

CHARTER TOWNSHIP OF WEST BLOOMFIELD

ORDINANCE NO. C-420-B

**TEXT AMENDMENT TO ZONING ORDINANCE
(Woodland Conservation)**

An Ordinance to amend the Woodland Conservation section of the Zoning Ordinance codified in Chapter 26 of the Charter Township of West Bloomfield Code of Ordinances, to reorganize its subsections and revise provisions regarding permit requirements and exemptions.

THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:

Section 1 of Ordinance

Section 26-47, Woodland Conservation, in Article II of the Zoning Ordinance, codified in Chapter 26 of the Charter Township of West Bloomfield Code of Ordinances, is amended to read as follows:

Sec. 26-47. Woodland conservation.

- (a) *Purposes.* The purposes of this section are to:
- (1) Provide for the protection of woodlands, including trees and associated forms of vegetation, as natural resources that contain elements of natural beauty, wildlife habitat and geological, hydrological, ecological and historical characteristics significant to the citizens of the township.
 - (2) Provide for the protection, conservation, replacement, proper maintenance and use of woodlands in order to minimize disturbance and structural changes to the vegetative community, prevent damage from erosion, sedimentation, windthrow, disease, limit loss of wildlife habitat and vegetative cover, all of which, in the aggregate, result in the destruction of the woodland character.
 - (3) Prohibit the unregulated cutting of trees or harvesting of forest products within a woodland; to establish a permit process which will regulate the manner and extent of tree cutting and harvesting of forest products from within these unique and valuable natural resources areas; and to prescribe the review process for the issuance of tree cutting and harvesting permits.
 - (4) Protect the township's woodlands for their current and future value, not only for residential areas and home sites, but also as settings for development in all zoning districts; to protect the reproductive and regenerative capabilities of woodland areas; to maintain plant and tree diversity; to protect groundwater recharge areas; to maintain visual screening, windbreak, dust collection and noise barrier characteristics exhibited by woodlands.

- (5) Provide for the paramount public concern for these natural resources in the interest of the health, safety and general welfare of the residents of the township.

(b) *Findings of Fact and Interpretation of Section.*

- (1) *Findings of fact.* The township finds that continued growth and development along with future redevelopment and emerging tree diseases and threats resulting in increased demands upon natural resources has had the effect of encroaching upon, despoiling or eliminating many of the woodlands and associated forms of vegetation. This natural resource and processes associated therewith if conserved constitutes an important physical, aesthetic, environmental, recreational and economic asset to existing and future residents of the township. Specifically, the township finds that:

- a. Woodland growth protects public health through the absorption of airborne pollutants and generation of oxygen, through buffering for the reduction of excessive noise and visual screenings, through cooling properties in the summer months and through the protection of groundwater recharge areas and subsurface water resources.
- b. Woodlands provide for public safety through the prevention of erosion, sedimentation, and flooding and through buffering for wind and storm damage.
- c. Trees and woodland growth are essential components of the general welfare of the township by maintaining natural beauty, recreation, protecting the reproductive and regenerative capabilities of the woodland areas, maintaining plant and tree diversity, protecting wildlife habitats and the irreplaceable heritage for existing and future township residents.
- d. The protection of such natural resources is a matter of paramount public concern, as provided by article IV, section 52 of the Michigan Constitution of 1963, and the Michigan Environmental Protection Act, Part 17 of the Natural Resources and Environmental Protection Act, MCL 324.1701 et seq. as amended.

- (2) *Interpretation.*

- a. Unless a definition is provided for a term, or context dictates otherwise, the terms of this section and the definitions applicable thereto, shall be interpreted by reference to the science of forestry, with the objective of conserving woodlands.
- b. The official woodland map of West Bloomfield Township incorporated into this section by this reference shall be deemed to be a special overlay zoning map. The woodland review board shall, in the first instance,

interpret this section and the woodland map, subject to review as provided in this section and by law. The woodland map may be updated by an amendment of this chapter at any time new data becomes available or as the growth of trees occurs. In all instances in which the official woodland map is proposed for amendment in a manner which would result in an increase in the area of woodlands on the map, notice of the public hearing to be conducted by the planning commission in connection with such amendment shall be given to the owners of all property on which the area of woodlands is proposed for expansion or new designation.

- c. Woodlands are identified for mapping purposes by the presence of two (2) criteria: (1) the presence of at least three (3) contiguous acres of area; and (2) the existence of canopy coverage over more than one-half of the area or average tree density of thirty (30) square feet of tree trunk area per acre (basal area). However, a property owner may request the township to have the township's forester perform an on-site analysis of the actual cross-sectional square footage of tree trunk area per acre (basal area) over the entire contiguous mapped woodland which includes such owner's property. In the event the township's forester reasonably determines that the mapped woodland area does not contain an average tree density of thirty (30) square feet of tree trunk area per acre (basal area), the township shall, for a period of one (1) year, consider such area to be unregulated under this section of the Code.

