

Chapter 12

ENVIRONMENTAL CONTROL

§ 12-1. SOIL EROSION AND SEDIMENT CONTROL.¹

§ 12-1.1. Mercer County Soil Conservation District. [Ord. #95-1027]

The Mercer County Soil Conservation District shall be the review and inspection authority for all designated development projects within the Township of Hopewell pursuant to N.J.S.A. 4:24-39 et seq. and any regulations promulgated thereunder.

§ 12-1.2. New Projects. [Ord. #95-1027]

Any new "applications for development" (as that term is defined in N.J.S.A. 4:24-41) received after the effective date of this section shall be referred to the Mercer County Soil Conservation District for review, approval and inspection pursuant to N.J.S.A. 4:24-39 et seq. The Township of Hopewell will require a bond for all soil erosion and sediment control measures which may be required, which bond shall be in the form of an escrow guarantee to ensure installation and completion of the required permanent stabilization measures.

§ 12-1.3. Ongoing Projects. [Ord. #95-1027]

- a. The township engineer shall retain responsibility for enforcing implementation of erosion control plans in accordance with Standards for Soil Erosion and Sediment Control for projects which are under construction as of the effective date of this section.
- b. The Mercer County Soil Conservation District shall assume responsibility for implementation of all projects for which final approval (including the soil erosion and sediment control plans) has been granted as of the effective date of this section.

§ 12-1.4. Inspection Fees. [Ord. #95-1027]

All developers of projects subject to the provisions of this section utilizing a revolving escrow fund for inspection fees shall post requisite inspection fees directly with the Mercer County Soil Conservation District in accordance with its fee schedule.

§ 12-2. FLOOD DAMAGE PREVENTION.²

§ 12-2.1. Statutory Authorization. [Ord. No. 2016-1635]

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the Township Committee of the Township of Hopewell of Mercer County, New Jersey does ordain as

1. Editor's Note: Prior ordinance history includes portions of Ordinance Nos. 7/15/74 and 441.

2. Editor's Note: Prior ordinances include Ord. Nos. 512, 645-83, 746-87, 01-1192. Ord. No. 2016-1635 deleted and replaced Section 2-12 in its entirety.

follows.

§ 12-2.2. Findings of Fact. [Ord. No. 2016-1635]

- a. The flood hazard areas of the Township of Hopewell are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- b. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

§ 12-2.3. Statement of Purpose. [Ord. No. 2016-1635]

It is the purpose of this section to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- a. Protect human life and health;
- b. Minimize expenditure of public money for costly flood control projects;
- c. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. Minimize prolonged business interruptions;
- e. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, bridges located in areas of special flood hazard;
- f. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- g. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- h. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 12-2.4. Methods of Reducing Flood Losses. [Ord. No. 2016-1635]

In order to accomplish its purposes, this section includes methods and provisions for:

- a. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- b. Requiring that uses vulnerable to floods including facilities which serve such uses,

- be protected against flood damage at the time of initial construction;
- c. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
 - d. Controlling filling, grading, dredging, and other development which may increase flood damage; and,
 - e. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

§ 12-2.5. Definitions. [Ord. No. 2016-1635]

Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give this section its most reasonable application.

ADMINISTRATIVE OFFICER — The Township Administrator or such other officer who may be appointed is hereby designated to administer this section by granting or denying development permit application in accordance with its provisions.

AH ZONE — Areas subject to inundation by one-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

AO ZONE — Areas subject to inundation by one-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.

APPEAL — A request for a review of the administrative officer's interpretation of any provision of this section or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO or AH Zone on a community's Digital Flood Insurance Rate Map (DFIRM) with a 1% annual or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — Land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. It is shown on the FIRM as Zone V, VE, V1-30, A, AO, A1-A30, AE, A99, or AH.

BASE FLOOD — A flood having a 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE) — The flood elevation shown on a published Flood Insurance Study (FIS) including the Flood Insurance Rate Map (FIRM). For Zones AE, AH, AO, and A1-30 the elevation represents the water surface elevation resulting from a flood that has a 1% or greater chance of being equaled or exceeded in any given year.

BASEMENT — Any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL — A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific

lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

DIGITAL FLOOD INSURANCE RATE MAP (DFIRM) — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

ELEVATED BUILDING — A non-basement building (i) built, in the case of a building in an Area of Special Flood Hazard, to have the top of the elevated floor elevated above the base flood elevation plus freeboard by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

EROSION — The process of the gradual wearing away of land masses.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

FLOOD INSURANCE RATE MAP (FIRM) — The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) — The official report in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

FLOOD OR FLOODING — A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters; and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN MANAGEMENT REGULATIONS — Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such State or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their

contents.

FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than 0.2 foot.

FREEBOARD — A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface prior to construction next to the proposed or existing walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a State inventory of historic places in States with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved State program as determined by the Secretary of the Interior; or
 2. Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements of 44 CFR Section 60.3.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of a floodplain regulation adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION — A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by the municipality.

RECREATIONAL VEHICLE — A vehicle which is [i] built on a single chassis; [ii] 400 square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

START OF CONSTRUCTION — For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading and filling nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its condition before damage would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

VARIANCE — A grant of relief from the requirements of this section that permits

construction in a manner that would otherwise be prohibited by this section.

