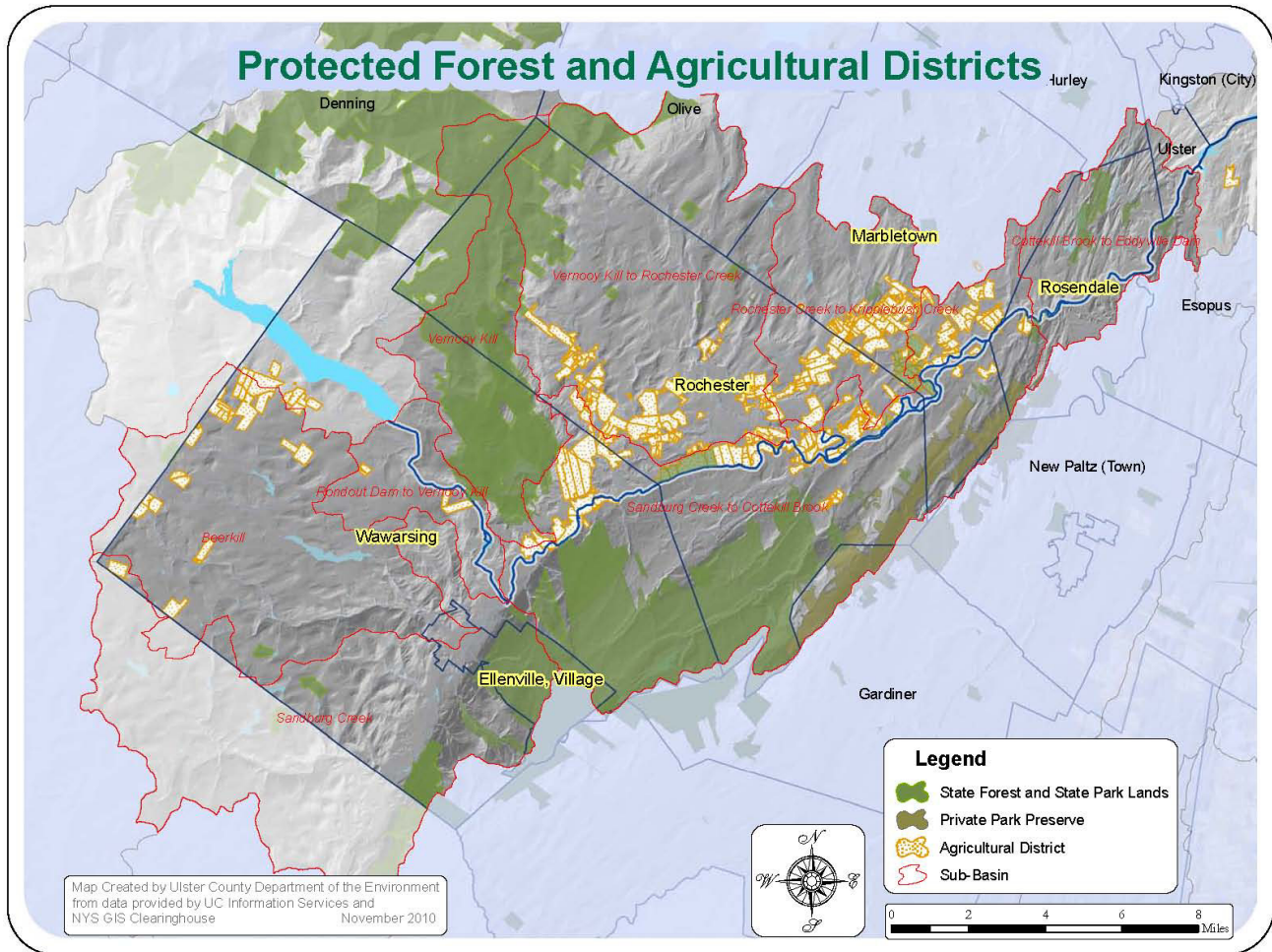


## SECTION 3.5 AGRICULTURE AND FORESTRY

Cross Reference- Section 3.3 Biodiversity

### Recommendations for Agriculture and Forestry:



Promoting and maintaining a sustainable and viable forestry industry should be a goal for the Lower Non-Tidal Rondout Watershed. To accomplish this there is currently a number of government, not-for-profit and industry programs in place to assist municipalities in achieving this goal. In addition to actively using the resources that are available, municipalities in the watershed need a current comprehensive plan that is supported by up-to-date zoning and land use regulations -- all of which should support the stewardship of forestlands and provide incentives for landowners to maintain large forested tracts of land.

