

(MODEL) RIPARIAN AREA PROTECTION OVERLAY ZONE

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Allegan Conservation District

1668 Lincoln Rd.

Allegan, MI 49010

RIPARIAN AREA PROTECTION OVERLAY ZONE.

(INSERT NAME OF TOWNSHIP) TOWNSHIP ---

ORDINANCE NO. 0- -

AN ORDINANCE TO AMEND THE (INSERT NAME OF TOWNSHIP) TOWNSHIP ZONING REGULATIONS, TO ESTABLISH REGULATIONS GOVERNING USES, ACTIVITIES, PLACEMENT OF BUILDINGS AND STRUCTURES AND REMOVAL AND ALTERATION OF EXISTING VEGETATION IN PROXIMITY TO RIPARIAN FEATURES

WHEREAS, the goals and supporting policies for the Township set forth in the (insert name of township) Township Master Plan (**Amend master plan as needed to include**) encourage protection of water quality in the Rabbit River and its tributary streams in the Township, by encouraging the provision of greenbelts along stream corridors, through use of building setback requirements and open space requirements; and

WHEREAS, the (insert name of township) Township Planning Commission has considered the findings and recommendations of the Upper Rabbit River Watershed planning project, "Watershed Management Plan" published in 2004. The Watershed Management Plan concludes that " reducing non-point source pollution will protect and restore the designated and desired uses of coldwater/warm water fishery, partial body contact recreation and native wildlife habitat; and

WHEREAS, a considerable body of evidence, summarized: in the document entitled "Where Rivers Are Born: The Scientific Imperative for Defending Small Streams and Wetlands," authored by a panel of scientists, indicates, "the health and productivity of rivers and lakes depends upon intact small streams and wetlands," and

WHEREAS, the "Where Rivers are Born" document includes the following findings and conclusions:

1. Land use changes in the vicinity of small streams and wetlands can impair the natural functions of such headwater systems.
2. The goal of protecting water quality, plant and animal habitat, navigable waterways, and other downstream resources is not achievable without careful protection of headwater stream systems; and

WHEREAS, the United States Environmental Protection Agency, in a document titled "National Management Measures to Control Non-point Source Pollution from Urban Area - Draft, " states "stream buffers should be protected and preserved as a conservation area because these areas provide many important functions and benefits, including

- Providing a "right-of-way" for lateral movement. -Conveying floodwaters.
- Protecting stream banks from erosion.
- Treating runoff and reducing drainage problems from adjacent areas. -Providing nesting areas and other wildlife habitat functions. . Mitigating stream warming. - Protecting wetlands.
- Providing recreational opportunities and aesthetic benefits.
- Increasing adjacent property values; and

WHEREAS, a publication of the Michigan Department of Environmental Quality, Coastal Management Division, titled "Filling the Gaps: Environmental Protection Options for Local Governments," published in 2003, makes the observation that "without the ability to protect inland lakes and streams from adverse uses of surrounding land, it is difficult for the state to effectively protect water quality on its own"; and

WHEREAS, the Michigan DEQ publication referenced above identifies minimum setback or "buffer strip" requirements from specific natural features elements as a recommended mechanism for local governments to protect natural resources, and states that "if the zoning ordinance has appropriate standards to protect natural resources and minimize harm to the environment as new development occurs, then not only the present generation, but also future generations will benefit"; and

WHEREAS, the (insert name of township) Township Planning Commission has studied the need for regulations to protect riparian natural features in the Township, in evaluating alternative methods of protecting these features and in developing recommended regulations establishing protection measures; and

WHEREAS, the (insert name of township) Township Planning Commission has held a public hearing and considered input from the public in developing the proposed riparian area protection regulations, and has recommended the adoption of regulations establishing development standards for protection of riparian areas; and

WHEREAS, it is the intent of these regulations to allow existing conditions, structures, buildings and property maintenance practices which do not conform with the restrictions contained herein to be continued, subject to the limitations and restrictions on nonconformities as outlined in the zoning regulations, Now therefore

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THE TOWNSHIP OF (INSERT NAME OF TOWNSHIP) ORDAINS:

CHAPTER ____

RIPARIAN AREA PROTECTION OVERLAY ZONE.

