

Model Riparian Buffer Ordinance.

This is a sample riparian buffer ordinance written as an amendment to an existing zoning ordinance. This ordinance complies with the state minimum standards for river corridor protection as well as the minimum standards for water supply watershed protection that relate to riparian buffers. Some local governments may also be subject to additional requirements for water supply watershed protection. Language that is optional or variable is indicated by brackets and/or parentheses. The name of the local government should be inserted for [county/municipality].

ARTICLE [X] RIPARIAN BUFFER ZONE

1. INTENT AND PURPOSE.

The streams and rivers of [county/municipality] supply much of the water required by [county/municipality] citizens for drinking and other municipal and industrial uses [alternatively, for regions that rely on groundwater: The quality of the groundwater that is used for drinking, agricultural and industrial purposes in [county/municipality] is connected with the quality of the surface water in the streams and rivers of [county/municipality]]. Furthermore, the people of [county/municipality] use the surface waters for fishing, canoeing, and other recreational and economic purposes. The [county/municipality] Board of Commissioners finds that the protection of the streams and rivers of [county/municipality] is vital to the health, safety and economic welfare of its citizens.

It is therefore the intent of this ordinance to amend the Zoning Ordinances of [county/municipality] to establish a new riparian buffer zone of restricted development and limited land use adjacent to all perennial streams and rivers in [county/municipality]. The purposes of the riparian buffer zone are: to protect public and private water supplies, to trap sediment and other pollutants in surface runoff, to promote bank stabilization, to protect riparian wetlands, to minimize the impact of floods, to prevent decreases in base flow, to protect wildlife habitat, and to generally maintain water quality.

The standards and regulations set forth in this ordinance are created under the authority of the [county/municipality]'s Home Rule and zoning powers defined in the Georgia Constitution (Article IX, Section 2). In the event of a conflict between or among any provisions of this ordinance, or any other ordinances of [county/municipality], the requirement that is most restrictive and protective of water quality shall apply.

2. TITLE.

This Ordinance shall be known as "The Riparian Buffer Zone Requirements of [county/municipality]" and may be referred to generally as "Riparian Buffer Requirements."

3. DEFINITIONS.

"Existing land use" means a land use which, prior to the effective date of this ordinance, is either:

- (1) completed; or
- (2) ongoing, as in the case of agricultural activity; or
- (3) under construction; or
- (4) fully approved by the governing authority; or
- (5) the subject of a fully completed application, with all necessary supporting

documentation, which has been submitted for approval to the governing authority or the appropriate government official, for any construction-related permit.

"Impervious surface" means any paved, hardened or structural surface which does not allow for complete on-site infiltration of precipitation. Such surfaces include but are not limited to buildings, driveways, streets, parking lots, swimming pools, dams, tennis courts, and any other structures that meet the above definitions.

"Land disturbing activity" means any grading, scraping, excavating or filling of land, clearing of vegetation and any construction, rebuilding or significant alteration of a structure.

"Protected area" means any land and vegetation that lies within the riparian buffer zone, as defined herein.

"Riparian Buffer Zone" or "RBZ" is an overlay zone that encompasses all land within 100 ft [or other fixed width, but never less than 50 ft] on either side of all streams in [county/municipality], measured as a line extending perpendicularly from the stream bank.

"Second order stream or higher" means any stream that is formed by the confluence of two or more other streams, as indicated by solid or dashed blue lines on the United States Geological Survey 7.5 minute quadrangle maps, of the most recent edition.

"Stream" or "River" means all of the following:

(a) any perennial stream or river (or portion thereof) that is portrayed as a solid line on a United States Department of Agriculture Soil Survey Map of the most recent edition; and

(b) any intermittent stream or river (or portion thereof) that is portrayed as a dashed line on a United States Department of Agriculture Soil Survey Map of the most recent edition; and

(c) any lake or impoundment that does not lie entirely within a single parcel of land; and

(d) any other stream as may be identified by [county/municipality].

"Stream bank" means the uppermost limit of the active stream channel, usually marked by a break in slope.

4. DISTRICT USE AND REGULATIONS.

4.1. The Riparian Buffer Zone District (RBZ) is an overlay zone that encompasses all land within 100 ft [or width defined above] on either side of all streams in [name of county/municipality], measured as a line extending from the stream bank. The RBZ must be maintained in a naturally vegetated state. Any property or portion thereof that lies within the RBZ is subject to the restrictions of the RBZ as well as any and all zoning restrictions that apply to the tax parcel as a whole.

4.2. The following land uses are prohibited within the protected area:

(a) any land disturbing activity;

(b) septic tanks and septic tank drain fields;

(c) buildings, accessory structures and all types of impervious surfaces;

(d) hazardous or sanitary waste landfills;

(e) receiving areas for toxic or hazardous waste or other contaminants;

(f) mining;

(g) storm water retention and detention facilities, except those built as constructed wetlands that meet the approval of the Office of Planning and Zoning of [county/municipality].

