

LOCAL LAW NO. 4 OF 2018
VILLAGE OF MONTEBELLO
STATE OF NEW YORK

BE IT ENACTED, by the Village Board of the Village of Montebello Local Law No. 4 of 2018 Entitled: "Implementation of Environmental Protection Overlay Districts and Aquifer and Wellhead Protection Standards" as follows:

Attachment A: Redlined Village Code

§ 92-10 Designation of local administrator.

The Village Engineer is hereby appointed local administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.

§ 92-11 Floodplain development permit.

A. Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 92-6 without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the local administrator and may include, but not be limited to, plans, in duplicate, drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. The construction, alteration or enlargement of any habitable building in a 100-year flood area shall require a Planning Board site development plan review, pursuant to Article IX of Chapter 195, in addition to a floodplain development permit required by this Chapter.

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§ 92-15 Standards for all structures.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 92-6:

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§ 92-16 Residential structures.

A. Elevation. The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in § 92-14A, Subdivision proposals; B, Encroachments; § 92-15, Standards for all structures; and §195-63.B(1), Floodplain Environmental Protection Overlay District (F-EPOD).

- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
- (2) Within Zone A, when no base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
- (3) Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 92-6 (at least two feet if no depth number is specified).
- (4) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.

§ 92-17 Nonresidential structures.

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of special flood hazard, in addition to the requirements in § 92-14A; Subdivision proposals; B, Encroachments; § 92-15, Standards for all structures; and §195-63.B(1), Floodplain Environmental Protection Overlay District (F-EPOD).

- A. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure shall either:
 - (1) Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (2) Be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- B. Within Zone AO, new construction and substantial improvements of nonresidential structures shall:
 - (1) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or
 - (2) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in Subsection A(2).
 - (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A floodproofing certificate or other certification shall be provided to the local administrator that certifies the design and methods of construction are in accordance with accepted standards of

practice for meeting the provisions of Subsection A(2), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

- (4) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters ground and away from proposed structures on slopes.
- (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

§ 92-18 Manufactured homes and recreational vehicles.

The following standards, in addition to the standards in § 92-14, General standards; § 92-15, Standards for all structures; and §195-63.B(1), Floodplain Environmental Protection Overlay District (F-EPOD) apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

A. Recreational vehicles.

- (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
 - (a) Be on site fewer than 180 consecutive days;
 - (b) Be fully licensed and ready for highway use; or
 - (c) Meet the requirements for manufactured homes in Subsection B, C and D.
- (2) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices and has no permanently attached additions.

B. Manufactured homes.

- (1) A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (2). Within Zone A, when no base flood elevation data are available, new or substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.
- (3). Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as two feet above the depth number specified on the Flood Insurance Rate Map enumerated in § 92-6 (at least two feet if no depth number is specified).

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§ 191-1 Title.

This chapter shall be known as the "Wetlands and Stream Protection Law of the Village of Montebello."

§ 191-2 Findings and intent.

- A. The Board of Trustees finds and declares it to be the public policy of the Village in furtherance of the Natural Resources portion of the Comprehensive Plan of the Village to preserve, protect and conserve its wetlands, water bodies and watercourses and the benefits derived therefrom, to prevent the despoliation and destruction and to regulate the use and development thereof to secure the natural benefits of wetlands, water bodies and watercourses consistent with the general welfare and beneficial economic and social development of the Village. In this connection, the Board of Trustees finds as follows:
- (1) Freshwater wetlands are invaluable resources for flood and stormwater control, fish and wildlife habitat, protection and provision of groundwater, recreation, pollution treatment, erosion controls, environmental education and open space.
 - (2) The preservation and maintenance of wetlands, water bodies and watercourses in an undisturbed and natural condition constitute important physical, ecological, social, aesthetic, recreational and economic assets necessary to promote the health, safety and general welfare of present and future residents of the Village and of downstream drainage areas.
 - (3) Recurrent flooding in areas of the Village, aggravated or caused by the loss of wetlands or alteration of watercourses or water bodies, has serious effects upon natural ecosystems and presents serious hazards to health, safety, welfare and property of the people of the Village.
 - (4) Since acts on wetlands, watercourses and water bodies in one location affect persons and property in other locations, wetland and water conservation are matters of concern to the entire Village. The establishment of preservation, protection and conservation practices is essential to the public health, safety and welfare of the residents of the Village.
- B. It is the intent of this chapter to implement the Freshwater Wetlands Act of the State of New York as presently contained in Article 24 of the Environmental Conservation Law, as the same may be amended from time to time, to the extent that said Freshwater Wetlands Act applies to property within the Village of Montebello and to promote the public purposes identified therein and in this section by providing for the protection, preservation, proper maintenance and use of the Village's wetlands, water bodies and watercourses, by preventing or minimizing erosion due to flooding and stormwater runoff, by maintaining the natural groundwater supplies, preserving and protecting the purity, utility, water retention capability, ecological functions, recreational usefulness and natural beauty of all wetlands, water bodies, watercourses and other related features of the terrain and by providing and protecting appropriate habitats for natural wildlife.

§ 191-3 Wetlands defined.

For the purpose of this chapter, wetlands are defined as all lands and waters within the Village of Montebello, including but not limited to any such lands and water hereafter designated on the New York State Freshwater Wetlands Maps, or the National Wetland Inventory Maps, which have a contiguous area of at least 1/10 of an acre and which contain any or all of the following:

- A. Lands and submerged lands commonly called “marshes,” “swamps,” “bogs” and “flats,” whether flooded at all times, flooded only seasonally or having a water table during at least three consecutive months of the year within six inches of the ground surface or supporting aquatic or semiaquatic vegetation of the types listed in § 24-0107, Subdivision 1(a), of Article 24 of the Environmental Conservation Law. The common names of these vegetative types are:
- (1) Wetland trees, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees, including, among others, red maple, willows, black spruce, swamp white oak, red ash, black ash, silver maple, American elm and birch.
 - (2) Wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other shrubs, including, among others, alder, buttonbush, bog rosemary, dogwoods and leatherleaf.
 - (3) Emergent vegetation, including, among others, cattails, pickerelweed, bulrushes, arrow arum, arrowheads, reed, wild rice, bur-reeds, purple loosestrife, swamp loosestrife and water plantain.
 - (4) Rooted, floating-leaved vegetation, including, among others, water lily, water shield and spatterdock.
 - (5) Free-floating vegetation, including, among others, duckweed and watermeal.
 - (6) Wet meadow vegetation, which depends upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other open land vegetation; including, among others, sedges, rushes, cattails, rice cut-grass, reed canary grass, swamp loosestrife and spike rush.
 - (7) Bog mat vegetation, including, among others, sphagnum mosses, bog rosemary, leatherleaf, pitcher plant and cranberries.
 - (8) Submergent vegetation, including, among others, pondweeds, naiads, bladderworts, wild celery, coontail, water mil-foils, muskgrass, water weeds and water smartweed.
- B. Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six feet and provided, further, that such conditions can be expected to persist indefinitely, barring human intervention.

