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Title:	Town of Mendon Environmental Protection Overlay Districts Ordinance
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Abstract

This law creates environmental protection overlay districts for the Town of Mendon, NY. The districts include: Wetland Protection Overlay District, Steep Slope Protection Overlay District, Watercourse Protection Overlay District, Scenic Vista Protection Overlay District, Historic Preservation Overlay District, Waste Disposal Overlay District, Woodlot and Timber Harvesting Protection Overlay District, Flood Damage Prevention Overlay District, and Soils Susceptible to Ponding Overlay District.

Resource

Town of Mendon, NY
Code of the Town of Mendon, NY
Chapter 200 Zoning
General Code
ARTICLE VI Environmental Protection Overlay Districts

§ 200-23. EPOD Environmental Protection Overlay Districts.

- A. Purpose and intent. The purpose of the Environmental Protection Overlay Districts (EPOD) established in this article is to provide special controls over land development located in sensitive environmental areas within the town. The EPOD regulations are intended to maintain open space and to prevent the irreversible loss of natural resources; enhance the safety of residents and property located within areas of special

flood hazard; maintain and/or improve surface water quality; preserve wildlife habitats; enhance the aesthetics of site development; preserve important scenic vistas which are visible from public rights-of-way; maintain soil and slope stability; and control the impacts of development on the environment.

- B. Compliance with other permit agencies' regulations. In addition to meeting the requirements of the underlying zoning district and these EPOD regulations, development shall also meet all of the standards for development as further regulated by the Federal Emergency Management Agency, the United States Army Corps of Engineers and the New York State Department of Environmental Conservation.
- C. In order to implement the purpose and intent set forth above in this article, the following environmental protection overlay districts are hereby established:

EPOD 1 Wetland Protection Overlay District

EPOD 2 Steep Slope Protection Overlay District

EPOD 3 Watercourse Protection Overlay District

EPOD 4 Scenic Vista Protection Overlay District

EPOD 5 Historic Site Protection Overlay District

EPOD 6 Waste Disposal Site Protection Overlay District

EPOD 7 Woodlot and Timber Harvesting Protection Overlay District

EPOD 8 Flood Damage Prevention Overlay District

EPOD 9 Soils Susceptible to Ponding Overlay District

- D. Official maps. The locations and boundaries of all Environmental Protection Overlay Districts are delineated on an official set of maps on file in the Town Building Department. These maps are known as the "Official Town of Mendon EPOD Maps" and include the Environmental Atlas Maps of the Town prepared by the Monroe County Environmental Management Council; the Federal Emergency Management Agency Flood Insurance Rate Maps for the Town of Mendon; the New York State Department of Environmental Conservation Freshwater Wetland Maps for the Town of Mendon; and federally designated wetland maps. The Official Town of Mendon EPOD Maps shall be used for reference purposes only and shall not be used to delineate specific or exact boundaries of the various overlay districts. The Town has the authority to amend or add

to these Official EPOD Maps as necessary. Field investigations and/or other environmental analyses shall be required in order to determine whether a particular piece of property is included within one or more of the overlay districts.

E. Interpretation of district boundaries.

- (1) The Code Compliance Officer (CCO) shall be responsible for interpreting Environmental Protection Overlay District boundaries based upon an interpretation of the Official Town of Mendon EPOD Maps, as well as the use of various criteria set forth in this article for determining such district boundaries. The CCO may request the assistance of the Town Engineer or other appropriate board in making a determination.
- (2) Where EPOD Districts overlay any primary zoning district delineated on the Official Zoning Map of the Town of Mendon, the requirements of the overlay district shall be met in addition to any requirements specified for development in the respective primary zoning district.

F. EPOD permit application procedures.

- (1) EPOD development permit. An EPOD development permit shall be required subject to the provisions of this section and prior to the commencement of any regulated activity or the issuance of any permit for regulated development in a designated EPOD District.
- (2) Exempt activities. The following activities are exempt from the permit procedures of this section:
 - (a) Lawn care and maintenance.
 - (b) Gardening activities.
 - (c) Tree and shrub care and maintenance.
 - (d) Removal of dead or deteriorating vegetation or trees.
 - (e) Removal of structures except for those as further regulated within the EPOD 5 sites.
 - (f) Repair and maintenance of structures except for those as further regulated within the EPOD 8 sites.

- (g) Repair and maintenance of faulty or deteriorating sewage facilities or utility lines.
 - (h) Reconstruction of structures damaged by a natural disaster, provided that the new construction is of the same size and use.
 - (i) Customary agricultural activities, except for new or expanded structures.
 - (j) Public health activities, orders and regulations of the New York State Department of Health, Monroe County Department of Health or other public health agency.
 - (k) Activities subject to review jurisdiction of the New York State Public Service Commission or the New York State Board on Electric Generation Siting and the Environment, under the provisions of Article 7 or 8 of the New York Public Service Law.
 - (l) Any actual or ongoing emergency activity which is immediately necessary for the protection and preservation of life, property or natural resource values.
- (3) Application for permit. Applications for EPOD development permits shall be made in writing to the Planning Board or Code Compliance Officer (CCO), on forms available in the Town Building and Planning Department. The application shall be made by the property owner or his/her agent and shall be accompanied by any materials or information deemed appropriate by the Planning Board or authorized official. The application shall be accompanied by a site plan map and other information as required for site plan approval found in Article IX of this chapter. Each application for an EPOD development permit shall be accompanied by the appropriate fee as determined by the Town Board. This fee shall be in addition to any other fees required.
- (4) Permit review.
- (a) For projects requiring site plan approval, the CCO shall refer a completed permit application to the Planning Board for a public hearing in accordance with the provisions of this chapter. The CCO may refer all applications to other appropriate boards and agencies for their review and recommendations. Such boards or agencies shall have 30 days from the date of their receipt of a complete application in which to review such application and report their recommendations to the Planning Board or authorized official. Should such boards or agencies fail to report their recommendations within the thirty-day time period, then the CCO or Planning Board may take

action on the permit application without such report. Wherever possible, public hearings for EPOD permits will be simultaneously scheduled with public hearings required under site plan review, subdivision review or any SEQR-related action for the same site.

(b) When an EPOD development permit application proposes any development activity or site improvements within parcels containing areas identified in the Town's Official Open Space Index, then the applicant shall be referred to the Environmental Conservation Board for its review and recommendations regarding the following:

[1] Protection of environmentally sensitive areas.

[2] Open space/natural resource management.

[3] Opportunities for public access.

(c) The CCO or Planning Board shall have the authority to grant or deny an EPOD development permit, subject to the standards, criteria and other regulations contained in this chapter.

