

PART II – GENERAL LEGISLATION

Chapter 73 – Environmental Protection – Reserved

[This law has not yet been adopted. It is inserted here to allow for its review by the Board of Trustees and its possible enactment, as well as integration into this part of the Code as Ch. 73]

Article I	Overlay Districts – In General	Sections 73-1 – 73-5
Article II	Wetland, Water Bodies, Watercourse District	Sections 73-6 – 73-9
Article III	Steep Slope District	Sections 73-10 – 73-13
Article IV	Woodland District	Sections 73-14 – 73-19
Article V	Scenic Resources District	Sections 73-20 – 73-23
Article VI	Final Items	Sections 73-24 – 73-31

Article I – Overlay Districts – In General – an overlay district is a special zone that is drawn on a map outlining a significant resource (*e.g. wetland, steep slope, woodland, scenic, etc.*). The district is “overlaid” on the existing land use regulations (*e.g. subdivision requirements, site plan review, or zoning districts*) and the overlay district then supplements these existing regulations. This approach will allow the Village of Marcellus to maintain or update current codes while addressing the special needs of particularly sensitive areas. In the Village of Marcellus, overlay districts will include the following and the boundaries for each district are indicated on the map entitled “The Official Zoning Map of the Village of Marcellus.”

Section 73-1 – Purpose – The purpose of the environmental protection overlay districts established in this article is to provide special controls over land development located in sensitive environmental areas within the Village of Marcellus. These districts and their associated regulations are designed to preserve and protect unique environmental features within the Village as much as possible, including but not limited to wetlands, steep slopes, watercourses and woodlands. The regulations contained in each environmental protection overlay district (EPOD) are not intended to be substituted for other general zoning district provisions, but can be superimposed over such district provisions, and should be considered as additional requirements to be met by the applicant or developer, prior to project approval. The purpose of the overlay districts is to provide the Village with an additional level of review and regulation that controls how land development permitted by the Village’s primary zoning districts should occur in sensitive or unique environmental areas.

Section 73-2 – Establishment of Districts – In order to address the specific goals listed above in **Section 73-1** of the ordinance, the Village of Marcellus has established the following environmental protection overlay districts (EPOD):

- EPOD #1 – Wetland, Water Bodies and Watercourses Protection District
- EPOD #2 – Steep Slope Protection District
- EPOD #3 – Woodland Protection District

EPOD #4 – Scenic Resources Protection District

Section 73-3 – Official Maps – The locations and boundaries of all environmental protection overlay districts shall be delineated on an official set of maps on file in the Village Clerk's Office. These maps shall be known and may be cited as the "Official Village of Marcellus EPOD maps" and shall include the environmental atlas maps for the Village, (prepared the *Onondaga County Environmental Management Council-OCEMC*), the official wetland maps for the Town, prepared by the New York State Department of Environmental Conservation (NYSDEC), and the official flood insurance rate maps (FIRM) for the Village, prepared by the Federal Emergency Management Agency (FEMA). The Official Village of Marcellus 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. Field investigations and/or other environmental analyses may be required in order to determine whether or not a particular piece of property is included within one or more of the overlay districts.

Section 73-4 – Interpretation of District Boundaries

- a. An authorized official shall be appointed by the Village Board and be responsible for interpreting environmental protection overlay district boundaries based on an interpretation of the "Official Village of Marcellus EPOD maps" determining such district boundaries. The authorized official may request the assistance of the Village Engineer/County Engineer or other appropriate department or agency in making such a determination.
- b. Where environmental protection districts overlay any primary zoning district delineated on the Official Zoning Map of the Village of Marcellus, the requirements of the overlay district shall be met in addition to any requirements specified for development in the respective primary zoning district.

Section 73-5 – Permit Application Procedures

- a. EPOD Development Permit: An EPOD development permit shall be required prior to the commencement of any regulated activity or the issuance of any building permit for regulated development in a designated environmental protection overlay district within the Village of Marcellus.
- b. The following activities are exempt from the permit procedures of the article, subject to determination by the authorized official that such activities involve necessary normal maintenance and upkeep of property, and/or are clearly incidental to the primary use on the property, and/or involve public health, safety or emergency situations:
 - 1) Lawn care and maintenance.
 - 2) Gardening activities.
 - 3) Tree and shrub care and maintenance.
 - 4) Removal of dead or deteriorating vegetation.
 - 5) Removal of structures.