- C. Lands and water substantially enclosed by aquatic or semiaquatic vegetation as set forth in § 191-3A of this chapter or by dead vegetation as set forth in § 191-3B, the regulation of which is necessary to protect and preserve the aquatic and semiaquatic vegetation.
- D. The waters overlying the areas set forth in § 191-3A and B and the lands underlying § 191-3C of this chapter.
- E. Any stream, watercourse or water body, classified as class N, AA, A, B, C, or D. (with class either Special or Unmodified) under New York Codes, Rules and Regulations 6 N.Y.C.R.R. 701, et seq.
- F. Lands and submerged lands containing poorly drained soils, as defined by the United States Department of Agriculture Soil Conservation Service (SCS) including, but not limited to, the following:

Poorly Drained Glacial Till

Fredon

Alden

Muck Soils: Organic

Carlisle

Adrian

Alluvium Soils

Rippowam

Sloan

§ 191-4 **Regulated activities.**

Except as provided in § 191-5 of this chapter, it shall be unlawful to conduct, directly or indirectly, any of the following activities upon any wetland, water body or watercourse or within the associated Wetlands, Waterbodies and Streams Environmental Protection Overlay District (W-EPOD) as defined in § 195-63 of this code, unless a permit is obtained from the Planning Board pursuant to the requirements of this chapter:

- A. Permit required. It shall be unlawful for any person without a written permit or permit waiver issued by the Village to alter the following:
 - (1) Any area within a W-EPOD containing a freshwater wetland 1/10 acre or larger.
 - (2) Any vernal pool or area within 100 feet a vernal pool.
 - (3) Any area within a W-EPOD containing a stream, watercourse or water body, classified as class N, AA, A, B, C, or D (with class either Special or Unmodified) under New York Codes, Rules and Regulations 6 N.Y.C.R.R. 701, et seq.
 - (4) Any area within 50 feet of a natural intermittent watercourse or stream that is running at least three months per year, or any other unclassified stream under 6 N.Y.C.R.R. 701, et seq.

B. Activities subject to regulation within the W-EPOD under this chapter shall include the following:

- (1) Any form of draining, dredging, excavation or removal of material, except removal of debris or refuse.
- (2) Any form of depositing of any material such as but not limited to soil, rock, debris, concrete, garbage, chemicals, etc.
- (3) Erecting any building or structure of any kind, roads, paved areas, or driveways, the driving of pilings or placing of any other obstructions within a regulated area, whether or not they change the ebb and flow of the water.
- (4) Installing a septic tank, running a storm sewer outfall, discharging sewage treatment effluent or other liquid waste into or so as to drain into any wetland, water body or watercourse; drilling and digging of wells, installation of any pipe or conduit.
- (5) The use of any chemicals, dyes, fertilizers, herbicides or similar materials, in any regulated area.
- (6) Creating an increase or decrease in the flow, velocity or volume of water in any watercourse or water body, excluding customary seasonal raising and/or lowering of said watercourse or water body.
- (7) Creating a diversion of water flow on any watercourse or water body.
- (8) Introducing any influents of high thermal content, such that the same are capable of causing deleterious ecological effect.
- (9) Clear-cutting, landscaping, removal or replacement of naturally existing native vegetation, at once or over time within a regulated freshwater wetland or in a regulated area adjacent to a freshwater wetland, watercourse or water body. These actions shall be reviewed by the Building Inspector or Village Engineer to determine if such acts affect the prevailing surface water runoff conditions, directly or indirectly.

§ 191-5 Activities permitted by right.

The following activities are permitted by right within the W- EPOD, except where the Planning Board submits written notification to the property owner that it is assuming jurisdiction over the activity for the purpose of assuring that the intent of this section is not violated:

- A. The depositing or removal of the natural products of the wetlands, water bodies or watercourses by recreational or commercial fishing, agriculture, hunting or trapping where otherwise legally permitted.
- B. Outdoor recreation activity that does not materially alter the natural state of the land or require construction, including use of field trails for nature study, hiking or horseback riding,

swimming, skin diving and boating, where otherwise legally permitted.

- C. Grazing, farming and harvesting of crops where otherwise legally permitted; provided, however, that any tillage of soil shall leave an undisturbed strip not less than six feet wide at the edge of any wetland, watercourse or water body to prevent erosion. With respect to any properties designated on the New York State Freshwater Wetlands Maps, or the National Wetland Inventory Maps, the activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively culling brush and timber, draining land or wetlands for growing agricultural products and otherwise engaging in the use of wetlands or other land for growing agricultural products shall be excluded from regulated activities insofar as federal and state regulations apply and shall not require a permit under § 191-4 of this chapter where otherwise regulated except that structures not required for the enhancement or maintenance or the agricultural productivity of the land and any filling activities shall not be excluded hereunder, and provided that the use of wetlands, water bodies and watercourses for uses other than those referred to in this subsection shall be subject to the provisions of this chapter. Each farmer or landowner who intends to conduct an activity described in this subsection which would otherwise be regulated shall notify the Planning Board, in writing, of his intention to engage in such activity, stating the approximate acreage to be affected, the general location thereof, the use or uses to be made of such land and the methods to be employed.
- D. Gardening where otherwise legally permitted; provided, however, that any tillage of soil shall leave an undisturbed strip not less than six feet wide at the edge of any wetland, watercourse or water body to prevent erosion.
- E. Operation and maintenance of such dams, retaining walls, terraces, sluices, culverts or other water control structures or devices as legally existed on the effective date of this section.
- F. Public health activities as exemplified by orders and regulations of the Rockland County Department of Health. The Department of Health shall notify the Planning Board, in writing, of the proposed activity it will undertake.
- G. Any actual and ongoing emergency activity as defined by the Board of Trustees, which is immediately necessary for the protection and preservation of life or property or the protection or preservation of natural resource values.
- H. Actual uses that were legally preexisting upon adoption of this chapter and are located within areas regulated by this chapter.

