

Section 12.3 Natural Resources, Buffer Areas

A. Definitions: For the purpose of this Section, the following words and phrases shall have the following meanings:

1. Impervious Cover: Any manmade paved, hardened or structural surface regardless of material including but not limited to rooftops, buildings, streets, roads, decks, patios including those of a brick or stone material, swimming pools, and any concrete or asphalt.
2. Natural Feature: A wetland or watercourse.
3. Natural Feature Edge: The ordinary high water mark, except that in the case where there exists a bank along the natural feature such as a stream or creek bank, where the bank exceeds a slope of ten percent (10%), the natural feature edge shall be considered the top of the bank or a line thirty (30) feet from the ordinary high water mark, whichever is less.
4. Ordinary High Water Mark: The line between upland and bottomland which persists through successive changes in water levels 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. In the case of Lake Huron, the ordinary high water mark shall be construed to be set at 581.5 feet above sea level as established by the United States Army Corps of Engineers.
5. Watercourse: Any waterway including a river, stream, creek, lake, vernal pool, pond, or any body of surface water having definite banks, a bed and visible evidence of a continued flow or continued occurrence of water.
6. Wetlands: 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.

B. Natural Feature Setback Required:

1. Buildings and Structures Greater Than Three (3) Feet in Height: A natural features setback of fifty (50) feet shall be maintained from the natural feature edge for all buildings, and any structures in excess of three (3) feet in height above the ground below, except as follows:
 - a. The minimum natural features setback in the case of Lake Huron shall be thirty-five (35) feet, subject to Footnote 7 of Table 3-4 of Article 3.
 - b. Excluding (a) above, where there exists one (1) or more dwellings located along such natural feature and where such one or more dwelling is within one hundred fifty (150) feet of a side lot line of the lot on which construction of a dwelling is proposed, the required setback shall be the average setback of such existing dwellings measured from the natural feature edge. However, in no case shall such natural feature setback be less than thirty-five (35) feet nor shall such setback be required to be greater than fifty (50) feet. Steps, and those portions of unroofed decks and porches with a floor surface eighteen (18) inches or less above the ground, shall not be considered in determining such average setback. Where only a portion of a dwelling is located within the one hundred fifty (150) foot measured distance, the setback of the entire dwelling shall be used for determining such average setback.
2. Structures Three (3) Feet or Less in Height: Unless otherwise specified in this Ordinance, a natural features setback of twenty-five (25) feet shall be maintained from the natural feature edge for all decks, patios, and any structures of three (3) feet or less in height above the ground below.

C. Use Restrictions within a Natural Feature Setback: Within a natural feature setback, unless and only to the extent determined to be in the public interest by the designated approving body for the proposal, there shall be no clearing, grubbing or stripping; no removal of vegetation; no application of fertilizers or pesticides; no dredging, grading, excavation, removal or addition of soil or filling of land; no erection or addition of structures, buildings or any other construction including concrete or asphalt paving; and no installation of any impervious cover. In addition, no vegetation cutting or removal within the natural features setback shall occur prior to all approvals from the designated approving body(s) have been obtained.

1. Determination of Public Interest: In determining if proposed construction or operations in a natural resources setback are in the public interest, the benefit that would be expected to result from the proposal shall be balanced against the reasonably foreseeable detriments, 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 question whether the proposal is clearly in the public interest, authorization for the construction and/or operation within the natural feature setback shall not be granted. The following criteria shall be applied in undertaking this balancing test:

- a. The relative extent of the public and private need for the proposed activity;
- b. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity;
- c. 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;
- d. The probable impact of the proposed construction and/or operation in relation to the cumulative effect created by other existing and anticipated activities on the natural feature to be protected;
- e. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values, and on fish, wildlife and the public health;
- f. The degree of proposed encroachment into the natural features setback, and the proximity of the proposed construction and/or operation in relation to the general natural feature, taking into consideration the degree of slope, general topography in the area, soil type and the nature of the natural feature to be protected;

D. Exemptions: If and to the extent the Township is prohibited from regulating the proposed activity in or on the respective natural feature by its ordinances or the laws of county, state or federal government or the rules of county, state or federal agencies, regulation under this Section shall be exempted. In addition, the following activities shall be exempted from regulation under this Section provided such activities shall comply with all county, state or federal laws and the rules of county, state or federal agencies, and all necessary approvals and permits have been granted. It is not the intent of this subsection (D) to exempt regulation by other ordinances and laws applicable to the natural feature.

1. Installation of a fence.
2. Maintenance of previously established lawn areas.
3. Grading and filling necessary in order to conform to express requirements imposed by the Township.
4. Installation of docks for watercourse use provided the portion of such dock or access way extending through or across a wetland does not exceed ten (10) feet in width at any point.
5. Planting of non-invasive trees and other vegetation, but not the use of fertilizers.
6. Work consisting of the repair or maintenance of any lawful use of land approved for such use.
7. Agriculture, landscaping, gardening and lawn maintenance, including the removal of dead and diseased trees.
8. The clearing of up to thirty percent (30%) of the vegetation in the natural features setback to afford views and/or access to the natural feature, provided adequate measures are taken to prohibit the exposure of bare soil and soil erosion, such as the establishment of grasses or other vegetative cover.
9. Any lawful activity that is under construction and for which all necessary permits have been granted.