

CHAPTER 1492
Controlling Riparian Setbacks and Wetland Setbacks

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CROSS REFERENCES

Controlling Construction Site Soil Erosion, Sediment, and Other Wastes and Storm Water
Runoff – see B. & H. Ch. 1488
Controlling Post-Construction Water Quality Runoff – see B. & H. Ch. 1490

1492.01 PUBLIC PURPOSE.

- (a) It is hereby determined that the system of rivers, streams, wetlands and riparian areas within the City of North Royalton contributes to the health, safety and general welfare of the residents of the City of North Royalton. The purpose of this Riparian Setback and Wetland Setback chapter is to protect and preserve the water quality within streams of the City of North Royalton and to protect residents of the City of North Royalton from property loss and damage because of flooding and other impacts of the stream. The method of implementing this chapter is by controlling uses and developments within a setback that would impair the ability of the riparian and/or wetland area to:
- (1) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters and regulating base flow.
 - (2) Stabilize the banks of streams to reduce bank erosion and the downstream transport of sediments eroded from stream banks.
 - (3) Reduce pollutants in streams during periods of high flows by filtering, settling and transforming pollutants already present in streams.
 - (4) Reduce pollutants in streams during periods of high flows by filtering, settling and transforming pollutants in runoff before they enter streams.

- (5) Provide areas for natural meandering and lateral movement of stream channels.
 - (6) Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
 - (7) Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian and wetland vegetation.
 - (8) Benefit the City of North Royalton economically by minimizing encroachment on wetlands and stream channels and reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents, and by contributing to the scenic beauty, the character and the environment of the City of North Royalton, the quality of life of the residents of the City of North Royalton and corresponding property values.
 - (9) Protect the health, safety, and welfare of the citizens of City of North Royalton.
- (b) The following regulation has been enacted to protect these services of riparian and wetland areas by providing reasonable controls governing structures and uses in riparian and wetland setbacks. The intent of this regulation is to:
- (1) Preserve to the maximum extent practicable the natural drainage characteristics of the City and building sites and minimize the need to construct, repair and replace enclosed storm drain systems.
 - (2) Preserve to the maximum extent practicable natural infiltration and ground water recharge and maintain subsurface flow that replenishes water resources, wetlands and wells.
 - (3) Reduce the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resource, wetlands and storm water management practices that are the result of inadequate storm water control due to the loss of riparian areas and wetlands.
 - (4) Reduce the long-term expense of remedial projects needed to address the problems caused by inadequate storm water control.

1492.02 APPLICABILITY, COMPLIANCE, AND VIOLATIONS.

- (a) The provisions of this Chapter shall apply to all lands within the corporated limits of the City of North Royalton except as described in subsection (b) hereof..
- (b) The provisions of this Chapter shall not apply to any parcel of land that is included in a subdivision that has previously received record plat approval or has been dedicated by the City or is property that has been developed before the effective date of this Chapter.
- (c) No preliminary plan or building permits shall be issued by the City of North Royalton without full compliance with the terms of these regulations.

- (d) Any person or organization who violates any provision in this Chapter shall be guilty of a minor misdemeanor and, upon conviction thereof, shall be subject to punishment as provided in Section 1492.99 of the Codified Ordinances of the City of North Royalton and shall be required to restore the Riparian or Wetland Setback through a plan approved by Cuyahoga SWCD.
- (e) The provisions of this Chapter may be enforced through civil or criminal proceedings brought by the City of North Royalton Law Director on behalf of the City of North Royalton.

1492.03 CONFLICTS WITH OTHER REGULATIONS AND SEVERABILITY.

- (a) Where this chapter imposes a greater restriction upon land than is imposed or required by any other provision of law, regulation, contract or deed, the provisions of this chapter shall control.
- (b) These regulations shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available thereunder, except as provided in subsection (a) hereof.
- (c) If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.
- (d) Failure of the City to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City, its officers, employees or agents being responsible for any condition or damage resulting therefrom.
- (e) It is not the role of the City to point out each and every part of the rules and how to implement them on the individual sites. It is the owner's responsibility to be proactive in meeting the intent, purpose and requirements of these regulations.

1492.04 CONSULTATIONS.

- (a) In implementing these regulations the City Engineer or other City officials may consult with the local county Soil and Water Conservation District (SWCD), State and Federal agencies and other technical experts as necessary. Any costs associated with such consultations may be assessed to the applicant or his or her designated representative.

1492.05 DEFINITIONS.

- (a) **APPLICANT:** Any person who executes the necessary forms to procure official approval of a project or a permit to carry out a project.