The following section reviews:

- Existing laws that exist to protect water quality
- Programs that provide training, technical assistance and funding to promote sustainable forestry management
- Ways to increase awareness of sustainable forestry among citizens and town officials
- Opportunities for coordination and partnerships in planning for forest uses
- The benefit of updating a municipalities comprehensive plan to better promote forestry practices
- The importance of updating land use regulations to “facilitate the practice of forestry”
- Land use regulations that are currently in use and other that can be used to support forestry and forest uses
- The use of Timber Harvest Plans, including Best Management Practices.
- Review standards for the practice of land clearing of trees

### **Existing Laws and Programs**

Forestry-related requirements: Several State and Federal regulations pertain to possible impacts of forest activities, particularly timber harvesting, on water quality and other environmental and safety factors. They include the following:

- **The US Army Corps of Engineers** may require a permit for stream crossings, with exemptions for certain crossings where Best Management Practices (BMPs) are used.
- **The NY DEC** requires a permit for stream crossings across certain classified streams and wetlands, requires minimum residual stand densities (basal area) for timber harvesting in wetlands, prohibits forest management roads within 150 feet of designated State Wild, Scenic or Recreation Rivers and requires the top-logging of cut trees in fire-prone parts of the State. NY DEC also requires a permit for stormwater discharges from land clearing activities that disturb one or more acres of land [NOTE: silvicultural activities, including managed timber harvesting, are specifically exempted from this stormwater permit requirement.]
- **The NY DOT** issues Special Hauling and Divisible Load Permits for log-truckers. State Vehicle and Traffic laws regulate road use, truck weights, allow towns to control seasonal use, protect against road damage by any user and prohibit anyone from leaving mud or debris on roadways.
- **State and Federal laws** govern the use and disposal of hazardous materials, including petroleum products, fuels and fluids, etc. State laws regulate the use and disposal of registered pesticides.

Voluntary programs: Several State, Federal, university and not-for-profit programs provide training, technical assistance and funding to private forest landowners, forest managers and loggers to promote sustainable forestry management.

*NY State Forestry BMP Field Guide:* Studies have shown that, while timber harvesting is not a major cause of water quality problems, skid trails, haul roads and landings – especially at stream crossings - have the potential to be sources of sedimentation, erosion and siltation of streams and other water bodies. The key to success is proper planning and the use of appropriate or “best” management practices (BMPs). These are simple, often low-cost practices and techniques that can be incorporated into timber harvests. They pay big dividends in keeping water clean, maintaining the productivity of the forest, improving public confidence in timber harvesters and maintaining public support for sustainable forest management.

In 2000, a group of New York forestry and water quality professionals representing State and Federal government agencies, academia and the forest industry produced a Forestry BMP field guide for harvesters, forest managers and landowners. This pocket-sized, illustrated guide recommends ways to ensure that road-building and logging activity are planned and conducted in a manner that minimizes impacts on streams, lakes and wetlands. Topics covered include:

- Planning
- Log decks and landings
- Forest roads
- Skid trails
- Stream crossings
- Post-harvest wrap-up
- Hazardous materials
- Erosion control tools and techniques

These BMPs are consistent with the EPA-approved State Non-point Source Management Plan required under the Clean Water Act. In addition, the guide describes various regulations and permits that loggers and landowners must meet. How a forest “looks” is not always the best guide to whether a property is being well managed from an environmental point of view, but timber harvesting that minimizes the most visually offensive aspects of logging can reduce public perception of site damage.

*NY Forest Tax Program:* This State program (Real Property Tax Law Section 480-a) supports forest land retention and sustainable management by allowing forest land to be taxed at a lower forest use value rather than its potential development value. Similar to the farm tax program, this tax incentive helps make it affordable for forestland owners to keep their land in forest use. It is also recognition of the environmental, social and economic benefits that forestland provides to the community as a whole. A 10-year commitment and management plan are required to receive the tax break and a minimum of 50 acres of forestland must be involved. Forestland that is part of a farm ownership that is taxed at use value may also receive reduced tax assessments.