VIOLATION — The failure of a structure or other development to be fully compliant with this section. A new or substantially improved structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b)(5), (c)(4), (c)(10), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

§ 12-2.6. General Provisions. [Ord. No. 2016-1635]

- a. **Lands to Which This Section Applies.** This section shall apply to all areas of special flood hazards within the jurisdiction of the Township of Hopewell Mercer County, New Jersey.
- b. **Basis for Establishing the Areas of Special Flood Hazard.** The areas of special flood hazard for the Township of Hopewell Community No. 345298 are identified and defined on the following documents prepared by the Federal Emergency Management Agency:
 1. A scientific and engineering report "Flood Insurance Study, Mercer County, New Jersey (All Jurisdictions)" dated July 20, 2016.
 2. "Flood Insurance Rate Map for Mercer County, New Jersey (All Jurisdictions)" as shown on Index and panels 34021C0013F, 34021C0014F, 34021C0016F, 34021C0017F, 34021C0018F, 34021C0019F, 34021C0036F, 34021C0038F, 34021C0079F, 34021C0082F, 34021C0083F, 34021C0084F, 34021C0092F, 34021C0101F, 34021C0102F, 34021C0103F, 34021C0104F, 34021C0106F, 34021C0107F, 34021C0108F, 34021C0109F, 34021C0111F, 34021C0112F, 34021C0113F, 34021C0116F, 34021C0117F, 34021C0126F, 34021C0127F, 34021C0128F whose effective date is July 20, 2016.

The above documents are hereby adopted and declared to be a part of this section. The Flood Insurance Study, maps and advisory documents are on file at Hopewell Township Municipal Clerk, 201 Washington Crossing-Pennington Road, Titusville, NJ 08560.

- c. **Penalties for Noncompliance.** No structure or land shall hereafter be constructed, relocated to, extended, converted, or altered without full compliance with the terms of this section and other applicable regulations. Violation of the provisions of this section by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this section or fails to comply with any of its requirements shall upon conviction thereof be subject to the fines and penalties as set forth at Chapter 3, Section 3-1 of this Code, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Township of Hopewell from taking such other lawful action as is necessary to prevent or remedy any violation.
- d. **Abrogation and Greater Restrictions.** This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions

shall prevail.

- e. Interpretation. In the interpretation and application of this section, all provisions shall be:
 - 1. Considered as minimum requirements;
 - 2. Liberally construed in favor of the governing body; and,
 - 3. Deemed neither to limit nor repeal any other powers granted under State statutes.
- f. Warning and Disclaimer of Liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This section shall not create liability on the part of the Township of Hopewell, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this section or any administrative decision lawfully made thereunder.

§ 12-2.7. Administration. [Ord. No. 2016-1635]

- a. Establishment of a Development Permit. A development permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in subsection 12-2.6b. Application for a development permit shall be made on forms furnished by the administrative officer and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:
 - 1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
 - 2. Elevation in relation to mean sea level to which any structure has been floodproofed.
 - 3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 12-2.9f2; and,
 - 4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- b. Designation of the Local Administrator. The administrative officer is hereby appointed to administer and implement this section by granting or denying development permit applications in accordance with its provisions.

- c. Duties and Responsibilities of the Administrator. Duties of the administrative officer shall include, but not be limited to:
1. Permit Review.
 - (a) Review all development permits to determine that the permit requirements of this section have been satisfied.
 - (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
 - (c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of subsection 12-2.9g1 are met.
 - d. Use of other Base Flood and Floodway Data. When base flood elevation and floodway data have not been provided in accordance with subsection 12-2.6b, Basis for Establishing the Areas of Special Flood Hazard, the administrative officer shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer subsections 12-2.9f1 and 12-2.9f2.
 - e. Information to be Obtained and Maintained.
 1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
 2. For all new or substantially improved floodproofed structures:
 - (a) Verify and record the actual elevation (in relation to mean sea level); and
 - (b) Maintain the floodproofing certifications required in subsection 12-2.7a3.
 3. Maintain for public inspection all records pertaining to the provisions of this section.
 - f. Alteration of Watercourses.
 1. Notify adjacent communities and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
 2. Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.
 - g. Substantial Damage Review.
 1. After an event resulting in building damages, assess the damage to structures due to flood and non-flood causes.
 2. Record and maintain the flood and non-flood damage of substantial damage

structures and provide a letter of Substantial Damage Determination to the owner and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control Section.

3. Ensure substantial improvements meet the requirements of subsections 12-2.9f1 and 12-2.9f2.
- h. Interpretation of FIRM Boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection 12-2.8.

§ 12-2.8. Variance Procedure. [Ord. No. 2016-1635]

- a. Appeal Board.
 1. The Mayor and Township Committee shall hear and decide appeals and requests for variances from the requirements of this section.
 2. The Mayor and Township Committee shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by administrative officer in the enforcement or administration of this section.
 3. Those aggrieved by the decision of the Mayor and Township Committee, or any taxpayer, may appeal such decision to the Superior Court, as an Action in Lieu of Prerogative Writ.
 4. In passing upon such applications, the Mayor and Township Committee, shall consider all technical evaluations, all relevant factors, standards specified in other subsections of this section, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;

- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
 5. Upon consideration of the factors of subsection 12-2.8a4 and the purposes of this section, the Mayor and Township Committee may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section.
 6. The administrative officer shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.
- b. Conditions for Variances.
1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a)-(k) in subsection 12-2.8a4 have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
 2. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 5. Variances shall only be issued upon:
 - (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection 12-2.8a4, or conflict with existing local laws

or ordinances.

