

## CHAPTER 320C

### Riparian and Wetlands Setbacks

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#### **320C.01 DEFINITIONS.**

As used in this chapter, the following words and terms shall mean the following:

**APPROVING AUTHORITY:** The official responsible for administering the applicable program(s).

**BEST MANAGEMENT PRACTICE (BMP):** Any practice or combination of practices that is determined to be the most effective, practicable (including technological, economic, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources of pollution to a level compatible with water quality goals. BMPs may include structural practices, conservation practices and operation and maintenance procedures.

**CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC):** A person that has subscribed to the Code of Ethics and have met the requirements established by the CPESC Council of Certified Professional In Erosion and Sediment Control, Inc. to be a Certified Professional in Erosion and Sediment Control.

**CHANNEL:** A natural stream that conveys water, or a ditch or channel excavated for the natural flow of water.

**COMMUNITY:** For purposes of this chapter, "Community" shall mean the City of Berea, State of Ohio, and its designated agents and representatives.

**CONCENTRATED STORM WATER RUNOFF:** Surface water runoff which converges and flows primarily through water conveyance features such as swales, gullies, waterways, channels or storm sewers, and which exceeds the maximum specified flow rates of filters or perimeter controls intended to control sheet flow.

**CONSERVATION:** The wise use and management of natural resources.

**DAMAGED OR DISEASED TREES:** Trees that have split trunks; broken tops; heart rot; 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.

**DESIGNATED WATERCOURSE:** A watercourse that is contained within, flows through, or borders the City of Berea and meets the criteria set forth in these regulations.

**DETERIORATED STRUCTURE:** A structure which has sustained substantial damage from any origin whereby the cost of restoring the structure to its before damaged condition would be equal to, or greater than fifty percent (50%) of the market value of the structure before the damage occurred.

**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.

**DITCH:** An excavation, either dug or natural, for the purpose of drainage or irrigation, and having intermittent flow.

**DUMPING:** The grading, pushing, piling, throwing, unloading or placing of soil or other material.

**EARTH DISTURBING ACTIVITY:** Any grading, excavating, filling, or other alteration of the earth's surface where natural or man-made ground cover is destroyed.

**EROSION:** The process by which the land surface is worn away by the action of water, wind, ice or gravity.

**EXISTING:** In existence at the time of the passage of this ordinance and these regulations.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** The agency with overall responsibility for administering the National Flood Insurance Program.

**GRADING:** Earth disturbing activity such as excavation, stripping, cutting, filling, stockpiling, or any combination thereof.

**IMPERVIOUS COVER:** Any surface that cannot effectively absorb or infiltrate water. This includes roads, streets, parking lots, rooftops, and sidewalks.

**INTERMITTENT STREAM:** A natural channel that may have some water in pools but where surface flows are non-existent or interstitial (flowing through sand and gravel in stream beds) for periods of one week or more during typical summer months.

**LARGER COMMON PLAN OF DEVELOPMENT OR SALE:** A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

**LANDSLIDE:** The rapid mass movement of soil and rock material downhill under the influence of gravity in which the movement of the soil mass occurs along an interior surface of sliding.

**LOCAL COUNTY SWCD:** The local county Soil and Water Conservation District.

**NATIONAL WETLANDS INVENTORY MAP:** Wetland maps that were created by the Fish and Wildlife Service, United States Department of Interior.

**NATURAL RESOURCES CONSERVATION SERVICE (NRCS):** An agency of the United States Department of Agriculture, formerly known as the Soil Conservation Service (SCS).

**NPDES PERMIT:** A National Pollutant Discharge Elimination System Permit issued by Ohio EPA under the authority of the USEPA, and derived from the Federal Clean Water Act.

**NOXIOUS WEED:** Any plant species defined by the Ohio Department of Agriculture as a "noxious weed" and listed as such by the Department. For the purposes of this regulation, the most recent version of this list at the time of application of these regulations shall prevail.

**OHIO EPA:** The Ohio Environmental Protection Agency.

**OHIO WETLANDS INVENTORY MAP:** Wetland maps that were created by the Natural Resources Conservation Service, USDA and the Ohio Department of Natural Resources.

**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 of woody terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

**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.

**PERSON:** Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, township, county, state agency, the federal government, or any combination thereof.

**PERENNIAL STREAM:** A natural channel that contains water throughout the year, except possibly during periods of extreme drought.

