

DRAFT

Based on November 6, 2008 Land Use Recommendations #1-4

(Wetland Jurisdiction/Definition, Setbacks & Buffers)

**INCORPORATED VILLAGE OF OLD FIELD
BOARD OF TRUSTEES**

**PROPOSED LOCAL LAW NO. 1 OF 2009 AMENDING
CHAPTER 121 OF THE CODE OF THE VILLAGE OF OLD
FIELD AS IT RELATES TO THE PROTECTION OF
ENVIRONMENTALLY SENSITIVE AREAS OF THE
VILLAGE**

Be it hereby enacted by the Board of Trustees of the Incorporated Village of Old Field as follows:

Section 1. Legislative intent.

The Board of Trustees hereby finds that it is necessary to amend and update certain sections of Chapter 121 , of the Code of the Village of Old Field, in order to protect the Village's natural resources. The Board of Trustees finds that increased protection of the Village's natural resources regulated under this article will have important benefits for the Village and its residents. Preserving the existing vegetated buffers surrounding environmentally sensitive areas and requiring the establishment of such buffers where they do not currently exist will serve as mitigation for development in adjacent areas.

The regulations in this article are adopted to protect and perpetuate some of the Village's most important natural resources. Growth and development have encroached upon or despoiled many of the Village's wetlands, watercourses, tidal waters, natural drainage areas, watersheds and water recharge areas, as well as its beaches, dunes, bluffs, and other coastal features. These natural resources, which are threatened by the Village's growth, constitute important physical, social, scenic, aesthetic, recreational, and economic attributes of the Village.

The provisions of this article are therefore designed to preserve and maintain these natural resources by minimizing their disturbance. Such protection will benefit the Village and its people in many ways, among which are the following:

- A. The protection of wetlands, watercourses, tidal waters, and marine habitat from damage caused by pollution, turbidity, siltation, or direct destruction, thereby protecting stocks of fish, shellfish, and other marine organisms, as well as the wildlife and vegetation which depend upon these resources for their survival.
- B. The protection of the Village's underground water supply and the quality of its tidal and fresh waters, through the preservation of natural filtration areas, and natural vegetative buffers.

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- C. The lessening of danger to life and property caused by coastal flooding and storms.
- D. The preservation of beaches and other coastal habitat needed to sustain rare or threatened coastal birds, as well as fragile coastal vegetative communities.
- E. The preservation of the Village's beaches, dunes, bluffs, wetlands, marshes, and other coastal resources, which together are integral to the character of Village and to its social and economic well-being.
- F. *Improved assessment of potential impacts such that residents' individual actions will be evaluated relative to the local and cumulative impact of that action on the regional ecosystem.*
- G. *Improved ability to mitigate against potential negative environmental impacts of a proposed action by ensuring a net increase in ecosystem services within the Village of Old Field.*

Section 2. Amendments.

Chapter 121 of the Code of the Village of Old Field shall be amended to read as follows:

§121-5 Word usage and definition

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BUFFER AREA The distance between an environmentally sensitive area or other boundary and the closest permissible location to such boundary for a regulated activity, as established by the approving authority.

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FRESHWATER WETLANDS The lands and waters in the Village of Old Field (including but not limited to those lands and waters as shown on the Freshwater Wetlands Map prepared by or for the State of New York pursuant to §24-0301 of the New York State Freshwater Wetlands Act and filed with the Suffolk County Clerk as of July 31, 1984, revised on June 14, 1989, and entitled "Tentative Freshwater Wetlands Maps"), which contain any or all of the following:

- A. Lands and submerged lands, commonly called marshes, swamps, sloughs, bogs, flats, streambanks, riverine systems, and the like, supporting aquatic or semiaquatic vegetation of the following vegetative types:

- (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 (*Acer rubrum*), willows (*Salix* spp.), swamp white oak (*Quercus bicolor*), black gum (*Nyssa sylvatica*) and sweet gum (*Liquidambar styraciflua*), Atlantic white cedar (*Chamaecyparis thyoides*), black ash (*Fraxinus nigra*), green ash (*Fraxinus pennsylvanica*), river birch (*Betula nigra*), and yellow birch (*Betula alleghanensis*).
- (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 (*Alnus* spp.), buttonbush (*Cephalanthus occidentalis*), sweet pepperbush (*Clethra alnifolia*), swamp honeysuckle (*Rhododendron viscosum*), spicebush (*Lindera benzoin*), sheep laurel (*Kalmia latifolia*), highbush blueberry (*Vaccinium corymbosum*), crimson eyed rose mallow (*Hibiscus palustris*), winterberry (*Ilex verticillata*), arrow-wood (*Viburnum dentatum*), common elderberry (*Sambucus canadensis*), inkberry (*Ilex glabra*), wild-raisin (*Viburnum cassinoides*), serviceberry (*Amelanchier* spp.), red chokeberry (*Aronia arbutifolia*), swamp rose (*Rosa palustris*) and witch-hazel (*Hamamelis virginiana*).
- (3) Emergent vegetation, including, among others: cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites communis*), wild rice (*Zizania aquatica*), bur reeds (*Sparganium* spp.), swamp loosestrife (*Decodon verticillatus*) and water plantain (*Alisma plantago-aquatica*), sweet flag (*Acorus calamus*), skunk cabbage (*Symplocarpus foetidus*), jewelweed (*Impatiens* spp.), blue flag (*Iris versicolor*), marsh marigold (*Caltha palustris*), horsetails (*Equisetum* spp.), swamp milkweed (*Asclepias incarnata*), and yellow flag (*Iris pseudacorus*).
- (4) Rooted, floating leaved vegetation, including, among others: water lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*) and spatterdock (*Nuphar advena*).
- (5) Free-floating vegetation, including, among others: duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrhiza*) and watermeal (*Wolffia* spp.).
- (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 (*Carex* and *Cyperus* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cutgrass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), purple loosestrife (*Lythrum salicaria*), spotted joe-pye weed (*Eupatorium maculatum*), beggar ticks (*Bidens* spp.), cinnamon fern (*Osmunda cinnamomea*), marsh fern (*Dryopteris thelypteris*), ostrich fern (*Pteretis pennsylvanica*), royal fern (*Osmunda regalis*), sensitive fern (*Onoclea sensibilis*), spike rushes (*Eleocharis* spp.), and switch grass (*Panicum virgatum*).

(7) Bog mat vegetation, including, among others: sphagnum mosses (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*), sundew (*Drosera rotundifolia*), and leatherleaf (*Chamaedaphne calyculata*).

(8) Submergent vegetation, including, among others: pondweeds (*Potamogeton* spp.), naiad family (*Najas* spp.), Bladderworts (*Utricularia* spp.), wild celery (*Valisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara* spp.), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.) and water smartweed (*Polygonum amphibium*).

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TIDAL WETLANDS Property within and included in the inventory of tidal wetlands prepared by or for the State of New York and filed with the Suffolk County Clerk as of September 28, 1982, last revised November 16, 1982, and entitled "Tidal Wetlands Maps," and any amendments thereto, which include any or all of the following:

A. Those areas which border or line beneath tidal waters, such as but not limited to banks, bogs, salt marshes, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters.

B. All banks bogs, meadows, flats and tidal marshes subject to such tides and upon which grow or may grow some or any of the following: salt meadow grass (*Spartina patens*) salt grass (*Distichlis spicata*), balck grass (*Juncus gerardia*), saltworts (*Salsola* spp.), sea lavender (*Limonium carolinianum*) glassworts (*Salicornia* spp), big cord grass (*Spartina cynosuroides*), prairie cordgrass (*Spartina pectinata*) marsh elder (*Iva frutescens*), sea-blite (*Suaeda maritime*), groundsel-tree (*Baccharis halimifolia*, crimson –eye rose mallow (*Hibiscus palustris*), seaside goldenrod (*Solidago sempervirens*) and the intertidal zone including salt marsh cordgrass (*Spartina alterniflora*).

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Article IV

General Area Requirements

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§ 121-21.2 Wetland Setbacks: The following minimum setbacks or other restrictions shall apply to all lots, lands, uses, activities, and structures within the Village. These setbacks or other restrictions shall apply whether or not the particular lot, land, use, activity, or structure requires a site plan, special permit or other permit or approval.

- A. Sewage disposal devices. No sewage disposal device or structure shall be constructed, placed, or installed within 150 feet of the boundary of a freshwater or tidal wetland.
- B. All other structures. No building or other structure shall be erected, constructed, placed, enlarged, reconstructed or installed within 100 feet of the boundary of a freshwater wetland or tidal wetland.
- C. Clearing. The clearing of vegetation or the establishment of turf, lawn, or landscaping shall not be undertaken within 50 feet of the upland boundary of a freshwater wetland or tidal wetland, unless otherwise restricted by the establishment of buffer area(s) as provided in this chapter.

§ 121-76 Regulated projects.

