

# ROCKAWAY RIVER WATERSHED CABINET

## TREE PROTECTION AND REMOVAL MODEL ORDINANCE

### I. PURPOSE

(Insert municipal name) having found that indiscriminate, uncontrolled and excessive destruction, removal and clear cutting of trees upon lots and tracts of land results in increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, degradation of water resources, decreased groundwater recharge, increased buildup of atmospheric carbon and increased dust and decreased property values, all of which negatively affect the character of (insert municipal name).

(Insert municipal name) realizing that the removal of trees adversely affects the health, safety and general welfare of our residents, desires to regulate and control indiscriminate and excessive cutting of trees by preserving the maximum possible number of trees in the course of development of a site, ensuring that the health of trees preserved on a site is maintained throughout the development process, protecting larger, older specimens of trees and encouraging innovative design and grading to promote the preservation of existing trees.

It is recognized that there is a strong relationship between the integrity of (insert municipal name) and the region's water resources, the development on steep slopes, tree removal, soil disturbance, stormwater management, ridge line protection and the general use of land resources. Therefore, the appropriate management of these resources is an important health, safety and general welfare concern.

### II. APPLICABILITY

With the exception of the exemptions set forth in Section 5 of this ordinance, no tree shall be cut or otherwise removed from any lands in (insert municipal name) without a tree removal permit. All applications to the Planning Board or Zoning Board of Adjustment for approval of a major subdivision, minor subdivision or site plan requiring tree removal shall include an application for a tree removal permit. Any residential, commercial, business or industrial lot owner wishing to remove trees upon said lot must comply with the Section 8 of this ordinance. The application shall be submitted to (insert appropriate municipal office) for review and approval. No tree that was planted or preserved as part of any landscape plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be removed, except for such trees directed to be removed pursuant to Section 5, subsection F, G, H & I.

### III. DEFINITIONS

(Municipalities should include the following definitions in their adopted ordinance unless the definition is already provided for in the adopted zoning ordinance)

**Board** - the municipal agency, either Planning Board or Zoning Board of Adjustment, to which the application for tree removal permit is submitted.

**Caliper** - Standard measure of tree size for trees to be newly planted. The measurement is taken 6 inches above the ground for trees 4 inches in diameter or less and 12 inches above the ground for trees over 4 inches in diameter.

**Clear Cutting** - the removal of all standing trees on a lot or a portion of a lot.

**Diameter at Breast Height** - diameter of a tree measured four and one-half (4 1/2) feet (forestry method) above the ground level on the downhill side for existing trees. Diameter at Breast Height may appear as the abbreviation "DBH" (Diameter Breast Height).

**Drip Line** - a limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree, but not less than six (6) feet from the trunk, whichever is greater; and within which no construction or disturbance shall occur.

**Replacement Tree** - a nursery-grown certified tree, properly balled, marked with a durable label indicating genus, species and variety, and satisfying the standards established for nursery stock and installation thereof, set forth by the American Association of Nurseryman.

**Selective Cutting** - the removal of larger trees on an individual basis while leaving trees of lesser size.

**Silviculture** - the management of any wooded tract of land to insure its continued survival and welfare, whether for commercial or noncommercial purposes, pursuant to a plan approved by the New Jersey Bureau of Forestry.

**Thinning** - the removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of remaining trees on the lot.

**Tree** - any self supporting woody plant which reaches a typical mature height of twelve (12) feet or more at maturity and has a typical DBH of four (4) inches or greater.

**Tree Canopy** - the top layer or crown of mature trees.

**Wooded Acres Permitted for Development** - means the wooded lands within a lot or tract, which are not specifically excluded from development by any federal, state, county or municipal law or ordinance, deed restriction or covenant running with the lands. For purposes of this Ordinance, those lands specifically eliminated from consideration as wooded acres permitted for development include, but are not limited to, wetlands as defined by N.J.S.A. 13:9B-1 et seq.