- d. It is not the intent of this section to regulate land areas which do not support one (1) or more the objectives set forth in this subsection (b)(1). A property owner shall be permitted to apply to the woodland review board for an adjustment of the outer boundary of a mapped woodland area. Considering the criteria set forth below, the applicant shall include in the application the reasons the adjustment should be made. Upon review of an application, the woodland review board, following review and report from the township forester, shall adjust a woodland boundary if the woodland review board finds that, taking into consideration the criteria set forth below, all or a portion of an area being considered is not part of the woodland:
 - 1. Whether and the extent to which the area being considered has tree species which are part of an adjacent tree stand.
 - 2. Whether the soil type relates to the adjacent area of the woodland.
 - 3. The extent of basal area and vegetation density within the area being considered.
 - 4. The relation of the area being considered to the wildlife habitat within the mapped woodland.

- e. The woodland review board decision under this subsection shall be after holding a public hearing as provided in subsection (i) and subject to appeal to the township board using the procedures specified in subsection (j).

(c) *Woodland Permits Generally; Format of Regulations in this Section.*

- (1) Permit requirement. The cutting of trees or harvesting of forest products within a woodland shall be subject to a permit process, and no cutting or harvesting shall be performed without such permit having first been issued. The township board shall, by resolution, establish a woodland review board which shall review all applications for woodland permits and have the authority to establish restoration and reforestation requirements for violations for purposes of subsection (m)(3) and as a condition of its decisions.
- (2) Site plans, plats and non-subdivision lots. Where a permit request involves a site plan or plat or development of a non-subdivision lot lying either wholly or partially within a woodland, the woodland review board shall apply those provisions contained in subsection (d) and advise the planning commission or township board regarding compliance of the proposed site plan or plat with those provisions.
- (3) Essential services/utilities. Where a permit request involves the excavation, trenching or construction of an essential service/utility lying either wholly or partially within a woodland, the township shall apply those provisions contained in subsection (e).
- (4) Tree preservation areas. Where a permit request involves the cutting of trees or removal of forest products lying either wholly or partially within a designated tree preservation area, the township shall apply those provisions contained in subsection (f).
- (5) Subdivision lots predating ordinance. Where a permit request involves the cutting of trees or removal of forest products lying within a woodland on an existing lot or outlot within a one-family subdivision approved prior to the adoption of the woodland ordinance, the township shall apply those provisions contained in subsection (g).
- (6) Woodland harvesting. Where a permit request does not involve a site plan or plat lying either wholly or partially within a woodland, the woodland review board shall evaluate the petition and direct the environmental director or manager on the disposition of the requested permit utilizing those provisions contained in subsection (h).

(d) *Woodland Permits for Site Plans, Plats and Non-Subdivision Lots.*

(1) *Application and review.*

- a. There shall be no cutting of trees or harvesting of forest products lying either wholly or partially within a woodland for the purpose of developing a site plan or plat without there first having been a woodland permit applied for and a permit issued by the township. Any woodcutting or removal of forest products within a woodland without there first having been a woodland permit issued shall subject the person(s) who authorized or knowingly permitted the individual to remove the trees, as well as the person(s) who removed the trees, to the fines and penalties as provided for within this chapter. It shall be the responsibility of the developer to notify the individual builders or owners of all restrictions pertaining to the preservation of woodlands pursuant to the approved woodland permit.
- b. Development of platted or unplatted parcels containing woodlands shall be subject to the woodland review and approval procedures if the site plan proposes encroachment into the woodland. This woodland acreage is independent of property lines and may incorporate contiguous woodlands on adjacent property.
- c. Maximum woodland disturbance.
 1. During a ten-year period prior to the adoption of this amendatory language of this section, a state-registered forester has made determinations in the township with regard to the extent of tree removal which may be permitted within a level of tolerance which achieves the conservation of woodland resources and concurrently allows new development to occur. Measurement has considered physical improvements, and the accompanying fringe damage caused during construction and which results from occupancy and use following construction. Based upon this long pattern and practice of determinations, as well as the actual development experience on woodland properties, and based upon the advice of the township's consulting forester, it has been concluded that, in order to make provision for the conservation of woodland resources and concurrently allow for reasonable development, a specified level of disturbance should be permitted, with flexibility for additional disturbance in those instances in which there are substantial woodlands on the site to be developed. Consistent with this conclusion, subject to adjustments specified in this subparagraph, and subparagraphs 2 and 3 below, there shall be an entitlement to a woodland disturbance in connection with the development and use of a site plan or plat equal to twenty-five (25) percent of each tree stand within the woodland area on the property

in question, with the specific disturbance area to be determined as provided in this chapter. The balance, or seventy-five (75) percent of the area of each tree stand on the property in question shall be preserved from such disturbance. The woodland review board shall permit a disturbance level greater than twenty-five (25) percent, but not exceeding forty (40) percent, where the following are demonstrated:

- i. More than twenty (20) percent of the site to be developed consists of woodlands; and
 - ii. The property may not be developed to the following densities unless a greater disturbance level is permitted: for residential property, one and one-half (1 1/2) residential units per gross acre; and for nonresidential property, fifteen (15) percent gross floor area in relation to the total site (for these calculations, the area of the site shall not include those portions of the property which are not buildable as a result of watercourses and wetlands unless and to the extent that a permit has been issued authorizing such development). The extent of greater disturbance permitted by the woodland review board shall be the minimum additional disturbance needed to achieve the residential and nonresidential development density specified above.
2. Based upon a review of the particular woodland, the woodland review board may establish an adjustment maintaining the overall woodland disturbance at twenty-five (25) percent, but specifying greater disturbance than twenty-five (25) percent of one (1) tree stand coupled with a corresponding decrease in disturbance of one (1) or more other tree stands on the property in question. Such adjustment shall be established based upon a consideration of the relative quality rating of the respective tree stand as analyzed by the township's registered forester, using the following quality rating criteria: species; likelihood of survival following development; tree stand size tree stand density; habitat potential; wildlife observation; scenic quality; and general health of tree stand. Regardless of the adjustments made in accordance with this subparagraph 2, considering all tree stands, there shall be an entitlement to a combined area of disturbance within the woodland area on the property in question of twenty-five (25) percent. In the administration of this subparagraph 2, the woodlands board shall take into consideration the objectives of this section 26-47, the standards contained in this subparagraph, as well as the interests of the petitioner which are brought to the attention of the woodlands board during the decision-making process relating to this

subparagraph. To the extent that a disturbance level greater than twenty-five (25) percent is permitted as provided in subparagraph 1 above, or in subparagraph 3 below, the provisions of this subparagraph 2 shall apply to such greater disturbance level.

3. The area of tree removal disturbance permitted in subparagraph 1 above may, in all events, be increased if and to the limited extent the applicant demonstrates that greater disturbance is necessary in order to provide space for sufficient buildings, structures, roads, drives, parking and utilities so that the land may be put to use which does not constitute a regulatory taking of the property. Such demonstration must include a showing that there is no feasible and prudent alternative to development which requires increasing the area of woodlands disturbance. In the event of a dispute with regard to whether the land may be put to a use which does not constitute a regulatory taking, or with regard to whether there is a feasible and prudent alternative for development of the land, an appeal may be taken in writing to the township board within twenty-one (21) days of the final decision of the woodland review board or planning commission, as the case may be. If the applicant feels aggrieved from the decision of the township board on appeal, the applicant, within twenty-one (21) days of the date of the decision on appeal by the township board, shall be entitled to file an action in the circuit court for the purpose of appealing the determination on the question remaining in dispute. Pending decision of the court, the determination of the township shall not be final. If the applicant does not file a timely appeal to the township board, or if the applicant does not file an appeal in the circuit court in a timely manner, as provided above, the decision of the woodland review board or planning commission, or the decision of the township board, as the case may be, shall be deemed to be reasonable and acceptable to the applicant and shall be final.

d. The site plan or plat review process for parcels of land containing woodlands shall include a procedure of inventory and evaluation to be performed by the township's registered forester. The site plan or plat shall incorporate the boundary of the woodland as it exists, and a proposed woodland disturbance configuration which shall delineate the specific boundary of the area of the woodland requested to be disturbed. The woodland disturbance configuration shall be determined based upon the applicant's site planning considerations, the provisions of subsection (d)(1)c, above and shall also take into consideration the following:

1. Conservation of the separate identified tree stands within the woodland.

2. Soil type (permeability, fertility, structure), considering the likelihood of survival following development.
 3. Reproductive capacity (sexual and vegetative).
 4. Vegetative species diversity (longevity, food value).
 5. Vegetative density (stem count).
 6. Basal area.
 7. Wildlife habitat.
 8. Other factors deemed relevant to preservation of the woodland based upon particular characteristics.
- e. The site plan or plat shall reflect the conservation of the woodland by either:
1. Selective clearing within the woodland to create wooded sites; or
 2. Creation of private woodland park areas within which no development or clearing shall take place. Utilities, roads or similar infrastructure may be permitted within such woodland park areas if and to the extent the disturbance of such improvements would not result in the maximum disturbance area being exceeded.
- f. The site plan or plat shall be considered for review by the woodland review board upon completion of the woodland inventory and evaluation report by the township's registered forester and the site plan or plat application requirements. The site plan submitted by the petitioner for review by the woodland review board shall include the following information:
1. A plan representing disturbance to the woodland which shall consist of either:
 - i. A survey showing the location of the entire woodland boundary on the petitioner's property and the location, size and species of all trees within the woodland contained on the petitioner's property that are equal to or larger than six (6) inches in diameter. The ground survey map shall be of sufficient scale to depict disturbance impact. A printed summary denoting the tag number of each tree, its size and species, the number of trees in each diameter size class, and

number of median size trees per acre shall be included as part of the ground survey map for the petitioner's property; or