- 6) Select cutting and removal of trees in woodlots, that is not located within a steep slope district, for personal use of property owner. Sale of said wood is prohibited.
- 7) Repair and maintenance of structures.
- 8) Repair and maintenance of faulty or deteriorating sewage facilities or utility lines.
- 9) Reconstruction of structures damaged by a natural disaster.
- 10) Customary agricultural activities, except structural activities.
- 11) Public health activities, orders and regulations of the New York State Department of Health, Onondaga County Department of Health, or other agency, undertaken in compliance with the New York State Environmental Conservation Law.
- 12) Any actual or ongoing emergency activity, which is immediately necessary for the protection and preservation of life, property or natural resource values.

c. Application for Permit. Applications for EPOD development permits shall be made in writing to the Village Board. Such an application shall be made by the property owner or his/he agent and shall be accompanied by any materials or information deemed appropriate by the Village Board, including but not limited to a scaled (1" = 50' or 1" = 100') site plan prepared and certified by a licensed engineer or land surveyor, that contains the following minimum information:

- 1) A location plan and boundary line survey of the property.
- 2) The location of all environmental protection overlay district boundaries, designated village open space, town, county or state parkland.
- 3) A proposed conceptual storm water plan showing sufficient detail for evaluation.
- 4) The location and types of all existing and proposed vegetation and shrub masses, as well as all trees with a diameter of six (6) inches or more within and/or adjacent to the property.
- 5) The location of all existing and proposed drainage patterns, drainage ways, swales etc., within and/or adjacent to the property.

d. Each application for an EPOD development permit shall be accompanied by the appropriate fee(s) as determined by the Village Board. This/those fee(s) shall be in addition to any other fees required for the development under the Village Zoning Ordinance and/or Municipal Code.

e. Permit Review – For projects requiring Site Plan approval under Article XVII of the Zoning Code, the authorized official shall refer a completed permit application to the Village Planning Board or Village Board, as the case may be for a public hearing in accordance with Article XVII of the ordinance. The authorized official may refer all applications to the appropriate boards and agencies for their review and recommendations. Such boards or agencies shall

have thirty (30) days from the date of its receipt of a completed application in which to review such application and report its recommendations to the appropriate board or authorized official. Should such boards and agencies fail to report or make a recommendation to the authorized official or the appropriate board regarding applications within the thirty (30) day time period, or request an extension, the authorized official or the appropriate board may take action on the permit application without such report.

f. The authorized official or the Village Planning Board or Village Board, as the case may be, shall have the authority to grant or deny an EPOD development permit, subject to the standards, criteria, other regulations contained in this ordinance, regulations contained in the *Marcellus Environmental Quality Review Law (MEQR)* and State Environmental Quality Review Act (SEQRA). The authorized official or the appropriate board may also request a report from the Village Engineer in acting on such permit applications.

g. Any development permit issued by the authorized official or the Village Planning Board or Village Board, as the case may be 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 policies and provisions of this article. Every permit issued pursuant to this article shall contain the following conditions:

- 1) The authorized official, Village Engineer/Consulting Engineer and/or other appropriate Village official shall have the right to inspect the project from time to time.
- 2) The permit shall expire on a particular date.
- 3) The permit holder shall notify the authorized official or other appropriate Village official of the date on which project construction is to begin, at least five (5) days in advance of such date of construction.

h. Requirement for Letter of Credit/Certified Check – Following approval of an application for an EPOD development permit, and prior to the issuance of any building or other Village permit, the applicant shall furnish the Village with an Irrevocable Letter of Credit or certified check in an amount to be reviewed and approved in writing by the Village Engineer/Consulting Engineer, and 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 official, or the Village Planning Board are constructed or carried out in accordance with such plans and specifications and other appropriate requirements of the Village of Marcellus.

i. The Irrevocable Letter of Credit or certified check shall continue in full force and effect until such time as the authorized official has certified that based on a site inspection, all specifications, requirements and permit conditions have been

completed and/or complied with, whereupon the Letter of Credit or certified check shall be released to the applicant. The authorized official, upon recommendation of the Village Engineer/Consulting Engineer, or other appropriate department or authorized official, may deduct or withhold an amount from the Letter of Credit or certified check sufficient to cover the cost of noncompliance with any requirements, specification, or permit condition and/or release the Village from any liability resulting from such noncompliance.

j. Suspension or Revocation of Permits – The authorized official may suspend a permit (temporarily) until such time as the board having jurisdiction reviews the suspension. The Village Board may, upon recommendation of the authorized official, and after having provided the permittee five (5) days written notice, suspend or revoke a development permit issued in accordance with the provisions of this section where it has found evidence that the applicant has not complied with any/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 in writing with its findings and reasons for revoking or suspending a permit issued pursuant to the section. The authorized official shall forward a copy of said findings to the applicant. Permitted work shall immediately cease upon suspension of a permit.

Article II – EPOD #1 – Wetland, Water Bodies and Watercourse Protection District

Section 73-6 – Purpose – The purpose of the Wetland Protection District Regulations is to preserve, conserve and protect freshwater wetlands located within the Village of Marcellus, pursuant to the New York State Environmental Conservation Law, as well as any local laws regulating wetlands. Through this statement of purpose, it is declared to be the public policy of the Village of Marcellus that these areas be protected as invaluable natural resources that provide for flood protection, wildlife habitats, recreational and open space, erosion and pollution control, and protection and recharging of ground water supplies. The regulations contained in this district seek to prevent the despoliation and destruction of freshwater wetlands by controlling development in these areas, and by requiring review and permit approval prior to project commencement.