Section 01. Intent and Purpose: The standards contained in this Chapter govern the use and alteration of land within a specified distance of, rivers, creeks and contiguous wetlands and other riparian features in (insert name of township) Township, in order to accomplish the following objectives: *(If the community wishes to include wetlands of over five acres that are not contiguous to the stream or water body it must remove the underlined word contiguous throughout)*

1. Implement the water quality protection, environmental protection and rural character protection goals and policies of the Township's Master Plan. *(Amend master plan as needed to include appropriate goals and policies)*
2. Achieve the Township's resource protection and community character goals in a manner that is reasonable and sensitive to local conditions and concerns of property owners. *(Amend master plan as needed to include appropriate goals and policies)*
3. Protect water quality and habitat quality in the, rivers, creeks, and contiguous wetlands and other riparian features in (insert name of township) Township, and thereby protect the public health, safety and general welfare, by encouraging filtering of storm water runoff through natural vegetative buffers along stream corridors, and by encouraging and protecting vegetative cover along stream banks to shade the stream, thereby maintaining lower water temperatures and high-quality stream habitat.
4. Maintain the integrity and stability of stream banks and protect stream banks against erosion, by providing for effective vegetative buffers adjacent to stream corridors, and by prohibiting excavation and building activities within a specified distance from stream banks and contiguous wetlands.
5. Protect the natural character and appearance of streams, river corridors and contiguous wetlands, which contribute to the valued natural character of the community, its quality of life and its property values.
6. Permit and encourage property owners to enhance native vegetation along riparian corridors in the Township.

Section 02. Applicability and Administrative Action:

1. Applicability. Except as provided in subsection 2 below the standards contained in this section shall be applicable to all land in the Township which is located within specified distances adjacent to:

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- a. All of the lakes, impoundments, rivers, streams, and creeks and ***contiguous*** wetlands located within the "protected riparian areas" identified on the map titled "Protected Riparian Areas Overlay Map," which is attached to and made a part of this ordinance, and a copy of which is on file in the office of the township Clerk" and ***(Note: Each community will have to prepare an overlay map that illustrates the stream sections and other water bodies to which the ordinance will apply).***
 - b. ***(Optional- if regulation of wetlands in excess of five acres is intended)*** non-contiguous wetlands as defined in this chapter.
 - c. Any other natural or artificial lake, pond or impoundment with a surface area of five (5) acres or more or any other river stream creek or drain that has definite banks, a bed and that under normal conditions, has visible evidence of a year-round flow of water. ***(Optional- use this to cover potentially unmapped streams, and county drains. Also man-made lakes and impoundments created after adoption)***
2. **Exemptions.** The standards contained in this Chapter **shall not** be applicable to:
- a. A lot or parcel, which was a "lot of record" on or before _____, 2006.
Optional a A lot or parcel which was a "lot of record and which supported a permitted principle residential, commercial or business use on or before _____, 2006 ***(This option would exempt only developed parcels. Vacant lots of record would still have to comply.)***
 - b. Agricultural operations that are conducted in conformance with the Michigan Right to Farm Act, Public Act 93 of 1981, as amended.
 - c. All activities that are authorized in a permit issued by the Michigan DEQ pursuant to Parts 31,301,303 or 315 of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.
3. **Administrative Action.** The decision on any application for a zoning approval or a permit for an activity on property subject to the riparian area protection standards of this Chapter shall be made by the Zoning Administrator. The decision by the Zoning administrator may, at his or her discretion entail a referral to the Planning Commission for its review and decision.

