

**RULES AND REGULATIONS  
OF THE  
CITY OF WYOMING STORM WATER DISTRICT  
WYOMING, OHIO**

**ARTICLE IV**

**STREAM CORRIDOR REGULATIONS**

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#### **401 PURPOSE, SCOPE, AND APPLICABILITY**

- A. The purpose of these Stream Corridor Regulations is to promote and maintain the health, safety, and welfare of the citizens of the City of Wyoming by establishing standards for storm water best management practices (BMPs) that minimize the degradation of the water resources of the City of Wyoming by:
1. Reducing the discharge of pollutants in storm water from development projects to the maximum extent practicable,
  2. Protecting water quality, and
  3. Satisfying the appropriate water quality requirements of the Clean Water Act, Ohio Law, and the Ohio Revised Code (ORC), including Section 6111.
- B. These Stream Corridor Regulations are adopted under authority of Ohio Law and the Ohio Revised Code, including Chapters 307 and 6117, and implement the requirements of the latest discharge permit issued by Ohio EPA to the City of Wyoming under the Phase II Program.
- C. These Stream Corridor Regulations are intended to benefit the City of Wyoming by minimizing encroachment on stream channels, reducing the need for costly engineering solutions such as dams and riprap for protecting facilities and reducing property damage and threats to the safety of watershed residents. These Stream Corridor Regulations are also intended to contribute to the scenic beauty and to the environment of the City of Wyoming, the quality of life of the residents of the City of Wyoming, and the corresponding property values. Stream corridor protection zones are intended to provide the following specific benefits:
1. Provide areas for natural meandering and lateral movement of stream channels in the interest of public safety, and minimize flooding and property damage.
  2. Maintain natural stream flow characteristics that absorb peak flows, slow the velocity of floodwaters and regulate base flow.
  3. Naturally stabilize streams to reduce erosion and downstream transport of eroded sediments, and to minimize the need for structural stabilization measures that contribute to aquatic habitat degradation.
  4. Reduce pollutants in runoff flowing through them and in streams during periods of high flows by filtering, settling and transforming pollutants already present in streams.
  5. Reduce the presence of aquatic nuisance species to maintain diverse and connected stream corridor vegetation.
  6. Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected stream corridor

vegetation.

- D. The City of Wyoming shall designate the **Enforcing Official** for purposes of enforcing these Stream Corridor Regulations.
- E. These Stream Corridor Regulations shall apply to all lands within the jurisdiction of the City of Wyoming according to the following criteria:
  - 1. The land lies within a Stream Corridor Protection Zone, as defined in Section 407 ESTABLISHMENT OF A STREAM CORRIDOR PROTECTION ZONE of these Stream Corridor Regulations and further defined based upon any Special Exceptions granted under Section 414 SPECIAL EXCEPTIONS of these Stream Corridor Regulations and/or Appeal under Section 416 DISPUTED DETERMINATIONS AND APPEALS of these Stream Corridor Regulations;
  - 2. The land lies within a property where Earthwork disturbing one (1) acre of land or more within a single development or redevelopment project or within a common plan of development has been conducted since the time of passage of these Stream Corridor Regulations;
  - 3. Any Earthwork within the Stream Corridor Protection Zone must minimize alterations of the stream and control expansion of Facilities and Activities, as defined in Table 405-A of these Stream Corridor Regulations (“Facilities and Activities”), present within the Stream Corridor Protection Zone in order to minimize degradation of the water resource caused by stream erosion and sediment deposition.
  - 4. Facilities, Activities, and vegetative conditions within the Stream Corridor Protection Zone at the time of passage of these Stream Corridor Regulations but not allowed under these Stream Corridor Regulations may be continued but shall not be expanded except as set forth in these Stream Corridor Regulations.

## **402 DEFINITIONS**

The words and phrases defined in Article I of the Rules and Regulations of the City of Wyoming shall have the same meaning herein unless otherwise provided.

## **403 COMPLIANCE WITH OTHER LAWS AND DISCLAIMER OF LIABILITY**

- A. Compliance with these Stream Corridor Regulations does not relieve the Owner from the duty to comply with any other applicable federal, state or local laws, regulations or ordinances or from responsibility otherwise imposed by law for damage to any person or property.
- B. Neither the submission, approval, or disapproval of an Improvement Plan under these Stream Corridor Regulations, nor the Issuance or denial of a Permit, nor the compliance or lack of compliance with these Stream Corridor Regulations, nor any action or lack of action by the **Enforcing Official** shall relieve the Owner from responsibility for injury or damage to any person or property otherwise

imposed by law, nor create or impose any liability upon the City of Wyoming, or their respective officers, agents, or employees for injury or damage to any person or property.