Section 73-7 – Delineation of District Boundaries – The boundaries of the Wetland Protection District shall be delineated on the "Official Village of Marcellus EPOD Maps" and shall include all wetland areas designated as Type I, Type II, Type III and Type IV by the New York State Department of Environmental Conservation (NYSDEC), as well as any locally regulated wetlands. The provisions of this section shall be applicable to all wetland areas within the Village of Marcellus shown on the official Village maps. Upon application for a development permit within a Wetland Protection District, the authorized official shall refer such application and site plan to the State Department of Environmental Conservation

(NYSDEC) in order to determine the precise boundary of the wetland area. The boundary of a Wetland Protection District shall include a buffer zone that extends out from the edge of the wetland area for a distance of one hundred (100) feet, or three hundred (300) feet, as determined by the NYSDEC, or local determination of wetland buffer not under NYSDEC and/or U.S. Army Corps of Engineers jurisdiction.

Section 73-8 – Regulated Activities – No regulations contained within this article are intended to supersede the provisions of Part 665 of the New York State Codes, Rules and Regulations (NYCRR), but are intended to supplement said provisions as an additional level of local review. No person shall conduct any of the following regulated activities within any Wetland Protection District in the Village of Marcellus unless such person has first applied for and obtained an EPOD development permit pursuant to the requirements of this article:

- a. Any form of draining, dredging, excavation or removal of any natural or previously deposited materials directly or indirectly from a wetland.
- b. Any form of dumping, filling or depositing any material either directly or indirectly within a wetland.
- c. The erection or placement of any structures, roads or any man-made materials within the wetland.
- d. Any form of pollution, including but not limited to installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into a wetland.
- e. Any activity which impairs the natural function of wetlands whether the impairing activity is located within the wetland or not.
- f. Any activity regulated by Section 24-0701 of the New York State Environmental Conservation Law.

Section 73-9 – Development Standards/Permit Conditions – In granting, denying or conditioning any application for an EPOD development permit, the authorized official or the appropriate board shall consider the effect that the proposed regulated activity will have on the public health, safety and welfare, and the protection or enhancement of the several functions and benefits of freshwater wetland areas as stated in **Section 73-6** of this ordinance. Furthermore, no permit shall be granted for a regulated activity within a Wetland District unless the applicant can adequately demonstrate that the activity will in no way at present or at any time in the future:

- a. Alter groundwater reservoir capacities.
 - b. Decrease watercourse flood carrying capacities.
 - c. Deteriorate water or air quality.
 - d. Alter water retention capabilities.
 - e. Increase downstream siltation.
 - f. Alter the natural wildlife balance.
 - g. Impair any natural function of the wetland.
-

Article III – EPOD #2 – Steep Slope Protection District

Section 73-10 – Purpose – The purpose of the Steep Slope Protection District is to minimize the impacts of development activities on steep slopes in the Village of Marcellus by regulating activities in these areas, and by requiring review and permit approval prior to project commencement. The development impacts include soil erosion and sedimentation, destruction of vegetation, increased runoff rates and slope failure. The regulations contained in 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 less likely to cause future slope failures and to retain as much as possible, the natural character of these areas.

Section 73-11 – Delineation of District Boundaries – The boundaries of the Steep Slope Protection District shall be delineated on the "Official Village of Marcellus EPOD Maps" and shall include all areas in the Village of Marcellus with fifty (50) feet of the top or toe of a *fifteen percent (15%) slope* or greater. The authorize official and Village Engineer/Consulting Engineer may consult other information including but not limited to, soil survey reports prepared by the Soil Conservation Service, topographic maps produced by the United States Geological Survey, field surveys and other appropriate sources in order to more accurately locate and delineate steep slope protection district boundaries within the Village.

Section 73-12 – Regulated Activities – No person shall conduct any of the following regulated activities within any Steep Slope Protection District in the Village of Marcellus, unless such person has first applied for an obtained an EPOD development permit pursuant to the requirements of this article:

- a. 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 as indicated in **Section 73-5-b** of this ordinance.
- b. The construction or placement of any sewage disposal system, including individual sewage disposal systems, septic tanks, septic drainage or leach fields.
- c. Filling, cutting, or excavating operations.
- d. Discharge of storm water and/or construction and placement of storm water runoff systems.

Section 73-13 – Development Standards Permit Conditions – In granting, denying or conditioning any application for an EPOD development permit, the authorized official or the Village Planning Board or Village Board, as the case may be, shall consider the effect that the proposed regulated activity will have on the public health, safety and welfare and the protection or enhancement of the fragile and environmentally sensitive steep slope areas within the

Village. No permit to undertake a regulated activity within a Steep Slope Protection District in the Village of Marcellus shall be issued by the authorized official or the appropriate board unless the applicant can adequately demonstrate that:

