

**A Local Law for Regulation and Protection of Steep Slopes in the  
Town of Middlesex**

**LOCAL LAW # \_\_ of the Year 2012  
(Draft revision 01/07/12)**

**Section 1 – Purpose and Objectives**

The Comprehensive Plan for the Town of Middlesex recognizes that the highland areas within the Town are significant natural features to be preserved and protected from ecological damage. The purpose of this Law is to regulate disturbance and development on environmentally sensitive steep slopes in the Town of Middlesex. This law will help to protect the Steep Slope Areas, as defined in this Law within the Town by providing special controls over land use and development. Construction on steep slopes can result in accelerated runoff of storm water. The destruction of natural vegetation and the increase in impervious surfaces due to development compounds the problems of runoff. Excess runoff can cause loss of topsoil through erosion, silting in of streams, and flood damage, as well as increasing the accumulation of pollutants that are carried into downstream bodies of water. Leaving woodlands and steep slopes undisturbed aids in the control of erosion and sedimentation, maintains the capability of the underlying soils to absorb and retain moisture, and serves to further protect the water quality within the watershed and associated streams.

Effective and reasonable application of this law in accordance with the following objectives will help to protect the health, safety and welfare of the citizens of the Town:

- A. Provide for the reasonable use of steep slopes while ensuring development will not induce soil erosion, require excessive grading, increase slope instability, or create sewage disposal problems.
- B. Guard against property damage and personal injury, and minimize the potential for erosion, slope failure, stream siltation, increased storm water runoff, flooding, the contamination of surface waters caused by the adverse effects of site preparation and construction on steep slopes and the protection of downstream water bodies.
- C. Conserve existing woodlands for air and water quality benefits and the preservation of wildlife habitats.
- D. Protect important scenic views and vistas for the general welfare of the Town of Middlesex community.
- E. Permit land uses by right that are compatible with protection of steep slope

areas, and encourage the use of steep slope areas for open space and conservation uses.

- F. Require development to avoid steep slope areas whenever possible, and require all land use, clearing, grading and construction to satisfy the Town's Development Standards. These Town Development Standards for steep slope construction are available through the Code Enforcement Officer (CEO). (see Section 3 - Development Standards)
- G. Regulate expansion of land use or development that existed on steep slope areas prior to the enactment of this Law.
- H. Protect adjoining properties from harmful consequences of development permitted under these requirements.

## **Section 2 – Establishment and Identification of a Steep Slope Protection Area (SSPA)**

### 2.1 Authority to Regulate SSPA

In accordance with Article 9 of the Town Law of the State of New York, the Town of Middlesex has the authority to enact local laws for the purpose of promoting the health, safety, or general welfare of the Town of Middlesex. The Town of Middlesex may have provisions in any such local law for the appointment of any municipal officer or employee to effectuate and administer such local law.

### 2.2 Applicability

This Law shall apply to all Steep Slope land within the Town (see definition of Steep Slope in Section 3), and adds additional restrictions and requirements to the underlying zone. All site preparation and construction activity located within a SSPA, which require approval under this Law, shall be subject to the provisions of this Law. The provisions of this Law are in addition to any other Town laws, ordinances, regulations and procedures governing site preparation and construction activities. In the event of a conflict between this Law and any other Town law, ordinance, regulation and/or procedure governing site preparation and construction activities, the most stringent law shall be applied.

### 2.3 Identification of a SSPA

- A. A Steep Slope Protection Area is defined and established as those non-contiguous areas within the Town having slopes 15% or greater as delineated on a map(s) prepared for the Town by the Canandaigua Lake Watershed Council or other agencies engaged by the Town for this purpose. The SSPA limits shall be determined by the

- change of slope, gradient or angle of the existing grade (either rising or falling) from a point at grade to another point (at grade) perpendicular to the contour lines. Any slope that has a change of slope equal to or greater than 15% gradient, 8.5° angle off of the horizontal plane, or a horizontal to vertical ratio of 6.7 H : 1 V, shall be determined to be a SSPA.
- B. The boundaries shown on the SSPA Map may be supplemented or modified by examination of one or more of the following sources whenever a subdivision or land development plan is submitted for review:
1. Survey of Yates County, New York, National Cooperative Soil Survey (NCSS). This information can be accessed through the Internet at the NCAA Web Soil Survey at <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>.
  2. Contour maps prepared from aerial photography.
  3. On-site survey prepared by a New York State Licensed Land Surveyor or a Professional Engineer.
- C. A SSPA shall be further divided into the following three (3) categories: (see Section 3 for definitions)
1. Moderately Steep Slope (15% to < 25%)
  2. Very Steep Slope (25% to < 40%)
  3. Extremely Steep Slope (40% and greater)
- D. Slope Measurements:

To ensure consistent conversion between the separate methods of expressing the extent of slope, the following table is provided. (H = horizontal, V = vertical).

DEGREES	RATIO	PERCENT
_____	_____	_____
8.5°	6.7 H : 1 V	15%
14.0°	4 H : 1 V	25%
18.4°	3 H : 1 V	33%
21.8°	2.5 H : 1 V	40%
26.6°	2 H : 1 V	50%

**Note:** 30.0°, ratio of 1.75 H : 1 V, and 57% is considered steep slope for lands within the Town that are subject to the Uniform Dock and Mooring Law.

- E. The Town Planning Board, Town Engineer, or a representative authorized by the Town Planning Board shall determine whether a SSPA has been shown with sufficient accuracy on the Applicant's plans. If the Planning Board, its representative, or the Town Engineer determines that the Applicant's steep slope mapping is deficient in any way, then the Applicant shall revise its steep slope mapping as may be required by the Planning Board. The Planning Board may require the Applicant to obtain additional field survey and existing conditions information as may be necessary to properly delineate the SSPA on the Applicant's site plans.
- F. The burden of determining the boundary of the SSPA shall be on the Applicant, supported by engineering and/or surveying data or mapping, testimony of a soil scientist, or other acceptable evidence.