- C. Approved Maintenance Agreements shall permit Owners of the Stream Corridor Protection Zone to abate any conditions that would be considered to be a nuisance, as defined by state and local rules, regulations, codes and ordinances. When reviewing Improvement Plans and conducting facility inspections, the **Enforcing Official** will address conditions that may contribute to the creation of a nuisance according to pertinent local regulations.
- D. Failure of the **Enforcing Official** to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the Owner from the responsibility for any resulting condition or damage, or result in any liability on the part of the **Enforcing Official**, the City of Wyoming, their officers, employees, or agents for any resulting condition or damage.
- E. These Stream Corridor Regulations do not create a duty upon the **Enforcing Official** or the City of Wyoming to persons impacted by any Stream Corridor establishment, operation, enforcement, or failure to enforce these Stream Corridor Regulations.

#### **404 CONFLICTS AND SEVERABILITY**

- A. Requirements of federal or state permits issued to the property owner under Section 401 or 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 shall govern when in conflict with the requirements of this regulation. Prior to initiating Earthwork within the Stream Corridor Protection Zone, recipients of such permits shall immediately provide the **Enforcing Official** with a copy of any required pre-construction notifications, mitigation plans, certifications, and regulatory correspondence required under such permits.
- B. Should any article, section, subsection, clause, or provision of these Stream Corridor Regulations be declared by a court of applicable jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remainder of these Stream Corridor Regulations, in whole or in part.
- C. These Stream Corridor Regulations shall not be construed as authorizing persons to maintain a nuisance on their property, and compliance with the provisions of these Stream Corridor Regulations shall not be a defense in any action to abate such a nuisance, unless otherwise specifically provided herein.

#### **405 PROTECTION OF STREAM CORRIDORS AND IMPROVEMENT PLANS REQUIRED**

- A. In each case where these Stream Corridor Regulations apply, the Owner shall submit an Improvement Plan addressing the requirements of these Stream Corridor Regulations prior to initiating any Earthwork.
- B. Allowable Facilities and Activities within Stream Corridor Protection Zones listed on **Table 405-A** and further defined through approved Improvement Plans,

successful appeals under Section 416 DISPUTED DETERMINATIONS AND APPEALS, or Special Exceptions under Section 414 SPECIAL EXCEPTIONS, shall be identified within Record Plats, easements and/or maintenance agreements associated with the development. No Concept Plan, Improvement Plan, Earthwork Permit, building permit, or zoning approvals shall be issued by the City of Wyoming without full compliance with these Stream Corridor Regulations where applicable.

- C. If damaged or destroyed, a Facility existing at the time of passage of these Stream Corridor Regulations or otherwise authorized under these Stream Corridor Regulations may be repaired or restored by the Owner within two years from the date of damage / destruction or the adoption of these Stream Corridor Regulations, whichever is later. Section 413 FACILITY OR ACTIVITY EXPANSION provides requirements for expansion of a Facility within the Stream Corridor Protection Zone existing at the time of passage of these Stream Corridor Regulations.

#### **406 STREAM DELINEATION**

- A. The Concept Plan and Improvement Plan for the project required under Section 508 of the Post-Construction Regulations (Article V of the Rules and Regulations of the City of Wyoming) shall show the location of water resources including surface waters, known springs, wetlands, streams, lakes, and water wells on or within 200 feet of the project site. The Owner shall provide information that supports the delineation of each stream, including the top of each stream bank. Such information may include, but not be limited to, copies from USGS Quad sheets showing streams, photographs, FEMA maps, or soils maps showing the location of streams.

