

Preserving River Valley Character

Report and Recommendations for Ridgeline Preservation in New York State

Prepared for:

**Towns of Highland, Lumberland and Tusten
Sullivan County, New York**

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What Defines the River Valley and the Ridgeline?

The landscape horizon of a hillside as viewed from prominent points routes of travel, including associated steep slope valley walls.

Issues with Preserving River Valley Character:

1. Whose view is it anyway?

Two views are involved with any ridgeline - the one from the ridgeline and the one of the ridgeline. Providing for one may reduce the quality of the other. One involves a definitive action to build, clear or otherwise improve a site, while the other involves maintaining the existing landscape. One involves the property rights of a landowner while the other involves the rights of a community to protect its essential character. How can one measure the tradeoff between these factors? If a balance is desirable, at what point is it achieved? Is it possible to simultaneously maximize the rights of both parties?

2. What is the legal basis for regulation of ridgeline development?

Ridgeline protection measures are typically motivated by concerns for scenery, a matter of general welfare to which the law generally affords a lower value than providing for basic health and safety. Accordingly, a regulation that restricts steep slope development that could cause erosion and pollute a water supply is easier to justify than one which seeks to protect the intangible value of a view. Ridgeline regulations, for this reason, are often based on a combination of objectives that include both aesthetic and non-aesthetic criteria. This is particularly true in Pennsylvania where the courts have taken a generally dim view of aesthetic zoning for its own sake.

Ironically, this has become more and more difficult as other measures have been put in place to address steep slope development, stormwater control and erosion and sedimentation. The courts have stated that a community cannot, for example, justify a large minimum lot size based on the presence of steep slopes if another regulation has already prohibited building on those slopes, because this would, effectively, be twice deducting density for the same reason.

Given this situation, communities must integrate ridgeline protection into their existing land use regulations. It cannot be constructed on an independent basis without regard for other local laws that may already restrict the ability to develop ridgelines. A community should not attempt to enact aesthetic criteria that would artificially limit density in the guise of steep slope protection, especially if density is already limited on this basis under other provisions of

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local law.

This begs the question of what types of regulations can be enacted under the law particularly in Pennsylvania? It suggests, moreover, that design is far more important than density within the Upper Delaware region where density is already restricted. Regulations that allow for the same density but require design that addresses aesthetic issues on a secondary level are far more likely to be supportable in court.

3. What type of development should be covered by ridgeline regulations?

Ridgeline development can be regulated at two levels - when existing lots are developed and when new buildings are created. The first is a matter of zoning and the second is typically addressed in subdivision regulations. Zoning can be employed in more or less the same manner in both New York and Pennsylvania. Pennsylvania subdivision regulations, however, can address many more aspects of land development than such regulations in New York State, where site plan review is exclusively a zoning matter (although a town would have, also, the authority to enact a separate site plan review law under the Municipal Home Rule Law).

Addressing ridgeline protection in new subdivisions is a relatively easy matter. Areas of concern can be mapped and protective easements created around them. Lots can then be clustered in other areas using a conservation subdivision approach. Building and clearing restrictions can also be imposed (e.g., by pre-designating building envelopes) as part of the subdivision approval. All this can be accomplished without necessarily affecting density. Towns only need to clearly articulate their guidelines and ensure that new subdivisions address them.

Dealing with existing lots, however, is far more difficult. The lots may have been purchased or laid out to maximize views. Any restriction on such views may be perceived as an infringement, not only on property rights, but also on the value of the land. It may not be possible on a given lot to achieve a design that will maximize the value of the views for all parties because it is too small, too steep or otherwise limited. What sorts of regulations will allow for intended use of such properties while also protecting both sets of views? How can communities implement such regulations without imposing an arbitrary burden and additional bureaucratic process on both landowners and towns? How can design criteria be implemented that will allow for simplified issuance of permits?

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4. What types of standards are appropriate to achieve ridgeline protection without artificially limiting density?

Ridgeline protection could involve a number of approaches to regulating development. Maximum percentages of clearing, height limits, large tree preservation outside of building envelopes, building separations and clearcutting limitations are all possibilities. Moreover, all can be justified for multiple purposes and all can be accomplished without artificially limiting density. Additionally, in New York State, it would be possible to require site plan review for individual building projects within designated ridgeline areas or for projects of certain sizes. Are these the appropriate standards? Are they reasonable? Will they achieve the intended purposes? Are there additional criteria that can be employed within the same framework? Is a discretionary review justified in some circumstances? These are the critical issues. A review of particular standards that might be appropriate in subdivision, site plan review or zoning regulations or in a recommended design manual follows. Each needs to be evaluated with these questions in mind.