- ii. An aerial survey map showing the boundary of the woodland on the petitioner's property as depicted on the official township woodland map. The aerial survey of the site shall include a fifty (50) feet to one (1) inch scale map of the petitioner's property to identify the proposed disturbance area.
2. The topographic contours at two-foot intervals, proposed grades, proposed elevations of roads, garage floors and brick ledges for all buildings. This required information shall be provided for a distance of fifty (50) feet beyond the property line.
 3. The proposed location of all utility lines, including water, sanitary and storm sewers, gas and similar infrastructure and the approximate depth of the buried utility. The site plan shall also include where off-site improvements are intended such as the extension of water and/or sewer, and if these off-site improvements impact a woodland area.
 4. The location of all improvements within the woodland, such as, but not limited to, buildings, roadways, and stormwater retention basins resulting in direct or indirect removal of woodland vegetation. For purposes of this section, direct removal is a term describing trees which will be removed from actual construction envelopes. Trees within ten (10) feet of the approved location of a building or structure shall be considered and deemed to be removed. For the purposes of this section, indirect removal is a term describing those trees which survive initial disturbance activities, but which are ultimately removed because of death caused by damage created as a consequence of soil compaction, wind breakage, equipment damage, site grading and other construction activities.
 5. A written summary shall be provided listing the calculated amount of land area and tree removal count occurring within each woodland construction envelope proposed within the woodland. The tree removal count shall be based on either the ground survey technique or aerial survey technique used in subsection (d)(1)d1, and the field plot data contained in the forester's report. A summation of the total land area and the total tree removal count within each of the disturbance categories listed above shall also be included for the entire woodland site. The site summary shall be

expressed in terms of a total square footage and percentage of land area and total and percentage of tree removal.

6. A development schedule that will provide a staged clearing plan, establishment of ground control points for determining compliance with allowed disturbance limited, marking of trees planned for direct removal, and a dirt plan identifying the method and placement of earth materials resulting from disturbance activities such as basement excavation, road grading and utility construction.
 7. Where a woodland abuts a designated natural beauty road, the woodland shall be maintained for a width of at least fifty (50) feet beyond the future right-of-way line. This fifty-foot-wide greenbelt may be crossed with utilities and a driveway only if no other practical alternatives exist for the development of the site upon approval by the woodland review board. In addition, if the petitioner demonstrates unnecessary hardship as a result of this requirement, the woodland review board shall grant relief to the extent necessary to remove the unnecessary hardship.
- g. Siting requirements for woodland construction envelopes and other disturbances within the property under review shall take into consideration the following criteria: maintenance of property distance between disturbances to sustain shade-tolerant species, prevent windthrow, reduce soil erosion, preservation of water infiltration rates to sustain soil moisture regimes and localized groundwater flow, preservation of sensitive or critical plant species, and preservation of wildlife habitat.
 - h. The removal or relocation of trees shall be limited to those instances when necessary for the location of structures or site improvements and when no feasible and prudent alternative location for the structures or improvements can be accomplished without causing undue hardship.
 - i. The proposed activity shall be in compliance with all other applicable codes and ordinances.
- (2) *Public hearing required.* After reference by the environmental director or manager, the woodland review board shall hold a public hearing as expeditiously as possible on the woodland permit request as established in subsection (i). The woodland review board shall inform the environmental director or manager or his designee as to the disposition of the permit request.
 - (3) *Woodland permit.*
 - a. For those developments and operations where the planning commission is the final approval authorized as defined in this chapter, the planning

commission, after review of the recommendation from the woodland review board, may authorize the issuance or denial of a woodland development permit as specified by the woodland review board. Any permit issued shall be issued by the environmental director or manager.

- b. For those plats, developments and operations where the township board is the final approval authority, the recommendation of the woodland review board shall be referred to the township board by the planning commission along with a separate recommendation for the disposition of the plat, development or operation. The township board may authorize the issuance of a woodland development permit by the environmental director or manager with or without specific conditions attached or deny the issuance of the woodland development permit.
- c. Upon approval of a woodland permit, a letter of credit or escrow account shall be posted with the township as a condition of site plan approval by the petitioner to guarantee compliance with the disturbance conditions stipulated in the site plan. The amount of the financial instrument shall be no less than ten (10) percent of the total inventory of median size trees and larger to be preserved on the site as calculated by the total undisturbed land area times the field tree density data in the forester's report times six hundred dollars (\$600.00). This financial instrument shall be structured in such a manner that if the total disturbed land area, either directly or indirectly, exceeds the number allowed on the approved site plan, this account shall provide for replacement landscaping at the rate of six hundred dollars (\$600.00) per removed tree in excess of approved allowance. The environmental director or manager shall authorize such replacement landscaping as soon as practical. The letter of credit or escrow account shall be maintained until the development is completed or final certificates of occupancy are issued, although reductions in the amount of the instrument are allowed as portions of the site are completed and final certificates of occupancy are issued.
- d. The issuance of building permits shall be contingent upon compliance with the approved clearing schedule and inspections by the township. Through the process of periodic site inspections by or for the environmental director or manager, a tally of both direct and indirect tree removal will be maintained by the township. The petitioner shall be notified in writing by the environmental director or manager or designee when and where replacement plantings are required. There shall be a final inspection made by the township for compliance with these woodland provisions or respective lots upon completion of the development and prior to release of final certificates of occupancy and letters of credit or escrow accounts on deposit with the township.

