

SECTION 2540. NATURAL FEATURE SETBACK. Effective 11/03/96

1. **Intent and Purpose.** It is the intent of this section to require a minimum setback from natural features, and to regulate property within such setback in order to:
 - (a) Prevent physical harm, impairment and/or destruction of or to a natural feature. It has been determined that, in the absence of such a minimum setback, intrusions in or onto natural features would occur, resulting in harm, impairment and/or destruction of natural features contrary to the public health, safety and general welfare.
 - (b) Achieve the following objective in relation to the setback areas:
 - (i) Protect unique wildlife habitat and habitat transition, including, without limitation, feeding, nesting, resting and traveling areas for numerous animals.
 - (ii) Protect of surface water run-off and water quality of pollution prevention purposes, and assistance in beneficial water recharge for drinking, irrigation and other purposes.
 - (iii) Provide water storage area in storm events.
 - (iv) Provide areas for recreational or other functional uses which are unique due to geographic relationship to natural feature.
 - (v) Preserve aesthetic views and areas for the enjoyment of natural resources.
 - (vi) Preserve threatened and endangered species habitat, including upland species.
 - (vii) Reduce the need for on-site and off-site storm water storage capacity based upon the availability of a greater area of absorption and a smaller impervious area.
 - (viii) Stabilize and protect soil resources, including the prevention of erosion and prohibition of loss due to the moving water resulting in destruction of upland, structures and infrastructure on the upland, and prevention of the alteration of the course of moving waters.

This regulation is based on the police power, for the protection of the public health, safety and welfare, including the authority granted in the Zoning Enabling Act.

It is recognized that there is a special relationship, between natural features and the adjoining upland in terms of; spatial relationship; interdependency in terms of physical location, plant species, animal species and an encouragement of diversity and richness of plant and animal species; overland and subsurface hydrology; water table; water quality; erosion or sediment deposition. Amended 11/03/96

2. **Regulation.** A natural feature setback shall be maintained in relation to all areas defined in this ordinance as being a "natural feature," unless, and to the extent, it is determined to be in the public interest not to maintain such setback.

3. **Definition of "NATURAL FEATURE"** A natural feature shall mean a wetland, as defined in the Township Wetlands Ordinance, and shall mean a watercourse, including a lake, pond, river, stream, or creek. This definition may be amended in the future to add other resources to be protected.
4. **Authorization and Prohibition.**
 - (a) The natural feature setback shall be an area or feature with boundaries and limitations determined in accordance with the standards and provisions in this section in relation to respective types of natural features.
 - (b) In conjunction with the review of plans submitted for authorization to develop property or otherwise undertake an operation in or on, or adjacent to, a natural feature, applicable natural feature setbacks shall be determined, and authorizations, and prohibitions established, by the body undertaking the plan review. In the event an activity is proposed within a setback area as designated under Subsection 7A or 7B, below, but such activity is not proposed in conjunction with an activity within the natural feature itself, review under this section shall be conducted by the Township body or official reviewing the proposed activity, or, if no other review is required, review shall be undertaken by the Planning Department.
 - (c) Within an established natural feature setback, unless and only to the extent determined to be in the public interest by the body undertaking plan review, there shall be no construction, removal or deposit of any structures or soils, including dredging, filling or land balancing. This prohibition shall not apply with regard to those activities exempted from this prohibition, below.
 - (d) In determining whether proposed construction or operations are in the public interest, the benefit which would reasonably be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the construction or other operation, taking into consideration the local, state and national concern for the protection and preservation of the natural feature in question. If, as a result of such a balancing, there remains a debatable questions whether the proposed project and/or operation is clearly in the public interest, authorization for the construction and/or operation within the natural feature setback shall not be granted. The following general criteria shall be applied in undertaking this balancing test:
 - (i.) The relative extent of the public and private need for the proposed activity.
 - (ii.) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
 - (iii.) The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private use

to which the area is suited, including the benefits the natural feature and/or natural feature setback provides.

- (iv.) The probable impact of the proposed construction and/or operation in relation to the cumulative effect created by other existing and anticipated activities in the natural feature to be protected.
- (v.) The probable impact on recognized historic, cultural, scenic, ecological, or recreational values, and on fish, wildlife and the public health.
- (vi.) The size and quantity of the natural feature setback being considered.
- (vii.) The amount and quantity of the remaining natural feature setback.
- (viii) Proximity of the proposed construction and/or operation in relation to the natural feature, taking into consideration the degree of slope, general topography in the area, soil type and the natural of the natural feature to be protected.
- (ix) Economic value, both public and private, of the proposed construction and/or operation, and economic value, both public and private, if the proposed construction and/or operation were not permitted.
- (x) The necessity for the proposed construction and/or operation.

5. **Exceptions.** If and to the extent the Township is prohibited by its ordinances and/or law from regulating the proposed activity in or on the respective natural feature, regulation under this section shall be exempted. In addition, the following activity shall be exempted, provided, it is not the intent of this provision to exempt regulation by other ordinance provisions relative to the natural feature itself.

- (a) Beach sanding within a setback area.
- (b) Installation of a seawall within a setback area.
- (c) Installation of a dock within a setback area.
- (d) Installation of a fence within a setback area.
- (e) Installation and maintenance of nonstructural improvements and landscaping, provided that no grade alterations are made and provided that filter fencing is installed during installation.
- (e) Grading and filling necessary in order to conform with express requirements imposed by the Township Engineer.

6. **Application Form.**

- (a) Application shall be made under this section on forms provided by the Department of Planning.
- (b) In addition, on all plans submitted to the Township for development review purposes, all natural features and natural feature setbacks, as specified in Subsection 7A and 7B below, shall be detailed.

7. **Setback Standards.**

Unless otherwise determined by the body undertaking the plan review, the following setbacks shall apply:

- (a) A 25 foot setback from the boundary or edge of a wetland, as defined and regulated in the township Wetland Ordinance.
- (b) A 25 foot setback from the ordinary high water mark of a watercourse.