

ORDINANCE NO. 2011-05

**AN ORDINANCE OF THE TOWNSHIP OF HOPEWELL, A FIRST CLASS TOWNSHIP
UNDER THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA,
REGULATING AND ESTABLISHING TIMBER HARVESTING PRACTICES TO
ALLOW FOR AND ENCOURAGE PROPER FOREST MANAGEMENT WITHIN
HOPEWELL TOWNSHIP**

WHEREAS, in order to preserve forests and the environmental and economic benefits they provide, it is the policy of the Township of Hopewell 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; and

WHEREAS, the timber harvesting regulations contained herein 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; and

WHEREAS, because proper cutting practices vary depending on the site and on landowner objectives, the intent of this ordinance is not to prescribe specific practices, but minimum requirements.

AND NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Commissioners for the Township of Hopewell, Beaver County, Pennsylvania, a municipal corporation under the First Class Township Code and the legal authority contained therein, and it is hereby ordained and enacted by the authority of the same as follows:

Section 1. Definitions. As used in sections 1 through 8 herein, the following terms shall have the meanings given them in this section.

- a. "Felling" means the act of cutting a standing tree so that it falls to the ground.
- b. "Forestry" means managing and using for human benefit forest lands and natural resources that occur on and in association with forest lands, including trees, other plants, animals, soil, and water. It includes, but is not limited to, the planting, cultivating, harvesting, transporting, and selling of trees for commercial purposes.
- c. "Landing" means a place where logs, pulpwood, or firewood are assembled for transportation to processing facilities.

- d. "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.
- e. "Litter" means discarded items not naturally occurring on the site such as tires, oil cans, equipment parts, and other rubbish.
- f. "Logging and Timber Harvesting" the terms "logging" and "timber harvesting" are used interchangeably herein, and defined as the act of cutting and removing trees and all activities related thereto, for cordwood, for lumber, for pulp or for any commercial purpose, excepting therefrom a landowner cutting on his own property for his own use, the cultivation and harvesting of Christmas trees or the clearing for development of building sites where such development is otherwise subject to the Township grading, landfill, excavation, subdivision or land development regulations.
- g. "Lop" means to cut tops and slash into smaller pieces to allow the material to settle close to the ground.
- h. "Operator" means an individual, partnership, company, firm, association, or corporation engaged in timber harvesting, including their agents, subcontractors and employees.
- i. "Precommercial 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.
- j. "Skidding" means dragging trees on the ground from the stump to the landing by any means.
- k. "Slash" means woody debris left in the woods after logging, including logs, chunks, bark, branches, uprooted stumps, and broken or uprooted trees or shrubs.
- l. "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.
- m. "Stream" means any natural or artificial channel of conveyance for surface water with an annual or intermittent flow within a defined bed and banks.
- n. "Timber harvesting", "tree harvesting", or "logging" means the process of cutting down trees and removing logs from the forest for the primary purpose of sale or commercial processing into wood products.

- o. "Top" means the upper portion of a felled tree that is unmerchantable because of small size, taper, or defect.
- p. "Township" means the Township of Hopewell, Beaver County.
- q. "Township Timber Harvesting Administrator or Administrator" the Township representative appointed by the Township Commissioners to administer this chapter.
- r. "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 areas.

Section 2. Permit required

- A. Logging operations within the Township of Hopewell on any parcel of property over one acre in size shall require a permit.
- B. On parcels of 25 acres or more, a permit shall be issued for a maximum of 25 acres at one time, and may be extended to permit logging operations on a contiguous area of up to 25 acres upon finding by the Administrator that all requirements of this chapter have been met, including payment of permit extension fees and charges as fixed by resolution.
- C. The logging contractor must notify the Administrator in writing at least ten days in advance that he or she will be completing timber harvesting on any twenty-five-acre parcel and desires a permit extension to continue harvesting additional acreage. Timely notice will expedite the review process and assure that timber harvesting continues without delay and proper security is provided pursuant to Section 5.
- D. On parcels of 25 acres or less, a permit shall be granted for the entire parcel.
- E. All permits or permit extensions issued under this section shall be valid for a period of five months.

Section 3. Application procedure, standards and variances

- A. An application for a logging permit and five copies shall be filed with the Administrator at least 30 days prior to the commencement of logging.
- B. The application shall be on a form prescribed by the Township and shall include at least the following information:
 - (1) The name and address of all property owners.
 - (2) The name and address of the logging operation.