6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

§ 12-2.9. Provisions for Flood Hazard Reduction; General Standards. [Ord. No. 2016-1635]

In all areas of special flood hazards, compliance with the applicable requirements of the Uniform Construction Code (N.J.A.C. 5:23) and the following standards, whichever is more restrictive, is required:

- a. Anchoring.
 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
 2. All manufactured homes to be placed or substantially improved shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- b. Construction Materials and Methods.
 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- c. Utilities.
 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters;
 3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and
 4. For all new construction and substantial improvements the electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- d. Subdivision Proposals.
 1. All subdivision proposals and other proposed new development shall be

- consistent with the need to minimize flood damage;
2. All subdivision proposals and other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
 3. All subdivision proposals and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and,
 4. Base flood elevation data shall be provided for subdivision proposals and other proposed new development which contain at least 50 lots or five acres (whichever is less).
- e. Enclosure Openings. All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings in at least two exterior walls of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of flood waters.
- f. Specific Standards. In all areas of special flood hazards where base flood elevation data have been provided as set forth in subsection 12-2.6b or in subsection 12-2.7d, the following standards are required:
1. Residential Construction.
 - (a) New construction and substantial improvement of any residential structure located in an A or AE Zone shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities, elevated at or above the base flood elevation plus one foot or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive.
 - (b) Require within any AO or AH Zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement together with the attendant utilities and sanitary facilities, elevated above the depth number specified in feet plus one foot, above the highest adjacent grade (at least three feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.
 2. Nonresidential Construction. In an Area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure located in an A or AE Zone shall have the lowest floor, including basement together with the attendant utilities and sanitary

facilities:

(a) Either:

- (1) Elevated to or above the base flood elevation plus one foot or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive; and
- (2) Require within any AO or AH Zone on the municipality's DFIRM to elevate above the depth number specified in feet plus one foot, above the highest adjacent grade (at least three feet if no depth number is specified). And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures;

(b) Or:

- (1) Be floodproofed so that below the base flood level plus one foot or as required by ASCE/SEI 24-14, Table 6-1, whichever is more restrictive the structure is watertight with walls substantially impermeable to the passage of water;
- (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
- (3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official as set forth in section 12-2.7e2(b).

3. Manufactured Homes.

(a) Manufactured homes shall be anchored in accordance with subsection 12-2.9a2.

(b) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall:

- (1) Be consistent with the need to minimize flood damage,
- (2) Be constructed to minimize flood damage,
- (3) Have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation plus one foot or as required by ASCE/SEI 24-14, Table 2-1, whichever is more restrictive.

g. Floodways. Located within areas of special flood hazard established in subsection 12-2.6 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential

projectiles, and erosion potential, the following provisions apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. If subsection 12-2.9g1 is satisfied, all new construction and substantial improvements must comply with subsection 12-2.9 Provisions for Flood Hazard Reduction.
3. In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the accumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than 0.2 of a foot at any point.

§ 12-2.10. Severability. [Ord. No. 2016-1635]

If any subsection, paragraph, sentence, clause, or phrase of this section shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the section, which shall remain in full force and effect, and for this purpose the provisions of this section are hereby declared to be severable.

§ 12-2.11. Adoption. [Ord. No. 2016-1635]

This section shall be effective upon final publication and shall remain in force until modified, amended or rescinded by the Township of Hopewell, Mercer County, New Jersey.

§ 12-3. STREAM CORRIDOR PROTECTION.

§ 12-3.1. Definitions. [Ord. #04-1328, § 2]

Definitions for this section are set forth in Chapter 17, Article X, Section 17-181 and are incorporated herein by reference.

§ 12-3.2. General Provisions. [Ord. #04-1328, § 2]

- a. Purposes. The purposes of the stream corridor protection provisions are to:
 1. Assure that adequate water supply is available and maintain the long-term natural equilibrium of the ground and surface waters in Hopewell Township and in neighboring communities.
 2. Improve and maintain the quality of the water supply and sustain diverse populations of aquatic flora and fauna.
 3. Improve the currently impaired streams in the township.
 4. Protect significant ecological components of stream corridors such as floodplains, woodlands, steep slopes and habitats for flora and fauna.

5. Minimize flood related damage to properties in the township and in neighboring communities.
 6. Complement Federal, State, regional, county and municipal watershed, flood hazard and stream corridor protection and management programs.
- b. Applicability. The stream corridor provisions apply to any land containing any portion of a stream corridor as defined in Chapter 17, Article X, Section 17-181. In the event that the requirements of Section 17-115 are not applicable, then the provisions of this chapter shall be applicable.
- c. Activities Permitted in Stream Corridors. Stream corridors shall remain in their natural state and shall not be developed or disturbed, except for the following activities:
1. Any activity subject to regulation by the New Jersey Department of Environmental Protection under the New Jersey Freshwater Wetlands Protection Act.
 2. Reconstruction of a valid nonconforming structure that predates the adoption of this section in the event of partial destruction by fire, natural hazards, or other acts of God, provided the reconstruction does not have a greater footprint or total area than that of the damaged structure and no change in land use occurs.³
 3. Any use or related maintenance thereof that existed prior to the date of adoption of this section.
 4. Any agricultural use or structure existing prior to the date of adoption of this section, but no new agricultural use or structure, except for fences, shall be permitted in a stream corridor, subject to approval by the New Jersey Department of Environmental Protection.
 5. Existing stormwater management facilities located in stream corridors are permitted to remain in a stream corridor and may be expanded or modified in connection with an application for development in accordance with the requirements of the approving authority.
 6. Surveying or activities for the purpose of establishing or re-establishing a boundary line or points, which use only hand-held equipment and do not involve the use of motorized vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed.
- d. Prohibited Activities. All activities not specifically permitted by the provisions of paragraph c above are prohibited. Prohibited activities include, but are not limited to, the following:
1. Alteration of watercourses and stream corridors by development or disturbance of any type.