5. EXCEPTIONS.

5.1. The following land uses are excepted from the provisions of Section 4:

(a) Existing land uses, except as follows:

1. when the existing land use, or any building or structure involved in that use, is enlarged, increased or extended to occupy a greater area of land; or

2. when the existing land use, or any building or structure involved in that use, is moved (in whole or in part) to any other portion of the property; or

3. when the existing land use ceases for a period of more than one year.

4. existing land uses that involve agricultural production and management shall be consistent with all state and federal laws, all regulations promulgated by the Georgia Department of Agriculture and best management practices established by the Georgia Soil and Water Conservation Commission.

(b) Selective logging, except within 50 ft [or other distance, but never less than 25 ft] of a stream and provided that logging practices comply with the best management practices set forth by the Georgia Forestry Commission.

(c) Crossings by transportation facilities and utility lines. However, issuance of permits for such uses or activities is contingent upon the completion of a feasibility study that identifies alternative routing strategies that do not violate the RBZ, as well as a mitigation plan to minimize impacts on the RBZ.

(d) Temporary stream, stream bank, and vegetation restoration projects, the goal of which is to restore the stream or riparian zone to an ecologically healthy state.

(e) Structures which, by their nature, cannot be located anywhere except within the riparian buffer zone. These include docks, boat launches, public water supply intake structures, facilities for natural water quality treatment and purification, and public wastewater treatment plant sewer lines and outfalls.

(f) Wildlife and fisheries management activities consistent with the purposes of Section 12-2-8 (as amended) of the Official Code of Georgia Annotated.

(g) Construction of a single family residence, including the usual appurtenances, provided that:

1. based on the size, shape or topography of the property, as of the effective

date of this ordinance, it is not reasonably possible to construct a single-family dwelling without encroaching upon the Riparian Buffer Zone; and

2. the dwelling conforms with all other zoning regulations; and

3. the dwelling is located on a tract of land containing at least two acres. For purposes of these standards, the size of the tract of land shall not include any area that lies within the protected river or stream; and

4. there shall be only one such dwelling on each two-acre or larger tract of land; and

5. septic tank drain fields shall not be located within the buffer area, although a septic tank or tanks serving such a dwelling may be located within the RBZ.

(h) Other uses permitted by the Georgia DNR or under Section 404 of the Clean Water Act. 5.2. Notwithstanding the above, all excepted uses, structures or activities shall comply with the requirements of the Erosion and Sedimentation Act of 1975 and all applicable best management practices and shall not diminish water quality as defined by the Clean Water Act. All excepted uses shall be located as far from the stream bank as reasonably possible.

6. MINOR VARIANCES.

6.1. A minor variance is a reduction in buffer width over a portion of a property in exchange for an increase in buffer width elsewhere on the same property such that the average buffer width remains 100 ft [or width specified above]. No minor variance can decrease buffer width to less than 75 ft [or 25 ft less than the buffer width]. A property owner may request a minor variance from the requirements of the RBZ by preparing the appropriate application with the [county/municipality] Office of Planning and Zoning.

6.2. Each applicant for a minor variance must submit documentation that issuance of the variance will not result in a reduction in water quality. All minor variances shall adhere to the following criteria:

(a) the width of the RBZ shall be reduced by the minimum amount possible, and never to less than 75 ft [or 25 ft less than the buffer width] at any point; and

(b) reductions in the width of the RBZ shall be balanced by corresponding increases in the RBZ elsewhere on the same property, such that the total area included in the RBZ is the same as if it were 100 ft [or width specified above] wide; and

(c) land disturbing activities must comply with the requirements of the Erosion and Sedimentation Act of 1975 and all applicable best management practices.

7. MAJOR VARIANCES.

7.1. A major variance is a reduction in RBZ width that is not balanced by a corresponding increase in buffer width elsewhere on the same property, or else a reduction in buffer width to less than 75 [or as specified above] ft. A property owner may request a major variance from the requirements of the RBZ by preparing the appropriate application with the [county/municipality] Office of Planning and Zoning. Such requests shall be granted or

denied by application of the criteria set forth below in section 24.7.3 and will be subject to the conditions set forth below in section 24.7.4. Under no circumstances may an exception be granted which would reduce the buffer to a width less than the minimum standards established by state or federal law.

7.2. Each applicant for a major variance must provide documentation that describes:

- (a) existing site conditions, including the status of the protected area; and
- (b) the needs and purpose for the proposed project; and
- (c) justification for seeking the variance, including how buffer encroachment will be minimized to the greatest extent possible; and
- (d) a proposed mitigation plan that offsets the effects of the proposed encroachment during site preparation, construction and post-construction phases.