### **Section 3 – Definitions**

- 3.1 AGGREGATE DIAMETER – The combined diameter of a multiple trunk tree (tree bole) measured at diameter breast height (DBH).
- 3.2 APPLICANT – The owner of record of a parcel of land situate in the Town, or his/her

- authorized agent.
- 3.3 CODE ENFORCEMENT OFFICER or CEO - The Code Enforcement Officer of the Town of Middlesex.
- 3.4 CONSTRUCTION EXECUTION PLAN – A written narrative, inserted on the site plan drawing or submitted as a separate document, describing the approach and sequencing of all construction activities, with primary emphasis on:
- initial and intermittent erosion control methods to be used and maintained
  - site preparation activities (tree removal, clearing & grubbing, temporary crushed stone usage, any construction road on site, etc.)
  - storage / removal of excavated materials
  - construction entrance location and maintenance
- 3.5 CONCEPT PLAN - A sketch(s) with written narrative as necessary, prepared by the Applicant or his agent, to indicate the proposed development of the Applicant's parcel. Sketches can be drawn by hand, and placed on a copy of a corresponding tax map or similar existing document for presentation purposes. All existing and proposed new structures and driveway / parking should be shown. Approximate finished dimensions of buildings should also be indicated. The purpose of a Concept Plan is to provide visual aide for preliminary project review with the Town Planning Board, prior to preparing engineered drawings.
- 3.6 DEC – New York State Department of Environmental Conservation.
- 3.7 DEVELOPMENT STANDARDS - Plan and elevation sketches prepared by the Town Engineer to provide Applicants with a more compatible design approach for steep slope construction, prior to formal preparation of plans by the Applicant's Architect and/or Engineer.
- 3.8 DIAMETER BREAST HEIGHT (DBH) – The diameter of a tree measured at four and one-half feet (4-1/2') above the highest point of the existing grade at the base of the tree.
- 3.9 DISTURBANCE - Any activity involving the clearing, excavating, storing, grading, filling or transporting of soil, or any other activity that causes soil to be exposed to the danger of erosion, including clearing of vegetation.
- 3.10 DRAINAGE LINE – A pipe, tile, ditch or other similar man-made means of accomplishing the removal of surface, subsurface water and/or collected water.
- 3.11 EROSION - Detachment and movement of soil or rock fragments by water, wind, ice and

gravity.

- 3.12 **EXTRACTIVE USE** - The removal of any soil, gravel, timber or other earth generated product from a property with the intent to sell or reuse. Site work performed via building permit in preparation for property improvements, where earth generated products are removed off site incidental to construction activities, shall not be deemed an extractive use.
- 3.13 **EXTREMELY STEEP SLOPE** - A slope equal to or greater than 40%. These are land surfaces rising forty (40) feet or more vertically per one hundred (100) feet horizontal.
- 3.14 **GRADING** - Adjusting the degree of inclination of the natural contours of the land, including leveling, smoothing and other modification of the natural land surface.
- 3.15 **INFILTRATION** – Rainfall minus interception, evaporation, and surface runoff; the part of rainfall that enters the soil.
- 3.16 **INTERCEPTION** – Precipitation retained on plant or plant residue surfaces and finally absorbed, evaporated, or sublimated. That which flows down the plant to the ground is called “stem flow” and not counted as true interception.
- 3.17 **LOCAL AUTHORITIES** – Town of Middlesex Planning Board and Code Enforcement Officer, Area Watershed Inspector, Yates County Planning Department, and Yates County Soil and Water Authority.
- 3.18 **MODERATELY STEEP SLOPE** - A slope equal to or greater than 15%, but less than 25%. These are land surfaces rising (15) feet to < (25) feet or more vertical per one hundred (100) feet horizontal.
- 3.19 **PARCEL** - A portion of land with defined boundaries; a lot.
- 3.20 **PARCEL SURVEY MAP** - A map of a parcel prepared and sealed by a NYS Licensed Land Surveyor (LLS).
- 3.21 **PLANNING BOARD** - The Planning Board of the Town of Middlesex.
- 3.22 **PRELIMINARY SITE PLAN REVIEW** - An informal meeting between the Planning Board and the Applicant to exchange information related to a proposed land improvement. The meeting includes a presentation of a preliminary drawing or sketch, and a discussion of project scope, location, schedule and other general information, following which, the Planning Board provides direction to the Applicant as to subsequent

- steps necessary to obtain permit approval.
- 3.23 PRIVATE DRIVEWAY – A private way used to provide vehicular access to one lot or parcel of land, and which adjoins a public road. A private driveway includes a temporary entrance for access to a lot for construction purposes.
- 3.24 PRIVATE ROAD – A private vehicular way used to provide access to two or more lots, pursuant to the provisions of Sec. 703 of the Middlesex Zoning Law, adjoining a public road.
- 3.25 PROTECTED TREE – Any living tree having a diameter of six inches (6”) DBH or greater, or having an aggregate diameter of fifteen inches (15”) DBH or greater for a bole cluster.
- 3.26 PROFESSIONAL ENGINEER – A Professional Engineer currently licensed to practice in the State of New York by the New York State Education Department.
- 3.27 RAVINE – A gully or gorge worn by the flow of water in a regularly or intermittently flowing waterway.
- 3.28 RESTORATION – The re-establishment of the grade, slope, stability, vegetation, or drainage system of disturbed property in a steep slope area by restoring the property back to substantially the same condition as existed prior to the disturbance.
- 3.29 SEDIMENT - Soil or soil materials or components that have been transported from their prior location.
- 3.30 SEDIMENTATION - The deposition of soil that has been transported from its site of origin by water, ice, wind, gravity of other natural means as a product of erosion.
- 3.31 SEQRA - State Environmental Quality Review Act - NYS Environmental Conservation Law, Article 8 and regulations at 6 NYCRR Part 617 providing for review of actions which may have a significant effect on the environment.
- 3.32 SETBACK – The minimum allowed horizontal distance measured from a parcel boundary to a structure, permanent feature or nearest edge of road surface on that property.
- 3.33 SITE PLAN - Map(s) or drawn representation of a proposed project or development, sometimes accompanied by written description and/or specifications, containing sufficient information and detail for municipal review and approval.