*NY Logger Training:* NYLT is a not-for-profit organization dedicated to providing safety, environmental and business training opportunities to timber harvesters in order to promote a higher level of safety and professionalism in the industry. In order to receive Trained Logger certification, an individual must complete three one-day sessions in: standard adult first aid and CPR, environmental concerns and chain saw safety and productivity. As of 2005 there were 300 loggers certified under NYLT. Continuing education is required to maintain certification. Several major forest companies and an increasing number of smaller forest owners require that the loggers they employ be certified through this program.

*Cooperative Forest Management Program:* This DEC program is intended to encourage private landowners to practice sustainable forest use and management on their woodlands. The NYS DEC and US Forest Service partner in the “Forest Stewardship Program,” which supports and complements the State’s CFM program authority and initiative. Under these programs, a professional forester will visit landowners on request to discuss the landowner’s interests and objectives, tour the property and identify forestry management opportunities. Written management plans may be developed that reflect ownership objectives and good forest practices. State service foresters provide advice and guidance on all aspects of sustainable forest management, including regeneration,

improvement work, developing recreational access, wildlife habitat improvement and timber harvesting. The intent is to encourage private landowners to become actively engaged in sustainable management of their forest resources. Landowners interested in pursuing additional forestry practices, those who want a Forest Tax Law management plan or those interested in a timber sale are referred to the private sector for those services.

In partnership with the US Forest Service, the New York Forest Owners Association, Cornell University, the State Extension Forester and Congress, the DEC also implements the new Forest Land Enhancement Program (FLEP), authorized as part of the 2000 Farm Bill. This program provides education, technical assistance and financial support to forest owners in developing forest management plans and carrying out approved management practices.

*Cooperating Forester Program:* A broad array of forest management services are available from private sector providers, beyond those available from State or Federal programs. DEC maintains a “Directory of Cooperating Foresters” that landowners may wish to use - a list of private sector qualified, professional foresters who have agreed to participate with the Department and promote sustainable forest management standards.

*Cornell’s Forestry Extension Program:* This program provides a variety of educational services and assistance to private, family forest owners that promote stewardship and sustainable production on forestlands. This includes informational brochures (available online), publications and presentations.

*Master Forest Owner Program:* This is a four-day Cornell University program that provides private, family forest owners with the information and encouragement needed to manage their forest holdings wisely and help promote sustainable forest management to their peers and neighbors. Graduates learn about saw timber and wildlife management, forest economics and ecology. MFOs continue to receive information updates and attend refresher classes. Over 140 experienced MFO volunteers are available Statewide to provide non-technical assistance to forest landowners.

*Watershed Forest Program:* This program, which applies to the Catskill-Delaware and Croton Watersheds, is sponsored by the not-for-profit Watershed Agricultural Council through New York City Department of Environmental Protection. It provides funding and technical assistance for the development of professional forest management plans, acquires conservation easements and funds a variety of forest BMP projects at private landowner request.

*Forest Certification Programs:* Many forest landowners and the forest products industry have actively pursued certification to demonstrate their commitment to “sustainable” forest products. In New York there are several certification systems that are intended to provide proof of a well-managed forest. These independent certification programs have been developed by environmental organizations and forest industries to establish standards for sustainable forestry. These standards include criteria, measures, and management and monitoring systems to ensure that forest lands are being managed in a sustainable manner, that forests are being conserved and that the forest products the public buys come from environmentally-sound sources.

Certification programs operating in New York include the Sustainable Forestry Initiative or SFI Program, Forest Stewardship Council or FSC Certification and the American Tree Farm Program. In all, more than 2.2 million acres in New York, including 720,000 acres of State Forest Lands, are currently enrolled in these and other similar programs.

*Other Programs:* Other, area-specific programs provide additional assistance in promoting sustainable forestry practices, including the NY City forest land easement and acquisition program in its upstate watersheds and the Highlands Stewardship program, which uses US Forest Service Funding to promote the development of forest stewardship plans in the southern Hudson River Valley.