**Table 405-A. Allowable Facilities and Activities in the Stream Corridor Protection Zone**

Facilities	Allowed?		Conditions
	Yes	No	
▪ Facilities pre-existing before regulation	X		Regulation only applies to development/redevelopment
▪ Buildings, structures, and other facilities subject to building permits / zoning approval		X	Unless otherwise allowed by these Regulations
▪ Swimming Pools	X		
▪ Signs and Billboards	X		
▪ Parking lots and paved areas		X	
▪ Roads:			
o <u>Crossing</u> the stream	X		If impact minimized and stream crossing BMP provided
o <u>Parallel</u> to the stream		X	Unless necessary and approved by <b>Enforcing Official</b>
▪ Paved foot and bike paths	X		Must relocate paths damaged by natural erosion
▪ Levees and dikes	X		If impact to stream corridor minimized
▪ Pipe lines (water, sewer, storm):			
o <u>Crossing</u> the stream	X		If impact minimized and stream crossing BMP provided
o <u>Parallel</u> to the stream	X		If necessary and approved by <b>Enforcing Official</b>
▪ Septic systems	X		If necessary and approved by the Local Health Department
▪ Storm water quantity/quality control facilities	X		If compatible with habitat function and permitted under floodplain regulations
▪ Fences	X		If impact to corridor, flooding minimized
▪ Public utility transmission lines	X		If necessary and approved by <b>Enforcing Official</b>
▪ Electric, telecommunication, cable TV lines:			
o <u>Crossing</u> the stream	X		If impact minimized and stream crossing BMP provided
o <u>Parallel</u> to the stream	X		If necessary and approved by <b>Enforcing Official</b>
▪ If inconsistent with Earthwork Regulations (Article III of the Rules and Regulations of the City of Wyoming)		X	
<b>Activities</b>			
▪ Clearing of existing vegetation		X	Unless required to support an allowed facility or activity
▪ Vegetation management intended to:			
o maintain hydraulic function	X		Per approved maintenance agreement under Post-Construction Regulations (Article V of the Rules and Regulations of the City of Wyoming), Section 516
o protect levees / dikes	X		
o maintain habitat function	X		
o remove damaged / diseased trees	X		
o control invasive species	X		
o maintain pre-existing vegetation condition (e.g., mowing)	X		
o abate nuisance conditions	X		
o re-vegetate / re-forest to improve corridor function	X		
▪ Debris removal	X		Per approved maintenance agreement
▪ Passive uses including hiking, fishing, picnicking, and similar uses	X		
▪ Soil disturbance by grading, stripping, or other practices		X	Unless required to support an allowed facility or activity
▪ Filling or dumping		X	Unless required to support an allowed facility or activity
▪ Resource restoration activities:			
o compensatory floodplain storage	X		
o stream and/or wetland restoration / enhancement / mitigation	X		
▪ Any activity authorized by a Section 401 / 404 permit	X		
▪ Agricultural Activities	X		
▪ Construction activities related to landslide stabilization	X		
▪ Use, storage, or application of pesticides		X	Except for spot spraying of noxious weeds or non-native species consistent with ODNR recommendations
▪ Storage or operation of motorized vehicles		X	Except for approved maintenance and emergency use

- B. If the submitted evidence does not clearly support the delineation of water resources required under Section 406(A) of these Stream Corridor Regulations, as determined by the **Enforcing Official**, then the **Enforcing Official** may require a site inspection and input from other sources of information including the U.S. Army Corps of Engineers, Ohio EPA, Ohio Department of Natural Resources, or the Hamilton County Soil and Water Conservation District.

**407 ESTABLISHMENT OF A STREAM CORRIDOR PROTECTION ZONE**

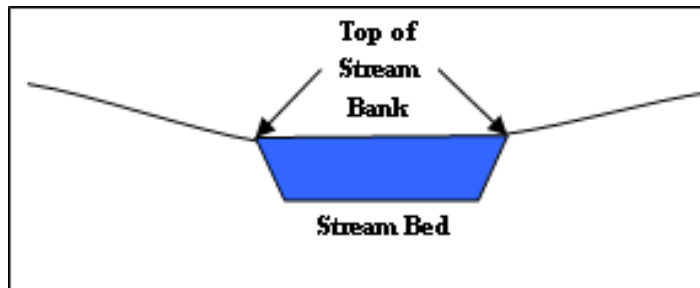
- A. A Stream Corridor Protection Zone consists of all streams with a drainage area greater than 100 acres (unless otherwise defined under these Stream Corridor Regulations) and the area along these streams, defined according to the following criteria:
1. The width of the Stream Corridor Protection Zone shall be based upon the tributary upstream drainage area and be the narrower of the criteria set forth for the Natural Stream Meandering Zone (column 3 of **Table 407-A**) unless one of the following conditions apply:
    - a. If one or more facilities not allowed according to Table 405-A currently occupies more than 50 percent of the proposed land disturbance area within the Natural Stream Meandering Zone (column 3 of Table 407-A), the Stream Corridor Protection Zone width shall equal column 2 of Table 407-A, or