- 3.34 **SITE PLAN REVIEW** - The process by which an Applicant presents a map(s), drawings and other supporting documentation of a proposed development or project, submitted to the Planning Board for consideration and approval, in advance of issuing a permit, and pursuant to the provisions of Section 700 of the Middlesex Zoning Law.
- 3.35 **SITE WORK** - Any proposed land alteration or improvement, to include, but not be limited to, the following: vegetation clearing / remediation, timber harvesting, grading, drilling, excavation / trenching, benching, terracing, backfilling, storm and erosion control work, embankment stabilization, catch basins, culvert piping, swales, ditches, rip rap, check dams, topsoil, seeding, mulching, access roads / driveways, construction entrances, retaining walls, utility work or similar land disturbance activity.
- 3.36 **SOIL** – The unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of vegetation.
- 3.37 **STABILIZED** - A condition where a disturbed or modified ground surface has received appropriate surface treatment, including structural cover or topsoil, seeding, mulching, geo-textile or erosion control matting (as applicable), to prevent erosion and sedimentation from occurring. In general, an area is considered “stabilized” when vegetative cover has exceeded 80% density coverage over that disturbed area.
- 3.38 **STEEP SLOPE** - Slopes of land 15% or greater as delineated on a map(s) prepared for the Town by the Canandaigua Lake Watershed Council or other agencies engaged by the Town for this purpose.
- 3.39 **STEEP SLOPE PERMIT APPLICATION** - An application form provided by the CEO that requires an Applicant to define all proposed site improvements within a steep slope area. This application must be reviewed and approved by the Planning Board.
- 3.40 **STEEP SLOPE CONDITIONAL USE PERMIT** - The written form of approval prepared by the CEO for any steep slope regulated activity. It is issued after a Steep Slope Permit Application has been submitted to and approved by the Planning Board, and is issued in advance of any Building Permit that may be required prior to start of construction. The Steep Slope Conditional Use Permit is used for both “permitted” and “conditional use” activities on steep slope parcels. (See Sections 5 thru 12)
- 3.41 **STORM WATER RUNOFF** - The water that flows overland during a rainstorm. As a rainstorm occurs, the water is either absorbed by trees and plants, infiltrates into the ground, re-evaporates or flows overland. The portion of the water that flows overland is defined as storm water runoff.

- 3.42 **STRUCTURE** – Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. "Structure" includes, but is not limited to: any building, foundation, cast-in-place concrete steps, all stairs and decks, above-ground storage tanks, above-ground water well components, both in-ground and above ground swimming pools, towers, billboards, retaining walls of any height, mortared or dry-laid stonework and trams.
- 3.43 **STRUCTURAL FILL** – Native or imported soil or processed material suitable for achieving the minimum bearing capacity and compaction requirements for the intended use.
- 3.44 **SUBGRADE** – The finished surface elevation achieved after removing organic surface material, followed by any necessary cut or fill activity, but prior to installing base and surface treatments.
- 3.45 **TOPOGRAPHICAL CONTOURS** - Continuous lines drafted on a map, at defined increments, depicting the changes in elevation and outlining the shapes of hills, valleys, gullies and surface irregularities.
- 3.46 **TOWN** - The Town of Middlesex in Yates County, New York.
- 3.47 **TOWN ENGINEER** - A professional engineer, registered in New York State, hired by the Town of Middlesex to perform the appropriate review of technical documents and site conditions, and to provide best practice recommendations and governing code requirements.
- 3.48 **TREE REMOVAL** – The actual physical removal of a tree, or the effective removal through intentional damaging, poisoning, or other action resulting in the death of a tree.
- 3.49 **VEGETATIVE PROTECTION** - Stabilization of erosive or sediment producing areas by covering the soil with:
- a. Permanent seeding, producing long-term vegetative cover,
  - b. Short-term seeding, producing temporary vegetative cover, or
  - c. Sodding, which is the placement of cultivated sod onto prepared topsoil to promote rapid soil stabilization.
- 3.50 **VERY STEEP SLOPES** - A slope equal to or greater than 25% but less than 40%. These are land surfaces rising twenty-five (25) feet to less than forty (40) feet vertical per one hundred (100) feet horizontal.
- 3.51 **WATERCOURSE** – Any natural or man-made channel through which water flows

intermittently or continually, such as rivers, streams, creeks, ravines, gullies, ditches, etc.

- 3.52 WATERSHED - The area or extent of land where water from rain and melting snow or ice drains downhill into a body of water, such as a river, lake, reservoir, estuary, wetland, sea or ocean. This area can be comprised of one or several drainage basins, which include both the streams and rivers that convey the water as well as the land surfaces from which water drains into those channels and water bodies.

#### **Section 4 – General Provisions**

- 4.1 All uses, activities and development occurring within a SSPA shall be undertaken only in strict compliance with the provisions of this Law, with all federal and state laws, and with all other applicable Town laws, codes and ordinances.
- 4.2 This Law shall apply to the following activities, provided such activity is permitted in the zoning district where it is located. (See Sections 5 thru 12)
- Residential development
  - Subdivision development
  - Commercial or industrial site development
  - Driveway and private road construction
  - Dock and mooring work above the mean high water mark
  - New or replacement stairway / tram system construction
  - Any site disturbance activity within a SSPA exceeding the following thresholds:
    - a) 500 square feet (20 ft. x 25 ft.) of disturbance within 2000 feet horizontal distance from the mean high water mark of Canandaigua Lake
    - b) 500 square feet (20 ft. x 25 ft.) of disturbance within 100 feet horizontal distance from any open water course
    - c) 10,000 square feet (100 ft. x 100 ft.) of disturbance occurring beyond the horizontal distance stipulations in a) and b) above.