- a. The stable angle of repose of the soil classes found on the site has been 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 for the site must be submitted and shall be determined by a professional soil scientist or engineer using the soil classes and nomenclature contained in the Onondaga County soil surveys, 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 and paid for by the developer (or applicant).
- c. No proposed activity will cause erosion or slipping of soil, or cause sediment to be discharged into Nine Mile Creek, its wetlands or tributaries, or any stream or tributary.
- 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 re-established 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 1: 16 and side slopes no greater than 1:3 if not terraced or otherwise structurally stabilized. Disturbed non-roadway areas shall be stabilized and adequately drained.
- f. Construction of erosion protection structures, particularly along the waterside of eroding bluffs, shall provide protection of bluff features according to the following standards:
 - 1) All erosion protection structures shall be designed and constructed according to generally accepted engineering principles found in publications of the U.S. Soil Conservation Service, as amended.
 - 2) 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.

g. Drainage of storm water 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.

h. Any grading, excavating or other soil disturbance conducted on a steep slope shall not direct surface water runoff over the receding edge during construction.

i. There is no reasonable alternative for the proposed regulated activity on that portion of the site not containing steep slopes. The applicant for a permit shall have the burden of demonstrating that the proposed regulated activity will be conducted in accordance with the standards and requirements set forth above, which may be imposed by the authorized official or board having jurisdiction,

Article IV – EPOD #3 – Woodland Protection District

Section 73-14 – Purpose – The purpose of the Woodland Protection District and Tree Preservation Zone Regulations is to preserve and protect Woodland and measurable stands of trees within the Village of Marcellus by regulating or controlling development in those areas, and by requiring review and conditioning permit approval prior to project commencement.

Section 73-15 – Delineation of District Boundaries – The boundaries of the Woodland Protection District shall be delineated on the "Official Village of Marcellus EPOD Maps," and shall include all areas in the Village of Marcellus of *five (5)* or more contiguous acres of Woodland. Areas that involve active orchards shall not be included in the Woodland Protection District.

Section 73-16 – Regulated Activities – No person shall conduct any of the following regulated activities within any Woodland Protection District or Tree Preservation Zone in the Village of Marcellus unless such person has first applied for and obtained an EPOD development permit pursuant to the requirements of the section:

- a. Clearing of, or construction on, any land area except for those activities exempted from the permit requirements of this article as *indicated in Section 73-5-b.*
- b. Woodland Management – Thinning or harvesting of trees within the area for commercial purposes.

Section 73-17 – Development Standards/Permit Conditions – In granting, denying or conditioning any application for an EPOD development permit, the authorized official or the Village Planning Board or Village Board, as the case may be, shall consider the effect that the

proposed regulated activity will have on the public safety and welfare, and the protection and enhancement of the Woodland and Tree Preservation Zone.

Section 73-18 – Adverse Effects – Any application for a permit to undertake a regulated activity within a Woodland Protection District or Tree Preservation Zone in the Village of Marcellus shall be required to adequately demonstrate to the authorized official or the board having jurisdiction that the proposed activity will in no way at present, or at any time in the future, adversely affect the following:

- a. Soil stability.
- b. Velocity or rate of surface water runoff.
- c. Existing drainage systems.
- d. Natural characteristics of a watercourse.
- e. Significant wildlife habitats.
- f. Steep slope areas.
- g. Recreational opportunities.
- h. Noise levels on adjacent areas.
- i. Water quality.

Section 73-19 – Specific Standards for EPOD Permit Application

- a. Site Development or Grading. In planning site development plans, the applicant shall preserve as much of the original site vegetation, including understory, brush and shrubs, as possible. The use of *Village Law 278* should be considered when dealing with sites where stands of mature trees are present.
- b. The Environmental Protection Overlay District review process shall include the following:
 - 1) The applicant shall provide a 1:50 scale "Tree Preservation Plan" which shows the following:
 - a) Woodland District and Tree Preservation Zone boundaries.
 - b) Limits of proposed clearing for right-of-ways, utility easements, building sites, access roads and drainage areas.
 - c) Proposed grade changes in or around treed areas.
 - d) Method of providing positive drainage in any proposed tree wells or areas where drainage patterns will be modified.
 - 2) The applicant shall then clear a survey path generally along the proposed right-of-ways and stake reference points such as road stations or lot numbers.
 - 3) The applicant shall then schedule a site walk with the Conservation Board, the Planning Board or Village Board, as the case may be, the Village 's Landscape Consultant and the

applicant's site engineer for the purpose of determining areas where tree preservation methods are to be intensified or where stands of trees will be left untouched.

4) Once this has been done, the applicant's site engineer shall then calculate to the satisfaction of the Conservation Board and Planning Board or Town Board, as the case may be, that no more than twenty-five 25% of the original Woodland District or Tree Preservation Zone will be disturbed. Grade changes of +/-18" will constitute disturbance.

5) If the applicant's site engineer finds it impossible to retain at least seventy-five 75% of the original Woodland District or Tree Preservation Zone, the applicant shall adequately demonstrate mitigation of the same through reforestation as follows:

a) A determination shall be made as to the species, size, quantity and dollar amount that said replanting shall entail.

b) This determination shall be mutually agreed upon by the developer, the developer's consultant and the Town's landscape consultant.

c) The agreed upon dollar amount for mitigation shall be included by the developer in a Letter Of Credit or certified check.