**PROFESSIONAL ENGINEER:** A person registered in the State of Ohio as a Professional Engineer, with specific education and experience in water resources engineering, acting in strict conformance with the Code of Ethics of the Ohio Board of Registration for Engineers and Surveyors.

**QUALIFIED FORESTER:** Any forester employed by the Ohio Department of Natural Resources, Division of Forestry, or any person attaining the credential of Certified Forester as conferred by the Society of American Foresters.

**QUALIFIED WETLAND PROFESSIONAL** means an individual competent in the areas of botany, hydric soils, and wetland hydrology, and is acceptable to the City Engineer.

**REDEVELOPMENT:** The demolition or removal of existing structures or land uses and construction of new ones.

**RETENTION BASIN:** A storm water management pond that maintains a permanent pool of water. These storm water management ponds include a properly engineereddesigned volume dedicated to the temporary storage and slow release of runoff waters.

**RIPARIAN AREA:** Naturally vegetated land adjacent to watercourses which, if appropriately sized, helps to limit erosion, reduce flood flows, and/or filter and settle out runoff pollutants, or which performs other functions consistent with the purposes of these regulations.

**RIPARIAN SETBACK:** Those lands within the City of Berea which are alongside streams, and which fall within the area defined by the criteria set forth in these regulations.

**SEDIMENT:** Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, gravity or ice, and has come to rest on the earth's surface either on dry land or in a body of water.

**SEDIMENT CONTROL:** The limiting of sediment being transported, by controlling erosion or detaining sediment-laden water, and allowing the sediment to settle out.

**SEDIMENT POLLUTION:** A failure to use management or conservation practices to control wind or water erosion of the soil and to minimize the degradation of water resources by soil sediment in conjunction with land grading, excavating, filling, or other soil disturbing activities on land used or being developed for commercial, industrial, residential, or other purposes.

**SENSITIVE AREA:** An area or water resource that requires special management because of its susceptibility to sediment pollution, or because of its importance to the wellbeing of the surrounding communities, region, or the state and includes, but is not limited to, the following:

- A. Ponds, wetlands or small lakes with less than five acres of surface area;
- B. Small streams with gradients less than ten feet per mile with average annual flows of less than 3.5 feet per second containing sand or gravel bottoms.
- C. Drainage areas of a locally designated or an Ohio designated Scenic River.
- D. Riparian and wetland areas.

**SHEET FLOW:** Water runoff in a thin uniform layer or rills and which is of small enough quantity to be treated by sediment barriers.

**SIVICULTURE:** The theory and practice of controlling forest establishment, composition and growth.

**SLIP:** A landslide as defined under "Landslides."

**SLOUGHING:** A slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth disturbing activity of man.

**SOIL:** Unconsolidated erodible earth material consisting of minerals and/or organics.

**SOIL CONSERVATION SERVICE, USDA:** The federal agency now titled the "Natural Resources Conservation Service," which is an agency of the United States Department of Agriculture.

**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, soil erosion and sediment pollution.

**SOIL EROSION AND SEDIMENT CONTROL PLAN:** A written and/or drawn soil erosion and sediment pollution control plan to minimize erosion and prevent off-site sedimentation throughout all earth disturbing activities on a development area.

**SOIL EROSION AND SEDIMENT CONTROL PRACTICES:** Conservation measures used to control sediment pollution and including structural practices, vegetative practices and management techniques.

**SOIL SURVEY:** The official soil survey produced by the Natural Resources Conservation Service, USDA in cooperation with the Division of Soil and Water Conservation, ODNR and the local Board of County Commissioners.

**STORM WATER CONVEYANCE SYSTEM:** All storm sewers, channels, streams, ponds, lakes, etc., used for conveying concentrated storm water runoff, or for storing storm water runoff.

**STREAM:** A body of water running or flowing on the earth's surface, or a channel in which such flow occurs. Flow may be seasonally intermittent.

**SUBSTANTIAL DAMAGE:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would be equal to, or greater than 50% of the market value of the structure before the damage occurred.

**USEPA:** The United States Environmental Protection Agency.

**100-YEAR FLOODPLAIN:** Any land susceptible to being inundated by water from a base flood. The base flood is the flood that has a one percent (1%) or greater chance of being equaled or exceeded in any given year. For the purposes of this regulation, the 100-year floodplain shall be defined by FEMA or a site-specific Floodplain Delineation in conformance with standard engineering practices and approved by the City of Berea.