(d) Any development permit issued by the CCO or the Planning Board in accordance with the provisions of this article may be issued with conditions. Such conditions may be attached as are deemed necessary to ensure the preservation and protection of environmentally sensitive areas and to ensure compliance with the purpose and intent and the specific provisions of this article. Every permit issued pursuant to this article shall contain the following conditions:

[1] The CCO or the Town Engineer and/or other designated Town official shall have the right to inspect the project from time to time.

[2] The permit shall expire within six months of the date issued, if construction is not started, or within one year if there has not been a substantial amount of work completed after the start of construction.

[3] The permit holder shall notify the CCO of the date on which project construction is to begin, at least five days in advance of such date of construction.

G. Requirement for letter of credit or certified check.

(1) Following approval of an application for an EPOD development permit, and prior to the issuance of any building or other Town permit, the applicant shall furnish the Town with an irrevocable letter of credit or certified check in an amount to be established by the Town Board after review by the Town Engineer. Said instrument shall be sufficient to cover the costs of compliance, contingencies and inspection of the various specifications and conditions of the development permit. The purpose of the letter of credit or certified check shall be to ensure that all items, activities or structures specified in the plans approved by the authorized boards or agencies and by the Town are constructed or carried out in accordance with such plans and specifications and other appropriate requirements of the town.

(2) The irrevocable letter of credit or certified check shall continue in full force and effect until such time as the CCO has certified that, based upon a site inspection, all specifications, requirements and permit conditions have been completed and/or complied with. At such time, the letter of credit or certified check shall be released to the applicant. Where the CCO finds noncompliance with permit conditions, said official may deduct or withhold an amount from the letter of credit or certified check sufficient to cover the cost of compliance with any requirements, specifications or permit conditions.

H. Suspension or revocation of permits. The CCO may suspend a permit (temporarily) until such time as the Board having jurisdiction reviews the suspension. The Board having jurisdiction may suspend or revoke a development permit issued in accordance with the provisions of this article. Suspension or revocation shall be based upon evidence that the applicant has not complied with any or all terms or conditions of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth. The CCO shall, in writing, notify the applicant of this finding and the reasons for revoking or suspending a permit issued pursuant to this article and shall forward a copy of said findings to the applicant.

I. Conservation restrictions.

(1) Where a proposed development or subdivision contains an area delineated on the Official Town of Mendon EPOD Maps, the Board considering the application shall have the right to restrict or prohibit the following activities within the EPOD portion of the site:

(a) Construction, including but not limited to structures, roads, bridges, drainage facilities, barns and sheds for animals and livestock and fences.

(b) Clear-cutting of trees or removal of vegetation or other ground cover.

(c) Change in the natural flow of a stream or disturbance of a streambed.

(d) Placement of septic or other sewage disposal systems.

(e) The use of motorized vehicles, including but not limited to all-terrain vehicles, motorcycles, snowmobiles and motorbikes.

(2) Where proposed development results in a conservation restriction being imposed by the authorized Board, said restriction shall be noted on the final approved map and filed with the office of the County Clerk and/or the Town Building Department.

J. Design criteria and construction specifications for development. In granting, denying or conditioning any application for an EPOD development permit, the CCO or the Planning Board shall also consider the design criteria and construction specifications established for development as contained in the officially adopted Town of Mendon Design Criteria and Construction Specifications for Land Development, as may be amended from time to time, and on file with the Town Building Department.

K. Appeals. All appeals to decisions made under this chapter shall be made to the Zoning Board of Appeals Secretary in accordance with § 200-81.

§ 200-24. EPOD 1 Wetland Protection Overlay District.

A. Purpose and intent. The purpose of the Wetland Protection Overlay District regulations is to preserve, conserve and protect freshwater wetlands located within the town, pursuant to the New York State Environmental Conservation Law. It is the intent of these regulations to prevent the despoliation and destruction of freshwater wetlands by controlling development within the regulated areas by requiring review and permit approval prior to project commencement.

B. Delineation of EPOD 1 District boundaries. The boundaries of the Wetland Protection Overlay District shall be delineated on the Official Town of Mendon EPOD Maps. These boundaries and their regulated buffer areas shall include all areas classified as freshwater wetlands by the New York State Environmental Conservation Law and the Federal Fish and Wildlife Agency and regulated by the United States Army Corps of Engineers. This wetland information may also include, but is not limited to, the Soil Survey Report for Monroe County; field survey maps of flagged wetland boundaries and their buffer areas; and other appropriate sources.

C. Regulated activities. No person shall conduct any development activity within the boundary of any determined federal or state freshwater wetland area or its buffer area in the Town unless such person has first applied for and obtained an EPOD 1 development permit pursuant to the requirements of this section. All EPOD 1 development permits shall be issued subject to the conditions imposed by the United States Army Corps of Engineers or the New York State Department of Environmental Conservation. All EPOD 1 development permits shall cross reference the permit number issued by these other regulatory agencies.

D. Development standards and permit conditions.

(1) In granting, denying or conditioning any application for an EPOD 1 development permit, the authorized official or the Planning Board shall consider the effect that the proposed regulated activity will have on the public health, safety and welfare. In addition, consideration shall also be given to the protection and enhancement of the fragile and environmentally sensitive freshwater wetland areas.

(2) No permit to undertake a regulated activity within a freshwater Wetland Protection Overlay District shall be issued unless the applicant can adequately demonstrate that the activity will in no way at present or at any time in the future:

(a) Adversely alter groundwater reservoir capacities.

(b) Decrease watercourse flood carrying capacities.

(c) Adversely alter water retention capabilities.

(d) Increase downstream siltation.

(e) Adversely alter the natural wildlife balance.

(f) Impair any natural function of the wetland.

(3) Construction standards.

(a) Construction on sites containing a freshwater wetland area and/or their regulated buffer areas shall be permitted in strict adherence to the standards specified by the respective federal or state permitting agency. No approval shall be granted by the CCO or board having jurisdiction over the issuance of an EPOD 1 development permit until evidence has first been provided that all regulatory agencies have issued required freshwater wetland permits.

(b) To the extent practical, any newly created freshwater wetland shall be constructed within the town.

(4) Prior to receiving any approval or imposing any conditions of approval, the applicant for an EPOD 1 development permit shall have the burden of demonstrating that the proposed regulated activity will be conducted in accordance with the standards and requirements of this section. In addition, the applicant shall satisfy any additional requirements which may be imposed by the agency, the CCO or board having jurisdiction.

§ 200-25. EPOD 2 Steep Slope Protection Overlay District.

