

## CITY OF LONG BRANCH

### PROPOSED STREAM CORRIDOR PROTECTION ORDINANCE

#### PROPOSED ORDINANCE SECTION 345-17.1 STREAM CORRIDOR PROTECTION

##### **A. Purpose**

The governing body of the City of Long Branch finds that properly vegetated riparian lands adjacent to streams, lakes or other surface water bodies (referred as stream corridors or riparian areas) provide important environmental protection and resource management benefits. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along surface water bodies within Long Branch, consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas.

The purpose of this ordinance is to designate riparian zones and to establish minimal acceptable requirements for the design of buffers to protect riparian areas; to protect the water quality of watercourses, lakes and other significant water resources; to protect riparian and aquatic ecosystems; and to provide for the environmentally sound use of Long Branch's land resources.

##### **B. Definitions**

*Administrative Authority* - The Planning Board, Board of Adjustment, Construction Office or Zoning Office with all of the powers delegated, assigned, or assumed by them according to statute or ordinance.

*Applicant* - A person, corporation, government body or other legal entity applying to the Planning Board, Board of Adjustment, Construction Office, or Zoning Office to engage in an activity that is regulated by the provisions of this ordinance, and that would be located in whole or in part within a regulated riparian zone.

*Disturbance* - The placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

*Riparian Zone* - The land and vegetation within and directly adjacent to all surface water bodies including, but not limited to lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys. There is no riparian zone along the Atlantic Ocean or along any manmade lagoon or oceanfront barrier island, spit or peninsula.

*Riparian Zone Management Plan* - A plan prepared by a landscape architect, professional engineer or other qualified professional that evaluates the effects of any proposed activity or use on any riparian

zone. The plan shall identify existing conditions, all proposed activities, and all proposed management techniques, including any measures necessary to offset disturbances to any affected riparian zone.

All other words and/or terms utilized in this ordinance shall be as defined or described in the Water Quality Management Planning rules, N.J.A.C. 7:15, the Stormwater Management Rules, N.J.A.C. 7:8, and/or Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, as they exist as of the effective date of this ordinance and as they may be amended over time.

## **C. Establishment of Riparian Zones**

### **1. Applicability**

Except as provided in Sections 4 and 5 below, riparian zones adjacent to all surface water bodies shall be protected from avoidable disturbance. Riparian zones shall be delineated along all surface water bodies in the City of Long Branch as defined in this Section including but not limited to the following: Branchport Creek, Manahassett Creek, Troutman's Creek, Poplar Brook, Shrewsbury River, Whale Pond Brook, and Takanassee Lake.

### **2. Applicant's Responsibility**

The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying the area of the riparian zone on any plan submitted to the City of Long Branch in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the City Engineer, and where required by State regulation, the New Jersey Department of Environmental Protection.

### **3. Mapping Standards**

Riparian zones shall be delineated as follows:

- A. There is no riparian zone along the Atlantic Ocean or along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula.
- B. The riparian zone shall be 300 feet wide along both sides of any Category One water (C1 water), and all upstream tributaries situated within the same HUC 14 watershed. (There are no C1 waters in Long Branch.)
- C. The riparian zone shall be 150 feet wide along both sides of the following waters not designated as C1 waters.
  - (1) Any trout production water and all upstream waters, including tributaries (None in Long Branch);
  - (2) Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water (None in Long Branch);

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(3) Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal as identified in the City's 2011 Environmental Resource Inventory, which is critically dependent on the surface water body for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

(4) Any segment of a water flowing through an area that contains acid producing soils (None in Long Branch).

D. For all other surface water bodies, a riparian zone of 50 feet wide shall be maintained along both sides of the water.

E. If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body is measured landward as follows:

(1) Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;

(2) Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;

(3) Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water line; and

(4) Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

## D. Permitted Uses

Unless otherwise provided for by this ordinance, riparian zones shall remain in or be restored to their natural, indigenous state, with no clearing or cutting of trees and brush, altering of watercourses, regrading or construction. For riparian zones in C1 waters, permitted uses are governed by the Stormwater Management rules at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act rules, N.J.A.C. 7:13, unless otherwise exempt. The following shall be permitted uses or activities in all other riparian zones, provided that they do not disturb the indigenous character of the area:

1. Public and private parkland and open space uses that are primarily passive in character provided near-stream vegetation is preserved. These uses do not require approval by the Zoning Officer or compliance with an approved riparian zone management plan. Such uses include wildlife sanctuaries, nature preserves, forest preserves, and fishing areas operated for the protection and propagation of wildlife, but excluding structures. Such uses also include swimming and fishing areas, boat launches, unpaved hiking, bicycle and bridle trails, provided that said trails have been stabilized with pervious materials.
2. Open fences for which a permit has been issued to the extent required by local ordinance.