**Table 407-A  
Required Stream Corridor Protection Zone Width from the Top of Stream Bank (Figure 407-A) on Each Side of a Stream by Contributing Drainage Area**

Contributing Drainage Area (ac) (Column 1)	Stream Bank Stabilization and Pollutant Filtering Zone (Column 2)	Natural Stream Meandering Zone (Column 3)
<20	10 ft	10 ft
21-50	20 ft	20 ft
51-99	25 ft	25 ft
100-250	25 ft	25 ft
251-500	25 ft	35 ft or 100-year floodway
501-750	25 ft	45 ft or 100-year floodway
751-1200	25 ft	55 ft or 100-year floodway
>1200	50 ft	65 ft or 100-year floodway

Note: 1 square mile = 640 acres

**Figure 407-A. Illustration of Top of Stream Bank**



- b. If the floodway width is less than the Stream Bank Stabilization and Pollutant Filtering Zone (column 2 of Table 407-A), the Stream Corridor Protection Zone width shall equal column 2 (The 100-year floodway may be designated by 1) the Federal Emergency Management Agency (FEMA) or 2) a hydrologic/hydraulic study accepted by the **Enforcing Official**).
  2. Upon the approval of the Owner, the **Enforcing Official** may adjust the location of the Stream Corridor Protection Zone width determined from Table 407-A as necessary to meet the intent of these Stream Corridor Regulations, based upon review of available topographic, flooding, and/or stream meander patterns. Any such adjustment shall not cause the total width of the Stream Corridor Protection Zone on either side of the stream to exceed the width as defined under this Section.
  3. If a pre-existing parcel is rendered unbuildable under the requirements of these Stream Corridor Regulations, adjustments may be made to the Stream Corridor Protection Zone so that a primary structure can be located on that parcel.
- B. City of Wyoming maps that show the general extent of the Stream Corridor Protection Zone may be used to support the delineation process; however, the maps are not intended to be a substitute for the delineations required under Section 406 STREAM DELINEATION of these Stream Corridor Regulations.
- C. The Owner of a property subject to these Stream Corridor Regulations may propose to establish a Stream Corridor Protection Zone within their property to streams with drainage areas smaller than the criteria established in Section 407(A), for the purpose of partially satisfying the requirements of the Post-Construction Regulations (Article V of the Rules and Regulations of the City of Wyoming).

#### **408 EXTENSIONS FOR STEEP SLOPES**

- A. The width of the Stream Corridor Protection Zone shall be extended to include areas where the average slope is greater than 50 percent and the toe of the slope begins at a point within the Stream Corridor Protection Zone. The maximum width of the Stream Corridor Protection Zone slope extension shall be to the top of the slope. The Concept Plan and Improvement Plan for the site shall clearly delineate all areas with slopes steeper than 50 percent within the project site, based on topographic mapping prepared for the project site utilizing a minimum of two-foot contour intervals.

#### **409 EXTENSIONS FOR WETLANDS**

- A. Where wetlands protected under federal or state law are located partially within the Stream Corridor Protection Zone, the Stream Corridor Protection Zone shall be extended to include the full extent of the wetland area plus any setback from the wetland required by a Section 404 permit. Portions of wetlands permitted to be filled under Section 401 and 404 of the Clean Water Act are excluded from this requirement.