- A. Purpose and intent. The purpose and intent of the Steep Slope Overlay Protection District is to minimize the impacts of development activities on steep slopes in the Town by regulating activities in these areas and by requiring review and permit approval prior to project commencement. The developmental impacts include soil erosion and sedimentation, destruction of vegetation, increased runoff rates and slope failure. The regulations for this district are designed to minimize the disturbance or removal of existing vegetation, prevent increased erosion and runoff, maintain established drainage systems, locate development where it is less likely to cause future slope failures and to retain, as much as possible, the natural character of these areas.
- B. Delineation of district boundaries. The boundaries of the Steep Slope Overlay Protection District shall be delineated on the Official Town of Mendon EPOD Maps and shall include all areas of fifteen-percent or greater slopes and all areas within 50 feet of the toe or top of such slopes. In order to more accurately locate and delineate Steep Slope Protection District boundaries within the town, the CCO or Town Engineer may consult other topographic information. This other topographic information may include, but is not limited to, the Soil Survey Report for Monroe County; topographic maps produced by the United States Geological Survey and/or the Monroe County Environmental Management Council; field survey maps; and other appropriate sources.
- C. Regulated activities. No person shall conduct any of the following regulated activities within any Steep Slope Overlay Protection District in the Town unless such person has first applied for and obtained an EPOD 2 development permit pursuant to the requirements of this section:
- (1) Construction of new buildings or structures or additions and modifications to existing buildings and structures in areas of slope 15% or greater.
 - (2) Clearing of or construction on any land area within the district, including construction or clearing activities related to providing equipment access on the

site, except for those activities exempted from the permit requirements of this section as indicated in the excavation regulations of chapter 97 of the Town Code.

- (3) The construction or placement of any sewage disposal system, including individual sewage disposal systems, septic tanks, septic drainage or leach fields.
- (4) Filling, cutting or excavating operations.
- (5) Discharge of stormwater and/or construction and placement of stormwater runoff systems.

D. Development standards and permit conditions.

- (1) In granting, denying or conditioning any application for an EPOD 2 development permit, the CCO or the Planning Board shall consider the effect that the proposed regulated activity will have on the public health, safety and welfare. In addition, consideration shall also be given to the protection or enhancement of the fragile and environmentally sensitive steep slope areas.
- (2) No permit to undertake a regulated activity within a Steep Slope Protection Overlay District shall be issued unless the applicant can adequately demonstrate that:
 - (a) The stable angle of repose of the soil classes found on the site shall be used to determine the proper placement of structures and other development-related facilities within the plateau area. Site specific calculations of the stable angle of repose shall be determined by a professional soil scientist or engineer. Said professional shall use the soil classes and nomenclature contained in the Soil Survey of Monroe County and obtained for the site by borings, as well as high-intensity soil survey data provided by the applicant.
 - (b) The stability of soils will be maintained or increased to adequately support any construction thereon or to support any landscaping, agricultural or similar activities. This shall be documented by soil bearing data provided by a qualified testing laboratory or engineer.
 - (c) No proposed activity will cause erosion or slipping of soil or cause sediment to be discharged into any stream or tributary or the wetlands or tributaries of Irondequoit Creek or Honeoye Creek.
 - (d) Plant life located on the slopes outside of the minimum area that needs to be disturbed for carrying on approved activities shall not be destroyed. Plants

or other acceptable ground cover shall be reestablished in disturbed areas immediately upon completion of development activity so as to prevent any of the harmful effects set forth above to maintain the natural scenic characteristics of any steep slope.

- (e) Access down steep slopes shall be provided with ramp slopes no greater than one to six and side slopes no greater than one to three if not terraced or otherwise structurally stabilized. Disturbed nonroadway areas shall be stabilized and adequately drained.
- (f) There is no reasonable alternative for the proposed regulated activity on that portion of the site not containing steep slopes.

(3) Construction standards.

- (a) Construction of erosion protection structures shall be permitted according to the following standards and those set forth in the Town of Mendon Design Criteria and Construction Specifications for Land Development:

- [1] All erosion protection structures shall be designed and constructed according to generally accepted engineering principles found in publications entitled "Stormwater Management Guidelines for New Development" and "Best Management Practices for Stormwater Runoff Management," as found in chapter 6 of the New York State Department of Environmental Conservation (NYSDEC) Stream Corridor Management Manual; and the New York Guidelines for Urban Erosion and Sedimentation Controls published by the Empire State chapter of the Soil and Water Conservation Society, as amended.
- [2] A long-term maintenance program shall be included in any application for construction, modification or restoration of an erosion protection structure until ground cover has been reestablished. Such program shall include specifications for normal maintenance of degradable material and the periodic removal of removable materials.
- [3] The construction, modification or restoration of erosion protection structures shall not be likely to cause any measurable increase in erosion at the development site or other locations and prevent adverse effects to natural protective features, existing erosion protection structures and natural resources such as significant fish and wildlife habitats.

- [4] Temporary erosion controls (i.e., straw bales, siltation fences, hydroseeding and mulching) shall be provided for all disturbed areas, shall be installed before work begins and shall be maintained until restoration is complete. The site plan shall show locations and methods of erosion/siltation controls.
- [5] A construction and erosion control schedule should be required from the applicant as part of the permit application. All disturbed steep slope areas shall be regraded and stabilized as soon as possible, but in less than 14 days.
- (b) Drainage of stormwater shall not cause erosion or siltation, contribute to slope failures, pollute groundwater or cause damage to, or flooding of, property. Drainage systems shall be designed and located to ensure slope stability.
- (c) Any grading, excavating or other soil disturbance conducted on a steep slope shall not direct surface water runoff over the receding edge during construction.
- (d) Removal of existing mature trees from steep slope areas will only be permitted where absolutely necessary to allow the subject construction. All trees larger than three inches in diameter as measured at breast height and any trees to be removed shall be shown on the site plan.
- (4) Prior to receiving any approval or imposing any conditions of approval, the applicant for an EPOD 2 development permit shall have the burden of demonstrating that the proposed regulated activity will be conducted in accordance with the standards and requirements of this section. In addition, the applicant shall satisfy any additional requirements which may be imposed by the authorized official or board having jurisdiction.

§ 200-26. EPOD 3 Watercourse Protection Overlay District.

- A. Purpose and intent. The purpose of the Watercourse Protection Overlay District is to provide special controls to guide land development within the major waterway corridors in the town. The district regulations encourage planning and development of land that will protect and preserve these sensitive environmental areas. It is also the intent of these regulations to prevent soil erosion, sedimentation and slope failure due to removal of vegetation, dredging, filling, damming or channelization; prevent degradation or loss of scenic views and the natural character of the area; and prevent

activities which degrade water quality.

