

Protective Regulations

Ohio Lake Erie Commission
Best Local Land Use Practices

Kirby Date, Countryside Program Coordinator

Center for Planning, Research, and Practice

Cleveland State University

Riparian/Wetland Setbacks: Basic definition

- Setback vs. “buffer”
- Apply to new construction only: existing improvements grandfathered
- Apply to reconstruction/reuse after a period of abandonment



Riparian/Wetland Setbacks: Applicability

- Location/applicability of setbacks
 - drainage area > ½ mile: all streams
 - drainage area < ½ mile: streams with defined bed and bank
- Usually class 2 and 3 wetlands
- Some models define as identified on certain maps
- Should apply to agricultural ditches
- Some models exempt agriculture, mining

Riparian/Wetland Setbacks: Width

- Width determined by watershed drainage area, or class of wetland
- Riparian: 25 to 300 feet from top of established ordinary high water mark is typical – some variation among models
- Wetlands: Class 2 – 75 feet; Class 3 – 120 feet.
- Flexibility and Buildability: control *location* of development while allowing it to occur
- Riparian: Should include 100 year floodplain, and riparian wetlands class 2 and 3
- Role of the Guide Map

Riparian and Wetland Setbacks: Permitted, Conditional Uses

- Permitted Uses
 - recreation
 - removal of damaged trees
 - revegetation with advice
- Conditional Uses (often with approved plan)
 - (landscaping)
 - stream crossing
 - stream bank restoration
 - (trails)
 - (fencing)
 - (selective harvesting)
 - stormwater detention

Riparian/Wetland Setbacks: Prohibited Uses

- Prohibited Uses
 - structures or expansion of existing structures
 - vegetation removal
 - (landscaping expansion)
 - (fencing)
 - septic/wastewater disposal
 - roads/drives/parking
 - motorized vehicles

Riparian Setbacks: Administrative Issues

- Meets Ohio EPA Phase II requirement for Post-Construction practices
- Wetland, riparian setback regulations can be combined or separate
- Need strong purpose statement
- Zoning and/or building permit contingent on compliance
- Variance flexibility is provided
- Conditions for variances vary
- Timing of setback identification, review of plans
- Monitoring during construction
- Enforcement based on complaint, or annual monitoring
- Penalties: typically a misdemeanor

Stormwater Management Regulations: Two Types

- Construction Runoff Control (AKA Erosion/Sediment Control): Water Quality – Requires SWPPP
- Post-Construction Control: Water Quality AND Quantity – managed through SWPPP and SWMP



Erosion/Sediment Control: How it works

- Requires preparation of a storm water pollution prevention plan (SWP3), or Abbreviated SWP3
- Establishes standards and preferred methods for control of sediment



Erosion/Sed Control: Methods

- Nonstructural : site design and avoidance of disturbance in the first place
- Stabilization: Covering/seeding disturbed areas
- Runoff control: Diverting runoff from disturbed areas (swales, dikes, berms, etc.)
- Sediment control measures: collecting sediment and keeping it on site (silt fences, settling ponds, storm sewer inlet protection)

Post-Construction Stormwater Management : How It Works

- Requires Comprehensive Stormwater Management Plan for activities disturbing soil
- Sets standards for volume, rate and quality of runoff from completed project
- Sets standards for preferred methods and facilities



Post-Construction Stormwater Management: Methods

- Structural practices acceptable to Ohio EPA: wet retention, dry retention, etc.
- Nonstructural: site design, conservation development, minimizing disturbance, riparian/wetland setbacks
- Low impact development practices: rain gardens, grassy swales, etc.