**410 DESIGNATION AND PROTECTION OF STREAM CORRIDOR PROTECTION ZONE**

- A. The Stream Corridor Protection Zone shall be kept in as natural a state as possible so that it can perform its inherent function of erosion protection, flood storage, and water quality protection. The Owner shall take the following actions to provide for the permanent protection of the zone.
1. The Owner shall delineate the Stream Corridor Protection Zone on the Improvement Plan for each property. Such delineation shall graphically include a metes and bounds description defining the border of the zone and must be submitted to the **Enforcing Official** for review and approval prior to construction. All Stream Corridor Protection Zones shall be delineated on the Record Plat for the Project.
  2. Prior to construction, and throughout the construction process, the Stream Corridor Protection Zone shall be physically delineated using highly visible practices, such as flagging, temporary construction fences, silt fences, or similar devices. Adequate signage shall be provided to indicate that most activities are prohibited beyond that barrier. A list of prohibited actions and activities shall be made readily available at the construction site.
  3. The Improvement Plan shall define an appropriate method to permanently delineate the Stream Corridor Protection Zone such that the location of the Zone is apparent and permits access to the Zone.
  4. An Inspection and Maintenance Agreement required under Section 516 of the Post-Construction Regulations (Article V of the Rules and Regulations of the City of Wyoming) shall also define maintenance responsibilities and methods for the Stream Corridor Protection Zone.
  5. Record Plats filed on or after the effective date of these Stream Corridor Regulations shall show the Stream Corridor Protection Zone boundary and state that the most recent version of these Stream Corridor Regulations shall define the allowable Facilities and Activities within the Stream Corridor Protection Zone.
  6. The portion of a lot or parcel reserved as the Stream Corridor Protection Zone may be considered as satisfying open space requirements and may be included in the total area for computing the density permitted for that parcel, even if ownership of the Stream Corridor Protection Zone is subsequently transferred. The resulting increase in net density permitted on that portion of the lot or parcel located outside of the Stream Corridor Protection Zone is acceptable to the extent that the gross density for the total area does not exceed the density prescribed in local regulations.
  7. Storm water discharges from the site must flow through one or more storm water BMPs designed according to the Post-Construction Regulations (Article V of the Rules and Regulations of the City of Wyoming) prior to entering the Stream Corridor Protection Zone, unless it is impractical to drain the portion of the site adjacent to the Stream

Corridor Protection Zone into a common drainage system of the site, (i.e., sheet flow from perimeter areas such as the rear yards of residential lots, for low density development scenarios), or where the Owner can demonstrate that the pollutant removal and stream protection requirements of the Post-Construction Regulations (Article V of the Rules and Regulations of the City of Wyoming), are addressed and met by the Stream Corridor Protection Zone, in the opinion of the **Enforcing Official**. In this case, sites must be graded in a manner that maximizes sheet flow through the Stream Corridor Protection Zone. Storm water discharges through the Stream Corridor Protection Zone must also comply with the Earthwork Regulations (Article III of the Rules and Regulations of the City of Wyoming), as well as storm water drainage rules and regulations of the City of Wyoming. Pipes or channels discharging storm water from a BMP may pass through the Stream Corridor Protection Zone if adequately stabilized from erosion.

#### **411 ENFORCEMENT**

- A. It shall be unlawful for any Owner to fail to comply with any of the requirements of these Stream Corridor Regulations or any lawful order issued by the **Enforcing Official** pursuant thereto, including the failure to pay any authorized civil penalty lawfully issued hereunder.
- B. The **Enforcing Official** shall have all such rights and powers in interpreting and enforcing these Stream Corridor Regulations as may be accorded to such officials by law, rule, or regulation.
- C. Any person that violates these Stream Corridor Regulations shall be required to restore the Stream Corridor Protection Zone through a reasonable plan consistent with the provisions of Section 412 RESTORATION OF STREAM CORRIDOR PROTECTION ZONE and approved by the **Enforcing Official**. The provisions of these Stream Corridor Regulations may be enforced through civil or criminal proceedings authorized by applicable laws, rules, or regulations brought by the **Enforcing Official**.

#### **412 RESTORATION OF STREAM CORRIDOR PROTECTION ZONE**

- A. All non-conforming Facilities and Activities covered by these Stream Corridor Regulations within a Stream Corridor Protection Zone, except for pre-existing facilities / activities defined under Section 401(E)(4), shall be removed by the Owner and their site restored to a condition consistent with the requirements of these Stream Corridor Regulations.
- B. The Owner is encouraged to cooperate with the **Enforcing Official** for the removal of pre-existing, non-conforming Facilities and Activities, the repair of severely eroded or unstable stream banks, and/or the provision of compensatory floodplain volume as part the Improvement Plans for a site.
- C. A Stream Bank Restoration Plan that incorporates bioengineering techniques shall be submitted as part of the Improvement Plan for a project that includes Earthwork within the Stream Corridor Protection Zone. The means and methods for stream restoration work, including Final Stabilization using non-vegetative and

vegetative materials, shall be shown in the Plan. Stream Bank Restoration Plans shall be designed and constructed based on the bankfull discharge and shall be able to withstand the inundation, stream velocities, and channel stresses associated with the 100-year flood event without structural failure once vegetative cover is established. Guidance and further references for stream bank stabilization and stream corridor restoration techniques are provided in the U.S. Department of Agriculture's publication *Stream Corridor Restoration: Principles, Practices and Processes and Engineering Handbook*.

