

RIPARIAN AREA PROTECTION OVERLAY ZONE.

SALEM TOWNSHIP ---

ORDINANCE NO. 0- -

AN ORDINANCE TO AMEND THE SALEM 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 Salem Township Master Plan 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 Salem 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 Salem 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 Salem 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 to the restrictions contained herein to be continued, subject to the limitations and restrictions on nonconformities as outlined in the zoning regulations, now therefore

THE TOWNSHIP OF SALEM ORDAINS:

SALEM TOWNSHIP
ORDINANCE NO. 06 - ____

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

Article 1. The Following Chapter XXIV RIPARIAN AREA PROTECTION OVERLAY ZONE shall be added its entirety to the Salem Township Zoning Ordinance:

**CHAPTER XXIV
RIPARIAN AREA PROTECTION OVERLAY ZONE.**

Section 24.01. 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 Salem Township, in order to accomplish the following objectives:

- a. Implement the water quality protection, environmental protection and rural character protection goals and policies of the Township's Master Plan.
- b. 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
- c. Protect water quality and habitat quality in the, rivers, creeks, and their contiguous wetlands and other riparian features in Salem 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.
- d. 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 the contiguous to streams wetlands.
- e. Protect the natural character and appearance of streams, stream corridors and their contiguous wetlands, which contribute to the valued natural character of the community, its quality of life and its property values.
- f. Permit and encourage property owners to enhance native vegetation along riparian corridors in the Township.

Section 24.02 Applicability and Administrative Action:

- a. 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:
1. All of the rivers, streams, and creeks located within the " RAP- Riparian Area Protection Overlay Zone " identified on the Salem Township Zoning Map as amended, and the wetlands contiguous to the identified rivers, streams, and creeks, as defined herein.
- b. Exemptions. The standards contained in this Chapter **shall not** be applicable to:
1. A lot or parcel, of two (2) acres or less in size which was a "lot of record" on or before *(insert effective date of this ordinance amendment)*, 2007.
 2. Agricultural operations that are conducted in conformance with best management practices (BMPs) as defined and prescribed by the Michigan Right to Farm Act, Public Act 93 of 1981, as amended.
 3. 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.
 4. Forestry operations that are conducted within the natural vegetation zone when done in conformance with generally accepted forestry management practices (GAFMPs) as defined and prescribed under the auspices of the Right to Forest Act Public Act 676 of 2002. Unless the activity is specifically addressed by guidelines contained within a forest management plan prepared by a forestry or other natural resources professional and/or the activity is a GAFMP officially recognized by the appropriate state agency and approved by Natural Resources Commission of the State of Michigan, the following practices shall not be considered exempt by this ordinance and shall be prohibited within the Riparian Areas Protection zone:
 - a) Cutting stream bank trees.
 - b) Unnecessary access roads and skid trails.
 - c) Cording and stacking of wood
 - d) Excessive soil compaction and rutting by tree harvesting equipment.
 - e) Removal of ground cover or understory vegetation.
 - f) Felling trees into the stream bed or leaving logging debris in the stream.
 - g) Servicing or refueling equipment.
 - h) Mechanical site preparation and site preparation burning.
 - i) Mechanical tree planting.
 - j) Broadcast application of pesticides or fertilizers.
 - k) Handling, mixing, or storing toxic or hazardous materials (fuels, lubricants, solvents, pesticides, or fertilizers).
 5. The cleaning out, straightening, widening, deepening, or extending, consolidation, relocation, tiling, and connection of Drains established under the provisions of the Michigan Drain Code, Public Act 40 of 1956, as amended.
- c. 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.