- (b) **BEST MANAGEMENT PRACTICES (BMPs):** Conservation practices or protective measures which reduce impacts from a particular land use. Best Management Practices for construction are outlined in “Rainwater and Land Development, Ohio’s Standard for Stormwater Management, Land Development, and Urban Sediment Protection” prepared by the Ohio Department of Natural Resources.
- (c) **CITY:** Throughout this regulation the city shall mean the City of North Royalton, State of Ohio, and its designated agents and representatives.
- (d) **CONSERVATION:** The wise use and management of natural resources.
- (e) **DAMAGED OR DISEASED TREES:** Trees that have a split trunk, broken tops, heart rot, or insect or fungus problems that will lead to imminent death, undercut root systems that put the tree in imminent danger of falling, leaning as a result of root failure that puts the tree in imminent danger of falling, or any other condition that puts the tree in imminent danger of being uprooted or falling into or along a stream or onto a structure.
- (f) **DEFINED CHANNEL:** A natural or man-made depression in the terrain which is maintained and altered by the water and sediment it carries.
- (g) **DEVELOPMENT AREA:** Any tract, lot, or parcel of land, or combination of tracts, lots or parcels of land, which are in one ownership, or are contiguous and in diverse ownership, where earth disturbing activity is to be performed.
- (h) **DITCH:** An excavation, either dug or natural, for the purpose of drainage or irrigation, and having intermittent flow.
- (i) **DUMPING:** The grading, pushing, piling, throwing, unloading or placing of soil or other material.
- (j) **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** The agency with overall responsibility for administering the National Flood Insurance Program.
- (k) **FINAL PLAT:** A final tracing of all or a phase of a subdivision and its complete survey information.
- (l) **GRADING:** Earth-disturbing activity such as excavation, stripping, cutting, filling, stockpiling or any combination thereof.
- (m) **IMPERVIOUS COVER:** Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.
- (n) **NATURAL SUCCESSION:** A gradual and continuous replacement of one kind of plant and animal group by a more complex group. The plants and animals present in

the initial group modify the environment through their life activities thereby making it unfavorable for themselves. They are gradually replaced by a different group of plants and animals better adapted to the new environment.

- (o) **NOXIOUS WEED:** Any plant defined as a “noxious weed” in Appendix I – Noxious Weed.
- (p) **OHIO RAPID ASSESSMENT METHOD:** A multi-parameter qualitative index established by the Ohio Environmental Protection Agency to evaluate wetland quality and function.
- (q) **OUTFALL:** An area where water flows from a structure such as a conduit, storm sewer, improved channel or drain, and the area immediately beyond the structure which is impacted by the velocity of flow in the structure.
- (r) **100-YEAR FLOODPLAIN:** Any land susceptible to being inundated by water from a base flood, which is the flood that has a one percent or greater chance of being equaled or exceeded in any given year. For the purpose of these regulations, the 100-year floodplain shall be defined by FEMA and approved by the City of North Royalton.
- (s) **ORDINARY HIGH WATER MARK:** The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention or woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The ordinary water mark defines the channel of a stream.
- (t) **POLLUTION:** Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to: public health, safety or welfare, domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock; wildlife, including birds, fish or other aquatic life.
 - (1) “POINT SOURCE” pollution is traceable to a discrete point or pipe.
 - (2) “NON-POINT SOURCE” pollution is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff, or ground water seepage rather than direct discharge.
- (u) **PRELIMINARY PLAN:** A drawing of a major subdivision for the purpose of study and which, if approved, permits proceeding with the preparation of the final plat.
- (v) **RIPARIAN AREA:** A transitional area between flowing water and terrestrial ecosystems, which provides a continuous exchange of nutrients and woody debris between land and water. This area is at least periodically influenced by flooding. Riparian areas, if appropriately sized and managed, help to stabilize banks, limit

erosion, reduce flood size flows and/or filter and settle out runoff pollutants, or perform other functions consistent with the purposes of these regulations.