§ 191-6 Procedure.

[Amended 1-21-2015 by L.L. No. 1-2015]

- A. General permit. Any person proposing to conduct or cause to be conducted a regulated activity specified in § 191-4 of this chapter within the W-EPOD as defined in § 195-63 of this code may obtain a general permit to do so, providing such activity meets the following criteria:

- (1) The activity is conducted within a currently disturbed area that does not have natural vegetation. Currently disturbed areas include landscaped lawn or garden areas at existing facilities, existing parking or paved areas (including sidewalks, sports courts, and patios), and existing structures.
- (2) The activity is not less than 50 feet from a wetland boundary, stream floodway, or water body shoreline, as determined by a licensed New York State landscape architect or other qualified licensed or certified New York State professional.
- (2) Authorized activities.
 - (a) Authorized activities include:
 - [1] Demolition and removal of existing accessory/appurtenant structures and restoration of the site with planting of native vegetation.
 - [2] Construction of driveways or parking areas limited to a total of 1,000 square feet within the area of a W-EPOD above the wetland boundary, stream or water body shoreline, within any ten-year period;
 - [3] Additions to existing structures limited to a total of 1,000 square feet basal area within the area of a W-EPOD above the wetland boundary, stream or water body shoreline, within any ten-year period.
 - [2] Installation of garages, decks, porches, sheds, pools, utility lines and other accessory/appurtenant structures of having a total of 1,000 square feet basal area area of a W-EPOD above the wetland boundary, stream or water body shoreline, within any ten-year period;
 - [4] In-kind, in-place replacement of existing accessory/appurtenant structures, roads and associated utilities.
 - (b) The authorized activities are to include appropriate stormwater runoff controls.
- (3) Procedure for obtaining a general permit. Any person seeking to perform an authorized activity shall submit to the Village Engineer, on forms approved by the Village Engineer and the Village Attorney, the following information:
 - (a) A request for authorization, which shall include the name and contact information of the property owner and, if different, the applicant; the street address and Tax Map identification number of the work location; a narrative description of the work to be performed; the name, contact information and Rockland County license number of the person or entity who will be performing the work; certification by the applicant as to the truth of the statements contained in the request; such other information as the Village Engineer deems appropriate; and the signature of the property owner, applicant and contractor;
 - (b) A site location map;

- (c) Project plans or sketch drawings showing all applicable details, and measurements to clearly define the extent and nature of the work;
 - (d) Three representative color photographs which clearly depict the site of the proposed activity, indicating the time and date when taken; and
 - (e) A permission to inspect property form.
- (4) No work is authorized until the permittee receives a signed project authorization from the Village Engineer.
 - (5) Nothing herein shall prevent the Village Engineer from referring any application hereunder to the Planning Board for review by that Board.
- B. Application for wetland and stream protection permits and information required. Any person proposing to conduct or cause to be conducted a regulated activity specified in § 191-4 of this chapter upon any wetland, water body or watercourse, or within any W-EPOD area, which is not eligible for a general permit as set forth in Subsection A of this § 191-6, shall file 10 copies of an application for a permit with the Planning Board as provided in this section. Such application shall include the following information:
- (1) Name and address of the applicant and the applicant's agent, if any, and whether the applicant is owner, lessee, licensee, etc. If the applicant is not the owner, the written consent of the owner must be attached.
 - (2) Street address and Tax Map designation of the subject property.
 - (3) A detailed description of the specific purpose, nature and scope of the activity proposed.
 - (4) A map showing the area of wetland, water body or watercourse directly affected, prepared by a licensed surveyor. Where a wetland is mapped, the delineating of the wetland shall be carried out by a certified wetlands specialist.
 - (5) A topographical and perimeter survey, hydrological computation, engineering studies and other factual or scientific data and reports as deemed necessary by the Planning Board to permit it to arrive at a proper determination.
 - (6) In the case of applications affecting water retention capability, water flow or other drainage characteristics of any wetland, water body or watercourse, the Planning Board may require the inclusion of a statement of the area of upstream and downstream watersheds, impact analysis and information as to rainfall intensity in the vicinity for not less than a one-hundred-year-return-frequency storm, together with approximate runoff coefficients to determine the capacity and size of any channel sections, pipes or waterway openings, together with plans for necessary bridges, culverts, stormwater or pipe drains that, in the opinion of the Planning Board, are needed to arrive at a proper determination on the application, consistent with the purposes of this chapter.
 - (7) A description of the existing conditions of the site on which the aquatic resource or resources

is or are located.

- (8) A description of the aquatic resource or resources in which the activity is proposed to take place.
 - (9) A description and analysis of the functions of the aquatic resource or resources for groundwater recharge, groundwater discharge, stormwater management, flood flow alteration, sediment stabilization, nutrient removal, habitat for flora, habitat for fauna, and recreational uses.
 - (10) A description and analysis of the impact or impacts that the proposed activity will have on the aquatic resource or resources, including the magnitude of the impact or impacts, the duration of the impact or impacts, including but not limited to a statement as to whether the duration is temporary, short-term, long-term or permanent, whether the impact or impacts are adverse to the functioning of the aquatic resource or resources or neutral or positive.
 - (11) A description and analysis of mitigation available to remedy negative impacts to the extent that such negative impacts are identified.
 - (12) Such other information as may be submitted to the Planning Board by the applicant, the public, or other governmental agencies, to the extent that such information is relevant to the approval standards contained in this section.
 - (13) A short environmental assessment form, Part 1, with adequate supporting narrative to allow the Planning Board to fully evaluate the environmental impact of the proposal under the provisions of the State Environmental Quality Review Act (SEQR).
 - (14) The applicant, at its own expense shall provide a field determination of the affected W-EPOD boundaries in the subject area to the Village Engineer according to the provisions of § **191-6B(5)**. The Village Engineer shall submit a written report to the Planning Board on this determination. The Village Engineer may accept a report from a wetlands specialist employed by the applicant for this purpose or may accept a boundary certification confirmed by the New York State Department of Environmental Conservation (NYSDEC) or the Army Corps of Engineers (ACOE).
- C. Public hearing. No sooner than 30 days and not later than 62 days after the receipt of a complete application and publication of notice of application as required herein, the Planning Board shall hold a public hearing on an application submitted pursuant to this chapter. A complete application shall include all of the information required in § **191-6B** of this chapter. The Planning Board shall cause notice of such hearing to be published in the official newspaper at least 10 days prior to the date set for such hearing. All owners of record within 500 feet of the perimeter of the property shall be notified of the hearing by certified mail, return receipt requested, not less than 15 days prior to the date set for such hearing. The applicant shall be responsible for the mailing of such notices and shall file with the Planning Board an affidavit of mailing at or prior to the public hearing. All applications and maps and documents relating thereto shall be open for public inspection at the office of the Village Clerk-Treasurer. At such hearing, any person or persons filing a request for a hearing or a timely notice of appearance may appear and be heard. The failure of the Planning Board to

act within 62 days shall not constitute a default permit grant.