Section 24.03 Overlay Sub-areas: Natural Vegetation Zones and Transition Zones: Definition, Intent and Delineation

a. 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:

- 1) *Natural Vegetation Zone*. The natural vegetation zone includes at a minimum, all lands located within thirty-five (35) feet of the ordinary high water mark of the stream. It also extends to the outer wetland boundary of contiguous wetland and therefore includes all contiguous wetlands as defined in this ordinance. The natural vegetation zone is intended to provide a functional vegetative corridor along the edge of a stream. Its functions shall be to protect 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.
- 2) *Transition Zone*. **The "transition zone," extends for a distance of fifteen (15) feet beyond the edge of the natural vegetation zone, only where there are no contiguous wetlands that extend beyond the 35 foot 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 restrictions remain necessary to protect water quality, animal habitat and the integrity of the adjacent stream. The transition zone is not applied in areas where contiguous wetlands extend beyond the 35 feet from the ordinary high water mark.

b. Delineation of Sub-Area Zones. The limits of the "natural vegetation zone" and the "transition zone" as used and defined in this Chapter is required to 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 Salem 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 Salem Township zoning regulations, except as permitted by Chapter 24 of the Salem Township Zoning Regulations."

Section 24.04. Development Standards. Natural Vegetation Zone

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

- a. No dwelling unit or other principal building and no accessory building may be constructed within the natural vegetation zone. The following structures may be permitted:
 - 1) Flood control or bank protection structures permitted or constructed by authorized state or federal agencies.

- 2) Pedestrian or vehicular bridges when designed and constructed in a manner that minimizes impact on the riparian feature.
 - 3) Boardwalk access to or through wetlands when constructed in accordance with a permit issued by the Michigan Department of Environmental Quality.
 - 4). One pump house per lot housing a pump used for irrigation when setback at least fifteen (15) feet from the high water mark, and having a maximum ground coverage of nine (9) square feet.
- b. On-site sanitary waste treatment systems are prohibited within the natural vegetation zone.
- c. 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:
1. 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.
 2. 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.
 3. 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.
 4. 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 riparian feature. The term "filtered view" connotes the maintenance or establishment of woody vegetation of sufficient density to screen the riparian feature from adjacent property, while also providing 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:
 - a) 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.
 - b) 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.
 - c) Select pruning and removal of vegetation above a height of three (3) feet shall be permitted.
 - d) 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.

- e) Clearing that is required to construct the exempt structures permitted in Section 24.02, sub-section b above, is permitted.

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

1. Storage of motorized vehicles or petroleum products
2. Storage or use of toxic or hazardous materials
3. Storage of herbicides or pesticides
4. Storage of fertilizer
5. Placement of fill or dumping of any refuse
6. Concentrated drainage flow by ditches, under drains or other similar systems.
7. Topsoil, sand and gravel extraction.

Section 24.05. Development Standards in the Transition Zone (15 feet landward of Natural Vegetation Zone)

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

- a. No dwelling unit or other principal building and no accessory building may be constructed within the transition zone. The following structures may be permitted:
 1. Flood control structures constructed by authorized state or federal agencies.
 2. Pedestrian or vehicular bridges, when deemed necessary and designed and constructed in a manner that minimizes impact on the riparian feature.
 3. One (1) viewing platform deck or gazebo with maximum ground coverage of two hundred (200) square feet.
 4. One pump house per lot housing a pump used for irrigation when setback at least fifteen (15) feet from the high water mark, and ground coverage of not more than nine (9) square feet.
- b. On-site sanitary waste treatment systems are prohibited within the transition zone.
- c. 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.
- d. 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.

Section 24.06 Minimum Lot Sizes & Principal Structure Setbacks

Within any Agricultural, Residential, Commercial or Industrial zoning district affected by the Riparian Area Protection Overlay, 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 Chapter shall be as follows:

- a. Minimum Lot area: Forty thousand (40,000) square feet
- b. Minimum Lot Width: one hundred (100) feet.
- c. Maximum Lot Depth: The depth of each lot 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.
- d. Minimum Principal Structure Setback: No principal structure shall be erected closer than (100 feet) from the high water mark of the stream or contiguous wetland except on non-conforming lots of record or where there are steep banks.
 - 1. 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 stream than the required setback line, only if after review by the Zoning Board of Appeals it is found that:
 - a) The lot could not be developed in conformance with the requirements of this Section,
 - b) 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.
 - c) Such location does not result in placement within the flood plain or a wetland without appropriate approvals by the Michigan D.E.Q.