Any person or entity seeking to perform such activity within a SSPA shall be required to complete and submit a Steep Slope Permit Application, and receive approval of

such application from the Planning Board, prior to submitting this application to the CEO for issuance of a Steep Slope Conditional Use Permit and Building Permit.

- 4.3 No development, alteration, grading, tree removal or construction shall take place in an area within a SSPA without a Steep Slope Conditional Use Permit. The Code Enforcement Officer shall issue all permits after the review and approval of the Steep Slope Permit Application by the Planning Board.
- 4.4 The Planning Board and the Town Engineer shall perform a detailed review of all applications and supporting documentation for proposed improvement activity located within a SSPA. The Applicant shall be responsible for reimbursing the Town for the costs incurred for this review and subsequent site inspection by the Town Engineer during construction. Costs at certain phases of the project may include daily inspections of the work site conducted by the Town Engineer, at the discretion of the Planning Board and/or CEO. The Town, in its discretion, reserves the right to require an escrow account funded by the Applicant to be established for reimbursement of these projected costs. (See Section 16)
- 4.5 All SSPA site plans shall comply with this Law **AND** all of the requirements of the following laws and regulations, at a minimum:
- The Town of Middlesex Zoning Law
  - The Town of Middlesex Land Subdivision Regulations
  - The Town of Middlesex Local Law for Regulation of Private Driveways and Private Roads
  - The Town of Middlesex Local Law for Storm Water Management and Erosion Control
  - The New York State SPDES Storm Water General Permit for Construction Activities.

In the case of a conflict among these laws, the most stringent requirement shall apply.

- 4.6 The following documents shall serve as the official guides and specifications for storm water management. Storm water management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this Law:

- The Town of Middlesex Local Law for Storm Water Management and Erosion Control.
  - The New York State Storm Water Management Design Manual, most current version or its successor, as published by the New York State Department of Environmental Conservation, hereafter referred to as the Design Manual.
  - The New York State Standards and Specifications for Erosion and Sediment Control (“blue book”), most current version or its successor, as published by the Empire State Chapter of Soil and Water Conservation Society, hereafter referred to as the Erosion Control Manual.
- 4.7 All Steep Slope Conditional Use Permit applications shall require a SEQR determination by the Planning Board.
- 4.8 An Applicant applying for subdivision development in a Steep Slopes Area shall submit individual Steep Slope Permit Applications for each lot. The submittal package may address the entire subdivision property, but individual lot steep slope disturbance calculations and driveway profiles must be provided.
- 4.9 The proposed development shall be designed to work with the natural elements of the site, including limiting the amount of disturbance, locating the proposed dwelling or other structure(s), if applicable, in an area that will create the least amount of grade disturbance and to balance the cut/fill by providing step foundations as necessary.
- 4.10 No protected tree shall be removed from a Steep Slopes Area without the approval of the Planning Board. Any proposed development shall be designed to avoid harm to, or removal of, protected trees in a SSPA. The Planning Board reserves the right to request design modifications for the protection of certain trees that the Planning Board has decided enhance the property and Town aesthetics, at their sole discretion. (See Section 3.25)
- 4.11 The finished slope of all cuts or fills for any site work shall not exceed a slope of one vertical to two horizontal (50% grade or 26.5 degrees of angle) where only new vegetation is proposed to prevent erosion. Retaining walls or other similar structural stabilization must be installed where the one-on-two slope limitation is exceeded. All such structural features must be designed by a Professional Engineer and will be subject to review by the Town Engineer and the Planning Board.
- 4.12 Any fill placed on the lot shall be properly stabilized and, when found necessary, depending on the nature of the soil types, soil characteristics, and existing slopes,

supported by retaining walls or other appropriate structures as approved by the Planning Board and the Town Engineer.

- 4.13 Installation of new retaining walls higher than (3) feet above finished grade shall require design drawings stamped by a Professional Engineer (P.E.) registered in NYS. In addition, the P.E. stamping the retaining wall drawings is also required to certify that all such retaining walls were constructed in accordance with his or her drawings at project completion. The Applicant must submit signed documentation from the P.E. attesting to this. The Applicant shall pay for all related costs.
- 4.14 If any existing retaining walls higher than three (3) feet above finished grade are to be incorporated into the proposed project design, a Professional Engineer registered in NYS shall evaluate the structural integrity of these existing retaining walls, and provide written direction and certification as to their use.
- 4.15 The alignment of roads and driveways shall follow the natural topography, minimize re-grading and comply with the design standards set forth in the Local Law for Regulation of Private Driveways and Private Roads in the Town of Middlesex.
- 4.16 Additional requirements for driveway and private road construction under this Law are as follows:
- If the total length of the driveway or private road exceeds 200 lineal feet, and the direct line of sight between the entrance and dwelling or other structure is obstructed, then at least one widened driveway or road section shall be constructed to allow for two vehicles to pass each other simultaneously. The widened driveway or road section shall be a minimum of 18 feet wide and 40 feet long, not including the transition between the normal width and widened width of the driveway or road.
  - If a permanent driveway cannot be installed to serve the residence or structural improvement being proposed due to Town Private Driveway and Private Road Law requirements, no temporary construction road / driveway shall be allowed. Alternate plans for accessing the building site to deliver construction material and equipment must be approved by the Planning Board and/or Town Engineer.
- 4.17 No proposed grading, driveways, retaining walls (including footings and geo-textile reinforcement), drainage swales or structures shall be allowed within fifteen (15) feet of the side or rear property lines.
- 4.18 Storm water calculations for pre and post development shall be provided for all storm events for the proposed site, including one (1) year, ten (10) year, twenty five (25) year and one hundred (100) year storms. The post development site shall be designed to provide a net-zero increase in the storm water runoff flow rate for all analyzed storms.