- (3) The proposed starting and completion dates for the logging operation.
 - (4) A description and quantity of the trees to be harvested prepared by a certified or otherwise accredited consulting forester.
 - (5) A description of the method of logging.
 - (6) Type and rate of seeding/mulching to be done to stabilize soil after logging and placement of same.
 - (7) An erosion and sedimentation control plan as approved by the Beaver County Conservation District and the Township Engineer.
 - (8) A description of all stormwater management and erosion control measures to be taken and the location of any stormwater or erosion control devices or facilities.
 - (9) A site plan of the parcel or parcels or property upon which the logging will be conducted, which shows:
 - (a) The location of access and adjacent roads, all watercourses and natural drainage swales within and adjacent to the site as well as all public utilities in the area of the logging operation.
 - (b) The location of any road work, grading, logging trails or log landing areas proposed in connection with the operation.
 - (c) The location of trees to be cut down and the acreage to be logged. (General description of area to be logged relative to parcel's boundaries.)
 - (d) The proposed hauling route.
 - (10) The gross vehicle weight of all logging vehicles and equipment shall conform to existing weight limit restrictions or, if in excess of such restrictions, a special hauling permit shall be obtained and a bond shall be posted in an amount as may be determined by the Township.
- C. The application must be signed by an owner of the property and by the logging operator, if any, and shall contain the following representation:
- "The undersigned has read and understands the Township Logging Ordinance and assures the Township that the proposed logging operation will comply in every respect with the Ordinance."
- D. The Township Logging Administrator shall forward the applications to the Township Engineer and forester for review and may also forward it to any appropriate government agency for review. In reviewing the application, the Township Engineer shall consider the

impact of the proposed logging operation upon stormwater runoff, erosion, watercourses, roads, water mains, storm sewers, sanitary sewers, drains and other public utilities. In particular, the Township Engineer shall consider the extent to which the application addresses and complies with applicable standards:

(1) For erosion and sedimentation control and stream crossing regulations, under 25 Pa. Code, Chapter 102, Erosion Control Rules and Regulations, issued pursuant to the Clean Streams Law, and 25 Pa. Code, Chapter 105, Dam and Waterway Rules and Regulations, issued pursuant to the Dam Safety and Encroachments Act.

(2) For stormwater management as set forth in the Stormwater Management Act and regulations issued pursuant thereto and in any Township stormwater management regulations.

E. The Township Engineer and forester shall make a recommendation in writing to the Township Logging Administrator approving or disapproving the logging plan and stating the reasons therefore.

F. Within 20 days after filing of the application, the Township Logging Administrator shall issue or deny a permit. Denial shall be in writing with reasons for denial stated therein. Approval may be subject to reasonable conditions stated in writing upon the permit and intended to achieve the goals of this chapter. The applicant shall be informed in writing of the reasons for such conditions.

G. Request for a variance from the rules and regulations of this chapter shall be considered by the Administrator in accordance with the following procedures:

(1) A variance may be granted from the requirements of this chapter if the following criteria are met:

(a) That there is good and sufficient cause based on physical circumstances, conditions or topography unique to the property.

(b) That failure to grant the variance would result in unnecessary hardship to the applicant.

(c) Any variance granted shall be the minimum variance necessary to relieve the hardship claimed as a basis for the variance.

(2) No application for a variance requested under this chapter shall be granted that would cause a public or private nuisance or result in violation of the Erosion and Sedimentation Rules and Regulations set forth at 25 Pa. Code, Chapter 102; the Pennsylvania Clean Streams Law, 35 P.S. § 691.1 et seq.; the Dam Safety and Encroachments Act, 32 P.S. § 6801.1 et seq.; or any other applicable Township ordinance or state or federal law.

(3) The Administrator shall forward all applications for variances to the Township Engineer and forester, who shall review the applications, with a copy to the Township Commissioners. The Township Engineer, in conducting his review, shall consider the factors referenced at Subsection G(1) and G(2) and may consider the factors referenced at the Pennsylvania Forestry Association's publication "New Timber Harvesting Guidelines" or similar publication, and the Department of Conservation and Natural Resources publication entitled "Controlling Erosion and Sedimentation from Timber Harvesting Operations," and any other publications setting forth commonly accepted guidelines for the timber harvesting industry. The Township Engineer may request additional information to assist in the review process.