The Board of Appeals may attach reasonable conditions to its approval

- 2. Principal Structure exception for steep banks. Where there is a steep stream 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) feet 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	Setback from Bluff or high water mark
<u>(a)</u>	<u>(b)</u>
10	90
15	80
20	70
25	60

Article 2 Amend the Definitions Chapter III of Zoning Ordinance to include the following terms and phrases and their meanings

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

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.

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.

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.

Forestry or natural resources professional: A person certified by the Society of American Foresters and/or licensed by the State of Michigan and or otherwise recognized by the State of Michigan who is by reason of his or her knowledge of the natural sciences, mathematics and principles of forestry and natural sciences, acquired by education and practical experience is qualified to engage in the practice of forestry.

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. Delineation of the ordinary high water mark entails the identification of indicators on the bank of a lake or stream and the transition line between, aquatic vegetation (such as sedges and cattails) and terrestrial vegetation (perennial grasses and woody shrubs) or the scour line on exposed earth on the bank (from constant erosion) and terrestrial vegetation. On any stream where the ordinary high water mark cannot be found, the top of the lowest stream bank on either side of stream shall substitute. In braided channels, the ordinary high water mark or line of mean high water shall be measured so as to include the entire stream feature. (See Figure). On an inland lake that has a level established by law, it means the high established level.

Stream Bank The portion of the stream channel cross section that restricts the lateral movement of water at normal bank-full levels often exhibiting a distinct break in slope from the stream bottom.

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.

Article 3 Amend the Site Plan content requirements of Section 14.04 to add a new subsection (w) which shall read as follows:

- (w). 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 24.

Article 4. Amend the content requirements for plans submitted for Step II Site Condominium Review and approval by adding a new subparagraph n), to Section 11.23, subsection (c) which shall read as follows:

- n). 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 24.

Article 5. Amend Section 11.24 (d) "Site Condominium Subdivision Layout, Design and Required Improvements" to add a new subsection(4) which shall read in its entirety as follows:

- (7). **Protected and uninhabitable Areas** - For properties affected by the Riparian Area Protection Overlay Zone as delineated on the "Riparian Areas Protection Overlay Map," and the Official Zoning Map of Salem Township, 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" or "transition zone" as it appears on the exhibit (insert letter designation) drawings of this development except as permitted by Chapter 24 of the Salem Township Zoning Ordinance."

Article 6. Amend the content requirements for Existing Zoning Plans submitted for review and approval of Conservation Subdivision Planned Unit Developments, Section 23.07 sub section (d), by adding a new subparagraph (7)to read as follows:

- (7). 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 24.

Article 7. Establishment of Riparian Area Protection Overlay District. Chapter 4 - Mapped Districts Section 4.01 Zone Districts, shall be amended by adding the following district designation to the list of zoning districts appearing on the Official Zoning Map of Salem Township.

- (j) RAP- Riparian Area Protection Overlay Zone

Article 8. Zoning Map Amendment. Amend the official zoning Map of the Township of Salem, Allegan County, Michigan by applying symbolization representing lines at least fifty feet landward of the ordinary high water marks and on each side of each, river, stream, or creek identified on the Riparian Area Protection Overlay Zone Map made part of this ordinance, and is to also include all wetland areas contiguous thereto which extend landward from such ordinary high water mark. Such symbolization shall represent those lands lying within the RAP- Riparian Area Protection Overlay Zone. The amended Zoning Map shall duly note that The Riparian Area Protection Zone symbolization appearing on the map is not to scale. It is intended as a representation of all lands lying within 50 feet either side of a stream covered by the symbolization as well as all contiguous

wetlands (as defined in Section 24.03 and regulated in Chapter 24) not graphically encompassed by the symbolization, but which are nonetheless adjacent and contiguous to an identified river, stream or creek.

Article 9. Severability. If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of the ordinance, being the intent of the Township that this ordinance shall be fully severable.

Article 10 Effective Date

This Ordinance shall become effective seven days after publication in a newspaper of general circulation in the Township.

Salem Township Clerk

FIGURE 1
RIPARIAN AREA PROTECTION ZONE

Ordinary High Water Mark for Typical
Streams at Top of Bank