- D. Earthwork within the Stream Corridor Protection Zone as a result of an allowable or non-allowable facility or activity must be mitigated through revegetation/reforestation, with the exception of vegetation removal for floodwall and levee maintenance and inspection.

#### **413 FACILITY OR ACTIVITY EXPANSION**

- A. A Facility or Activity existing at the time of passage of these Stream Corridor Regulations but prohibited under Table 405-A may be expanded by the Owner through a determination of the **Enforcing Official**, subject to compliance with the following provisions, at a minimum:
1. The expansion area must not exceed 25% of the footprint area of the existing facility or use that lies within the Stream Corridor Protection Zone.
  2. The expansion must comply with all pertinent local, state and federal regulations, including, but not limited to the following:
    - a. Local, state, and Federal FEMA floodplain regulations;
    - b. Local storm water quantity / quality control regulations;
    - c. Ohio EPA NPDES Permits authorizing storm water discharges associated with construction activity or the most current version thereof;
    - d. Section 401 of the Clean Water Act;
    - e. Ohio EPA Section 401 Water Quality Certification General Isolated Wetland Permit requirements; and
    - f. Section 404 of the Clean Water Act.
  3. The expansion must not contribute to increased stream bank erosion in those areas.
  4. An additional stream crossing or crossings for a subdivision or open space development is necessary for the health, welfare, and safety of the residents of the subdivision.

#### 414 SPECIAL EXCEPTIONS

- A. Any Owner may apply to the **Enforcing Official** for a special exception to these regulations for some or all of the Stream Corridor Protection Zone affecting the Owner's property. In reviewing applications for special exceptions, or in hearing appeals concerning special exceptions under this paragraph, the **Enforcing Official** and the City Manager shall give due regard to the nature and condition of all adjacent uses, including any adjoining stream and Stream Corridor Protection Zone, and to potential economic development benefits associated with granting the requested special exception application. In authorizing a special exception, the **Enforcing Official** and/or the City Manager shall impose requirements and conditions with respect to location, construction, maintenance, and operation that are necessary and appropriate to mitigate the special characteristics of the development in order to make it compatible with the stream and adjacent Stream Corridor Protection Zones. In reviewing an application for a special exception, the **Enforcing Official** and/or the City Manager shall use the following standards in rendering a determination:
1. Whether the Owner has demonstrated that the size, character, scale, and intensity of the proposed special exception are compatible with the stream, adjacent Stream Corridor Protection Zones, and adjacent existing uses;
  2. Whether the Owner has demonstrated that the authorizing of such special exception will not be of substantial detriment to the stream, the adjacent Stream Corridor Protection Zone, or the general vicinity in which it is located;
  3. Whether the proposed special exception will maintain the general welfare of the community and is consistent with the community's economic development goals for the area;
  4. The extent to which the requested change diminishes the hydraulic and habitat functions of the Stream Corridor Protection Zone. This determination shall be based on sufficient technical and scientific evidence as provided by the Owner and the agencies listed in this section;
  5. The extent to which the existing Facilities and Activities preserve the native soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodway;
  6. Whether the property will yield a reasonable return without the special exemption or whether there can be beneficial use of the property;
  7. Whether the special exemption is substantial;
  8. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the special exemption;
  9. Whether the Owner's situation or circumstances can feasibly and

economically be obviated through some method other than special exemption; and

10. Whether the spirit and the intent behind the resolutions, ordinances, regulations, measures and orders would be observed and substantial justice done by granting the special exemption.
- B. No single factor listed above shall control, and not all factors shall be applicable in each case. Each case shall be determined on its own facts.
- C. The designated **Enforcing Official** and/or the City Manager may impose such conditions and restrictions upon the property benefitted by a special exemption as the **Enforcing Official** and/or the City Manager deem necessary and appropriate to comply with the standards set forth in this provision, to reduce or minimize the impact of such special exemption upon other property in the neighborhood and to further the purpose and intent of these Stream Corridor Regulations.

#### **415 INSPECTION OF STREAM CORRIDOR PROTECTION ZONE**

- A. The Stream Corridor Protection Zone shall be inspected by the **Enforcing Official** whenever appropriate and necessary, and at least upon the occurrence of the following:
  1. When a Concept Plan, Improvement Plan, preliminary Record Plat or other land development plan is submitted.
  2. When a building or zoning permit is requested.
  3. Prior to any Earthwork, to inspect the delineation of the Stream Corridor Protection Zone as required under these Stream Corridor Regulations.
- B. The Stream Corridor Protection Zone may also be inspected as deemed necessary by the **Enforcing Official** or an approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the **Enforcing Official** that uses or facilities are occurring that may reasonably be expected to violate the provisions of these regulations.