**Opportunities for Local Leadership:** While the various programs described previously provide technical and other assistance to forest landowners in managing their forests for sustainability, it is at the local level where decisions are made as to whether, where and under what circumstances forest uses and harvesting are actually allowed. This puts local officials in the driver's seat and requires a carefully-considered approach to these issues.

**Public participation and education:** Often, just raising the level of awareness of forests and sustainable forestry among citizens and town officials can bring a great deal of understanding to a community about the multiple values of forests as working landscapes, including the benefits they provide and threats to forestry. Efforts to convey generally-accepted forest practices and cycles to the public and to compare these with farm operations can also be helpful. Speakers, including educators, professional foresters and others can be invited to participate in informational workshops or forums. Not-for-profit land trusts, conservation organizations, Conservation Advisory Councils, county Soil and Water Conservation Districts (SWCDs) and county Environmental Management Councils also play an important role. Local newspapers or town newsletters can run a series of guest columns addressing various aspects of forestry and forest uses. Following an educational effort, the public should be invited to be an active participant in any adoption or updating of a community's comprehensive plan and/or land use regulations that address forest uses. Involving citizens early in the process is important as this translates into long-term support and efforts that are more likely to be implemented.

**Coordination and partnerships:** There are many opportunities for coordination and partnerships in planning for forest uses. Towns can promote a variety of cooperative resources that are available to help private forest landowners be the best possible stewards of their forest land, including the several voluntary programs described above. Soil and Water Conservation Districts, Resource Conservation and Development Councils (RC&D), Regional Forest Practice Boards and county and regional planning agencies have knowledge of regional forest issues and resources and may be able to provide useful technical assistance or bring neighboring towns together to talk. Working with neighboring towns using a regional approach can provide advantages in protecting a critical mass of forest lands as a long-term working landscape. It can also help assure consistency across municipal boundaries in safeguarding important environmental features and systems that provide regional benefits. Does your town share common forest resources such as streams, lakes, habitat or recreational areas with neighboring towns? Is your reservoir in a different town? Intermunicipal agreements are a tool allowed by State law that can help towns manage shared resources in a mutually-beneficial way. Regional planning approaches often receive preferential consideration for grant assistance from public agencies that recognize the advantages of this approach.

**Updating the comprehensive plan:** Towns that are currently without a comprehensive plan and land use regulations should consider developing and adopting these. All New York communities that use zoning must base that zoning on an adopted comprehensive plan. A comprehensive plan is intended to guide future growth and development as well as identify important natural and cultural resources that should be protected and sustainably managed. A comprehensive plan should have three parts: 1) inventory and analysis, 2) goals and objectives and 3) an action strategy.

*Inventory and analysis:* The inventory is the primary building block of the plan because it identifies unique land capabilities and constraints that can be used to guide development, management and protection efforts. A comprehensive plan should inventory and map the town's forest lands (as well as other land uses) – preferably using Geographic Information System (GIS) technology. GIS mapping allows multiple forest characteristics to be identified and combined on one or more maps. For instance, a single map could note forest cover and also identify streams, lakes, steep slopes, riparian buffers, sensitive or rare plant or wildlife habitat, wetlands, watershed or groundwater protection areas, recreation facilities and uses and scenic roads or rivers. In addition, forestlands can be mapped by ownership – private, corporate, not-for-profit or public. Some of these GIS layers are available through State, federal or county agencies, while others may need to be created.

The plan text should provide general information on ownership and forest use if the mapping does not. In addition, there should be a discussion of soil productivity and constraints (local SWCDs can provide soils information), landowner management goals, environmental and social benefits, preservation efforts, contribution of the various forest uses to the local economy and any relevant local or regional trends.

Specific environmental, social and economic facts should be presented, including those that impact the larger region. For instance, is there a local or regional mill? If so, is it supplied primarily by local forests? Or, is the forest part of a watershed that uses surface water sources for public drinking water? These and other questions are all relevant to the plan.

The plan should also identify any adverse impacts that have resulted from forest practices to date in the town. Have any practices created problems for the community, adjacent landowners or the environment? If so, what practices and what problems?