6) Prior to commencement of earthmoving operations, the developer and site contractor shall demonstrate compliance with the approved limits of disturbance by delineation with snow fencing, envirofence or other acceptable means of delineation of these boundaries.

7) Once all earthmoving, utility and road construction has been done, the developer shall have the scheduled trees installed in locations acceptable to both the authorized official and developer.

c. Tree Harvesting. Any activity within a Woodland Protection District or Tree Preservation Zone involving the thinning of trees or harvest timber for commercial use shall be subject to an EPOD permit.

Applications for this type of activity shall be submitted by the applicant to the New York State Department of Environmental Conservation and Onondaga County Soils and Water Conservation Service for review and advisory opinions.

d. Applicants for such activity must submit a management plan prepared by a qualified consulting forester or a forest management recommendation prepared by a NYSDEC Forester, which includes the following information:

- 1) A site plan showing linlits of the proposed work and existing size of the Woodland.
- 2) The species and sizes of trees present and the basal area of the site before and after the proposed management activity.
- 3) The system of harvesting and access roads.
- 4) Definite time frame for the activity.
- 5) Proposed erosion and sedimentation control measures, including revegetation and timing, design in accordance with "Woodlots of the Northeast, Erosion and Sediment Control Guidelines," prepared by the U.S. Department of Agriculture, 1977.
- 6) The posting of a Letter Of Credit or certified check sufficient to pay for completion of remedial measures upon failure of the applicant to meet the specifications of the plan, in an amount necessary to complete the anticipated work.
- 7) The recording of timber sale contracts with the Village Clerk of the Village of Marcellus.

d. The following specific practices shall be used to minimize soil erosion and sedimentation during harvesting activities:

- 1) Stream swale crossings shall be kept to a minimum.
- 2) Stream banks shall be protected by controlling skidding and felling close to the stream.
- 3) All roads and skid trails shall be reviewed for appropriate location, design and construction.
- 4) Landing locations that avoid erosion problems and minimize impact to understory shall be selected.
- 5) Applications for Woodland management shall comply with all applicable New York State and local fire laws.
- 6) Whenever possible, landings shall be kept out of sight.
Landings and access roads shall be restored after use.

e. Tree Preservation

- 1) The subdivider is required to permanently tag or affix identification on each tree on the site having a caliper of eight (8) inches or more prior to the submission of an application for preliminary subdivision approval.
- 2) The subdivider shall layout the subdivision in such a manner as to minimize the number of trees eight (8) inches or more in caliper to be removed to accommodate development.
- 3) The subdivider is required to preserve all trees eight (8) inches or more in caliper unless the Planning Board or Village Board, as the case may be, has specifically authorized their removal.

- 4) On sites devoid of trees eight (8) inches or more in caliper or sparsely populated with such trees, the Board shall require the installation of supplemental trees having a minimum caliper of six (6) inches, such that there will be an overall density of one (1) tree per three thousand (3,000) square feet of land, or fraction thereof. Supplemental trees shall also be tagged for future identification.
- 5) The subdivider may be required to preserve trees having a caliper of less than eight (8) inches if the Planning Board or Village Board, as the case may be, finds that such trees have significant aesthetic value due to species or location or that their removal would excessively alter drainage or affect the stability of slopes.
- 6) The subdivider shall install protective barriers around each tree or groups of trees and adjacent under story not specifically authorized for removal prior to the start of any construction or may with the approval of the Board, erect protective barriers around sections in which several trees are located. The barriers shall remain in place and be kept in good repair until all construction has been completed and removal of the barriers has been authorized by the Village's Consulting Engineer.
- 7) Trees which have been designated for preservation, including supplemental trees, shall be deemed to be required site improvements, and their preservation and replacement, as necessary, including the replacement of trees damaged during construction, shall remain the responsibility of the subdivider for a period of one (1) year after the completion of the subdivision. That portion of the performance bond calculated to be the cost of replacing trees to be preserved or supplemental trees which may be damaged during construction shall be retained by the Village for at least one (1) year after all improvements in the subdivision have been completed. Prior to release of the bond, the trees shall be inspected to ensure that they have not been damaged, and that future growth will be characteristic of the species.
- 8) The requirements for tree preservation shall not apply to lots for existing houses in a new subdivision, provided that such lots and houses will not be altered to accommodate development of the subdivision. However, this provision shall not relieve the subdivider of the responsibility of including in the tree preservation plan for the subdivision any tree eight (8) inches or more in caliper located within fifty (50) feet of a new lot or required subdivision improvement. When lots for existing houses

have been excluded from the tree preservation plan, the landscape architect shall set forth on the plan which lots have been excluded, and shall certify that the plan does include all trees eight (8) inches or more in caliper located within fifty (50) feet of a new lot or other subdivision improvement, and that surrounding development will not substantially alter the environment of the trees on such lot.

9) In cases where the number of trees required to satisfy the penalty cannot be accommodated on the site of the violation, the penalty shall include planting of trees on available public spaces and/or payment of \$800.00 per tree to the Village tree fund.