Storm water piping, channels and swales shall be designed based on the entire contributing drainage area and to pass the ten (10) year storm event. All discharged storm water shall be reduced to non-erosive flow rates. Provide USGS mapping of the entire contributing drainage area if it extends beyond the site plan mapping.

- 4.19 The design plans shall provide stabilized diversion swales located upgrade from any development on steep slopes to limit the volume of runoff water that may affect erosion, sedimentation or slope failure of these placed fills. Flow cannot be diverted onto neighboring properties.
- 4.20 Benching of existing grades (to be disturbed) shall be done in accordance with the NYSDEC Standards and Specifications for Erosion and Sediment Control, land grading, page 5B.49, design criteria 3 and figure 5B.23, as well as Town Standards. At the discretion of the Planning Board, benching may be required on both moderately steep and very steep slopes, based on fill depth, distance from dwelling, road or Canandaigua Lake, or for any other environmental concerns deemed important for the safety of the general public and protection of downstream water bodies.
- 4.21 Any disturbance of steep slopes shall be performed between April 1st and October 15th, and disturbed areas shall not be left bare or exposed during the winter and spring thaw periods. Permanent vegetative cover shall be planted within three (3) days after completion of final grading. Permanent vegetative cover must be planted no later than October 15<sup>th</sup>.
- 4.22 The Applicant shall follow the Construction Execution Plan as submitted and approved during the Site Plan Review process. This requirement shall also include any additional conditions or specifications imposed during the Site Plan approval process. There shall be no attempt to deviate from the approved Construction Execution Plan or additional imposed conditions without receiving subsequent review and approval from both the Planning Board and CEO.

### **Section 5 – Permitted Uses on Moderately Steep Slopes (15% to < 25%)**

- 5.1 The following open space and conservation uses are **permitted** on Moderately Steep Slopes:
  - A. Wildlife sanctuary, woodland preserve, arboretum, and passive park and recreation areas.
  - B. Forestry and reforestation in accordance with recognized natural resource and soil

- conservation practices, and as permitted by Town and State regulations.
- C. Pasture and grazing land in accordance with recognized natural resource and soil conservation practices.
  - D. Outdoor plant nursery or orchard in accordance with recognized natural resource and soil conservation practices.
  - E. Cultivation and harvesting of crops in accordance with recognized natural resource and soil conservation practices.
  - F. Non-structural accessory uses necessary for the operation and maintenance of the above permitted uses.

A Steep Slope Conditional Use Permit issued by the CEO will be required for the above permitted uses. This is for notification and monitoring purposes only. There will be no permit fee.

### **Section 6 - Conditional Uses on Moderately Steep Slopes (15% to < 25%)**

- 6.1 The following activities **may be allowed** under Steep Slope Conditional Use Permit, provided that each activity is in compliance with the provisions of this Law, regulations of the underlying district, and is not prohibited by any other Town Law.
- A. One residential structure
  - B. One single or double stall detached garage
  - C. One patio area adjacent the residence, not to exceed 250 square feet
  - D. One driveway to serve the residence / garage (Driveways must comply with the Town Private Driveways and Private Roads Law to be allowed.)
  - E. Trams and/or stairs as may be needed to access another elevation on the property.
  - F. Clearing of vegetation or grading for allowed improvements, including the addition of fill.
  - G. Sanitary and storm sewers with the approval of the Town Engineer and the DEC.
  - H. On-lot sewage disposal systems when approved by the DEC and/or the New York State Department of Health.

- I. Utility transmission lines and aboveground utility line structures unless upon petition of a public utility corporation, the New York State Public Utility Commission shall, after public hearing, decide that the presence of such proposed lines or structures in question is not reasonably necessary for the convenience or welfare of the public.
  - J. The following features may also be allowed based upon extent of soil erosion potential and impact to existing terrain, adjacent properties and scenic vistas. If applied for, the design and location of these features must be clearly detailed and dimensioned on the final site plan, and shall be closely reviewed via site visit by the Planning Board and /or Town Engineer.
    - Landscaping for decorative or visual purposes only
    - Paths developed specifically for golf carts, ATV's or other similar small vehicles (maximum path width to be six feet)
    - At-grade patio larger than 250 square feet
    - Additional detached structures such as storage buildings, garden sheds, gazebos and playhouses, none however to exceed 150 square feet in plan view.
- 6.2 Steep Slope Permit Applications for Conditional Use Permits shall include prepared Site Plans as specified under Section 14 of this Law.
- 6.3 Development within Moderately Steep Slopes will adhere to the following conditions:
- A. Initial erosion control measures shall be put into place, inspected and approved by the CEO **before** any site clearing, grading or other construction activity will be allowed to proceed. Additional erosion control measures scheduled to be installed later during construction must also be inspected and approved by the CEO before further activity will be allowed to proceed. It shall be the applicant and/or contractors responsibility to coordinate all inspections with the CEO. Initial and phased erosion control measures shall be agreed to during the permit application process and site plan review. Erosion control measures shall be part of the overall Construction Execution Plan.
  - B. Disturbed slopes are required to receive temporary stabilization measures within seven (7) days of initial disturbance and to receive permanent stabilization measures within three (3) days of establishing final grade.
  - C. The minimum acceptable stabilization measures shall consist of topsoil placement, seeding and mulching.
  - D. Slope disturbance and clearing of moderately steep slopes shall be kept at a minimum for a building site. The acceptable limits of slope disturbance and clearing shall be

determined during Site Plan Review at the discretion of the Planning Board and/or Town Engineer.

### **Section 7 - Prohibited Uses on Moderately Steep Slopes (15% to < 25%)**

- 7.1 The following uses are **specifically prohibited** on Moderately Steep Slopes:
- A. Removal of existing ground cover and root systems except when related to an approved conditional use.
  - B. Solid waste disposal, recycling uses, junkyards, or other similar outdoor storage uses.
  - C. Installation of in-ground swimming pools and tennis courts.
  - D. Storm water detention basins.
  - E. Resource extraction uses.