- D. Planning Board action. Within 75 days of the date the complete application is submitted or within 45 days of the date of any public hearing which may be conducted on said application, whichever period is shorter, the Planning Board shall render a decision to approve, approve with modifications or disapprove the issuance of a permit for the proposed activity. The decision of the Planning Board shall be made by written resolution stating the findings and reasons for such decision. The decision of the Planning Board shall be preceded by the completion of the SEQR process. An application shall not be deemed complete until a negative declaration has been granted or a draft environmental impact statement has been accepted as complete by the Planning Board pursuant to SEQR regulations.

§ 191-7 Standards for granting permits.

- A. The applicant shall have the burden of demonstrating that the proposed activity will be in accord with the policies and provisions of this chapter and the policies of the Montebello Comprehensive Plan.
- B. In granting, denying or limiting any permit, the Planning Board shall consider the effect of the proposed activity with reference to the public health and welfare, fishing, flood, hurricane and storm dangers and the protection or enhancement of the several functions of the wetlands and the benefits derived therefrom as set forth in this section, irrespective of political boundaries, and shall make findings based on the criteria below. The Planning Board may conduct a site visit for the purpose of determining compliance with these standards:
- (1) The environmental impact of the proposed actions.
 - (2) The alternatives to the proposed action.
 - (3) Irreversible and ir retrievable commitments of resources that would be involved in the proposed action.
 - (4) The character and degree of injury to or interference with safety, health, or the reasonable use of property that is caused or threatened.
 - (5) The suitability or unsuitability of such activity to the area for which it is proposed.
 - (6) The effect of the proposed activity with reference to the protection or enhancement of several functions of wetlands, water bodies and watercourses.
 - (7) The availability of preferable alternative locations on the subject parcel or of the proposed action outside of the W-EPOD, or at a greater distance from the wetland, stream or water body within the W-EPOD.
 - (8) The availability of mitigation measures that could feasibly be added to the plan or action.
 - (9) The extent to which the exercise of property rights and the public benefit derived from such use may outweigh or justify the possible degradation of the wetland, water body or watercourse, the interference with the exercise of two other property rights and the

impairment or endangerment of the public health, safety or welfare.

- C. Permits will be issued by the Planning Board pursuant this chapter only if the Board shall make finding warranting the grant of such permit on the basis of the considerations set forth in this subsection and that such permit is consistent with the policies and provisions of this chapter.
- D. The Planning Board may grant a permit subject to such terms and conditions as it shall reasonably impose upon findings that such activity is not contrary to the purposes of § 191-2 of this chapter. Said Board may also, in its discretion, permit any activity otherwise prohibited by this chapter to be carried out, except with respect property to designated on the New York State Freshwater Wetlands Maps or National Wetland Inventory Maps, or otherwise regulated by a county, state, or federal agency provided that the Planning Board determines after investigation that to prohibit the activity would cause undue hardship to the property owner.
- E. Permits will be issued by the Planning Board only if the Board shall find that:
- (1) The proposed regulated activity is consistent with the policy of this chapter.
 - (2) The proposed regulated activity is consistent with the land use ordinances and regulations governing wetlands, water bodies and watercourses applicable in the Village of Montebello.
 - (3) The proposed regulated activity is compatible with the public health and welfare of the Village.
 - (4) The applicant has demonstrated that there is no practicable alternative for the proposed regulated activity on another part of the site outside of the W-EPOD, or at a greater distance from the wetland, stream or water body within the W-EPOD.
 - (5) The proposed regulated activity minimizes the degradation to or loss of any part of the designated wetland, water body or watercourse or its regulated areas and minimizes any adverse impacts on the functions and benefits that said wetland, water body and watercourse provide.
 - (6) The proposed activities must also be in compliance with the standards set forth in the federal regulations and in the New York State Freshwater Wetland Regulations, Sections 665.7(e) and 665.7(g).
 - (7) Notwithstanding any other provisions herein, duly filed notice, in writing, that the State of New York or any agency or governmental subdivision thereof is in the process of acquiring any wetlands by negotiation or condemnation shall be sufficient basis for denial of any permit.
- F. The Planning Board may include as a condition for issuing a permit that wetland protection techniques be employed, including mitigation measures, such as, but not limited to, the construction of dry rock walls along the edge of wetlands, wetland buffers, or other locations intended to demarcate wetlands, or other protective measures prior to or as part of developing a site. The technique selected must ensure adequate recharge to the wetland or stream and protection of their natural functions.

- G. In the event that significant adverse impacts on the functioning of the aquatic resource or resources are identified, the applicant or the Planning Board, in the form of conditions, may propose mitigation. Without limiting the generality of the term, mitigation may include relocation of aquatic resources, in whole or in part, substitution of alternative aquatic resources, in whole or in part, or replacement of aquatic resources, in whole or in part whether on the same parcel or another parcel in the Village.
- H. In granting a permit, the Planning Board may limit the same or impose conditions or limitations designed to carry out the public policy set forth in this chapter and the Comprehensive Plan of the Village of Montebello. The Planning Board may require surety in an amount and with surety and conditions satisfactory to it, securing to the State of New York or the Village of Montebello as the case may be, compliance with the conditions and limitations set forth in the permit. The Building Inspector, with the concurrence of the Village Engineer, may suspend or revoke a permit if he finds that the applicant has not complied with any of the conditions or limitations set forth in the permit or has exceeded the scope of the activity as set forth in the application. The Building Inspector may suspend the permit if the applicant fails to comply with the terms and conditions set forth in the application.

§ 191-8 Appeals.

