



**MODEL ORDINANCE FOR THE
ESTABLISHMENT OF WETLAND SETBACKS**

PLEASE NOTE

- The following model wetland setback ordinance is recommended as part of a community’s storm water management program for flood control, erosion control, and water quality protection. In general it should be implemented in conjunction with a riparian setback regulation for the community.
- This model ordinance **MUST BE TAILORED TO THE SPECIFIC NEEDS OF EACH COMMUNITY**. Text throughout the model indicates decision points with a ☞ symbol. **It is also IMPORTANT THAT COMMUNITIES DEVELOP A MAP OF KNOWN WETLANDS**. Please contact CRWP for assistance in tailoring this model to your community’s needs and in developing such maps.
- Throughout this model duties are assigned to the “Community.” These should be assigned to specific staff and departments.

WHEREAS, wetlands protect the public health and safety of the *[community]* by:

1. Reducing peak flood flows, storing flood waters, and maintaining stream flow patterns.
2. Minimizing streambank erosion by reducing runoff volume and velocity.
3. Protecting ground water quality by filtering pollutants from storm water runoff.
4. Recharging groundwater reserves.
5. Maintaining surface water quality by minimizing sediment pollution from streambank erosion, and trapping sediments, chemicals, salts, and other pollutants from flood waters and storm water runoff, and,
6. Providing habitat for aquatic and terrestrial organisms, many of which are on Ohio’s Endangered and/or Threatened Species listings; and,

WHEREAS, wetlands cannot continue to provide these functions unless protected from the effects of fluctuations in storm water flow; urban pollutants; disposal of fill or dredged materials; and other impacts of land use change; and,

WHEREAS, replacement of the public health and safety benefits of wetlands including flood control, erosion control, ground water recharge, and water quality protection, if possible, will require significant public expenditure; and,

WHEREAS, the State of Ohio has lost over 90 percent of its original wetlands, and the Chagrin River watershed has lost over 80 percent of its original wetlands, due to draining, dredging, filling, excavating, and other acts; and,

WHEREAS, flooding is a significant threat to property and public health and safety, and wetlands lessen the damage from flooding by slowing the water velocity, enabling water to soak into the ground, and by providing temporary storage of overbank flood flow; and,



WHEREAS, sedimentation of eroded soil adversely affects aquatic communities and incurs removal costs to downstream communities; and,

WHEREAS, there are watershed-wide efforts to minimize flooding and streambank erosion in the *[watersheds to which community belongs]* watersheds and to protect and enhance the water resources of the *[major watercourses to which community drains]* and its tributaries and *[community]* recognizes its obligation as a part of these watersheds to minimize flooding and streambank erosion by controlling runoff within its borders; and,

WHEREAS, the Chagrin River Watershed Partners, Inc.; the Cuyahoga Soil and Water Conservation District; the Geauga Soil and Water Conservation District; the Lake County Soil and Water Conservation District; the Natural Resource Conservation Service of the U.S. Department of Agriculture; the Northeast Ohio Areawide Coordinating Agency; the Ohio Department of Natural Resources, Division of Natural Areas and Preserves; the Ohio Environmental Protection Agency; and the U.S. Environmental Protection Agency recommend wetland setbacks as a valuable tool in an overall management program for flood risk reduction, erosion control, water quality control, and aquatic habitat protection; and,

WHEREAS, studies undertaken by, and reviewed by, the Ohio Environmental Protection Agency and other independent scientific bodies recommend the minimum distances for wetland setbacks; and,

WHEREAS, the Council of the *[community]* has reviewed and adopted the recommendations of the above government agencies, and the Council finds that in order to minimize encroachment on wetlands and the need for costly engineering solutions to protect structures and reduce property damage and threats to the safety of watershed residents; to protect and enhance the scenic beauty of the *[community]*; and to preserve the character of the *[community]*, the quality of life of the residents of the *[community]*, and corresponding property values, it is necessary and appropriate to regulate structures and uses within a wetland setback surrounding Ohio EPA Category 2 and 3 wetlands in the *[community]*; and,

WHEREAS, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the peace, health, safety, and general welfare of its citizens; and,

WHEREAS, 40 C.F.R. Parts 9, 122, 123, and 124, referred to as NPDES Storm Water Phase II, require designated communities, including *[community]*, to develop a Storm Water Management Program to address the quality of storm water runoff during and after soil disturbing activities.