### **Section 8 – Permitted Uses on Very Steep Slopes (25% to < 40%)**

- 8.1 The following open space and conservation uses are **permitted** on Very Steep Slopes:
- Permitted uses are the same as Section 5.1.

### **Section 9 – Conditional Uses on Very Steep Slopes (25% to < 40%)**

- 9.1 The following activities **may be allowed** under Steep Slope Conditional Use Permit, provided that each activity is in compliance with the provisions of this Steep Slopes Law, regulations of the underlying district, and is not prohibited by any other Town Law.
- A. One residential structure with attached garage
  - B. One driveway to serve the residence / garage (Driveways must comply with the Town Private Driveways and Private Roads Law to be allowed.)
  - C. Trams and/or stairs as may be needed to access another elevation on the property
  - D. Minimal clearing of vegetation or grading, including the addition of fill, as required for the construction of a residence and/or driveway.
  - E. Sanitary and storm sewers with the approval of the Town Engineer and the DEC.

- F. Sewage disposal system for residence. Must first be reviewed for location viability by local authorities, followed by design approval by the DEC and/or the New York State Department of Health.
- G. Utility transmission lines and aboveground utility line structures unless upon petition of a public utility corporation, the New York State Public Utility Commission shall, after public hearing, decide that the presence of such proposed lines or structures in question is not reasonably necessary for the convenience or welfare of the public.
- H. The following features may also be allowed based upon extent of soil erosion potential and impact to existing terrain, adjacent properties and scenic vistas. If applied for, the design and location of these features must be clearly detailed and dimensioned on the final site plan, and shall be closely reviewed via site visit by the Planning Board and /or Town Engineer.
- Paths developed specifically for golf carts, ATV's or other similar small vehicles (maximum path width to be six feet)
  - One at-grade patio no larger than 250 square feet
  - Detached structures such as storage buildings, garden sheds, gazebos and playhouses, none however to exceed 150 square feet in plan view.
- 9.2 Applications for Steep Slope Conditional Use Permits for Very Steep Slopes shall include prepared Site Plans as specified under Section 14 of this Law.
- 9.3 In addition to the requirements of Section 6.3, development within Very Steep Slopes shall also include both the installation of geo-textile matting or similar product for slope protection, and a detailed written plan for re-vegetation of all disturbed areas. These additional requirements must be reviewed and approved by the Planning Board and/or Town Engineer.

### **Section 10 – Prohibited Uses on Very Steep Slopes (25% to < 40%)**

- 10.1 The following items are **specifically prohibited** on Very Steep Slopes:
- A. All items prohibited on Moderately Steep Slopes, Section 7.
  - B. All terraced landscaping, with or without retaining walls, not directly required as a result of residence, driveway or approved septic system installation.

### **Section 11 – Permitted Uses and Development on Extremely Steep Slopes of 40% or More**

11.1 The following open space and conservation uses are **permitted** on Extremely Steep Slopes:

- A. Wildlife sanctuary, woodland preserve, and passive park and recreation areas.
- B. Forestry and reforestation in accordance with recognized natural resource and soil conservation practices, and as permitted by Town and State regulations.
- C. Pasture and grazing land in accordance with recognized natural resource and soil conservation practices.

**NOTE:** Any site work required for access to any of the above **permitted** uses must be reviewed and approved by the Planning Board.

## **Section 12 – Prohibited Uses and Development on Extremely Steep Slopes of 40% or More**

All uses are prohibited except for those listed in Section 11.

## **Section 13 – Conditional Use Standards and Criteria**

13.1 In review of a Steep Slope Permit Application, the Planning Board shall consider the following:

- A. Conditional Uses as referenced in this Law.
- B. Relationship of the proposed use to the objectives set forth in Section 1 herein.
- C. Adverse effects on abutting properties.
- D. The need for a woodland management plan on wooded steep slope areas.
- E. Proposed roads, driveways and parking areas are designed so that land clearing and/or grading will not cause accelerated erosion. Both vertical and horizontal alignment for such facilities shall be designed so that hazardous conditions are not created.
- F. Alternative placement of structures to non-steep slope areas were carefully evaluated including buildings, retaining walls, roads, access driveways, parking facilities and other development, and can be shown to be inappropriate or infeasible to the satisfaction of the Planning Board.
- G. Proposed on-lot sewage disposal facilities are properly designed and constructed in

- conformity with applicable regulations. When a septic system or septic system repair is proposed within a steep slope area, the Applicant shall obtain the approval of the New York State Department of Health of the system design and/or repair prior to submission of the Final Site Plan application to the Planning Board for consideration of approval.
- H. Proposed non-agricultural displacement of soil is for purposes consistent with the intent of this Law and will be executed in a manner that will not cause erosion or other unstable conditions. The Applicant shall provide an erosion and sediment control plan and supporting evidence.
- I. Surface runoff of water will not create unstable conditions, including erosion, and appropriate storm water management facilities will be constructed as necessary.
- J. With all Steep Slope Permit Applications, the Planning Board reserves the right to limit, prohibit and/or require the following within steep slope areas:
1. To limit the footprint area of any proposed dwelling, other structures or accessories such as at-grade patios, barns, sheds, detached garages, or similar features.
  2. To require stepped building foundations and reduced height basement areas for any and all types of structures.
  3. To limit the size of the disturbance and clearing areas.
  4. To require the Applicant to have a certified geo-technical report prepared.
  5. To limit the proposed driveway length.
  6. To require stairs and/or gravel footpaths to access the dwelling in lieu of a driveway.
  7. To require storm water diversion.
  8. To require fire protection devices.
  9. To require specialized engineered slope stabilization methods to ensure that all environmental and public safety concerns have been addressed in the best interest of the Town.
- K. The Applicant's Engineer has submitted the necessary civil and structural design calculations and details for the proposed site improvement activities. All engineering

design calculations and details shall be sealed and signed by a Professional Engineer licensed within the State of New York.

