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

**PROPOSED LOCAL LAW NO. 5 OF 2009 AMENDING
CHAPTER 121 OF THE CODE OF THE VILLAGE OF OLD
FIELD TO REQUIRE A SPECIAL PERMIT FOR
DEVELOPMENT ACTIVITIES IN A BLUFF SETBACK
AREA**

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

Section 1. Amendments.

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

§ 121-5. Word usage and definitions.

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- B. As used in this chapter, the following terms and words shall have the meanings herein defined. Words not herein defined shall have the meanings given in Webster's Unabridged Dictionary.

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BLUFF - A bank or cliff with a height at least ten feet above mean high water mark and a precipitous or rounded face exceeding a one-to-one slope and adjoining a beach or a body of water. The seaward limit of a bluff is the landward limit of its contiguous beach. Where no beach is present, the seaward limit is mean low water. The landward limit of a bluff is defined by a line that is located twenty-five (25) feet landward of and running parallel to the bluff's receding edge or point of inflection.

BLUFF SETBACK AREA – The portion of a lot that includes a bluff and/or that portion of a lot that is located adjacent to a bluff, measured fifty (50) feet landward from the landward limit of a bluff, and extending the full width of the bluff.

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DEVELOPMENT ACTIVITIES - Any construction, reconstruction or demolition of a structure or the excavation, clearing or grading of land, but shall not include the routine maintenance and repair of existing structures, patios, driveways and walkways, or normal ground maintenance, including mowing, trimming and pruning of vegetation, planting and replanting, and removal of dead or diseased vegetation, provided that such activity does not involve any regrading or other disturbance of the land, and further provided that any such activity conforms with all other applicable laws, ordinances and regulations.

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ARTICLE XII Special Permits Uses

§ 121-___. Intent.

The special permit uses listed in this chapter possess characteristics of a nature such as to require special review and the application of general and special standards before locating in districts where they are not permitted by right, in order to assure an orderly and harmonious arrangement of land uses in the district and in the community. Such uses may be authorized by the Board of Trustees, after a public hearing.

§ 121-___. Rules of procedure; notice requirements.

- A. The Board of Trustees shall make rules as to the manner of filing applications for special permit uses and as to any other matter requiring action by said Board.
- B. Upon the filing with the Board of Trustees of an application for a special permit together with payment of the required fees, the Board shall fix a time and place for a public hearing thereon and shall give notice of such hearing by publishing a notice thereof in the official Village newspaper at least 20 days prior to the date of the public hearing.
- C. Notice of hearing shall state the location of the building or premises, the name of the owner and applicant and the general nature of the application.
- D. Cost and expense of providing the above notice shall be borne by the applicant.
- E. Mailing of notices; rescheduling of public hearing.
 1. The applicant or his/her authorized agent shall mail notice of the hearing, postmarked no less than 10 days nor more than 20 days before the hearing, to the owners of all properties located within 200 feet of the exterior limits of the subject property as shown on the current tax roll:
 - a. Notice of hearing addressed to the owners of properties that are directly

adjacent to the subject property shall be sent by certified mail return receipt requested. For purposes of this subsection, "adjacent" shall include property located on the opposite side of any street or right-of-way.

- b. Notice of hearing addressed to the owners of all other properties located within 200 feet of the exterior limits of the subject property shall be sent by first class mail.
2. The applicant or his/her authorized agent shall also file an affidavit of mailing with the Village Clerk no less than two business days before the hearing. Said affidavit shall contain a sworn statement by the affiant that he/she is the person that actually mailed the notices and a list of the names and addresses of the property owners that were notified and the manner in which they were mailed notice. The affidavit shall be accompanied by the receipts for those notices mailed by certified mail and any return receipts received at the time the affidavit is filed. Failure to mail the notices and/or file the affidavit of mailing with the Village Clerk as required herein shall result in postponement of the public hearing.
3. If a public hearing is rescheduled for any reason, notice of the new hearing shall be republished and remailed as required herein. Notice of a rescheduled hearing shall indicate that the hearing was rescheduled from a specific date.

F. Fees and deposits.

1. The schedule of required fees and deposits is as follows:

<u>Item</u>	<u>Amount</u>
Filing fee	\$250
Hearing deposit	\$1,500
Maximum reimbursement	\$5,000

2. Upon a showing of extreme financial hardship by an applicant, the Board of Trustees, at its discretion, may, by resolution, reduce or waive the above fee, deposit and maximum reimbursement.
3. The village may charge applicants all costs for engineering, legal, accounting, environmental and other professional services and such other expenses reasonably incurred by the village in connection with an application to the Board of Trustees up to the maximum reimbursement. The applicant's hearing deposit shall be charged for these expenses. Additional expenses that exceed the deposit shall be paid by the applicant within 30 days of notification. Failure to reimburse the village for expenses as required may, at the Board of Trustees' discretion, result in suspension of the applicant's matter pending before the Board. No

building permit, demolition permit or certificate of occupancy shall be issued until all required fees and deposits have been paid in full.