- B. Delineation of district boundaries. The boundaries of the Watercourse Protection Overlay District shall be delineated on the Official Town of Mendon EPOD Maps. These boundaries shall include the following areas: Irondequoit Creek, Honeoye Creek and all tributaries thereto located within the town; and for a distance of 75 feet from each bank or to the landward boundary of the area of special flood hazard (see EPOD 8 District regulations below in this article), whichever is greater.
- C. Regulated activities. No person shall conduct any of the following regulated activities unless such person has first applied for and obtained an EPOD 3 development permit pursuant to the requirements of this section. Customary agricultural operations are not required to obtain an EPOD 3 development permit.
- (1) Construction of new buildings or structures or additions to or modifications of existing buildings or structures.
 - (2) Construction or placement of any on-site septic or sewage disposal system.
 - (3) Filling, cutting or excavation, either on land or within a watercourse or floodplain.
 - (4) Removal of natural vegetation.
 - (5) Discharge of stormwater and/or construction of a private commercial or municipal stormwater runoff system.
 - (6) Outside storage of materials and equipment used in the conduct of a business.
 - (7) Activities which would alter the natural flow pattern of any of the aforementioned watercourses.
 - (8) Construction of public or private roads, trails and bridges.
 - (9) Boat launching sites and fishing access parking areas.
- D. Development standards and permits. In granting, denying or conditioning any application for an EPOD 3 development permit, the CCO or the Planning Board shall consider the effect that the proposed regulated activity shall have on the public health, safety and welfare and the protection of the major watercourses within the town.
- (1) General regulations. Any applicant for a permit to undertake a regulated activity within a Watercourse Protection Overlay District shall be required to adequately

demonstrate that the proposed activity will in no way at present or at any time in the future adversely affect the following:

- (a) Water quality.
 - (b) Watercourse flood-carrying capacities.
 - (c) Rate of sedimentation.
 - (d) Rate/velocity of groundwater runoff.
 - (e) Natural characteristics of the watercourse or floodplain.
- (2) Specific standards. No permit to undertake a regulated activity within the district shall be issued by the CCO or the Planning Board unless it determines that the proposed project complies with the following standards:
- (a) The proposed activity provides adequate measures to prevent disruption and pollution of fish and wildlife habitats and freshwater wetlands, stormwater runoff, septic and sewage systems and any other activity on the site.
 - (b) A natural vegetative buffer of 100 feet from each bank shall be retained adjacent to the watercourses to absorb floodwaters, to trap sediments, to protect adjacent fish and wildlife habitats and to protect scenic qualities.
 - (c) Site preparation, including stripping of vegetative cover or grading, shall be undertaken so that the amount of time that disturbed ground surfaces are exposed to the energy of rainfall and runoff water is limited. Disturbed soils shall be stabilized and revegetated before construction can begin. During the interim, erosion protection measures, including but not limited to vegetation, retention ponds, recharge basins, berming, silt traps and mulching, shall be used to ensure that sedimentation is minimized and mitigated.
 - (d) The project shall provide adequate measures to protect surface waters and groundwaters from direct or indirect pollution and from overuse.
 - (e) Fill shall not encroach on natural watercourses, constructed channels or floodway areas. All fill shall be compacted at a final angle or repose which provides stability for the material, minimizes erosion and prevents settlement.

- (f) Roads, trails and walking paths along water bodies shall be sited and constructed so they are not a source of runoff and sedimentation. Such roads, trails and walking paths shall be constructed and sited in such a manner as to maximize the visual opportunities of a water body while maintaining the scenic qualities of the water body.
- (g) No new dock, boat launching site or fishing access and parking area shall be constructed unless it is shown that it will not impede the natural flow of the streams to which this section applies. Said facilities shall be located and constructed so as to minimize their intrusion into the streams and avoid adverse environmental impact and unreasonable impacts upon public use of the waters.
- (h) New structures, except for fences, bridges and fishing access parking areas, shall not be constructed within 75 feet of the bank of the stream.
- (i) New structures shall be designed and constructed in accordance with erosion control standards and stormwater control standards contained in the Best Management Practices for Stormwater Runoff Management and Stormwater Management Guidelines for New Development, as found in Chapter 6 of the New York State Department of Environmental Conservation's Stream Corridor Management Manual.

§ 200-27. EPOD 4 Scenic Vista Protection Overlay District.

- A. Purpose and intent. The purpose of the Scenic Vista Protection Overlay District is to protect and preserve those areas of the Town that have been determined to possess unique visual qualities which are worthy of protecting from encroachment resulting from development. It is the intent of these EPOD 4 development permit procedures to regulate and/or control development in or adjacent to the scenic sites identified in the Town of Mendon Open Space, Parks and Recreation Master Plan and to require review and approval prior to project commencement.
- B. Delineation of scenic vistas. The boundaries of the Scenic Vista Protection Overlay District shall be delineated on the Official Town of Mendon EPOD Maps. The boundaries shall also be based upon the NYSDEC Guidelines for Open Space Planning and shall include all the designated scenic vistas contained in the adopted Town of Mendon Open Space, Parks and Recreation Master Plan.
- C. Regulated activities. No person shall conduct any of the following regulated activities within any Scenic Vista Protection Overlay District in the Town unless such person has first applied for and obtained an EPOD 4 permit pursuant to the requirements of this

section:

- (1) Construction of new buildings or structures or additions and modifications to existing buildings and structures in areas delineated as possessing scenic vistas and shown in the adopted Town of Mendon Open Space, Parks and Recreation Master Plan.
- (2) Filling, cutting or excavating operations.

D. Development standards and permit conditions.

- (1) In granting, denying or conditioning any application for an EPOD 4 development permit, the CCO or the Planning Board shall consider the effect the proposed regulated activity will have on maintaining the identified scenic vista that exists on the site, as viewed from along the adjacent public right-of-way.
- (2) No permit to undertake a regulated activity within a Scenic Vista Protection Overlay District shall be issued unless the applicant can adequately demonstrate that:
 - (a) The proposed structure will not interfere with the scenic vista identified on the site as viewed from along the adjacent public right-of-way. This shall be demonstrated through the use of computer generated photos of the site, if required by the reviewing board.
 - (b) Any cutting of timber in these areas will not reduce the visual quality of the scenic vista.
 - (c) There is no reasonable alternative for the proposed regulated activity on that portion of the site not containing a scenic vista.
- (3) Construction standards. Construction of sites within the Scenic Vista Protection Overlay District shall be permitted according to the following standards:
 - (a) Building design and site development that is found by the authorized Board to provide the minimum visual interference or blocking of the identified scenic vista from along the adjacent public right-of-way; and
 - (b) No accessory structures shall be located in any yard that interferes with the scenic vista as identified in the adopted Town of Mendon Open Space, Parks and Recreation Master Plan.