- 13.2 The Applicant is advised to submit a Concept Plan to the Planning Board, to include a current topographical map showing anticipated area of disturbance, prior to submission of the full application. This submittal shall be for conceptual review and discussion. The conceptual review will help determine the feasibility of the proposed development prior to the Applicant expending time and money preparing a Steep Slope Permit Application with supporting professional drawings. This conceptual review is not intended to provide an approval for the proposed site improvements. The Planning Board will not render any final approval or decision based upon a Concept Plan.

### **Section 14 – Site Plan Requirements**

- 14.1 Site Plan Requirements – The Steep Slope Permit Application shall be accompanied by a Site Plan of the proposed site work, which shall include, but not be limited to, the following:
- A. An Overall Site Plan containing the parcel(s) to be developed shall be provided at a minimum scale of 1" = 100'. Adjoining parcel information shall also be provided on this site plan. Detailed Site Development Plan(s) shall be provided for the project at a minimum scale of 1" = 30'.
  - B. Property Owner and Adjoining Property Owners, all tax parcel numbers, plan scale, north arrow, serving road name, NYS Licensed Professional Engineer stamp and signature.
  - C. The site plan shall indicate the Surveyor name, date of field survey work or the referenced survey map, site benchmark and survey datum reference.
  - D. The site plan shall delineate the SSPA(s) through legible limit lines or shading. The plan shall also indicate the various categories of steep slopes as per the steep slope definitions within Section 2 herein. No distinction shall be made between original (naturally occurring) and man-made steep slope areas.
  - E. Site Data Table providing dimensional information for: lot area, lot width, lot depth; front, side, rear yard setbacks; basement, finished floor and roof elevations. The Site Data Table shall also include the tax map number, zoning district and area of site disturbance.
  - F. Overall property boundaries, bearings and distances, and any existing easements or

- right-of-ways that run through the property.
- G. All proposed structure locations, including retaining walls, and driveway locations.
  - H. The area of disturbance/clearing with all topographic and existing structure information extending a minimum of 100 ft. beyond the parcel(s) limits.
  - I. Existing and proposed topography with a maximum contour interval of 2 feet or less.
  - J. Public road access, Right of Way, shoulder width, drive lane width and sight distance.
  - K. Existing utilities, highway/road improvements, drainage swales, culverts, sidewalks and guide rails.
  - L. Proposed driveway profile with existing grade, proposed grade and driveway slopes. This information shall be provided via separate details sections.
  - M. Proposed driveway cross-sections with existing and proposed grades for side slopes.
  - N. Locations of existing, temporary and permanent proposed drainage improvements, including diversion swales, inlets, berms and storm water collection system. As stated in Section 4.18, storm water calculations used for all proposed drainage improvements shall be submitted for review.
  - O. All natural topographic features, including: tree lines, brush lines, rock outcrops, runoff swales, creeks and gullies. Indicate vegetation features to be removed and to remain.
  - P. All Environmental Resources located on or within 500 feet of the project site shall be designated on the site plan, including: Federal and State Wetlands and check zones, rare plants and animal areas, classified water bodies and significant natural communities and vicinities. General locations of these environmental resources can be found on the DEC website at [www.dec.ny.gov/imsmaps/ERM/viewer.htm](http://www.dec.ny.gov/imsmaps/ERM/viewer.htm). If one of these resources is located within or adjacent to the project site, additional review may be required.
  - Q. Designate Archeo-sensitive areas and flood zones located on or within 500 feet of the project site. General locations of these can be found on the NYS Office of Parks, Recreation & Historic Preservation (<http://nysparks.state.ny.us/shpo/online-tools/disclaimer.aspx?pgm=gis>) and the U.S. Fish & Wildlife Service National Wetland Inventory ([www.fws.gov/wetlands/Data/mapper.html](http://www.fws.gov/wetlands/Data/mapper.html)).

- R. Soil boundary limits and descriptions, including erodibility of soil (highly erodible, potentially highly erodible, not erodible, etc.) as determined by the USDA Natural Resource Conservation Service. The soils limits can be found at the USDA website: <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
- S. Proposed limits of clearing and construction shall be delineated.
- T. Location of all trees 6" diameter or greater, measured DBH, that are proposed for removal. Label the tree species on the plans. Any tree, regardless of diameter, deemed significant or special by the Planning Board as a result of a site tour shall also be located on the plans. (See Section 4.10)
- U. Proposed driveway pull offs, turn-arounds and emergency equipment access.
- V. All proposed utilities and existing utility modifications/alterations proposed, including septic system design and well locations if applicable.
- W. Proposed and existing retaining walls. Proposed retaining walls should be designed to create the smallest, least disruptive footprint.
- X. All variances and waivers required/requested for the project site shall be listed.
- Y. Provide written details and drafted sectional views of all temporary and permanent Erosion Control Methods that will be utilized, i.e., silt fence, inlet protection, sediment basins, check dams, construction entrance with maintenance plan, and seeding/mulching mix, application rates & specifications.
- Z. Temporary soil stockpiling locations, along with stabilization and erosion protection for the soil stockpiles, shall be illustrated on the plans. Soil stockpiles may not be placed on slopes greater than ten (10%) percent.
- AA. Provide details for all site improvements, utilities, and drainage systems as may be necessary for complete clarity.
- BB. A steep slopes map or overlay shall be provided, highlighting all Moderately Steep Slopes, Very Steep Slopes and Extremely Steep Slopes. A legend shall be provided to differentiate the sloped areas. The area of disturbance, grading and clearing shall be tabulated for each of the defined steep slope areas.
- CC. Provide New York State Health Department approval for any septic systems located within steep slopes areas prior to submission for Final Site Plan review.