Review of the determination of the Planning Board shall be, within a period of 30 days after the filing thereof, pursuant to the provisions of Article 78 of the Civil Practice Law and Rules.

§ 191-9 Fees.

All applications for a wetlands permit shall be accompanied by a fee in accordance with the Fee Schedule adopted by the Board of Trustees.

§ 191-10 Applicability; prevalence of more protective standards.

- A. The requirements of this chapter relating to a separate application shall not apply to any work shown on construction drawings or improvement plans for subdivision or site plans submitted to the Planning Board. The regulatory provisions of this chapter shall nevertheless apply.
- B. Where this chapter is less or more protective of the environment than the Environmental Conservation Law of the State of New York or any local law or ordinance of the County of Rockland or the Village of Montebello, the law or ordinance that is more protective of the environment shall prevail.

§ 191-11 Penalties for offenses.

Pursuant to Title 23 of Article 71 of the Environmental Conservation Law, the following penalties shall apply:

- A. Any person who violates, disobeys or disregards any provision of this chapter shall be liable for a civil penalty not to exceed \$3,000 for every such violation. Before assessment of the civil penalty, the alleged violator shall be afforded a hearing or opportunity to be heard before the Planning Board upon due notice, and with rights to specification of the charges and representation by counsel.
- B. The Planning Board shall also have the power, following a hearing, to direct a violator to

cease violation of this chapter and, under the Board's supervision, to satisfactorily restore the affected freshwater wetland or watercourse to its condition prior to the violation, insofar as that is possible, within a reasonable time and under the supervision of the Planning Board.

- C. Any civil penalty or order issued by the Planning Board shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In addition to the above civil fine, any person who violates any provision of this chapter shall be guilty of a violation pursuant to the Penal Law, punishable by a fine of not less than \$500 nor more than \$1,000. For a second and each subsequent offense, the violator shall be guilty of a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,000, or a term of imprisonment of not less than 15 days nor more than six months, or both. Each offense shall be a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. Instead of or in addition to these punishments, any offender may be punished by being ordered by the court to restore the affected freshwater wetland to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which restoration shall be effected under the supervision of the Commissioner of the Department of Environmental Conservation or of the Village.
- E. The Village Board shall have the right to seek equitable relief to restrain any violation or threatened violation of any provision of this chapter.

§ 191-12 Enforcement.

The Code Inspector or Building Inspector shall issue and post notices of violations of this chapter. In addition, by resolution, the Board of Trustees may direct the Code Inspector or Building Inspector to make such inspection and reports, initiate and take such court proceedings and perform all other actions as required by the Board of Trustees as may be necessary to enforce this chapter or to invoke penalties for its violation.

§ 191-13 Definitions.

For the purpose of this chapter, certain words and terms used herein are defined as follows:

AQUATIC RESOURCE

Any wetland, watercourse, or water body and associated buffers.

BOARD OF TRUSTEES

The Board of Trustees of the Village of Montebello.

BOUNDARIES OF A WETLAND, WATER BODY OR WATERCOURSE

The outer limit of the vegetation specified in § 191-3A of this chapter, or of the land and waters specified in § 191-3B, C and D or of water bodies and watercourses or of the soils specified in § 191-3E, typically the outer limit of hydrophytic vegetation, hydric soils or hydrological indicators.

BUILDING

Any structure, or extension thereof or addition thereto, having a roof supported by such things

as columns, posts, piers or walls and intended for the shelter, business, housing or enclosing of persons, animals or property.

BUILDING INSPECTOR

The Building Inspector of the Village of Montebello.

CODE INSPECTOR

The Building Inspector or such officer as may be designated by the Village Board as Code Inspector or Code Enforcement Officer or charged with enforcement of this chapter.

DEPOSIT

To fill, place, eject, discharge or dump any material, but not including stormwater.

FRESHWATER WETLAND

See § 191-3 of this chapter.

MATERIAL

Soil, stones, sand, gravel, clay, bog, peat, mud, debris and refuse or any other organic or inorganic substance, whether liquid, solid or gaseous, or any combination thereof.

MITIGATION

A way to avoid, minimize or compensate adverse impacts.

NATIONAL WETLANDS INVENTORY MAPS

The wetlands maps prepared by the United States Department of the Interior.

NEW YORK STATE FRESHWATER WETLANDS MAPS

The wetlands maps prepared by the State of New York pursuant to Article 24 of the Environmental Conservation Law.

PLANNING BOARD

The Planning Board of the Village of Montebello.

REGULATED AREA

Includes any freshwater wetland, watercourse or waterbody and the W-EPOD area surrounding the same; or any vernal pool and the area surrounding the same for a horizontal distance of 100 feet from the edge of the pool. All surfaces are measured horizontally in all directions from the normal high-water mark of the edge of wetland or top of stream bank. The regulated area is subject to the requirements of this chapter.

STRUCTURE

A combination of materials constructed, assembled or erected on, above or below the ground or attached to something having location on, above or below the ground, including but not limited to buildings, fences, tanks, towers and swimming pools.

VERNAL POOL

Small temporary bodies of standing water which are seasonally flooded for sufficient periods of time to support amphibian reproduction, but these periods of inundation are interspersed with dry phases. Vernal pools which support viable breeding populations of amphibians are regulated as wetlands.

VILLAGE ENGINEER

The Village Engineer of the Village of Montebello.

WATER BODIES

Any body of standing water which is not dry more than three months of the year as computed from the average of the last two consecutive calendar years and which, when wet, is customarily more than 500 square feet in water surface area.

WATERCOURSES

Any body of flowing water flowing in an identifiable channel or course and which is not dry more than three months of the year.

WETLANDS

As defined in § 191-3 of this chapter.

WETLANDS, WATERBODIES, AND STREAMS ENVIRONMENTAL PROTECTION OVERLAY DISTRICT (W-EPOD)

As defined in §195-63 of the Village Code.

ZONING LAW

The Chapter 195, Zoning, the Zoning Local Law in effect in the Village of Montebello.

Amend Chapter 195 Zoning, as follows:

§ 195-14 Special bulk requirements.

- A. As part of any minimum lot area requirement of this chapter, no land under water, subject to or within the one-hundred-year-frequency floodplain, freshwater wetlands, within easements or rights-of-way for any utilities, with slopes of over 25% or within a designated street line of any road shall be counted. Furthermore, only 75% of land area of land with a slope exceeding 15% but no more than a slope of 20% shall be credited, and only 50% of land area of land with a slope exceeding 20% but with no more than a slope of 25% shall be credited. The application of this section to any particular lot or site shall be the responsibility of the Village Planning Board at the time of subdivision or site development plan approval.