Section 03. Overlay Sub-areas: Natural Vegetation Zones and Transition Zones: Definition, Intent and Delineation

1. **Definition and Intent:** The land area subject to the riparian area overlay protection standards of this section shall be comprised of two sub-area zones. The definitions and intended purposes of each of these sub-areas are as follows:
 - a. ***Natural Vegetation Zone.*** The natural vegetation zone includes all lands located

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within thirty-five (35) feet of the ordinary high water mark of a riparian feature, all lands within twenty five (25) feet of the boundary of a ***contiguous*** wetland as defined in this ordinance, and all land located within seventy- five (75) feet of the ordinary high water mark of a riparian feature which slopes toward the riparian feature at a grade of twelve percent (12%) or greater. The natural vegetation zone is intended to provide a functional vegetative corridor along the edge of a riparian feature, to protect the water quality, animal habitat and aesthetic values of the riparian feature by minimizing erosion, stabilizing the bank, minimizing nutrient flows into the water, shading the water to maintain low water temperatures, and screening man-made structures. *(Note: The above suggested zone limit widths may be adjusted)*

- b. *Transition Zone.* The "transition zone," extends for a width of fifteen (15) feet beyond the edge of the natural vegetation zone. The transition zone is intended to provide distance between upland development and the natural vegetation zone, in an area outside of the natural vegetation zone where there are fewer restrictions on disturbance and improvements, but where some restriction remains necessary to protect water quality, habitat and integrity of the adjacent riparian feature. *(Note: The suggested zone limit widths may be adjusted)*

Note: The two sub-area approach suggested and used throughout this model may be abandoned in favor of a single "green belt". If that approach is selected with a few modifications all reference to the transition zone contained in this model could be deleted and the depth of the "Natural Vegetation zone" indicated above could be adjusted as appropriate..

2. Delineation of Sub-Area Zones. The limits of the "natural vegetation zone" and the "transition zone" as used and defined in this Chapter shall be accurately shown on all site plans, land division plans, subdivision plans (plats), site condominium plans, plans for planned unit developments, and all applications for building permits submitted for review by *(insert name of township)* Township. Any such plans for sites on which is located any protected riparian area subject to these regulations shall include the following statement: "There shall be no clearing, grading, earth change, placement of fill, construction or disturbance of vegetation within the area labeled as being subject to the riparian area protection standards of the *(insert name of township)* Township zoning regulations, except as permitted by Chapter *(insert chapter or section # of these regulations)* of the *(insert name of township)* Township Zoning Regulations."

Section 04. Development Standards. Natural Vegetation Zone

Land located within the natural vegetation zone shall be subject to the following development standards:

1. No dwelling unit or other principal building and no accessory building may be constructed

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within the natural vegetation zone. The following structures may be permitted:

- a. Flood control or bank protection structures permitted or constructed by authorized state or federal agencies.
 - b. Pedestrian or vehicular bridges when designed and constructed in a manner that minimizes impact on the riparian feature.
 - c. Boardwalk access to wetlands constructed in accordance with a permit issued by the Michigan Department of Environmental Quality.
 - d. One pump house per lot housing a pump used for irrigation when setback at least fifteen (15) feet from the high water mark, a ground coverage of nine (9) square feet. *(Note: The size standard should be made consistent with existing ordinance provisions on pump houses, if any.)*
 - c. Not more than one fishing pier or boat dock per lot or building site, not exceeding ten (10) feet in width and 10 feet in length, projecting no more than six (6) feet over the water as measured from the waters edge, unless otherwise regulated by this ordinance or other local or state statute. *(Note: This provision must be coordinated/consistent with local riparian access control or funneling ordinances, if any)*
2. On-site sanitary waste treatment systems are prohibited within the natural vegetation zone.
3. The area within the natural vegetation zone shall be kept in a predominantly natural condition. Clearing or removal of existing trees shrubs and groundcover shall be limited to the following:
- a. Removal of isolated diseased or dead trees and damaged trees that are in an unstable condition and that pose a safety hazard. The stumps and root structures of removed trees shall be left in place.
 - b. Removal of noxious plants and shrubs, including poison ivy, poison sumac and poison oak and other plants regarded as common nuisance in Section 2, Public Act 359 of 1941 as amended and species that are recognized as highly invasive, as contained on a "List of Invasive Species" maintained on file in the office of the Township Clerk. *(Note: This list should be initially prepared and periodically updated with the help of DEQ and Allegan County conservation District.)*
 - c. Planting of native species that are contained on a "List of Native Species" maintained on file in the office of the Township Clerk is permitted. *(Note: This list should be initially prepared and periodically updated with the help of DEQ and Allegan County conservation District)*
 - d. Limited removal of vegetation in order to provide a filtered view of the riparian feature from adjacent property and to provide reasonable private access to the