#### **IV. TREE CUTTING OR REMOVAL RESTRICTED**

With the exception of the exemptions set forth in Section 5, no person shall cut or remove, or cause to be cut or removed, any existing tree with a diameter at breast height (DBH) of six (6) inches or greater upon any lands within (insert municipal name) unless the cutting or removal can be accomplished in accordance with the provisions of this ordinance.

## **V. EXEMPTIONS**

The following shall be exempt from this ordinance:

- A. Commercial nurseries and fruit orchards.
- B. Christmas tree farms.
- C. Residential lots that are less than two (2) acres in size.
- D. Residential lots that are greater than two (2) acres and are removing no more than six (6) trees with a ten (10) inch DBH or less in one (1) calendar year. ( Policy Decision)
- E. Any tree, which is part of a cemetery.
- F. Trees directed to be removed by municipal, county, state or federal authority pursuant to law.
- G. Removal of trees, which are dead, dying or diseased, or trees which have suffered damage, or any tree whose angle of growth makes them a hazard to structures, roads, or human life.
- H. Removal of trees, which appear to cause structural damage to buildings or foundations.
- I. Any tree growing on or over a public right-of-way or public land.
- J. Pruning or removal of trees within the right-or-way by utility companies for maintenance of utility wires or pipelines and the pruning of trees within sight easements.
- K. Trees removed in conjunction with farmland greater than five (5) acres in size that will be actively devoted primarily to agricultural uses and that yield a minimum annual income of five hundred dollars (\$500) from said farming activities except that where the owner desires to remove any trees for the purpose of expanding farmlands, an inventory of trees to be removed, identified by size and species, shall be prepared and filed with the (insert appropriate municipal officer) prior to any tree removal. In the event the expanded farmlands are not actively devoted primarily to farming activities for a period of seven (7) years following tree removal, the tree replacement provisions contained in Section 7 shall apply.
- L. Those projects which have received major subdivision or site plan approval prior to the effective date of this Ordinance and amended major subdivision and site plans.

## **VI. TREE REMOVAL REQUIREMENTS FOR MAJOR AND MINOR SUBDIVISIONS AND SITE PLANS**

Each application to the Planning Board or Zoning Board of Adjustment (insert appropriate municipal office) for approval of a major or minor subdivision or a site plan that requires the removal of trees shall include an application for a tree removal permit. The application and development proposal shall conform to the following provisions:

- A. Application Form - The application form may be obtained from the (insert appropriate municipal officer) and shall include the following information:
  - 1. Name and address (street, lot and block) of the owner of the premises and status of legal entity (individual, partnership, corporation of this or any

other state, etc.);

2. Description of the premises where removal is to take place, including lot and block numbers, street address as assigned;
3. A list of all trees to be removed with a DBH equal to or greater than six (6) inches identified by size and species, including total number of each species to be removed;
4. Purpose for tree removal (new construction, street or roadway, driveway, utility easement, recreation areas, parking lot, etc);
5. Proof that there are no delinquent property taxes or assessments due on the property for which the application is submitted; and
6. Such other information as may be deemed necessary in order to effectively process and decide such application.

B. Landscape Plan - The following information shall be provided on a landscape plan prepared by a Registered Landscape Architect or Registered Professional Engineer and submitted with the application for tree removal. The landscape plan must be submitted prior to tree removal permit approval.

1. Base information

- a. Location of existing tree canopy within the property boundaries.
- b. Location of individual trees with a DBH equal to or greater than six (6) inches identified by size and species within the area of development/limit of disturbance.
- c. Location of individual trees with a DBH equal to or greater than six (6) inches identified by size and species beyond the area of development/limit of disturbance.
- d. Location of individual existing trees and their drip lines noted for preservation within the area of development/limit of disturbance identified by size and species. Where clusters of trees exist on the site or are contiguous with adjacent sites, fragmentation of the cluster shall be avoided where possible.
- e. Location of all required replacement trees.
- f. Clear labeling of the area(s) intended for tree/vegetation removal.
- g. Tree protection material details and limit of disturbance line.
- h. Location of existing and proposed buildings/structures.
- i. All bodies of water and wetlands, including water retention and detention areas.
- j. Location of all existing driveways and parking areas.