- (w) **RIPARIAN SETBACK:** The area set back from each bank of a stream to protect the riparian area and stream from impacts of development, and streamside residents from impacts of flooding and land lost through erosion. Riparian Setbacks are those lands within the City of North Royalton that fall within the area defined by the criteria set forth in these regulations.
- (x) **SOIL AND WATER CONSERVATION DISTRICT (SWCD):** An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employees, hereinafter referred to as the Cuyahoga SWCD.
- (y) **SOIL DISTURBING ACTIVITY:** Clearing, grading, excavating, filling or other alteration of the earth's surface where natural or human made ground cover is destroyed and which may result in, or contribute to, erosion and sediment pollution.
- (z) **STREAM:** A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodical flowing water (ORC 6105.01) in such a way that terrestrial vegetation cannot establish roots within the channel.
- (aa) **STORMWATER POLLUTION PREVENTION PLAN (SWPPP):** The plan which describes all the elements of the stormwater strategy implemented during and after construction. The plan addresses erosion control and stormwater quality.
- (bb) **STORMWATER QUALITY TREATMENT:** The removal of pollutants from urban runoff and improvement of water quality, accomplished largely by deposition and utilizing the benefits of natural processes.
- (cc) **VARIANCE:** A modification of the enforcement of the Riparian Setback and Wetland Setback chapter which will not be contrary to the public interest and where, due to conditions peculiar to this property and not the result of the action of the applicant, a literal enforcement of this chapter would result in undue hardship to the applicant.
- (dd) **WATERCOURSE:** A natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through, or borders the community.
- (ee) **WATERSHED:** An area of land that drains into a particular watercourse, usually divided by topography.
- (ff) **WETLANDS:** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

1492.06 ESTABLISHMENT OF RIPARIAN SETBACKS AND WETLAND SETBACKS.

- (a) Riparian Setbacks and Wetland Setbacks are established as provided in this Chapter.
- (b) Streams addressed by this chapter are those which meet the definition of “stream” in Section 1492.05 of these regulations and are indicated on at least one of the following maps:
 - (1) USGS Topographical Map
 - (2) Soil Maps located in the Soil Survey of Cuyahoga County, Ohio, USDA, NRCS.
- (c) Widths of Riparian Setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, and are established as follows:
 - (1) A minimum of 300 feet on each side of all streams draining an area greater than 300 square miles.
 - (2) A minimum of 120 feet on each side of all streams draining an area greater than 20 square miles and up to 300 square miles.
 - (3) A minimum of 75 feet on each side of all streams draining an area greater than 0.5 square miles (320 acres) and up to 20 square miles.
 - (4) A minimum of 25 feet on each side of all streams draining an area less than 0.5 square miles (320 acres).
- (d) The following are exempt from the terms and protection of this chapter: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey stormwater to another system, tile drainage systems, and stream culverts.
- (e) The following shall apply to the Riparian Setback:
 - (1) Where the 100-year floodplain is wider than the Riparian Setback on either or both sides of the stream, the Riparian Setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be determined by the project engineer conducting a hydrologic analysis of the project area in conformance with standard engineering practices and approved by the City Engineer, or by the FEMA Flood Insurance Rate Maps, whichever is more extensive.
 - (2) Because the gradient of the riparian corridor significantly influences impacts on the stream, the following adjustment for steep slopes will be integrated into the Riparian Setback formula for width determination:

<u>Average Percent Slope</u>	<u>Width of Setback</u>
15% through 20%	Add 25 feet
Greater than 20% through 25%	Add 50 feet

Greater than 25%

Add 100 feet

Average percent slope of the streambank is to be calculated for the area within the Riparian Setback and is to be measured as a line perpendicular to the stream channel at the location where structures or uses are proposed in the plan. All of the following measurements are to be performed using County of Cuyahoga Topographic Map (1993) or equivalent. Calculate slope as follows:

Change in elevation from the edge of stream channel to edge of Riparian Setback divided by horizontal map distance from the edge of stream channel to the edge of the Riparian Setback.

- (3) Where wetlands protected under federal or state law are identified within the Riparian Setback, the Riparian Setback shall consist of the full extent of the wetlands. In addition, wetlands shall be protected to the extent detailed in these regulations.
- (f) Wetland setbacks are established as follows:
 - (1) A minimum of 120 feet surrounding and including all Ohio EPA Category 3 Wetlands, or current equivalent Ohio EPA classification.
 - (2) A minimum of 75 feet surrounding and including all Ohio EPA Category 2 Wetlands, or current equivalent Ohio EPA classification.
 - (3) No additional setback will be required adjacent to Category 1 Wetlands.
- (g) Wetlands shall be delineated by a qualified professional under guidelines established by the U.S. Army Corps of Engineers and Ohio Environmental Protection Agency and the delineation approved by the appropriate agencies. If a conflict exists between the delineation protocols of these two agencies, the delineation protocol that results in the most inclusive area of wetland shall apply. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of the regulations.
- (h) If no wetlands are found, the applicant or his or her designated representative shall submit a letter from a qualified wetland professional with the preliminary plat or permit application verifying that the qualified wetland professional has surveyed the site and found no wetlands.
- (i) The applicant or his or her designated representative shall be responsible for field delineation of riparian and wetland setbacks, including any expansions or modifications as required by these regulations, and identifying these setbacks on all property/parcel splits, subdivisions, commercial development or other land development plans, and/or building permit applications submitted to the City. This delineation may be done by a metes and bounds, or higher level, survey and shall be subject to review and approval by the City. This delineation may be subject to review by the Cuyahoga SWCD at the direction of the City Engineer and at the expense of

the applicant. As the result of this review, the City of North Royalton may require further studies from the applicant.

