

**TOWNSHIP OF MONTGOMERY  
ORDINANCE NO. 24-1723**

**AN ORDINANCE AMENDING CHAPTER 2, "ADMINISTRATION", CHAPTER 14, "SOIL AND SOIL REMOVAL", AND CHAPTER 16, "LAND DEVELOPMENT", OF THE CODE OF THE TOWNSHIP OF MONTGOMERY (1984), COUNTY OF SOMERSET, STATE OF NEW JERSEY, UPDATING AND AMENDING THE REQUIREMENTS FOR SOIL DISTURBANCE, SOIL HAULING, AND TREE REMOVAL WITHIN THE TOWNSHIP**

**WHEREAS**, the Mayor, Committee and citizens recognize that trees and shrubs are a natural resource that provide aesthetic, ecological, environmental, economic, and health benefits to the Township of Montgomery and its inhabitants, and as such, require responsibility for their active stewardship; and

**WHEREAS**, the Mayor and Committee recognize that the management of trees and shrubs on individual properties can have significant impacts not only on those individual properties, but also on neighboring properties, the streetscape, the tree canopy, and the entire municipality; and

**WHEREAS**, the Mayor and Committee have found that indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon lots and tracts of land within the Township can exacerbate flooding, increase soil erosion and sedimentation, decrease fertility of the soil, decrease groundwater recharge, and increase buildup of atmospheric carbon; and

**WHEREAS**, the Mayor and Committee recognize these impacts tend to adversely impact the character of the Township and decrease property values, render land unfit and unsuitable for its most appropriate use and adversely affect the health, safety and general welfare of the inhabitants of the Township; and

**WHEREAS**, the Mayor and Committee desire appropriate management of these resources and desire to regulate and control indiscriminate and excessive cutting of trees within the Township, in order to preserve the maximum number of trees in the course of development or redevelopment of a site, protect larger and specimen trees, encourage innovative design, and minimize disturbance to promote the preservation of existing vegetation; and

**WHEREAS**, the Mayor and Committee wish to widely disseminate this information to the public, and have established a six (6) month introductory period wherein violations and penalties will not be assessed above and beyond the required replanting or contributions in lieu of replanting until the introductory period expires on November 1, 2024.

**NOW BE IT ORDAINED**, by the Mayor and Township Committee of the Township of Montgomery, County of Somerset, State of New Jersey, that the following amendments to the Code of the Township shall be made to Chapter 2 of the Code of the Township of Montgomery entitled "Administration", Chapter 14 of the Code of the Township of Montgomery entitled "Soil and Soil Removal", and Chapter 16 of the Code of the Township of Montgomery entitled "Land Development".

**SECTION 1.** Section 2-15.6 Duties of the Shade Tree Committee shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

§2-15.6. Duties.

[Ord. #86-518, S 1]

The duties of the Shade Tree Committee are as follows:

- a. On an on-going basis, review the ordinances of the Township and those of other municipalities and counties, and recommend to the Township Committee ordinance amendments that will promote the planting, proper maintenance and preservation of **native** shade and ornamental trees.
- b. Provide advice to the Township Committee concerning the planting, care **and maintenance of trees**, ~~pruning, spraying~~ **within** Township public rights-of-way **and on public properties**.
- c. When requested, provide cost estimates for inclusion in the Municipal Budget of the work described in **subsection 2-5.16b** ~~above~~ and, ~~when where~~ such work is contracted for, provide assistance in the supervision of the work.
- d. Make information available to residents concerning the planting and care of ornamental, **evergreen** and shade trees on their own properties.
- e. **Encourage tree planting and** stimulate community interest in arboriculture through news articles, planting events and the like.
- f. Locate and map ~~patriarch~~ trees **of significance** within the Township.
- g. Perform such other duties as may, from time to time, be assigned by the Township Committee.
- h. **Review applications to the Planning Board and Zoning Board of Adjustment, and make recommendations on proposed landscaping.**

**SECTION 2.** Section 2-17.6 Duties of the Open Space Committee shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

§2-17.6. Duties.

[Ord. #89-605, S 1]

The duties of the Open Space Committee are as follows:

- a. Make recommendations to the governing body on whether lands proposed for dedication for stream corridors, general open space or farmland preservation shall be accepted or approved by the Township Committee.
- b. Seek on behalf of the Township, opportunities for the acquisition of open space and stream corridors, and for bringing participants into the Farmland Preservation Program in accordance with priorities established by the Township Committee.

- c. Interact with other boards, committees, commissions in the Township in coordinating recommendations for the acquisition of open space and stream corridors, and the development of Farmland Preservation Program participants.
- d. Assist, as may be needed, in the implementation of open space, stream corridor and farmland preservation programs established or approved by the Township Committee.
- e. Perform such other duties as, from time to time, may be assigned by the Township Committee.
- f. **Make recommendations to the governing body regarding stewardship, including tree plantings, in stream corridors, open space or farmland preserved accepted and approved by the Township Committee.**
- g. **Review applications to the Planning Board and Zoning Board of Adjustment, and make recommendations.**

**SECTION 3. Chapter 14 “Soil and Soil Removal” amended.**

Chapter 14 of the Code, entitled “Soil and Soil Removal” shall be amended as follows (additions in **bold** and deletions in ~~striketrough~~):

Chapter 14 ~~Soil and Soil Removal~~ **Soil Disturbance, Soil Hauling, and Tree Removal**

Section 14-1 “Soil Erosion and Sediment Control”

Section 14-2 “Removal of Soil for Sale”

**SECTION 4. Section 14-3 “Clearing and Removal of Trees” replaced.**

Section 14-3 of the Code, entitled “Clearing and Removal of Trees”, shall be deleted in its entirety and replaced with a new Section 14-3 to read as follows:

Section 14-3. Tree Removal and Replacement.

Subsection 14-3.1. Purpose.

The purpose of this section is to establish requirements for tree removal and replacement in Montgomery Township; prevent indiscriminate tree removal, injury, or destruction; establish penalties for noncompliance; to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil; protect the environment, public health, safety, and welfare; further the Township of Montgomery’s Master Plan goal that states “conservation of existing and natural resources should be an integral part of the planning process, with special attention to the constraints on environmentally critical and sensitive areas”.

Subsection 14-3.2. Definitions

As used in this section, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural

number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" means the requirement is always mandatory and not merely directory.

**APPLICANT** – any “person”, as defined below, that is the landowner, agent, optionee, contract purchaser or other person authorized in writing to act for the landowner submitting an application under this chapter.

**BOARD** – shall mean the Montgomery Township Planning Board and/or Zoning Board of Adjustment, unless otherwise specified.

**BUILDING** – a combination of materials to form a construction adapted to permanent, temporary or continuous occupancy and having a roof.

**CALIPER** – the diameter of a tree trunk measured in inches at a point 6 inches above natural grade for trees with trunks 4 inches or less in diameter, and at a point 12 inches above natural grade for trees with trunks greater than 4 inches in diameter. This measurement is a nursery term used to determine the tree size for proposed planting.

#### **DEVELOPMENT**

1. The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure; any mining excavation or landfill; and any use or change in the use of any building or other structure, or land or extension of use of land, by any person, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
2. In the case of development of agricultural lands, development means any activity that requires a state permit, any activity reviewed by the County Agriculture Development Board (CADB) and the State Agriculture Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

**DIAMETER AT BREAST HEIGHT (DBH)** – the diameter of the trunk of an existing tree generally measured at a point four and a half feet above ground level from the uphill side of the tree.

**DISTURBANCE** – the placement or reconstruction of lot coverage, impervious surface or motor vehicle surface, or exposure and/or movement of soil or bedrock, any activity involving clearing, cutting, removing vegetation, grading, transporting, storing or filling of land, development, and any other activity which causes land to be exposed to the danger of erosion.

**DRIPLINE** – the outermost limits of tree branches depicted as a line on the ground. When the outer limits of the branches are unclear, the drip line shall be presumed to be located one and one-half feet from the center of the trunk of a tree for each inch of the trunk DBH.

**ENFORCEMENT OFFICER** – shall mean the Montgomery Township Engineer or their designee.

**GARDEN CENTER** – shall mean a retail business of which the principal sales are garden and landscaping related products.

**INVASIVE PLANT SPECIES** – a plant reproducing outside its native range and outside cultivation that disrupts naturally occurring native plant communities by altering structure, composition, natural processes or habitat quality. Invasive plants are those plants recognized by the New Jersey Department of Environmental Protection Appendix to Policy Directive 2004-2 Invasive Non-Indigenous Plant Species, October 2004 or the latest directive emanating from NJDEP Appendix to Policy Directive 2004-2, and those on the most recent New Jersey Invasive Species Strike Team “Do Not Plant List.”

**MAJOR DEVELOPMENT** – see Section 16-5.2.

**NATIVE SPECIES** – appropriate indigenous vegetation found in the natural community that is suited to the soil, topography, and hydrology of a particular site.

**PERSON** – an individual, resident, partnership, corporation, company, firm, association, agency, or any other entity recognized by law, including its agents or employees.

**STRUCTURE** – a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land, including but not limited to, buildings, fences, standards, signs, towers, tanks, swimming pools and tennis courts, and excluding on-site wastewater treatment and disposal systems

- a. **PRINCIPAL BUILDING OR STRUCTURE** – a building or structure which is the main or primary building or structure on the lot.
- b. **ACCESSORY BUILDING OR STRUCTURE** – a building or structure which is customarily associated with and is subordinate and incidental to the principal building or structure, and which is located on the same lot therewith, including, but not limited to, garages, carports, barns, decks, kennels, sheds, non-portable swimming pools, guest houses and all roofed structures. Any accessory building attached to the principal building shall be considered part of the principal building

**TREE** – a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

- a. **PROBLEM TREE** – any tree, limb or portion thereof, that is dead or dying, as a result of natural causes, including storms, and is hazardous or threatens public health, safety, and welfare. This does not include voluntary removal for construction projects, including but not limited to solar panels, additions, decks/patios, etc.
- b. **REPLACEMENT TREE** – replacement tree nursery stock shall adhere to the current ANSI American Standard for Nursery Stock. A deciduous tree shall measure at least one and one-half (1.5) inches in caliper measured six (6) inches above the ground, and an evergreen tree shall measure at least six (6) feet in height measured from the ground.
- c. **STREET TREE** – a tree planted within the public right-of-way or within 25-feet of the edge of a roadway. Street trees shall be deciduous and shall measure at least one and one-half (1.5) inches in caliper measured six (6) inches above the ground.
- d. **TREE OF SIGNIFICANCE** – any tree that is recognized by the municipal governing body as being of significance due to its size, unique value, age, rarity, or the aesthetic, botanical, ecological, and historical value.