**WATERCOURSE:** Any natural, perennial, or intermittent channel, stream, river or brook.

**WATER RESOURCES:** All streams, lakes, ponds, wetlands, water courses, waterways, drainage systems, and all other bodies or accumulations of surface water, either natural or artificial, which are situated wholly or partly within, or border upon this state, or are within its jurisdiction, except those private waters which do not combine or affect a junction with natural surface waters.

**WETLAND:** 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.

**WETLAND, OHIO EPA CATEGORY 2 WETLANDS:** Those wetlands classified by the Ohio EPA as Category 2 wetlands under OAC 3745-1-54 (C) (2), or current equivalent Ohio EPA classification, in accordance with generally accepted wetland functional assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.

**WETLAND, OHIO EPA CATEGORY 3 WETLANDS:** Those wetlands classified by the Ohio EPA as Category 3 wetlands under OAC 3745-1-54(C)(3), or current equivalent Ohio EPA classification, in accordance with generally accepted wetland functional assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.

**WETLAND SETBACK:** Those lands within the City of Berea that fall within the area defined by the criteria set forth in these regulations.

**WINTER:** October 1st to April 1st of each year.

(Ord. 2006-63. Passed 10-2-06.)

### **320C.02 PLAN, PURPOSE AND SCOPE.**

(a) **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 the 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.

(b) **Purpose:** The purpose and intent of this chapter are to:

- (1) Protect the receiving stream's physical, chemical, and biological characteristics and to maintain stream functions.

- (2) Establish consistent, technically feasible and operationally practical standards to achieve a level of storm water quantity and quality control that will minimize damage to public and private property and degradation of water resources, and will promote and maintain the health, safety, and welfare of the residents of the City of Berea.
- (3) Preserve to the maximum extent practicable the natural drainage characteristics of the City of Berea and building sites and minimize the need to construct, repair, and replace enclosed storm drain systems.
- (4) Preserve to the maximum extent practicable natural infiltration and ground water recharge, and maintain subsurface flow that replenishes water resources, wetlands, and wells.
- (5) Prevent unnecessary stripping of vegetation and loss of soil, especially adjacent to water resources and wetlands.
- (6) Reduce the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resources, wetlands, and storm water management practices that are the result of inadequate storm water control due to the loss of riparian areas and wetlands.
- (7) Reduce the long term expense of remedial projects needed to address problems caused by inadequate storm water control.

(c) Scope: This chapter applies to development areas having new or relocated projects involving highways. This chapter applies to development areas having new or relocated projects involving highways, underground cables, pipelines, property splits, industrial projects, commercial projects, building activities on farms, redevelopment of urban areas and all other land uses not specifically exempted. This chapter does not apply to:

- (1) Land disturbing activities related to producing agricultural crops or Silviculture operations regulated by the Ohio Agricultural Sediment Pollution Abatement Rules (1501: 15-3-01 to 1501: 15-3-09 of the Ohio Administrative Code) and existing at the time of passage of this chapter.
- (2) Strip mining operations regulated by Chapter 1513 of the Ohio Revised Code and existing at the time of passage of this regulation.
- (3) Surface mining operations regulated by Chapter 1514 of the Ohio Revised Code and existing at the time of passage of this regulation.

(Ord. 2006-63. Passed 10-2-06.)

### **320C.03 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.

(Ord. 2006-63. Passed 10-2-06.)

### **320C.04 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.**

(a) Where this chapter imposes a greater restriction upon land than is imposed or required by other City of Berea provisions of law, ordinance, contract or deed, the provisions of this ordinance shall prevail.

(b) If a court of competent jurisdiction declares any clause, section, or provision of these regulations invalid or unconstitutional, the validity of the remainder shall not be affected thereby.

(c) These regulations shall not be construed as authorizing any person to maintain a private or public nuisance on his or her property. Compliance with the provisions of this chapter shall not be a defense in any action to abate such nuisance.

(d) Failure of the City of Berea 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 of Berea, its officers, employees, or agents being responsible or hold liable for any condition or damage resulting therefrom. (Ord. 2006-63. Passed 10-2-06.)