7.3. No major variance shall be issued unless the [county/ municipality] Zoning Board of Appeals determines that:

- (a) the requirements of the RBZ represent an extreme hardship for the landowner such that little or no reasonable economic use of the land is available without reducing the width of the RBZ; or
- (b) the size, shape or topography of the property, as of the effective date of this ordinance, is such that it is not possible to construct a single-family dwelling without encroaching upon the Riparian Buffer Zone.

7.4. Any major variance issued by the [county/municipality] Zoning Board of Appeals will meet the following conditions:

- (a) the width of the RBZ is reduced only by the minimum extent necessary to provide relief; and
- (b) land disturbing activities must comply with the requirements of the Erosion and Sedimentation Act of 1975 and all applicable best management practices. Such activities shall not impair water quality, as defined by the federal Clean Water Act and the rules of the Georgia Department of Natural Resources, Environmental Protection Division; and
- (c) as an additional condition of issuing the variance, the [county/municipality] Zoning Board of Appeals may require water quality monitoring downstream from the site of land disturbing activities to ensure that water quality is not impaired.

8. REPEAL CLAUSE.

The provisions of any ordinances or resolutions or parts thereof in conflict herewith are repealed, save and except such ordinances or resolutions or parts thereof which provide stricter standards than those provided herein.

9. SEVERABILITY.

Should any section, subsection, clause, or provision of this Article be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Article

in whole or any part thereof other than the part so declared to be invalid.

10. AMENDMENT.

This Article may be amended from time to time by resolution of the Board of Commissioners of [county/municipality]. Such amendments shall be effective as specified in the adopting resolution.

11. EFFECTIVE DATE.

This article shall become effective upon its adoption.

This section establishes the justification for the ordinance. It should be tailored to emphasize the important aquatic resources of the local area.

For example, if endangered species of fish are present, insert a sentence that says "In addition, the [local river] and its tributaries provide habitat for a number of threatened and endangered species of fish." If these terms are defined previously in the zoning ordinance then they may not have to be redefined here.

The width of the riparian buffer zone is first defined here. Naturally, this width must be consistent throughout the ordinance. We recommend a width of 100 ft, which is consistent with state minimum standards. If a width narrower than 100 ft is specified, a separate ordinance or section of this ordinance must be added to cover those stream segments governed by minimum standards (water supply watersheds and large rivers).

This ordinance specifies the use of soil survey maps, which may be the most accurate maps for determining affected streams. In some areas other map types may be preferable. This section should be changed to refer to the most accurate map available for the jurisdiction, with accuracy determined by field evaluations.

Local governments with port facilities may wish to except these facilities provided they meet certain requirements.

Important Note:

Section 5.1(g)-1 exceeds the state minimum standards by requiring the residence to be located outside of the riparian buffer if possible. As of this writing such a provision may require EPD approval. Contact the University of Georgia Institute of Ecology Office of Public Service and Outreach for more information on this issue.

Minor variances allow for "buffer averaging," which gives the landowner a fast and easy method for reducing the width of the RBZ by small amounts if necessary.

Section 7.3a is designed to ensure that any landowner who might have grounds for a claim of "takings" can qualify for a variance. Section 7.3b is designed to ensure that even those landowners with lots smaller than two acres, as of the effective date of the ordinance, can construct a single-family dwelling within the buffer if necessary to prevent extreme hardship. Landowners with lots of two acres or larger who must encroach on the buffer in order to construct a home are excepted in section 5.1(g)-1.

ADDITIONAL WATER SUPPLY WATERSHED REQUIREMENTS.

The above ordinance meets the riparian buffer provisions of the state minimum standards for water supply watershed protection. However, the minimum standards place other restrictions on small and large water supply watersheds in addition to riparian buffer requirements. A water supply watershed is the drainage basin upstream of governmentally owned drinking water supply intake; a small water supply watershed is less than 100 square miles, while a large water supply watershed is 100 square miles or larger. A water supply reservoir is a

governmentally owned impoundment of water for the primary purpose of providing water to one or more governmentally owned public drinking water systems.

Within a seven mile radius upstream of a water supply reservoir, no impervious surfaces, septic tanks or septic tank drain fields may be installed within 150 ft of a stream bank.

****Note: The EPD can approve alternate criteria for protecting drinking water standards. Because the ordinance above is generally stricter than the state minimum standards, the EPD may allow local governments to waive certain criteria, such as the 150 ft impervious surface/septic setbacks. We do not recommend waiving the other requirements described here.****

In both large and small water supply watersheds, new facilities which handle hazardous materials of the types and amounts determined by the Department of Natural Resources must perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the Department of Natural Resources.

In small water supply watersheds only, new hazardous waste treatment or disposal facilities are prohibited, and new sanitary landfills are allowed only if they have synthetic liners and leachate collection systems. The impervious surface area (including all public and private structures, utilities or facilities) of the entire water supply watershed shall be limited to twenty-five percent (25%) of the area of the watershed or existing use, whichever is greater.