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riparian feature. The term "filtered view" connotes the maintenance or establishment of woody vegetation of sufficient density to screen riparian feature from adjacent property, to provide for bank stabilization and erosion control and to serve as an aid to infiltration of surface runoff. The vegetation need not be so dense as to completely block the view of the riparian feature. To that end the following standards shall apply:

- (1) Sufficient live root system and vegetation must be retained to provide for bank stabilization and erosion control, to encourage infiltration of runoff, and to provide shading of the water surface.
- (2) Existing vegetation between a height of three (3) feet above the ground and the ground surface shall remain undisturbed and in a natural condition except as otherwise provided for herein.
- (3) Select pruning and removal of vegetation above a height of three (3) feet shall be permitted to harvest merchantable timber.
- (4) Existing vegetation may be removed and/or managed, including maintaining a turf lawn, in an area with a maximum width of fifteen (15) feet to and ten (10) feet along one or both sides of the riparian feature. Within this corridor a paved or unpaved trail or path with a maximum width of nine (9) feet is permitted.
- (5) Clearing that is required to construct the exempt structures permitted in Section 02, sub-section 2 above, is permitted.

4. Prohibited activities: The following activities are prohibited in the natural vegetation zone:

- a. Storage of motorized vehicles or petroleum products
- b. Storage or use of toxic or hazardous materials
- c. Storage of herbicides or pesticide
- d. Storage of fertilizer
- e. Placement of fill or dumping of any refuse
- f. Concentrated drainage flow by ditches, under drains or other similar systems.
- g. Topsoil, sand and gravel extraction.

5. Use of Pesticides, Herbicides and Fertilizers. The use of pesticides, herbicides and fertilizers within the natural vegetation zone is strongly discouraged except when in accord with the advice and supervision of qualified specialists.

Section 05. Development Standards in the Transition Zone (25 feet landward of Natural Vegetation Zone)

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Land located within the transition zone shall be subject to the following development standards and restrictions:

1. No dwelling unit or other principal building and no accessory building may be constructed within the transition zone. The following structures may be permitted:
 - a. Flood control structures constructed by authorized state or federal agencies.
 - b. Pedestrian or vehicular bridges, when deemed necessary and designed and constructed in a manner that minimizes impact on the riparian feature.
 - c. One (1) viewing platform deck or gazebo with a maximum ground coverage of two hundred (200) square feet.
 - d. One pump house per lot housing a pump used for irrigation when setback at least fifteen (15) feet from the high water mark, and a ground coverage of not more than nine (9) square feet. *(Note: The size standard should be made consistent with existing ordinance provisions on pump houses, if any.)*
2. On-site sanitary waste treatment systems are prohibited within the transition zone.
3. Except for public or private access and recreational trails not exceeding ten (10) feet in width, the construction of impermeable surfaces such as paved driveways, paved parking areas, tennis courts and other similar surfaces is prohibited in the transition zone.
4. Vegetation within the transition zone may be altered and managed in a manner customary for the uses permitted in the zoning district applicable to the subject property.

Note: Alternative Lot size and setback provisions. Alternative lot size, depth and width and width to depth ratios and principal building setback requirements may be appropriate for use in the overlay district. If used they would supercede the requirements of the underlying district. Some communities that already have large lot requirements may chose to only impose the principal building setback requirement. Other communities that wish to continue to allow relatively small lots adjacent to the river or stream may chose to leave their lot size requirements as they are and rely solely on the transition and natural vegetation zones as outlined above. Others may y choice not to impose revised lot standards in some districts and revise them in others Each community should evaluate each of its effected zoning districts to determine if alternative lot dimension and setback requirements are desired and appropriate.