**TREE NURSERY** – shall mean a tree farm and/or wholesale grower of deciduous and evergreen trees.

**TREE AND SOIL PROTECTION ZONE** – the area within the dripline of a tree, as the term is defined herein.

**TREE REMOVAL, DESTRUCTION, OR INJURY** – to kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive or improper pruning, application of substances that are toxic to the tree, and improper grading and/or soil compaction within the Tree and Soil Protection Zone that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of tree treatments intended to manage disease, insects, fungi, Invasive Plant Species, or other damaging factors.

**TREE REPLACEMENT FUND** – a fund established for the administration, planting, maintenance, and other miscellaneous costs associated with the installation of trees, shrubs, or green infrastructure on public rights-of-way and public property in the Township. See Section 14-3.13.

**WOODLAND** – managed or unmanaged areas, groves or stands of trees, i.e., greater than six (6) inches DBH covering an area greater than 1/4 acre; or groves of mature trees greater than twelve (12) inches DBH consisting of more than 10 individual trees within an area of ½ acre.

#### Subsection 14-3.3. Applicability

- a. Any person who desires to remove tree(s) shall first submit a Tree Removal Application to the Enforcement Officer.
- b. A permit shall be required for tree removal and replacement as a standalone permit, or a separate permit required prior to issuance of a zoning, building, construction, health, or other municipal permit.
- c. All applications to the Planning Board or Zoning Board of Adjustment including but not limited to major subdivisions, minor subdivisions, site plans, or variances involving tree removal shall be required to obtain a permit for tree removal and replacement.
- d. Land disturbance of ½ acre or more shall be subject to the full provisions of **Section 14-3**. Land disturbance less than ½ acre shall not be subject to Subsections **14-3.12d1, 14-3.12d2, and 14-3.12d3**.

#### Subsection 14-3.4. Prohibited Activities

- a. No person shall remove a tree in the Township of Montgomery without obtaining a tree removal authorization from the Enforcement Officer. Removing any tree within critical areas, conservation easements, or conservation deed restricted areas is prohibited unless determined by the Enforcement Officer to be necessary for public health and safety.
- b. No person shall remove a Street Tree unless approved by the Enforcement Officer.

#### Subsection 14-3.5. Exemptions.

- a. The Enforcement Officer may exempt a tree or trees from the replacement requirements of this Section when:
  1. The removal or clearing is on property subject to an approved forest stewardship or woodland management plan pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 or on property used as a garden center or tree nursery.
  2. The removal or clearing is on property located within the Airport Hazard Area established pursuant to the New Jersey Air Safety and Zoning Act of 1983, P.L. 1983, c. 260.
  3. Problem trees that cannot be remedied by pruning, provided however, that:
    - i. The person desiring the removal is the owner of the property on which the tree is located; and
    - ii. Said person provides prior notification of the proposed removal to the Enforcement Officer, and the Enforcement Officer verifies the diseased, dead or dying condition.
  4. Removal of tree(s) within fifty feet (50') of a principal structure. Distance shall be measured from the outer edge of the trunk of the tree to the closest point in the structure.
  5. Removal of trees that is necessary to service, maintain, or ensure the continued safe use of a lawfully existing accessory structure, including but not limited to the repair or alteration of an individual subsurface sewage disposal (septic) system, and/or the replacement or repair of a water supply. The Enforcement Officer may require written justification from a Certified Arborist, Licensed Landscape Architect, or similarly certified landscaping professional if the applicant proposes removal of healthy tree(s).
  6. Removal of trees that is necessary to service, maintain, or ensure the continued safe use of a right-of-way, easement, deed restricted area, public property, or utility infrastructure by a political subdivision of this State and any state, interstate or Federal agency, or companies regulated by the New Jersey Board of Public Utilities.
  7. Tree farms with farmland assessment by the Tax Assessor, plant nurseries, fruit orchards, and garden centers.
  8. Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan.
  9. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.
  10. Removal of Invasive Plant Species.

- b. The property owner shall complete a Tree Removal Waiver Application and indicate which category(ies) of the exemptions listed above are applicable.

Subsection 14-3.6. Tree Removal Application or Waiver Application for Exemptions.

The Tree Removal Application or Waiver Application for Exemptions required by this Section shall include the following:

- a. Completed application on a form prescribed by the Enforcement Officer, to be filed in the office of the Township Engineer.
- b. Tree Removal applications shall include a Tree Removal and Replacement Plan or sketch (if permitted by the Enforcement Officer). The plan shall include the following information at a minimum:
  - 1. The plan shall provide for replacing the removed tree(s) in the same or contiguous location(s), and in accordance with the requirements herein. The plan shall require that the applicant replace each removed tree with one or more trees depending on the DBH of the tree(s) removed in accordance with **Schedule A**, the "Tree Replacement Schedule" and/or **Schedule B**, the "Replacement Fee in Lieu of Planting" in Section **14-3.7**.
  - 2. All trees to be removed with DBH, species, location, total number of trees, and proposed limits of disturbance on a map of the property; and
  - 3. Trees to remain within the limits of disturbance, tree protection where required pursuant to this Section, soil erosion and sediment control measures (when applicable); and
  - 4. Replacement trees with caliper and species; and
  - 5. Trees to be removed that may meet the exemption criteria in this section. The determination of exemption eligibility will be determined by the Enforcement Officer during review; and
  - 6. Location of property lines, easements and deed restrictions, including but not limited to those for conservation and sight distance purposes, structures, subsurface disposal system, wells, sewer lines, approximate location of other underground utilities, overhead utilities, and Critical Areas (see **16-6.4**); and
  - 7. Distances between trees and property lines, easements, structures, and subsurface disposal system; and
  - 8. Description of the application purpose; and
  - 9. Site access; and
  - 10. Plan shall be at a scale and clarity suitable for review by the Enforcement Officer; and



11. Such other information as may be deemed necessary by the Enforcement Officer in order to effectively process and decide such application; and
- c. Waiver Application for Exemptions shall include the following information:
    1. Description of the requested applicable exemption category(-ies); and
    2. Photos depicting category(-ies) of exemption(s) sought (if applicable), such as dead/diseased trees, invasives species; and
    3. Online aerial map or survey, plan or map including the following information:
      - i. All trees to be removed with species and location; and
      - ii. If available, location of property lines, easements and deed restrictions, including but not limited to those for conservation and sight distance purposes, structures, subsurface disposal system, wells, sewer lines, Airport Hazard Area, approximate location of other underground utilities, overhead utilities, and Critical Areas (see **16-6.4**); and
    4. If applicable, copy of property owner's woodland management plan, if not already on file with the Township Tax Assessor's Office; and
    5. Such other information as may be deemed necessary by the Enforcement Officer in order to effectively process and decide such application; and
  - d. The holder of a permit shall provide prior notice to the Enforcement Officer in accordance with the time specified on the permit for any tree removal and replacement activities.
  - e. Emergencies – trees may be removed without first obtaining a permit in cases of emergency. Immediate notice and substantiation of the emergency shall be communicated with the Enforcement Officer. The Enforcement Officer shall determine whether an emergency existed that would endanger the public health or safety, or cause damage to public or private property. A Tree Removal Application shall thereafter be made within a period of 48 hours of the removal and compliance with all provisions of this Section shall be met.
    - a. Subsection 14-3.7. Tree Replacement Requirements Trees shall be replaced on the property from which they are removed in accordance with Schedule A.
    - b. In lieu of replanting trees on the subject property, the Applicant may contribute funds in accordance with Schedule B.
    - c. Tree replacement materials shall be provided in accordance Subsection **14-3.12**.
    - d. Street trees removed shall be replaced with street trees according to the standards listed herein, unless otherwise approved by the Enforcement Officer.
    - e. The replacement trees must be protected from wildlife pursuant to the tree protection standards in Subsection **14-3.12**.

- f. Replacement trees shall be planted within 1 year of permit issuance, unless otherwise specified as a condition to a permit for tree removal and replacement; zoning, building, construction, health, or other municipal permits involving tree removal; Board approval; or as otherwise authorized by the Enforcement Officer.
- g. If an applicant is seeking a Certificate of Occupancy or Certificate of Approval for site work and plantings cannot be installed because of seasonal or weather conditions, the timing of planting may be relaxed if the applicant is able to demonstrate to the Enforcement Officer that adequate measures have been put in place to assure future planting, and the Enforcement Officer finds that the health, safety and welfare of the public will not be jeopardized by any such delay. The applicant shall post a Temporary Certificate of Occupancy Guarantee(s) pursuant to [16-9.2d.2.\(c\)](#) for any Temporary Certificate of Occupancy.

<b>Schedule A – Plant Replacement Trees on Subject Property</b>	
<b>DBH of Tree(s) to be Removed</b>	<b>Required No. of Replacement Tree(s) (1.5" minimum caliper) per Tree(s) Removed</b>
DBH of 1.5" to less than 6" as required by a Board approval, street tree, or tree replacement under this section	One (1)
Street Tree DBH more than 6"	Two (2)
DBH of 6" to less than 18"	Two (2)
DBH of 18" to less than 30"	Three (3)
DBH of 30" or greater, or Tree of Significance	Four (4)

- h. In lieu of replanting trees on the subject property, the Applicant may contribute funds in accordance with Schedule B. Contributions may be made to satisfy the entirety of the planting requirements, or in part if contributions are made in combination with planting.