Potential Elements of Ridgeline Regulation:

1. **Conditional/Special Use or Site Plan Review for clearings above certain thresholds.**

The Town of Delaware now has a regulation that requires Special Use approval and Site Plan Review for clearings of specified sizes that are proposed to take place within a specific distance of the ridgeline. The Town of Cohecton is proposing to adopt a similar new ridgeline provision. It provides as follows:

Buildings shall not be located so close to the ridgeline of the River valley as to create potential erosion, sedimentation or landslide conditions. All clearing of more than one-half acre and all proposed building within the boundaries of the Upper Delaware Scenic and Recreational River that would be located within 200 feet of the highest ridgeline visible from the River or from Route 97 shall be subject to Special Use review for the purpose of limiting the amount of clearing, buffering structures with natural vegetation and otherwise limiting the impact on scenic resources, controlling stormwater and addressing public safety issues. All clearing of more than one-acre elsewhere within the boundaries of the Upper Delaware Scenic and Recreational River shall be also be subject to Special Use review for the same purposes.

This particular provision benefits from being relatively simple and

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straightforward. By subjecting any clearing of one-acre or more in the valley to Special Use review, it provides a basis for addressing most of the major concerns with clearing on individual lots. However, it largely relies upon exercise of discretion to set the standards and addresses none of the particulars. Moreover, it does not deal with multiple clearings for residences in a subdivision. These problems could be addressed by adding some review criteria and adopting conservation development provisions for subdivisions.

2. **An overlay zoning district that includes specific design standards for the mapped ridgeline area.**

A model ridgeline overlay district for the Shawangunk Ridge provides for several specific design standards for new development within a designated area. These standards include the following measures:

Visibility - *All structures shall be sited to avoid occupying or obstructing public views of land within the Overlay District. Public views shall be considered to be from any location listed on the SEQRA Visual Environmental Assessment Form. These locations are frequented by the public and offer unobstructed views of the Shawangunk Ridge. Visibility shall be measured using a condition of no leaves on trees.*

Building Sites - *Building sites shall be clearly noted on any plat or plan. All structures shall be sited away from ridgetops and ridgelines. Whenever possible, structures shall be sited at lower elevations and close to existing roads.*

Structure Design - *Structures shall blend in with natural surroundings through preferred use of stone or natural wood siding and use of roofing materials with earthtone colors.*

Lighting - *Exterior lighting shall be controlled in both height and intensity. Under no circumstances shall the light level at any lot line exceed 0.2 foot-candles, measured at ground level. Screening or shielding of luminaries may be required.*

Structure Screening - *As a condition of approval an applicant may be required to preserve existing vegetation or provide new plantings of native vegetation to screen structures. Additionally, a conservation easement pursuant*

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to Section 247 of General Municipal Law and Sections 49-0301 39 through 49-0311 of New York Environmental Conservation Law shall be the preferred means to protect or buffer views.

Existing Vegetation - *Existing vegetation shall be preserved to the maximum extent possible. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site so as to maintain native vegetation as a screen for structures as seen from public roads or parks and other public views.*

Tree Cutting - *No cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) except for harvests of less than fifteen (15) cords or less than 10,000 board feet on any one parcel shall take place except in accordance with an approved building permit, site plan, subdivision or timber-harvesting plan. Cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.*

Trail Access and Setback - *The Town, consistent with Sections 277 and 281(d) of New York Town Law,5 shall seek trail corridor access and setback of development away from trails where documentation exists that the subject parcel includes an existing or potential public trail such as the Long Path.*

Underground Utilities - *All electric, telephone, television and other communication lines, both main and service connections, servicing new developments shall be provided by underground wiring within easements of dedicated public rights-of-way, installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.*

Recreation Open Space - *As a condition of approval the Town may require up to twenty percent (20%) of any parcel within the Overlay District for parkland, recreation and open space purposes, so long as this condition does not reduce the number of units allowable under applicable zoning. Such land shall be dedicated.*

Although the tree cutting standards are clearly excessive for the Upper Delaware where logging is an important industry, these standards could, if modified, work as Conditional Use, Special Use or Site Plan Review criteria. Significantly, they are complemented by Conservation Development provisions

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applicable to new subdivisions.