☞ ***Remove this whereas clause if your community is not designated under the NPDES Phase II regulation.***

NOW, THEREFORE, BE IT ORDAINED by the Council of the *[community]*, County of *[county]*, State of Ohio, that:

SECTION 1: Codified Ordinance *Chapter XXXX Wetland Setbacks*, is hereby adopted to read in total as follows:



**CHAPTER XXXX
WETLAND SETBACKS**

XXXX.01 PURPOSE AND SCOPE

- A. It is hereby determined that the wetlands within the *[community]* contribute to the health, safety, and general welfare of the residents of the *[community]*. The specific purpose and intent of this regulation is to regulate uses and developments within wetland setbacks that would impair the ability of wetlands to:
1. Minimize flood impacts by absorbing peak flows, slowing the velocity of flood waters, regulating stream base flows, and maintaining stream flow patterns.
 2. Minimize streambank erosion by reducing runoff volume and velocity.
 3. Protect groundwater quality by filtering pollutants from storm water runoff.
 4. Recharge groundwater reserves.
 5. Protect surface water quality by minimizing sediment pollution from streambank erosion, and filtering, settling, and transforming sediments, chemicals, salts, and other pollutants from flood waters and storm water runoff.
 6. Provide habitat to a wide array of aquatic and terrestrial wildlife.
 7. Benefit the *[community]* economically by minimizing encroachment on wetlands and the need for costly engineering solutions such as retention/detention basins and rip rap to protect structures and reduce property damage and threats to the safety of watershed residents; and by contributing to the scenic beauty and environment of the *[community]*, and thereby preserving the character of the *[community]*, the quality of life of the residents of the *[community]*, and corresponding property values.
- B. The following regulation has been enacted to protect these services of wetlands by providing reasonable controls governing structures and uses within wetland setbacks around Ohio EPA Category 2 and 3 wetlands in the *[community]*.

Due to the importance of properly functioning wetlands, minimum wetland setbacks may be given preference over minimum front, side, or rear yard setbacks as specified in this ordinance in the consideration of an appeal for a variance by the board of zoning appeals.

XXXX.02 APPLICABILITY, COMPLIANCE & VIOLATIONS

- A. This regulation shall apply to all zoning districts.
- B. This regulation shall apply to all structures and uses on lands containing an Ohio EPA Category 2 or 3 wetland as defined in this regulation, except as provided herein.
- C. No approvals or permits shall be issued by the *[community]* without full compliance with the terms of this regulation.



XXXX.03 CONFLICTS WITH OTHER REGULATIONS & SEVERABILITY

- A. Where this regulation 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 regulation shall control.
- B. This regulation 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 *Section XXXX.03 (A)* of this regulation.
- C. If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

XXXX.04 DEFINITIONS

For the purpose of this regulation, the following terms shall have the meaning herein indicated:

- A. **COMMUNITY:** Throughout this regulation, this shall refer to the *[community]* or its designated representatives, boards, or commissions.
- B. **IMPERVIOUS COVER:** Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, and sidewalks.
- C. **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 this regulation shall prevail.
- D. **OHIO ENVIRONMENTAL PROTECTION AGENCY:** Referred throughout this regulation as the "Ohio EPA."
- E. **OHIO EPA CATEGORY 2 WETLANDS:** Those wetlands classified as Category 2 wetlands under OAC 3745-1-54, in accordance with generally accepted wetland assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.
- F. **OHIO EPA CATEGORY 3 WETLANDS:** Those wetlands classified as Category 3 wetlands under OAC 3745-1-54, in accordance with generally accepted wetland assessment methods acceptable to the U.S. Army Corps of Engineers and Ohio EPA at the time of application of this regulation.
- G. **SOIL AND WATER CONSERVATION DISTRICT:** An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employee(s), hereinafter referred to as *[county]* SWCD.
- H. **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.
- I. **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 would exceed, 50%



of the market value of the structure before the damage occurred.

- J. WATERCOURSE: Any brook, channel, creek, river, or stream having banks, a defined bed, and a definite direction of flow, either continuously or intermittently flowing.
- K. 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. (40 CFR 232, as amended).
- L. WETLAND SETBACK: Those lands within the *[community]* that fall within the area defined by the criteria set forth in *Section XXXX.05* of this regulation.

