

Dealing with Local Timber Harvesting Ordinances

A Guide for the Forestry Community



PENNSTATE



College of Agricultural Sciences
Agricultural Research and Cooperative Extension

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1. Introduction

Forests are an essential and significant part of Pennsylvania's environment and economy. The Pennsylvania legislature acknowledges that carefully planned and executed timber harvesting is crucial for conserving not only the aesthetic values but also the economic values of Penn's Woods. Timber harvesting is regulated by only a small fraction of Pennsylvania's local governments, but as residential development increases, more municipalities may begin to regulate timber harvesting in order to maintain Pennsylvania's woods for future generations. Local governments, primarily townships, regulate timber harvesting by adopting ordinances that may include provisions requiring harvest plans, permits, and silvicultural regulations.

According to a Penn State survey conducted in 1992, at least 135 townships in Pennsylvania have adopted ordinances.¹ Half of the communities that have an ordinance are rural, making the adoption of ordinances not only a suburban phenomenon.

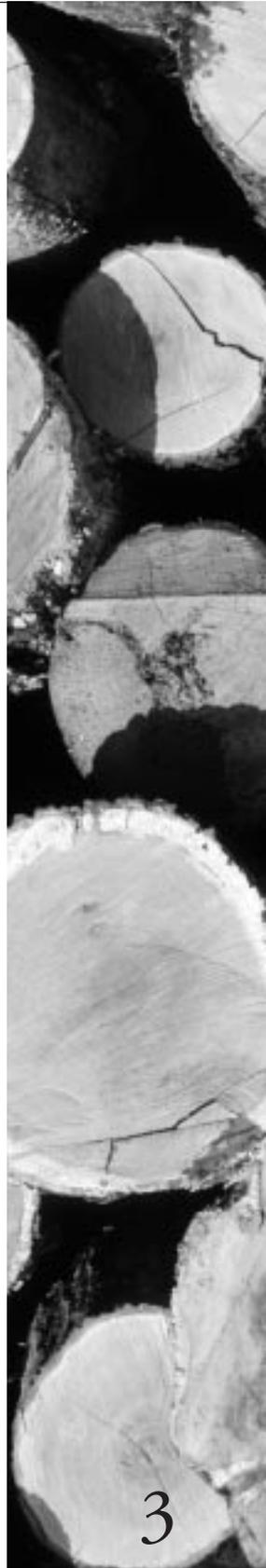
¹ Reeder, E. 1992. "Local Timber Harvesting Ordinances in Pennsylvania." Master's thesis, the Pennsylvania State University. 131 pp.

Many factors go into deciding whether or not an ordinance should be adopted. These include environmental protection, soil erosion and sedimentation pollution controls, aesthetic values, development concerns, logging traffic, and road damage, among others. We discuss many of these factors later in the publication.

Despite the fact that townships adopt ordinances to regulate timber harvesting, there is a lack of forester participation in drafting these ordinances. Of the 68 townships reviewed in the Penn State study, none used a forester as the principal author of their timber harvesting ordinance, nearly three-quarters did not consult a forester while creating the ordinance, and almost one-third did not even know that forestry expertise was available. Owing to the lack of foresters' involvement in creating these ordinances, many contain provisions that negatively affect forestry practices by imposing unnecessary or unreasonable forestry regulations. If provisions like these continue to be applied, then forestry impacts may include lower financial returns to landowners on investments, higher regeneration failure among tree species, decreased timber quality as a result of inferior silvicultural practices, loss of jobs in townships owing to a diminishing interest in logging, and a greater likelihood that the forest base will be converted for other uses.

In this publication we provide information for foresters, landowners, and loggers on ways to communicate with municipalities that are considering creating timber harvesting ordinances. We discuss the following:

- History of timber harvesting ordinances in Pennsylvania
- Local government structure and its role in the construction and regulation of timber harvesting ordinances
- Zoning ordinances
- Types of land uses that relate to timber harvesting
- Developing a timber harvesting ordinance
- Examples of unreasonably restrictive and reasonable timber harvesting regulations
- The process of obtaining a permit and contesting permit denials and illegal ordinances
- Working with local governments to develop ordinances



2. The Pennsylvania Municipalities Planning Code and Recent Forestry Amendments

The Pennsylvania Municipalities Planning Code (MPC) authorizes counties, townships, and boroughs to administer local land use planning. The MPC does this by mandating how municipalities may go about establishing planning commissions, preparing and adopting comprehensive plans, and enacting land use regulations such as zoning ordinances. The MPC also authorizes municipalities to protect, preserve, or conserve open land, including forests and woodlands, but states that the protection, preservation, or conservation of such land cannot hinder forestry practices.

The MPC establishes the basic rules that a municipality must follow when enacting, administering, enforcing, and amending a zoning ordinance, and creates the basic purposes of the ordinance. Since 1992, provisions relating specifically to the practice of forestry as a land use have been enacted into the MPC by the legislature. These provisions include the amendments of 1992, 1994, and 2000.

In 1992, the Pennsylvania legislature enacted the first MPC forestry-related provision, referred to as “the right to practice forestry” provision, which prohibits municipalities from unreasonably restricting forestry activities. (Article VI, Section 603(f) states: “Zoning ordinances may not unreasonably restrict forestry activities.”)

In 1994, the legislature added a definition of “forestry” to Section 107(a) of the MPC:

The management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting, and selling trees for commercial purposes, which does not involve any land development.

The last clause in this definition is important because it states that forestry is not land development and, therefore, should not be regulated by the provisions of a municipality’s land development and subdivision ordinance. In Section 107 of the MPC, the definition of “land development” includes the improvement of land involving two or more buildings or a single nonresidential building. Clearly, the management of forest and timberlands as illustrated by the added definition of forestry does not include improving the land for buildings, unless the tree harvesting is being done as part of an overall land development or subdivision plan. The definition of forestry was added to encourage municipalities to view the practice of forestry as a sound and economically viable form of land use, in contrast to converting forests for development.

Through Acts 67 and 68 of 2000, the legislature expanded “the right to practice forestry” provision of Section 603(f) of the MPC. Section 603(f) was further amended:

To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout this Commonwealth, forestry activities, including, but not limited to timber harvesting, shall be a permitted use by right in all zoning districts in every municipality.

This addition recognized forestry, including timber harvesting, as a permitted use by right in all zoning districts of every municipality. Through Act 68, the legislature unilaterally determined how forestry as a land use will be treated in a zoning ordinance.

The Act 68 amendments also changed the MPC’s purpose clause, Section 105, which outlines the legislature’s statement of purpose for planning in the Commonwealth. The recent amendment to this section incorporates modifications related to forestry and shows the legislature’s interest in the use of forest resources. The addition to Section 105 forbids a municipality from taking actions that preclude access to the land for forestry purposes:

[A]nd wherever the provisions of this Act promote, encourage, require, or authorize governing bodies to protect, preserve, or conserve open land, consisting of natural resources, forests, and woodlands, any actions taken to protect, preserve, or conserve such land shall not be for the purposes of precluding access for forestry.

The amendment puts emphasis on forestry as a valuable, important economic resource. In other words, natural resource preservation activities must not take away from landowners the availability of access to forest lands and the opportunity to use these forest lands for economic gain.

With the latest amendments effective February 21, 2001, the current status of the MPC as it relates to forestry reads as follows:

- Municipal ordinances must allow forestry activities as a use by right in all zoning districts.
- Restrictions on forestry activities are reasonable if contained in the ordinance, but no additional requirements may be added at the time of issuance of a permit.
- Ordinances that prohibit forestry activities in any zoning district or permit forestry activities only by special exception, conditional use, or variance are not valid. Such ordinances are effectively repealed by the provisions of Act 68.
- Restrictions on forestry activities that appear only in special exception or conditional use provisions of an ordinance may not be enforced.

- Many municipal ordinances require the issuance of a zoning permit to proceed with forestry-related activities. If a permit application is denied, an appeal may be filed with the zoning hearing board in accordance with the provisions of the MPC.
- Timber harvesting activities that are part of a land development and subdivision plan do not fall within the definition of forestry activities and are not a permitted use by right under the MPC.
- Municipalities are not authorized to assume whether an applicant intends to develop the land subsequently.

In summary, the latest amendments added to the MPC since 1992 directly affect forestry practices and have great importance in determining the future of forestry practices. The amendments illustrate that forestry is a preferred land use. The legislature encourages forestry to be practiced in all forested areas of every municipality, and regulatory standards for forest management operations that are created by a municipality are not to be unreasonably restrictive. With the amendments, municipalities may no longer “zone out” forestry from any zoning district. The issue at hand, however, is whether and what types of “reasonable restrictions” municipalities may impose on forestry activities. There isn’t a legal definition of “unreasonably restrictive,” so the way that forestry provisions of the MPC are applied will have to be interpreted and developed by the courts, which will have to decide whether the provisions of an ordinance reasonably or unrea-

sonably restrict forestry activities on a case-by-case basis. The case law that may occur now is crucial for the timber harvesting industry because some municipalities can be expected to aggressively regulate forestry.