<b>Schedule B – Monetary Contribution in lieu of Replanting</b>	
<b>DBH of Tree(s) to be Removed</b>	<b>Replacement Fee per Removed Tree in Lieu of Planting</b>
DBH of 1.5" to less than 6" as required by a Board approval, street tree, or tree replacement under this section	\$500.00
Street Tree DBH more than 6"	\$1,000.00
DBH of 6" to less than 18"	\$1,000.00
DBH of 18" to less than 30"	\$1,500.00
DBH of 30" or greater, or Tree of Significance	\$2,000.00

**Subsection 14-3.8. Tree Removal Application Fee.**

Tree Removal applications will not be considered complete without payment of the required fees. The non-refundable application fees required by this section shall be paid by the applicant as follows:

- a. \$40 for removal of 1-4 trees plus \$20 per each tree thereafter; or
- b. \$800 for land disturbance of ½ acre or more.
  - 1. The fees in **14-3.8a** and **14-3.8b**, as restated under “Engineering Permits” in 16-9.1a, shall be paid by the applicant for the Enforcement Officer’s, or their designee’s, review of the application. Fees will be assessed during review of municipal zoning, building, construction, or other municipal permits. The fees shall cover review of the initial submission, one resubmission to address comments provided by the Enforcement Officer, and one inspection. For applications subject to **14-3.8a**, an additional fee of \$40 per resubmission shall apply if all comments are not addressed to the satisfaction of the Enforcement Officer, or if additional inspections are needed. For applications subject to **14-3.8b**, an additional fee of \$400 per resubmission shall apply if all comments are not addressed to the satisfaction of the Enforcement Officer, or if additional inspections are needed. Alternatively, the Enforcement Officer may require the applicant to set up an escrow account in an amount calculated pursuant to Section **16-9.2g2** to cover administration and professional review costs if deemed necessary. Where the application review is performed as part of a Board application that requires review escrow, the escrow account established in 16-9.2 shall be used. The application charge is a flat fee and is nonrefundable. The escrow account is established to cover the costs of professional services, including but not limited to engineering, planning, legal and other expenses connected with the review of the submitted materials.
- c. Tree Removal Application fees are not required for applications to the Planning Board or Zoning Board of Adjustment as these applications are subject to escrow accounts listed in Section **16-9.1**. A Tree Removal Application shall still be filed with the Enforcement Officer following Board approvals and prior to starting work.
- d. Replacement fee per removed tree accepted in lieu of planting shall be in addition to any Tree Removal Application fees.
- e. In addition to fees, a maintenance guarantee calculated by the Enforcement Officer shall be provided prior to issuance of a permit. The maintenance guarantee shall be retained for two (2) years following the certification of completion issued by the Enforcement Officer.
- f. Fees shall not apply to tree(s) that meet the exemption criteria in Subsection **14-3.5**.
- g. No more than one permit shall be issued per any one (1) year period for any property.

Subsection 14-3.9. Evaluation of Application.

The following factors shall be reasonably considered by the Enforcement Officer when evaluating an application:

- a. Factors weighing against approval of the application include but are not limited to:
  - 1. Proposed removal of trees in critical areas (see **16-6.4**), conservation easement or conservation deed restricted areas;

2. Loss of threatened and endangered species habitats;
  3. Whether the applicant's purpose for tree removal can reasonably be achieved without the proposed tree removal or clearing;
  4. Proposed removal of replacement trees, street trees, buffer screening or other tree, required pursuant to this Section or as a requirement of Board approval;
- b. Factors weighing in favor of approval include but are not limited to:
1. Meets the definition of problem tree as determined by the Enforcement Officer;
  2. Whether a public purpose is furthered by the proposed tree removal;
  3. Proposed tree replacement or reforestation that enhances wildlife habitat, lessens air or noise pollution, promotes aquifer recharge, decreases area soil erosion and sedimentation, or improves area stormwater run-off conditions;

#### Subsection 14-3.10. Time Period to Review Application

- a. The Enforcement Officer shall review applications and shall grant, deny, or comment on the application within a period of 30 calendar days of submission of a complete application unless, by mutual agreement in writing between the Township and the applicant, the period of 30 days shall be extended for an additional period of 30 calendar days. Tree removal and replacement shall be completed within one (1) year of the date of permit approval, at which time the permit shall expire. The one (1) year time period may be extended by the Enforcement officer for an additional 6 months upon showing of good cause by the applicant. The applicant shall secure a certificate of completion from the Enforcement Officer once plantings are complete. The maintenance guarantee will be retained for 2 years after the certificate of completion. The Enforcement Officer or designee will reinspect plantings prior to maintenance guarantee expiration to determine if additional work is needed or can authorize release of the guarantee. Expiration of a permit does not waive the requirements of this section including replanting and/or contributions in lieu of planting. Any incomplete work will be considered a Violation.

#### Subsection 14-3.11. Appeal of Enforcement Officer's Decision.

If a Tree Removal Application is denied by the Enforcement Officer, the applicant shall have a right to appeal the decision to the Zoning Board of Adjustment within 10 days of receipt of denial.

#### Subsection 14-3.12. Design Criteria

- a. Site Protection and General Planting Requirements.
  1. A conscious effort shall be made to preserve the existing vegetation and woodland wildlife habitat corridors on the site. Existing hedgerows and woodlands shall be preserved and maintained. However, in both of these cases, dead trees and branches and invasive species may be removed if approved by the Enforcement Officer, or as part of an approved subdivision or site plan.

2. Proposed landscaping should provide for a variety and mixture of plantings. The selection should consider susceptibility to disease, colors, season, textures, shapes, blossoms, and foliage as well as local soil conditions and water availability. The plans shall show the location, species, size at planting and quantity of each plant.
3. All plantings shall be species indigenous to the area, shall be grown of nursery stock and free of insects and disease, and in accordance with the standards set forth in ANSI Z60.1, American Standard for Nursery Stock. A list of suggested native tree species shall be maintained in the office of the Township Engineer, and is subject to change from time to time. Non-native species may be considered by the Enforcement Officer.
4. Invasive species shall be prohibited, as recognized by the New Jersey Department of Environmental Protection Appendix to Policy Directive 2004-2 Invasive Non-Indigenous Plant Species, October 2004 or the latest directive emanating from NJDEP Appendix to Policy Directive 2004-2, and those on the most recent New Jersey Invasive Species Strike Team "Do Not Plant List".
5. Landscaping shall be conceived holistically and be designed to achieve a thorough integration of the various elements of site design, including building and parking placement, the natural features of the site and the preservation of pleasing or aesthetic views. Landscaping shall be used to accent and complement the form and type of building proposed, and to re-establish connectivity among existing woodlands and hedgerows.
6. Plantings on stormwater management basin embankments shall be prohibited. Plantings within or near stormwater management facilities in areas other than the embankment must conform to the NJDEP BMP manual, as amended.
7. Plantings and maintenance of vegetation near roadways and intersections shall be consistent with Section 3-8 of the Code of the Township of Montgomery.
8. The Township, at its discretion, may consult with a landscape architect regarding the appropriateness of the landscaping plan as it relates to the physical characteristics of the site. Approval of plantings will be subject to the approval of the Township's Landscape Architect.
9. No grading or changes in topography shall be permitted within woodlands, hedgerows, conservation easements, conservation deed restricted areas, critical areas, or within tree and soil protection zone of trees to remain.
10. Plants with pervasive root systems shall not be located where they may cause damage to drainage pipes, sewer laterals, septic systems, and underground utilities. Trees shall not be planted near or under overhead utilities. Plantings adjacent to drainage infrastructure and storm water management facilities shall meet the minimum offset requirements listed in the most recent version of the New Jersey Stormwater Best Management Practice (BMP) Manual referenced in Chapter 16-5.2.

b. Newly Planted Materials Standards. Newly planted materials, including Street Trees, Replacement Trees, Buffer, and any other plantings needed to meet the requirements listed in this Chapter, shall meet the following standards:

1. All newly planted shade, ornamental, street, buffer, and replacement trees as required by this section shall be of nursery stock, shall have a minimum caliper of 1.5 inches measured six inches from the ground, shall be balled and burlapped.
2. Evergreen trees shall be at least six (6) feet in height, measured from the ground, balled and burlapped.
3. Shrubs and hedges shall be a minimum 18 inches to 24 inches in height, except within sight triangles where plantings are restricted to 12 inches maximum height, and trees are prohibited, pursuant to **16-5.3c**.
4. Burlap shall be cut open and loosened around the entire root ball, or completely removed, prior to backfill around tree trunk. All root ball wire shall be cut or removed.

c. Tree Protection Standards

1. All existing trees having a DBH of six (6) inches or more and wooded areas within twenty (20) feet of the outer limits of the approved limits of disturbance, and trees identified on the plans to remain within the limits of disturbance, shall be protected by snow fence or similar barrier placed at the Tree and Soil Protection Zone.
2. Limits of disturbance shall be set back at least twenty (20) feet from any critical areas, conservation easements, conservation deed restricted areas, whether existing or required, also subject to any other provisions listed in 16-4.1e, 16-6.4.
3. When the limits of disturbance are within twenty (20) feet of a property line, easements and deed restrictions (other than those for conservation purposes), structure, subsurface disposal system, utility, or other sensitive locations, then such areas shall be protected prior to starting work.
4. No grading shall be performed, and no equipment or materials of any kind shall be stored within the Tree and Soil Protection Zone of any tree to remain.
5. Tree protection shall remain in place during construction and/or disturbance.
6. All new trees shall be protected from deer browsing and antler rubbing from grade to a height of 4-feet using black polypropylene mesh, metal wire, or other materials approved by the Enforcement Officer. Protection for newly planted trees shall remain in place during the two (2) year maintenance guarantee period.
7. All plant material shall be guaranteed for at least two (2) years in accordance with 16-9.2. Any plant material that does not survive within that time period or is in poor condition based upon the opinion of the Enforcement Officer shall be replaced by

plant material of the same size and species at the expense of the Applicant, or comparable substitute acceptable to the Enforcement Officer.

8. Any tree not approved for removal that is damaged during work must be inspected by the Enforcement Officer. If the damage cannot be corrected, the damaged tree(s) shall be removed and replaced in accordance with this Chapter, or fees in lieu of replanting shall be paid.

d. Street Trees, Buffer Screening, Tree Planting for Major Development, and Tree Replacement Fund

1. Street Trees.

- a. Street trees are part of the public infrastructure.
- b. Street trees should be planted on both sides of the street at the intervals and/or in groupings as listed below. The Enforcement Officer or Board may allow exceptions based on factors including but not limited to tree species, site conditions, proximity to infrastructure, or other factors:
  - i. 50-foot maximum spacing for trees with an expected mature height of 40-feet or more; and/or
  - ii. 40-foot maximum spacing for trees with an expected mature height of 30-feet to less than 40-feet; and/or
  - iii. 30-foot maximum spacing for trees with an expected mature height of less than 30-feet; and/or
  - iv. An equivalent number may be planted in informal, naturalized groupings if approved by the Enforcement Officer or Board.
- c. Street trees shall be planted on the side of sidewalks furthest from the road. Street trees should be installed a minimum of 8-feet offset from sidewalks, but no more than 25-feet from the road edge. Where the 8-foot offset is not feasible, root barriers shall be required on any side of the street tree abutting sidewalk for a minimum length of 24-feet, centered on the tree, and 18-inches deep. Chemically treated root barriers should be avoided unless other options are not available.
  - i. If street trees can only be accommodated between the road and sidewalk, street trees shall be offset at least 3-feet away from the road edge, and an easement shall be provided for any sidewalk placed outside of the right-of-way. Easements shall abut and run parallel with the right-of-way, and extend a minimum of 2-feet beyond the sidewalk. Private improvements shall not be permitted within the sidewalk easement.