### **320C.05 RIPARIAN AND WETLAND SETBACK REQUIREMENTS.**

(a) It is hereby determined that the system of wetlands, riparian areas, rivers, streams, and other natural watercourses within the City of Berea contributes to the health, safety, and general welfare of the residents. The specific purpose and intent of this part of these regulations is to regulate uses and developments within riparian and wetland setbacks that would impair the ability of riparian and wetland areas to:

- (1) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
- (2) Assist in stabilizing the banks of watercourses to reduce bank erosion and the downstream transport of sediments eroded from watercourse banks.
- (3) Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in watercourses.
- (4) Reduce pollutants in watercourses by filtering, settling, transforming and absorbing pollutants in runoff before they enter watercourses.
- (5) Provide watercourse habitats with shade and food.
- (6) Provide habitat to a wide array of aquatic organisms, wildlife, many of which are on Ohio's Endangered and/or Threatened Species listings, by maintaining diverse and connected riparian and wetland vegetation.
- (7) Benefit the City of Berea economically by minimizing encroachment on wetlands and watercourse channels and the need for costly engineering solutions such as dams, retention basins, and rip rap to protect structures and reduce property damage and threats to the safety of residents; and by contributing to the scenic beauty and environment of the City of Berea, and thereby preserving the character of the City of Berea, the quality of life of the residents of the Community, and corresponding property values.

(b) The following regulations have been enacted to protect these services of riparian and wetland areas by providing reasonable controls governing structures and uses within a wetland and/or riparian setback along designated watercourses in the City of Berea.

(1) Applicability and Compliance:

A. These regulations shall apply to the following:

1. All lands that are within the jurisdiction of the City of Berea and that border designated watercourses and wetlands as defined in these regulations.
2. Property split plan approvals, site plan approvals, and land development plan approvals requested of the City of Berea.
3. All building permits which involve soil disturbing activities.

B. The City of Berea shall issue no approvals or permits without full compliance with the terms of these regulations.

(c) Establishment of designated watercourses and riparian setbacks:

(1) Designated watercourses shall include those watercourses meeting any one of the following criteria:

A. All watercourses draining an area greater than one-half ( $\frac{1}{2}$ ) square mile, or

B. All watercourses draining an area less than one-half ( $\frac{1}{2}$ ) square mile and having a defined bed and bank. In determining if watercourses have a defined bed and bank, the City of Berea may consult with a representative of the local county SWCD or other technical experts as necessary.

(2) Riparian setbacks on designated watercourses are established as follows:

A. A minimum of 300 feet on both sides of all watercourses draining an area greater than 300 square miles.

B. A minimum of 120 feet on both sides of all watercourses draining an area greater than 20 square miles and up to and including 300 square miles.

C. A minimum of 75 feet on both sides of all watercourses draining an area greater than one half square mile and up to and including 20 square miles.

D. A minimum of 25 feet on both sides of all watercourses draining an area less than one half square mile and having a defined bed and bank as determined above.

(3) Riparian Setback Map:

A. The City of Berea shall use the latest edition of the official soil survey that shows drainage features, on the paper maps in the back of the book, as the map identifying designated watercourses and their riparian setbacks. The drainage features identified on the paper maps in the official soil survey and the information contained therein shall be believed to be accurate.

B. At the time of application of this regulation, if any discrepancy is found between the Riparian Setback Map and the criteria for designated watercourses or riparian setbacks as set forth in these regulations, the criteria shall prevail.

C. In reviewing and interpreting the maps the City of Berea may consult with a representative of the local county SWCD and other technical experts as necessary.

(4) The following conditions shall apply in riparian and wetland setbacks:

A. Riparian and wetland setbacks shall be measured in a perpendicular and horizontal direction outward from the ordinary high water mark of each designated watercourse and defined wetland boundary.

B. Except as otherwise provided in this regulation, riparian and wetland setbacks shall be preserved in their natural state and shall be established and marked in the field prior to any soil disturbing or land clearing activities.

- C. Where the 100-year floodplain is wider than a riparian setback on either or both sides of a designated watercourse, 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.
- D. Where wetlands are identified within a riparian setback, the minimum riparian setback width shall be extended to the outer boundary of the wetland. In addition, wetlands shall be protected to the extent detailed in these regulations.
- E. Wetlands shall be delineated by a site survey approved by the City of Berea using delineation protocols accepted by the U.S. Army Corps of Engineers and the Ohio EPA at the time of application of this regulation. 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.