3. Local Government Structure

Pennsylvania consists of 67 counties, 56 cities, 962 boroughs, and 1,548 townships. These four general types of local municipalities in Pennsylvania each operate under their own code of laws. An important general law that affects local government, the MPC allows municipalities to undertake comprehensive planning and to adopt zoning, subdivision, and land development ordinances.

In addition to residing in one of the 67 counties, each Pennsylvanian also lives in a municipality. Municipal governing bodies, consisting of locally elected officials, make all policy decisions and appoint staff to administer their governments. Municipal activities that may affect forestry include local planning, zoning, and code enforcement.

In Pennsylvania local government there are two types of officers: an elected representative and professional administrative staff. Elected representatives are the policy makers and come from all walks of life: merchant, farmer, doctor, or any community member. The professional staff, on the other hand, make local government administration their life work. Professionals serving in county and municipal governments follow careers in fields such as city and regional planning, community development and housing, and parks and recreation. The elected representatives and the professional staff

both must have a long-range view for community life in areas that are rapidly changing. They must both be competent in policy making and administration, and be dedicated to their jobs and their community. In this publication we focus on townships and township officials, both of whom have the most importance in dealings with zoning ordinances and appeals.

Townships

First and Second Class Townships governed by elected officials are the most common form of municipal government in Pennsylvania. First Class Townships are those with population densities of 300 people per square mile. These townships are governed by a group of five elected commissioners, or if the township is divided into wards, one commissioner per ward. The commissioners are elected for four-year terms. Second Class Townships are more numerous than First Class Townships. Townships operating under the Second Class Township Code are composed of three supervisors elected at large. Two additional supervisors may be elected if the additional seats are approved by voters in a referendum. All have six-year terms.

The Second Class Township Code also authorizes the board of supervisors to make and adopt all ordinances, bylaws, rules, and regulations considered necessary for the proper management and control of the township. The board of supervisors plays the central role in township government and serves as the legislative body of the township by setting policy, adopting comprehensive plans for land use, and enacting ordinances and resolutions. Since there is no separately elected executive, the board may also perform executive functions, such

as enforcing ordinances, or may employ staff to administer these functions.

Planning Commissions

Planning for future development and redevelopment of communities is an important function of townships. A township's board of supervisors may create a planning commission as an advisory body in the preparation of a comprehensive plan for the township, preparing and making recommendations on an official map and suggesting land use requirements including zoning, subdivision, and land development ordinances. Planning commissions may propose adoption of a comprehensive master plan for the community to provide an official arrangement of land uses. Planning commissions also review and advise governing bodies on proposed land use ordinances and regulations governing development of land.

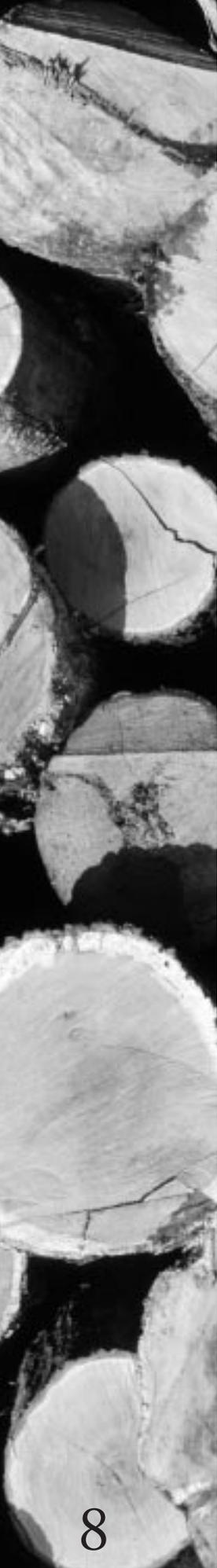
Planning commissions are an important tool by which citizens and landowners can make their views known on growth, planning, and the direction that the township is taking or is planning to take. Since planning commissions receive and interpret input on these issues, citizens can have more discussion time regarding the issues that concern them. The planning commission can then help advise on decisions based on citizen input during meetings of the board of supervisors.

Zoning Hearing Boards

If a municipality enacts a zoning ordinance, it must also create a zoning hearing board. The board's main purpose is to help ensure that the zoning ordinance is applied and administered fairly and equitably. This is accomplished by hearing appeals on the validity of the zoning ordinance, the map, or the decision made by the zoning officer. Also, the board can grant variances and special exceptions to the ordinance in certain hardship situations. Although the board is not responsible for the contents of the zoning ordinance, it nevertheless plays a vital role in the ordinance's overall effectiveness. The board also may detect weaknesses in the zoning ordinance, perhaps as a result of frequent and similar variance requests. In this case, the board may recommend that the governing body consider a zoning amendment to correct an ordinance flaw.

A zoning hearing board is made up of either three or five appointed members, all of whom must be residents of the municipality and must hold no other elected or appointed position. Since the board has no legislative power, it cannot make, modify, or enforce zoning policy. The board schedules hearings on applications and appeals that come before it, takes evidence, and issues written decisions with findings of fact and conclusions of law. The zoning hearing board must always limit its scope of activities to those permitted by the MPC and by the local zoning ordinance.

The zoning hearing board of a municipality has exclusive jurisdiction in hearing and deciding (1) substantive challenges to the validity of any land use ordinance, except curative amendments, (2) procedural challenges to a land use ordinance, (3) appeals from the determination of the zoning officer, (4) appeals from a determination by the municipal engineer or zoning officer with respect to the administration of any flood plain or flood hazard ordinance or such provisions within a land use ordinance, (5) applications for variances, (6) applications for special exceptions, and (7) appeals from the determination of the zoning officer or municipal engineer in the administration of any land use ordinance or provision with reference to sedimentation and erosion control or storm water management.



4. Zoning Ordinances

The actions of a governing body regarding forestry and timber harvesting practices directly affect a municipality; therefore, official actions are specified in township codes and other state laws. The MPC mandates that all permanent legislative acts must be made by ordinance, and in certain cases, the MPC specifies when the ordinance must be used. An ordinance is defined as a municipal law that has a general or permanent nature.

Zoning divides the community into districts according to present and future land use. Areas can be zoned to create residential, commercial, and industrial districts. A zoning ordinance typically follows the development of a comprehensive plan, and the board may enact, amend, and repeal zoning ordinances to update the comprehensive plan.

Three fundamental rules govern the preparation of a zoning ordinance. First, the ordinance is usually created by the planning commission and is based on the municipality's comprehensive plan. Second, a comprehensive plan and a zoning ordinance should be developed under the guidance of a trained planner. This person would ensure that proper professional planning techniques are used when the ordinance is written and the maps prepared; a trained planner would also make certain that the zone classifications conform to

the comprehensive plan. Finally, the zoning ordinance must be consistent with the provisions of the MPC. In the next section we discuss different types of land uses that may be included or excluded from a particular zone by virtue of a municipality's zoning ordinance.

5. Types of Land Uses

Although court decisions generally have discouraged exclusions of any legitimate land uses, certain land uses may be excluded from a specific zone or may inadvertently be omitted from the municipality entirely. If a use is excluded, the burden of proof shifts to the municipality. However, the zoning ordinance contains provisions to help with these situations.

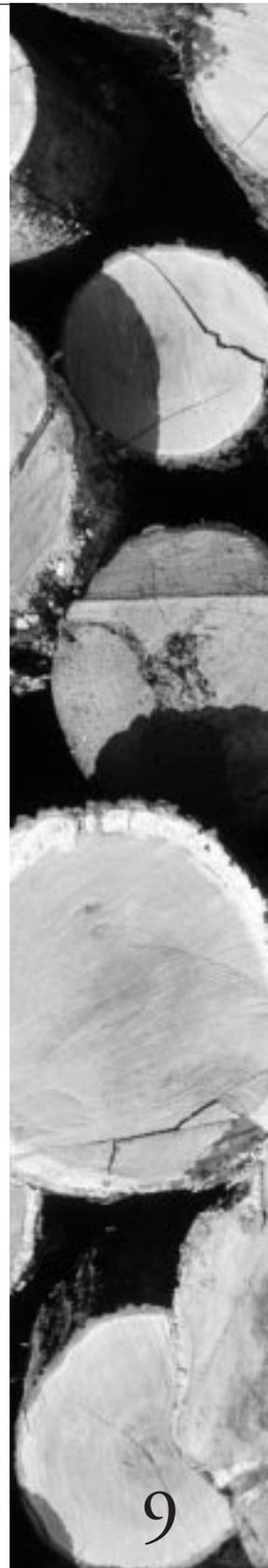
Each zoning district provides for permitted uses by right, by special exception, or by conditional use, which are all unique with respect to their effects and administration. The MPC mandates that forestry activities, including timber harvesting, are a permitted use by right in all zoning districts of a municipality. In zoning terminology, the term “permitted use” generally refers to those uses that are allowed absolutely and unconditionally and that may not be burdened by conditions not found within the ordinance of the zoning district. No hearings or reviews by the planning commission are required in permitted use cases. Approval of the permit application rests solely with the zoning officer.

