

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.

RIPARIAN FOREST BUFFER PROTECTION AGREEMENT

THIS RIPARIAN FOREST BUFFER PROTECTION AGREEMENT (this “Protection Agreement”) dated as of _____ (the “Agreement Date”) is by and between _____ (the “undersigned Owner or Owners”) and _____ (the “Holder”).

Background

Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit “A” (the “Property”). The Property is also described as:

Street
Address:
Municipality:
County:
Parcel
Identifier:

Purpose

Conservation Objectives

The undersigned Owner or Owners and Holder are entering into this Protection Agreement to establish a riparian forest buffer (the “Riparian Buffer”) along _____ Creek (the “Creek”) for the following purposes (collectively, the “Conservation Objectives”): to maintain and improve the quality of water resources associated with the Creek; to perpetuate and foster the growth of healthy forest; to preserve habitat for Native Species dependent on water resources or forest; and to ensure that activities and uses in the Riparian Buffer are sustainable, i.e., they neither diminish the biological integrity of the Riparian Buffer nor deplete the soil, forest and other natural resources within the Riparian Buffer over time.

Riparian Buffer Area

The Riparian Buffer consists of the strips of land stretching _____ (__) feet landward from the Top of the Banks of the Creek, together with the banks and bed of the Creek, to the extent that the strips, banks and bed are contained within the Property.

Baseline Documentation

The report (the “Baseline Documentation”), to be kept on file at the principal office of Holder, describes the conservation values of the Riparian Buffer identified in the Conservation Objectives, describes existing conditions of the Riparian Buffer including Existing Improvements as of the Agreement Date, and includes, among other information, photographs depicting the Riparian Buffer.

Owners’ Control

Owners reserve all rights and responsibilities pertaining to their ownership of the Property but for the rights *specifically* granted to Holder in this Protection Agreement. No public access is granted by virtue of this Protection Agreement.

Defined Terms

Initially capitalized terms used and not otherwise defined in this Article I are defined in the last Article of this Protection Agreement (the “Glossary”).

Restrictive Covenants: Improvements

No Improvements are permitted within the Riparian Buffer except as set forth in this Article II.

Existing Improvements

Any Existing Improvement may be maintained, repaired and replaced in its existing location. An Existing Improvement may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to an Additional Improvement of the same type set forth in this Article.

Additional Improvements

Only the following Additional Improvements are permitted within the Riparian Buffer:

Existing Agreements

Improvements that Owners are required to allow under Existing Agreements.

Other Additional Improvements

Fences, walls and gates along the perimeter of the Riparian Buffer; signs not exceeding one square foot each; and habitat improvement devices such as birdhouses and bat houses.

Trails of highly porous surface and footbridges for non-motorized use.

Subject to Review, fish passage, fish habitat improvement and stream bank stabilization structures.

Subject to Review, irrigation facilities accessory to agricultural use of the Property.

Subject to Review, stream crossing and access structures and associated access corridor for the purpose of allowing passage across the Riparian Buffer by livestock, horses and agricultural equipment to cross the Creek or access water in the Creek in a specified location. It is Owners' responsibility to install fencing whenever necessary to prevent grazing within or other unrestricted access to the Riparian Buffer by horses or livestock.

Subject to Review, access drives and utility lines but only if there is no other reasonably feasible means to provide access and utility services to the Property except via the Riparian Buffer.

Restrictive Covenants: Activities; Uses; Disturbance of Resources

No activities, uses or disturbances of resources are permitted within the Riparian Buffer except as set forth in this Article III.

Existing Agreements

Activities, uses and Construction that Owners are required to allow under Existing Agreements are permitted.

Other Activities and Uses

Except as provided in the preceding section, activities and uses within the Riparian Buffer are limited to those permitted below and provided in any case that the intensity or frequency of the activity or use does

not have the potential to materially and adversely impair maintenance or attainment of Conservation Objectives.

Disturbance of Resources

Cutting trees, Construction or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate or warn against an unreasonable risk of harm to Persons, property or health of Native Species on or about the Riparian Buffer. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.