- (j) Prior to any soil disturbing or land clearing activity, the Riparian and/or Wetland Setbacks shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout soil-disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All construction fencing shall be removed when constructed is completed and replaced with permanent delineation monuments of iron pins or delineators.
- (k) No approvals or permits shall be issued by the City of North Royalton prior to delineation of the Riparian Setback and Wetland Setback in conformance with these regulations.
- (l) Upon completion of an approved subdivision, commercial development or other land development or improvement, the applicant shall have the Riparian and/or Wetland Setbacks permanently recorded on the plat records and written recorded easement(s) and shall be maintained as open space thereafter through a permanent conservation easement.

1492.07 USES PERMITTED IN THE RIPARIAN SETBACK AND WETLAND SETBACK.

- (a) The following uses are permitted by right within the Riparian Setbacks and Wetland Setbacks without prior approval. Open space uses that are passive in character shall be permitted in the setback including, but not limited to, those listed in subsections (a)(1) through (4) hereof. No use permitted under these regulations shall be construed as allowing trespass on privately held lands. Alteration of this natural area is strictly limited. Except as otherwise provided in these regulations, the setback shall be preserved in its natural state.
 - (1) Recreational activity. Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, non-motorized bicycling, fishing, hunting, picnicking and similar uses and associated structures including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.
 - (2) Removal of damaged or diseased trees. Damaged or diseased trees may be removed. Because of the potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that area greater than 6 inches in diameter, shall be anchored to the shore or removed from the 100-year floodplain.
 - (3) Revegetation and/or reforestation. The revegetation and/or reforestation of the setback shall be allowed without approval. Species of shrubs and vines recommended for stabilizing flood prone areas along streams within the City of North Royalton are listed in the Appendix II - Woody Plants Suitable For Riparian Areas.

- (4) The City of North Royalton Engineering Department maintains the right of access to all streams within the City of North Royalton for the purposes outlined in the Ohio Revised Code, Section 6131.01 to 6131.64, 6133.01 to 6133.15, 6135.01 to 6135.27, and 6137.05.1.
- (b) The following uses are permitted by right within the Riparian Setbacks and Wetland Setbacks with prior approval of the design.
 - (1) Stream bank stabilization/erosion control measures. Best Management Practices (BMP's) for stream bank stabilization or erosion control may be allowed if such practices are within permitted uses by the local, state, and federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available. Such stream bank stabilization/ erosion control practices shall only be undertaken upon review of a Stormwater Pollution Prevention Plan (SWPPP or SWP3) by the Cuyahoga SWCD and approval by the City of North Royalton.
 - (2) Crossings. In reviewing plans for stream crossings, the City may confer with the Cuyahoga SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water, the Army Corps of Engineers, the County of Cuyahoga Engineer, the Cuyahoga County Health Department; or other technical experts as necessary.
 - (a) Limited crossings of designated streams through the setback by vehicles, storm sewers, sanitary sewers, water lines, and public utility lines will be per the approval of local, state and federal governing agencies and as a part of the regular subdivision review process.
 - (b) One driveway crossing per stream per tax parcel will be allowed for individual landowners.
 - (c) Roadway crossings for major and minor subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the City of North Royalton's design standards and as approved by the City of North Royalton Planning Commission. If more than two crossings per 1,000 linear feet of stream center are required for these areas, the applicant must apply for a variance.
 - (d) All roadway crossing shall be perpendicular to the stream flow and shall minimize disturbance to the setback and shall mitigate any necessary disturbances.
 - (3) Selective harvesting of timber. Selective harvesting of timber may be allowed upon presentation of a Forest Management and Harvest Plan prepared by a qualified forester and accepted by the City Engineer. Harvesting of timber on land designated as an Agricultural use District shall follow the guidelines and requirements in Section 818 of the North Royalton Codified Ordinances.
 - (a) Any landowner harvesting timber for sale shall post a performance guarantee with the City. This performance guarantee shall be in the form of a surety bond, escrow account, certified check or cash as required in Section 818.01, Permit Fee and Bond Required, and it shall be held unit completion of the timber harvesting operation.