(4) The Township Engineer shall, within 20 days after receiving an application for a variance, and any additional information, make a written recommendation with respect thereto to the Administrator, stating the reasons for his recommendation. The Administrator shall consider the Township Engineer's recommendation and any comment(s) received from the Township Commissioners and shall grant or deny the variance.

(5) The grant of a variance may be subject to reasonable conditions and safeguards necessary in order to protect the public health, safety and welfare, to protect public and private property and to achieve the objectives of this chapter.

(6) Whenever a decision on a variance is made, the Administrator shall notify the applicant and the Township Commissioners in writing of such decision.

(7) Application for a variance shall stop the twenty-day time limit for permit decisions under Subsection F from running until such time as the variance request is finally disposed of.

H. Any person aggrieved by a permit or variance decision may file an appeal within 30 days to the Township Commissioners, who shall hold a hearing thereon pursuant to the Local Agency Law and may affirm, modify or reverse the decision appealed from. The Township Commissioners may impose, as part of its decision, any conditions and safeguards necessary in order to protect the public health, safety and welfare or to protect private or public property and to promote the objectives of this chapter. The Township Commissioners, as part of its decision, may adjudicate constitutional law issues and may grant relief from any substantive requirement herein where full compliance with the requirement, due to unique physical conditions of the land to be logged, is not reasonably possible and where waiving the requirement will not result in significant adverse environmental consequences or in any violation of applicable laws or regulations.

Section 4. General operational requirements.

Both the landowner and logging operator shall be responsible for compliance with the following operational requirements:

- A. No property shall be clear cut except as needed for silvicultural purposes and as recommended by a certified or otherwise accredited consulting forester as part of a forest stewardship or other comprehensive forest management plan.
- B. A minimum fifty (50') foot buffer shall be maintained along all streams, roadways and adjacent properties. Select trees may be removed within these buffer zones only with the express approval of the Township Forester.
- C. All applications to harvest timber on a slope exceeding 25% shall provide an erosion control plan that recognizes such slope conditions.
- D. Before completion of a logging operation, the forester shall inspect the property to determine whether adequate erosion-resistant cover exists to protect the property from erosion and specify what measures, if any, must be taken to insure erosion protection. A copy of the forester's report shall be furnished to the Administrator, and the property owner shall certify installation of said measures before the logging operation is considered complete.
- E. No tree is to be felled that may be the largest of its species in Pennsylvania as outlined in the Big Trees of Pennsylvania Handbook. Except as needed for silvicultural purposes and as recommended by a certified or otherwise licensed professional forester (the forester) as part of a forest stewardship or other comprehensive forest management plan (the management plan), trees with a diameter of 12 inches or less may be harvested only if such trees are cull trees or dead trees, and such harvesting will not result in clear cutting of the parcel under permit. The removal of trees with a diameter of 12 inches or less must be specifically approved by the Administrator based upon a finding that such removal will not result in clear cutting (unless clear cutting is the forest regeneration method recommended by the forester in the forest management plan). The diameter of the tree shall be measured at 4 1/2 feet above ground level.
- F. Treetops and other logging debris should not exceed six feet in height above the ground surface and not exceed four feet in height in buffer zones.
- G. All roadway/skid trails must be repaired to prevent soil erosion and sedimentation and to prevent pooling of stormwater.
- H. Proper erosion and sedimentation control measures shall be taken on disturbed property to prevent accelerated water runoff.
- I. No commercial sale of wood or logs shall be permitted on the property unless zoning approval is obtained.
- J. All soil or debris washed onto public streets during logging shall be cleaned up each day. Where adjacent properties, public or private, have suffered erosion or accumulation of soil and debris as a result of logging, such conditions shall be remedied before completing the logging operation or within three days after notification of the landowner by the Administrator that such conditions exist.

K. Felling or skidding on or across any public thoroughfare is prohibited without the express written consent of the Township or the Pennsylvania Department of Transportation, whichever is responsible for maintenance of the thoroughfare.

L. No tops or slash shall be left within twenty-five feet of any public thoroughfare or private roadway providing access to adjoining residential property.