- (4) Prior to receiving any approval or imposing any conditions of approval, the applicant for an EPOD 4 development permit shall have the burden of demonstrating that the proposed regulated activity will be conducted in accordance with the standards and requirements of this section. In addition, the applicant shall satisfy any additional requirements which may be imposed by the CCO or board having jurisdiction.

§ 200-28. EPOD 5 Historic Site Protection Overlay District.

- A. Purpose and intent. The purpose and intent of the Historic Site Protection Overlay District is to minimize the impacts of development activities on sites in the Town which are listed on the federal and state registers of historic sites. The developmental impacts include architectural compatibility of the proposed structure with the adjacent historic sites and the desires of the Town to retain, as much as possible, the natural character and historic setting of these areas.
- B. Delineation of historic sites. The boundaries of the Historic Site Protection Overlay District shall be delineated on the Official Town of Mendon EPOD Maps and shall include all sites listed on the federal and state registers of historic sites; and those lands lying within 500 feet of the boundary of said historic sites; and in addition, those sites listed and shown on the Historic Sites Map, Figure 2-11, of the adopted Town of Mendon Comprehensive Plan - 2015; and those lands lying within 500 feet of the boundary of said historic structure.
- C. Regulated activities. No person shall conduct any of the following regulated activities within any Historic Sites Protection Overlay District in the Town unless such person has first applied for and obtained an EPOD 5 development permit pursuant to the requirements of this section:
 - (1) Construction of new buildings or structures or additions and modifications to existing buildings and structures.
 - (2) Accessory structures such as swimming pools, tennis courts, satellite dishes, outdoor pavilions and other similar accessory facilities.
 - (3) Placement of signs.
 - (4) Clearing of or construction on any land area within the district, including construction or clearing activities related to providing equipment access on the site.

- (5) Filling, cutting or excavating operations.
- (6) Discharge of stormwater and/or construction and placement of stormwater runoff systems.
- (7) Clear-cutting of trees and removal of vegetation or other ground cover.
- (8) Personal wireless telecommunications towers.

D. Development standards and permit conditions.

- (1) In granting, denying or conditioning any application for an EPOD 5 development permit, the CCO or the Planning Board shall consider the effect that the proposed regulated activity will have on the public health, safety and welfare. In addition, consideration shall also be given to the protection or enhancement of the designated historic landmarks.
- (2) No permit to undertake a regulated activity within an Historic Sites Protection Overlay District shall be issued unless the applicant can adequately demonstrate that:
 - (a) The proposed activity will in no way adversely affect the physical integrity or historic character of an existing historic site; and
 - (b) There is no reasonable alternative for the proposed regulated activity on that site.
- (3) Construction standards. Construction of sites within the Historic Site Protection Overlay District shall be permitted according to the following standards and those set forth by any state or federal historic agency having jurisdiction:
 - (a) Building design and site development that is found by the authorized board to complement the adjacent historic structure and site; and
 - (b) No accessory structures shall be located within the side yard adjacent to the historic structure site.
- (4) Prior to receiving any approval or imposing any conditions of approval, the applicant for an EPOD 5 development permit shall have the burden of demonstrating that the proposed regulated activity will be conducted in accordance with the standards and requirements of this section. In addition, the

applicant shall satisfy any additional requirements which may be imposed by the CCO or board having jurisdiction.

§ 200-29. EPOD 6 Waste Disposal Site Protection Overlay District.

A. Purpose and intent.

- (1) The purpose of the Waste Disposal Site Protection Overlay District is to identify and evaluate any confirmed waste disposal sites located on a site or within 2,000 feet of a proposed development and regulate any activity in these areas by requiring review and permit approval prior to project commencement.
- (2) Waste disposal sites have the potential to pose a hazard to health and the environment. The regulations contained in this overlay district are designed to promote a coordinated review by appropriate agencies and the town, analyze known waste disposal sites prior to development within the affected areas and protect humans, animals, structures and the environment from exposure to potential contamination through direct or indirect contact.

B. Identification of confirmed waste disposal sites. The locations of confirmed waste disposal sites are shown on the Official Waste Site Inventory Maps for the town, which include any locations of waste sites in adjacent municipalities that are located within 2,000 feet of the municipal boundary. Sites known to contain waste are based upon information obtained from the Monroe County Environmental Management Council (MCEMC), Monroe County Department of Health (MCDOH), New York State Department of Environmental Conservation (NYSDEC), municipal files, aerial photos, knowledge of residents or through site investigations. Additional site investigations may be necessary to determine if these sites contain hazardous waste.

C. Review of waste disposal sites.

- (1) The MCDOH is involved in the review of realty subdivision, on-site sewage disposal installation, water main extensions and sanitary sewer extensions. The MCDOH also assists with inventorying and reviewing information on waste sites, developing municipal reports on waste sites, reviewing information and reports on hazardous waste sites and reviewing comments on proposed developments near waste sites. The MCDOH approval can be withheld until the waste site concerns have been adequately addressed.
- (2) Preliminary reviews of many developments (under the authority of the New York State General Municipal Law §§ 239-l, 239-m and 239-n are performed by the Monroe County Department of Planning and Economic Development Review

Committee. Waste sites which may impact the proposed development are also identified during this review process, resulting in a recommendation to the developer and municipality that an evaluation of the impact of a waste site be conducted.

(3) Impact assessment.

(a) Waste disposal sites have the potential to pose a hazard to human health and the environment. Therefore, consideration of a nearby waste site's potential effect upon future residents or users of a proposed development is within the purview of the State Environmental Quality Review Act (SEQR).

(b) Potential adverse effects from waste disposal sites can include the following:

[1] Direct human contact with waste materials when development occurs on or near a waste disposal site.

[2] Indirect human contact with waste materials, such as when utility service is extended through a waste site and contamination subsequently migrates along the water or other underground line.

[3] Contamination of drinking water from private wells as a result of contaminated groundwater.

[4] Exposure of other living organisms to contamination. Stormwater runoff from a new development discharged in the direction of a waste site could generate additional leachate and/or erode cover material, allowing leachate to escape, which may prove harmful to nearby plant and animal communities.

[5] Damage to nearby utility lines or building foundations due to the corrosive and reactive characteristics of certain wastes.

(4) Proximity of a proposed development to a waste disposal site does not necessarily result in disapproval of the application. It may require special design features to mitigate potential problems as well as additional conditions of approval to provide for careful monitoring during construction.

D. Development standards and permit conditions. When an applicant first contacts the town, the CCO shall determine whether the project is near a waste site using the waste site information described above in this article and the process that follows:

(1) Waste disposal site evaluation form.