2. Design Requirements

- a. Only those trees necessary to permit the construction of buildings, structures, streets, driveways, infrastructure and other authorized improvements shall be removed. Existing vegetation shall be preserved to the greatest extent feasible.

Shade

- b. No more than sixty (60) percent of the existing tree canopy within the property boundaries shall be removed. The location of the remaining forty (40) percent of the tree canopy to be preserved shall be noted on the landscape plan. Steep slope limits of disturbance shall supersede this section when appropriate.
- c. No more than ten (10) percent of existing trees with a DBH equal to or greater than ten (10) inches within the area of development/limit of disturbance shall be removed unless the applicant shall replant trees removed in accordance with Section 7.
- d. Input from a designated subcommittee of the Board and/or the Tree Committee (Insert Planning Commission if other committees do not exist) shall be requested for recommended areas of tree preservation.
- e. Landscape standards may be waived by the Board when trees and/or shrub masses are preserved and/or relocated on-site that duplicate or essentially duplicate the landscape requirements contained in this section.
- f. The appropriate reviewing authority shall have the option of requiring a conservation easement to protect any or all trees or tree canopy areas to remain on site.

C. Site protection

- 1. Tree protection measures and the limit of disturbance line shown on the landscape plan shall be provided in the field with snow fencing or other durable material and verified by the (insert appropriate municipal officer) or other designated official prior to soil disturbance.
- 2. Protective barriers shall not be supported by the plants they are protecting, but shall be self-supporting. Barriers shall be a minimum of four (4) feet high and shall last until construction is complete.
- 3. Chain link fence may be required for tree protection if warranted by site conditions and relative rarity of the plant.
- 4. Snow fencing used for tree protection shall be firmly secured along the drip line, but shall be no less than six (6) feet from the trunk.
- 5. The grade of the land located within the drip line shall not be raised or lowered more than six (6) inches unless compensated by welling or retaining wall methods; and in no event shall welling or retaining wall methods be less than six (6) feet from the trunk of a tree.
- 6. No soil stockpiling, storage of building materials, construction equipment or vehicles shall be permitted within the drip line or within six (6) feet of any remaining trees, whichever is greater.
- 7. Any clearing within the drip line, or within six (6) feet of the trunk of a remaining tree, whichever is greater, shall be done by hand-operated equipment.
- 8. Where a tree that has been noted for preservation is severely damaged and unable to survive, tree replacement shall occur as provided in Section 7.

**VII. TREE REPLACEMENT AND REFORESTATION**

A. The replacement of trees shall occur as prescribed in the following table.

<b>Tree Replacement Schedule</b>	
<b>Caliper of Existing Tree Removed</b>	<b>Number of Replacement Trees (3" caliper)</b>
Less than 6 inches	1
Between 6 & 12 inches	3
Between 12.1 & 18 inches	4
Between 18.1 & 24 inches	5
Between 24.1 & 30 inches	7
Between 30.1 & 36 inches	10
Greater than 36 inches	The equivalent of 3" caliper trees or greater needed to equal the DBH of the removed tree

1. Replacement tree(s) shall be of nursery grade quality, balled and burlapped and installed on site. Where replacement trees are required but not suitable for the particular site prescribed due to the size of the site, (insert municipal name) shall deposit the trees into a community tree bank. Trees deposited into the community tree bank shall be utilized for planting on public lands (Policy Decision).
2. The type of replacement tree(s) shall be the same as the species removed from the site or other as approved by the (governing body).
3. The planting of all replacement trees shall be done by or supervised by a person with horticultural training in tree care and planting methods.
4. Newly planted replacement trees shall be monitored for a period of one year to ensure the health of the trees. If the replacement trees die within the one-year period, the developer/applicant shall replace the dead tree.