(5) The applicant or his or her designated representative shall be responsible for delineating riparian and wetland setbacks, including any expansions or modifications as required by these regulations, and identifying these setbacks on all property subdivision property splits, commercial development or other land development plans, and/or building permit applications submitted to the City of Berea. 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 of Berea. As a result of this review, the City of Berea may consult with a representative of the local county SWCD or other technical experts as necessary.

(6) Prior to any soil disturbing activity, riparian and wetland setbacks shall be clearly delineated on site by the applicant or his or her designated representative, and such delineation shall be maintained throughout soil disturbing activities.

(7) No approvals or permits shall be issued by the City of Berea prior to on-site delineation of riparian and wetland setbacks in conformance with these regulations.

(8) Upon completion of an approved property subdivision property split, land development, or other improvement, riparian and wetland setbacks shall be permanently recorded on the plat records of the City of Berea.

(d) Establishment of Wetland Setbacks:

(1) Wetland setbacks are established as follows:

- A. A minimum of 120 feet surrounding and including all Ohio EPA Category 3 Wetlands, or current equivalent Ohio EPA classification.
- B. A minimum of 75 feet surrounding and including all Ohio EPA Category 2 Wetlands, or current equivalent Ohio EPA classification.

(e) Procedure for Wetland Setbacks:

- (1) No change to parcel boundaries or land use change:
  - A. Upon filing a request for a building permit that does not involve changing of any parcel boundaries or changes in land use, the applicant will check for indicators of wetlands on the National Wetlands Inventory maps, and Ohio Wetlands Inventory map, and the Cuyahoga County Wetlands Inventory (if applicable). A photo copy of the applicable section of each map will be attached to the permit application.
  - B. If a potential wetland is shown on any of the maps or if there is reason for the City of Berea to believe that an unmapped wetland exists on or within 120 feet of the project site the applicant will retain a qualified wetland professional to evaluate the proposed project site for wetlands or wetland buffer areas. If no wetland or wetland buffer areas are found, the applicant shall submit a letter from the qualified wetland professional with the preliminary plat or permit application verifying his or her negative findings.
- (2) New residential or commercial or other type development and projects involving a change to parcel boundaries or a land use change:
  - A. Upon filing a request for approval of a preliminary plat or building permit for new residential, commercial or other type of development that involves changes in any parcel boundaries or changes in landuse, the applicant or his or her designated representative shall retain a qualified wetland professional to survey the proposed development site for wetlands. If no wetlands are found, the applicant or his or her designated representative shall submit a letter with the preliminary plat or permit application verifying that a qualified wetland professional has surveyed the site and found no wetlands. If wetlands are found, the following procedures shall be followed:
  - B. A qualified wetland professional, acceptable to the City Engineer, shall determine the presence of Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) on the proposed development site using the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of this regulation. Acceptance of this determination shall be subject to approval by the City Engineer.
  - C. If Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) are located on the proposed development site, the applicant or his or her designated representative shall delineate these wetlands and the wetland setback in conformance with these regulations. The applicant or his or her designated representative shall identify all delineated wetlands and their associated setbacks on all property subdivision property split plans, land development plans, and/or permit applications submitted to the City of Berea.

1. Wetlands shall be delineated by a site survey, approved by the City of Berea, using delineation protocols accepted by the US Army Corps of Engineers and the Ohio EPA at the time of application of this regulation. If conflict exists between the delineation protocols of these two agencies, the delineation protocol that results in the most inclusive area of wetland shall apply.
2. Wetland setbacks shall be delineated through a metes and bounds, or higher level, survey subject to approval by the City of Berea.

D. Prior to any soil or vegetation disturbing activity, the applicant or his or her designated representative shall delineate wetland setbacks on the development site in such a way that they can be clearly viewed, and such delineation shall be maintained throughout construction.

E. No approvals or permits shall be issued by the City of Berea prior to delineation of wetland setbacks in conformance with this regulation.

(3) Upon completion of an approved property subdivision property split, commercial development or other land development or improvement, riparian and wetland setbacks shall be permanently recorded on the plat records for the City of Berea and shall be maintained as open space thereafter through a permanent conservation easement. A third party, not the landowner or permittee or the City of Berea, that is allowed by state law shall be given the conservation easement. If no third party will accept the conservation easement, the City of Berea shall accept it and protect it in perpetuity. (Ord. 2006-63. Passed 10-2-06.)