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3. Crossings by recreational trails, roads, railroads, stormwater lines, sanitary sewer lines, water lines and public utility transmission lines, subject to approval by the Zoning Officer, provided that the land disturbance is the minimum required to accomplish the permitted use, that any applicable State permits are acquired, that any disturbance is offset by buffer improvements in compliance with an approved riparian zone management plan, and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.
4. Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved riparian zone management plan, or wetlands mitigation projects that have been approved by the New Jersey Department of Environmental Protection, subject to approval by the Zoning Officer and subject to compliance with an approved riparian zone management plan.
5. Maintenance of landscaping including removal of dead vegetation, fallen trees and in-channel debris; pruning for reasons of imminent public safety; removal of invasive species as noted on a list that will be kept and updated by the City Environmental Commission.
6. Reconstruction of a structure that predates the adoption of this article in the event of damage or destruction by fire or natural hazards provided the reconstruction does not have a greater footprint or total area than that of the damaged structure and no change in land use occurs. Any such reconstruction shall be performed in accordance with current state and federal construction standards within floodplains.

### E. Prohibited Uses

Any use or activity not specifically authorized in Section 4, Section 6 or Section 7 of this ordinance shall be prohibited within the riparian zone. By way of example, the following activities and facilities are prohibited:

1. Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation.
2. Storage of any hazardous or noxious materials.
3. Alteration of watercourses, regrading, dumping of trash, soil, dirt, fill, vegetative or other debris.
4. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Soil Conservation District.
5. Roads, driveways, or motor vehicle traffic except where otherwise permitted by this ordinance.
6. Parking lots.

### F. Variances

To the extent allowed by the Stormwater Management Rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), new disturbances for projects or activities in the riparian zone

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established by this ordinance may be granted by the Board of Adjustment in accordance with § 40:55D-70 of the Municipal Land Use Law provided that:

1. The disturbance is proposed to be located on a pre-existing lot (existing as of the effective date of this ordinance) and there is insufficient room outside the riparian zone for the proposed use otherwise permitted by the underlying zoning; and
2. There is no other reasonable or prudent alternative to placement in the riparian zone, including obtaining variances from setback or other requirements that would allow conformance with the riparian zone requirements.

### G. Exceptions

To the extent allowed under the Stormwater Management Rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and subject to review and approval by the New Jersey Department of Environmental Protection to the extent required by those rules, the following disturbances for projects or activities in the riparian zone established by this ordinance are allowed:

1. Reconstruction within the limits of existing impervious surfaces;
2. Linear development with no feasible alternative route;
3. Disturbance that is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the New Jersey Department of Environmental Protection;
4. Disturbance necessary to provide for public pedestrian access or water dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Flood Hazard Area Control Act rules, N.J.A.C. 7:13, or the Coastal Zone Management rules, N.J.A.C. 7:7E; or
5. Disturbance with no feasible alternative required for the remediation of hazardous substances performed with New Jersey Department of Environmental Protection or Federal oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 et seq.

### H. Performance Standards

All encroachments proposed into riparian zones in C1 waters shall comply with the requirements of the Stormwater Management rule at N.J.A.C. 7:8-5.5(h) and the Flood Hazard Area Control Act rules, N.J.A.C. 7:13, and shall be subject to review and approval by the New Jersey Department of Environmental Protection, unless exempt. As noted, no C1 waters exist in Long Branch.