Section 06 Minimum Lot Sizes & Principal Structure Setbacks

Within the ____, ____, and ____ zoning districts the minimum lot width and depth for all lots with any part located within this Riparian Area Protection Overlay and created after the effective date of this Section shall be increased as follows:

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1. Minimum Lot Width: _____ hundred (_00) feet.
2. Minimum Lot Depth: The minimum lot depth shall be sufficient to accommodate all setbacks and yard requirements of this overlay zone and the underlying district, and shall not have a width to, depth ratio of more than 1 to 5 (*Note: This ratio can be adjusted to match the width to depth ratio required for all other property in the Township or modified to allow a greater depth if desired along riparian properties*).
3. Minimum Principal Structure Setback: No principal structure shall be erected closer than (100 feet) from the high water mark of the riparian feature except on non-conforming lots of record or where there are steep banks.

a. Non-conforming lots of record. A lot of record existing on the effective date of this chapter that is non-conforming by reason of width or depth on may be used and a principal structure and accompanying septic system may be sited closer to the riparian feature than the required setback line, only if after review by the Zoning Board of Appeals it is found that:

- (1)The lot could not be developed in conformance with the requirements of this Section,
- (2)The proposal for use will place the principal, structure in a location as nearly in conformance with the setback requirements of both this Chapter and the underlying zoning district as possible.
- (3)Such location does not result in placement within the flood plain or a wetland without appropriate approvals by the Michigan D.E.Q.

The approval must be established by grant of a variance by the Board of Appeals after making the above findings and after specifying all conditions attached thereto. In no event shall the Board of Appeals reduce the natural vegetation zone and transition zone requirements of this Chapter if it is feasible to develop the property by conforming with the of requirements of Section ___02 and development standards Section__03

b. Principal Structure exception for steep banks. Where there is a steep bank, a principal structure (but not a septic system) may be constructed closer to the riparian feature according to the following schedule:

Where the bank height, at the bluff, is (a) as measured in vertical feet from the high water mark, the principal structure may locate no closer than (b) horizontal feet from the bluff or the high water mark, whichever is greater:

Bank height
(a)

Setback from Bluff or high water mark
(b)

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10
15
20
25

90
80
70
60

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Related Amendments

A. Definitions.

Amend the Definitions Chapter of Zoning Ordinance to include the following terms and phrases and their meanings -disregard if local definitions are adequate).

Bluff: the top of a steep bank rising from the ordinary high water mark on a lot or parcel.

Earth change: an artificial change in the natural cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. Prior to engaging in any earth change activity within five-hundred (500) feet of a lake or stream, a valid permit is necessary from the local soil erosion and sedimentation control enforcement agency.

Filtered view: The maintenance or establishment of woody vegetation of sufficient density to screen development from the riparian feature, to provide for bank stabilization and erosion control, to serve as an aid to infiltration of surface runoff and to provide cover to shade the water in a manner which still allows a partial view to the water feature.

Development: means any manmade change to improved or unimproved real estate for any purpose, including but not limited to construction of buildings or other structures, mining, dredging, filling, paving or excavation.

Ordinary high water mark: The line between upland and bottomland that persists through successive changes in the water level, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural visible markings or changes in the character of soils, or vegetation due to the prolonged presence of water and which distinguishes between predominantly aquatic terrestrial land.

Lot: a parcel of land, exuding any portion in a street or other right-of-way, of at least sufficient size to meet all minimum dimensional and use requirements and to provide such setback area and other open spaces as required by this ordinance. Such lot shall have frontage on a public road or street on an approved private street or drive, and

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may consist of: (a) single lot of record; (b) a portion of a lot of record; (c) any combination of complete and/or portions of contiguous lots of records; or (d) a parcel of land described by metes and bounds; provided that in no case of lot division or combination shall the area of any lot or parcel created, including residuals be less than the minimum size required by this ordinance

In the context of a condominium project, lot(s) shall mean the same as Building Site(s) and is that portion(s) of a condominium project designed and intended for separate ownership and/or exclusive use, as described in the Master Deed. Lot shall be further defined as:

- (a) A condominium unit consisting of the area under a building envelope and the contiguous area around the building envelope which, by itself, meets the minimum area and yard requirements for lots as required by the Leighton Township Zoning Ordinance as amended; or
- (b) The contiguous limited common element under and surrounding a condominium unit that is or shall be assigned to the owner(s) of the condominium unit for the owner(s) exclusive use and which, together with the condominium unit, meets the minimum area and yard requirements for lots as required by the Leighton Township Zoning Ordinance as amended.