XXXX.05 ESTABLISHMENT OF WETLAND SETBACKS

- A. Designated wetlands shall include those wetlands meeting any ONE of the following criteria:
 - 1. All wetlands ranked by an appropriate wetland evaluation methodology as Ohio EPA Category 2.
 - 2. All wetlands ranked by an appropriate wetland evaluation methodology as Ohio EPA Category 3.
- B. Wetland setbacks on designated wetlands are established as follows:
 - 1. A minimum of 120 feet surrounding all Ohio EPA Category 3 wetlands.
 - 2. A minimum of 75 feet surrounding all Ohio EPA Category 2 wetlands.
- C. The following conditions shall apply in wetland setbacks:
 - 1. Wetland setbacks shall be measured in a perpendicular direction from the defined wetland boundary.
 - 2. Wetlands shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.
 - 3. Except as otherwise provided in this regulation, the wetland setback shall be preserved in its natural state.

XXXX.06 APPLICATIONS AND SITE PLANS

- A. The applicant shall be responsible for indicating wetland setbacks as required by this regulation and shall identify such setbacks on a site plan included with all subdivision plans, land development plans, and/or zoning permit applications submitted to the *[community]*. The site plan shall be prepared by a professional engineer, surveyor, landscape architect, or such other qualified professional as determined by the *[community]* and shall be based on a survey of the affected land. Two (2) copies of the site plan shall be submitted. The site plans shall include the following information:



1. The boundaries of the lot with dimensions.
 2. The locations of designated wetlands.
 3. The limits, with dimensions, of the wetland setbacks.
 4. The existing topography at intervals of two (2) feet.
 5. The location and dimensions of any proposed structures or uses, including proposed soil disturbance, in relationship to all wetlands.
 6. North arrow, scale, date, and stamp bearing the name and registration number of the qualified professional who prepared the site plan.
 7. Other such information as may be necessary for the *[community]* to ensure compliance with this regulation.
- B. The *[community]* may, in reviewing the site plan, consult with the *[county]* SWCD or other such experts. Any costs associated with this review may be assessed to the applicant.
- C. If soil disturbing activities will occur within 50 feet of the outer boundary of the applicable wetland setback as specified in this regulation, the wetland setback shall be clearly identified by the applicant on site with construction fencing as shown on the site plan. Such identification shall be completed prior to the initiation of any soil disturbing activities and shall be maintained throughout soil disturbing activities.
- D. No approvals or permits shall be issued by the *[community]* prior to identification of wetland setbacks on the affected land in conformance with this regulation.

XXXX.07 USES PERMITTED IN WETLAND SETBACKS

☞ Communities should review, and modify as necessary, the following lists of permitted and prohibited uses for consistency with existing codes and community concerns.

- A. By Right Uses Without A Permit. Open space uses that are passive in character shall be permitted in wetland setbacks, including, but not limited to, those listed in this regulation. No use permitted under this regulation shall be construed as allowing 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. Wetland setbacks may be revegetated and/or reforested with native, noninvasive plant species.
- B. By Conditional Use Permit Granted by the *Planning and Zoning Commission*: When granting Conditional Use Permits for the following uses, the *Planning and Zoning Commission* may, for good cause, attach such conditions as it deems appropriate. Permits issued under this regulation are issued to the applicant only, shall not be transferred, and shall be void if not implemented within one (1) year of issuance.
1. Crossings: Crossings of designated wetlands through wetland setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means may be permitted provided such crossings minimize disturbance in wetland setbacks and mitigate



any necessary disturbances. Such crossings shall only be undertaken upon approval of a Crossing Plan by the **Planning and Zoning Commission**. Any costs associated with review of Crossing Plans may be assessed to the applicant.

If work will occur within the jurisdictional boundary of the designated wetland, proof of compliance with the applicable conditions of a US Army Corps of Engineers Section 404 Permit (either a Nationwide Permit, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification), shall also be provided to the **[community]**. Proof of compliance shall be the following:

- a. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
 - b. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
 - c. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
2. **Storm Water Retention and Detention Facilities:** Storm water management facilities may be constructed in the wetland setback, provided:
- a. Where the minimum wetland setback is less than or equal to 50-feet, the storm water management facilities are located outside the minimum wetland setback.
 - b. Where the minimum wetland setback is greater than 50-feet, storm water management facilities are located at least 50-feet from jurisdictional boundary of the wetland
3. **Landscaping:** The removal of natural vegetation within a wetland setback and the subsequent cultivation of lawns, landscaping, shrubbery, or trees may be allowed provided that such cultivation is done in conformance with a Landscaping Plan approved by the **Planning and Zoning Commission**. Any costs associated with review of Landscaping Plans may be assessed to the applicant. Landscaping Plans shall meet the following criteria:
- a. Maintain trees in the wetland setback larger than nine (9) inches in caliper (diameter) as measured fifty-four inches above the ground to the maximum extent practicable.
 - b. Maintain trees, shrubbery, and other non-lawn, woody vegetation in the wetland setback to the maximum extent practicable.