- d. Street trees shall not be located closer than 35 feet from the intersection of the street right-of-way lines, within sight lines, or sight triangle easements, whichever is most restrictive.

2. Buffer Screening.

a. General Requirements

- i. Buffers are for the purposes of separating or protecting one use from another and buffer screening is used to visually shield or obscure the view of one use from another and reduce noise perception and glare from direct or reflected light beyond the lot.
- ii. Buffer widths shall be measured horizontally and shall be dimensioned as required in Section **16-4** or Section **16-6** of this chapter, as the case may be.
- iii. No above surface structure, activity, drainage basin, storage of materials, parking of vehicles or any other improvements shall be permitted in a buffer area, except that underground utilities may be installed where the Board deems that a buffer screening is not necessary within the entire width of the buffer area.
- iv. The location and design of buffer screening shall consider the use being screened or protected; the distance between the use being screened or protected; the distance between the use and the property line; differences in elevation; the types of buffers, such as dense planting, existing woods, a wall or fence, buffer height and width; and other combination of man-made and natural features.
- v. Newly proposed buffers shall be designed, planted, graded, and maintained with grass or ground cover, together with a dense screen of trees, shrubs, existing vegetation, other plant materials. Fences, walls, or other screening provisions may be considered. The general guideline is that the closer or more intense a use or activity is to a property line, the more effective and denser the buffer screening must be year-round in obscuring light (including headlights), vision, and reducing noise beyond the lot(s).
- vi. The preservation of natural wooded tracts shall be an integral part of all site plans and subdivisions and may be calculated as part of the required buffer, provided that the growth is of a density and the area is of a width to serve the purpose of a buffer screening.
- vii. Buffers shall be permanently maintained in good condition at all times and kept clean of all debris, rubbish, and invasive plants. Plant material that does not live or is in poor condition shall be replaced by the owner. Buffer screening easements or deed restrictions shall



be required where deemed necessary by the Enforcement Officer or Board.

- viii. The buffer area shall not be broken except for vehicular or pedestrian access points and required sight distances or easements, unless specifically approved by the Enforcement Officer or Board.
- ix. The installation of that portion of the approved buffer necessary to screen a particular portion of the tract from being viewed from a bordering street or from an adjacent property shall be completed to the greatest extent possible prior to the issuance of building permits for development of that particular portion of the tract.

b. Non-Residential Buffers

- i. Shall include all general buffer screening requirements.
- ii. Buffer areas are required along lot and street lines of all nonresidential lots where said property lines or the center line of adjacent streets abut residential uses or residential zoning district lines, except as otherwise required in Section 16-4.
- iii. The width of the buffer area for each particular district shall be as prescribed in Section 16-4. Buffer areas shall be measured horizontally and at right angles to either a straight lot line or street line, or the tangent lines of curved lots or street lines.

c. Parking Lot and Loading Area Plantings

- i. Buffer screening plantings shall be provided between the off-street parking areas and any lot line including right-of-ways. Fences, walls, berms, and/or other screening provisions may be considered to supplement landscaping.
- ii. All loading areas shall be planted and screened sufficiently to obscure the view of the vehicles and loading platforms from any public street and adjacent use throughout the year. Such screening shall be by an extension of the building, a fence, berm, wall, planting or combination thereof, subject to any standards set in Chapter 14 or Chapter 16.
- iii. Each off-street parking area shall have one tree per 10 parking spaces. The Enforcement Officer or Board may allow exceptions based on factors including but not limited to tree species, site conditions, proximity to infrastructure, or other factors. Planted areas shall be distributed throughout the parking area. Trees may be supplemented with shrubs and ground cover to break the view of parked cars. Planting locations shall not impair sight lines in drive aisles, drive aisle intersections, or at roadway intersections.

- iv. The minimum size of all planting beds within and adjacent to parking areas shall be ten feet in any direction.
- v. Green infrastructure for stormwater management in the form of bio-retention, rain gardens, or other collection measures that will support and sustain plant material shall be integrated in parking and loading areas wherever feasible.

3. Tree Planting Requirements for Major Developments.

- a. In addition to tree replacement as a result of tree removal, as well as meeting the design requirements for Street Trees, Buffers and Buffer Screening, Non-Residential Buffers, Parking Lot and Loading Area Plantings, Replacement, and other design requirements listed herein, a minimum of twenty (20) trees per disturbed acre of land shall be planted if the disturbance exceeds ½ acre or more, or meets the definition of Major Development as defined in Section **16-5.2**. In cases of subdivisions, trees shall be proportionately distributed on each property to the greatest extent practicable based on consultation with the Township Landscape Architect and/or Enforcement Officer. Any trees provided to meet the required street tree, buffer screening, and/or replacement requirements shall not be counted towards the tree planting requirement for Major Developments.

4. Tree Replacement Fund Contribution

- a. The fees listed in Subsection **3.7**, Schedule B may be paid in lieu of planting any required trees. Contributions may be made to satisfy the entirety of the planting requirements, or in part if contributions are made in combination with planting.

e. Critical Areas

- 1. Any disturbance of Critical Areas is subject to the provisions of Section 16-6.4.

f. Conservation Requirements

- 1. For the protection and enjoyment of natural features, critical areas, buffers and buffer screening, conservation easements or conservation deed restricted areas, and/or buffer easements or buffer deed restricted areas, shall be provided and recorded by deed if required by the Board or Enforcement Officer.
  - a. All critical areas as defined in Section 16-6.4, shall be protected by conservation easements or conservation deed restrictions. Where the critical areas or areas to be conserved are wooded, the conservation easements or conservation deed restricted areas shall extend 20 feet beyond the closest tree in order to ensure that there will be no disturbance to the root structure of the tree(s).

- b. Prior to any clearing, grading or construction taking place on a site proposed for development, the easements or deed restricted areas shall be clearly marked in the field by a Professional Land Surveyor using four-inch concrete monuments to be permanently installed at the limits of the easements or deed restricted areas, including any changes in direction, subject to the inspection and approval by the Township Engineer. If the distance between monuments exceeds 250 feet, supplemental monuments or line markers shall be installed at intervals approved by the Township Engineer.
- c. The terms of easements and deed restrictions shall follow the form established by the Township and is subject to the Township Attorney's review and approval.
- d. Where existing vegetation is sparse in critical areas which are to be preserved by conservation easements or conservation deed restrictions, additional plantings shall be required to promote stability to the flood plains, slopes, and to promote the wildlife habitat.

Subsection 14-3.13. Tree Replacement Fund.

- a. A Tree Replacement Fund is hereby established to receive Tree Removal Application fees, contributions made in lieu of required tree planting (whether in whole or in part), and fines collected for violations and penalties. The Township shall use the Tree Replacement Fund towards administration, planting, maintenance, and other miscellaneous costs associated with the installation of trees, shrubs, or green infrastructure on public rights-of-way and public property in the Township. All funds remitted to the Township shall be deposited and maintained in a separate designated bank account.
- b. The Tree Removal Application fees will be used to pay administrative costs to implement the provisions of this Section, including but not limited to costs for processing of permits, site inspections, consultants, and supervisors of tree replacements.
- c. Contributions made in lieu of required tree planting, and fines collected for violations and penalties shall be used towards planting, maintenance, and other miscellaneous costs associated with the installation of trees, shrubs, or green infrastructure on public rights-of-way and public property in the Township. Up to 30 percent of the contributions made can be used towards costs associated with administrative costs listed in Subsection **14-3.13b**.
- d. Appropriations from the Tree Replacement Fund shall be authorized by the Enforcement Officer with consideration of the recommendations by the Township Landscape Architect.
- e. The Tree Replacement Fund shall be maintained by the Chief Financial Officer.

Subsection 14-3.14. Violations and Penalties.

Any person(s) found to be in violation of this Section shall:

- a. A grace period is provided to communicate with Montgomery residents to increase awareness of this ordinance. Any person found to be in violation of this Section from May 1, 2024 to

October 31, 2024 (inclusive) shall be required to plant the required number of replacement trees listed in Schedule A or pay the replacement fee per removed tree in lieu of planting in accordance with Schedule B, or a combination thereof; and

- b. For a first offense on or after November 1, 2024: plant 125% of the required number of replacement trees listed in Schedule A (rounded up to the nearest whole number), or pay 125% of the replacement fee per removed tree in lieu of planting in accordance with Schedule B, or a combination thereof; and
- c. For second and subsequent offenses on or after November 1, 2024: plant 150% of the required number of replacement trees listed in Schedule A (rounded up to the nearest whole number), or pay 150% of the replacement fee per removed tree in lieu of planting in accordance with Schedule B, or a combination thereof; and
- d. Pay all other required fees and escrow listed in this Section.

The Enforcement Officer has the power to revoke a permit if the applicant provided false or misleading information within the application and/or if there is noncompliance with the approved permit.

If the Enforcement Officer cannot determine the DBH of trees removed in violation of this Section, each tree removed shall be considered to have a DBH of 30" or greater for the purposes of calculating replacement trees, replacement fee in lieu of planting, and/or penalties.

Subsection 14-3.15. Inspections.

- a. Prior to granting or denial of applications for tree removal and replacement, an inspection of the site may be made by the Enforcement Officer or a designee.
- b. An inspection with the Enforcement Officer may be required prior to planting to confirm the appropriateness of the planting plan as it relates to the physical characteristics of the site.
- c. Applicants shall schedule inspections after planting to confirm compliance with the approved plans.
- d. Upon completion of the landscaping, the Enforcement Officer shall check for compliance with the approved plans. If necessary, a punch list of outstanding or unsatisfactory items shall be provided to the applicant. Final sign-off shall be given after all work is satisfactorily completed.

#### **SECTION 5. Section 14-4 "Soil Hauling".**

Section 14-4 of the Code, entitled "Clearing and Removal of Trees", shall be added to Chapter 14 to read as follows:

Section 14-4. Soil Hauling

Subsection 14-4.1 Purpose

- a. The purpose of this Section is to prevent adverse impacts on public health, safety, and general welfare of the public and the environment by regulating excavation, placement, filling, grading, regrading, leveling, storing, removal, or otherwise altering or moving of soils and/or fill within, to, or from Montgomery Township. In addition, the intent of this section is to prevent placement of contaminated materials and to control soil operations that may cause or create erosion, dust, mud, and silt deposits on adjoining property, streets, critical areas, and waterways. The requirements in this Section do not exempt an applicant from any other required local, County, State, or Federal approvals, including Soil Conservation District requirements. This Section is intended to act in conjunction with all Soil Conservation District and other applicable requirements with regards to acceptability and placement of soil/fill materials.