- (a) The MCEMC and the MCDOH have developed a waste disposal site evaluation form (WDSEF), on file with the MCEMC, to help applicants gather relevant information when development projects involve a waste site. The form also indicates the type of impacts that should be evaluated after the information is obtained. In addition, these two agencies have developed a property inspection form to aid in on-site investigations.
- (b) The MCDOH has designated two cases requiring evaluation of a waste site and completion of a WDSEF:
 - [1] Case 1: development proposed on or within 300 feet from the boundary of a confirmed waste disposal site.
 - [2] Case 2: construction disturbance associated with proposed development occurring between 300 feet and 2,000 feet from the boundary of a confirmed waste site, under certain conditions as follows:
 - [a] The development will be utilizing a private water well for drinking water or for irrigation;
 - [b] The site is listed in the Inactive Hazardous Waste Disposal Sites in New York State prepared by the New York State Departments of Environmental Conservation and Health or is otherwise under investigation through the federal or state Superfund Programs; and/or
 - [c] A public agency has identified concerns about the proximity of the development to the waste site.
- (c) "Construction disturbance" as referred to in this section is defined as construction of utility lines, a drinking water well and/or excavations for basements or footers or significant cutting (greater than two feet) to regrade a parcel.
- (d) The instructions for a WDSEF recommend that the applicant contact MCEMC prior to completing the form. This will enable the developer to review the project in relation to the waste site and obtain information on the waste site. The extent of site investigation will depend on the nature of the waste site, the amount of data already available and the nature of the proposed

development.

(2) Permit approval.

- (a) The applicant completes and submits the WDSEF property inspection form and site plans to the town. The Town submits the information to the MCDOH.
- (b) The MCDOH reviews the information and determines completeness. The applicant and the Town will be provided a written statement of deficiencies if the requested information is incomplete. Upon receipt of a complete application, a review is initiated and a written response is made to the applicant with copies to the Town and other involved agencies. The correspondence will specify conditions for inclusion in and SEQR determination of significance and/or the EPOD 4 development permit.

§ 200-30. EPOD 7 Woodlot Protection Overlay District.

A. Purpose and intent. The purpose of the Woodlot Protection Overlay District regulations is to preserve, conserve and protect established wooded areas located within the town. It is the intent of these regulations to prevent the destruction of established wood lot areas by requiring review and permit approval prior to any tree harvesting or cutting for development purposes. Applicants for such activity must submit a plan prepared by a qualified consulting forester, arborist, horticulturalist or a qualified forester that includes the following information:

- (1) A survey of all trees to be removed on the site that are over six inches in diameter measured at breast height and identified by species, condition and worthiness for preservation.
- (2) A during- and post- harvesting or cutting for development purposes protection plan for trees to be saved or moved.
- (3) An integrated site plan which includes the wood lot area protection plan and any additional development on the site, including all new or expanded structures, utilities, access roads, grading or other activities, which may adversely affect the wood lot area.

B. The following specific practices shall be used to minimize soil erosion and sedimentation during wood lot area management activities:

- (1) All disturbed areas shall be protected from erosion either by mulch or temporary seeding within two weeks of disturbance.
- (2) Erosion and siltation controls shall be consistent with the New York Guidelines for Urban Erosion and Sediment Control (most recent edition).
- (3) All trees to be saved shall be protected with orange construction fencing placed at the drip line or a distance greater than the drip line.
- (4) All trees to be saved shall be pruned, watered and fertilized prior to, during and after construction.
- (5) Vehicles, materials and equipment storage shall not be allowed in areas fenced to protect trees.
- (6) Maintenance of landscape plantings, if required, shall be guaranteed for three years.
- (7) In planning development sites, applicants shall preserve as much mature vegetation as possible. Use of clustering of buildings to avoid mature wooded areas shall be encouraged wherever practical, as well as the planting of replacement vegetation to mitigate the unavoidable uses of woodlots.

§ 200-31. EPOD 8 Flood Damage Prevention Overlay District.

- A. Findings. The Town Board finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the town. It is further found that such damages may include destruction or loss of private and public housing, damage to both publicly and privately owned facilities and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, these EPOD 8 regulations are hereby incorporated in this article.
- B. Purpose. It is the purpose of these provisions to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions that are designed to:
 - (1) Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.

- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- (4) Control filling, grading, dredging and other development which may increase erosion and flood damages.
- (5) Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- (6) Qualify and maintain properties in the Town for participation in the National Flood Insurance Program.

C. Objectives. The objectives of the EPOD 8 Flood Damage Prevention Overlay District are to:

- (1) Protect human life and health.
- (2) Minimize expenditure of public money for costly flood control projects.
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) Minimize prolonged business interruptions.
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard.
- (6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas.
- (7) Provide that developers are notified that property is in an area of special flood hazard.
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

D. General provisions.

- (1) Lands to which the EPOD 8 regulations apply. This section applies to all areas of special flood hazard within the jurisdiction of the town, exclusive of the Village of Honeoye Falls.
- (2) Basis for establishing the EPOD 8 regulations.
 - (a) The EPOD 8 regulations are based upon the areas of special flood hazard that have been identified and defined on the following documents on file in the Town Building Department:
 - [1] The Flood Insurance Rate Map Panels Index Nos. 360423 0001-0013B, whose effective date is April 15, 1982.
 - [2] The scientific and engineering report prepared by the Federal Emergency Management Agency entitled "Flood Insurance Study, Town of Mendon, New York, Monroe County," dated October 15, 1981.
 - [3] The Flood Boundary and Floodway Map Panels Nos. 360423 0001-0013B, whose effective date is April 15, 1982.
 - (b) These above documents are hereby adopted and declared to be a part of this section. The Flood Insurance Study and Maps are on file at the Mendon Town Hall, Building Department, 16 West Main Street, Honeoye Falls, New York 14472.
- (3) Interpretation and conflict with other laws and regulations.
 - (a) The EPOD 8 regulations include all revisions to the National Flood Insurance Program through September 24, 1994, and shall supersede all previous laws adopted by the Town for the purpose of flood damage prevention.
 - (b) In the interpretation and application of these regulations, the provisions of this section shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this section are at variance with the requirements of any other section of chapter 200, the most restrictive, or that section imposing the higher standards, shall govern.
- (4) Severability. The invalidity of any section or provision of this regulation shall not invalidate any other section or provision thereof.

- (5) Notification procedure for noncompliance. No structure in an area of special flood hazard (EPOD 8 Flood Damage Prevention Overlay Protection District) shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of these EPOD 8 regulations and any other applicable regulations. Any infraction of the provisions of this section by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the EPOD 8 development permit, shall constitute a violation. Any person who violates this section or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Mendon from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this section of the Town Code for which the developer and/or owner has not applied for and received an approved variance under § 200-31E12 of this chapter will be declared to be noncompliant by the Code Compliance Officer and notification sent to the Federal Emergency Management Agency.

