moving signs. Signs that move or contain visible parts which move.
- (d) Neon signs. Signs illuminated by neon lamps.
- (e) Signs containing luminous material, sequin studded letters, or lettering with fluorescent paint.
- (f) "A" type signs. Portable free-standing or "A" type signs.
- (g) Advertising devices. Displays that contain banners, balloons, flags, pennants, pinwheels, searchlights or other attention getting devices.
- (h) Signs on rocks, trees, etc. Signs affixed to or painted upon rocks, trees, utility poles or other such structures.
- (i) Parking of advertising vehicles. Vehicles parked on the street or in locations on private property which have attached thereto or suspended therefrom any advertising signs.

Section 646-7.4 Signs for which permits are required. No person shall construct, erect, own, operate or maintain a sign, advertising structure or device not otherwise exempt pursuant to the provisions of section 646-7.2 (a) of this Subpart, which advertises the principal business conducted on the property on which the sign is located without a permit from the commission.

Section 646-7.5 Application for permits. Applications for sign permits shall be submitted to the commission on such forms as the commission may prescribe, and shall contain or have attached thereto the following information and material:

- (a) The name, address and telephone number of the owner of the property.
- (b) The name, address and telephone number of the applicant (owner of the sign).
- (c) The name, address and telephone number of the sign contractor, if any.
- (d) The principal business or principal businesses conducted on the property.
- (e) The location of building, structure or lot to which, or upon which, the sign or other advertising structure is to be attached or erected, together with a statement showing the street or highway frontage of such lot.
- (f) The location of sign on property in relation to distance from public right-of-way and adjoining owners.
- (g) The size of sign.
- (h) The height of the top of the structure of the sign above ground level.
- (i) The description of sign, including text, material used, color of lettering and background.
- (j) The type of illumination, if any, to be used in connection with the signs.
- (k) A statement and description of all other signs located on the property.

(l) A detailed drawing or blueprint depicting the construction details of the sign and showing the lettering and/or decorative elements composing the sign; the position of lighting or other extraneous devices; a location plan showing the position of the sign on any building or land, its position in relation to nearby buildings or structures and its position in relation to any private or public street or highway.

(m) If a permit is requested for an existing sign, the date it was erected.

(n) A statement of other facts deemed material.

Section 646-7.6 Size, placement, number and height limitations of permitted signs.

(a) *Size and Placement.* No sign shall exceed 48 square feet in area. A permit for a 48 square foot sign is granted only when the sign is placed at least 10 feet back from the highway right-of-way. The part of the sign closest to the right-of-way is the point at which the measurement is taken. In general, the size of the sign is governed by its proximity to the highway right-of-way; i.e., the closer to the road the less area required to get the message across. All signs must be placed 10 feet from the highway right-of-way unless special circumstances require that they be placed closer. Special circumstances are: alignment of highway, terrain, existing trees or other natural features, or structure located on other parcels of real property, which might block or impair the view of the sign. Before a permit for a sign is granted, its location in relation to the blocking of visual access to existing signs is also considered. In circumstances in which a permit is granted for a sign closer than 10 feet to the right-of-way the square footage of the sign is reduced to the amounts stated in the following schedule:

On edge of right-of-way	- 32 square feet
1 foot from right-of way	- 33 square feet
2 feet from right-or-way	- 34 square feet
3 feet from right-or-way	- 35 square feet
4 feet from right-or-way	- 36 square feet
5 feet from right-or-way	- 37 square feet
6 feet from right-or-way	- 38 square feet
7 feet from right-or-way	- 39 square feet
8 feet from right-or-way	- 40 square feet
9 feet from right-or-way	- 41 square feet

(b) *Number.* No more than two advertising signs are permitted on one parcel of property, except as provided in subdivision (d) of this section. Businesses located on a parcel of property having 100 feet or less of road frontage will be granted a permit for one free- standing sign and one wall sign providing that such wall sign does not exceed 32 square feet in area. Businesses located on a parcel of property having in excess 100 feet of road frontage will be granted a permit for two free-standing signs provided that the distance between the two free-standing signs shall be at least 50 feet, or one free- standing sign and one wall sign, providing that such wall sign does not exceed 32 square feet in area. In addition to the above, a permit will be granted for an identification sign on the lakeshore providing that such sign does not exceed 15 square feet in area. Also, the commission may grant permits for the erection of directional signs provided that the individual signs do not exceed two square feet in area, and are limited to the text "Office", "Entrance", or "Exit". Permits will be granted only if the applicant can show that the directional sign or signs are necessary because of unusual access to the commercial business establishment.