Planting Native Species but no monoculture.

Removal of Invasive Species to accommodate replanting with Native Species.

Sustainable forestry in accordance with a Resource Management Plan approved for that activity after Review but not within fifty (50) feet of the top of the bank of the Creek.

Agricultural use is limited to passage of horses, livestock and equipment via a corridor (if any) permitted under Article II to access water at a specified location or stream crossing structures (if any) permitted under Article II.

Subject to Review, stream bank stabilization, dam removal and other habitat improvement activities.

Other resource management activities consistent with Conservation Objectives and conducted in accordance with the Resource Management Plan approved for that activity after Review.

Subject to Review, removal and disturbance of soil, rock and vegetative resources to the extent reasonably necessary to accommodate Construction of and maintain access to Improvements within the Riparian Buffer with restoration as soon as reasonably feasible by replanting with Native Species.

Vehicular use (including motorized vehicular use) in connection with an activity permitted within the Riparian Buffer or otherwise in the case of emergency.

Recreational and Educational Uses

Activities that do not require Improvements other than those permitted within the Riparian Buffer and do not have the potential to materially and adversely affect Conservation Objectives such as (i) walking, nature study, bird watching, fishing and hunting; and (ii) other educational or scientific activities consistent with maintenance or attainment of the Conservation Objectives.

Rights and Duties of Holder and Beneficiaries

Grant to Holder

By signing this Protection Agreement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a conservation servitude over the Riparian Buffer in perpetuity for the purpose of administering and enforcing the restrictions and limitations set forth in this Protection Agreement. The undersigned Owner or Owners warrant to Holder that the Riparian Buffer is, as of the Agreement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Protection Agreement as an exhibit the legally binding subordination of any Liens affecting the Riparian Buffer as of the Agreement Date.

Rights and Duties of Holder

The grant to Holder under the preceding section gives Holder the right and duty to perform the following tasks:

Enforcement

To enforce the terms of this Protection Agreement in accordance with applicable provisions of this Protection Agreement including, in addition to other remedies, the right to enter the Property to investigate a suspected, alleged or threatened violation.

Inspection

To enter the Property and inspect the Riparian Buffer for compliance with the requirements of this Protection Agreement upon reasonable notice, in a reasonable manner and at reasonable times.

Review

To exercise rights of Review in accordance with the requirements of this Article as and when required under applicable provisions of this Protection Agreement.

Interpretation

To interpret the terms of this Protection Agreement, apply the terms of this Protection Agreement to factual conditions on or about the Riparian Buffer, respond to requests for information from Persons having an interest in this Protection Agreement or the Riparian Buffer (such as requests for a certification of compliance), and apply the terms of this Protection Agreement to changes occurring or proposed within the Riparian Buffer.

Other Rights of Holder

The grant to Holder under this Article also permits Holder, without any obligation to do so, to exercise the following rights:

Amendment

To enter into an amendment of this Protection Agreement with Owners if Holder determines that the amendment is consistent with and in furtherance of the Conservation Objectives; will not result in any private benefit prohibited under the Internal Revenue Code; and otherwise conforms to Holder's policy with respect to amendments of conservation servitudes.

Signs

To install one or more signs identifying the protected status of the Riparian Buffer which may be located (i) within the Riparian Buffer or (ii) in another location within the Property readable from the public right of way and otherwise reasonably acceptable to Owners.

Review

The following provisions are incorporated into any provision of this Protection Agreement that is subject to Review:

Notice to Holder

At least thirty (30) days before Owners begin or allow any Construction, activity or use that is subject to Review, Owners must notify Holder of the change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the change and its potential impact on natural resources within the Riparian Buffer.

Notice to Owners

Within thirty (30) days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (i) accept Owners' proposal in whole or in part; (ii) reject Owners' proposal in whole or in part; (iii) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Owners' notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement of the proposed Improvement, activity, use or Construction constitutes acceptance by Owners of all conditions set forth in Holder's notice.