### **320C.06 USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS.**

(a) By-Right Uses Without A Permit: Open space uses that are passive in character shall be permitted in riparian and wetland setbacks, including, but not limited to, those listed in these regulations. No use permitted under these regulations shall be construed as allowing public trespass on privately held lands.

- (1) Recreational Activity. Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, fishing, hunting, picnicking, and similar uses.
- (2) Removal of Damaged or Diseased Trees. Damaged or diseased trees may be removed.
- (3) Revegetation and/or Reforestation. Riparian and wetland setbacks may be revegetated with non-invasive plant species.
- (4) Maintenance of lawns, gardens and landscaping: Lawns, gardens and landscaping, that existed at the time this ordinance was passed, may be maintained as long as they are not increased in size.

(b) By-Right Uses With A Permit:

- (1) 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.

- A. Any landowner harvesting timber for sale shall post a one thousand dollars (\$1,000) performance guarantee with the City of Berea. This performance guarantee shall be in the form of a Security Bond, Escrow Account, Certified Check or Cash, and it shall be held until 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 6 inches in diameter at the cut end shall be cut into sections no longer than 6 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 community 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 US Army Corps of Engineers and the Ohio EPA Wetland and Stream protection permit numbers and the associated permit requirements.

(2) Streambank Stabilization and Erosion Control Measures. Streambank stabilization and erosion control measures may be allowed provided that such measures are ecologically compatible and substantially utilize natural materials and native plant species where practical. The streambank stabilization and erosion control measures shall only be undertaken upon approval of an Soil Erosion and Sediment Control Plan by the City of Berea

(3) Crossings. Crossings of designated watercourses and through riparian setbacks by publicly and privately owned sewer and/or water lines and public and private utility transmission lines shall only be allowed upon approval of a Crossing Plan by the City Engineer. Such crossings shall minimize disturbance in riparian setbacks and shall mitigate any necessary disturbances. Soil erosive materials will not be used in making stream crossings. (Ord. 2006-63. Passed 10-2-06.)

### **320C.07 USES PROHIBITED IN RIPARIAN AND WETLAND SETBACKS.**

Any use not authorized under these regulations shall be prohibited in riparian and wetland setbacks. By way of example, the following uses are specifically prohibited; however, prohibited uses are not limited to those examples listed here.

- (a) Construction. There shall be no structures of any kind.
- (b) Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquid, or solid materials, except for non-commercial composting of uncontaminated natural materials, and except as permitted under the USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS section of these regulations.
- (c) Roads or Driveways. There shall be no roads or driveways permitted in riparian and/or wetland setback area, except as permitted under the USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS section of these regulations. There shall be no roads or driveways or roads permitted in wetlands or watercourses without a permit issued by the US Army Corps of Engineers and/or the Ohio EPA.
- (d) Motorized Vehicles. There shall be no use of motorized vehicles, except as permitted under the USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS section of these regulations.
- (e) Disturbance of Natural Vegetation. There shall be no disturbance, including mowing, of the natural vegetation, except for such conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with this regulation; for such disturbances as are approved under the USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS section of these regulations; and for the passive enjoyment, access, and maintenance of landscaping or lawns existing at the time of passage of this regulation. Nothing in this regulation shall be construed as requiring a landowner to plant or undertake any other activities in riparian and wetland setbacks.
- (f) Parking Lots. There shall be no parking lots or other human-made impervious cover, except as permitted under the USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS section of these regulations.
- (g) New Surface and/or Subsurface Sewage Disposal or Treatment Areas. 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) Crossings. Crossings of designated riparian and wetland setbacks by publicly and privately owned sewer and/or water lines and small public and small private utility transmission lines without a permit issued by the US Army Corps of Engineers and/or the Ohio EPA.

(Ord. 2006-63. Passed 10-2-06.)

**320C.08 NON-CONFORMING STRUCTURES OR USES IN RIPARIAN AND WETLAND SETBACKS.**

(a) A non-conforming use within a riparian and wetland setback which is in existence at the time of passage of this regulation, and which is not otherwise permitted under these regulations, may be continued. However, the use shall not be changed or enlarged unless it is changed to a use permitted under these regulations.