- (b) Due to the potential for felled logs and branches to damage downstream properties and/or to block ditches or otherwise exacerbate flooding, logs or branches resulting from permitted selective harvesting that are greater than six inches in diameter at the cut end shall be cut into sections no longer than six feet or removed from the 100-year floodplain. Harvested trees or felled logs and branches that are part of a designed and approved Streambank Stabilization and Erosion Control measure shall be allowed to remain in a designated watercourse.
- (c) The Forest Management and Harvest Plan must:
 - (1) Show that the site will be adequately stocked after the approved selective harvest. "Adequately stocked" shall be defined as the residual stocking level greater than the B-Level on the Allegheny Hardwood Stocking Guide produced by the United States Forest Service, or other United States Forest Service stocking guides as dictated by the forest city to be harvested.
 - (2) Show that trees located less than 25 feet from the ordinary high water mark will not be impacted by the proposed harvesting.
 - (3) Include a map of the site. This map shall specify the location of any skid and haul roads required for transporting harvested trees and fire wood from riparian and wetland setbacks.
 - (4) Include the method to be used to transport harvested trees from riparian and wetland setbacks.
 - (5) Specify the erosion control best management practices that will be employed during and after the proposed harvest. These erosion control practices shall be in conformance with the Ohio department of Natural resources, Division of Forestry's BMPs for Erosion Control on Logging Jobs in Ohio.
 - (6) Provide the U.S. Army Corps of Engineers and the Ohio EPA Wetland and Stream protection permit numbers and associated permit requirements.
- (4) Placement of stormwater retention or detention facilities may be considered within the setback if:
 - (a) Stormwater quality treatment that is consistent with current state standards is incorporated into the basin.
 - (b) The stormwater quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.
 - (c) Every effort is made to locate the facilities in a manner to minimize the impacts to the riparian and wetlands setbacks.
 - (d) The storm water basin and outlet pipe shall be located outside the boundaries of a delineated wetland.

1492.08 USES PROHIBITED IN THE RIPARIAN SETBACK AND WETLAND SETBACK.

The following uses are specifically prohibited within the Riparian Setback and Wetland Setback.

- (a) Construction. There shall be no structures of any kind, except as permitted under these regulations.
- (b) Dredging or Dumping. There shall be no drilling for petroleum or mineral products, mining activity, filling, dumping or dredging of soil, spoils, or any material-natural or man-made-except as permitted under these regulations.
- (c) Roads or Driveways. There shall be no roads or driveways, except as permitted under these regulations.
- (d) Motorized Vehicles. There shall be no use of motorized vehicles of any kind, except as permitted under these regulations.
- (e) Modification or Disturbance of Natural Vegetation. Modifications or disturbance of the natural vegetation, including mowing, shall be limited to conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with these regulations; for such disturbance as are approved under these regulations; and for the passive enjoyment, access and maintenance of landscaping or lawns existing at the time of passage of these regulations.

Nothing in this section shall be construed as requiring a landowner to plant or undertake any other activities in the setback provided the landowner allows for natural succession.

- (f) Parking Lots. There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.
- (g) New Surface and/or Subsurface Sewage Disposal or Treatment Area. Riparian and wetland setbacks shall not be used for the disposal or treatment of sewage except in accordance with local county Board of Health regulations in effect at the time of application of this regulation.
- (h) Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to: asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.
- (i) Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to stormwater runoff around the facility. Such facilities include, but are not limited to: landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations, and road salt storage barns.

1492.09 NON-CONFORMING STRUCTURES OR USES IN THE RIPARIAN SETBACK AND WETLAND SETBACK.

- (a) Structures and uses within the Riparian Setback and Wetland Setback, existing at the time of passage of these regulations, that are not permitted under these regulations may be continued but shall not be expanded except as set forth in this Chapter.
- (b) If damaged or destroyed, these structures or uses may be repaired or restored within six months from the date of damage/destruction or the adoption of these regulations, whichever is later, at the property owner's own risk.
- (c) A residential structure or use within the Setback existing at the time of passage of these regulations may be expanded subject to the provisions of subsection (c)(1) through (3) hereof.
 - (1) The expansion conforms to existing zoning regulations.
 - (2) The expansion must not impact the stream channel or the 100-year flood plain.
 - (3) The expansion must not exceed an area of 15% of the footprint of the existing structure or use that lies within the Setback. Expansions exceeding 15% of the footprint within the Setback must be obtained through the variance process.
 - (4) The expansion is at the property owners own risk.
- (d) Non-residential structure or use expansions will be permitted only through the variance process.
- (e) A non-conforming structure or use that is discontinued may be resumed any time within six months from such discontinuance, but not thereafter. No change or resumption shall be permitted that is more detrimental to riparian and wetland setbacks, as measured against the intent and objectives of these regulations as determined by the City, than the existing or former nonconforming structure or use.