3. Editor's Note: This section was adopted December 13, 2004 as Ordinance No. 04-1328.

2. Clearing or cutting of any vegetation, except for removal of dead vegetation, pruning for reasons of safety and harvesting of agricultural products.
3. Disposal of brush, debris or any solid or liquid waste.
4. Installation offences and sheds.

§ 12-3.3. Administration. [Ord. #04-1328, § 2]

- a. Stream Corridor Permit. A stream corridor permit shall be required before any prohibited activity is undertaken within any stream corridor as defined in Chapter 17, Article X, Section 17-181, provided that if the approving authority has considered an application for development involving a stream corridor, a stream corridor permit may not be sought for five years after the date of completion of the development.
- b. Duties and Responsibilities of the Administrative Officer. The administrative officer shall be responsible for the issuance of stream corridor permits, in accordance with the procedures and standards set forth in subsections 12-3.4 and 12-3.5 below. The administrative officer shall consult with the township engineer with regard to engineering and technical issues.
- c. Application for Stream Corridor Permit. Application for a stream corridor permit to allow prohibited activities to occur within stream corridors shall be made in accordance with the requirements of subsection 12-3.4 and subject to the considerations set forth in subsection 12-3.5.
- d. Appeal Procedure. Appeals from determinations made by the administrative officer relative to the issuance of stream corridor permits may be made to the zoning board of adjustment in accordance with the requirements of subsection 12-3.7.

§ 12-3.4. Application for Stream Corridor Permit/Procedures. [Ord. #04-1328, § 2]

- a. Procedure. The following procedures shall govern the issuance of stream corridor permits:
 1. The applicant shall file an application with the administrative officer to allow prohibited activities to occur within a stream corridor. Such application shall be on a form prescribed by the township and shall include a concept sketch drawn to scale showing the proposed development or disturbance. Based on the nature of the development or disturbance proposed, and in the reasonable discretion of the administrative officer and the township engineer, the applicant may be required to submit, in addition to the application and the concept sketch, 10 copies of a true and accurate plot plan, prepared by a qualified and licensed New Jersey professional, drawn to a scale of not less than one inch equals 50 feet. If required by the administrative officer or the township engineer in order to make an informed decision, the plot plan shall exhibit the following:
 - (a) The exact size, shape, location and elevation of existing and proposed structures and of any fill, regrading or areas of disturbance;

- (b) Contour lines at intervals of not more than two feet;
 - (c) The stream corridor for a delineated stream as defined in Chapter 17, Article X, Section 17-181;
 - (d) The location of all improvements and disturbance proposed in the stream corridor; and
 - (e) The extent of any proposed watercourse alterations.
2. The administrative officer shall review the submission and shall advise the applicant in writing within 30 days of submission if the application is incomplete and shall specify the items that are lacking. If the administrative officer does not notify the applicant that the application is incomplete, then the application shall be deemed to be complete.
 3. Upon determining the application to be complete, the administrative officer shall refer the stream corridor permit application and all accompanying documents relative thereto to the environmental commission and the township engineer for review and comment. If necessary, the environmental commission shall appoint a subcommittee, consisting of less than an effective majority, in order to facilitate the prompt review of permit applications without requiring the application to await the next regularly scheduled meeting of the full commission. The commission or the subcommittee, jointly with the township engineer, shall review the application, and after giving the applicant an opportunity to be heard with respect thereto, shall provide their joint findings and recommendations in writing to the administrative officer utilizing the considerations for review set forth in subsection 12-3.5 below. The commission shall render its written report within 30 days of referral. Failure to do so without written consent to an extension of time by the applicant shall be deemed to constitute a report in favor of issuance of the permit and without recommendations or conditions.
 4. After review of the consideration set forth in subsection 12-3.5 below and the joint recommendations made by the environmental commission or its subcommittee and the township engineer, the administrative officer may approve the stream corridor permit with or without conditions or may deny the stream corridor permit as deemed necessary to further the purpose of this section. The administrative officer shall make the final determination as to approval with or without conditions or denial of the requested stream corridor permit. Such final determination shall be forwarded in writing to the applicant. The administrative officer shall specify the reasons for the action taken.
 5. If the stream corridor permit is approved, the administrative officer shall issue a permit to the applicant, but such permit shall not relieve the applicant from complying with other applicable laws and ordinances.
 6. If the administrative officer fails to approve or deny the permit within 90 days after the date of submission of a complete application, or within such further time agreed to by the applicant in writing, the application shall be deemed to be approved.