#### Subsection 14-4.2. Definitions

As used in this section, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" means the requirement is always mandatory and not merely directory.

**ACCEPTABLE SOIL/FILL** – non-water-soluble, non-decomposable, inert solids such as soil, subsoil, topsoil, sand, clay, loam, gravel, humus, rock, traces of concrete, brick, glass, and/or clay or ceramic products, free of construction/demolition debris, garbage, refuse, or sludge and not containing concentrations of one or more contaminants that exceed the New Jersey Department of Environmental Protection (NJDEP) Residential Direct Contact Soil Remediation Standards or Non-Residential Direct Contact Soil Remediation Standards, whichever is more stringent, as set forth in N.J.A.C. 7:26D (Remediation Standards).

**AGRICULTURAL or HORTICULTURAL** – for the purposes of supporting common farm site activities, including but not limited to the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management; fertilization; weed, disease, and pest control; disposal of farm waste; irrigation, drainage and water management; and grazing.

**APPLICANT** – any “person”, as defined below, that is the landowner, agent, optionee, contract purchaser or other person authorized in writing to act for the landowner, submitting an application under this chapter.

**CONSTRUCTION/DEMOLITION DEBRIS** – mixed waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements, pools, hardscape, and other structures that includes, but is not limited to, treated and untreated wood scrap; tree parts, tree stumps and brush; plaster and wallboard; roofing materials; corrugated cardboard and miscellaneous paper; ferrous and nonferrous metal; non-asbestos building insulation; plastic scrap; carpets and padding; and other miscellaneous materials.

**CONTAMINATED PROPERTY** – any property, including but not limited to structures, sediment, soil and water, that contains a contaminant which is present at such levels or concentration as to require action pursuant to any federal or state statutes or regulations.

**CONTAMINATED SOIL/FILL** – any soil/fill containing contaminants exceeding the current requirements for the most stringent concentrations between the Non-Residential and Residential Direct Contact Soil Remediation Standards pursuant to N.J.A.C. 7:26D (Remediation Standards).

**CRITICAL AREA** –critical areas as defined in Section 16-6.4 of Township Code.

**DEVELOPMENT**

3. The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure; any mining excavation or landfill; and any use or change in the use of any building or other structure, or land or extension of use of land, by any person, for which permission is required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.
4. In the case of development of agricultural lands, development means any activity that requires a state permit, any activity reviewed by the County Agriculture Development Board (CADB) and the State Agriculture Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

**DISTURBANCE** – the placement or reconstruction of lot coverage, impervious surface or motor vehicle surface, or exposure and/or movement of soil or bedrock, any activity involving clearing, cutting, removing vegetation, grading, transporting, storing or filling of land, development, and any other activity which causes land to be exposed to the danger of erosion.

**DRAINAGE** – the removal of surface water or groundwater from land by drains, grading, or other means.

**DREDGED MATERIAL** – sediments removed from under a body of water such as, but not limited to, a lake, stream, and/or river, removed during a dredging operation that are displaced or removed to another location.

**EROSION** – the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

**EROSION AND SEDIMENT CONTROL PLAN** – a plan which fully indicates necessary land treatment measures, including a schedule of the timing for their installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be in accordance with standards adopted by the Soil Conservation Committee of the Department of Agriculture, State of New Jersey.

**EXCAVATION OR CUT** – any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

**GRADE or REGRADE** – dig, excavate, move, remove, place, deposit, fill, grade, regrade, strip, level, or otherwise alter, change the location, contour, transport, or supply soil/fill.

**HORTICULTURAL** – see AGRICULTURAL.

**LAND** – any ground, soil or earth, including marshes, swamps, drainage-ways and areas not permanently covered by water within the Township.

**LOT** – any designated parcel, tract or area of land, separated from other parcels, established by a plat, subdivision, deed, survey, metes and bounds description, and/or otherwise as permitted by law and to be used, developed or built upon as a unit; provided that no portion of an existing public street shall be included in calculating a lot boundary or lot area. The word "lot" includes the words "plot" and "premises".

**PERMIT** – the official document issued by the Township Engineer or their designee approving the Application for import, export, and/or transfer of Soil/Fill to, from, or within Montgomery Township.

**PERSON** – an individual, resident, partnership, corporation, company, firm, association, agency, or any other entity recognized by law, including its agents or employees.

**REDEVELOPMENT** – any development of a previously developed area.

**REMEDIAL ACTION** – as defined in the Technical Requirements for Site Remediation (Technical Requirements) at N.J.A.C. 7:26E–1.8, those actions taken at a contaminated site as may be required by the New Jersey Department of Environmental Protection (NJDEP), including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any contaminant is remediated in compliance with the applicable remediation standards. A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met.

**REMEDICATION** – as defined in the Technical Requirements at N.J.A.C. 7:26E–1.8, all necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation and remedial action; provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

**SEDIMENT** – solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water or gravity as a product of erosion.

**SITE** – any plot, parcel or parcels of land.

**SOIL/FILL** – material placed at a location for the purpose of filling low areas, changing the contours of an area, stabilizing existing grades and/or raising the grade of an area. Fill typically consists of soil, but may also include but is not limited to non-water-soluble, traces of non-decomposable, inert solids, such as rock, stone, gravel, sand, brick, block, concrete, glass, earth, dirt, clay, loam, ceramic products, and/or any combination thereof. The terms soil and fill may be used interchangeably in this Section if used alone.

**SOIL CONSERVATION DISTRICT** – Somerset-Union Conservation District as organized in accordance with the provisions of Chapter 24, Title 4, of the New Jersey Revised Statutes.

**TOPSOIL** – friable, loamy soil/fill, free of debris, objectionable weeds and stones, typically composed of 2% or more by weight of organic matter, and containing no toxic substance or adverse chemical or harmful physical condition, that has the ability to support vegetation as the top layer of earth.

**UNSUITABLE SOIL/FILL** – peat moss, organic material, vegetation, leaves, tree stumps, wood chips, sawdust, chemical waste, tires, wooden logs, contaminated soil/fill, or as otherwise determined by the Township Engineer.

Subsection 14-4.3. Applicability

- a. A permit for soil hauling is required to import or export any quantity of soil/fill material to, from, or within Montgomery Township.
- b. No person shall deposit, place, or export soil/fill material, or cause, allow, or authorize soil/fill to be placed on or exported from any property in the Township of Montgomery, unless a permit is issued by the Township Engineer along with any other applicable county, state or federal approval(s) or permit(s).
- c. Unless otherwise exempt under this chapter, no permit shall be issued for soil/fill import unless:
  1. The applicant submits proof that the soil/fill material has been tested consistent with the requirements of this Section to demonstrate the material is acceptable soil/fill; and
  2. The soil/fill meets the definition of acceptable soil/fill; and
  3. A soil disturbance permit is obtained pursuant to Section **14-1**; and
  4. The application otherwise conforms with the standards of this chapter and the requirements on the application form.
- d. Unless otherwise exempt under this chapter, no permit shall be for soil/fill export issued unless:
  1. The applicant provides documentation from the municipal engineer or other appropriate municipal official acknowledging the material is being imported to the locality under their jurisdiction, provides documentation from NJDEP registered soil and fill recycling or solid waste facilities stating that the material will be accepted, or other documentation acceptable to the Township Engineer to ensure proper disposal. No case shall preclude the applicant from testing soil/fill if required by the receiving municipality or recycling facility.
  2. When exporting Soil/Fill, the applicant provides documentation from the property owner receiving the material, acknowledging the material is being imported to their property.
  3. The soil/fill meets the definition of acceptable soil/fill, if required to comply with **14-4.3d.1** above; and
  4. A soil disturbance permit is obtained pursuant to Section **14-1**; and
  5. The application otherwise conforms with the standards of this chapter and the requirements on the application form.



- e. This Section does not apply to soil/fill imported or exported for the purposes of remediation pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS, N.J.A.C. 7:26C) and Technical Requirements for Site Remediation (N.J.A.C. 7:26E), operation and/or closure of sanitary landfills (N.J.A.C. 7:26), dredge repository sites approved by State or Federal agencies, or any projects undertaken by Montgomery Township, Somerset County, the State, or any government agency.

Subsection 14-4.4. Prohibited Activities

- a. No person shall import soil/fill to, or export soil/fill from the Township of Montgomery without having previously obtained a permit authorizing soil hauling from the Township Engineer.
- b. No person shall modify the topography of a property in a manner that causes adverse impacts on surrounding property or rights-of-way.
- c. Permanent stockpiling or material mining is prohibited.
- d. Importing or placement of contaminated or unsuitable soil/fill.

Subsection 14-4.5. Exemptions.

- a. The Township Engineer may exempt a person from the requirement to obtain a soil hauling permit when:
  - 1. Placing of acceptable soil/fill for septic installation and/or repair certified to be such by a licensed New Jersey engineer; or approved by the Health Department.
  - 2. Placing virgin quarry products including, but not limited to, rock, stone, gravel, sand, and other mined natural products that do not constitute soil or unsuitable materials.
  - 3. Acceptable soil/fill material being moved from one section of an owner's property to another section of the same property. This activity may require a soil disturbance permit pursuant to Section **14-1**.
  - 4. Agricultural or horticultural use of lands when operated in accordance with a farm conservation plan approved by the Somerset-Union Conservation District or when a determination has been made by the Soil Conservation District that such use will not cause excessive erosion or sedimentation.
  - 5. Landscaping and gardening by property owners or their agents, provided it does not alter existing drainage patterns.

Subsection 14-4.6. Permit Application.

The permit application required by this Section shall include the following:

- a. Completed application on a form prescribed by and filed in the office of the Township Engineer.