(c) *Height.* The top of the sign, advertising structure or device shall not exceed 20 feet above the ground level where the sign is located. This height is permitted only when special circumstances make it necessary.

(d) (1) Permits may be granted for more than two advertising signs in the event more than one business is operated on a single parcel of real property. In this event, permits may be granted for the following signs:

(i) one sign, 48 square feet in area, 10 feet back from the highway right-of-way, or one sign closer to the highway right-of-way as provided in subdivision (a) of this section; and

(ii) one wall sign for each business operated on the parcel of real property, provided that the areas of all the signs erected under this subparagraph does not exceed 48 square feet, and further provided that the wall sign is maintained on the building in which the business advertised is located.

(2) Each business owned by an individual or corporation shall be considered a separate business, provided the individuals or stockholders are not related as spouses or parents and decedents.

(3) In the event a parcel of real property is used by one owner to operate more than one business, the number of businesses shall be determined in accordance with the following:

(i) In towns which have a town ordinance requiring the licensing of businesses, the number of businesses shall be determined by the number of businesses registered under its town ordinance.

(ii) In towns which do not have a town ordinance requiring the licensing of businesses the number of businesses shall be determined by the Lake George Park Commission based upon the following criteria.

(a) the sale of products and services which are not normally associated with one business;

(b) the location and construction of the buildings in which the businesses are located;

(c) the management and accounting systems used by the businesses; and

(d) uses which are considered accessory uses to the main business shall not be considered as a separate business.

Section 646-7.7 Permitted signs on leased property. If a lessee leases the entire parcel of real property such lessee shall be entitled to permits for signs as set forth in section 646-7.6 of this Subpart. If a lessee leases a portion of a parcel of real property, the owner and lessee are considered as one applicant in determining the issuance of permits to be granted under section 646-7.6 of this Subpart.

Section 646-7.8 Materials, shapes, lettering, colors and decorative elements of permitted signs.

(a) *Materials.* Each sign shall be constructed of wood, metal or other durable material approved by the commission.

(b) *Shapes.* Simple forms, such as rectangles, squares, ovals, or circles are permitted. Other forms are subject to approval by the commission.

(c) *Lettering, colors, and decorative elements.* These components are subject to approval by the commission.

Section 646-7.9 Text on permitted signs. The text on each sign is subject to approval by the commission and is limited to:

(a) name or assumed name of the owner of the property on which it is located;

(b) principal business or businesses conducted on the property;

(c) brief indication of products or services available; and

(d) (No) Vacancy.

Section 646-7.10 Illumination of permitted signs. Only white artificial lighting shall be used to illuminate a sign. No flashing intermittent or moving light or lights, or neon lamps, shall constitute a part of or be used to illuminate a sign. No light shall be placed in such a manner that it is a hazard to the traveling public, or shall cause any objectionable glare, either direct or reflected.

Section 646-7.11 Recognition emblems of national quality organizations. A recognition emblem of a national quality organization constitutes an advertising sign and is included in the computation of the area and number of signs.

Section 646-7.12 Criteria for action in approving of denying applications. In approving, conditionally approving, or denying any application for a sign permit, the commission shall apply all of the following criteria as the basis for its actions:

- (a) whether it is necessary for the applicant's enjoyment of substantial trade and property rights;
- (b) whether it is consistent with the intents and purposes as set forth in section 646-7.1 of this Subpart;
- (c) whether it constitutes a detriment to public safety and welfare;
- (d) the size, shape, color and placement of the sign shall be considered to determine if the sign is compatible with and bears a harmonious relationship with the surrounding environs; and
- (e) the location and design of the proposed sign shall be considered to determine if the sign will obscure from view or unduly detract from existing adjacent signs.

Section 646-7.13 Structural safety and maintenance of permitted signs. All parts, portions, units, and materials composing the sign, together with the frame, background, supports or anchorage, therefore, shall be maintained in proper repair and state of preservation. The surface of all signs shall be kept neatly painted.

Section 646-7.14 Approval, review and revocation of permits.

- (a) Permits for signs within the park shall be signed by the executive director of the commission.
- (b) All permitted signs shall be erected and maintained in accordance with the representations contained in the application and with the provisions of the permit.
- (c) All permits issued or deemed to be issued shall be subject to review and shall be revocable for cause at any time.

Section 646-7.15 General provisions.

- (a) The commission may require the applicant to furnish any further statements or information which it deems necessary for proper consideration of an application.
- (b) Permits are issued by the commission only to indicate compliance with ECL, article 43 and do not imply compliance with any other provision of law.
- (c) Any action of the commission by which an application for a permit hereunder is denied, is reviewable pursuant to the provisions of article 78 of the CPLR.