(b) A non-conforming structure within a riparian and wetland setback which is in existence at the time of passage of this regulation, and which is not otherwise permitted under these regulations, may be continued. However, the existing building footprint or roofline may not be expanded or enlarged in such a way that would move the structure closer to the stream or wetland.

(c) A non-conforming structure or use or deteriorated structure within a riparian and wetland setback which is in existence at the time of passage of this regulation, and which is discontinued, terminated, or abandoned for a period of six (6) months or more, may not be revived, restored, or re-established.

(d) A non-conforming structure or use that is discontinued may be resumed any time within six (6) 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 of Berea, than the existing or former non-conforming structure or use.

(Ord. 2006-63. Passed 10-2-06.)

**320C.09 VARIANCES WITHIN RIPARIAN AND WETLAND SETBACKS.**

(a) The City of Berea may grant a variance from this chapter as provided herein. In determining whether there is unnecessary hardship or practical difficulty such as to justify the granting of a variance, the City of Berea shall consider the potential harm or reduction in riparian and/or wetland area functions that may be caused by a proposed structure or use.

(b) In making a variance determination, the City of Berea shall consider the following:

- (1) Varying the front, rear or side yard setback before the riparian and wetland setbacks are varied.
- (2) Variances should not be granted for asphalt or concrete paving in the riparian and wetland setbacks in any situation where porous pavement (i.e., porous pavers, and similar products) could be utilized.

(c) In making a variance determination, the City of Berea may consider the following:

- (1) A parcel existing at the time of passage of this ordinance is made unbuildable.
- (2) The soil type 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 of Berea's flood damage prevention regulations may be used as guidance when granting variances in the 100-year floodplain.
- (3) 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 data.

- (4) The degree of hardship this regulation places on the landowner, and the availability of alternatives to the proposed activity.
- (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 of Berea.
- (7) A reduction in storm water infiltration into the soil in wetland areas will occur.
- (8) A requested above ground fence does not increase the existing area of mowed grass or lawn.

(Ord. 2006-63. Passed 10-2-06.)

#### **320C.10 BOUNDARY INTERPRETATION AND APPEALS PROCEDURE.**

(a) When an applicant or his or her designated representative disputes the boundary of a riparian or wetland setback or the ordinary high water mark of a watercourse, the applicant or his or her designated representative shall submit documentation to the City of Berea which describes the boundary, the applicant's proposed boundary, and justification for the proposed boundary change.

(b) The City of Berea shall evaluate this documentation and shall make a written determination within a reasonable period of time, not to exceed sixty (60) days, a copy of which shall be submitted to the applicant. If during this evaluation the City of Berea requires further information, it may be required of the applicant. In the event that the City of Berea requests such additional information, the sixty (60) day limit on the City of Berea's review shall be postponed until the applicant provides such information.

(c) Any party aggrieved by any wetland or riparian setback determination under this regulation may timely appeal to the Municipal Planning Commission in accordance with other administrative appeals procedures.

(Ord. 2006-63. Passed 10-2-06.)

#### **320C.11 INSPECTION OF RIPARIAN AND WETLAND SETBACK.**

(a) The delineation of riparian and/or wetland setbacks shall be inspected by the City of Berea, as follows:

- (1) Prior to any soil disturbing activities authorized by the City of Berea under for a property subdivision property split, land development plan, and/or building permit. The applicant or his or her designated representative shall provide the City of Berea with at least five (5) working days notice prior to starting soil disturbing or land clearing activities.
- (2) Prior to starting any of the activities authorized by the City of Berea under the USES PERMITTED IN RIPARIAN AND WETLAND SETBACKS section of these regulations, the applicant or his or her designated representative shall provide the City of Berea with at least five (5) working days notice prior to starting such activities.

(3) Any time evidence is brought to the attention of the City of Berea that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.  
(Ord. 2006-63. Passed 10-2-06.)

### **320C.12 MISCELLANEOUS.**

(a) Effective Date: This chapter and its regulations shall become effective upon their passage.

(b) Consultations: In implementing these regulations the City Engineer or other City of Berea 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.  
(Ord. 2006-63. Passed 10-2-06.)

### **320C.99 VIOLATIONS AND PENALTIES.**

(a) 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.

(b) 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. 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 of Berea, 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.  
(Ord. 2006-63. Passed 10-2-06.)