XXXX.08 USES PROHIBITED IN WETLAND SETBACKS

Any use not authorized under this regulation shall be prohibited in 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 buildings or 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 noncommercial composting of uncontaminated natural materials and except as permitted under this regulation
- C. Walls: There shall be no walls.
- D. Roads or Driveways. There shall be no roads or driveways, except as permitted under this regulation.
- E. Motorized Vehicles. There shall be no use of motorized vehicles, except as permitted under this regulation.
- F. Disturbance of Natural Vegetation: There shall be no disturbance of natural vegetation within wetland setbacks except for the following:
 - 1. Maintenance of lawns, landscaping, shrubbery, or trees existing at the time of passage of this regulation.
 - 2. Cultivation of lawns, landscaping, shrubbery, or trees in accordance with an approved Landscaping Plan submitted in conformance with this regulation.
 - 3. Conservation measures designed to remove damaged or diseased trees or to control noxious weeds or invasive species.
- G. Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles: There shall be no parking spaces, parking lots, or loading/unloading spaces.
- H. New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Wetland setbacks shall not be used for the disposal or treatment of sewage, except as necessary to repair or replace an existing home sewage disposal system and in accordance with recommendations of the [county] Board of Health.

XXXX.09 NON-CONFORMING STRUCTURES OR USES IN WETLAND SETBACKS

☞ Communities may want to remove this section if non-conforming structures and uses are addressed elsewhere in their codes.

- A. A non-conforming use, existing at the time of passage of this regulation and within a wetland setback, that is not permitted under this regulation may be continued but shall not be changed or enlarged unless changed to a use permitted under this regulation.
- B. A non-conforming structure, existing at the time of passage of this regulation and within a wetland setback, that is not permitted under this regulation may be continued but shall not have the existing building footprint or roofline expanded or enlarged.
- C. A non-conforming structure or use, existing at the time of passage of this regulation and within a wetland setback, that has substantial damage and that is discontinued, terminated, or abandoned for a period of six (6) months or more may not be revived, restored, or re-established.



XXXX.10 VARIANCES WITHIN WETLAND SETBACKS

☞ *Sections XXXX.10 and XXXX.11 assign the authority to review and grant variances in the wetland setback to the Planning and Zoning Commission (P&Z), a role traditionally filled by the Board of Zoning Appeals. This role for the P&Z, developed by the City of Kirtland, is recommended because P&Z will be the body developing the wetland setback ordinance and recommending it to Council. Through this process of ordinance development, the members of P&Z become familiar with the intent of wetland setbacks, the technical issues involved, and the importance of adjusting other setbacks, such as side yard and rear yard, to ensure buildability while maintaining wetland areas. For this reason, the members of P&Z may be better able to grant reasonable wetland setback variances. Communities should consult their law director regarding this modification of authorities.*

- A. The **Planning and Zoning Commission** may grant a variance to this regulation as provided herein. In granting a variance, the following conditions shall apply:
1. In determining whether there is unnecessary hardship with respect to the use of a property or practical difficulty with respect to maintaining the wetland setback as established in this regulation, such as to justify the granting of a variance, the **Planning and Zoning Commission** shall consider the potential harm or reduction in wetland functions that may be caused by a proposed structure or use.
 2. The **Planning and Zoning Commission** may not authorize any structure or use in a Zoning District other than those authorized in the Zoning Code.
 3. Variances shall be void if not implemented within one (1) year of the date of issuance.
- B. In making a determination under **Section XXXX.09 (A)** of this regulation, the **Planning and Zoning Commission** may consider the following:
1. The soil type and natural vegetation of the parcel.
 2. The Ohio EPA Category of wetland. Category 3 wetlands are the highest quality wetlands in the State of Ohio and should be protected to the greatest extent possible.
 3. The extent to which the requested variance impairs the flood control, erosion control, water quality protection, or other functions of the wetland setback. This determination shall be based on sufficient technical and scientific data.
 4. The degree of hardship, with respect to the use of a property or the degree of practical difficulty with respect to maintaining the wetland setback as established in this regulation, placed on the landowner by this regulation and the availability of alternatives to the proposed structure or use.
 5. Soil-disturbing activities permitted in the wetland setback through variances should be implemented to minimize clearing to the extent possible and to include Best Management Practices necessary to minimize erosion and control sediment.
 6. The presence of significant impervious cover, or smooth vegetation such as maintained