Milford Township considered (and subsequently rejected) a similar overlay district approach based on a Vermont model. Standards addressed in that version included the following:

Skyline Protection - *With the exception of telecommunication facilities, which must be approved under separate Township regulations, no structure shall penetrate the skyline when viewed from any public viewing point (excluding points on the road that provide access to adjacent development). The skyline is the line between the vegetation on top of a relevant landform and the sky.*

Structure Location - *Structures shall not be sited on top of high points, outcroppings, or prominent knolls within the site.*

Sloping Sites - *Buildings located on sloping sites shall be built into the topography to the extent practicable.*

Building Colors - *Exterior building colors shall be selected to blend with the natural background, preferably earth tones.*

Tree Clearing - *While selective clearing of trees to create a building site may be undertaken, such clearing shall not disrupt the continuity of the skyline. Trees may be cleared to create a yard around a dwelling provided that:*

The existing and newly cleared yard area (including the footprints of all structures, waste water treatment facilities, swimming pools, tennis courts, parking and circulation areas, etc.), may not exceed 0.5 acres or fifty (50) percent of the lot size, whichever is smaller;

The yard area may be increased by 50% provided that no less than six mature trees (at least 4" caliper at 42 inches above ground level, shall be left in the yard to add shade and screening. If the site does not contain an adequate number of existing trees, the developer shall plant trees of species similar to those in surrounding woodlands;

All trees designated on an approved plan as being protected or retained, and all trees to be planted, shall be maintained continually, and replaced with similar species, of at least 4" caliper, if they die. Clearcutting and

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replacement shall not, however, be permitted as a practice.

Buffers - *A buffer of existing vegetation, at least fifty (50) feet wide, shall be maintained (except for a driveway and a single view corridor as provided herein) between the cleared yard and all lot lines.*

Minimum Lot Area - *The minimum lot area for any lot that is more than 50% within the Overlay District shall be two (2) acres.*

Selective Cutting and Pruning - *Selective pruning and cutting is allowed on the lot, including the buffer areas, to provide views through and between trees, provided that the narrowest point of any view corridor is no more twenty-five (25) feet in width at the structure facade. The corridor width may increase by up to 0.5 feet for every foot of distance away from the structure to a maximum of fifty (50) feet.*

The Township may allow a second view corridor if the sum of the narrowest points of the two view corridors does not exceed twenty-five (25) feet and the two corridors do not overlap on the site.

Selective pruning is preferred to removal of entire trees.

Clearcutting of the entire view corridor shall not be allowed.

It is the intent of this Section that the vast majority of the facades of buildings in the overlay district will be screened from view from public roads, parks, paths or trails all year round.

Tree Groupings - *Existing trees shall be saved in undisturbed groupings wherever possible.*

Lighting - *In addition to all requirements set forth in these Regulations, all outdoor lighting fixtures shall be downward shielded and screened so that direct illumination from the fixture is not transmitted beyond the property line.*

These standards fill in a view gaps in the Shawangunk model with objective regulations that leave less to discretion. However, the detail may be excessive. Also, Milford Township rejected the regulations on advice of legal counsel who thought they were unconstitutional in Pennsylvania.

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Recommendations:

Given the above background it is recommended that a two-fold approach be taken under zoning law to address the situation, including; 1) a set of site plan review standards to deal with ridgeline development on existing lots, and 2) the mandatory use of conservation subdivision design for new subdivisions of five or more lots so as to require the protection of ridgelines in advance. Both would take place within a Ridgeline Overlay District for the area in question. Most of the New York State communities already have or are separately considering conservation subdivision design regulations on which these standards can be piggybacked. Attached are the model regulations for specifically addressing ridgeline protection.

Model Ridgeline Zoning Provisions

500 Ridgeline Overlay District

A Ridgeline Overlay District is hereby created to encompass all areas included in the Upper Delaware Scenic and Recreational River corridor as defined in the *Upper Delaware River Management Plan*, excluding designated hamlet areas. [NOTE: Communities may wish to designate more specific boundaries using GIS mapping capabilities available from the Sullivan County Division of Planning, the National Park Service and others. Such mapping would be able to more accurately designate the location of ridgelines as viewed from the River or major highways and shape an overlay district more tightly so as to affect less area.]

500.1 Findings and Intent

A Findings

1. The 1978 designation of the Upper Delaware River as a National Scenic and Recreational River recognized the unique natural character of the Delaware River valley.
2. This character is often defined by large unbroken expanses of forest rising from the River valley to the ridgelines above.
4. Maintaining this character is important for maintaining property values and attracting tourists and visitors to the area.
5. Development which takes place within this corridor can and should be accomplished in such a way that it maintains, to the maximum degree practical, the unbroken forest appearance from major public viewing points along the River and the highways serving the valley.

- B. Intent - It is intended to establish standards that will, without affecting density or the range of uses otherwise permitted in underlying zoning districts, maintain the unbroken forest appearance of ridgelines and valley walls in the Ridgeline Overlay District as seen from major public viewing points.