Uses permitted by special exception or conditionally are usually reserved for land uses that would have a significant impact on the district or the whole community, or uses that would necessitate more control or additional safeguards. Such uses require a

closer examination by the body granting their approval. The major difference between a special exception and a conditional use is the entity making the decision. Special exceptions are granted by the zoning hearing board, whereas conditional uses are granted by the governing body of a municipality. Although there is no rule saying which of these two types of land uses a community should choose and for what specific uses each is warranted, many communities reserve conditional uses for those that will have a significant impact on the entire municipality. Uses that have a lesser impact on the entire community but still require a closer examination are often reviewed via special exception procedures. Hearings that are required for both special exceptions and conditional uses are no longer applicable to forestry because it is now a permitted use by right.

The MPC states in Act 68 that forestry-related activities may be subject only to those standards set forth for permitted uses in the zoning district where the activity will occur, or those standards in the ordinance that are generally applicable to permitted uses. An applicant can't be denied by the zoning officer if all the standards and criteria included in an ordinance are met, and if there is a denial, the applicant can appeal to the zoning hearing board.

This is why it is important for a municipality to include enough detail in an ordinance to provide both permit applicants and zoning officers with clear guidance on what must be met when applying for a particular land use, such as timber harvesting.



6. Applying for a Permit

To obtain a permit for forestry activities, including timber harvesting, landowners or their representatives must complete several steps:

- Inquire whether a zoning ordinance exists in the township where the activities will be conducted. If not, the forestry activities may not need a municipal permit.
- If a zoning ordinance is present in the township, determine if forestry requirements are included in it. If so, request a copy of the zoning ordinance sections that pertain to forestry operations in order to be able to address them when applying for a permit.
- If the zoning ordinance contains forestry provisions, request an application for a zoning permit.
- Finally, fill out and submit the permit application to the zoning officer along with the permit application fee and whatever the zoning ordinance requires, such as a logging plan or a copy of an erosion and sedimentation plan.

Once this standardized process has been completed, the zoning officer must then either approve or disapprove the application based on the regulatory standards affecting forestry in the ordinance. A zoning officer is authorized to approve or deny the “right” to use the land for forestry, which is created by the district’s zoning ordinance. However, the MPC restricts the zoning officer from having any discretionary power to waive or tighten any requirements of the ordinance. If the application is approved, a permit is issued and forestry activities, including timber harvesting, may take place. If the application is denied, the applicant may reapply, or file an appeal with the township’s zoning hearing board. The following section deals with how a landowner can appeal the determination made by the zoning officer in a particular area.

7. Appealing the Denial of a Permit

Since forestry is a “permitted use,” the granting or denial of a permit by the zoning officer may be appealed to the zoning hearing board of a local government, which hears appeals from determinations made by the zoning officer.

A zoning ordinance’s validity can be challenged based on the failure of the ordinance to provide for forestry activities as a permitted use in every zoning district. Also, if an applicant believes that a zoning officer has imposed standards or conditions not found in the specific zoning district regarding permitted uses by right or thinks that the standards are “unreasonable” as related to acceptable silvicultural and forestry practices, the applicant can enter an appeal. In all cases, the amendments to the MPC regarding forestry activities take priority over all local enactments.

Traditionally, there have been two ways that an individual can appeal or challenge a zoning ordinance as it applies to his or her property. The first way is through a zoning amendment, which requires a change of classification. The second way is a variance, which, although seldom applicable to the timber industry and timber harvesting operations, requests relief from the literal enforcement of the zoning ordinance in hardship situations. In 1972, an amendment to the MPC added a third method, the curative amendment, which is a

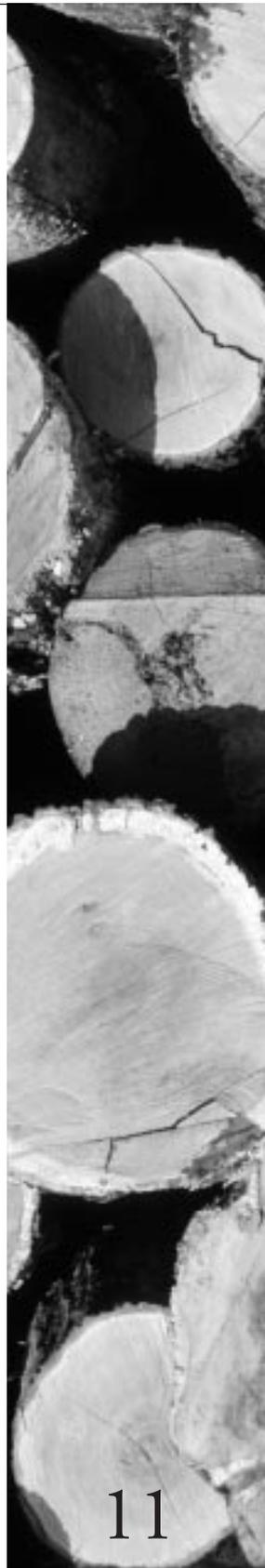
hybrid form of challenge to the zoning ordinance. The curative amendment allows the landowner to challenge a municipality’s ordinance on the basis that it does not provide for all uses or for a reasonable share of uses, and to suggest a “cure” as an amendment to the zoning ordinance. The curative amendment is both an appeal from, and if granted, an amendment to, the zoning ordinance.

If a property owner feels that a provision of the ordinance, for example, a map, prohibits or restricts the use of land in which he or she has an interest, a curative amendment may be submitted to the governing body. It is a substantive challenge to the validity of the ordinance, in this case a map, and the applicant is asking the governing body to hear the challenge and to decide upon the matter. If a timber harvesting ordinance is properly developed with enough detail, the need for challenge will be minimized because both the landowner and zoning officer are able to follow the specific criteria presented in the ordinance.

The appeals process is available to anyone who has been denied a permit. However, before an applicant takes a permit request to this level, he or she may make changes to the application and try to reapply for the permit. The appeals process begins with the zoning hearing board. The zon-

ing hearing board must appoint its own solicitor to assist in its deliberations, written decisions, and appeals. The municipal solicitor may not be the zoning hearing board solicitor since the board members’ opinions and decisions may differ from the views of the supervisors. The supervisors may, just as any affected citizen, appeal a decision of the zoning hearing board to the courts. A legal challenge on procedural grounds or alleged defects in the process of enactment goes to the zoning hearing board, but if the appeal is from the enactment of an initial zoning ordinance and no zoning hearing board has yet been established, then the appeal goes directly to court.

There is a 30-day limit for appeals on approved preliminary or final application to the zoning hearing board. If the citizen then wants to appeal the board’s ruling, he or she has 30 days from the date that the decision was entered to appeal to the common pleas court.



8. Developing a Timber Harvesting Ordinance

In writing a timber harvesting ordinance, it is important to know how “forestry” is defined in the Municipalities Planning Code (MPC), discussed on page 4. As a result of the many activities encompassed by this definition of “forestry,” as well as the range of accepted silvicultural practices, each municipality may have a different approach to writing a timber harvesting ordinance.

Some important questions should be answered before a community decides to write an ordinance to regulate timber harvesting. First, the community should carefully consider its motivation for developing such an ordinance. Is there concern over increasing development of forest lands for other uses, worry about the negative impacts that may result from increasing truck traffic, or concern about erosion, sedimentation, or other sources of environmental degradation? If these are the issues, a timber harvesting ordinance may not necessarily be the best solution. Some of these issues, such as the impact of truck traffic and erosion and sedimentation, are already addressed by state laws and regulations. Therefore, any further local action would simply duplicate the efforts of existing laws. Concern about the impact of development may indicate that tree preservation standards may need to be incorporated into the township’s land development and subdivision ordinance. Some of these issues may also be more

effectively and cost efficiently addressed through alternative solutions or through education.