Any land fragmentation or development trends in forest areas should be identified. Is forest land being converted to residential or other land uses? Parcelization trends can also be studied. Is most development and parcelization occurring within or close to hamlets, villages and cities? Or is it taking place in rural or fringe forest and farm areas? If the latter, your town may want to consider the use of various growth management tools that will direct development back into and near already developed areas and limit development in forest and farm areas.

Next, an analysis should use a future population projection for the town together with information about natural resource capabilities and constraints, existing land uses and infrastructure to make observations about the needs of forestry and forest land values versus development pressures and the needs of the community as a whole. Any existing or potential conflicts should be fleshed out and the plusses and minuses of each side explored.

*Goals and objectives:* Goals and objectives set forth the broad values and specific intentions of the community. They are often drawn from public input as part of a citizen participation process, from community surveys and from the input of the local planning advisory group. Forest goals and objectives should meld public opinion with the factual information derived from the inventory and analysis to guide the plan's final recommendations for action. A sample goal might be "To protect forest land for multiple-use forestry, including timber production, watershed management, fish and wildlife habitat and recreation." Sample objectives intended to follow through with this goal might be "Revise the zoning ordinance to permit timber harvesting in the Rural Resource Zone" or "Assure that forested buffers are maintained along all streams, recreation trails and scenic roads."

*An action strategy:* An action strategy identifies the comprehensive plan's specific recommendations related to forest land and uses. This should include a Future Land Use Map that identifies a "critical mass" of land to include the key, contiguous forest land holdings considered by the community to have the greatest value for single or multiple forest purposes. This map should provide a basis for reexamining zoning and making any needed changes for consistency with the plan map. The action strategy often includes a timeline and identifies responsible parties and resources needed to implement the recommendations of the plan. Actions might include changes to the zoning or subdivision ordinances or permitting process as they relate to multiple uses of forest land, including harvesting and the maintenance of habitat, watershed or scenic values.

New York's State Environmental Quality Review Act (SEQRA) provides municipalities the opportunity to anticipate potential adverse environmental impacts of proposed development and land use actions and avoid these through mitigating measures. Towns with significant forestry operations could consider preparing a generic environmental impact statement (GEIS) as part of a comprehensive plan or update that would apply to timber harvests among other actions. A GEIS would include the identification of mitigating measures that would then be implemented through zoning standards such as stream buffers or steep slope requirements. This would eliminate the need for the SEQRA review of individual proposed harvests, thereby streamlining the review process for all parties down the road.

### **Evaluating Existing Land Use Regulations**

Land use regulations, including the zoning and subdivision ordinances, are often updated in a parallel process to or right after the adoption of the comprehensive plan. Regulations must be "in accordance" with a comprehensive plan and are required, among other things, to "facilitate the practice of forestry," according to the State's 2003 Right to Practice Forestry law (Town Law Section 263). This means that towns should specifically identify forest uses as allowed and desirable in the town. Frequently, town zones omit any mention of forest uses or harvesting as allowed uses. Towns should also review existing regulations to identify any "forestry unfriendly" language. This may include language that creates obstacles to generally accepted forest management. It is important for towns to clearly distinguish between forestry uses or sustainable forestry practices, and development activities that change the underlying land use as well as permanently remove trees and forest cover. Often attempts to regulate development or land clearing end up restricting sustainable forestry.

The biggest single problem ordinance is the one that simply fails to identify forest management and harvesting as allowed uses. Though usually an oversight, such an omission obviously complicates forest management goals for a property. Landowners may be forced to pursue use variances – a cumbersome process designed to evaluate proposed exceptions to the rule rather than facilitate sustainable forestry practices.

As towns evaluate their land use regulations, they should consider whether the comprehensive plan or other sources of information have documented any problems or concerns related to generally-accepted forest practices, including timber harvesting. Where past timber harvests have been responsibly conducted and there is no experience of or concerns about potential adverse environmental impacts, such towns may feel there is no need for further oversight of proposed timber harvests.