§ 12-3.5. Considerations for Review of Stream Corridor Permits. [Ord. #04-1328, § 2]

- a. The administrative officer shall be guided by the following considerations in reviewing applications for stream corridor permits:
 1. The standards used to grant a design waiver set forth at N.J.S.A. 40:55D-51 a and b, specifically whether the permit request is reasonable and within the general purpose and intent of the provisions of the section and whether the literal enforcement of the section is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.
 2. The extent to which all necessary permits have been obtained from applicable Federal, State or local government agencies having jurisdiction.
 3. The extent to which applicant will mitigate any encroachments into the stream corridor and rehabilitate any and all degraded or disturbed areas within the stream corridor and maintain the integrity of the surrounding habitat.
 4. The extent to which the proposed activity, development or disturbance will measurably increase the danger of flood damage or negatively impact the ecology of the stream corridor.
- b. In the event that the administrative officer grants a stream corridor permit, the stream corridor permit shall only allow the minimum encroachment necessary to afford relief.
- c. Interpretation of Boundaries. The administrative officer, with the advice of the township engineer and subcommittee of the environmental commission, shall make interpretations, where needed, as to the exact location of the boundaries of the stream corridors, for example, where there appears to be a conflict between the mapped or proposed mapped boundaries and actual field conditions.

§ 12-3.6. Stream Corridor Averaging. [Ord. #04-1328, § 2]

An applicant may undertake stream corridor averaging, as defined in Chapter 17, Article X, subsection 17-181. Stream corridor averaging shall only be permitted along the perimeter of retention basins. Stream corridor width may be reduced to a minimum of 25 feet for buildings or other structures or zero feet for dams, pedestrian walkways, walls, and any associated landscaped areas along the perimeter of a retention basin, provided, however, that the total length of stream corridor reduction is not greater than 40% of the length of the perimeter of the retention basin. For every stream corridor reduced in area along a retention basin, there shall be an equivalent increase in stream corridor area provided elsewhere along the perimeter of the retention basin.

§ 12-3.7. Appeal Procedure. [Ord. #04-1328, § 2]

- a. The zoning board of adjustment shall be designated as the agency to act as the appeal authority to hear and decide all appeals from the decision of the administrative officer.
- b. Any applicant wishing to appeal the decision of the administrative officer relative

to the issuance of a stream corridor permit, shall file a notice of appeal with the administrative officer within 20 days of receipt of the administrative officer's decision, specifying the grounds of such appeal. The administrative officer shall immediately transmit to the zoning board of adjustment all the documents constituting the record upon which the action appealed from was taken.

- c. The zoning board of adjustment shall follow the requirements set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-70a et seq., relating to the appeal of the administrative officer's determination. However, the role of the zoning board of adjustment shall not be derived from the Municipal Land Use Law but shall be a function assigned to the zoning board of adjustment by this section as the agency to perform this appeal function.
- d. The zoning board of adjustment shall render a decision no later than 120 days from the date of the notice of appeal. Failure of the board to render a decision within such 120-day period or within such further time as may be consented to by the applicant in writing shall constitute a decision favorable to the applicant.
- e. Any person aggrieved by the decision of the administrative officer may appeal such decision directly to the Superior Court of New Jersey as provided by the laws of the State of New Jersey or may appeal the decision of the zoning board of adjustment, as the case may be.

§ 12-4. FOREST MANAGEMENT AND TREE REMOVAL.

§ 12-4.1. Intent and Purpose. [Ord. No. 2012-1554; Ord. No. 2016-1642]

Trees are declared to be an important cultural, ecological, scenic and economic resource. Proper management of this resource will ensure its maintenance and result in economic returns. Forestry management is intended to meet the objectives of preserving, protecting, enhancing and maintaining trees and providing opportunities for the continued use of forest resources by ensuring management of forest and trees through the application of sound management practices.

It shall be unlawful to cut down, damage, poison or in any other manner destroy or cause to be destroyed any trees covered by this subchapter, except in accordance with the provisions of this section.

§ 12-4.2. Definitions. [Ord. No. 2012-1554; Ord. No. 2016-1642]

ADMINISTRATIVE OFFICER — Shall mean the individual appointed annually by the Township Committee who shall be responsible for the issuance of tree removal permits, in accordance with the procedures and standards set forth herein. The Administrative Officer shall consult with the Municipal Engineer with regard to engineering and technical issues. The Administrative Officer may consult with a Certified Tree Expert or Forester under contract with the Township Committee and the costs for said consultant shall be paid from the Tree Escrow Funds.

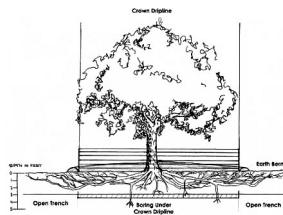
CALIPER: ANSI Z60 FOR NURSERY STOCK — Caliper is a type of diameter measurement used in the nursery industry. The height measurement shall be taken from ground level for field grown stock and from the soil line for container grown stock, which should be at or near the top of the root flare. Caliper measurement of the trunk

shall be taken six inches above the top of root flare up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches, the caliper should be measured at 12 inches above the top of root flare. Seldom are tree trunks perfectly round. The most accurate measurement will result from the use of a diameter tape. Caliper measurements taken with manual or electronic "slot" or "pincer" type caliper tools should be the average of the smallest and largest measurements.

COMMUNITY FORESTRY MANAGEMENT PLAN — Shall mean a plan developed by a municipality that outlines the goals and objectives for managing trees on municipal property with the intent of minimizing liability to the municipality and maximizing the useful life of the tree resource. The plan is to be approved by the New Jersey Department of Environmental Protection, Division of Parks and Forestry, New Jersey Forest Service.

DIAMETER BREAST HEIGHT (DBH) — Shall mean the diameter of a tree measured 4 1/2 feet above the uphill/highest side.