NOTE: A portion of a limited common element that is contiguous to a lot as defined in (a) or (b) above and assigned to the exclusive use of more than one condominium unit will only be considered in calculating minimum lot area if the limited common element is dedicated on the Master Deed for the purpose of supporting a driveway serving not more than two site condominium units or for the support of underground utilities used in common by two adjacent site condominium units.

Wetland: Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and which is contiguous to an inland lake, a river or stream.

Optional Wetland Definition if non-contiguous wetlands in excess of 5 acres are to be included in the regulations

Wetland: Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh and which is any of the following: (1) Contiguous to an inland lake or pond, or a river or stream; (2) Not contiguous to an inland lake, river or stream, and is more than 5 acres in size; (3) Not contiguous to an inland lake or a river or stream, is 5 acres or less in

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size and the Michigan Department of Environmental Quality determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner.

B. PUD, Site Condominium and Site Plan review provisions of the Zoning Ordinance and Subdivision Control Ordinance.

Amend the submittal requirement for each of these procedures as appropriate to require the following:

1. Identification of the limits of any required "natural vegetation zone" and/or "transition zone" adjacent to a riparian feature, as established by the riparian area protection standards contained in Chapter ____.

C. Site Condominium and Subdivision Control Ordinances

Amend the criteria required for approval f or denial of plats and site condominium subdivisions as appropriate to include the following additional requirements.

1. For properties affected by a Riparian Area Protection Overlay Zone as delimited on the Township Zoning map, master deed provisions and restrictive covenants shall include the following statement: "There shall be no clearing grading, placement of fill, construction or disturbance of vegetation within any lot (unit), out-lot, park or common area labeled "natural vegetation zone" and the "transition zone" as it appears on this plat (or exhibit ____ drawings) of this development except as permitted by Chapter (insert chapter or section # of these regulations) of the (insert name of township) Township Zoning Ordinance."

D. Non-conforming Use and Lot Provisions of the Zoning Ordinance

Include the following statement in the non-conforming lot and use provisions of the zoning ordinance that limits the establishment of legal non-conformities within the Riparian Area Protection Overlay Zone when new lots are created under the land division.

All land divisions in any zoning district shall fully comply with all other requirements of the Township's zoning regulations. When a land division results in the creation of a new lot, excluding, the parent or remainder parcel, which includes land that is within the Riparian Area Protection Overlay Zone's "natural vegetation zone" and transition zone as defined in Chapter ____ of the Zoning Ordinance, any existing conditions on the subject lots that do not comply with the intent and development standards for the "natural vegetation zone" and "transition zone" contained in Chapter ____ shall not constitute a lawful nonconforming use.

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E. Land Division/Lot Split Ordinance:

Where appropriate, include the following submittal requirements and additional criteria for approval or denial of lot splits in the local ordinance governing land divisions.

1. **For properties affected by a Riparian Area Protection Overlay Zone** as delimited on the Township Zoning map the Survey drawings shall illustrate the limits of any "natural vegetation zone" and "transition zone" as used and defined in Chapter ___ of the (insert name of Township) Zoning Ordinance.
2. **For properties affected by a Riparian Area Protection Overlay Zone** as delimited on the Township Zoning map, deed restrictions shall include the following statement: "There shall be no clearing grading, placement of fill, construction or disturbance of vegetation within the area labeled "natural vegetation zone" and the "transition zone" as it appears on the legal survey of this parcel except as permitted by Chapter (insert chapter or section # of these regulations) of the (insert name of township) Township Zoning Ordinance."