#### **416 DISPUTED DETERMINATIONS AND APPEALS**

- A. An Owner wishing to dispute 1) an established Stream Corridor Protection Zone boundary on the Owner's property; 2) the identification of a stream and its stream bank(s) on the Owner's property, 3) the application or expansion of prohibited Facilities and Activities within the Stream Corridor Protection Zone on the Owner's property; or 4) a determination of the **Enforcing Official** under these Stream Corridor Regulations which adversely affects the Owner; shall provide to the **Enforcing Official** a written statement of the Owner's position concerning the dispute, together with credible written supporting information and documentation evidencing the Owner's position.
- B. The Owner may be required to provide such additional information as the

- Enforcing Official** may reasonably deem appropriate in order to make a proper determination of the disputed issues. The **Enforcing Official** shall evaluate the submitted materials, together with such other items or information which the **Enforcing Official** may deem relevant to the inquiry, and make a written determination of the disputed issues within thirty (30) days from the date of submission by the Owner of all information and materials requested of the **Enforcing Official**. A copy of the written determination of the **Enforcing Official** shall be provided to the Owner promptly after its issuance.
- C. An Owner wishing to appeal a determination made by the **Enforcing Official** under Sections 415(A) and 415(B) shall submit a written appeal setting forth the basis of the appeal and why the determination of the **Enforcing Official** is erroneous together with a copy of the determination of the **Enforcing Official** appealed from, and any relevant supporting materials and documentation required to evidence the Owner's position. The appeal shall be submitted to the City Manager to hear appeals under these Stream Corridor Regulations not later than fifteen (15) calendar days after receipt of the written determination of the **Enforcing Official**, or seventeen (17) calendar days from the mailing of a copy of the written determination by the **Enforcing Official**, whichever is sooner. The Owner shall provide a copy of the written appeal to the **Enforcing Official** at the time the Appeal is filed with the Appeals Board.
- D. The City Manager shall decide such appeal at a meeting to be held within sixty (60) days from the time the appeal is received by the Appeals Board. In any appeals hearing conducted under this provision, an Owner contesting a determination by the **Enforcing Official** shall provide sufficient credible evidence to the City Manager to support a finding that the determination of the Enforcing Official was erroneous. In making any determinations or decisions under these provisions, the **Enforcing Official** and the City Manager shall consult with the local zoning official to determine if other setbacks required of the property may be altered to minimize encroachment into the Stream Corridor Protection Zone.
- E. In interpreting these Stream Corridor Regulations or deciding any appeals based on these Stream Corridor Regulations, the **Enforcing Official** and the City Manager may consult with representatives from the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the Hamilton County Engineer; the Department of Environmental Services of Hamilton County; the Hamilton County General Health District; or other technical experts as necessary to consider appeals.
- F. In reviewing any requests for changes in Facilities, Activities, or Boundaries, or in reviewing any disputed matters or appeals of disputed matters under these Stream Corridor Regulations, the **Enforcing Official** and the City Manager shall consider, among other relevant items, documents, and evidence, the following:
1. The extent to which the requested change diminishes the hydraulic and habitat functions of the Stream Corridor Protection Zone. This determination shall be based on sufficient technical and scientific evidence as provided by the Owner and the agencies listed in this section;

2. The extent to which the existing Facilities and Activities preserve the native soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodway;
  3. The degree of hardship these regulations place on the Owner and the availability of alternatives to the proposed development;
  4. Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;
  5. Whether the variance is substantial;
  6. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
  7. Whether the Owner's situation or circumstances can feasibly and economically be obviated through some method other than variance; and
  8. Whether the spirit and the intent behind the resolutions, ordinances, regulations, measures and orders would be observed and substantial justice done by granting the variance.
- G. No single factor listed above shall control, and not all factors shall be applicable in each case. Each case shall be determined on its own facts.
- H. The City Manager may impose such conditions and restrictions upon the property benefitted by a variance as the City Manager may deem necessary to comply with the standards set forth in this section, to reduce or minimize the impact of such variance upon other property in the neighborhood and to further the purpose and intent of these Stream Corridor Regulations.