Failure to Notify

If Holder fails to notify Owners as required in the preceding subsection, the proposal set forth in Owners' notice is deemed approved.

Standard of Reasonableness

Holder's approval will not be unreasonably withheld; however, it is not unreasonable for Holder to disapprove a proposal that may adversely affect Conservation Objectives.

Beneficiaries

Owners and Holder grant and convey to any of the Persons identified below (collectively, the "Beneficiaries") the right to exercise Holder's rights and duties under this Protection Agreement should Holder fail to uphold and enforce in perpetuity the restrictions under this Protection Agreement.

- The conservation district of the county in which the Property is located.
- The Commonwealth of Pennsylvania acting through the Department of Environmental Protection.

Violation; Remedies

Breach of Duty

If Holder fails to enforce this Protection Agreement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Protection Agreement may be (i) exercised by a Beneficiary or a Qualified Organization designated by a Beneficiary; and/or (ii) transferred to another Qualified Organization by a court of competent jurisdiction.

Violation of Protection Agreement

If Holder determines that this Protection Agreement is being or has been violated or that a violation is threatened or imminent then the provisions of this Section will apply:

Notice

Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the Riparian Buffer damaged or altered as a result of the violation.

Opportunity to Cure

Owners' cure period expires thirty (30) days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied: (i) Owners cease the activity constituting the violation promptly upon receipt of Holder's

notice; (ii) Owners and Holder agree, within the initial thirty (30) day period, upon the measures Owners will take to cure the violation; (iii) Owners commence to cure within the initial thirty (30) day period; and (iv) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.

Imminent Harm

No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm to natural resource within the Riparian Buffer described in the Conservation Objectives in clear violation of the terms of this Protection Agreement.

Remedies

Upon expiration of the cure period (if any) described in the preceding Section, Holder may do any one or more of the following:

Coercive Relief

Seek coercive relief to specifically enforce the terms of this Protection Agreement; to restrain present or future violations of this Protection Agreement; and/or to compel restoration of natural resources destroyed or altered as a result of the violation.

Civil Action

Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Protection Agreement together with interest thereon from the date due at an annual rate of interest equal at all times to two percent above the “prime rate” announced from time to time in *The Wall Street Journal*. These monetary obligations include, among others, Losses and Litigation Expenses.

Self-Help

Enter the Property to prevent or mitigate irreparable harm to natural resources within the Riparian Buffer identified in the Conservation Objectives in clear violation of the terms of this Protection Agreement.

Restitution

Seek restitution of any amounts paid for this Protection Agreement if the Riparian Buffer is the subject of a taking in eminent domain or other civil action seeking modification or termination of this Protection Agreement or release of the Riparian Buffer from this Protection Agreement.

Remedies Cumulative

The description of Holder’s remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or otherwise under Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other remedies available to Holder at the same time or at any other time.

No Waiver

If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with this Protection Agreement or a waiver of Holder’s rights to exercise its rights or remedies at another time.

No Fault of Owners

Holder will waive its right to reimbursement under this Article as to Owners (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

Continuing Liability

If the Riparian Buffer is transferred while a violation remains uncured, the transferor Owners remain liable for the violation jointly and severally with the transferee Owners. This provision does not apply if Owners (a) notify Holder of the names and address for notices of the transferees and, if less than the entirety of the Property is transferred, furnish Holder with a survey and legal description of the portion of the Property transferred; and (b) Holder has issued a certificate of compliance evidencing no violations within thirty (30) days prior to the transfer. It is the responsibility of the Owners to notify Holder of the transfer and request a certificate of compliance to verify whether violations exist as of the date of transfer.

Miscellaneous

Notices

Requirements

Each Person giving any notice pursuant to this Protection Agreement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid.

Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

Governing Law

The internal laws of the Commonwealth of Pennsylvania govern this Protection Agreement.