In addition to carefully considering the need for an ordinance, a community should calculate how it would be affected by the development and implementation of a timber harvesting ordinance. For example, how much will the ordinance cost and does the township have the expertise to enforce it? How will it best be administered? Will the ordinance really be able to solve the problem? How will the ordinance affect the economic and operational situation of loggers and landowners? If, after a careful examination of all these factors, a community still decides that a timber harvesting ordinance will best solve the problem, it needs to consider various other factors as it develops the provisions to include.

Many communities use another municipality’s ordinance to serve as a model when developing one for themselves. This technique may lead to greater consistency among ordinances throughout the state, but problems arise if the ordinances are not based on good silvicultural practices. *Timber Harvesting in Pennsylvania*² and the sample ordinance provided in

² Catalog No. UH097, available from the Publications Distribution Center, The Pennsylvania State University, 112 Agricultural Administration Building, University Park, PA 16802-2602; phone: 814-865-6713. pubs.cas.psu.edu/

the Appendix (see page 22) give general guidelines as well as standards that are “reasonable” with respect to forestry in general and timber harvesting specifically.

The ability for a community to develop an ordinance that is “reasonable” is very important. Sometimes a provision that may seem reasonable to the municipality may actually place unreasonable burdens on the forestry community. As a result, a community that adopts a timber-harvesting ordinance containing perceived “unreasonable” provisions may force a reduction in forestry operations in their community or even trigger legal action against the municipality. If a provision is “unreasonable,” an individual or company has a right to take the municipality to court, resulting in a very time-consuming, often expensive litigation. In addition, the loss of income for landowners and the loss of the forestry operations for the community can be significant. The forestry operation not only provides jobs and wages but also contributes to the local tax base.

Furthermore, landowners may lose their ability to collect income from timber harvesting. They may instead decide to sell their land to a developer, who will, in turn, develop the forest land into residential or commercial property. The forest base loses as well, no longer being subject to essential forest management activities.

As a result, it is imperative that any municipality considering the development of a timber harvesting ordinance be familiar with, and understand the importance of, making its ordinance “reasonable” to the forestry community. The threshold for what is “reasonable” or “unreasonable,” however, is not easy to define and has not yet been addressed by Pennsylvania’s legislature or through Pennsylvania case law. A municipality will need to think carefully about how the provisions included in its ordinance may not only affect, but also be interpreted by, the forestry community. Care should be taken to solicit the assistance of forestry experts before any forestry or timber harvesting ordinance is developed. Industry and landowners should also take a proactive role in educating municipal officials on forestry practices.

In the next chapter, we present examples of provisions considered “unreasonable.” These are taken from ordinances that have actually been implemented.

9. Unreasonable Timber Harvesting Provisions

The MPC states, “Zoning ordinances may not unreasonably restrict forestry activities.” To date, neither the general assembly nor the courts have defined what is “unreasonable.” Some ordinances contain requirements that are more restrictive than necessary, affecting the ability of landowners to apply accepted silvicultural principles, as well as manage their forest in an economically viable way. Below we discuss what may be considered “unreasonable” restrictions regarding administrative considerations, which involve plan reviews, permits, fees, ambiguous language, and road use restrictions. Second, we look at “unreasonable” technical considerations, which involve sedimentation and erosion plans, diameter limits, cutting restrictions, artificial regeneration, and buffer strips. Finally, we examine “unreasonable” restrictions regarding bonds, specifically performance and regeneration bonds.

Note: The examples given in this section are taken from actual ordinances. They may or may not be viewed as “unreasonable,” and are used here only for discussion purposes.

Administrative Considerations

Permits

A local government may reasonably require that a timber harvesting operation apply for a permit before the start of any operation. In most cases, however, these permits should only serve to verify that state laws are being followed. Comprehensive state regulations already cover many aspects of a timber harvesting operation. As a result, local ordinances containing requirements that are more restrictive than those provisions developed by the state are deemed unreasonable. Here are two examples of requirements that may be considered overly restrictive:

- *The logging permit shall be valid for a maximum of 10 acres at any one time. Logging permits shall only be valid for a period of four (4) months.*
- *A permit shall expire after thirty (30) days of the date of issuance.*

Plan Review

Review Period

Many local timber harvesting ordinances require a timber harvesting operation to obtain a permit before beginning timber harvesting activities. Part of the requirement for obtaining this permit is submitting a logging plan for review and approval by the municipality. While it may not be unreasonable to require a review and approval process for a logging plan, a costly and lengthy or unspecified review period may be unreasonable. Below are some examples of what may be considered unreasonable with respect to this requirement:

- *If the harvesting will take place in an environmentally sensitive area or reserved open space, it requires the completion of a conservation plan.*
- *The secretary, the township engineer, and the zoning enforcement officer each shall examine said application to determine compliance with all applicable codes and ordinances within forty-five (45) days after filing and all required information has been submitted to either approve or reject said application.*

It may not be unreasonable in developing a timber harvesting ordinance to require that a logging plan be reviewed. However, a local government needs to be aware of the impact its requirements may have on a timber harvesting operation. While it is necessary to allow some time for the municipality to conduct a review of the logging plan, that time period must be reasonable. The process for approving a logging plan needs to be reasonable with respect to the time period, the scope of the review, and the costs involved.

Expertise of Reviewers and Plan Writers

Again, while it may be reasonable to require that a logging plan be reviewed and approved prior to the start of any timber harvesting operation, it is important to consider who will complete that review. When the reviewers are selected based on their position in the community, rather than on their forestry training, this requirement can be unreasonable. Here are some examples of unreasonable parts of regarding expertise in reviewing and writing plans:

- *Such plan shall be prepared by a registered landscape architect or other qualified person, and shall bear the recommendations of the township engineer and the township planning commission and the approval of the owner of the tract and the board of township supervisors.*
- *The plan shall be approved by the township codes and zoning administrator and reviewed by the Environmental Advisory Council. The review may include an inspection of the site of the proposed operation.*

In writing a timber harvesting ordinance, think about the role of the zoning officer in approving timber harvesting operations in the community. Ordinances should be written plainly, containing objective standards that position the zoning officer to either approve or disapprove the permit application. Similarly, any requirements for a forestry or logging plan should be specifically identified and be sufficiently rudimentary for the zoning officer to be assured that the terms of the ordinance are being satisfied.

Fees

When a local timber harvesting ordinance requires that a permit be obtained or a logging plan be reviewed, it may be reasonable to charge a small fee to cover the associated administrative costs. It is unreasonable, however, for the timber harvesting ordinance either to charge a high fee for these required services or to fail to specify the actual amount of the fee. The fees that are charged need to be reasonable so as not to deter forestry operations because of economic considerations.

- *The fee for the processing of a logging plan shall be \$25 for the original plan and \$10 for any amendment thereto. In the event the township enforcement officer determines that the logging plan or amendment necessitates the review of the township engineer, the processing fee shall be increased to include the cost of the township engineer's services.*
- *The application fee for processing is two hundred (\$200) dollars.*
- *The applicant shall agree in writing to reimburse the town-*

ship for all costs of administration and review of the application by the township engineer or consultant. Funds shall be deposited with the township in an amount as specified by resolution of the Board of Supervisors.

Municipal fees to review a logging plan or to administer a permit should be specified in the ordinance and should be reasonable in relationship to the level of review that ordinance standards require. An ordinance requiring a timber harvesting operation to pay an excessive permit fee may impose an economic hardship on the operation and the landowner and make it economically infeasible for the harvesting operation to take place.

Ambiguous Language

A local timber harvesting ordinance should be written in a straightforward, unambiguous way. A municipality must ensure that the requirements for conducting a timber harvesting operation in its community are written in clear, concise, and specific language and that all important terms are properly stated. It is unreasonable to expect a timber harvester to understand and comply with the requirements of an ordinance written in language that is unclear and ambiguous, as in the following examples:

- *Township approval may not be unreasonably withheld for any forest management plan which meets all of the above requirements. However, the township may impose such additional requirements as it may reasonably deem to be necessary to ensure compliance with the purposes of*

this ordinance and the provisions of the township zoning ordinance establishing buffer zones and screening requirements.

- *No site disturbance work shall begin, or proceed to a subsequent phase, until inspected and approved by the township engineer or consultant who shall then file a report thereon with the township.*
- *All forestry involving more than five acres in any three-year period shall occur only in compliance with a forest management plan developed by a professional forester, and that is consistent with the timber harvesting guidelines of the Pennsylvania Forestry Association.*

The ordinance should be clear and written in plain language to avoid misinterpretations. For example, failure to specify what constitutes “additional requirements,” or what the guidelines will be for something to be “inspected and approved,” or who can be considered a “professional forester” lends to the ordinance an element of the unknown; it also leaves a timber harvesting operator wondering about hidden review and enforcement requirements and costs. Therefore, it is important to be specific and concise about all provisions and to define clearly all terms incorporated into a timber harvesting ordinance. Failure to do this is unreasonable, and many timber harvesting operators may fear litigation if they do conduct a harvest in a community where an ordinance is not specific about what is expected.