500.2 Special Definitions

The following special definitions shall apply to the Ridgeline Overlay District:

Conservation Easement - A right or interest in land granted primarily for the preservation of the land in its undeveloped state but which may allow limited development (e.g., a residential structure) and other compatible uses such as agriculture and forestry.

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Conservation Open Space - That part of a conservation subdivision set aside for the protection of sensitive natural features, farmland, scenic views and other primary and secondary conservation areas identified by this Zoning Law. It may be accessible to the public, restricted to common areas for use by residents or retained in individual private ownership subject to a conservation easement.

Major Public Viewing Point - A location on the Delaware River, New York State Route 97, Pennsylvania Route 191, or River Road on either side of the Delaware River, from which large numbers of individuals (more than 1,000 vehicles per day in the case of drivers) are able to view large expanses of the River valley.

Reflective - Any surface which bends, casts or throws back light in such a manner as to cause glare.

Ridgeline - The line between the tops of the vegetation on the development site and the sky as seen from a major public viewing point.

500.3 Development of Existing Lots of Record

The following specific site plan review standards are intended to minimize the visual impacts associated with the development of individual lots existing on July 1, 2005. Such development shall be exempt from these site plan review criteria if the Town Code Enforcement Officer determines, from the visual impact analysis required by this section, that the view of any principal structures or proposed clearing for other than driveway access purposes is already minimized from any major public viewing point. Any structure(s) located more than one mile from a major public viewing point shall be presumed to have minimal impact absent compelling evidence that the bulk or number of structures would have an unusually large or major cumulative impact on the unbroken forest appearance of the River valley.

- A. Visual Impact Analysis - Applicants for building or zoning permits for new principal or accessory structures and landowners proposing the clearing of land or the construction of other improvements shall complete a visual impact analysis, using the New York State Environmental Quality Review Act (SEQRA) Visual Assessment Form and such other information as the Town Code Enforcement Officer may require for these purposes, to indicate how the view of the structure will be minimized from any major public viewing point.
- B. Basic Standard - Buildings within the Ridgeline Overlay District shall largely be screened from view from major public viewing points, if the Planning Board, in conducting site plan review, shall determine there would be a major impact on the visual landscape.
- C. Site Plan - The applicant shall, in addition to other information required under

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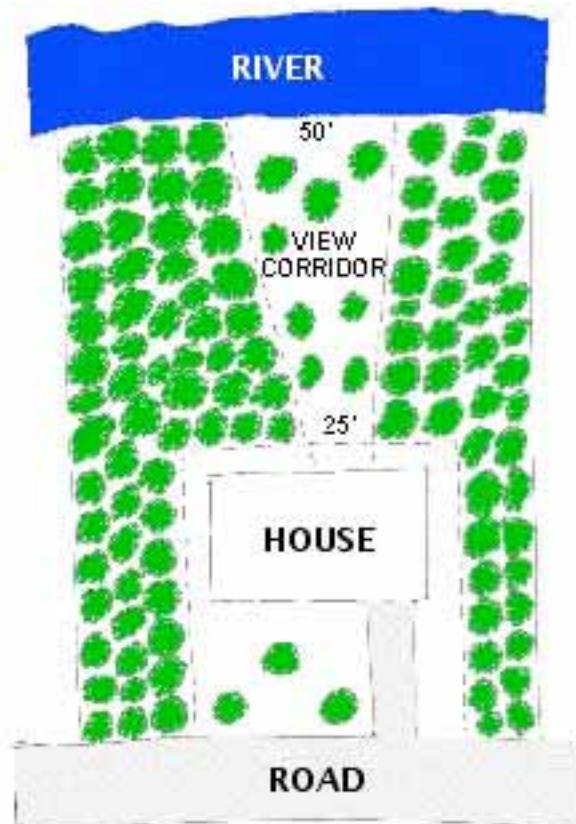
this Law for site plan review, provide for the following as may be applicable:

1. Existing site conditions including topography and existing vegetation (differentiating between wooded, brushy and grassy areas) and significant natural features.
 2. Location of all proposed development and site clearing, principal structures, drives, parking, storm water management systems and accessory structures (including sewage disposal systems).
 3. Location of all areas proposed for thinning of vegetation including identification of vegetation and trees to remain.
 4. Details of any landscaping and tree planting proposed.
 5. Building footprints, design details and elevations.
- D. Ridgeline Protection - The ridgeline shall not be penetrated by any structure when viewed from any major public viewing point (excluding views from the road providing access to the development). No vegetation clearing or thinning shall alter the ridgeline as seen from any major public viewing point except as permitted herein.
- E. Tree and Vegetation Clearing and Pruning - Tree and vegetation clearing and pruning shall be minimized and shall be limited to those areas of the lot approved for principal and accessory structures, parking, drives, sewage systems and view corridors in accord with this Section 500. Such clearing and pruning shall not, however, disrupt the continuity of the ridgeline. Removal of entire trees shall only be permitted in instances where selective pruning will not accomplish the same objectives. This shall not preclude forestry enterprises conducted in accord with Town requirements.
- F. Building Envelope - The building envelope permitted shall be a rectangle with an upslope boundary forty (40) feet or less from the building, side boundaries forty (40) feet or less from each side of the building, and a downslope boundary twenty-five (25) feet or less from the building. Accessory structures, including sewage disposal systems and parking areas, shall be built within the building envelope or in a clearing no greater than twenty (20) feet around the structure. These standards may be modified by the Planning Board to the minimum degree necessary to accommodate the placement of sewage systems where placement within the specified building envelope is not possible due to soil conditions.
- G. Building and Structure Design - Buildings and structures shall, whenever

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possible, be designed and constructed to blend with the natural background. Reflective siding and roofing materials shall not be used, unless the materials are treated to eliminate reflection. This shall not apply to window glass, however.

- H. Buffers - A buffer of not less than fifty (50) feet in width shall be maintained between the building envelope and all property lines, where such areas will be visible from a major public viewing point. This buffer shall remain undisturbed except for a driveway entrance and the view corridor permitted by this section.
- I. View Corridors - Selective cutting and pruning shall be allowed on the lot, including within buffer areas, to provide one (1) view corridor through and between trees, provided that the narrowest point of any view corridor is no more twenty-five (25) feet in width at the edge of the building envelope. A second view corridor shall be permitted provided the sum of the narrowest points of the two (2) view corridors does not exceed twenty-five (25) feet and the corridors do not overlap.



The corridor width may increase by up to 0.5 feet for every foot of distance away from the structure to a maximum of fifty (50) feet in width. The basal area of

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trees in the view corridor shall not be reduced below fifty (50) percent of the basal area present before cutting or below sixty-five (65) square feet per acre, whichever is higher. Basal area is the area in square feet per acre occupied by tree stems at four and one-half (4.5) feet above the ground, normally measured by a calibrated prism or angle gauge.

- J. Lighting - Outdoor lighting for all development shall be downward shielded and screen to minimize reflective glare and transmission of light beyond the property lines.
- K. Lack of Existing Vegetation - Where the visual impact assessment shows that existing trees and vegetation are not adequate to screen the development, the applicant shall provide a tree planting and landscaping plan to minimize the visual impact. Buildings shall, in such case, be located on the site to minimize the visual impact. All trees planted shall be species indigenous to surrounding woodlands and other landscaping materials shall be of a type adapted to the climate of the Town. The minimum tree size shall be 4" caliper at 42 inches above ground level and all trees and vegetation shall be maintained in good condition and shall replaced in-kind as necessary. Tree planting and landscaping shall achieve the proposed screening within five (5) years of permit approval.
- L. Other Modifications - An applicant desiring to employ alternate means of achieving the objectives of this section may apply to the Zoning Board of Appeals for further modification of the standards contained herein. The Zoning Board of Appeals shall not be constrained by the standards for variances but shall ensure that such modification shall achieve no less screening of the structures or clearing(s) from view at the major public viewing point(s) in question.

500.4 Conservation Subdivision Design in the Ridgeline Overlay District

- A. Conservation subdivision design, as provided for in this Law, shall be mandatory for all new subdivisions of five (5) or more lots within the Ridgeline Overlay District.
- B. All lots in new conservation subdivisions shall include designated building envelopes and development restrictions in accord with the standards of Section 500.3 herein.
- C. Ridgeline areas and other ridgeline locations of high visibility from major public viewing points ("ridgeline areas") shall be considered primary conservation spaces for purposes of conservation subdivision design. Building locations shall be designated so as to avoid these areas.

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- D. The Planning Board may grant a density bonus for conservation subdivisions that; locate building sites outside of the Ridgeline Overlay District while preserving other land within it; locate building sites away from the ridgeline area; impose higher than required standards of screening to preserve ridgeline views and the appearance of unbroken forest; or otherwise surpass the objectives of this section. Such bonuses shall be based upon a maximum of one additional dwelling unit, above that otherwise permitted within the underlying zoning district, per five (5) acres of ridgeline area that is protected. The decision whether to grant such bonus shall be at the discretion of the Planning Board, which shall be guided by the degree to which the proposed conservation subdivision design achieves the intent of this section.