- b. Permit applications shall include the following information at a minimum:
1. Hauling route, estimated number, gross vehicle weight of trucks, and weight restrictions of any roads along the route.
  2. Topographical survey of existing conditions on the site.
  3. A plot plan prepared by a licensed professional pursuant to applicable statutes at a scale not less than 1 inch equals 30 feet, or sketch (if permitted by the Township Engineer), showing (at a minimum) limits of disturbance; existing and proposed grading contours (see Section **16-5.2z**); estimated cut/fill quantities for soil import and/or export; soil erosion and sediment control measures, construction sequence, and construction details conforming to the Standards for Soil Erosion and Sediment Control in New Jersey as amended (unless exempt under Section **14-1.11**); construction access location; stabilization measures; locations of critical areas (see Section **16-6.4**), easements, deed restrictions, lot boundaries, and methods of preventing encroachments; any other plan requirements listed in Chapter **14** or Chapter **16** (generally including but not limited to Sections **14.1, 14.2, 16-5.2, 16-6.4, 16-8, and 16-10.3**, the provisions of which are incorporated by reference herein as if fully restated); and any other information required by the Township Engineer or their representative deemed necessary to evaluate the application and ensure there will be no detrimental impacts to surrounding properties, rights-of-way, critical areas, or other areas.
  4. Soil/fill testing analytical data by a Certified Laboratory, Professional Engineer, or other authorized professional, demonstrating compliance with the most stringent concentrations between the Non-residential and Residential Direct Contact Soil Remediation Standards pursuant to N.J.A.C. 7:26D (Remediation Standards).
    - i. When importing or transferring soil within Montgomery Township, provide a Professional Engineer or Certified Laboratory certification stating that the soil is clean, meets the definition of Acceptable Soil/Fill.
    - ii. When exporting soil from Montgomery Township, provide documentation from the receiving municipality acknowledging receipt of the materials, or provide a letter from NJDEP registered soil and fill recycling or solid waste facilities, stating that the material will be accepted. Neither case precludes applicant from testing soil if required by the receiving municipal engineer or recycling facility.
  5. Copies of any and all other approvals, licenses, and permits required by any other government agency or entity having jurisdiction over the subject application, or over the subject property, as applicable.
- c. The Township Engineer may require that the applicant provide the following:
1. Written notification to the property owners that may be directly or indirectly affected by the proposed work, and acknowledgement of receipt. Notification shall be limited to properties within 200 feet of the site boundary.

Subsection 14-4.7. Permit Application Fee.

- a. There is no fee charged by Montgomery Township for soil hauling permits. Fees may apply for associated soil disturbance permits pursuant to Section **14-1**.

Subsection 14-4.8. Evaluation of Application.

- a. In addition to the testing requirements otherwise set forth in this Section, the Applicant shall demonstrate to the Township Engineer that there will be no negative impacts created by the import, export, or movement of soil/fill, the land disturbance, associated development, or redevelopment. The following minimum factors shall be considered:
  1. Purpose of application; and
  2. Soil erosion; and
  3. Surface water drainage, and surface/groundwater quality; and
  4. Impacts to public streets, improvements, property, critical areas, utilities, other surrounding areas, and services; and
  5. Changes in topography which will result after the placement, removal, or movement of soil/fill; and
  6. Acceptability and suitability of soil/fill; and
  7. Duration of temporary stockpiling; and
  8. Reuse of existing materials to minimize hauling; and
  9. Such other factors as may negatively impact public health, welfare, and safety; and
  10. Comments and recommendations of the Township Engineer.

Subsection 14-4.9. Time Period to Review Application

- b. The Township Engineer shall review applications and shall grant, deny, or comment on the application within a period of 30 calendar days of submission of a complete application unless, by mutual agreement in writing between the Township and the applicant, the period of 30 days shall be extended for an additional period of 30 calendar days. Permits granted for soil hauling shall remain in force and effect until the Township Engineer certifies completion of the work, or the permit expires. The permit shall expire one (1) year from the date of approval. The one (1) year time period may be extended by the Township Engineer for an additional 6 months upon showing of good cause by the applicant.

Subsection 14-4.10. Appeal of Township Engineer's Decision.

- a. Whenever an application for a permit is denied, the applicant may appeal the denial to the Township Committee by filing a written notice of appeal with the Township Clerk within 10 days

after receiving notice of the denial. The Township Committee shall discuss the matter at the next available public meeting to modify, affirm or reverse the decision.

Subsection 14-4.11. Violations and Penalties.

Any person who violates any provision of this Section shall be subject to fines and penalties established in Chapter 1, Section 1-5. Every day in which such violation continues after due notice has been served shall constitute a separate violation or offense. Upon order of the Court, the violator shall pay all costs associated with analytical testing, remediation, removal and proper disposal of soil/fill material determined to not to comply with the definition of acceptable soil/fill.

Subsection 14-4.12. Inspections.

- a. Prior to granting or denial of soil hauling applications, an inspection of the site may be made by the Township Engineer or a designee.
- b. The Township Engineer or a designee may inspect the site to confirm the appropriateness of the applicant's plan as it relates to the physical characteristics of the site.
- c. Applicants shall schedule inspections during work hours to confirm compliance with the approved plans.
- d. The Applicant shall notify the Township Engineer when work is complete. The Township Engineer or designee shall check for compliance with the approved plans. If necessary, a punch list of outstanding or unsatisfactory items shall be provided to the applicant. Final sign-off shall be given after all work is satisfactorily completed.
- e. The Township Engineer or designee may inspect sites within Montgomery Township that are suspected to be in violation of this Chapter. The applicant shall furnish copies of disposal tickets, as applicable and when requested by the Township Engineer or designee.

Subsection 14-4.13. Permit suspension or revocation.

- a. Any person issued a soil hauling permit shall comply with all conditions set forth in the permit and in this Section. Submitting false information or noncompliance with a permit may subject the person receiving a permit to a violation or penalty pursuant to Subsection 14-4.11 above and/or suspension or revocation of such a permit.

Subsection 14-4.14. Final Completion.

- a. As a condition precedent to the issuance of Certificates of Occupancy, Certificates of Approval, or any Certificate of Completion, the applicant shall submit an as-built grading plan prepared by a licensed land surveyor to the Township that also bears an engineer's certification that the as-built conditions, including lot grading, comply with the approved final design and soil erosion control plans. The as-built plan shall include any pertinent information requested by the Township Engineer, traditionally including but not limited to site features, grading, limits of clearing, and pertinent information about the property.
- b. If an applicant is seeking a Certificate of Occupancy or Certificate of Approval for site work and final soil stabilization cannot be installed because of seasonal or weather conditions, the timing

of stabilization may be relaxed if the applicant is able to demonstrate to the Township Engineer that adequate measures have been put in place to assure future planting, and the Township Engineer finds that the health, safety and welfare of the public will not be jeopardized by any such delay. The applicant shall post a Temporary Certificate of Occupancy Guarantee(s) pursuant to 16-9.2d.2.(c) for any Temporary Certificate of Occupancy or Temporary Certificate of Approval.

**SECTION 6.** Section 16-2.1 Definitions shall be amended to add the following definitions:

For the purpose of this chapter, certain phrases and words are herein described as follows: Words used in the present tense include the future; words used in the singular number include the plural number and vice versa; words used to include the male gender include the female gender and vice versa; the word "used" shall also include arranged, designed, constructed, altered, converted, rented, leased or intended to be used; the word "lot" includes the word "plot" and "premises"; the word "building" includes the word "structure", "dwelling" or "residence"; the word "shall" is mandatory and not discretionary. Any word or item not defined herein shall be used with a meaning as defined in Webster's New International Dictionary of the English Language, unabridged and latest edition. Moreover, whenever a term is used in the chapter which is defined in N.J.S.A. 40:55D-1, et seq., such term is intended to have the meaning as defined in N.J.S.A. 40:55D-1, et seq., unless specified to the contrary in this chapter.

**ACCEPTABLE SOIL/FILL** – non-water-soluble, non-decomposable, inert solids such as soil, subsoil, topsoil, sand, clay, loam, gravel, humus, rock, traces of concrete, brick, glass, and/or clay or ceramic products, free of construction/demolition debris, garbage, refuse, or sludge and not containing concentrations of one or more contaminants that exceed the New Jersey Department of Environmental Protection (NJDEP) Residential Direct Contact Soil Remediation Standards or Non-Residential Direct Contact Soil Remediation Standards, whichever is more stringent, as set forth in N.J.A.C. 7:26D (Remediation Standards).

**AGRICULTURAL or HORTICULTURAL** – for the purposes of supporting common farm site activities, including but not limited to the production, harvesting, storage, grading, packaging, processing, and the wholesale and retail marketing of crops, plants, animals, and other related commodities and the use and application of techniques and methods of soil preparation and management; fertilization; weed, disease, and pest control; disposal of farm waste; irrigation, drainage and water management; and grazing.

**APPLICANT**– any “person”, as defined below, that is the landowner, agent, optionee, contract purchaser or other person authorized in writing to act for the landowner submitting an application under this chapter.

**CALIPER** – the diameter of a tree trunk measured in inches at a point 6 inches above natural grade for trees with trunks 4 inches or less in diameter, and at a point 12 inches above natural grade for trees with trunks greater than 4 inches in diameter. This measurement is a nursery term used to determine the tree size for proposed planting.

**CONSTRUCTION/DEMOLITION DEBRIS** – mixed waste building material and rubble resulting from construction, remodeling, repair, and demolition operations on houses, commercial buildings, pavements, pools, hardscape, and other structures that includes, but is not limited to, treated and untreated wood scrap; tree parts, tree stumps and brush; plaster and wallboard; roofing materials;

corrugated cardboard and miscellaneous paper; ferrous and nonferrous metal; non-asbestos building insulation; plastic scrap; carpets and padding; and other miscellaneous materials.

**CONTAMINATED SOIL/FILL** – any soil/fill containing contaminants exceeding the current requirements for the most stringent concentrations between the Non-Residential and Residential Direct Contact Soil Remediation Standards pursuant to N.J.A.C. 7:26D (Remediation Standards).

**CONTAMINATED PROPERTY** – any property, including but not limited to structures, sediment, soil and water, that contains a contaminant which is present at such levels or concentration as to require action pursuant to any federal or state statutes or regulations.

**CRITICAL AREA** – critical areas as defined in Section 16-6.4 of Township Code.

**DEVELOPMENT** – shall mean the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation or landfill, and any use or change in use of any building or other structure or land or extension of use of land, for which permission may be required.

**DIAMETER AT BREAST HEIGHT (DBH)** – the diameter of the trunk of an existing tree generally measured at a point four and a half feet above ground level from the uphill side of the tree.

**DISTURBANCE** – the placement or reconstruction of lot coverage, impervious surface or motor vehicle surface, or exposure and/or movement of soil or bedrock, any activity involving clearing, cutting, removing vegetation, grading, transporting, storing or filling of land, development, and any other activity which causes land to be exposed to the danger of erosion.