Road Use Restrictions

While it may be true that overweight hauling by timber harvesting operations could cause damage to certain local roadways, the Pennsylvania State Legislature has mandated legal standards and requirements for overweight hauling in title 75PCS, Chapter 49. These regulations authorize local governing bodies to post roads with weight limits, issue permits for use of a posted road by an overweight vehicle, and enter into agreements for posting bonds and requiring excessive maintenance for local roadways. These road posting and bonding regulations must be subject to an ordinance adopted apart from any forestry or timber harvesting ordinance. Some of the provisions included in local timber harvesting ordinances, however, contain “unreasonable” constraints on the use of roadways for timber harvesting purposes.

- *Prior to hauling on any township road, a bond shall be posted in accordance with Section 5. The township engineer shall prepare a report prior to hauling to establish the road condition. Hauling shall be limited to dry periods to prevent damage to the roadway base. A township representative shall follow the first truck to determine if the roadway is being damaged. The roadway shall be kept clean and free of mud and wood debris. At the point of access, the logger shall construct an aggregate entrance area to support the roadway edge. No parking of logging vehicles or storage of logs shall be permitted in township road rights-of-way. Water from the logging area shall not be discharged onto the township roadway surface.*

Timber harvesting operations typically work within the constraints of a small profit margin. Flexibility is important even when conditions may warrant restricting logging operations; for example, in early spring logging trucks may cause excessive road damage.

Technical Considerations

Sedimentation and Erosion Plans

Generally, timber harvesting does not have a major impact on soil and water resources. However, certain activities associated with timber harvesting have the potential to adversely affect soil and water resources. In response to this concern, state regulations (25 Pa. Code, Chapter 102) require that all earth disturbances have a site-specific erosion and sediment control plan. In addition, any operation that disturbs 25 or more acres of land (determined by acreage of logging roads and trails) may apply for and receive an erosion and sedimentation control permit. Because these state regulations are already in existence, it is unreasonable for local ordinances to include additional or more restrictive requirements. Below are some examples of sedimentation and erosion control requirements added by a local timber harvesting ordinance.

- *All exposed ground surfaces shall be stabilized or protected with a vegetative cover.*
- *Grading and earth moving operations shall be avoided during the period November 15 to April 1, when revegetation of exposed ground surfaces is difficult.*

Before incorporating into a local timber harvesting ordinance provisions addressing sedimentation and erosion, a municipality should carefully examine the existing state regulations. Any provision that is more restrictive than those contained in the state regulations may be unreasonable.

Diameter Limits

Diameter limit harvesting is a technique in which all trees above a certain specified diameter are removed. This technique, which generally results in taking only the largest, best trees of the most valuable species, can affect the future health and value of the forest stand. Below are some examples of unreasonable requirements, found in ordinances from around the state, concerning diameter limit harvests.

- *The only trees that may be cut down in a logging operation must have a minimum diameter of twelve (12) inches diameter at breast height (dbh) and a maximum diameter of thirty-six (36) inches dbh.*
- *Within the area designated as buffer strip the provision states that “within this area, only trees over fourteen (14) inches dbh may be cut, but no more than one-half the basal area may be removed.*
- *This provision states that it shall be unlawful for anyone to cut down any tree in any zone which is six (6) inches or more in diameter measured at a point four and one-half (4.5) feet above ground level.*

Although diameter limit provisions may have been incorporated into the ordinance for a specific purpose, such as protecting

historic trees, or as a result of concern over the loss of trees generally, mandating a diameter limit on timber harvesting operations can be detrimental. In Pennsylvania forest stands, the smaller trees are typically the same age as the large trees. The difference in size is often the result of a difference in tree species, a genetically inferior tree, or the result of poor location. Diameter limit harvesting will eventually shift the composition of the forest and may even degrade the quality of the forest by promoting inferior trees. This practice may also limit future options for forest management and slow down the stand’s ability to recover from disturbance through the elimination of seed trees for the species removed. As a result, requiring this method of harvest is unreasonable.

Cutting Restrictions

A timber harvesting ordinance that specifies a “proper” cutting method or that imposes restrictions on the harvesting methods allowed, without a consideration of the actual conditions at the site, is unreasonable. Instead, the methods selected for a harvesting operation should be based on the types of trees being harvested, the landowner’s desired outcome, and existing ecological requirements at the site to ensure proper regeneration.

- *A minimum of ten (10) square feet of basal area per acre of desirable commercial species shall be retained in situ on the harvest site. (In situ means in its natural position or place.)*
- *Intermediate thinnings shall retain at least sixty (60) square feet of basal area per acre.*

- *On slopes of 10–25 percent logging will involve less than one-third of even-aged and non-contiguous trees.*
- *All trees shall be removed in sections not to exceed twenty-four (24) feet in length.*
- *(1) No more than 20 percent of the woodlands in environmentally sensitive areas shall be altered, removed, cleared, or built upon. Environmentally sensitive areas shall include flood plains, flood plain soils, steep slopes, wetlands, wetland margins, and lake or pond shorelines. (2) No more than 50 percent of woodlands which are not located in environmentally sensitive areas (as defined in [1] above) shall be altered, removed, cleared, or built upon.*

Certain sites require specific silvicultural methods to ensure proper regeneration of species and forest stands. Timber harvesting operations should be given flexibility to determine what method or methods will best allow for future stands. Additionally, landowners have a right to manage their woodlot for future outcomes. It is unreasonable for a municipality to restrict these landowner rights.

Clear-Cutting Restrictions

Clear-cutting refers to the forestry practice whereby all trees are removed with the purpose of reestablishing an even-aged stand. Restricting clear-cutting in forests is an unreasonable ordinance provision. Often, these provisions are developed and included based on a common misperception that this type of harvesting is ugly and detrimental to forest ecosystems. This is not true, and in fact, shade-intolerant forest stands

require clear-cutting to ensure proper regeneration. Additionally, this type of management practice is often beneficial with respect to the landowner's opportunities for the stand's future management. Below are some unreasonable provisions found in timber harvesting ordinances pertaining to clear-cutting:

- *No clear-cutting of a forest or secondary forest shall be permitted.*
- *No more than fifty (50) contiguous acres may be clear-cut in any ten (10)-year period. Adjacent timber stands may subsequently be clear-cut if satisfactory regeneration has been established on the previously clear-cut area.*
- *There shall be no clear-cutting within twenty-five (25) feet of the adjoining property line without the express written permission of the adjoining land owner(s).*
- *Clear-cut harvesting is permitted provided that advance regeneration is present and no more than twenty-five (25) acres or twenty-five (25) percent of a tract of real estate, whichever is less, may be clear-cut during a ten (10)-year period.*

There are a variety of acceptable silvicultural methods, and clear-cutting is one of them. It can be used to meet goals at a timber harvesting site and to ensure the proper regeneration. To restrict its use is unreasonable.

Artificial Regeneration

Artificial regeneration, reseed-ing or replanting an area where a forestry operation took place, is often written into timber ordinances as a requirement. An ordinance requiring artificial regeneration, however, is typically not necessary in Pennsylvania. When acceptable silvicultural practices are used, most of Pennsylvania's forests will regenerate naturally from seeds already in the soil or sprouts from the stumps. These naturally regenerated trees have been shown to grow faster and survive better than the planted trees. Therefore, it is unreasonable, both economically and ecologically, to require a forestry operation to artificially regenerate the site. Species requirements also prevent landowners from improving the overall quality of their woodlot. Here are some examples of such species requirements:

- *When a logging operation has been completed, the property shall be replanted with trees of a similar nature measuring a minimum of two (2) feet in height to replace the trees which were cut down.*
- *A reforestation program shall be submitted which shall show a program for reestablishment of the forest on a sustained yield basis, except where clearing is for agricultural use.*
- *The permit application shall indicate what restoration, regrading, and reseed-ing will be performed upon completion of the activity, and the issuance of the permit shall be conditioned upon the same taking place; the zoning officer shall be assured that such regrading, reseed-ing, and restoration of the land shall be in accordance with the*

requirements of any other governing authority and otherwise shall be such as shall restore the lands involved to a reasonable condition and productive use in the future, without detriment to adjoining tracts of lands or roads.

Requiring artificial regeneration can create an unnecessary economic obstacle for a timber harvesting operation. As a result, this requirement is unreasonable and should not be included under local timber harvesting ordinances.