- e. On single-family lots within a woodland, the application for a building permit shall be accompanied by a grading plan developed in accordance with article XIII of chapter 8 of this Code, Grading and Drainage. In addition to the minimum requirements required in article XIII of chapter 8 of this Code, the grading plan shall include the size, location and species of all trees six (6) inches and larger on the subject property, and specify which trees are proposed to be removed.
- f. The petitioner shall stake, paint or otherwise delineate the location of all disturbances proposed in the woodland, including roadways, structures, utilities, stormwater retention basins, etc., prior to the issuance of the building permit for any construction. The township shall inspect the site for compliance with the approved plan and designate those trees to be removed from the site. Protective fencing may be required around any trees to be preserved. Unless otherwise specified, all trees within the woodland preservation area, regardless of size, shall be protected during construction.
- g. The environmental director or manager may approve minor adjustments to the location of a building, road, drive, utility or other improvement where it can be shown that additional trees, healthier trees or trees with a higher value rating will be preserved as a result of the adjustment, provided the total percentage of trees six (6) inches and larger to be removed and the area of land to be disturbed is not increased and all other codes and ordinances are met. Such changes shall be verified in the field and documented with revised site plans. All such adjustments shall be reported to the supervisor who shall notify the woodland review board.

(4) *Tree protection during construction.*

- a. Before development, land clearing, filling or any land alteration for which a woodland permit is required by this section commences, the developer shall be required to erect, for the protection of remaining trees, barriers as approved by the township. Such protection shall remain in its approved location until such time as it is authorized by the township for removal. During construction no attachments or wires shall be attached to any trees to be protected. The woodland review board may require wood, metal or other substantial material in the construction of barriers.
- b. Except for construction that may be necessary within the temporary construction areas, it shall be unlawful for any person to conduct any activity, including, but not limited to, the placing of any solvents, material, construction machinery, or soil, which may cause the direct or indirect removal of any tree within a woodland preservation area or within the drip line of any other tree which is indicated to be saved on the approved site plan or plat.

- (5) *Woodland permit appeal.* An appeal of a woodland permit or denial of a woodland permit shall be made to the township board in accordance with subsection (j).
- (e) *Woodland Permits for the Construction and Maintenance of Essential Services/Utilities.*
- (1) *Application and review.*
- a. Except as otherwise provided in this chapter, or unless reviewed and approved under another section herein, there shall be no cutting of trees or removal of forest products lying either wholly or partially within a woodland for the purpose of excavating, trenching, or constructing an essential service/utility without there first having been a woodland permit applied for and a permit issued by the township.
- b. A woodland permit shall be required where it is documented by or for the environmental director or manager, after the review of those items required in subsection (e)(1)c. below, that more than two (2) trees six (6) inches or larger in diameter within any thirty-foot length of the proposed woodland construction envelope are to be removed or directly impacted by the proposed construction of the essential service/utility.
- c. A permit request to construct or maintain an essential service/utility within a woodland shall include plans with the following information for review by the woodland review board:
1. The proposed location of the essential service/utility, including any permanent ancillary equipment or structures.
 2. Topographic contours at two-foot intervals.
 3. The depth of the essential service/utility if underground.
 4. Where the essential service/utility abuts a roadway, the location of the existing and planned rights-of-way.
 5. The location of the construction and permanent easements for any existing and proposed essential services/utilities.
 6. The location, size and species of all trees which are six (6) inches in diameter or larger within the construction easement and an area thirty (30) feet on either side of the construction easement.
 7. The location, size and species of all trees six (6) inches or larger in diameter to be removed.

8. A list of the type of construction equipment to be used.
- d. The standards provided in subsection (d)(1)e, above shall govern the granting or denial of an application for a woodland permit required by this section.
- (2) *Public hearing required.* After reference by the environmental director or manager, the woodland review board shall hold a public hearing as expeditiously as possible on the woodland permit request as established in paragraph (i) below. The woodland review board shall inform the environmental director or manager or his designee as to the disposition of the permit request.
 - (3) *Woodland permit.*
 - a. Upon approval the woodland review board may require that a letter of credit or escrow be posted with the township in order to assure compliance with the approved woodland permit. The amount of the letter of credit or escrow shall be determined by the woodland review board based on the impact to the woodland.
 - b. The woodland review board may require the boring of the utility under certain trees and restoration plantings to preserve the integrity of the woodland.
 - c. The woodland review board may require the erection of barriers to protect the trees during construction. Such protection shall remain in its approved location until such time as it is authorized by the township for removal.
 - (4) *Woodland permit appeal.* An appeal of a woodland permit or denial of a woodland permit shall be made to the township board in accordance with subsection (j).
- (f) *Woodland Permits for Tree Cutting within Designated Tree Preservation Areas after the Approval of a Woodland Permit.*
 - (1) *Permits required.* Upon approval of a woodland permit or site plan and unless otherwise specified, it shall be unlawful for any person, without first obtaining a permit from the township, to undertake any construction (i.e., buildings, additions, decks, patios, tennis courts, pools, outbuildings or other attached or detached accessory structures) or activities which will cause the direct or indirect removal of any tree within a designated tree preservation area. A tree preservation area shall be defined as any area within a woodland, regardless of size, where trees are indicated to be saved on the approved woodland permit, site plan or plat.