DRIPLINE — Shall mean the line extending vertically from the exterior edge of a tree's live crown to the ground.



EROSION — Shall mean the detachment and movement of soil or rock fragments by water, ice, wind and gravity.

EXEMPT AREA — Shall mean the lot area as provided in this section for which tree replacement shall not be required.

FOREST MANAGEMENT PLAN — Shall mean a plan for the management of timbered or forested lands approved by the New Jersey Department of Environmental Protection, New Jersey Forest Service, or similar State or Federal agency.

OPEN SPACE — Shall mean any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use and enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open spaces, provided that such areas may be improved with only those buildings, structures, streets and off-street parking and other improvements that are designated to be incidental to the natural openness of the land.

SPECIMEN TREE — Shall mean an individual tree that measures 60% or more of the circumference at breast height of a State Record Tree for that species.

STATE RECORD TREE — Shall mean the largest tree of each species found in New Jersey as listed on the NJ State Big Tree Register, available from the NJDEP Division of Parks & Forestry, State Forest Service, PO Box 404, Trenton, NJ 08625.

TREE — Shall mean any State Record Tree, Specimen Tree or any other woody perennial plant greater than 20 feet in height.

TREE ESCROW FUND — Shall mean a fund established by the governing body for the

administration and promotion of tree and shrubbery resource sustainability projects and practices which may be consistent with the Community Stewardship Incentive Program as outlined within the New Jersey Shade Tree and Community Forestry Assistance Act P.L. 1996, chapter 135.

TREE EXPERT — Shall mean a Forester qualified by the State of New Jersey and having a minimum of five years' experience working in New Jersey, a Conservation Officer qualified by the State of New Jersey and having a minimum of five years' experience working in New Jersey or an arborist qualified by the State of New Jersey and having a minimum of five years' experience working in New Jersey.

TREE PLANTING PLAN — Shall mean a specific plan adopted by Hopewell Township for the location and placement of trees on public property.

TREE PRESERVATION AND REMOVAL PLAN — Shall mean a specific plan that contains tree locations and other information required by this section.

TREE REMOVAL PERMIT — Shall mean a permit issued by the Administrative Officer.

TREE REPLACEMENT PLAN — Shall mean a specific plan for replacement of removed trees in accordance with the provision of this subchapter.

§ 12-4.3. Applicability. [Ord. No. 2012-1554 § 4; Ord. No. 2016-1642]

The terms and provisions of this section shall apply as follows:

- a. It shall be unlawful for any person to remove or cause to remove trees above and beyond a combined total of 150 inches of DBH within a 10 year period unless a tree removal permit has first been obtained, (e.g. combined total of 150 inches of DBH equals 15 trees of 10 inches DBH; five trees of 30 inches DBH; 10 trees of 15 inches DBH; etc.)
- b. It shall be unlawful for any person to remove or cause to remove trees which are State record trees or specimen trees unless a tree removal permit has first been obtained.
- c. Exceptions. The provisions of this section shall not apply to the following:
 1. Any property upon which no trees are located, as confirmed by a site visit of the Administrative Officer.
 2. Any tree less than 10 inches DBH.
 3. Any tree or trees removed or cut in accordance with a forest management plan, provided that such plan is filed with the Tax Assessor.
 4. Any tree or trees removed or cut in accordance with an approved conservation plan prepared by the Soil Conservation District, provided that such plan has been filed with the Tax Assessor.
 5. Any tree or trees planted and grown for commercial purposes on property used as a commercial nursery, tree farm, garden center, Christmas tree plantations or tree orchards.

6. Any tree located within or adjacent to an existing cleared area of an existing utility right-of-way/easement and required to be removed as part of a vegetation management plan for an existing utility as approved by the New Jersey Board of Public Utilities. All new utility construction, whether above or below ground and regardless of whether located within an existing or new right-of-way/easement, shall be subject to all requirements of this ordinance.
7. Clear area as established by the FAA for runway safety.
8. Weather emergencies such as hurricanes, fire, windstorm, ice storm, flood, freezing temperatures or other disaster.
9. Dead or diseased trees which are a hazard to persons or property.
10. Qualified Right-To-Farm activities.

§ 12-4.4. Tree Removal Permits; General. [Ord. No. 2012-1554; Ord. No. 2016-1642]

- a. Any person wishing to obtain a tree removal permit shall make application to the Administrative Officer by filing a written application which shall include a Tree Preservation and Removal Plan and payment of application fees as set forth in Chapter 10. No application shall be considered without the payment of the required fees.
- b. Removal of State record trees and specimen trees shall require approval of the Township Committee with consideration of recommendations by the Environmental Commission.
- c. Where an application as required by this section has been submitted, no permit shall be issued until an application for a tree removal permit meeting all of the criteria of this section has been reviewed and approved by the Administrative Officer.
- d. Where an application for a tree removal permit is made in connection with the construction of a building or other improvement, no building permits shall be issued until the tree removal permit has been issued.
- e. All fees, including outstanding permit fees, inspection fees and tree escrow fund contributions, shall be paid prior to the issuance of the tree removal permit.
- f. The Administrative Officer shall approve or deny the tree removal permit within 10 business days after receipt of a completed application and payment of application fees. An additional 10 business days shall be added to the review period if the Administrative Officer requests additional information as may reasonably be required to review a tree removal permit within the original review period.
- g. A tree removal permit shall require the Administrative Officer to inspect the site from time to time to enforce the permit conditions. An inspection fee shall be paid as a condition of any tree removal permit in accordance with Chapter 10, Fees and Permits.
- h. The Administrative Officer shall notify the applicant in writing of the factual basis and criteria for any denial.