1492.10 BOUNDARY INTERPRETATION AND APPEALS PROCEDURE.

- (a) When an applicant disputes the boundary of the Riparian Setback or Wetland Setback or the ordinary high water mark of a stream, the applicant shall submit evidence of a nature described throughout this Chapter to the City of North Royalton that describes the boundary, presents the applicant's proposed boundary and presents all justification for the proposed boundary change.
- (b) The City Engineer or his/her designated authority shall evaluate all materials submitted and shall make a written recommendation to the Planning Commission within a reasonable period of time not to exceed 60 days. A copy of this recommendation shall be submitted to the applicant. If during this evaluation the City Engineer requires further information to complete this evaluation, the applicant may be required to provide additional information. In the event that the City requests such additional information, the 60 day limit on the City's review shall be postponed until the applicant provides such information.
- (c) The Planning Commission shall decide such boundary disputes. The party contesting the location of the Setback or the ordinary high water mark of the streams as

determined by these regulations shall have the burden of proof in case of any such appeal.

- (d) Any party aggrieved by any wetland or riparian setback determination under this regulation may appeal to the Board of Zoning Appeals.

1492.11 VARIANCES WITHIN RIPARIAN SETBACK AND WETLAND SETBACK.

- (a) Applications for variances to the provisions of this Chapter shall be submitted to the Board of Zoning Appeals.
- (b) The Board of Zoning Appeals may consult with representatives from the Cuyahoga SWCD; the Ohio Department of Natural Resources, Division of Natural Area; the Ohio Environmental Protection Agency, Division of Surface Water, the Army Corps of Engineers, the County of Cuyahoga Engineer, the Cuyahoga County Health Department, or other technical experts at the expense of the applicant as necessary to consider variance requests.
- (c) Expansions of structures or uses exceeding 50% of the footprint area are subject to subsections (c)(1) through (3) below:
- (1) The expansion conforms to the existing zoning regulations.
 - (2) The expansion must not impact the stream channel or the 100-year floodplain.
 - (3) The expansion of a structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or streambank erosion to landowners in those areas. A hydrologic study must be completed by non-residential applicants only, as a process of the variance application.
- (d) Requests for variances for subdivisions will be considered for the following:
- (1) An additional stream crossing or crossings for a subdivision or open space development which is necessary for the health, welfare, and safety of the residents of the subdivision.
 - (2) A reduction of the setback width, not to exceed 10% of the prescribed Setback width.
- (e) No variances shall be granted for expansion of the following structures or uses:
- (1) Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to: asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.
 - (2) Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to stormwater runoff around the facility. Such facilities include, but are not limited to: landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations, and road salt storage barns.
- (f) In reviewing whether to grant variances, the Board of Zoning Appeals shall consider the following:

- (1) The extent to which the requested variance impairs the flood control, soil erosion control, sediment control, water quality protection or other functions of the riparian and/or wetland area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies, at the applicant's expense, listed in subsection (a) through (e) above.
- (2) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain. The criteria of the City's flood damage reduction regulations (Chapter 1466) may be used as guidance when granting variances in the 100-year floodplain.
- (3) Varying the front, rear and side yard setbacks before the riparian and wetland setbacks are varied.
- (4) Variances should not be granted for asphalt or concrete paving in the riparian and wetland setbacks in any situation where gravel or porous pavement (i.e., porous pavers and similar products) will do the job.
- (5) Soil-disturbing activities permitted in a riparian and/or wetland setback through variances should be implemented in order to minimize clearing to the extent possible, and to include best management practices necessary to minimize soil erosion and maximize sediment control.
- (6) The presence of significant impervious cover, or smooth vegetation such as maintained lawns, in riparian setback areas compromises their benefits to the City.
- (7) A reduction in storm water infiltration into the soil on wetland areas will occur.
- (8) The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.

1492.12 INSPECTION OF RIPARIAN SETBACK AND WETLAND SETBACK.

- (a) The Riparian Setback and Wetland Setback shall be inspected by the City of North Royalton or by the Cuyahoga SWCD.
 - (1) When a preliminary subdivision plat or other land development plan is submitted to the City of North Royalton.
 - (2) When a building or zoning permit is requested.
 - (3) Prior to any soil disturbing activity to inspect the delineation of the Setback as required under these regulations. The applicant or his or her designated representative shall provide the City with at least five working days notice prior to starting soil disturbing or land clearing activities. A video tape record is required to be performed and submitted.
 - (4) When dedication of a subdivision is requested.
- (b) The Riparian Setback shall also be inspected annually or as the time permits by the City of North Royalton or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the City of North Royalton that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.
- (c) Violations of these regulations will be handled as noted in Section 1492.02(d).