§ 121-___. General considerations and standards.

A. No special permit shall be authorized by the Board of Trustees unless it shall determine:

1. That the use will not prevent the orderly and reasonable use of adjacent properties or of properties in the surrounding area or impair the value thereof.
2. That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located or of permitted or legally established uses in adjacent districts.
3. That the safety, health, welfare, comfort, convenience or order of the Village will not be adversely affected by the proposed use and its location.
4. That the use will be in harmony with and promote the general purposes and intent of this chapter.

B. In making such determination, the Board of Trustees shall give consideration, among other things, to:

1. The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such special permit uses.
2. The conservation of property values and the encouragement of the most appropriate uses of land.
3. The effect that the location of the proposed use may have upon the creation or undue increase of traffic congestion on public streets, highways or waterways.
4. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.
5. Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
6. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise.
7. Whether the operation in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if

existing or if proposed by the Village or by other competent governmental agency.

8. The necessity for an asphaltic or concrete surfaced area for purposes of off-street parking and loading of vehicles incidental to the use and whether such area is reasonably adequate and appropriate to meet the parking and loading demands of the use.
9. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use or by the structures to be used therefor or by the inaccessibility of the plot or structures thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such lot.
10. Whether the use or the structures to be used therefor all cause an overcrowding of land or undue concentration of population.
11. Whether the lot area is sufficient, appropriate and adequate for the use and the reasonable anticipated operation and expansion thereof.
12. The physical characteristics and topography of the land.
13. Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or place of public assembly.

§ 121-___. Specific criteria.

In addition to the general considerations and standards set forth in this chapter, the following special permit criteria shall be required for the uses so indicated:

- A. Development activities within a bluff setback area.

The Board of Trustees finds that it is necessary to preserve, protect and conserve the Village of Old Field's bluff areas for a variety of physical, ecological, aesthetic, recreational and economic reasons related to promoting and protecting the public health, safety and general welfare of present and future residents of the Village of Old Field and surrounding areas. Specifically, the Board of Trustees finds that bluffs are inherently fragile natural features subject to erosion, sloughing, weakening, slumping and eventual collapse from any grading, improper use, development, runoff and groundwater seepage, removal of vegetation, improper siting of buildings, paving or parking areas which require special regulations to ensure that bluffs are sufficiently protected from development activities that have the potential to compromise their integrity. Accordingly, no special permit for development activities within a bluff setback area shall be issued unless the Board of Trustees finds that such activities comply with the following criteria and conditions:

1. No development activities shall take place on a bluff, except the Board of Trustees may authorize stairways constructed solely for pedestrian use and built by an individual property owner for the limited purpose of providing non-commercial access to the beach.
2. Development activities may be authorized within a bluff setback area provided that the Board of Trustees determines that such activities will take place on a portion of the property that is likely to remain unaffected by erosion for a period of fifty (50) years. Said determination shall be made within the sole discretion of the Board of Trustees based upon historical data and other evidence that establishes the erosional rate of the bluff.
3. Land disturbance, including removal of vegetation, alteration of grade, alteration of surface soils, and similar activities shall be minimized within a bluff setback area.
4. All natural vegetation within a bluff setback area shall be retained and enhanced to the extent practicable.
5. All stormwater runoff shall be directed so that it does not flow across the surface of the land to the bluff face.
6. Stormwater shall not be recharged in a quantity or a location from which surface runoff or subsurface water or groundwater flow will undermine the bluff face.
7. Roads, driveways, parking areas and other impervious surfaces shall be sited in such a manner that no stormwater from such surface will reach the bluff face.
8. Where existing vegetation has been disturbed, such area shall be replanted with vegetation suitable for the location. Said vegetation shall be shown on a Landscape Plan that shall be approved by the Board of Trustees.

§ 121-___. Imposition of restrictions and conditions.

- A. The Board of Trustees shall, in the granting of any special use permit, have the authority to:
 1. limit the duration of any special permit, and require periodic renewals in order to continue the use.
 2. impose reasonable restrictions on the hours of operation of any special permit use.
 3. impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, including requiring an applicant to plant and maintain a natural vegetation buffer area adjacent to a bluff, where appropriate.

- B. Such restrictions and conditions shall be consistent with the spirit and intent this chapter, and shall be imposed for the purpose of minimizing any adverse impact such special permit use may have on the neighborhood or community.

§ 121-___. Expiration.

All special permits granted by the Board of Trustees pursuant to this chapter shall expire one year after the date of the Board's grant of approval thereof, unless a building permit has been issued and substantial construction has commenced in reliance thereon.

Section 2. 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 3. Effective date.

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

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