

## 10. FREQUENTLY ASKED QUESTIONS

### GENERAL

#### ***Why don't builders and developers want to save trees during construction?***

Generally speaking, they do want to save trees. But some developers find it easier not to, or don't know how to save trees. Communities should be sure that developers clearly understand that trees and woodlands of value must be conserved during the land development process. Planning documents and good land use regulations can be used to help ensure that communities get what they want.

Builders need encouragement. They will usually give the community what it wants in return for faster approvals and predictability from the land development process.

#### ***During the land development approval process, how do we know which trees are most important to conserve?***

First, the community must establish which types of tree and woodland resources have the highest priority for conservation. Then, each development application must provide detailed, site-specific information about the location, type, size and health of all tree and woodland resources on the development site. Once this information is submitted, a qualified municipal consultant can advise plan reviewers about the importance of the resources based on the priorities for conservation established by the community.

#### ***Why is it that after the Planning Board approves plans for development with the understanding that trees won't be cleared, there are few or no trees left on the site when construction is finished?***

Because the builder failed to build the project according to approved development plans. Sometimes this is the result of changes that occur in the field in response to unexpected site conditions. A qualified professional should be available for the duration of construction to advise, inspect and enforce the development plans.

#### ***Why doesn't the governing body support our efforts to save trees in our community?***

Because they are not convinced that the community will support the effort, and they do not have enough information to make decisions. The governing body represents the people in the community. If the majority of the community gets involved in the effort to conserve woodlands, and is willing to support the effort, the governing body should respond accordingly.

Non-profit organizations such as the New Jersey Forestry Association can provide information and support to local efforts to save trees.

#### ***Why aren't there any employees in the public works department trained to properly maintain trees in our community?***

Because the community does not have a comprehensive community forestry program with the full support of the governing body. The public works department will maintain tree and woodland resources in the community if the governing body asks them to do so and gives them the proper resources to do their job.

## LEGAL

### ***How can we manage the clearing of woods on private property?***

You can limit the amount of woods being cleared on private land by passing clear, precise and fair tree removal and woodland conservation regulations. Through land development regulations, you can require a certain percentage of the property be retained in woodlands, with the permitted development clustered in other areas of the property. You can also specify the desired trees or woodland stands to be retained as a result of a detailed inventory, which identifies important/priority trees and woodlands to be preserved.

Another way to limit the amount of woods being cleared is to pass an ordinance through the general police powers. Through this approach, you can regulate tree removal on all properties, regardless of whether the landowner is undertaking an activity that triggers the land development regulations.

### ***How can the government tell me that I can't remove trees on my own property?***

It can't. The government can, however, place restrictions or require compensation for the removal of tree and woodland resources on private property that have been identified as having a high priority to the health, safety, and welfare of the community.

### ***What does the New Jersey Municipal Land Use Law (MLUL) say about tree conservation regulations?***

The MLUL supports the preservation of the environment and the protection of the health, safety and welfare of the public. The MLUL authorizes municipalities to pass land use regulations regarding the preservation of trees and woodlands as part of site plan review and subdivision review, as well as zoning ordinances. See, for example, 40:55D-38b(3) and (7) and 40:55D-41a and c. Tree conservation regulations passed by municipalities may not conflict with specific aspects of the MLUL.

### ***Can municipalities impose tree replacement funds or off-site tree planting as part of the land development process?***

Tree replacement funds and off-site mitigation are reasonable as long as the applicant has the option of planting replacement trees on site and there is a hardship relief provision if this cannot be done. However, municipalities should be cautious about mandating replacement trees off-site or payment in lieu of planting trees on-site. Avoid mandatory fees for every tree removed where replacement on-site is physically impossible. This risks being challenged as an unauthorized impact fee (see 40:55D-42 for the types of off-tract improvements that a municipality can require a developer to provide via a payment).

## RELATIONSHIP TO OTHER GOVERNMENT AGENCIES & PROGRAMS

### ***Do local governments have the right to review and approve forest management plans that are filed under the New Jersey Farmland Assessment Act?***

Yes, but only as part of a tree clearing or land disturbance permit application process. The primary reason that forest management plans are prepared is to qualify for tax abatements provided by the Farmland Assessment Program. New Jersey State law provides the process for preparing and approving these plans for the purpose of qualifying for farmland assessment. Only qualified foresters may prepare the plans. Their qualifications are approved by the State. The minimum contents of these plans are regulated, as well.

There are many criticisms of the farmland assessment program. One problem is that forests are no longer able to yield enough timber to qualify for tax abatements because of their inability to regenerate caused by excessive deer grazing. After extensive research, there is still no solution to the overpopulation of deer from the scientific community. It is recommended that tax abatements be extended for woodland conservation in addition to timber harvesting. This is a policy decision that must be made at the state level, and only lobbying efforts and public sentiment will affect changes of this nature.

### ***Can local land use regulations supercede the New Jersey Farmland Assessment Act?***

The farmland assessment statute (N.J.S.A. 54:4-23.1) does not contain any language that specifically prevents local regulations from superceding it. There are no court rulings on this specific question, but the appellate court has held that property does not qualify for farmland assessment if agricultural use is prohibited. If municipalities can prohibit an agricultural activity, then it follows that municipalities can also regulate other activities.

### ***Doesn't the New Jersey Right to Farm Act allow farmers to clear as much wooded land as they want?***

Yes. The Right to Farm Act, (N.J.S.A. 4:1C-1 to 10.4) has been held to supercede direct local regulation of commercial farms. Therefore, a local forest protection law may not apply to commercial farms as defined in the act.

The Act allows farmers to clear trees and woodlands in order to farm. Farmers should be engaged in the dialogue about woodland conservation in their communities. They can provide insight into how they are willing and able to contribute to woodland conservation efforts.

***Why doesn't the Soil Conservation District prevent people from clearing trees?***

The Soil Conservation District reviews, approves, and inspects soil erosion and sediment control plans for the purpose of limiting soil erosion on disturbed sites, such as sites under construction. These plans are required to be submitted by anyone planning to disturb land areas of 5,000 square feet or greater. The District does not have the jurisdiction to regulate tree clearing.

***Why doesn't our Shade Tree Commission stop developers from clearing trees?***

Planning and Zoning Boards are responsible for reviewing and approving land development applications. Some Shade Tree Commissions review and comment on land development applications as requested by the Planning Board. Some Commissions do not, depending on their function.

**“Ultimately, the decision to save the environment must come from the human heart. The key point is a call for a genuine sense of universal responsibility that is based on love, compassion, and clear awareness.”**

**-The Dalai Lama.**