Article V – EPOD #4 – Scenic Resources Protection District

Section 73-20 – Purpose – Many landscape and geologic features and improvements have a special scenic character, including a special historic or aesthetic interest or value. These features have been altered or changed, notwithstanding the feasibility of preserving and continuing the use of such landscape and geologic features and without adequate consideration of the irreplaceable loss to the people of the Village of Marcellus of the scenic, aesthetic, cultural and historic values represented by such landscape and geologic features. The Village of Marcellus should not disregard the scenic landscape, geologic and aesthetic features and should not permit their destruction and in the alternative should further their preservation and creation. Resources that are recognized for the scenic beauty also provide critical habitat for wildlife. Ridgelines, open fields and meadows, and cultural places provide critical nesting and denning areas and are important dispersal areas. More specifically, this protection district will:

- a. Preserve and protection scenic resources such as landscapes, ridgelines and geologic features which represent or reflect the character of the Village of Marcellus
- b. Safeguard scenic resources and aesthetic and cultural heritage, as embodied in the landscape and geologic features.
- c. Stabilize and improve property values in such scenic resource areas.
- d. Foster civic pride in the beauty of the [insert name of municipality].
- e. Promote the use of scenic and aesthetic resources for the education, pleasure and welfare of the people of the [insert name of municipality].

Section 73-21 – Delineation of District Boundaries – The boundaries of the Scenic Resources Protection District shall be delineated on the “Official Village of Marcellus EPOD Maps” and shall include all areas in the Village of Marcellus characterized as follows:

- a. General Characteristics. A scenic resource shall be found to possess one (1) or more of the following general characteristics.

- 1) Illustrative of a natural landscape feature, geologic feature or improvement representing the natural character and history of the Village of Marcellus.
 - 2) Possessing a unique overall quality of scenic beauty, scale, texture and form.
- b. Specific characteristics. A scenic resource shall be found to have one (1) or more of the following specific characteristics:
- 1) Roadways.
 - a) The natural landscape on the edge of the roadway consists of dense forest edge with extensive, healthy or unusual variety of major rock outcroppings.
 - b) Roadway that provides a scenic vista or a panoramic view over one (1) or more of the other types of resources such as slopes, ridgelines, open fields and meadows, water's edge, cultural places and tress and stands of trees.
 - c) The road has a narrow, winding quality linking it with the rural past.
 - d) The road has a special character defined as identified by the Village of Marcellus.
 - 2) Slopes.
 - a) A rise in elevation providing a focal point of a vista or elements of a panoramic view.
 - b) An elevation, which because of steepness, geologic structure, water flow or vegetation is aesthetically pleasing.
 - c) Areas that provide critical nesting and denning habitat.
 - 3) Ridgelines.
 - a) The crest of hills that are the focal points of vistas or are elements of a panoramic view.
 - b) Linear elements that define the horizon or define progression of significant elevation.
 - c) Important wildlife dispersal areas.
 - 4) Open fields and meadows.
 - a) A large open area where the predominant vegetation consists of herbaceous growth and shrubs that provide unique and distinct landscape scenery significantly different from a predominantly wooded landscape.
 - b) The open field or meadow provides a visual link to the agricultural history of the Village of Marcellus.
 - c) The open field provides an important visual focus for stands of tress, stonewalls or fences.
 - d) Areas of critical wildlife habitat.

- 5) Water's edge.
 - a) Reservoirs, ponds, lakes and permanently running streams and brooks that are focal points of vistas or are elements of a panoramic view.
 - b) The reservoir, pond, lake or permanently running stream or brook provides a reflective or aesthetically scenic view.
- 6) Cultural places.
 - a) Settings and locations, including buildings walls, fences, cemeteries, markers, monuments, statues, other structures and the surrounding areas which provide a visual link to the culture and history of the Village of Marcellus
 - b) Any historically unique or significant area.
 - c) Any property designated or eligible for designation on an official list of historic places.
- 7) Trees.
 - a) Unique trees with regard to species diversity and species assemblages .
 - b) Any tree or stand of trees with historic significance.
 - c) Landmark tress, defined as any tree which is representative of a particular species in form, size (height, diameter breast height, crown width) and age-potential and has reached the limits of one (1) of these characteristics, or is unusual based on its location or history, and is identified as contributing significantly to the character or visual amenity of the Village.

Section 73-22 – Regulated Activities – No person shall conduct any of the following regulated activities within any Scenic Resources Protection District in the Village of Marcellus unless such person has first applied for and obtained an EPOD development permit pursuant to the requirements of this Section, including, in addition to the information required in **Section 73-5-c**, the following:

- a. A grading plan showing all areas of cut and fill.
- b. A site plan delineating the locations of all structures.
- c. Sections, elevations, and perspectives showing the design of all proposed structures, including height from design grade.
- d. A landscape plan showing existing and proposed vegetation.
- e. Calculations showing how height restrictions are met.
- f. Material and/or paint descriptions for areas of structures visible in a scenic view.
- g. Color photographs showing the site from representative locations on the roadway of a scenic view.