[Amended 8-17-2005 by L.L. No. 5-2005]

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§ 195-37 Aquifer and Wellhead Protection.

- A. Findings and purpose. The Village of Montebello finds that protection of groundwater is essential to promoting the health, safety, and welfare of the Village. The purpose of these Aquifer and Wellhead Protection standards are to protect, preserve, and maintain the quality and quantity of the groundwater resources, which the Village depends upon entirely for its present and future public water supply, as well as for the supply of numerous private wells in the Village of Montebello and the region. As used herein, "present and future" means any wells or springs currently in use for public water supply purposes, any potential wellhead areas that have been identified and are under study or planned for future use, as well as those wellhead areas identified for study from the time so designated.
- B. Definition of aquifers and wellheads. The locations of aquifers and public water supply wellheads are shown on the Aquifers and Wellheads Map, dated October 2017, which, with all explanatory matter thereon, is hereby adopted and made part of this Chapter. A copy of said map, indicating the latest amendments, shall be kept up-to-date in the offices of the Village Clerk-Treasurer for the use and benefit of the public. The entire Village overlays Federal Sole Source Aquifers and the west side of the Village rests upon a mapped New York State Primary/Principal Aquifer. *Note: See chapter 195 Attachment 7.*
- C. Applicability.
- (1) Any application for subdivision approval, special use permit, site plan approval, or building permit, under this chapter or Chapter 163, Subdivision of Land, shall be subject to the aquifer use restrictions below. The applicant shall show, on any required submissions, which portion of the subject property lies within the NYS Primary Aquifer and which portion lies within the Federal Sole Source Aquifer, as identified on the Aquifer Map
 - (2) Existing development, uses or activities not in compliance with the aquifer use restrictions

below are considered legally nonconforming uses or activities. Any change in a legally nonconforming use or activity with respect to the standards of this §195-378, shall be subject to the requirements of this section. Notwithstanding the foregoing, if any permitted nonconforming uses or activities are found to pose a potential or imminent hazard to health, they shall be deemed violations of this chapter.

- D. Aquifer use restrictions for all lands in Montebello. The following use restrictions and requirements shall apply to all lands located within the Village of Montebello. These use restrictions are in addition to those prohibited uses listed in §195-11, and are not intended to supersede the New York State Agriculture and Markets Law or the New York State Environmental Conservation Law governing acceptable agricultural practices.
- (1) Disposal wells. The installation or use of disposal wells is prohibited.
 - (2) Animal wastes. Manure piles shall not be permitted unless provision has been made to prevent seepage into groundwater. Suitable storage facilities shall be required when it is not possible to spread or dispense of wastes on a daily basis.
 - (3) Industrial sludge and toxic chemicals. No toxic or hazardous substances, defined as such by the United States Environmental Protection Agency or the New York Department of Environmental Conservation, shall be stored except under permit from those agencies.
 - (4) Wastewater lagoons and pits. Use of wastewater lagoons and pits for temporary storage of wastewater is prohibited. All storage facilities shall be watertight, located above ground, and under permit by the New York Department of Environmental Conservation.
 - (5) Disposal. Disposal of toxic chemicals, industrial sludge, or radioactive materials is prohibited.
 - (6) Fertilizer storage. All bulk storage of fertilizers for agricultural or commercial use must be within a building or structure which will prevent any seepage or runoff.
 - (7) Salt and coal stockpiles. The storage of salts or coal is prohibited except in a completely enclosed building or structure, which will prevent any seepage or runoff containing such materials.
 - (8) Potable water wells. All potable water supply wells shall be constructed in accordance with the requirements of the Rockland County Department of Health.
 - (9) Abandoned wells. All abandoned wells shall be sealed in accordance with the requirements of the Rockland County Department of Health.
- E. Aquifer use restrictions for the NYS Primary/Principal Aquifer areas and within 500 feet of Public Water Supply Wellheads. The following use restrictions and requirements shall apply to all lands located within the NYS Primary/Principal Aquifer, or which are located within 500 feet of public water supply wellheads. The restriction below are in addition to all of those listed in section D above. These use restrictions are not intended to supersede the New York State Agriculture and Markets Law or the New York State Environmental Conservation Law governing acceptable agricultural practices.

(1) Protection of natural vegetation, clearing limits. To ensure maximum water recharge and to minimize the potential for fertilized vegetation, natural vegetation located on a tract or lot shall be preserved to the maximum extent possible, consistent with the following parameters:

- a. In connection with any site plan or any building permit for the construction of a single-family home, the natural vegetation on a lot or a tract in the NYS Primary/Principal Aquifer area or within 500 feet of Public Water Supply Wellheads, shall not be disturbed except as authorized herein.
- b. For Nonresidential lots and tracts, subdivisions, and for two or three-family homes or other multifamily projects, the total amount of disturbance of natural vegetation shall not exceed 50% of the gross area of the lot or tract. The Planning Board may alter or waive the provisions of this subsection where nonresidential lots or tracts, subdivisions, or multifamily projects proposed for development otherwise would meet the provisions of Village Code and a revegetation program which protects the aquifer is incorporated into the project design.
- c. For single-family detached residences, the amount of disturbance of natural vegetation shall not exceed the following percentages as reduced by any environmental or easement constraints pursuant to §195-14.A.

1 to 15,000	75%
15,001 to 30,000	60%
30,001 to 60,000	50%
60,001 to 90,000	35%
90,001 to 140,000	25%
140,001 to 200,000	20%
200,001 or greater	15%

- d. The Planning Board, when considering the residential subdivision of a tract within the Aquifer and Wellhead Protection area, shall utilize development or building envelopes, scenic easements, reserved areas, covenants and restrictions or any other reasonable means to best implement the requirements of this section during later building permit application reviews.

(2) Fertilizer, pesticide and herbicide use. No fertilizers, pesticides or herbicides shall be stored or applied except in compliance with this section. All storage of fertilizers, pesticides and herbicides within the New York State Primary/Principal Aquifer or within 500 feet of public water supply wellheads shall be within a building. All such use, storage, or application of fertilizers, pesticides and herbicides shall be in accordance with the requirements of the New York State Environmental Conservation Law and its

implementing regulations. Fertilizers, pesticides and herbicides shall be applied in manner and amount, in accordance with a landscape plan subject to review and approval of the Planning Board. However, individual homeowners and commercial agriculture uses may apply pesticides and fertilizers on their own property and shall be exempt from the Planning Board landscape plan review requirements of this section.