- (6) Warning and disclaimer of liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based upon scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This regulation does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This law does not impose liability on the part of the town, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this section, or any administrative decision made hereunder.

E. Administration of the EPOD 8 regulations.

- (1) Designation of the local administrator. The Code Compliance Officer (CCO) is hereby appointed local administrator to administer and implement this section by granting or denying EPOD 8 flood damage prevention development permits in accordance with these provisions.

- (2) The EPOD 8 flood damage prevention development permit.
 - (a) Purpose. The EPOD 8 flood damage prevention development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard for the purpose of protecting citizens from increased flood hazards and ensuring 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 Maps enumerated in § 200-31D(2) above, without a valid EPOD 8 flood damage prevention development permit (hereinafter referred to as "EPOD 8 permit").

- (b) Fees. All applications for an EPOD 8 permit shall be accompanied by an application fee established by the Town Board. In addition, the applicant shall be responsible for reimbursing the Town for any additional costs necessary for review, inspection and approval of any development for which an EPOD 8 permit is issued. The Town Board, by resolution, may require a deposit to cover these additional costs.
- (3) Application for an EPOD 8 permit. An Application for an EPOD 8 permit shall be made on forms furnished by the CCO. The application 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 applicant shall also provide the following information on the permit form:
- (a) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure that is to be located within Zones A1 - A30, AE or AH or Zone A on the Flood Insurance Rate Maps or Flood Boundary Floodway Maps if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the CCO the as-built elevation, certified by a licensed professional engineer or surveyor.
 - (b) The proposed elevation, in relation to mean sea level, of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of any new or substantially improved structure to be located in Zones V1 - V30 or VE or Zone V if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the CCO the as-built elevation, certified by a licensed professional engineer or surveyor.
 - (c) The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the CCO the as-built floodproofed elevation, certified by a professional engineer or surveyor.

- (d) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 200-31E(8) below entitled "Utilities."
 - (e) A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 200-31E(10) below entitled "Nonresidential structures."
 - (f) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 200-31D(2), when notified by the CCO, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
 - (g) A technical analysis, by a licensed professional engineer, if required by the CCO, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
 - (h) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments that are greater than either 50 lots or five acres.
- (4) Duties and responsibilities of the Code Compliance Officer. Duties of the Code Compliance Officer (CCO) shall include but not be limited to the following:
- (a) Permit application review. The CCO shall conduct the following permit application review before issuing an EPOD 8 permit:
 - [1] Review all applications for completeness, particularly with the requirements of the previous subsection, Application for a permit, and for compliance with the provisions and standards for this article.
 - [2] Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site

is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards for § 200-31E(5), Construction standards, and, in particular, Subsection A, Subdivision proposals.

[3] Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The CCO may require the applicant to submit additional technical analyses and data necessary to complete the application. If the proposed development may result in physical damage to any other property or fails to meet the requirements of § 200-31E(5), Construction standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.

[4] Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.

(b) Use of other flood data.

[1] When FEMA has designated areas of special flood hazard on the community's Flood Insurance Rate Map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the CCO shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this article.

[2] When base flood elevation data are not available, the CCO may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard.

(c) Alteration of watercourses.

[1] Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse and submittal of evidence of such notification to the Regional Director, Region II, Federal

Emergency Management Agency.

- [2] Determining that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(d) Construction stage.

- [1] In Zones A1 - A30, AE and AH, and also Zone A, if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).

- [2] Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The CCO shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

(e) Inspections. The CCO and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

(f) Stop-work orders.

- [1] The CCO shall issue, or cause to be issued, a stop-work order for any EPOD 8 Permit found ongoing without said permit. Disregard of a stop-work order shall subject the violator to the penalties set forth elsewhere in this chapter.

- [2] The CCO shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of

this article and/or the conditions of the EPOD 8 permit. Disregard of a stop-work order shall subject the violator to the penalties described elsewhere in this chapter.

(g) Certificate of compliance.

[1] In areas of special flood hazard, as determined by documents enumerated in § 200-31D(2), it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof, hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance for the EPOD 8 permit has been issued by the CCO stating that the building and/or land conforms to the requirements of this article.

[2] A certificate of compliance shall be issued by the CCO upon satisfactory completion of all development in areas of special flood hazard.

[3] Issuance of the certificate shall be based upon the inspections conducted as prescribed in § 200-31E(4)(e), Inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

(h) Information to be retained. The CCO shall retain and make available for inspection copies of the following:

[1] Floodplain development permits and certificates of compliance.

[2] Certifications of as-built lowest floor elevations of structures, required pursuant to Subsections E(4)(d)[1] and [2], Construction stage, and whether or not the structures contain a basement.

[3] Floodproofing certificates required pursuant to Subsection E(4)(d)[1], Construction stage, and whether or not the structures contain a basement.

[4] Variances issued pursuant to § 200-31E(12), Variance procedures.

[5] Notices required under § 200-31E(4)(c)[1], Alteration of watercourses.

(5) Construction standards. 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 § 200-31D(2).

(a) Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):

[1] Proposals shall be consistent with the need to minimize flood damage.

[2] Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage.

[3] Adequate drainage shall be provided to reduce exposure to flood damage.

(b) Encroachments.

[1] Within Zones A1 - A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:

[a] The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location; or

[b] The Town agrees to apply to FEMA for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town for all costs related to the final map revision.

[2] On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § 200-31D(2), no new construction, substantial improvements or other development (including fill) shall be permitted unless:

[a] A technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood; or

[b] The Town agrees to apply to FEMA for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town for all costs related to the final map revisions.

(6) Standards for all structures.

(a) Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse or lateral movement during the base flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(7) Construction materials and methods.

(a) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.

(b) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.

(c) Enclosed areas below lowest floor.

[1] For enclosed areas below the lowest floor of a structure within Zones A1 - A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the

entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

[a] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and

[b] The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

[2] Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.

(8) Utilities.

(a) Machinery and equipment servicing a building must either be elevated to or above the base flood level or designed to prevent water from entering or accumulating within the components during a flood. This includes heating, ventilating and air-conditioning equipment, hot-water heaters, appliances, elevator lift machinery and electrical junction and circuit breaker boxes. When located below the base flood elevation, a professional engineer's or architect's certification of the design is required.

(b) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(c) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall.

(d) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(9) Residential structures. The following standards, in addition to the standards in §§ 200-31E(5)(a), Subdivision proposals, and 200-31.E(5)(b), Encroachments,

and 200-31E(6), Standards for all structures, apply to structures located in areas of special flood hazard as indicated.