- i. The final decision of the Administrative Officer may be appealed to the Township Administrator by filing written notice within 10 days of the final decision. The Township Administrator shall issue its decision within 60 days after notice of appeal is filed. The Township Administrator may delegate its appeal responsibilities to the Environmental Commission. The Township Administrator's decision may be appealed to the Hopewell Township Committee who shall render a final decision within 45 days after a public hearing on the appeal.

§ 12-4.5. Tree Preservation and Removal Plan. [Ord. No. 2012-1554; Ord. No. 2016-1642]

Tree preservation and removal plans shall contain the following minimum information. The Administrative Officer reserves the right to request additional information as may reasonably be required to review a tree removal permit:

- a. The name and address of the applicant.
- b. The name and address of the owner of the property from which the trees are to be removed.
- c. The street address and lot and block of the property.
- d. A certification from the lot owner that the applicant is specifically authorized to make the application for tree removal.
- e. The shape and dimensions of the lot or parcel, including the location of all existing and proposed easements.
- f. Tree removal plans shall consist of a tree location sketch containing at least the minimum amount of pertinent information to enable the determination of compliance with the regulations in this subchapter.
- g. Tree preservation limits.
- h. Limits of all tree protection with appropriate construction details.
- i. All State record and specimen trees to be removed. The applicant shall provide documentation demonstrating that all reasonable efforts have been made to preserve State record and specimen trees, including, but not limited to, if feasible, relocation of existing and proposed infrastructure, roadways and buildings.
- j. Tree replacement plan in accordance with this section. A tree replacement plan may be integrated with landscape plans submitted for other separate land use approvals.
- k. A North arrow.
- l. The location of existing and proposed infrastructure, roadways and buildings, if any.
- m. Soils disturbed during any tree removal shall be stabilized in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.

§ 12-4.6. Criteria for Issuance of Permits. [Ord. No. 2012-1554; Ord. No. 2016-1642]

The tree removal permit shall be approved by the Administrative Officer following his determination that the following criteria have been met:

- a. A tree preservation and removal plan has been provided meeting all of the criteria in subsection 12-4.5;
- b. A tree replacement plan has been provided meeting all of the criteria in subsection 12-4.9;
- c. The Administrative Officer, after consultation with the Municipal Engineer, has determined that the proposed tree removal will NOT:
 1. Result in additional stormwater runoff which will impact adjacent properties;
 2. Create new erosion or will not require a soil erosion and sediment control plan approval by the Mercer County Soil Conservation District; or
 3. Impair growth or impair development of remaining trees on the applicant's property or upon adjacent properties;
 4. Create unusual dust or other nuisances during tree removal;
 5. Cause damage to on or off site utilities including but not limited to wastewater discharge and treatment systems, water supply and distribution systems;
 6. Result in dangerous or hazardous conditions.

§ 12-4.7. Term of Permit. [Ord. No. 2012-1554; Ord. No. 2016-1642]

Approved tree removal permits shall be valid for a period not to exceed 12 calendar months from the date of issuance by the Administrative Officer and shall be conditioned upon payment of all permit and inspection fees. An extension may be granted by the Township Administrator for a period not to exceed three months for good cause shown. All work not completed within the term of permit or term of extension shall be the subject of a new application and the payment of new fees.

§ 12-4.8. Display of Permit and Right of Entry. [Ord. No. 2012-1554; Ord. No. 2016-1642]

- a. The tree removal permit shall be prominently displayed on the site continuously while trees are being removed or replaced or work done as authorized by the tree removal permit and for 10 days thereafter.
- b. All persons cutting or removing trees, if other than the applicant, shall carry with him/her authorization from the owner and applicant authorizing such person to cut or remove trees.
- c. In the event that trees are being cut or removed in accordance with a forest management plan or a soil conservation plan, a copy of said plans shall be in the possession of the person cutting or removing such trees, if not the owner of the lot.

- d. As a condition for the issuance of the permit, the applicant shall agree in writing to the entry onto his/her premises by the Administrative Officer or his designee as necessary to inspect the site in review of the application for a tree removal permit and to inspect the permitted tree removal work to effectuate the provisions of this chapter. Failure to allow such entry shall constitute a violation of the permit and this chapter.

§ 12-4.9. Tree Replacement Plan. [Ord. No. 2012-1554; Ord. No. 2016-1642]

Unless deemed an exception by subsection 12-4.3c, trees to be removed shall be replaced in accordance with a tree replacement plan which shall be prepared in accordance with the following:

- a. For each tree 10 inches in DBH or greater that is removed, the applicant shall prepare a replanting plan for other areas on the same tax lot which is subject to the tree removal.
- b. Tree replacement on the subject tax lot to compensate for the tree removals shall be as follows:
 - 1. Number and size of replacement trees to be used for each tree 10 inches in DBH or larger that is to be removed beyond a combined total of 150 inches DBH and replacement shall be as follows:

Diameter of Removed Trees at Breast Height in Inches	Number of Replacement Trees for Each Tree Removed	Caliper of Replacement Trees
Greater than 10 inches up to 16 inches	2	2 — 2 1/2 inches
Greater than 16 inches up to 23 inches	2	3 inches
Greater than 23 inches up to 30 inches	4	3 1/2 — 4 inches
Greater than 30 inches	5	3 1/2 — 4 inches