- (3) Storage tanks and pipelines. The installation, construction, placement, or replacement of new or existing underground storage tanks or containers of 1,100 gallons or less for petroleum products, including their pipelines, or underground storage tanks, pipelines, or containers for any other toxic chemical is prohibited in connection with all uses, including home fuel storage tanks for residential purposes. All above ground storage tanks of 1,100 gallons or less for petroleum products, pipelines, and transfer areas shall, to the maximum extent feasible, be designed to minimize the risk of groundwater contamination by incorporating backup containment structures, impervious surfaces, catchment areas, and other features. The Village reserves the right to prohibit installation or expansion of above ground storage tanks of 1,100 gallons or less for petroleum products or installation or expansion of above ground storage tanks, pipelines, or containers for any other toxic chemical, where consistent with the purpose and standards of this section. This subsection is intended to be consistent with the requirements of the New York State Petroleum Bulk Storage Code found in 6 NYCRR 612, 613, and 614 which regulates storage tanks holding 1,100 gallons or more.

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§ 195-63 Conservation and Environmental Protection Overlay Districts

- A. Purpose. There exists within the Village of Montebello a continuous and largely contiguous system of open, environmentally sensitive, and scenic lands, including but not limited to Palisades Interstate Park Commission parklands, scenic open vistas on existing industrial use campuses, existing golf course, steep slopes, freshwater wetlands, waterbodies, streams, and one-hundred-year floodplains. Disturbance of this open space system would impact the visual quality of the Village thereby potentially impacting property values, affect water quality, impact significant ecological habitat, and potentially create or exacerbate drainage conditions resulting in loss of property or property value.
- B. Location and Standards for Environmental Protection Overlay Districts (EPOD) and Conservation Overlay District.
- (1) Floodplain Environmental Protection Overlay District (F-EPOD)
- (a) F-EPOD Overlay Defined. The location of the F-EPOD shall be any area within the Village of Montebello mapped by the Federal Emergency Management Agency on its Flood Insurance Rate Maps and as defined by § 92-4 of this Code either as an "Area of Special Flood Hazard," "Base Flood," or "100-Year Flood" area.
- (b) F-EPOD Standards.
- (i) Development Coverage Limits. Development Coverage, as defined in § 195-124

of this chapter, shall not exceed 15% of any portion of the subject site located within the F-EPOD.

- (ii) Flood Damage Prevention Code. All construction, occupancies and land use activities in the F-EPOD shall comply with Chapter 92 of the Village Code, Flood Damage Prevention. No development shall be undertaken in any area of special flood hazard without first securing a floodplain development permit. Any application for site plan, subdivision, special use permit or any application for a variance which proposes disturbance that is regulated by Chapter 92 shall be conditioned upon the applicant securing a floodplain development permit if required.
- (iii) F-EPOD to be depicted by applicant. Any lot plan, site plan, or subdivision plan that is submitted to a board for approval, or to the Building Inspector in support of a building permit application, shall clearly show the limits of the F-EPOD as prepared by the applicant, and all improvements or land disturbance proposed therein. The depiction of the boundaries of the F-EPOD overlay on the official Zoning Map is for general guidance only. The F-EPOD boundary shall be mapped by a licensed surveyor or engineer on the applicant's site plan, and the location of the F-EPOD as shown on the stamped drawing shall control.
- (iv) Habitable buildings in the 100-Year Floodplain. The construction, alteration or enlargement of any habitable building in a 100-year flood area shall require a Planning Board site development plan review, pursuant to Article IX of this Chapter, in addition to a floodplain development permit required by Chapter 92. Before granting any approval for such activities, the Planning Board shall make a finding that all of the following criteria below have been met. The Planning Board may conduct a site visit for the purpose of gathering evidence prior to making such findings:
 - a. The proposed regulated activity is compatible with the public health and welfare of the Village.
 - b. The applicant has demonstrated that there is no practicable alternative for the proposed regulated activity or action at other locations on the subject parcel outside of the F-EPOD, or at any locations at a greater distance from or at a greater elevation above the area subject to flooding.
 - c. Measures have been added to the plan or action to minimize flood damage; to mitigate impacts on the floodplain's ability to store floodwaters; to allow natural functioning of the floodplain; and to minimize the obstruction of the passage of floodwaters under or around the structures.
 - d. The exercise of property rights in this case and the public benefit derived from such use of these rights outweigh or justify the possible degradation or function of the floodplain, the interference with the exercise of other property rights than those of the applicant and the impairment or endangerment of the public health,

safety or welfare.

e. The activity will not result in significant adverse environmental impacts.

(v) Relocation of proposed improvements. Any Village agency that is responsible for reviewing and deciding upon any variance, building permit, site plan, or subdivision plan for any improvements proposed within an F-EPOD, may, as a condition of approval, require that a proposed improvement(s) be relocated outside the F-EPOD or not placed within a F-EPOD to protect the health, safety and general welfare of the community, if practicable.

(2) Wetlands, Waterbodies, and Streams Environmental Protection Overlay District (W-EPOD)

(a) W-EPOD Overlay Defined. The location of the W-EPOD shall be any area within the Village of Montebello meeting any one of the following criteria:

(i) All freshwater wetlands meeting the criteria as defined in § 92-4 of this Code and Chapter 191, §191-3, and any uplands within 100 feet, horizontal distance, of such wetland boundary.

(ii) The Mahwah River, classified as protected Class A waters by the New York State Department of Environmental Conservation in 6 N.Y.C.R.R. 701, et seq, and any uplands within 150 feet, horizontal distance, of the normal high-water line of its banks.

(iii) All streams, classified as protected Class B waters by the New York State Department of Environmental Conservation in 6 N.Y.C.R.R. 701, et seq, and any uplands within 100 feet, horizontal distance, of the normal high-water line of their banks.

(iv) All streams, classified as protected Class C waters by the New York State Department of Environmental Conservation in 6 N.Y.C.R.R. 701, et seq, and any uplands within 75 feet, horizontal distance, of the normal high-water line of their banks.

(b) W-EPOD Standards.