- (a) 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 two feet or more above the base flood level.
 - (b) Within Zone A, when no base flood elevation data are available, new and substantially improved structures shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
 - (c) Within Zone AO, new and substantially improved structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 200-31D(2) above (at least two feet if no depth number is specified).
 - (d) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- (10) Nonresidential structures. The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures, in addition to the requirements in §§ 200-31E(5)(a), Subdivision proposals, and 200-31E(5)(b), Encroachments, and 200-31E(6), Standards for all structures.
- (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, together with attendant utility and sanitary facilities, shall either:
 - [1] Have the lowest floor, including basement or cellar, elevated two feet or more above the base flood elevation; or
 - [2] Be floodproofed so that the structure is watertight below a level three feet or more above the base flood level 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 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 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 § 200-9E(9).

(c) 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 by the CCO that certifies the design methods for construction are in accordance with accepted standards of practice for meeting the provisions of § 200-9E(9), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

(d) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.

(e) 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.

(11) Manufactured homes and recreational vehicles.

(a) The following standards in addition to the standards in §§ 200-31E(5), General standards, and 200-31E(6), Standards for all structures, apply in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

[1] Recreational vehicles placed on sites within Zones A1 - A30, AE, Ah, V1 - V30, V and VE 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 E(11)(b), (d) and (e) below in this subsection.

[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) A manufactured home that is placed or substantially improved in Zone A1 - A30, AE, AH, V1 - V30 or VE that is on a site either outside of an existing manufactured home park or subdivision; or in a new manufactured home park or subdivision as herein defined; in an expansion to an existing manufactured home park or subdivision as herein defined; or in an existing manufactured home park or subdivision as herein defined on which a manufactured home has incurred substantial damage as the result of a flood shall, within Zones A1- A30, AE and AH, be elevated on a permanent foundation such that the lowest floor is elevated two feet or more above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement; or, within Zones V1 - V30 and VE, be elevated on a pile foundation such that the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) is elevated to or above the base flood elevation and securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Elevation on piers consisting of dry stacked blocks is prohibited. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

(c) A manufactured home to be placed or substantially improved in Zone A1 - 30, AE, AH, V1 - V30 or VE, in an existing manufactured home park or subdivision, that is not to be placed on a site on which a manufactured home has incurred substantial damage, shall be:

[1] Elevated in a manner such as required above; or

[2] 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. Elevation on piers consisting of dry stacked blocks is prohibited.

- (d) Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall have the floor 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. Elevation on piers consisting of dry stacked blocks is prohibited.
- (e) Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § 200-31D above. Elevation on piers consisting of dry stacked blocks is prohibited.

(12) Variance procedure.

- (a) In passing upon an application for a variance to the requirements of these EPOD 8 Flood Damage Prevention Overlay District regulations, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
 - [1] The danger that materials may be swept onto other lands to the injury of others.
 - [2] The danger to life and property due to flooding or erosion damage.
 - [3] The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - [4] The importance of the services provided by the proposed facility to the community.
 - [5] The necessity to the facility of a waterfront location, where applicable.
 - [6] The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage
 - [7] The compatibility of the proposed use with existing and anticipated development.

- [8] The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area.
- [9] The safety of access to the property in times of flood for ordinary and emergency vehicles.
- [10] The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding.
- [11] The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
- [12] The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

(b) Upon consideration of the factors listed above in this section, the purpose of the EPOD 8 Overlay District and the criteria set forth in Article XII, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(c) The Code Compliance Officer shall maintain a copy of the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

(13) Conditions for variances. Generally, variances may be issued for the following actions:

(a) New construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that items in Subsection E(12) above have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

(b) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:

[1] The proposed repair or rehabilitation will not preclude the structure's

continued designation as an historic structure.

[2] The variance is the minimum necessary to preserve the historic character and design of the structure.

(c) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

[1] The criteria of Subsections E(13)(a), (e), (f) and (g) of this section are met; and

[2] The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

(d) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(e) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(f) Variances shall only be issued upon receiving written justification of:

[1] A showing of good and sufficient cause.

[2] A determination that failure to grant the variance would result in exceptional hardship to the applicant.

[3] A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing laws or ordinances.

(g) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of the CCO that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

- A. Purpose and intent. The Town Board finds that the potential and/or actual damages from development occurring on soils that possess characteristics which are susceptible to the ponding of surface waters may be a problem to the residents of the town. Such problems may include increased peak drainage flows affecting drainage downstream from the site; impact on public improvements such as drainage structures downstream; destruction or loss of private septic systems; foundation damage; and the placement of development in close proximity to areas where insect infestation may occur. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, these EPOD 9 regulations are hereby incorporated in this article.
- B. Delineation of EPOD 9 District boundaries. The boundaries of the Soils Susceptible to Ponding Overlay District shall be delineated on the Official Town of Mendon EPOD Maps. These boundaries shall be based upon the soils characteristics and mapping of these areas identified on the Factors Affecting Development Map on file in the Town Building Department.
- C. Regulated activities. No person shall conduct any development activity within the boundary of a mapped Soils Susceptible to Ponding Overlay District unless such person has first applied for and obtained an EPOD 9 development permit pursuant to the requirements of this section. All EPOD 9 development permits shall be issued by the Code Compliance Officer subject to the conditions imposed by either the Planning Board, Zoning Board of Appeals or Environmental Conservation Board. All EPOD 9 development permits shall cross reference the application number(s) issued by the town.
- D. Development standards and permit conditions.
- (1) In granting, denying or conditioning any application for an EPOD 9 development permit, the authorized official or board shall consider the effect that the proposed regulated activity will have on the public health, safety and welfare. In addition, consideration shall also be given to the protection and enhancement of the natural drainage patterns within the drainage divide; in particular, impact on sites located downstream of the site being developed.
 - (2) No permit to undertake a regulated activity within an area having soils possessing ponding characteristics shall be issued unless the applicant can adequately demonstrate that the activity will in no way at present or at any time in the future:
 - (a) Adversely alter surface water flows during periods of inundation or alter groundwater reservoir capacities.
 - (b) Increase watercourse flood-carrying capacities.

- (c) Adversely alter water retention capabilities.
 - (d) Increase downstream siltation.
 - (e) Adversely alter the natural wildlife balance.
 - (f) Impair any natural function of the area.
- (3) Construction standards.
- (a) As part of any development permit application, the applicant shall prove to the local official or board that the purpose and intent of these regulations are not being adversely affected by the proposed development.
 - (b) To the extent practical any development shall provide mitigation measures to ensure that the site's ponding conditions do not affect the foundation of any structure, the septic system or site drainage.
- (4) Prior to receiving any approval or imposing any conditions of approval, the applicant for an EPOD 9 development permit shall have the burden of demonstrating that the proposed regulated activity will be conducted in accordance with the standards and requirements of this section. In addition, the applicant shall satisfy any additional requirements which may be imposed by the local official or board having jurisdiction