**VIII. TREE REMOVAL AND PROTECTION ON RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND BUSINESS ZONED LOTS (EXCLUDING MAJOR AND MINOR SUBDIVISIONS AND SITE PLANS)**

- A. Applicability - On any residential lot that is greater than two (2) acres in size and removing more than six (6) trees with a DBH of 10 inches or more in one calendar year shall submit an application for a tree removal permit to the (appropriate municipal officer). The application and development proposal shall conform to the provisions contained herein.
- B. The provisions of this section shall also apply to all commercial, industrial and business zoned lots.
- C. Application Form - The application form shall be available from the (appropriate municipal officer) and shall include the following information:
  - 1. Name and address (street and lot and block) of the owner of the premises and status of legal entity (individual, partnership, corporation of this or any other state, etc.);
  - 2. Description of the premises where removal is to take place, including lot and block numbers, and street address as assigned;
  - 3. A list of all trees to be removed with a DBH equal to or greater than ten (10) inches identified by size and species, including total number of each species to be removed.
  - 4. Purpose for tree removal (construction, building addition, street or roadway, driveway, utility easement, recreation area, patio, parking lot, etc.);
  - 5. Such other information as may be deemed necessary in order to effectively process and decide such application.
- D. Sketch Data
  - 1. Base information
    - a. A sketch shall be provided showing the location of the tree(s) to be removed with a DBH of ten (10) inches or greater.
  - 2. Design requirement
    - a. Trees to be removed shall be those trees necessary to permit the

construction of buildings or building additions, structures, driveways, septic fields, decks and lawn areas. The trees removed shall constitute no more than 60 percent of the existing tree canopy. Existing vegetation shall be preserved to the greatest extent feasible.

E. Site Protection

1. Site protection measures shall be provided in accordance with Section 6C.

F. Tree Removal Criteria - In addition to the design requirements stated above, the (insert appropriate municipal officer) may grant a tree removal permit based upon one or more of the following circumstances:

1. Where the location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks.
2. Where the location of an existing tree negatively impacts on an existing septic field.
  3. Where no other alternative exists for the placement of a building, building addition, structure, septic field, driveway, deck, patio or lawn area for the recreational use by the inhabitants of the building or dwelling, or any other authorized improvements, but in the vicinity of an existing tree.
  4. Where the location or growth of a tree inhibits the enjoyment of any outdoor pool, patio or deck.
  5. Where the location, angle or growth of an existing tree makes it a hazard to structures or human life.

G. Review by Planning Board - If, in the opinion of the (insert appropriate municipal officer), the request for tree removal does not satisfy the above criteria, then the application may be forwarded to the Planning Board for action.

H. Tree replacement

1. Tree replacement shall be accordance with the provisions in Section 7 of this ordinance.

**IX. REVIEW STANDARDS**

In accordance with the design requirements provided in this

ordinance, unless otherwise indicated herein, a tree removal permit may only be granted for the following reasons and under the following terms and conditions:

- A. Where the area proposed for tree removal is to be occupied by: a building or other structure; a street or roadway; a driveway; a parking area; a patio; a swimming pool; a recreation area; a power, drainage, sewerage or any other utility line, easement, or right-of-way, or where the area of tree removal is 20 feet or less from either side of or around the perimeter of any of the foregoing, whichever is applicable.
- B. In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in part A of this Section:
  - 1. That the continued presence of such tree or trees is likely to cause danger to persons or property upon the property for which removal is sought, or upon adjoining or nearby property.
  - 2. That the area where such tree or trees are located has a cut, depression or fill of land, or the topography of the land is of such a character as to be injurious or dangerous to such tree or trees, or to tree or trees located nearby.
  - 3. That the removal of trees is for the purpose of conducting forestry activities, which activities include, but are not limited to, the harvesting of trees in accordance with a forest management plan and the thinning out of a heavily wooded area, with some trees to be removed, and other trees to remain.
- C. Upon an express finding by the appropriate decisional authority that the proposed tree removal will not result in or cause, increase or aggravate any or all of the following conditions: impaired growth or development of remaining trees or shrubs on the property of the applicant or upon adjacent property, soil erosion, sedimentation and dust, drainage or sewerage problems, dangerous or hazardous conditions, and depression in the land value of the subject property and properties in the neighboring area.
- D. The appropriate decisional authority shall have the power to affix reasonable conditions to the granting of the permit for the removal of trees.