**DRAINAGE** – the removal of surface water or groundwater from land by drains, grading, or other means.

**DREDGED MATERIAL** – sediments removed from under a body of water such as, but not limited to, a lake, stream, and/or river, removed during a dredging operation that are displaced or removed to another location.

**DRIPLINE** – the outermost limits of tree branches depicted as a line on the ground. When the outer limits of the branches are unclear, the drip line shall be presumed to be located one and one-half feet from the center of the trunk of a tree for each inch of the trunk DBH.

**ENFORCEMENT OFFICER** – shall mean the Montgomery Township Engineer or their designee.

**EROSION** – the detachment and movement of soil or rock fragments by water, wind, ice or gravity.

**EROSION AND SEDIMENT CONTROL PLAN** – a plan which fully indicates necessary land treatment measures, including a schedule of the timing for their installation, which will effectively minimize soil erosion and sedimentation. Such measures shall be in accordance with standards adopted by the Soil Conservation Committee of the Department of Agriculture, State of New Jersey.

**EXCAVATION OR CUT** – any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

**GARDEN CENTER** – shall mean a retail business of which the principal sales are garden and landscaping related products.

**GRADE or REGRADE** – dig, excavate, move, remove, place, deposit, fill, grade, regrade, strip, level, or otherwise alter, change the location, contour, transport, or supply soil/fill.

**HORTICULTURAL** – see AGRICULTURAL.

**INVASIVE PLANT SPECIES** – a plant reproducing outside its native range and outside cultivation that disrupts naturally occurring native plant communities by altering structure, composition, natural processes or habitat quality. Invasive plants are those plants recognized by the New Jersey Department of Environmental Protection Appendix to Policy Directive 2004-2 Invasive Non-Indigenous Plant Species, October 2004 or the latest directive emanating from NJDEP Appendix to Policy Directive 2004-2, and those on the most recent New Jersey Invasive Species Strike Team “Do Not Plant List.”

**LAND** – any ground, soil or earth, including marshes, swamps, drainage-ways and areas not permanently covered by water within the Township.

**LOT** – ~~shall mean a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit; provided that no portion of an existing public street shall be included in calculating a lot boundary or lot area. The word "lot" includes the words "plot" and "premises".~~ **any designated parcel, tract or area of land, separated from other parcels, established by a plat, subdivision, deed, survey, metes and bounds description, and/or otherwise as permitted by law and to be used, developed or built upon as a unit; provided that no portion of an existing public street shall be included in calculating a lot boundary or lot area. The word "lot" includes the words "plot" and "premises".**

**NATIVE SPECIES** – appropriate indigenous vegetation found in the natural community that is suited to the soil, topography, and hydrology of a particular site.

**PERMIT** – the official document issued by the Township Engineer or their designee approving the Application for import, export, and/or transfer of Soil/Fill to, from, or within Montgomery Township.

**PERSON** – an individual, resident, partnership, corporation, company, firm, association, agency, or any other entity recognized by law, including its agents or employees.

**REDEVELOPMENT** – any development of a previously developed area.

**REMEDIAL ACTION** – as defined in the Technical Requirements for Site Remediation (Technical Requirements) at N.J.A.C. 7:26E–1.8, those actions taken at a contaminated site as may be required by the New Jersey Department of Environmental Protection (NJDEP), including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, whether to an unrestricted use or otherwise, designed to ensure that any contaminant is remediated in compliance with the applicable remediation standards. A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met.

**REMEDICATION** – as defined in the Technical Requirements at N.J.A.C. 7:26E–1.8, all necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge, including, as

necessary, the preliminary assessment, site investigation, remedial investigation and remedial action; provided, however, that "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

**SEDIMENT** – solid material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water or gravity as a product of erosion.

**SITE** – any plot, parcel or parcels of land.

**SOIL/FILL** – material placed at a location for the purpose of filling low areas, changing the contours of an area, stabilizing existing grades and/or raising the grade of an area. Fill typically consists of soil, but may also include but is not limited to non-water-soluble, traces of non-decomposable, inert solids, such as rock, stone, gravel, sand, brick, block, concrete, glass, earth, dirt, clay, loam, ceramic products, and/or any combination thereof. The terms soil and fill may be used interchangeably in this Section if used alone.

**SOIL CONSERVATION DISTRICT** – Somerset-Union Conservation District as organized in accordance with the provisions of Chapter 24, Title 4, of the New Jersey Revised Statutes.

**TOPSOIL** – friable, loamy soil/fill, free of debris, objectionable weeds and stones, typically composed of 2% or more by weight of organic matter, and containing no toxic substance or adverse chemical or harmful physical condition, that has the ability to support vegetation as the top layer of earth.

**TREE** – a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

- a. **PROBLEM TREE** – any tree, limb or portion thereof, that is dead or dying, as a result of natural causes, including storms, and is hazardous or threatens public health, safety, and welfare. This does not include voluntary removal for construction projects, including but not limited to solar panels, additions, decks/patios, etc.
- b. **REPLACEMENT TREE** – replacement tree nursery stock shall adhere to the current ANSI American Standard for Nursery Stock. A deciduous tree shall measure at least one and one-half (1.5) inches in caliper measured six (6) inches above the ground, and an evergreen tree shall measure at least six (6) feet in height measured from the ground.
- c. **STREET TREE** – a tree planted within the public right-of-way or within 25-feet of the edge of a roadway. Street trees shall be deciduous and shall measure at least one and one-half (1.5) inches in caliper measured six (6) inches above the ground.
- d. **TREE OF SIGNIFICANCE** – any tree that is recognized by the municipal governing body as being of significance due to its size, unique value, age, rarity, or the aesthetic, botanical, ecological, and historical value.

**TREE NURSERY** – shall mean a tree farm and/or wholesale grower of deciduous and evergreen trees.

**TREE AND SOIL PROTECTION ZONE** – the area within the dripline of a tree, as the term is defined herein.



**TREE REMOVAL, DESTRUCTION, OR INJURY** – to kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive or improper pruning, application of substances that are toxic to the tree, and improper grading and/or soil compaction within the Tree and Soil Protection Zone that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of tree treatments intended to manage disease, insects, fungi, Invasive Plant Species, or other damaging factors.

**TREE REPLACEMENT FUND** – a fund established for the administration, planting, maintenance, and other miscellaneous costs associated with the installation of trees, shrubs, or green infrastructure on public rights-of-way and public property in the Township. See Section 14-3.13.

**UNSUITABLE SOIL/FILL** – peat moss, organic material, vegetation, leaves, tree stumps, wood chips, sawdust, chemical waste, tires, wooden logs, contaminated soil/fill, or as otherwise determined by the Township Engineer.

**WOODLAND** – managed or unmanaged areas, groves or stands of trees, i.e., greater than six (6) inches DBH covering an area greater than 1/4 acre; or groves of mature trees greater than twelve (12) inches DBH consisting of more than 10 individual trees within an area of ½ acre.

**SECTION 7.** Footnote 12 under Subsection 16-4.2d under “MR Mountain Residential, R-5 Single Family Residential, R-2 Single Family Residential, R-1 Single Family Residential, R Single Family Residential” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- [12]. **Intentionally omitted.** ~~The entirety of the provisions specified in § 14-3, entitled “Clearing and Removal of Trees,” of the Code of the Township of Montgomery (1984) shall apply to all residential lots in the MR, R-5 and R-2 Zoning Districts that cannot be further subdivided under the applicable zoning standards, including the provision that no more than 50% of the area of the lot or, in any case, a maximum area of 40,000 square feet, shall be cleared of trees.~~

**SECTION 8.** Subsection 16-4.6e5 under “REO-1 Research, Engineering and Office; REO-2 Research, Engineering and Office; REO-3 Research, Engineering and Office” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

5. The minimum required yard area shall include a planted buffer of 40 feet in width along any common property line with a residential district (see Subsection ~~16-5.6g~~ **14-3.12d2 of Chapter 14.**)

**SECTION 9.** Subsection 16-4.7a3e4 under “MR/SI Mountain Residential/Special Industrial” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

4. A minimum buffer area of 200 feet shall be provided along all property lines. Where natural growth does not provide adequate buffer, such buffer areas shall be in accordance with Subsection **14-3.12d2 of Chapter 14** ~~16-5.6g of this chapter~~, except that railroad spurs, utility lines and access roads perpendicular to existing public streets may traverse the buffer area, and except further that parking spaces for passenger automobiles may be placed within the buffer area, provided that such parking spaces are not less than 100 feet from any street or lot line.

**SECTION 10.** Subsection 16-4.8e5 under “LM Limited Manufacturing” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

5. The minimum required yard area shall include a planted buffer of 40 feet in width along any common property line with a residential district (see Subsection ~~16-5.6g~~ **14-3.12d2 of Chapter 14.**)

**SECTION 11.** Subsection 16-4.14a13.(h) under “Site Specific Inclusionary Zones for COAH Qualified Affordable Housing” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- (h). All portions of the tract not utilized by buildings or paved surfaces shall be landscaped, utilizing combinations such as landscaped fencing, shrubbery, lawn area, ground cover, rock formations, contours, existing foliage, and the planting of conifers and/or deciduous trees native to the area in order to either maintain or reestablish the tone of the vegetation in the area and lessen the visual impact of the structures and paved areas. The landscaping requirements of Subsection ~~16-5.6~~ **14-3.12 of Chapter 14** shall reasonably be applied; ~~however, Subsection 16-5.6 d3(b) shall not be applicable.~~

**SECTION 12.** Section 16-5.14c2 under “Streets, Curbs, and Sidewalks” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

Section 16-5.14c2

Sidewalks may be located in the traditional manner between the proposed edge of pavement and right-of-way line of the street or, in the alternative, the reviewing municipal agency may require that the sidewalks be set back further from the proposed edge of pavement and be constructed in a meandering pattern. In such instances, the sidewalks ordinarily will be located both within the street right-of-way and an additional five feet of the ten-foot strip of land adjacent the street right-of-way otherwise provided for the location of underground utilities and known as the utility easement. **Sidewalk easements may overlap the utility easement but should be avoided where possible. Sidewalk easements shall abut and run parallel with the right-of-way, and extend a minimum of 2-feet beyond the sidewalk. Private improvements shall not be permitted within the sidewalk easement.**

When the sidewalks are required to be constructed in a meandering pattern, the underground utilities will be located within the five-foot portion of the ten-foot utility easement furthest from the street center line. The meandering sidewalk will be located within the remainder of the utility easement and the street right-of-way between the cartway and the utility easement.