Section 73-23 – Development Standards/Permit Conditions – In granting, denying or conditioning any application for an EPOD development permit, the authorized official or the appropriate board shall consider the effect that the proposed regulated activity will have on the public health, safety and welfare and the protection and enhancement of scenic resources within the Village.

a. The Applicant Shall Demonstrate that:

- 1) Views of prominent ridgelines that form the limits of scenic viewsheds are preserved.
- 2) Viewsheds shall provide the observer with the visual perspective of the area in terms of foreground, middle ground, and background.
- 3) The scenic quality of the area shall be retained through the preservation of native vegetation and natural topography.
- 4) View windows through site development are maintained.

b. Approval Criteria. In determining approval, the [insert relevant approval agency] shall consider the following:

- 1) Siting of any structure is on a portion of the property where topography and existing vegetation will screen the development from view.
- 2) Use of non-reflective or low reflective building material and dark natural or earth-tone colors.
- 3) Exterior lighting is shielded so that it is not highly visible from identified viewing areas. Shielded materials should be composed of non-reflective, opaque materials.
- 4) Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.
- 5) Proposed developments or land use activities are aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.
- 6) Structure height remains below the surrounding forest canopy level thereby maintaining the tree line.
- 7) Siting and/or design is such that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as the location on the property.

- 8) Paving and excavation is minimized to the greatest extent possible
 - 9) Features that are characteristic of the scenic area such as retaining fences, stone walls, rocks, and vegetation are preserved and maintained.
-

Article VI – Final Items

Section 73-24 – Additional Considerations and Findings

a. Consideration – In granting or denying approval of any development the Planning Board shall consider all relevant facts and circumstances including by not limited to the following:

- 1) The environmental impact of the proposed action.
- 2) The alternatives to the proposed action, including the availability of preferable alternative locations on the subject parcel or any other parcel under the control of the applicant.
- 3) The ability or unsuitability of the proposed activity to the area for which it is proposed.
- 4) The effect of the proposed activity with reference to the protection or enhancement of the functions of critical environmental features and the benefits these characteristics provide.
- 5) The availability of further technical improvements, safeguards or other mitigation measures that could feasibly be added to the plan or action.
- 6) The possibility of further avoiding reduction of the critical area's natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation and/or prevent erosion, assimilates wastes, facilitate drainage and provide recreation and open space.

b. Findings. Approval will be issued by the Planning Board pursuant to this section only if the applicant demonstrates that:

- 1) The proposed development is consistent with the policy hereof to preserve, protect and conserve critical environmental features and their ecological connections by preventing to the maximum extent practicable the degradation and destruction of these features.
- 2) The proposed regulated activity is compatible with public health and welfare.
- 3) The proposed activity cannot practicably be relocated on the site so as to eliminate or reduce the impacts on critical environmental areas.

Section 73-25 – Approval Conditions

a. Approval issued pursuant to this chapter may contain conditions designed to assure the preservation and protection of affected critical environmental areas, and compliance with the objectives of this ordinance.

b. Approval issued pursuant to this chapter shall contain conditions including the following:

- 1) Work conducted under approval shall be open to inspection at any time, including weekends and holidays, by the code enforcement officer.
- 2) Approval shall expire on a specified date.
- 3) The applicant shall notify the code enforcement officer of the date on which the work is to begin, at least five days in advance of such date.

c. Conditions may include but shall not be limited to the following:

- 1) Limitations on the total portion of any lot or the portion of the critical environmental characteristic on the lot than may be adversely impacted.
- 2) Setbacks for structures, filling, grading, or otherwise modifying a critical environmental area.
- 3) Modifications to project design to ensure continued protection of an area or specific feature.
- 4) Replanting of vegetation or other necessary restoration activities to replace damaged or destroyed areas.

d. Performance guarantees.

- 1) The Planning Board may require that, prior to commencement of work under approval issued pursuant to this ordinance, the applicant shall post a performance guarantee in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the performance guarantee shall be consistent with the performance guarantee shall be consistent with the purposes of this ordinance. The performance guarantee shall remain in effect until the approval authority or its designated agent certifies in writing that the work has been completed in compliance with the terms of the permit and the performance guarantee is released by the approval authority, or until a substitute performance guarantee is provided. In the event of a breach of any condition of any permit, the approval authority may act to obtain and make appropriate use of the proceeds of the performance guarantee.
- 2) The approval authority shall set forth in writing in the file it keeps regarding an application its findings and reasons for imposing a performance guarantee pursuant to this section.

Section 73-26 – Penalties for offenses

a. Administrative sanctions.

- 1) Damages. Any person who undertakes any activity regulated by this chapter without approval issued hereunder, or who violates, disobeys or disregards any provision of this ordinance, shall be liable to the Village of Marcellus for civil damages caused by such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action

brought by the municipality at the request and in the name of the Village Board in any court of competent jurisdiction.

2) Restitution. The Village Board shall have the authority to direct the violator to restore the affected critical environmental area to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the Village Board or its designee. Further, the Village Board shall have the authority to require an adequate performance guarantee in a form and amount deemed necessary by the Village Board to ensure the restitution of the affected critical environmental area.