DD. Provide a Construction Execution Plan. (See Section 3.4)

### **Section 15 - Bonding Requirements**

After the issuance of a Steep Slope Conditional Use Permit, but prior to issuance of any associated Building Permit, the Applicant shall provide a Performance Bond to the CEO naming the Town as Obligee / Loss Payee. The bond must cover 100% of the estimated cost of the project activities listed below. These estimated line items of cost are to be prepared and submitted by the Applicant's Architect or Engineer. All estimated costs must be based upon final site plan documents approved by the Town Planning Board. This cost estimate submittal shall be itemized as follows: (show estimate for each line item)

- Construction entrance and required maintenance of same
- Temporary silt fence and straw bales, to include required maintenance
- Allowance for temporary erosion stabilization (seed, mulch, erosion mats, etc.) throughout life of project
- Reshaping existing grade to final grade per drawings, to include any terracing, benching and topsoil placement
- Final fertilizing, seeding and mulching of cleared areas
- Furnishing and installing replacement trees and required vegetation remediation
- Open ditches, diversion swales, perimeter swales, rip rap and check dams
- Installed cost of permanent catch basins and culvert piping
- Installed cost of all retaining walls
- Driveway, to include final surface treatment

The Planning Board must first approve the amount of the Performance Bond to be issued.

### **Section 16 – Permit Procedures**

- 16.1 A property owner (Applicant) planning improvements to his or her parcel(s) shall determine what steps are necessary to proceed, and which permits will be required, by first meeting with the Town CEO. The CEO shall determine if the property improvements will be performed in an area of steep slopes by utilizing mapping already prepared by the Town.
- 16.2 If the purposed property improvements are to be performed in an area of steep slopes, a Steep Slope Permit Application must be completed by the Applicant and submitted to the CEO. This application form is available at the Code Enforcement Office at the Middlesex Town Hall, and requires an Applicant to define all proposed site improvements within the

steep slope area.

- 16.3 The CEO shall review all Steep Slope Permit Applications for completeness. The CEO may reject permit applications if determined to be incomplete and/or lack adequate plans or attachments. (See Section 14 for plan / attachment requirements)
- 16.4 When the CEO receives a properly completed Steep Slope Permit Application, the CEO shall schedule a time for the Applicant to appear before the Planning Board for formal review of the purposed site improvements. The Town Engineer may also be required to review the application at the discretion of the Planning Board.
- 16.5 After final review and approval of the Steep Slope Permit Application by the Planning Board, a Steep Slope Conditional Use Permit shall be prepared and issued by the CEO. The Steep Slope Conditional Use Permit will allow the Applicant to proceed with certain site improvements as depicted on the permit form, and as authorized by the Planning Board and CEO at this point in the permitting process. The Steep Slope Conditional Use Permit is used for both “permitted” and “conditional use” activities on steep slope parcels (See Sections 5 thru 12). This permit must also be issued in advance of any Building Permit that may be required.
- 16.6 The CEO will advise the Applicant of any subsequent permits required to complete all site improvements being purposed. In general, any structure (See Section 3.42) requires an additional site plan review followed by the issuance of a Building Permit.
- 16.7 All application review and permit fees to be assessed are indicated on the Town Fee Schedule. There is no fee for Planning Board review of a Concept Plan. For all subsequent reviews by the Planning Board, a fee will assessed.
- 16.8 Steep Slope Permit Applications will require technical assistance from the Town Engineer during the review process. All costs incurred shall be charged to the Applicant.
- 16.9 Town Engineer costs shall be determined as follows:
- When a Steep Slope Permit Application is submitted to the Planning Board by the CEO, the Town Engineer will be contacted via Work Order to submit a cost estimate for review services throughout the application review process. This Work Order must be reviewed and signed by the Applicant before proceeding with application review. The signed Work Order provides Applicant consent to reimburse the Town of Middlesex for Town Engineer review services. An escrow payment may be required in advance, as determined by the Planning Board.
  - During the Final Steep Slope Application review, the Town Engineer shall

estimate potential inspection costs for the construction phase and submit a second Work Order request for these additional costs. The Applicant will review and sign this second Work Order to consent reimbursement before a Building Permit will be issued. Additional escrow funds may be required as determined by the Planning Board.

- 16.10 Escrow fund balances shall be monitored throughout the review and construction phases, and adjusted accordingly. An Applicant's failure to consent to reimburse the Town for Town Engineer services and related costs shall constitute a withdrawal of the Application (see Town Zoning Law Section 700.4.3d) or may initiate a Stop Work Order during construction.

### **Section 17 - Enforcement and Penalties**

- 17.1 The provisions of this Local Law shall be administered and enforced by the Code Enforcement Officer of the Town.
- 17.2 The CEO or his/her agent shall have to power to make inspections of all activities performed within a Steep Slope Protection Area to assure compliance with this Local Law.
- 17.3 If the CEO determines that a violation of this law has occurred, the CEO shall notify the Applicant in writing of the violation, directing that the corrective action be taken within a reasonable amount of time consistent with the nature of the violation.
- 17.4 If the violation has not been corrected to the satisfaction of the CEO, the CEO shall have to power to revoke or suspend the Building Permit, and deny new permits until the existing violation has been remedied.
- 17.5 The CEO shall have the authority to issue a Stop Work Order to halt construction, and to issue a cease and desist order from using the SSPA illegally in violation of this Local Law.
- 17.6 The CEO is authorized to issue appearance tickets and prosecute any violation of this Local Law.
- 17.7 An action or proceeding in the name of the Town of Middlesex may be commenced in any court of competent jurisdiction to compel compliance with or enjoin violation of this Local Law or order issued in connection with this Local Law, and to demand any person or entity violating this Local Law return the work site to prior conditions at that person's or entity's expense.

17.8 A violation of any part of this Law or order issued in connection with this Law shall constitute a “violation” as defined in the Penal Law of the State of New York. Conviction of violation of this Law shall be punishable by a fine of not less than \$100, nor more than \$1000, or by imprisonment for a period not to exceed (15) days, or both. Each day that a violation continues shall constitute a separate violation.

**Section 18 – Effective date**

18.1 This Local Law shall be effective upon filing with the NYS Department of State.