- 2. Tree replacement species shall be indigenous to the area and site.
- 3. Trees planted within other existing natural stands of trees on-site may be spaced five feet to 20 feet on center.
- c. Unless otherwise set forth in this section, tree replacement shall follow the guidelines set forth in the "New Jersey No Net Loss Reforestation Act," P.L. 1993, c.106 (c:13:1L-14.2).
- d. All proposed replacement tree species shall be selected from Trees For New Jersey Streets as published by the New Jersey Shade Tree Federation; Street Tree Factsheets, a publication of the Municipal Tree Restoration Program; and the adopted Hopewell Township Community Forestry Plan.
- e. Tree replacement materials shall be provided in accordance with the standards set

forth in ANSI Z60.1, American Standard for Nursery Stock.

- f. Removal of State record trees or specimen trees requires approval of the Hopewell Township Committee. Replacement requirements for any State record tree or specimen tree approved to be removed shall be established by the governing body.
- g. Credits for tree replacement shall be given on a one-to-one basis when one of the following conditions are proposed on the tree replacement plan:
 - 1. Preservation of stands of 10 or more trees with a DBH of six inches or greater within the limit of the disturbance line. Credit will only be given for native trees located within the stand.
 - 2. Preservation of one acre or more of on-site areas having stands of trees with a DBH of six inches or greater which are to be left in natural condition. Preservation shall be provided by a deed of conservation easement from the lot owner to Hopewell Township which deed shall be filed with the Mercer County Clerk's Office by the applicant as a condition of the tree removal permit after approval by the Township Committee. This credit excludes all previous dedicated easements.
- h. Soils disturbed during tree replacement shall be stabilized in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.
- i. All replacement trees shall be maintained in healthy condition for no less than two years from the date of planting.
- j. When the site in question cannot physically accommodate the total replacement amount of trees required by this section, as certified by the applicant and verified by the Administrative Officer, tree replacement may be accomplished by a contribution of the monetary value of non-replaced trees to the Township Tree Escrow Fund in an amount as set forth in Chapter 10, Fees and Permits. Payment shall be a condition of the tree removal permit.

§ 12-4.10. Tree Protection During Construction. [Ord. No. 2012-1554; Ord. No. 2016-1642]

- a. Prior to any tree removal protection shall be installed. Tree protection shall remain until tree removal is complete.
- b. Tree protection shall be provided, as a minimum, in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey.
- c. There shall be no wires or attachments to trees being protected.
- d. Protection is required for any soil disturbance within the drip line of any tree not being removed.
- e. Any trees damaged during construction must be inspected and treated if required in accordance with written guidance from a tree expert. If the damage is unable to be treated as certified by the tree expert the damaged tree shall be removed and replaced in accordance with this section.

- f. No materials of any kind shall be stored and no construction machinery shall be placed within the drip line of any tree to be protected.
- g. When the tree protection area is adjacent to street rights-of-way and utility easements, the location said street rights-of-way and utility easements shall be identified during construction.

§ 12-4.11. Tree Replacement Escrow Fund. [Ord. No. 2012-1554; Ord. No. 2016-1642]

A Tree Escrow Fund shall be established to receive and disburse replacement tree contributions. The primary purpose of the Tree Escrow Fund is to provide for the planting and maintenance of trees and shrubs on public property. The fund will also pay administrative costs to implement the provisions of this section, including but not limited to fees for processing of permits, site inspections, consultants, and supervision of tree replacements. Administrative costs imposed in accordance with this section shall not exceed 30% of the fund, as determined on an annual basis. Appropriations from the Tree Fund shall be authorized by the Township Committee in accordance with a municipal tree planting plan with consideration of recommendations made by the Environmental Commission. The Tree Escrow Fund shall be maintained by the Chief Financial Officer.

§ 12-4.12. Guarantees. [Ord. No. 2016-1642]

- a. Performance Guarantee. When a tree replacement plan is proposed as part of residential construction, compliance with the tree replacement plan shall be required prior to release of the final certificate of occupancy. When a tree replacement plan is part of non-residential construction or new utility construction a performance bond guaranteeing compliance with the tree replacement plan shall be provided to the Township. The performance guarantee shall be in a form and in an amount prescribed by the Municipal Land Use Law.
- b. Maintenance Guarantee. When a tree replacement plan is proposed as part of residential construction, the two year maintenance obligation shall be required as a performance condition of the final certificate of occupancy. When a tree replacement plan is part of non-residential construction or new utility construction, a two year maintenance bond in the amount of 15% of the performance bond shall be provided to the township. The maintenance guarantee shall be in a form and in an amount prescribed by the Municipal Land Use Law.

§ 12-4.13. Violations and Penalties. [Ord. No. 2012-1554; Ord. No. 2016-1642]

- a. Any person, firm, partnership, corporation, association or other legal entity violating any of the provisions of this section shall, upon conviction of such violation be punished by a fine of up to \$2,000 for each violation, in the discretion of the Judge before whom conviction may be had. Each illegally removed tree shall be considered a separate violation. Each violation of any of the provisions of this section and each day the same is violated shall be defined and taken to be a separate and distinct offense. In addition, the court may order restitution (fine and/or appraised value, whichever is greater) and/or replacement of the tree illegally removed.

- b. In addition to other remedies, the Tree Specialist or other authorized official may institute any appropriate legal action to prevent a continuing violation of the terms of this section.