Buffer Strips

Buffer strips along streambanks are required by Commonwealth sedimentation and erosion plans. Local timber harvesting ordinances often will include similar requirements as well as requirements for leaving buffer strips along property lines. The purpose of buffer strips along streambanks is to reduce the amount of sediment and nutrients that get into a stream and, therefore, to protect water quality. Buffer strips along property boundaries are intended to reduce the aesthetic impacts of a timber harvesting operation. These requirements, however, are not always necessary, and it may be unreasonable to include them. Below are some provisions found in some timber harvesting ordinances pertaining to buffer strips:

- *A buffer strip of at least one hundred (100) feet from the centerline of the stream shall be maintained on both sides of the stream.*
- *A ten (10)-foot buffer zone of untouched timber shall be maintained between the cutting site and adjacent property boundar-*

ies unless specifically waived in writing by the adjacent property owner.

While leaving a buffer zone along a water course is an important forestry practice, best management practices for timber harvesting activities indicate that minimum buffer strip widths can be as little as 25 feet, depending on the slope of the land and the location of the harvest with respect to the stream. While buffer strip widths of less than 50 feet may require a permit or written waiver, a provision in an ordinance that limits the potential for this size of buffer strip outright, without allowing for consideration of these other factors, is unreasonable. A buffer strip is intended to reduce the impact of sedimentation and erosion on a water body. Buffer strips are already addressed by state regulations and guidelines and are a part of the guidelines for developing an appropriate erosion and sedimentation plan. Further requirements as part of a timber harvesting ordinance may present an unnecessary and redundant level of regulation.

A buffer strip requirement along property boundaries is also unreasonable. For a small-scale cut, a requirement of buffer strips along property lines may be such that the buffer strip area reduces the amount of timber that can be harvested, and the harvesting operation may no longer be economically viable.

Bonds

Two different types of bonds are often associated with timber harvesting operations: regeneration and performance. Bonds are one way to ensure that any damage caused as a result of the operation will be repaired.

Performance and regeneration bonds may include any action to ensure that the timber harvesting operation fulfills the requirements for the postharvest site as determined by the ordinance. They may include actions such as revegetating, reseeding, or regrading the site. An examination of provisions relating to performance bonds in timber harvesting ordinances from around Pennsylvania has turned up the following unreasonable provisions:

- *Those who secure a logging permit shall post a bond written by a surety company authorized to do business in the Commonwealth of Pennsylvania with the township as obligee in the amount of \$500 per acre to guarantee restoration of the property.*
- *Prior to the commencement of a logging operation, the applicant shall post a bond, written by a surety company authorized to do business in the Commonwealth of Pennsylvania with the township identified as the obligee in an amount to be determined by township to a maximum amount of \$5,000, which bond shall guarantee restoration of the property damaged by the logging operation.*

- *One ordinance may require a bond or other security to ensure that any damage to the stream will be repaired.*

These provisions can be considered unreasonable for a number of reasons. First, bonds are expensive; they can be difficult to obtain since they are not often readily available from bond underwriters, and the time period of the bond may be held open indefinitely. In addition, the stipulations that a township might include in a bond often duplicate the provisions of the Commonwealth's erosion and sedimentation requirements. They therefore present another level of unnecessary protection for local government that is not often determined by individuals trained in forestry. These bonds may also require the artificial regeneration of a site that may be able to regenerate naturally in a more cost-effective and ecologically efficient manner.

Furthermore, regeneration bonds have been found not to have time periods for compliance. The end result is that these bonds are unnecessary and unreasonable burdens for a timber harvesting operation. Finally, a recent Pennsylvania Supreme Court case (*Hydropress Environmental Services v. Township of Upper Mount Bethel*, No 112 MPA 2202) decided that the township in question did not have the legal authority to impose road improvements that led to a waste disposal site or impose financial security requirements for each disposal site.

10. How to Work with Local Governments

In order to work with local governments, foresters and loggers should promote the creation of a local timber harvesting ordinance committee, promote the evaluation of both regulatory and nonregulatory alternatives, and help to craft the selected alternative. Foresters need to become involved with local timber harvesting issues in a community. Early and ongoing involvement is encouraged.

By developing a timber harvesting ordinance committee, decisions about whether and how to regulate timber harvesting can be made with the input of the public after carefully considering the issues from all viewpoints involved. A committee can aid local government to ensure that full public involvement and in-depth study occurs before the drafting of an ordinance. In some cases, these tasks can be assigned to local environmental advisory committees. If these committees don't exist in an area, however, then an ad hoc committee consisting of landowners, residents of forest areas, loggers, sawmillers, environmentalists, foresters, and other professional resource managers can be created. This type of committee should meet the following objectives:

- Define the problem
- Determine its significance
- Identify and compare alternative solutions

- Consider additional enforcement costs
- Identify and evaluate consequences of alternatives
- Evaluate proposed forest practices
- Ensure that any road posting and bonding requirements are consistent with Pennsylvania Department of Transportation regulations
- Consider the economic impacts of the proposed regulation on forest landowners and loggers
- Make recommendations for action to the municipality's governing body

It is important to remember to provide plenty of opportunities for effective public involvement. One way to do this is to hold public meetings.

Foresters should promote the evaluation of both regulatory and nonregulatory alternatives. State regulations already address forestry concerns, so local regulations are not always the best way to deal with them. Education is also a solution to forestry concerns, and foresters are encouraged to participate in statewide efforts such as the Forest Stewardship Program and the Tree Farm Program. Participation in programs such as these may improve the quality of management on local forest lands.

Foresters and loggers should be actively involved in the details of whatever solution is ultimately decided upon. A workable program needs to be developed; to do this one must review all drafts carefully and suggest specific alternative language where necessary.

If you become aware of a local government that is considering or may be considering a forestry-related ordinance, please contact Penn State Forestry Extension at 7 Ferguson Building, University Park, PA 16802, telephone: 814-863-0401, fax: 814-865-6275. Extension can act as a clearinghouse and provide the following services:

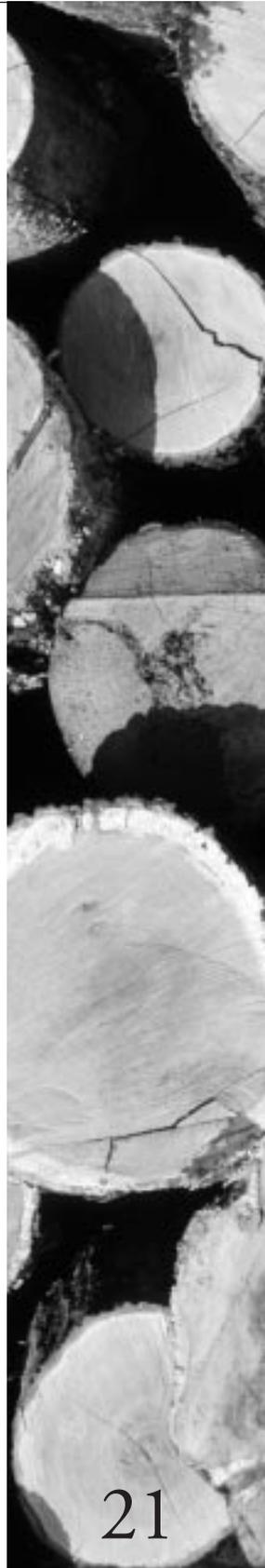
- Identify local governments that are considering timber harvesting regulations
- Update the forestry community on local regulatory developments
- Distribute information such as background material and sample ordinance provisions
- Maintain a database on existing timber harvesting ordinances
- Arrange for professional foresters to become involved in local regulatory deliberations
- Coordinate training for the forestry community on this topic

11. Summary

This publication is designed to provide landowners, foresters, and loggers with the knowledge they need to work with local governments on timber harvesting issues. It also suggests tools and guidelines for building fair, effective timber harvesting ordinances.

Foresters in communities where timber harvesting occurs need to become involved before an ordinance has been drafted or enacted in a municipality. In addition, foresters and other members of the forestry community, such as landowners, loggers, and wood products companies, need to become involved in forestry issues by contacting local governments and county planning commissions and by visiting conservation districts.

When a local government considers adopting a timber harvesting ordinance, foresters can use this publication to offer sound advice on how to serve the needs of the community in the most cost-effective way without placing unnecessary or unreasonable restrictions on the practice of forestry. After reading this publication, foresters should be able to understand and explain the problems that can be caused by poorly crafted or inappropriate ordinance provisions. Also, foresters should now be aware of topics commonly covered by timber harvesting ordinances and related to ordinance provisions.



Appendix: A Model Timber Harvesting Ordinance

A community has thought carefully about the pros and cons of developing and implementing a timber harvesting ordinance and has decided that such an ordinance will serve to meet its overall goals. The model ordinance text, developed by Penn State Cooperative Extension and endorsed by the Pennsylvania State Association of Township Supervisors, can serve as a guideline for crafting a timber harvesting ordinance. The model has been developed with the intention of being fair to all stakeholders affected by a timber harvesting operation, from the local citizens to the forest landowners and the forestry industry. This balanced approach leads to an ordinance whose standards are considered to be “reasonable.”