(i) W-EPOD boundaries to be depicted by applicant. Any lot plan, site plan, or subdivision plan that is submitted to a board for approval, or to the Building Inspector in support of a building permit application, shall clearly show the limits of the W-EPOD as prepared by the applicant, and all improvements or land or vegetation disturbance or limits of clearing proposed therein. The depiction of the boundaries of the W-EPOD overlay on the official Zoning Map is for general guidance only. Boundaries of wetlands, waterbodies and streams and the extent of any required upland buffer areas as defined above, shall be determined by a licensed New York State landscape architect, or other qualified licensed or certified New York State professional, and the location of the W-EPOD as shown on the stamped drawing shall control.

- (iii) Within the portion of the W-EPOD, within 150 feet of the normal high-water line of the banks of the protected Class A waters of the Mahwah River, after the adoption of this Zoning Law, any new structures, land disturbance, clearing, removal of vegetation, parking, storage or grading or landscaping shall comply with the provisions of Chapter 191 of this Code. Landscaped or lawn areas, structures or parking areas in existence are grandfathered and may be maintained, but may be expanded only in accordance with Chapter 191 of this Code.
- (iv) Within the portion of the W-EPOD, within 100 feet of the boundary of any freshwater wetland, after the adoption of this Zoning Law, any new structures, land disturbance, clearing, removal of vegetation, parking, storage or grading or landscaping shall comply with the provisions of Chapter 191 of this Code. Landscaped or lawn areas, structures or parking areas in existence are grandfathered and may be maintained, but may be expanded only in accordance with Chapter 191 of this Code.
- (v) Within the portion of the W-EPOD, within 100 feet of the normal high-water line of the banks of a stream classified as protected Class B waters, after the adoption of this Zoning Law, any new structures, land disturbance, clearing, removal of vegetation, parking, storage or grading or landscaping shall comply with the provisions of Chapter 191 of this Code. Landscaped or lawn areas, structures or parking areas in existence are grandfathered and may be maintained, but may be expanded only in accordance with Chapter 191 of this Code.
- (vi) Within the portion of the W-EPOD, within 75 feet of the normal high-water line of the banks of a stream classified as protected Class C waters, after the adoption of this Zoning Law, any new structures, land disturbance, clearing, removal of vegetation, parking, storage or grading or landscaping shall comply with the provisions of Chapter 191 of this Code. Landscaped or lawn areas, structures or parking areas in existence are grandfathered and may be maintained, but may be expanded only in accordance with Chapter 191 of this code.
- (vii) Relocation of proposed improvements. Any Village agency that is responsible for reviewing and deciding upon any variance, building permit, site plan, or subdivision plan may, as a condition of approval, require that a proposed improvement(s) be relocated outside the W-EPOD or not placed within a W-EPOD to protect the health, safety and general welfare of the community, if practicable.

(3) Steep Slopes Environmental Protection Overlay District (S-EPOD)

- (a) S-EPOD Overlay Defined. The location of the S-EPOD overlay shall be any area within the Village of Montebello with a slope of 15% or greater, and which is 500 square feet or greater in size.
- (b) S-EPOD Standards.
 - (i) S-EPOD to be depicted by applicant. Any lot plan, site plan, or subdivision plan that is submitted to a board for approval, or to the Building Inspector in support of a

building permit application, shall clearly show the limits of the S-EPOD as prepared by the applicant, and all improvements or land disturbance proposed therein. The depiction of the boundaries of the S-EPOD overlay on the official Zoning Map is for general guidance only. The S-EPOD boundary shall be mapped by a licensed surveyor or engineer on the applicant's site plan, and the location of the S-EPOD as shown on the stamped drawing shall control.

- (ii) Within the S-EPOD, construction of any structure, clearing, or grading shall be completely prohibited on those portions of the S-EPOD with slopes of 25% or greater.
 - (iii) Within the S-EPOD, construction of any structure, clearing, or grading shall be limited to twenty percent (20%) of the portion of the subject site with slopes of between 15 and 24 percent.
 - (iv) Relocation of proposed improvements. Any Village agency that is responsible for reviewing and deciding upon any variance, building permit, site plan, or subdivision plan may, as a condition of approval, require that a proposed improvement(s) be relocated outside the S-EPOD or not placed within a S-EPOD to protect the health, safety and general welfare of the community, if practicable.
- C. Site plan review and approval required in any EPOD or C Overlay. Any disturbance of land, and any building permit application proposing a structure within the C Overlay or any EPOD overlay defined above, including fences, shall be reviewed by the Village Engineer, and approved by the Planning Board, except that the improvements listed below shall not require approval for construction in the C overlay or any EPOD. All other applicable approvals and permits that may be required shall be obtained prior to disturbance. **[Amended 9-15-2010 by L.L. No. 2-2010]**
- (1) Signs in accordance with Chapter 143. **[Amended 2-19-2014 by L.L. No. 2-2014]**
 - (2) Utility boxes, provided same are screened, and also provided they are not otherwise located within a wetland, floodplain or stream.
- D. Conditions of approval. The Planning Board shall ensure that any land use, construction, or disturbance in the C Overlay District or any EPOD shall meet the standards of § 195-63B of this Chapter. The Planning Board shall ensure that the purposes of the overlay district are met, and may establish conditions to protect the qualities of the C District or any EPOD, by requiring structures and other proposed improvements to be located elsewhere on the property outside the C overlay or any EPOD, reduced in size, or other changes that would protect the overlay district.
- E. Grandfathering. Preexisting uses shall be permitted to continue in the C District or any EPOD and existing structures shall be grandfathered from these requirements, however, any proposed additions or expansions to existing structures which would be located within the C overlay or any EPOD shall require review and approval by the Planning Board.
- F. Site plan submission. Sufficient information shall be submitted to the satisfaction of the Planning Board to illustrate the location of the C Overlay and the extent of any EPOD on the

subject property, and the location of any proposed improvements or disturbances in relation to the overlay(s), and to make a determination as to whether the location of proposed improvements or disturbances will impact the resources contained in the overlay district.

- G. The portion of any lot located in the C overlay or any EPOD, shall not be eliminated from the calculation of minimum lot area, unless otherwise constrained by the features regulated in § 195-14A of this chapter.

The following note should be added to 195 Attachment 2:1, Table of Bulk Requirements, as a 6th footnote, applying to all the Development Coverage percentages in Column 13:

- 6 When an EPOD Overlay is present, see §195-63 for modified development coverage standards.

DRAFT