Binding Agreement

This Protection Agreement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

Amendments, Waivers

No amendment or waiver of any provision of this Protection Agreement or consent to any departure by Owners from the terms of this Protection Agreement is effective unless the amendment, waiver or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given.

Severability

If any provision of this Protection Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Protection Agreement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Protection Agreement invalid, illegal or unenforceable in any respect.

Counterparts

This Protection Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

Indemnity

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) any breach or violation of this Protection Agreement or Applicable Law; (b) damage to property or personal injury (including death) occurring on or about the Riparian Buffer if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

Guides to Interpretation

Captions

Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Protection Agreement are for convenience only and do not constitute a part of this Protection Agreement.

Terms

The word “including” means “including but not limited to”. The word “must” is obligatory; the word “may” is permissive and does not imply any obligation.

Conservation and Preservation Easements Act

This Protection Agreement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390.

Restatement of Servitudes

This Protection Agreement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of Servitudes.

Entire Agreement

This is the entire agreement of Owners, Holder and Beneficiaries (if any) pertaining to the subject matter of this Protection Agreement. The terms of this Protection Agreement supersede in full all statements and writings between Owners, Holder and others pertaining to the transaction set forth in this Protection Agreement.

Incorporation by Reference

The following items are incorporated into this Protection Agreement by means of this reference:

- The Baseline Documentation
- The legal description of the Property attached as Exhibit “A”

Coal Rights Notice

The following notice is given to Owners solely for the purpose of compliance with the requirements of the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, Pub. L. 390:

NOTICE: This Protection Agreement may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Riparian Buffer.

Glossary

Additional Improvements

All buildings, structures, facilities and other improvements within the Riparian Buffer other than Existing Improvements.

Applicable Law

Any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Riparian Buffer or this Protection Agreement as amended through the applicable date of reference.

Beneficiary or Beneficiaries

The Persons (if any) designated as a Beneficiary under Article IV.

Construction

Any demolition, construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

Existing Agreements

Easements and other servitudes affecting the Riparian Buffer prior to the Agreement Date and running to the benefit of utility service providers and other Persons that constitute legally binding servitudes prior in right to this Protection Agreement.

Existing Improvements

Improvements located on, above or under the Riparian Buffer as of the Agreement Date as identified in the Baseline Documentation.

Improvement

Any Existing Improvement or Additional Improvement.

Indemnified Parties

Holder, each Beneficiary (if any) and their respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

Invasive Species

A plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as "Plant Invaders of the Mid-Atlantic Natural Areas", by the National Park Service National Capital Region, Center for Urban Ecology and the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office are to be used to identify Invasive Species.

Lien

Any mortgage, lien or other encumbrance securing the payment of money.

Litigation Expense

Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Protection Agreement including in each case, attorneys' fees, other professionals' fees and disbursements.

Losses

Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

Native Species

A plant indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Pennsylvania: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees, vols. 1 & 4* by Little are to be used to establish whether or not a species is Native.

Owners

The undersigned Owner or Owners and all Persons after them who hold any interest in all or any part of the Riparian Buffer.

Person

An individual, organization, trust or other entity.

Resource Management Plan

A record of the decisions and intentions of Owners prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Objectives during certain operations potentially affecting natural resources protected under this Protection Agreement. The Resource Management Plan includes a resource assessment, identifies appropriate performance standards and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

Review

Review and approval of Holder under the procedure described in Article IV.

Review Requirements

Collectively, any plans, specifications or information required for approval of an activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Protection Agreement either as an exhibit or as part of the Baseline Documentation or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

Top of the Bank

The elevation at which rising waters begin to inundate the floodplain. In case of ambiguous, indefinite or nonexistent floodplain or question regarding location, the Top of the Bank shall be the bankfull water elevation as delineated by a person trained in fluvial geomorphology and utilizing the most recent edition of *Applied River Morphology* by Dave Rosgen or reference book of greater stature.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Protection Agreement as of the Agreement Date.

Witness/Attest:

Name:

Name:

Title:

By: _____

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public

Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____ of _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Print Name: _____, Notary Public