In this model ordinance, eight sections deal with topics appearing most frequently in existing ordinances, each followed by a discussion of that section’s function and purpose. The sections include: (1) policy; purpose, (2) scope; applicability, (3) definitions, (4) notification; preparation of a logging plan, (5) contents of the logging plan, (6) forest practices, (7) responsibility for road maintenance and repair; road bonding, and (8) enforcement. The italicized sections are suggested content for an ordinance.

Section 1. Policy; Purpose

Many ordinances begin with a statement of general policy, purpose, or intent. The function of this purpose statement is to provide guidance to the community and to help applicants, zoning officials, and the court interpret the intent of the ordinance and properly apply it. Overall, the purpose of a timber harvesting ordinance is not to prevent logging, but to encourage sustainable timber harvesting. The purpose statement should recognize the importance of forests to the community, and should explain how the ordinance can help to sustain existing forests and the long-term benefits that derive from them.

In order to conserve forested open space and the environmental and economic benefits they provide, it is the policy of the township (borough) of _____ to encourage the owners of forest land to continue to use their land for forestry purposes, including the long-term production of timber, recreation, wildlife, and amenity values. The timber harvesting regulations contained in sections 1 through 8 are intended to further this policy by (1) promoting good forest stewardship; (2) protecting the rights of adjoining property owners; (3) minimizing the potential for adverse environmental

impacts; and (4) avoiding unreasonable and unnecessary restrictions on the right to practice forestry.

Section 2. Scope; Applicability

The scope of the ordinance defines what is covered by the provisions included within it. In this example, scope will apply only to those operations in which the value of timber products removed exceeds \$1,000. This is an important distinction, and as this statement makes clear, the ordinance does not exist to regulate small-scale tree removal for personal purposes, but instead it focuses on commercial timber harvesting operations.

To encourage maintenance and management of forested or wooded open space and promote the conduct of forestry as a sound and economically viable use of forested land throughout the township (borough), forestry activities, including timber harvesting, shall be a permitted use by right in all zoning districts. Sections 1 through 8 apply to all timber harvesting within the township (borough) where the value of the trees, logs, or other timber products removed exceeds \$1,000. These provisions do not apply to the cutting of trees for the personal use of the landowner or for pre-commercial timber stand improvement.

Section 3. Definitions

Discussion of Definitions

Most ordinances contain definitions of terms that are technical in nature, or are commonly used words that have a special meaning within the ordinance. These definitions help communities and citizens correctly interpret and apply the ordinance. The definition of terms can affect how the ordinance is understood and applied to accomplish its goal. Only those terms that require definition need to be included in this section. Once the decision is made regarding which terms to include, these terms need to be unambiguously and accurately defined. This model lists some of the more commonly used terms and definitions in forestry-related ordinances.

*As used in Sections 1 through 8, the following terms shall have the meanings given them in this section.*³

- a. *“Felling” means the act of cutting a standing tree so that it falls to the ground.*
- b. *“Forestry” means the management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.*³
- c. *“Landing” means a place where logs, pulpwood, or firewood are assembled for transportation to processing facilities.*
- d. *“Litter” means discarded items not naturally occurring on the site such as tires, oil cans, equipment parts, and other rubbish.*
- e. *“Lop” means to cut tops and slash into smaller pieces to allow the material to settle close to the ground.*
- f. *“Operator” means an individual, partnership, company, firm, association, or corporation engaged in timber harvesting, including the agents, subcontractors, and employees thereof.*
- g. *“Landowner” means an individual, partnership, company, firm, association, or corporation that is in actual control of forest land, whether such control is based on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner, and any agents thereof acting on their behalf, such as forestry consultants, who set up and administer timber harvesting.*
- h. *“Pre-commercial timber stand improvement” means a forest practice, such as thinning or pruning, which results in better growth, structure, species composition, or health for the residual stand but which does not yield a net income to the landowner, usually because any trees cut are of poor quality, too small or otherwise of limited marketability or value.*
- i. *“Skidding” means dragging trees on the ground from the stump to the landing by any means.*
- j. *“Slash” means woody debris left in the woods after logging, including logs, chunks, bark, branches, uprooted stumps, and broken or uprooted trees or shrubs.*
- k. *“Stand” means any area of forest vegetation whose site conditions, past history, and current species composition are sufficiently uniform to be managed as a unit.*
- l. *“Stream” means any natural or artificial channel of conveyance for surface water with an annual or intermittent flow within a defined bed and banks.*
- m. *“Timber harvesting,” “tree harvesting,” or “logging” means that part of forestry involving cutting down trees and removing logs from the forest for the primary purpose of sale or commercial processing into wood products.*
- n. *“Top” means the upper portion of a felled tree that is unmerchantable because of small size, taper, or defect.*
- o. *“Wetland” means areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances, do support a prevalence of vegetation typically adapted for life in saturated soil conditions including swamps, marshes, bogs, and similar area.*

³ Only forests and timberlands subject to residential or commercial development shall be regulated under the township’s (borough) land development and subdivision ordinance.

Section 4. Notification; Preparation of a Logging Plan

The notification requirement asks that a landowner who intends to harvest timber notify the municipality of this intention. As a part of this requirement, the landowner is responsible for preparing a logging plan that will address the compliance of the harvest with existing regulations. Although notification and plan preparation must take place, the ordinance does not require that the landowner submit the logging plan for review and approval, or that the landowner apply for a permit to conduct the operation. Submitting a plan for review, or obtaining a permit can be a time-consuming process that increases the cost of an operation. Additionally, in most cases, such requirements are unnecessary. Instead, the notification and plan requirements allow the local government to inspect the site and be assured that there is a plan to govern the conduct of the harvesting project.

The length of time for the notification period has been left in the text of the model ordinance. It is up to the community to determine a fair and adequate period for notification prior to, and at the end of, any harvesting activity. Despite this latitude, it is important that the notification period selected by the community be reasonable. Because timber harvesting operations rely on the weather, timber markets, and other operational constraints, it is recommended that this period be kept as short as possible, preferably no more than five days.

The language of the model ordinance also gives the community the ability to select the size of harvest, based on acreage, that will require a notification of commencement or completion to be submitted to the local authority. Every community has different concerns and goals, and therefore it is the community's responsibility to identify an acreage requirement for notification that is fair and reasonable. For example, although a five-acre timber harvest may be of concern to a suburban community, this size of harvest may not be of concern to a rural community. The potential impacts of a timber harvest, in some cases, may be so small that government intervention is not justified. While each community is different, in general, a reasonable threshold is between five and ten acres.

The notification and logging plan requirements are the responsibility of both the landowners and the harvest operator. The ordinance refers to the two parties as "jointly and severally liable" for complying with all the requirements of the timber harvesting ordinance, including developing an appropriate logging plan and sending out the correct notification within the proper time frame. To be "joint and severally liable" means that either party may therefore be subject to enforcement actions indicated in the ordinance if all the requirements are not sufficiently met. This means that before any action, each party should make sure the operation is in compliance. Failure to do so could result in stop work orders and fines for both parties.

The notification and logging plan requirements illustrate the dual responsibility of the community and timber harvesting operation. The community developing and implementing the ordinance needs to set reasonable requirements for notification time frames and logging plans. Landowners and timber harvest operators are responsible for complying with regulations to ensure that an operation generates no negative impact on the community. By taking these responsibilities seriously, timber harvests can be a beneficial and important part of a community.

a. Notification of commencement or completion.

For all timber harvesting operations that are expected to exceed ___ acres, the landowner shall notify the township (borough) enforcement officer at least ___ business days before the operation commences and within ___ business days before the operation is complete. No timber harvesting shall occur until the notice has been provided. Notification shall be in writing and shall specify the land on which harvesting will occur, the expected size of the harvest area, and, as applicable, the anticipated starting or completion date of the operation.

b. Logging plan. *Every landowner on whose land timber harvesting is to occur shall prepare a written logging plan in the form specified by this ordinance. No timber harvesting shall occur until the plan has been prepared. The provisions of the plan shall be followed throughout the operation. The plan shall*

be available at the harvest site at all times during the operation and shall be provided to the township (borough) enforcement officer upon request.

- c. Responsibility for compliance.** The landowner and the operator shall be jointly and severally responsible for complying with the terms of the logging plan.