However, towns that have experienced problems or have concerns may already have adopted or may be considering adopting local ordinances that call for some level of review of proposed timber harvests. Such towns are often in the more densely-populated parts of the State and interest in local ordinances has often been prompted by complaints related to aesthetic concerns. Other concerns relate to damage to town roads or neighboring property, soil erosion and sedimentation, water quality and noise. State laws already exist to address some of these concerns (see previous section), while others may be addressed at the local level.

While municipalities have a legitimate interest in protecting the environmental and social benefits that standing forests provide – particularly assuring that timber harvesting does not endanger public safety or welfare – these interests need to be balanced together with legitimate landowner rights to realize a reasonable return on their land. Towns with overly-restrictive local ordinances may limit or eliminate management and revenue-generating options for landowners, forcing them to consider alternative uses of their forest land other than keeping it as open space. Local forest-based businesses and jobs – harvesting firms, saw-mills, truckers, manufacturers – may also be adversely impacted, causing economic hardship to local residents.

### **Forest Regulations in Use**

There are several ways in which forest management activities and timber harvesting are currently reviewed in New York municipalities. They may be a permitted use – with or without notification or review – or may be allowed through a special use permit or site plan review process. Some towns require town board review, while others require planning or zoning board review and still others allow enforcement officers to make the decision. A few communities involve a consulting professional forester to conduct or assist in the review.

It is useful to review the purpose of permitted uses, special use permits, site plan review and use variances in local zoning. All of these approaches have been used in reviewing proposals for timber harvests, yet some are more appropriate than others. Permitted uses are those that the municipality feels should be allowed in a particular zone under all circumstances, though they may be made subject to specific conditions that would be reviewed as part of a ministerial decision by the community's enforcement officer. Some towns that do not list timber harvesting as a permitted use nevertheless allow it through a temporary permit that may be obtained from the enforcement officer.

Special use permits are for those uses that are felt to be generally appropriate for a particular zone, though perhaps not in all circumstances or as proposed, and are subject to either general or specific conditions to assure compatibility with and/or minimal impacts on nearby uses. Special use permits are normally issued by the planning board or zoning board of appeals as part of a discretionary review process involving a public hearing.

While the special use permit process may allow timber harvests, this is often a burdensome and unpredictable process for landowners because review standards can be vague or unreasonable and the timeline is often drawn-out. The special use permit process is, in fact, designed to review development proposals, and the expertise of reviewing bodies is, accordingly, chiefly in the development area, not in the various facets of forest management.

Site plan review is a process that is used to assure that whatever use is permitted is sited so as to minimize adverse impacts on- and off-site. Occasionally, this process is used to review proposed timber harvests and impose standards that really only apply to development proposals.



Use variances can permit uses that are not listed as allowed in a particular zone. These are issued by the zoning board of appeals as part of a quasi-judicial review process involving a public hearing.

The problem with the use variance process in reviewing proposed timber harvests is that this process exists to handle the unanticipated exception to the rule. The burden of proof of the appropriateness of the use rests on the landowner. Yet timber harvesting is a normal and common forest activity in many rural areas. It should not be more difficult to manage land for forest use than it is to develop. It is far better to allow the use in appropriate zones, and, if there are concerns about the way in which timber harvests are carried out, address these with specific conditions.

### **Updating Land Use Regulations**

Land use regulations can be updated in ways that will support forestry and forest uses and provide for the fair yet meaningful review of timber harvests by incorporating the following standards:

**A definition of forest use:** A town's zoning should include a definition of forest use in the Definitions section of the ordinance. This definition should identify the many multiple uses to which forest land can be put. Some towns may want to include a separate definition of timber harvesting, especially if they choose to subject harvesting to a review process. In this case, it would be wise to establish a reasonable threshold below which no review is necessary. Such an exemption is needed for small-scale cutting of trees for firewood or other personal, non-commercial purposes. There should also be exemptions for Christmas tree harvests, removal of hazardous or fallen trees, and clearing of dead or diseased trees. A reasonable threshold would be 10 cords or 10 thousand board feet (MBF) per parcel or contiguous ownership per year. Another possible threshold could be tied to acreage – 1, 2 or 5 acres being various numbers used.

Towns that wish to regulate land clearing of trees for building purposes are advised to distinguish land clearing from timber harvesting in their definitions, as the latter is intended as a sustainable forestry practice, whereas the former is not. Because of the differing goals of these practices, if they are to be regulated, each should be addressed in separate ordinance provisions (see discussion that follows).