lawns, in the wetland setback compromises its benefits to the *[community]*. Variances should not be granted for asphalt or concrete paving in the wetland setback. Variances may be granted for gravel driveways when necessary.

7. Whether a property, otherwise buildable under the ordinances of the *[community]*, will be made unbuildable because of this regulation.
8. In order to maintain the wetland setback to the maximum extent practicable, the ***Planning and Zoning Commission*** may consider granting variations to other area or setback requirements imposed on a property by the Zoning Code.
9. In granting a variance under this regulation, the ***Planning and Zoning Commission***, for good cause, may impose such conditions that it deems appropriate to maintain the purposes of this regulation as outlined in ***Section XXXX.01***.

XXXX.11 PROCEDURES FOR VARIANCES & APPEALS

- A. Any applicant seeking a variance to the conditions imposed under this regulation or an appeal to an administrative decision made under this regulation, other than a decision by the ***Planning and Zoning Commission***, may apply to or appeal to the ***Planning and Zoning Commission***. The following conditions shall apply:
 1. When filing an application for an appeal to an administrative decision, the applicant shall file a notice of appeal specifying the grounds therefor with the administrative official within 20 days of the administrative official's decision. Upon determining that the application is complete and upon receipt of the required fee of ***\$100***, the administrative official shall transmit to the ***Planning and Zoning Commission*** the application and a transcript constituting the record from which the administrative decision subject to appeal was based. This transmission shall occur no less than fourteen (14) days prior to a regularly scheduled meeting of the ***Planning and Zoning Commission*** in order to be placed on the agenda for that meeting.
 2. When applying for a variance, the applicant shall file a variance request with the ***Planning and Zoning Commission***.
 3. Applications for appeals or variances made under this regulation shall contain the following information:
 - a. The name, address, and telephone number of the applicant;
 - b. Proof of ownership or authorization to represent the property owner.
 - c. The location of the property, including street address and permanent parcel number.
 - d. The current zoning of the property.
 - e. A description of the project for which the appeal or variance is sought.
 - f. A description of the administrative decision being appealed or the conditions of



the regulation from which a variance is sought.

- g. Names and addresses of each property owner within 500 feet as shown in the current records of the *[county]* Auditor typed on gummed labels.
- 4. Applications for variances or appeals of administrative decisions shall not be resubmitted to the *Planning and Zoning Commission* within one (1) year of the date of a final decision by the *Planning and Zoning Commission* on the original application, unless the applicant shows the *Planning and Zoning Commission* either of the following:
 - a. Newly discovered evidence that could not have been presented with the original submission, or
 - b. Evidence of a substantial change in circumstances since the time of the original submission.
- B. A decision by the *Planning and Zoning Commission* in response to an application for a variance request or an appeal of an administrative decision filed pursuant to *Section XXXX.10 (A)* of this regulation shall be final.

XXXX.12 INSPECTION OF WETLAND SETBACKS

The identification of wetland setbacks shall be inspected by the *[community]*:

- A. Prior to soil disturbing activities authorized under this regulation. The applicant shall provide the *[community]* with at least two (2) working days written notice prior to starting such soil disturbing activities.
- B. When evidence is brought to the attention of the *[community]* that uses or structures are occurring that may reasonably be expected to violate the provisions of this regulation.

XXXX.99 PENALTY

- A. Any person who shall violate any section of this regulation shall be guilty of a misdemeanor of first degree and, upon conviction thereof, shall be subject to punishment as provided in *Chapter XXXX* and shall be required to restore the wetland setback through a restoration plan approved by the *Planning and Zoning Commission*.
- B. The imposition of any other penalties provided herein shall not preclude the *[community]* 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, ordinances, rules, or regulations, or the orders of the *[community]*.