- (2) *Submittal of application.* All applications for a permit to remove trees within a designated tree preservation area beyond the prescribed limits of a woodland permit or site plan shall be accompanied by a dimensioned plot plan showing the following:
- a. Date, north point and scale.
 - b. The dimensions of all lot and property lines, showing the relationship of the subject property to abutting properties.
 - c. The dimensions of any easements on the subject property, and the dimensions and depths of any proposed underground utilities or services which require the removal of trees.
 - d. The location and dimensions of the building and driveway envelope as approved on the original woodland permit and/or site plan.
 - e. The location of all existing and proposed structures on the subject property.
 - f. Existing and proposed contour data when the application involves filling or grading activities of more than two (2) cubic yards.
 - g. The size, location and species of all trees four (4) inches and larger on the subject property. The size of a tree is measured in terms of diameter, measured four and five-tenth (4.5) feet (dbh) from the base of the tree.
 - h. The size, location and species of all trees four (4) inches dbh and larger to be removed, both directly and indirectly, as a result of the proposed activity.
- (3) *Review criteria.* In reviewing an application for a permit it shall be presumed that an earlier determination under this section establishing the woodland preservation area shall remain in effect unless the applicant demonstrates that further disturbance should be permitted based upon the following:
- a. Danger to life, health or property.
 - b. The absence of feasibility of alternatives.
 - c. Quality of the woodland-unique species.
 - d. The absence of impact to wildlife, including their habitats.
 - e. The size of the woodland.

- f. The economic value, both public and private, of the proposed change to the general area.
 - g. The location of utilities.
 - h. Changes in grade and light penetration and the impact to the surrounding woodland.
 - i. Mitigating factors, such as additional plantings, removal of diseased trees, etc.
 - j. Other factors as are in harmony with the purpose of this section (e.g., subsection (d)(1)d. above).
- (4) *Review of application.* After reference by the environmental director or manager, the woodland review board shall hold a public hearing on the permit application as provided in subsection (i), with review to be determined by the location and extent of the proposed tree clearing activities as follows:
- a. **One-Family Residential Lots.** Where the proposed activity involves the removal of trees within a designated tree preservation area on platted or condominium one-family lots, the permit application shall be reviewed by or for the environmental director or manager, who shall refer to the permit application to the woodland review board. The woodland review board shall review the application and after review shall either approve the application with or without amendments or deny the application, stating its reasons for denial.
 - b. **Other than One-Family Residential Lots.** Where the proposed activity involves the removal of trees within a designated tree preservation area that is not on a platted or condominium single-family lot, the application, review and decision process shall be in accordance with subsection (d).
 - c. *Woodland permit appeal.* An appeal of a woodland permit or denial of a woodland permit shall be made to the township board in accordance with subsection (j).
- (5) *Acts for which a permit is not required.* On one-family lots within a platted or condominium subdivision in a woodland, the following tree cutting activities are permitted without a permit from the township:
- a. Any tree within ten (10) feet of the approved location of a one-family dwelling and its accessory driveway, single garage and underground utilities. This exception to the permit requirement does not apply to other accessory buildings or structures.

- b. Any other tree designated for removal, as shown on the approved woodland permit or site plan.

- (g) *Tree Cutting on One-Family Subdivision Residential Lots approved before the Adoption of Woodland Ordinance.*
 - (1) *Acts for which a permit is not required.* On those lots or outlots within one-family subdivisions that received final plat, final preliminary plat or final site plan approval prior to the adoption of the woodland provisions of the zoning ordinance and any subsequent amendments thereto, any tree within ten (10) feet of the approved location of a one-family dwelling and its accessory driveway, single garage and underground utilities may be cut without a permit. This exception to the permit requirement does not apply to other accessory buildings or structures.

 - (2) *Permit required.* Except as provided in subsection (g)(1) above, a woodland permit shall be required for the removal of any other tree on an existing one-family residential lot within a woodland. The application and review process shall be in accordance with subsection (d).

- (h) *Woodland Permit for Harvesting.*
 - (1) *Application and review.*
 - a. There shall be no cutting of trees or harvesting of forest products lying either wholly or partially within a woodland without there first having been a woodland permit applied for jointly by both the owner of record of the woodland and the tree harvester, and the permit having been issued by the township. Woodcutting and harvesting of forest products within a woodland without there first having been a woodland permit issued shall subject the person(s) who authorized or knowingly permitted the individual to remove the trees, as well as the person(s) who removed the trees to fines and penalties as provided for within this chapter.

 - b. There shall be a woodland permit fee established by resolution of the township board.

 - c. The woodland permit application shall be submitted to the environmental department and shall include the following information:
 - 1. A legal description of the property for which the woodland permit is requested.

 - 2. The application shall be signed by both the owner(s) of record of the property where the harvest is proposed and the tree harvester.