Both Types: Administrative Issues

- Both types must be addressed – together or separate
- Standards and practices must meet minimum OEPA standards
- Should require compliance with State/Federal Regulations
- Must require provisions for maintenance of facilities during and after construction

Administrative Issues continued

- Who will have responsibility for plan review and inspection?
- Who will have responsibility for long-term maintenance of facilities?
- How will long term monitoring be handled?
- Erosion/Sed Control - Must have authority to stop work immediately
- Must have provisions for enforcement
- Penalties – most are a misdemeanor

Recommended Review Process

- 1) Conceptual Plan Stage (“Sketch Plan”)
 - Pre-application meeting
 - Sketch Plan Submitted
 - Review on-site: riparian/wetland delineation
- 2) Preliminary Plan Stage
 - Preliminary Plan
 - determine applicability of state/federal regulations
- 3) Preliminary Improvement Plan Stage
 - Construction drawings
 - submit crossing, riparian setback, slope stabilization, stormwater etc plans (as required by regulation)
 - all permits/approvals in process (required) for final approval
- 4) Final Plat
 - record all easements, setbacks, agreements as required by regulation

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Steep Slope Protection Regulations: How They Work

- Often are naturally included in riparian protection
- *Permit based* regulation types require conditional use for construction on slopes steeper than a designated slope (15-30%)



Steep Slope Regulations: Works ctd.

- *Riparian setback expansion* types require normal riparian setback to be expanded to include slopes over a certain %
- Another approach is to expand riparian setback based on more detailed engineering analysis including soils, vegetation, etc as well as slope

Steep Slope Protection Regulations: Issues

- In theory, “any slope can be developed” – but there are health and safety considerations
- Engineering analysis helps to justify slope level cutoff point
- Other provisions of riparian setbacks can be applied (lot flexibility, variances, grandfathering, etc.)

Steep Slope Regulations: Decision Points

- Engineering analysis: what are professional recommendations, based on analysis?
- Determine best of three approaches
- Establish slope limits for regulation
- Establish uses and restrictions within steep slope area
- Establish procedures for review, inspection, monitoring, enforcement, and variance

Meadow Protection Regulations: How they work

- Recommended for communities with mowing ordinances that would prevent natural area management
- *Permit Laws* require an approved management plan; require review and monitoring
- *Exclusion Laws* exempt native grass areas from mowing ordinance; initiated upon complaint
- *Proactive Laws* require native grass areas in new landscapes; require review and monitoring



Meadow Protection: Works ctd.

- All are based on recommendations of identified “expert”
- Some regulations are set up as setback regulations

Meadow Protection Regulations: Issues

- Relationship with meadow “expert” must be established (SWCD?)
- Invasive and noxious weeds must be prohibited
- Permit and Proactive type laws require professional plan preparation, establishment of review procedures and long-term monitoring
- Public/neighbor education is critical
- Inspection and enforcement are important

Meadow Protection: Decision Points

- Is a protection law needed?
- Choose between Permit, Exclusion, and Proactive approach
- Identify best “expert”
- Establish review, inspection and enforcement procedures
- Identify responsibilities for education and technical assistance of public

Woodland Protection Regulations: How They Work

- Focused on new development sites
- Requires arborist review prior to design
- Incorporates design criteria into project review



Tree Protection Regulations: works ctd.

- Establishes standards for tree protection during and after construction
- Establishes procedures for review, inspection, monitoring, and enforcement

Woodland Protection: Issues

- Initial site review and construction protection plan must be prepared by qualified professional
- Size alone does not determine priority for preservation; should be based on species, health, sensitivity to disturbance, as well as size
- True long-term tree protection requires avoidance of site compaction, hydrology alteration, and alteration of sunlight conditions for a large area around tree (up to 3 times width of drip line)
- Monitoring and enforcement are critical – once a tree is gone or severely injured nothing can be done
- Relationship to forest management requirements
- Relationship to riparian setbacks

Woodland Protection: Decision Points

- Identify likely high priorities for preservation in comprehensive planning process
- Identify procedures and responsibilities for review, inspection, monitoring, and enforcement
- Identify experts who can provide technical assistance/recommendations to community

Questions?