~~Regarding landscaping, when sidewalks are constructed in the traditional manner set back approximately five feet from and parallel to the edge of pavement, street trees shall be required between the edge of pavement and the sidewalk. However, when the meandering pattern of sidewalk construction is required, trees and shrubs shall be planted in concentrated areas at locations where the sidewalk turns as well as at other locations required and approved by the reviewing municipal agency.~~

**Street trees near sidewalks shall conform to the design guidelines and requirements of Section 14-3.**

**SECTION 13.** Section 16-5.6 “Natural Features” replaced.

Section 16-5.6 of the Code, entitled "Natural Features", shall be deleted in its entirety and replaced with a new Section 16-5.6 to read as follows:

Section 16-5.6. Soil Disturbance, Soil Hauling, and Tree Removal

§16-5.6. Natural Features.

[Ord. #85-482, S 506; Ord. #88-584, SIVF; Ord. #01-1039, S 2; Ord. #03-1119, SS 8, 9; Ord. #08-1294, S 4; Ord. #08-1307, S 1; Ord. #09-1340, S 1]

Section 16-5.6 of the Code, entitled "Natural Features", shall be deleted in its entirety and replaced with a new Section 16-5.6 to read as follows:

**a. Tree Removal and Replacement**

- 1. Tree removal and replacement shall conform to the requirements of Section 14-3, the provisions of which are incorporated by reference herein as if fully restated.**

**b. Soil Disturbance and Soil Hauling**

- 1. Soil disturbance and soil hauling shall conform to the requirements of Sections 14-1 and 14-4, the provisions of which are incorporated by reference herein as if fully restated.**

**SECTION 14.** Section 16-5.8 Off-Street Parking, Loading Areas and Driveways shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

Section 16-5.8 Off Street Parking, Loading Areas and Driveways

[Ord. #85-482, S 508; Ord. #88-584, SIVG-K; Ord. #89-628, S 5, 5; Ord. #89-633, S 1; Ord. #03-1119, SS 10, 11; Ord. #09-1312, S 1]

**a. Landscaping**

- ~~1. Except for detached single-family dwelling units and multiple-family buildings, a screen planting, berm, fence, wall or combination thereof, no less than four feet nor more than seven feet in height, shall be provided between the off-street parking areas and any lot line or street line except where a building intervenes or where the distance between such areas and the lot line or street line is greater than 150 feet.~~
- ~~2. All loading areas shall be landscaped and screened sufficiently to obscure the view of the parked vehicles and loading platforms from any public street and adjacent use throughout the year. Such screening shall be by an extension of the building, a fence, berm, wall, planting or combination thereof and shall not be less than four feet in height.~~
- ~~3. Each off-street parking area shall have a minimum area equivalent to one parking space per every 30 spaces landscaped with approximately 1/2 said area having shrubs no higher than three feet and the other half having trees with branches no lower than~~

~~seven feet. Such landscaped areas shall be distributed throughout the parking area in order to break the view of parked cars in a manner not impairing visibility.~~

**1. Landscaping shall conform to the requirements of Section 14-3.**

- b. No Change.
- c. No Change.
- d. No Change.
- e. No Change.
- f. No Change.

**SECTION 15.** Section 16-6.4d.7(d)(5) Provisions Governing Activities in Stream Corridors shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- (5). Conservation easements or conservation deed restrictions in accordance with Subsection **14-3.12f of Chapter 14** ~~16-5.6e of this chapter~~ shall be required for the remaining area of the stream corridor, provided there is a minimum twenty-foot unrestricted area between the proposed structure and the easement.

**SECTION 16.** Section 16-6.4d.7(e) Design Guidelines for Flood Hazard Areas, Special Flood Hazard Areas and Stream Corridors shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

Section 16-6.4. Critical Areas.

d. Flood Hazard Areas, Special Flood Hazard Areas and Stream Corridors.

7. Development. A zoning permit shall be obtained prior to any construction or development within a stream corridor. Where development in a stream corridor is proposed in a site plan, subdivision, or variance application, the Montgomery Township Planning Board or Zoning Board, whichever board has jurisdiction over the application, shall ensure the applicant meets the requirements of this subsection. The fee for the zoning permit, pursuant to Subsection 16-9.1 of this chapter, shall be remitted at the time the application for the permit is submitted. There shall be no additional fee for the issuance of a zoning permit if the development in the stream corridor is proposed in a site plan, subdivision or variance application that has been approved by the Planning Board or Zoning Board.

(e) Design Criteria. The following design criteria shall be utilized in all development in a stream corridor. All development shall be in compliance with the applicable requirements of the Uniform Construction Code (N.J.A.C. 5:23) and the following standards, whichever is more restrictive:

- (1) General Criteria:
  - i. No change.
  - ii. No change.
  - iii. No change.

- iv. No change.
- v. No change.
- vi. No change.
- vii. **Planting Design. Planting design shall be provided pursuant to the requirements in Section 14-3.**

(2) No change.

**SECTION 17.** Section 16-6.4e.3 Performance Standards for Steep Slopes shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

Section 16-6.4. Critical Areas.

e. Steep Slopes. The purpose of designating steep slopes as critical areas is to prevent soil erosion and stormwater runoff resulting from development of such steep slope lands. Development, as defined in Subsection 16-2.1 and including well and sewage disposal systems, throughout the Township shall occur only on the portion of a lot or tract outside the steep slope area, except as otherwise specifically permitted by ordinance, and except further as follows:

3. Performance Standards. The Board, in considering a variance, shall be guided by, but not limited to, the following:

- (a) No change.
- (b) No change.
- (c) No change.
- (d) No change.
- (e) No change.
- (f) No change.
- (g) No change.

**(h) Planting Design. Planting design shall be provided pursuant to the requirements in Section 14-3.**

**SECTION 18.** Footnote 2 under Section 16-6.5g9 under “Optional Development Alternatives” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- [2]. The entirety of the provisions specified in Section 14-3, entitled **“Tree Removal and Replacement”** ~~Clearing and Removal of Trees~~, of the Code of the Township of Montgomery (1984) shall apply to all residential lots in a single-family conservation design subdivision, ~~including the provision that no more than 50% of the area of a lot may be cleared of trees.~~

**SECTION 19.** Section 16-6.5h16(e) under “Optional Development Alternatives” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- (e). All roadways shall be lined with shade trees in accordance with Subsection ~~16-5.6d15-~~  
**14-3.12d1 of Chapter 14.**

**SECTION 20.** Section 16-6.10g2 under “Wind, Solar or Photovoltaic Energy Systems” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- (2). Any proposal for a wind, solar or photovoltaic energy system shall conform to the provisions of Subsection 16-5.6 of this chapter, entitled Natural Features, and of Section 14-3 of the Code, entitled **Tree Removal and Replacement** ~~Clearing and Removal of Trees~~, with respect to tree removal.

**SECTION 21.** Section 16-8.3b15 under “Submission of Minor Subdivision Plats and Minor Site Plans” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- (15). **A tree removal, planting and landscape plan conforming to the requirements of 14-3 of Chapter 14 and 16-4 of Chapter 16.** ~~The location and identification of existing vegetation with an indication as to whether it is to remain or be removed, with the limits of disturbance clearly indicated on the plan, and any proposed buffer and landscaped areas, including a landscaping legend or a note addressing compliance with the landscaping requirements in Subsection 16-5.6 of this chapter.~~

**SECTION 22.** Section 16-8.4b “Submission of Preliminary Major Subdivision Plats and Preliminary Major Site Plans” shall be amended as follows (additions in **bold** and deletions in ~~strikethrough~~):

- (19). **A tree removal, planting and landscape plan conforming to the requirements of 14-3 of Chapter 14 and 16-4 of Chapter 16.** ~~The location and identification of existing vegetation with an indication as to whether it is to remain or be removed. The location and species of all existing individual trees or groups of trees having a caliper of six inches or more measured 4 1/2 feet (DBH) above the ground level shall be shown within the portion(s) of the tract to be disturbed as a result of the proposed development, indicating which trees are to remain and which are to be removed, with the limits of disturbance clearly indicated on the plan.~~
- (20). **Intentionally deleted.** ~~A landscape plan showing the location of all proposed plantings, screening and buffering, a legend listing the botanical and common names, the sizes at the time of planting, a planting schedule, method of irrigation, the total quantity of each plant, and the location of each plant keyed to the plan or plat.~~

**SECTION 23.** Section 16-9.1 “Fees” amended. The application charge and escrow account table in Section 16-9.1a, shall be amended to add the following after row 18 (additions in **bold**; deletions in ~~strikethrough~~):

		Application Charge	Plus	Escrow Account
<b>19.</b>	<b>Engineering permits and reviews</b>			
	(a) <b>Major Developments*</b>	<b>\$800 for initial submission and one re-review</b>		<b>\$2500 minimum**</b>
	<b>Minor Developments*</b>	<b>\$250 for initial submission and one re-review</b>		<b>\$800 minimum**</b>
	(b) <b>Soil Disturbance and Hauling</b>	<b>\$100 (See Chapter 14)</b>		
	(c) <b>Street / Right-of-Way Opening</b>	<b>See Chapter 11</b>		
	(d) <b>Flood Hazard Search Certificate</b>	<b>\$25 (see 16-6.4d11.(c))</b>		
	(e) <b>Floodplain Permit</b>	<b>reserved</b>		
	(f) <b>Tree Removal Application</b>	<b>See Chapter 14*</b>		
	(g) <b>Address changes</b>	<b>\$150 per unit</b>		
	<p><b>*not required for Board applications as an escrow account is already required.</b></p> <p><b>** for complex projects that exceed an initial review time of 2 hours, and require more than one re-review, the Township Engineer may require the applicant to post funds to an escrow account to cover administrative and consultant review costs. The amount will be determined by the Township Engineer based on an estimated hourly review time. The maximum requested amount shall not exceed \$5,000.00. The applicant shall replenish the account if there are insufficient funds to cover the reviews. Inspection fees or escrow may be required pursuant to 16-9.2 prior to issuance of any municipal permits.</b></p>			

**SECTION 24. REPEALER.** All ordinances and resolutions or parts thereof inconsistent with this ordinance are repealed.

**SECTION 25. SEVERABILITY.** If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be valid and enforceable.

**SECTION 26. EFFECTIVE DATE.** This ordinance shall take effect upon final adoption and publication in accordance with law.