Section 5. Contents of the Logging Plan

A logging plan must be developed for any timber harvesting operation. This plan must be consistent with accepted silvicultural principles and must also comply with all existing state regulations. In general, the requirement to map out the operation in relation to natural features within the harvest boundaries in order to develop a logging plan ensures that a timber harvesting operation will think about the impact it may have on the environment and the community. Additionally, the state mandated erosion and sedimentation plan, required by Chapter 102, as well as any other state requirements, are typically incorporated and are satisfied into the logging plan.

The logging plan also lists specific, enforceable measures that the operation will take to ensure the timber harvest meets all local and state regulations. Since the logging plan must be made available at any timber harvest site, it can be a good way to ensure that measures are taken to protect community resources without requiring a lengthy, costly review and approval process.

- a. Minimum requirements.** As a minimum, the logging plan shall include the following:

- (1) Design, construction, maintenance, and retirement of the access system, including haul roads, skid roads, skid trails, and landings;
- (2) Design, construction, and maintenance of water control measures and structures such as culverts, broad-based dips, filter strips, and water bars;
- (3) Design, construction, and maintenance of stream and wetland crossings; and
- (4) The general location of the proposed operation in relation to municipal and state highways, including any accesses to those highways.

- b. Map.** Each logging plan shall include a sketch map or drawing containing the following information:

- (1) Site location and boundaries, including both the boundaries of the property on which the timber harvest will take place and the boundaries of the proposed harvest area within that property;
- (2) Significant topographic features related to potential environmental problems;
- (3) Location of all earth disturbance activities such as roads, landings, and water control measures and structures;

- (4) Location of all crossings of waters of the Commonwealth; and

- (5) The general location of the proposed operation to municipal and state highways, including any accesses to those highways.

- c. Compliance with state law.** The logging plan shall address and comply with the requirements of all applicable state laws and regulations including, but not limited to, the following:

- (1) Erosion and sedimentation control regulations contained in 25 Pennsylvania Code, Chapter 102, promulgated pursuant to the Clean Streams Law (35 P.S. §§691.1 et seq.);
- (2) Stream crossing and wetlands protection regulations contained in 25 Pennsylvania Code, Chapter 105, promulgated pursuant to the Dam Safety and Encroachments Act (32 P.S. §§693.1 et seq.); and

- d. Relationships of state laws, regulations, and permits to the logging plan.** Any permits required by state laws and regulations shall be attached to and become part of the logging plan. An erosion and sedimentation pollution control plan that satisfies the requirements of 25 Pennsylvania Code, Chapter 102, shall also satisfy the requirements for the logging plan and associated map specified in paragraphs (a) and (b) of this section, provided that all information required by these paragraphs is included or attached.

Section 6. Forest Practices

The logging plan typically is written for the extent of the harvest, to show compliance with state regulations, and to identify measures to be taken as part of the harvest. In addition to the logging plan, it may be reasonable for a local timber harvesting ordinance to include provisions relating to specific forest practices. Often, these provisions, such as those in the model ordinance, relate to issues of public safety, trespass, and aesthetics. These types of provisions are most common in a local timber harvest ordinance. Other ordinances in the past have included a variety of other types of forest practices, which are unreasonable and can be an obstacle to the best silvicultural methods suitable for the stand at that time. These unreasonable provisions include:

- Limits on clear-cutting
- Selection harvesting
- Buffer strips
- Logging on steep slopes
- Hours of operation
- Mud on the roads

As each forest stand is different, so too will each timber harvest be different. As a result, an ordinance that includes provisions allowing, requiring, or disallowing certain forest practices throughout a municipality fails to take into consideration a particular site's unique circumstances and ecological requirements as well as the cost ramifications of carrying them out.

The following requirements shall apply to all timber harvesting operations in the township (borough).

- a. Felling or skidding on or across any public thoroughfare is prohibited without the express written consent of the township (borough) or the Pennsylvania Department of Transportation, whichever is responsible for maintenance of the thoroughfare.*
- b. No tops or slash shall be left within twenty-five (25) feet of any public thoroughfare or private roadway providing access to adjoining residential property.*
- c. All tops and slash between twenty-five (25) and fifty (50) feet from a public roadway or private roadway providing access to adjoining residential property or within fifty (50) feet of adjoining residential property shall be lopped to a maximum height of four (4) feet above the surface of the ground.*
- d. No tops or slash shall be left on or across the boundary of any property adjoining the operation without the consent of the owner thereof.*
- e. Littering resulting from a timber harvesting operation shall be removed from the site before it is vacated by the operator.*

Section 7. Responsibility for Road Maintenance and Repair; Road Bonding

A municipality has a legitimate reason to be concerned about the damage that a timber harvesting operation may cause to the local roads. By including in a timber harvesting ordinance the right to require a road bond, a municipality can ensure that any road repairs needed as a result of a timber hauling will be covered by the responsible party. Any road bond, however, must be consistent with the requirements of the uniform statewide requirements set forth in 67 Pennsylvania Code, Chapter 185. These requirements already set statewide standards for ensuring that local road repairs are completed by the party responsible for the damage.

A timber harvesting ordinance may only include a provision requiring a road bond if this provision is consistent with these statewide regulations and such requirements have been adopted in a separate ordinance that addresses the bonding of local roadways. Any provision inconsistent with the requirements of Chapter 189 is not lawful and could expose the municipality to civil actions.

In addition, local government should not include bonding requirements for anything other than roads in a local timber harvesting ordinance. Any performance or regeneration bond that requires the timber harvesting operation to provide funds to complete additional requirements as stated in the ordinance is unreasonable. Such requirements

can present a significant burden to the landowner or operation in terms of time and money. The requirement to complete a logging plan in fulfillment of the ordinance imposes a legal duty on the landowner or company to comply with that plan. If this duty is not fulfilled, the municipality already has the legal authority to require the landowner or operator to correct the problem. Therefore, any additional bonding requirements are unnecessary and unreasonable.

Pursuant to Title 75 Pennsylvania Consolidated Statutes, Chapter 49, and Title 67 Pennsylvania Code, Chapter 189, the landowner and the operator shall be responsible for repairing any damage to township (borough) roads caused by traffic associated with the timber harvesting operation to the extent the damage is in excess of that caused by normal traffic and may be required to furnish a bond to guarantee the repair of such damages.

Section 8. Enforcement

The enforcement section of the ordinance does three things: (1) it specifies who is responsible for enforcing the ordinance, (2) it defines the mechanisms of the enforcement, (3) and it establishes the penalties that will result from failing to comply with the ordinance. In addition to these three things, it is important to grant access to the timber harvesting operations to the individual who will be chosen as the enforcement officer. In the model ordinance, this is done through paragraph (b). Often, a community will appoint the zoning or code enforcement officer to enforce the provisions in the timber harvesting ordinance.

When considering what mechanisms of enforcement to use and what penalties to apply to violations, a community needs to think carefully about what is reasonable. Various levels of tools can be used, based on the situation. For example, a written notice may be enough to solve the problem identified by the enforcement officer. When this does not work, however, other measures, such as ordering a suspension of operations, may be issued. Finally, if all other measures fail, a municipality can reserve the right to seek criminal penalties.

a. Township (Borough) Enforcement Officer. The _____ shall be the enforcement officer for sections 1 through 8.

b. Inspections. The township (borough) enforcement officer may go upon the site of any timber harvesting operation before, during, or after active logging to (1) review the logging plan or any other required documents for compliance with sections 1 through 8, and (2) inspect the operation for compliance with the logging plan and other on-site requirements of these regulations.

c. Violation notices; suspensions. Upon finding that a timber harvesting operation is in violation of any provision of sections 1 through 8, the township (borough) enforcement officer shall issue the operator and the landowner a written notice of violation describing each violation and specifying a date by which corrective action must be taken. The township (borough) enforcement officer may order the immediate suspension of any

operation upon finding that (1) corrective action has not been taken by the date specified in a notice of violation; (2) the operation is proceeding without a logging plan; or (3) the operation is causing immediate harm to the environment. Suspension orders shall be in writing, shall be issued to the operator and the landowner, and shall remain in effect until, as determined by the township (borough) enforcement officer, the operation is brought into compliance with sections 1 through 8 or other applicable statutes or regulations. The landowner or the operator may appeal an order or decision of an enforcement officer within thirty days of issuance to the governing body of the township (borough).

d. Penalties. Any landowner or operator who (1) violates any provision of sections 1 through 8; (2) refuses to allow the township (borough) enforcement officer access to a harvest site pursuant to paragraph (b) of this section; or (3) fails to comply with a notice of violation or suspension order issued under paragraph (c) of this section is guilty of a summary offense and upon conviction shall be subject to a fine of not less than \$100 nor more than \$300, plus costs, for each separate offense. Each day of continued violation of any provision of sections 1 through 8 shall constitute a separate offense.