## **X. PROTECTION OF TREES**

Whenever an application for tree removal is granted under the terms and conditions of this ordinance, the following protective measures shall be observed:

- A. No material or temporary soil deposits shall be placed within the drip line of any existing tree to be preserved.
- B. Except while engaged in tree removal, no equipment shall be operated within six feet of any tree protected by this ordinance nor shall such equipment be operated at any time in such a manner as to break, tear, bruise, decorticate or otherwise injure any living or dormant tree. Except while engaged in tree removal, all requirements of Section 6 shall be observed.

## **XI. PERMIT APPROVAL**

- A. Time limits for approval
  - 1. Where the permit application is submitted as a part of an application for major subdivision, minor subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to major subdivision, minor subdivision or site plans.
  - 2. Where the application is made in connection with a residential, commercial, business or industrial lot that is not part of a major or minor subdivision or site plan, the (insert appropriate municipal officer or body) shall act on the application within thirty (30) days of its receipt or within such additional time as is consented to by the applicant. Failure to act within thirty (30) days, or any extension thereof, shall be deemed to be an approval of the application and thereafter, a tree removal permit shall be issued.
  - 3. Approval by default with regard to major subdivision, minor subdivision and site plan applications, shall not be deemed to be a waiver of a tree removal permit.

## **XII. DURATION OF PERMITS**

Permits granted for the removal of trees under the terms and conditions of this ordinance shall run with the land and shall remain in force and effect for the following periods of time, and not thereafter. Once the permit has expired, a new application must be submitted for review and a new permit issued.

- A. If granted for a lot or parcel of land for which no building permit is required - one year from the date of issuance.
- B. If granted for a lot or parcel of land for which a building permit is required, but for which no site plan approval is required by the Planning Board, until expiration of

the building permit granted with such tree removal permit.

- C. If granted for a lot or parcel of land for which site plan approval from the Planning Board/Zoning Board is required as a condition precedent to obtaining a building permit - until expiration of the site plan approval, or expiration of the building permit issued after such site plan approval.
- D. If granted for a lot or parcel of land for which minor subdivision is sought - one year from the date of granting such minor subdivision.
- E. If granted for a lot or parcel or land for which preliminary approval of a major subdivision is sought - until expiration of such approval.

### **XIII. INSPECTION**

- A. Prior to taking final action upon any application for tree removal, an inspection of the site shall be made by the (insert appropriate municipal officer, board or committee), in those cases where final determination is to be made by that body as to the granting or denial of an application.
- B. Prior to any tree removal, all trees must be marked and areas to be cleared identified for inspection by a municipal representative.
- C. The (insert appropriate title) shall periodically inspect the site throughout the duration of construction in order to ensure compliance with this ordinance. Such inspection shall be made of the site referred to in the application, and of contiguous and adjoining lands, as well as of lands in the vicinity of the application, for the purpose of determining drainage conditions and physical conditions existing thereon.

### **XIV. NOTICE OF COMMENCEMENT OF TREE REMOVAL**

- A. The holder of a tree removal permit shall notify the (insert appropriate municipal officer) in writing at least four (4) business days in advance of when the tree removal activity will commence.
- B. The notice shall also include information as to the manner of disposal of the removed trees.
- C. In the case of the removal of dead or diseased trees, the dead or diseased trees shall not be turned into mulch and applied to the site, but shall be disposed of in a manner so as to not disease other trees on site.

### **XV. FEES**

A. A review fee of \_\_~~(XX)~~\_ dollars shall accompany the application for tree removal.

**XVI. PENALTIES**

When regulated trees are removed without a tree removal permit, the affected areas shall be replanted to the satisfaction of the appropriate municipal authority in accordance with the replacement schedule in Section 7.