M. All tops and slash between twenty-five and fifty feet from a public roadway or private roadway providing access to adjoining residential property or within fifty feet of adjoining residential property shall be lopped to a maximum height of four feet above the surface of the ground.

N. No tops or slash shall be left within five (5) feet or across the boundary of any property adjoining the operation.

O. Litter resulting from a timber harvesting operation shall be removed from the site and surrounding areas upon completion of the project.

P. There shall be no trespassing upon adjoining properties.

Q. The daily timber harvesting operation shall begin no earlier than 7 a.m. and shall end no later than 7 p.m.

Section 5. Responsibility for road maintenance and repair; road bonding.

The landowner and the operator shall be responsible for repairing any damage to Township roads caused by traffic associated with the timber harvesting operation to the extent the damage is in excess of that caused by normal traffic. Pursuant to 67 Pennsylvania Code, Chapter 189, the landowner or operator shall furnish a bond to the Township to guarantee the repair of such damages.

If the Township roads proposed to be utilized are posted with weight limits, the posted tonnage shall not be exceeded, or the procedure below shall be followed:

(a). The landowner and/or operator shall pay for the videotaping of the roadways, within the proposed limits of use, prior to allowing any loaded vehicles on the roadways. The taping shall be performed by an independent firm or organization approved by the Township and performed in the presence of a Township Representative. The taping shall depict all significant cracks and raveling of the pavement in a continuous mode from beginning to end points; and

(b). The video shall be submitted to the Township for review and safe keeping; and

(c). A bond shall be submitted to the Township in an amount specified by the Township Engineer; and

(d). Upon completion of the hauling the requirements of 7a. and 7b. shall be repeated; and

(e). If a comparison between the initial and subsequent video tapes reveal that new damage is present, the Township will not release the bond unless and until:

1. The landowner and/or operator pay for the actual repair work necessary to correct the damage caused by the hauling; or
2. The landowner and/or operator pay an amount estimated by the Township Engineer for the necessary repairs.

Section 6. Fees.

A. Payment of a \$300.00 nonrefundable fee for processing of a logging application shall accompany the application. A Plan Review Bond or cash in the amount of \$1,500.00 shall accompany the application to ensure payment of invoices related to engineer and forester services pertaining to the application. Invoices must be paid within 30 days or claim will be made against this security. The fee may be amended by resolution of the Township Commissioners.

B. When a permit is issued, the applicant shall also reimburse the Township for reasonable fees charged by the Township Engineer and any forestry consultant retained by the Township for reviewing the application. Such fees shall be in accord with a written schedule of fees submitted by the Township Engineer and forester to the Township.

Section 7. Enforcement.

A. Township officers may enter upon the land in question before, during or after a logging operation in order to determine whether a logging application or operation complies with this chapter.

B. If any logging is done in violation of this chapter, the Township may do any or all of the following:

- (1) Bring action in court at law or in equity to prevent, restrain, correct, determine or abate such violation.
- (2) Revoke or suspend any logging permit that has been granted, such action to be appealable to the Township Commissioners within 30 days of notice of revocation.
- (3) Bring action before the District Justice to impose penalties for violation.

Section 8. Violations and penalties.

Any person violating this chapter shall, upon conviction thereof before a District Justice, be sentenced to pay a fine not exceeding \$500 for each violation, and each day such violation continues may be considered a separate offense.

Section 9. Conflict of codes; interpretation.

When provisions of this chapter conflict with other applicable regulations, codes or laws, the more stringent regulation or legislation shall apply. As is the case with all legislation, this chapter is to be interpreted utilizing a rule of reason that will best allow for the attainment of the balance between the public and private interests this chapter seeks to achieve. Furthermore, this chapter is to be interpreted and applied, to the extent possible, so that it meets all federal and state constitutional requirements and statutory requirements.

If any aspect of this chapter is finally determined to violate constitutional and/or statutory requirements, through the process of appellate litigation, that aspect of this chapter shall be deemed excised or reformed to the extent necessary to cause the remainder of this chapter to remain legally enforceable.

ENACTED AND ORDAINED into law this 9th day of MAY, 2011.

ATTEST:

Wendy Kasunic

TOWNSHIP OF HOPEWELL

BY: Andy Brunette
Andy Brunette, Manager
Hopewell Township

Board of Commissioners

BY: Richard Bufalini
Richard Bufalini, President