3. A harvest plan for the woodland prepared and signed by a forester licensed and registered in the state. The harvest plan shall incorporate the following information and standards in addition to a complete description of the products to be harvested:
 - i. A present description of the woodland specifying basal area, tree species mixture, a sampling of tree size and the notation of unusual, scarce or endangered trees.
 - ii. A one hundred (100) percent tally of trees to be harvested stating the species, size and quantity. This tally shall include those trees removed which are diseased, damaged or in an otherwise unhealthy condition.
 - iii. A general description of the woodland after the proposed harvest specifying basal area and tree species mixture. A basal area which provides canopy cover, reproductive capacity, understory structure, and wildlife habitat sufficient to maintain the function performed by the particular forested area disturbed shall be maintained within the woodland after harvesting. This basal area will be determined based upon the application of principles of forestry science, as proposed by the applicant and approved in the reasonable discretion of the woodland review board after consultation with the township forester.
 - iv. A list of equipment to be used in the harvest process in order to estimate the amount of damage which can be expected to non-harvested trees within the woodland.
 - v. Trees which have trunk diameter of more than twenty (20) inches, when measured four and five-tenth (4.5) feet from the ground, shall not be included in the harvest unless special written exception is noted on the permit. Special exceptions shall be granted in the case of totally damaged or diseased trees, or in conformance with a plan approved to achieve sound forestry management objectives.
 - vi. The diversity of tree species shall be maintained within the woodland at generally the same ratio both before and after the harvest, except to the extent the applicant demonstrates and the township's forester reasonably finds and explains that maintenance of such diversity will serve no purpose, or is inconsistent with standards customarily applied in the forestry industry.

- vii. The perimeter of the woodland shall not be disturbed and shall be maintained at a width of at least one hundred (100) feet, except for ingress and egress points as indicated on the approved woodland permit. If a petitioner demonstrates unnecessary hardship as a result of this requirement, the woodland review board shall grant relief to the extent necessary to remove the unnecessary hardship.
 - viii. A time schedule for the start and completion of all work within the woodland.
 - ix. The estimate value of the harvest based on the sale of the forest products, not the fee paid to the landowner, shall be included as part of the harvest plan.
4. A restoration program and time schedule shall be included and provide for the following:
- i. Grading and seeding all areas disturbed as a result of the harvest activity, including wheel ruts, log yards, aprons and concentrated work areas.
 - ii. Tree stumps shall be cut flush with the ground.
 - iii. For all trunks and branches four (4) inches or greater in diameter, crowns of felled trees shall be reduced to firewood length and stacked unless they are to be removed from the site as they are cut. Trunks and branches less than four (4) inches in diameter shall be reduced to woodchips and left on the site.
- d. The environmental director or manager shall review the woodland permit application for both completeness and adherence to ordinance standards. A site inspection of the subject woodland shall be made by or for the environmental director or manager. The township's *Method for Woodland Inventory and Evaluation*, dated June 7, 1984, incorporated by this reference, shall be completed by the township forester as part of the on-site inspection and compared with the woodland permit application to determine the accuracy of the application.
- (2) *Public hearing required.* After reference by environmental director or manager, the woodland review board shall hold a public hearing as expeditiously as possible on the woodland permit request as established in subsection (i). The woodland review board shall inform the environmental director or manager or his designee as to the disposition of the permit request.

(3) *Woodland permit.*

- a. Upon approval of a woodland permit, the petitioner shall be required to post a letter of credit or establish an escrow account with the township in the amount of at least ten (10) percent of the estimated value of the proposed harvest, or five thousand dollars (\$5,000.00), whichever is greater. The permit shall only be issued following the posting of the required assurances. The escrow amount shall be returned to the petitioner upon completion and inspection by or for the environmental director or manager of the restoration work required by the approved woodland permit.
- b. In the event of nonperformance of work required as part of the permit within the time limit established by the woodland permit, the escrow account shall be forfeited to the township at a rate of five (5) percent per day for each day of nonperformance. The permit holder shall be entitled to request and obtain a hearing before the woodland review board to demonstrate good cause for the delay. Such request shall be presented within twenty-one (21) days of the end of the time limit established in the permit. Following the hearing, the woodland review board shall specify the amount of the forfeiture, if any, based upon the amount of time which elapsed following the time limit without good cause. Until the end of the twenty-one (21) days within which a hearing may be requested, or until a decision is made by the woodlands board on a timely request, whichever is applicable, the forfeiture shall be held in abeyance.
- c. A woodland permit, having been approved, shall be valid for a period not exceeding one (1) year from the date of issuance. All restoration work prescribed as part of the woodland permit must be completed within six (6) months from the start of work within the woodland. Extension of the six-month limit may be granted by the environmental director or manager up to an additional six (6) months, providing it is requested in writing by the permit holder(s), the conditions which existed at the date the permit was granted remain unchanged, and the reasons necessitating the extension are provided.
- d. The approved woodland permit shall be posted by the petitioner on the site in full and obvious view to the casual observer prior to work starting on the site. Posting location near a road is preferred. The township ordinance enforcement officers and the police department are authorized to enforce the provisions of this section.

(4) *Woodland permit appeal.* An appeal of a woodland permit, denial of a woodland permit or denial of the extension of the six-month limit on restoration by the environmental director or manager shall be made to the township board in accordance with subsection (j).