1492.13 COMPREHENSIVE STORM WATER MANAGEMENT PLAN.

The Riparian and Wetland Setback Plan developed to meet this regulation will be coordinated and combined with the Post-Construction Water Quality Plan and the Construction Site Conservation Plan that are developed for a same site. These plans will be titled and numbered in one consecutive sequence to make a Comprehensive Storm Water Management Plan for the site. The Comprehensive Storm Water Management Plan so developed will serve as the Storm Water Pollution Prevention Plan (SWP3) required by Ohio EPA as part of the NPDES Storm Water permit for General Construction.

1492.14 DISCLAIMER OF LIABILITY.

Neither submission of a plan under the provisions herein, nor compliance with the provisions of these regulations, shall relieve any person or entity from responsibility for damage to any person or property that is otherwise imposed by law.

1492.15 EFFECTIVE DATE.

This chapter and its regulations shall become effective upon their passage.

1492.98 VIOLATIONS.

No person shall violate, or cause, or knowingly permit to be violated, any of the provisions of these regulations, or fail to comply with any such provisions or with any lawful requirements of any public authority made pursuant to these regulations, or knowingly use or cause or permit the use of any lands in violation of these regulations or in violation of any permit granted under these regulations.

1492.99 PENALTIES.

- (a) Whoever violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the first degree and shall be fined no more than one thousand dollars (\$1,000.00) or imprisoned for no more than one hundred eighty (180) days, or both, for each offense.
- (b) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
- (c) Upon notice from the City Engineer, or designated representative, that work is being performed contrary to this regulation, such work shall immediately stop. Such notice shall be in writing and shall be given to the owner or person responsible for the development area, or person performing the work, and shall state the conditions under which such work may be resumed; provided, however, in instances where immediate action is deemed necessary for public safety or the public interest, the City Engineer may require that work be stopped upon verbal order pending issuance of the written order.
- (d) The imposition of any other penalties provided herein shall not preclude the City, by or through its Law Director and/or any of his or her assistants, from instituting an

appropriate action or proceeding in a Court of Proper Jurisdiction to prevent an unlawful development or to restrain, correct or abate a violation, or to require compliance with the provisions of this regulation or other applicable laws, or ordinances, rules or regulations or the orders of the City Engineer.

APPENDIX I: NOXIOUS WEEDS.

“Weeds” includes, but is not limited, to the following:

Bittersweet (Nightshade), Buckthorn, Thistles, Curley Dock, Corncockle, Golden Rod, Iron Weed, Horse Nettle, Johnsongrass, Milkweed, Oxeye daisy, Quackgrass, Queen Anne’s Lace, Wild Onion, Wild Mustard, Wild Parsnips, Prickly Lettuce, and other plant capable of causing skin reactions upon contact, or producing severe allergic respiratory reactions.

“Noxious weeds” means those plants defined as “Prohibited Noxious Weeds” in section 901:5-37-01 of the Ohio Administrative Code and any of the following: Golden Rod, Poison Hemlock, Poison Ivy, Poison Oak, Ragweed, Stinging Nettle, and other plants capable of causing skin reaction upon contact or producing severe allergic respiratory reactions.

APPENDIX 2: WOODY PLANTS SUITABLE FOR RIPARIAN AREAS.

This list was assembled by Roger Gettig, The Holden Arboretum for Chagrin River Watershed Partners.