A site plan application shall be filed for any of the following projects (hereinafter referred to as "project" or "projects") when conducted within the Village:

- A. Construction of a dwelling;
- B. Construction with a footprint exceeding 750 square feet for:
 - (1) An addition to a dwelling;
 - (2) An accessory building; or
 - (3) An addition to an accessory building.
- C. Any construction, clearing, grading or filling in an environmentally sensitive area or within 100 feet of an environmentally sensitive area, other than a tidal wetland or freshwater wetland;
- D. Any construction, clearing, grading or filling in a tidal wetland or freshwater wetland or within 200 feet of a tidal wetland or freshwater wetland.
- Ⓓ. E. Grading, removal or filling of more than 100 cubic yards of material;

E. F Clearing, grading or filling which will affect existing drainage onto surrounding properties or neighboring environmentally sensitive areas;

F. G Any construction or relocation of a new parking area, driveway, or curb cut or addition to an existing parking area or driveway exceeding 750 square feet, but not including the reconstruction or replacing of an existing parking area or existing driveway;

G. H Construction of any impervious surface exceeding 750 square feet.

§ 121-76.1 Prohibited Activities

- A. No buildings or structure, other than a government facility, shall be created, constructed, placed, erected, reconstructed or maintained in a freshwater wetland or tidal wetland.
- B. Bulkheads and seawalls shall be prohibited in all freshwater wetlands or tidal wetlands, except when found necessary to protect the natural environment from excessive erosion, silting or an imbalance in the ecological system of the freshwater or tidal wetlands after approval by the Board of Trustees of the Village of Old Field and all other appropriate public agencies.

§121-79 Site plan review application.

A. Where a site plan review is required, the property owner or authorized agent shall submit a written application that defines precisely the extent and nature of the contemplated project, including its location on the site, and provide the following documents:

- (1) An up-to-date survey prepared by a licensed surveyor;
- (2) Suffolk County land and tax map showing the property and adjacent properties within 200 feet, with the names and addresses of the property owners;
- (3) A site plan prepared by a professional engineer. For a new dwelling, the site plan must show details for the entire lot. For all other applications, the site plan must show details within 100 feet of the project. All site plans must show such other details of neighboring properties, roadways, and environmentally sensitive areas which are or may be affected by the project. The SPR Board may require additional site review details or an enlarged plan scope, as it deems necessary for review;
- (4) Tree preservation plan: indicates the trees, bushes and shrubs to be removed, relocated, preserved, or planted within the site review area; and

- (5) Building plans, if applicable, showing exterior design, footprint, and elevation.

B. The property owner shall physically mark and stake the property to delineate all areas and features which the SPR Board deems pertinent to the review of the application pursuant to regulations of the SPR Board.

C. Site Analysis Map. A site plan for which approval is sought shall be dated and shall include a site analysis map containing the following elements (unless one or more is waived by the SPR Board for good cause shown) to be considered complete:

- (1) Existing and proposed sewerage disposal systems.
- (2) Existing topography of the site and immediately adjacent property, as revealed by contours or key elevations as may be required by the SPR Board, and any proposed regrading of the site. The datum shall be in accordance with United States Coast and Geodetic Survey.
- (3) Natural features, such as water bodies, drainage courses, fresh and salt marshes, coastal dunes, bluffs, beaches, escarpments, woodlands, large trees, unique plant and wildlife habitat and overlook areas.
- (4) Cultural features, such as archaeological remains, trails, historic buildings and sites.

§ 121-79.1 Buffer adjoining wetlands.

A. In recognition of those areas of significant or critical value, a natural vegetative buffer area not to exceed 200 feet deep shall be maintained adjacent to any freshwater wetland or tidal wetland. The depth of said buffer shall be determined within the sole discretion of the SPR Board. Factors to be considered by the SPR Board include the following:

- (1) Scenic, recreational, historic, archaeological or ecological value or
- (2) Areas having unusual topographic or natural features.

B. Vegetative buffers shall be established in accordance with the table below which provides for varying required widths depending on area of cleared or impervious surfaces in the adjacent upland area, as well as the slope of the land.

<i>Area of Cleared and Impervious Surface Land Adjacent to Freshwater Wetlands and Tidal Wetlands</i>	<i>Vegetative Buffer Minimum Width</i>	<i>Vegetative Buffer Minimum Width if Adjacent Land Slope Exceeds 10%</i>
<i>Less than 0.25 acre</i>	<i>25</i>	<i>50</i>
<i>Less than 0.5 acre</i>	<i>50</i>	<i>75</i>
<i>Less than 1.0 acre</i>	<i>75</i>	<i>100</i>
<i>Greater than 1.0 acre</i>	<i>100</i>	<i>125</i>

C. Where alterations to an existing residential structures result in the expansion of the structures' footprint (square footage of the ground floor area encompassed by the structural foundation of an existing structures) of less than ten (10) percent, no new vegetative buffer shall be required.

Section 3. Severability.

If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which judgment should have been rendered.

Section 4. Effective date.

This local law shall take effect immediately upon filing with the New York Secretary of State.

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