(5) *Creation of new unregulated woodland.*

- a. Subject to the conditions set forth below in this subsection (5), a person may plant trees so as to create a new area which would otherwise be or become a woodland, as defined in this section, but which shall not be considered or mapped as a woodland.
 - b. An area of newly planted trees shall not be considered or mapped as a woodland if all of the following conditions are met prior to the planting of any new trees:
 1. No part of the area on which the trees are to be planted shall be within an existing woodland, and the canopy coverage of the trees over the area in question shall be less than fifteen (15) percent of the total area on which the new trees are to be planted.
 2. The owner of the property shall submit to the environmental department a plan prepared by a State of Michigan registered forester, outlining and describing the plan for the planting, maintenance and removal of the new trees. Such plan shall be subject to approval by the township's forester for the purpose of confirming that the plan is designed to achieve sound forestry management objectives.
 3. There shall be ongoing conformance with the approved forestry management plan.
 - c. The environmental department shall maintain the forestry management plan on file at the township unless and until the plan has been carried out to completion.
- (i) *Public Hearings.* Where a public hearing is required under this section, notice of the public hearing shall be sent not less than fifteen (15) nor more than thirty (30) days prior to the hearing date by first class mail to the property owners and occupants within three hundred (300) feet of the subject property. Such notice shall also be sent to all subdivision associations and lake associations which are contiguous to the property and are registered with the township. The notice shall indicate that a public hearing has been requested, the nature of the woodland permit request, the petitioner's name and address, and the time, date and location of the hearing. A synopsis of the notice shall also be published in one (1) of the legally approved newspapers of general circulation in the township.

(j) *Appeal of Woodland Permit Recommendation.*

- (1) An appeal may be made by any person from a recommendation or decision of the woodland review board. Such an appeal shall be made to the township board which shall have the authority to approve, reverse or modify any such recommendation or decision. This shall be the only appeal to consider matters pertaining to woodlands.
- (2) Any appeal to the township board must be received in writing by the township clerk within twenty-one (21) days of the woodland review board recommendation.
- (3) Public notification of the appeal shall be in accordance with subsection (i).
- (4) The township board shall be the only body empowered to reverse or modify a recommendation or decision of the woodland review board. In the absence of reversal or modification by the township board, a recommendation of the woodland review board shall be binding.

(k) *Woodland Permits Approved Prior to October 27, 1989.* Site plans or plats approved by the woodland review board, planning commission or township board prior to October 27, 1989, shall be exempt from the terms and provisions of the amendments of this section, which became effective on October 27, 1989. Those site plans and plats approved prior to October 27, 1989, shall comply with the terms and conditions of the woodland permit.

(l) *Permit Expiration.* A woodland permit shall be valid for a period consistent with a valid site plan approval in accordance with section 26.40. If not part of a valid site plan, a woodland permit shall be valid for one (1) year. Any modifications to a site plan or plat which proposes additional encroachment into a woodland other than what was originally approved shall be subject to review of the woodland review board. Where the renewal of a site plan or plat is proposed which would be contrary to the woodland ordinance as a result of amendments to the ordinance subsequent to the original approval of the site plan or plat, the woodland review board shall apply the provisions of the current ordinance in reviewing the proposed renewal of the site plan or plat.

(m) *Enforcement.*

- (1) Any person found guilty of violating any of the provisions of this section shall be guilty of a misdemeanor and shall be subject to the fines and penalties as outlined in section 1-10 of this Code of Ordinances. Each violation of this section shall constitute a separate offense.
- (2) Any use or activity in violation of the terms of this section is hereby declared to be a nuisance per se and may be abated by order of any court of competent jurisdiction. The township, in addition to other remedies, may institute any appropriate action or proceeding to prevent, abate or restrain the violation. All

costs, fees and expenses in connection with such action shall be assessed as damages against the violator by a court of competent jurisdiction.

- (3) In addition to the remedies stated herein, the township may order the restoration and reforestation of any woodland which has been impacted as a result of a violation of this section at the violator's expense.
- (n) *Maintenance.* Nothing in this section shall be construed to limit or prohibit the regular trimming, pruning and maintenance of trees; the removal of dead, diseased or dying trees; or the trimming or removal of trees which might reasonably be expected to cause injury to persons or property or cause damage to an essential service/utility if left unattended. However, if such maintenance by an essential service/utility will involve woodland tree cutting in an existing easement or right-of-way, a permit shall be required pursuant to the provisions of subsection (e), unless such permit requirement is not permitted by law.
- (o) *Emergency Actions.* Actions which are made necessary by an emergency, such as tornado, windstorm, flood, freeze, dangerous and infectious insect infestation or disease, or other disaster, in order to prevent injury or damage to persons or property, and where deferring such action in order to obtain authorization under this section would jeopardize persons or property, such actions may be taken without authorization under this section to the limited degree necessary. A person taking such emergency action shall, within fourteen (14) days of such action, provide a report to the environmental director or manager, describing the actions taken, the nature of the emergency necessitating the action, and the extent of the cutting or removal of, or damage to, any trees or area protected by this section. Such report shall be reviewed by the director to determine whether the action taken was reasonably necessitated by an emergency situation as described above. To the extent actions were taken which exceeded those reasonably necessitated by the emergency, the person in question shall be required to provide replacement trees and take other restorative action as determined necessary by the woodland review board under all of the circumstances.