3) Stop-work order; revocation of permit. In the event that any person having approval issued pursuant to this chapter fails to comply with any of the conditions or limitations set forth in the approval, exceeds the scope of the activity as set forth in the application or operates so as to be materially detrimental to the public welfare or injurious to a critical environmental area, the approval authority may suspend or revoke the approval as follows:

a) Suspension of approval shall be by a written stop-work order issued by the Code Enforcement Officer and delivered to the permittee or his agent or the person performing the work. The stop-work order shall be effective immediately, shall state the specific violations cited and shall state the conditions under which work may be resumed. A stop-work order shall have the effect of suspending all authorizations and permits granted by the Village thereof. The stop-work order shall remain in effect until the Code Enforcement Officer is satisfied that the applicant has complied with all terms of approval or until a final determination is made by the Planning Board as provided in **Subsection a(3)(b)** immediately below.

b) Public hearing; notice; determination.

i) No site development approval shall be permanently suspended or revoked until the Planning Board holds a public hearing.

Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:

i.a) The grounds for complaint or reasons for suspension or revocation.

i.b) The time and place of the hearing to be held.

ii) Such notice shall be served on the applicant at least one week prior to the date set for the public hearing unless the stop-work order is issued for a violation occurring less than one week before the regularly scheduled public meeting of the Planning Board. At such hearing, the applicant shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion of the hearing, the Planning Board shall

determine whether approval shall be reinstated, suspended or revoked.

b. Other sanctions. Any person convicted of having violated or disobeyed any provision hereof, any order of the Village Board or any condition duly imposed in development approval granted pursuant to this chapter, for the first offense shall be punished by a fine of not less than \$1,000 per day of offense. Each subsequent offense shall be punishable by a fine of not less than \$2,000 per day. Each consecutive day of the violation shall be considered a separate offense. The term "person," as used herein, shall mean a natural person or a corporation.

Section 73-27 – Enforcement – The Village of Marcellus is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions hereof and/or to compel the restoration of the affected critical environmental area to its condition prior to the violation of the provisions of this ordinance.

Section 73-28 – Appeals – Any final determination, decision or order of the Planning Board may be appealed to the Village Board by means of the procedure specified for zoning matters as set for in Part III, Zoning Code, Article XIX.

Section 73-29 – Inspection

a. Lands within or adjacent to an identified Environmental Protection Overlay District will be inspected by the Code Enforcement Officer when:

- 1) A subdivision or land development plan is submitted.
- 2) A building permit is requested.
- 3) A change or resumption of nonconforming use is posed.

b. The district may also be inspected periodically by the Code Enforcement Officer for compliance with an approved restoration plan, excessive or potentially problematic erosion, hazardous trees, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials.

Section 73-30 – Environmental Protection Overlay District Management

a. Management Plan. Within any identified environmental protection overlay district, no construction, development, use, activity, or encroachment shall be permitted unless the effects of such development are accompanied by implementation of an approved Environmental Protection District Management Plan.

- 1) The landowner or developer shall submit to the Planning Board a Environmental Protection District Management Plan prepared by a landscape architect, engineer, or other qualified professional, which fully evaluates the effects of any proposed uses on the Environmental Protection District.
- 2) The management plan shall identify the existing conditions, all proposed activities, and all proposed management techniques, including any measures necessary to offset disturbances.

Section 73-31 – General Provisions – In order to carry out the purposed provisions hereof, and in addition to the powers specified elsewhere in this ordinance, the following general provisions shall apply:

- a. Indemnification. The property owner and applicant, by making an application for approval, shall indemnify and hold the Village of Marcellus harmless against any damage or injury that may be caused by or arise out of any entry onto the subject property in connection with the processing of the application, during proposed work, or within one year after completion of the work.
- b. Conflicts. Wherever this chapter is inconsistent with any other law of the Village of Marcellus, whichever law imposes the more stringent restriction shall prevail.
- c. Severability. The provisions and sections of this chapter shall be deemed to be severable, and the invalidity of any portion of this ordinance by a court of competent jurisdiction shall not affect the validity of the remainder of this chapter.
- d. Cease and Desist Order. The Code Enforcement Officer is authorized to issue a cease and desist order to any landowner, contractor or their agent who is engaged in any activity on the land that may have a significant impact on any critical resources designated in this chapter. When such an order has been issued, the landowner must not resume the activity until approval has been issued by the Village Board which shall cause the Village Board to make all the findings, apply all standards and consider all relevant approval criteria as contained in this chapter.
- e. Waiver. The Village Board charged with the implementation of these provisions may waive them when reasonable with regard to any development proposal submitted for its approval or any permit requested to which these standards are applicable. The applicant must demonstrate, by presenting clear and convincing evidence, that the application of the particular standard or standards requested to be waived will cause a unique and serious hardship to the applicant. Before such a waiver may be granted, the approval agency must find that the waiver it is granting is the minimum needed to relieve the demonstrated hardship and that the natural resources protected by these standards will be impacted as minimally as possible by the waiver.
- f. Effective date. This chapter shall become effective immediately upon publishing and posting as required by law.