**Appropriate zoning:** The adoption of a forest or farm/forest zone is the ideal way to assure that forest land can be readily managed for multiple forest uses, including harvesting, while potentially conflicting uses such as residential subdivisions are discouraged or not allowed. Forest zones help to prevent the fragmentation and conversion of forest land to other developed uses. Towns are encouraged to place forest lands not needed for development into one or more appropriate forest zones. Use of an average density standard in these zones of one allowed dwelling per 10 or 20 acres of forest land will greatly help to maintain the forest land base. Permitting sawmills will help accommodate existing sawmills as well as allow new ones.

**A reasonable review process:** Before towns make any decisions as to how to review proposed timber harvests, they should determine what types of problems, if any, they are currently encountering. It may be that a simple notification process that informs the town of the planned harvest and its particulars is all that is needed. For towns that want the opportunity to review proposed timber harvests, perhaps the best approach is to allow them as permitted uses that are subject to specific conditions that assure that the environmental and safety objectives of the town will be met. A local ordinance could call for the submission of a forester- approved harvest plan that meets established

local standards. While a local enforcement officer may or may not have the needed expertise to review a proposed harvest plan, make on-site checks during harvesting and assure compliance with local conditions of approval, a town could contract with a professional consulting forester on retainer to do this. This is the approach that is being used by a few towns in the Hudson River Valley. To offset the costs of professional services, a town may impose a fee, which should be clearly stated in a local ordinance. Ideally, the fee should include a base component (perhaps \$100) that applies to all harvests and an additional component that is acreage-related.

Because permitted uses involve ministerial decision making, little discretion can be exercised by the local enforcement officer, who must require that established local standards be met. Where towns desire greater flexibility and discretion in applying local standards, use of the special use permit process would be more appropriate. In such case, a professional forester could provide useful assistance to the decision-making body.

### **Timber Harvest Plans**

The DEC and other professionals recommend that timber harvesting be preceded by a well-thought-out timber harvest plan that protects soil and water resources and fish and wildlife habitat. Towns can require that such a plan be submitted as part of the local review process. A consulting forester can help the town design a form that identifies the elements local officials want to see included in a timber harvest plan. Landowners should be encouraged to contact a forestry professional for assistance in developing the timber harvest plan and conducting an on-the-ground evaluation of the site. A typical timber harvesting plan that is designed to meet landowner objectives as well as a town's review requirements will likely cost the landowner between \$1,000 and \$2,000; for the small landowner, this could be a significant percent of the value of the harvest. Towns should be mindful that their regulations should not impose undue hardship on working forest landowners and operations.

Local standards can be appropriate if they address specific concerns and:

- *Are clear and objective* – examples would be: a streamside buffer of 70 feet on up to 20% slopes (from BMP Field Guide), no landings within stream buffer strips and no tops within 25 feet of public roads, streams or public recreational trails.
- *Are even in application* – an example would be a seasonal closure of a road to all trucks over a certain weight, not just logging trucks. Another example would be an hours-of-operation ordinance that applies to all high-noise sources, not just timber harvesting. Alternatively, in rural areas with little nearby residential development, there may be no reason for limiting hours of operation at all.
- *Impose reasonable and justified standards* – an example would be a local ministerial review process that requests reasonable information from the applicant, requires that reasonable forest-related standards and BMPs be met that allow some flexibility and responsiveness to particular site characteristics, allows a reasonable window of time to conduct the cut, imposes a specific and reasonable fee, requires limited bonding - if any - and does not require that the town be named as coinsured. Harvesting standards should be based on specific problems the town has identified as being of concern. Requirements of standard development proposals that are not applicable to forest activities should not be imposed. Any harvesting limits should assure that the majority of a proposed property can be harvested in some manner.

While buffer strips can provide important protection to streams, steep slopes, recreation trails and scenic roads, selection harvests can still be a compatible use within these buffers in many cases. Harvesting permits should be valid for a minimum of one year, with at least one permitted extension allowed.