Flood Tolerance*		Shade	Common Name
<u>High Flood Tolerance</u>		<u>Tolerance**</u>	
Aronia	arbutifolia	3	Red chokeberry
Aronia	melanocarpa	3	Black chokeberry
Cephalanthus	occidentalis	5	Common buttonbush
Clethra	alnifolia	2	Summersweet clethra***
Cornus	amomum	4	Silky dogwood
Cornus	stolonifera (sericea)	5	Redosier dogwood
Hamamelis	vernalis	3	Vernal witchhazel***
Ilex	deciduas	3	Possumhaw***
Ilex	glabra	2	Inkberry***
Ilex	verticillata	3	Common winterberry
Itea	virginica	1	Virginia sweetspire***
Magnolia	virginiana	2	Sweetbay magnolia***
Myrica	pensylvanica	4	Northern bayberry
Physocarpus	opulifolius	4	Common ninebark
Potentilla	fruticosa	4	Bush cinquefoil
Sambucus	canadensis	1	American elderberry
Salix	x cotteti	5	“Bankers” willow ***
Salix	exigua	5	Sandbar willow
Salix	purpurea	5	“Streamco” willow ***
Viburnum	cassinoides	2	Witherod viburnum
Parthenocissus	quinquefolia	1	Virginia creeper (vine)
<u>Moderate Flood Tolerance*</u>			
Calycanthus	floridus	1	Common sweetshrub
Hypericum	kalmianum	5	Kalm St. Johnswort
Viburnum	dentatum	2	Arrowwood viburnum
Xanthorhiza	simplicissima	1	Yellowroot***
<u>Intermediate Flood Tolerance*</u>			
Aesculus	parviflora	2	Bottlebush buckeye***
Aesculus	pavia	2	Red buckeye***
Cornus	racemosa	2	Gray dogwood
Lindera	benzoin	1	Common spicebush
Rosa	setigera	4	Prairie rose
Campsis	radicans	3	Trumpetcreeper (vine)
Lonicera	dioica	2	Limber honeysuckle(vine)
Corylus	americana	2	American filbert
Diervilla	lonicera	1	Dwarf bushhoneysuckle
Fothergilla	gardeni	1	Dwarf fothergilla ***
Fothergilla	major	1	Large fothergilla ***

Hydrangea	arborescens	1	Smooth hydrangea
Hydrangea	quericifolia	1	Oakleaf hydrangea ***
Mahonia	aquifolium	1	Oregongrape holly ***
Rosa	carolina	4	Carolina rose
Rubus	odoratus	1	Fragrant thimbleberry
Vaccinium	stamineum	2	

Low Flood Tolerance

Arctostaphylos	uva-ursi	4	Bearberry
Cornus	rogusa	1	Roundleaf dogwood
Corylus	americana	2	American filbert
Diervilla	lonicera	1	Dwarf bushhoneysuckle
Fothergilla	gardeni	1	Dwarf fothergilla***
Fothergilla	major	1	Large fothergilla***
Hydrangea	arborescens	1	Smooth hydrangea
Hydrangea	quericifolia	1	Oakleaf hydrangea***
Mahonia	aquifolium	1	Oregongrape holly ***
Rosa	carolina	4	Carolina rose
Rubus	odoratus	1	Fragrant thimbleberry
Symphoricarpos	albus	1	Common snowberry
Vaccinium	stamineum	2	Common deerberry

No Flood Tolerance

Amorpha	canescens	5	Leadplant***
Ceanothus	americanus	3	New Jersey tea
Comptonia	peregrine	2	Sweetfern
Dirca	palustris	1	Leatherwood
Hypericum	frondosum	5	Golden St. Johnswort
Juniperus	communis	5	Common juniper
Juniperus	horizontalis	5	Creeping juniper ***
Rhus	aromatica	5	Fragrant sumac
Sambucus	pubens	1	Scarlet elder
Symphoricarpos	albus	1	Common snowberry

* High Flood Tolerance: Generally lowland wet species surviving when flooded or exposed to high water table more than 40% of the growing season.

* Moderate Flood Tolerance: Generally lowland wet species surviving when flooded or exposed to high water table more than 30% of the growing season but less than 40%.

* Intermediate Flood Tolerance: Generally lowland wet-mesic species surviving occasional inundation or elevated water table between 20% and 30% of the growing season.

* Low Flood Tolerance: Generally upland mesic and mesic-dry species rarely inundated or exposed to an elevated water table for periods of short duration, between 5% and 20% of the growing season.

* No Flood Tolerance: Generally upland dry species exhibiting immediate and rapid decline frequently culminating in death if inundated or exposed to elevated water table for more than 5% of the growing season.

** Shade Tolerance: Shade tolerance means able to grow in a state of health and vigor beneath dense shade. In this ranking, shrubs and vines are ranked on a scale of 1 to 5, with 1 being very shade tolerant, and 5 being very shade intolerant.

Note:

1. The majority of plants listed are available on the local commercial market and do not displace native species.
2. The cultivated varieties (“cultivars”) of the species listed above may also be used.
3. Primary information taken from Hightshoe, Gary 1987. Native Trees, Shrubs, and vines for Urban and Rural America. Van Nostrand. NY, NY
4. For further assistance contact Roger Gettig, Landscape Consulting Program, The Holden Arboretum, or Steve Roloson, ODNR Scenic Rivers Programs. (A.O.)

*** Denotes plant species that are not native to Ohio.