The following conditions shall apply to all other riparian zones:

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1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the riparian zone to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.
2. Any lands proposed for development which include all or a portion of a riparian zone shall as a condition of any major subdivision or major site plan approval, provide for the vegetation or revegetation of any portions of the riparian zone which are not vegetated at the time of the application or which were disturbed by prior land uses including agricultural use. Said vegetation plan shall utilize native and non-invasive tree and plant species to the maximum extent practicable in accordance with an approved riparian zone management plan.
3. For building lots which exist as of the date of adoption of this ordinance, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the riparian zone provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the riparian zone.
4. All stormwater shall be discharged outside of but may flow through a riparian zone and shall comply with the Standard for Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey", established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 *et seq.* (see N.J.A.C. 2:90-1.3.) If stormwater discharged outside of and flowing through a riparian zone cannot comply with the Standard for Off-Site Stability, then the proposed stabilization measures must meet the requirements of the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-10.2 *et seq.*, and have an approved flood hazard area permit.

### I. Riparian Zone Management Plan

Unless otherwise exempt under this ordinance, a landowner, applicant, or developer proposing any activities regulated by this ordinance and requiring major subdivision or site plan approval shall submit a riparian zone management plan to the City Engineer as described in this section. The riparian zone management plan shall be prepared by an environmental professional, professional engineer or other qualified professional and fully evaluate the effects of any proposed uses on the riparian zone. A riparian zone management plan is not required where the riparian zone is not being disturbed and conservation easements/deed restrictions are applied to ensure there will be no future clearing or disturbance of the riparian zone.

1. The management plan shall identify existing conditions including:
  - a) Vegetation;
  - b) Field delineated surface water bodies;
  - c) Field delineated wetlands;
  - d) One-hundred-year floodplain;

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- e) Flood hazard areas, including floodway and flood-fringe areas, as delineated by the New Jersey Department of Environmental Protection;
  - f) Soil classifications as found on soil surveys;
  - g) Existing subdrainage areas with HUC-14 (Hydrologic Unit Code) designations; and
  - h) Slopes in each subdrainage area segmented into sections of slopes that are less than 15%; above 15% but less than 20%; and greater than 20%.
2. The management plan shall describe all proposed uses and activities and fully evaluate the effects of those uses and activities in a riparian zone; and describe all proposed management techniques including proposed vegetation and any other measures necessary to offset disturbances or enhance the riparian zone.
3. The management plan shall include provisions in narrative and/or graphic form specifying:
- a) The manner in which the area within the riparian zone will be owned and by whom it will be managed and maintained.
  - b) The conservation and/or land management techniques and practices that will be used to conserve and protect the riparian zone.
  - c) The professional and personnel resources that are expected to be necessary to maintain and manage the riparian zone.
  - d) A revegetation plan, if applicable, that includes: three layers of vegetation including herbaceous plants that serve as ground cover, understory shrubs, and trees that form an overhead canopy. Vegetation selected must be native, non-invasive species, consistent with the soil, slope and moisture conditions of the site. Dominant vegetation in the riparian zone management plan shall consist of plant species that are suited to the riparian zone environment. The City Engineer may require species suitability to be verified by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, US Fish and Wildlife Service and/or state or federal forest agencies.
4. The management plan shall be reviewed by the City Engineer in consultation with the Environmental Commission. The City Engineer shall prepare and submit a report with recommendations to the applicable administrative authority prior to the authority rendering a decision.
5. The applicable administrative authority may require performance guarantees to ensure implementation of the management plan covering a period of not less than two years in the form of a bond, cash or letter of credit, which shall be provided to the City prior to the issuance of any permits.

## **J. Appeals**

Any party aggrieved by the location of the riparian zone boundary determination under this ordinance may appeal to the City Engineer. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal. Any party wishing to appeal the determination of the City Engineer shall file a notice of appeal with the Long Branch City Council within 20 days of receipt of the City Engineer's decision. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal.

## **K. Inspections**

Lands within or adjacent to an identified riparian zone may be inspected by an authorized municipal representative as part of the normal review process under the following circumstances:

1. A subdivision or land development plan is submitted.
2. A construction permit is requested for new construction which results in a net increase in lot coverage.
3. A change or resumption of a nonconforming use is proposed.
4. Excessive or potentially problematic erosion is present, other problems are discovered, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials or when the downstream surface waters are indicating reduction in quality.

## **L. Enforcement**

When a riparian zone has been altered in violation of this ordinance, all ongoing development work shall stop and the riparian zone shall be restored. The City shall have the authority to issue a stop-work order to cease all ongoing development work and order restoration, rehabilitation or replacement measures at the expense of the owner or other responsible party, as appropriate, in order to compensate for violation of the provisions of this ordinance.