- *Provide for streamlined review* – an example would be a review by a town-contracted professional forester and town decision within 30 days of the submittal of an application. An efficient review timeline minimizes costs and uncertainties for the landowner, thus encouraging the continued forest use of the property.
- *Require best management practices to protect environmental values* – there are many professional sources of BMPs; those used by applicants, loggers and towns should all be backed by a professional source, such as the BMP Field Guide. Towns may require either that timber harvest plans meet generalized BMPs to be specified and implemented under the supervision of privately contracted professional foresters, or they may specify BMPs by listing them in local ordinances and retaining a publicly-contracted professional forester to review timber harvest plans and assure their implementation.

The types of best management practices that may reasonably be required as part of timber harvest plans include:

- Required buffer strips along streams, steep slopes, scenic byways, recreational trails or where threatened or endangered species exist
- Other erosion and sedimentation control techniques
- Standards for the construction of forest roads, skid trails and stream crossings
- Standards for the construction of log decks and landings
- Standards related to clean-up and site restoration

Towns can greatly assist local landowners, loggers and wood products businesses by working together to use common approaches to forest practices within regions.

Multiple and differing local ordinances can be particularly frustrating for operators, who must familiarize themselves with standards that differ among municipalities, and adjust their operations accordingly if they are to do business there. Towns can provide further assistance by promoting fair and standardized forestland assessment practices within regions.

There are several specific types of ordinance provisions that raise particular concerns because they add effort, time and cost to proposed timber harvests and are difficult and expensive for towns to implement. These involve standards that:

- Are vague and discretionary
- Are uneven in application
- Ask for information that is not readily available
- Impose overly-specific standards
- Require SEQRA review
- Are unduly burdensome
- Unreasonably slow the local review process
- Prohibit most or all harvesting
- Are counter-productive

## **Land Clearing of Trees**

Some towns may wish to adopt review standards for the land clearing of trees for development (frequently mistakenly called “clearcutting” – a silvicultural practice). Because the objective of such a review differs from that of sustainable forestry management, any standards should be separate from a planned timber harvesting review process. In fact, suburban towns are well advised to adopt land clearing standards to help them demonstrate compliance with the Phase II Stormwater requirements (Section 402) of the Clean Water Act. This Act requires permits for stormwater discharges from land clearing that disturbs one or more acres.

Very often, land clearing of trees occurs as part of a subdivision or land development proposal or, sometimes, in advance of one. Subdivision and land development standards can mandate or provide incentives for the retention of specified minimum-diameter trees on site (excepting the area including the footprint of the building, the driveway and lands needed for access by building equipment) or, alternatively, the replacement of any such trees that are removed by new trees of a specified minimum diameter. Retaining or replacing on-site trees can minimize the need for structural stormwater solutions to runoff created by new impervious surfaces.

The difficulty is often in devising and enforcing land clearing standards that can be used when there is not yet a proposed subdivision or land development proposal. Landowners may indicate that they will be conducting a generally-accepted timber harvest and end up land clearing the site in what is clearly not sustainable forestry practice. For this reason, it is understandable that some towns may desire to prohibit land clearing, particularly in growing areas where on-site tree retention on development sites can provide important stormwater and water-quality benefits that will help towns meet required federal Clean Water standards. It is precisely when land is planned for development, and not necessarily as part of sustainable forestry practice, that the removal of tree cover is most problematic for the environment.

For this reason, it may be reasonable for a local review process to be designed to identify applicants whose actual intent is land clearing rather than sustainable forest practice. Specific requested information in a harvesting application could permit an experienced forester on retainer by a town to flag such applicants. While such applicants could not be required to retain or replace specific-diameter trees as under a town’s subdivision and land development standards, they could be required to implement a selection harvest rather than land clear their property, thereby minimizing any environmental damage should the property later be developed. For such local standards to meet with success, they must be thoroughly publicized and accompanied by educational efforts to familiarize landowners with the new requirements. Many landowners are not aware that development lots with mature trees and other vegetation sell at a premium and may minimize the need for and cost of providing structural stormwater controls on-site.<sup>1</sup>

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<sup>1</sup> *A Municipal Official’s Guide to Forestry in New York State*, NY Planning Federations, DEC and Empire State Forest Products Association: (pg 10-21) February 2005