

SECTION 38- NATURAL RESOURCE PROTECTION

(Adopted October 4, 2016 by Resolution 2016-113, Effective November 3, 2016)

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38.01 RIPARIAN AND WETLAND SETBACKS

38.02 PURPOSE AND INTENT

- A. It is hereby determined that the system of headwaters, rivers, streams, wetlands, and other watercourses within Painesville Township contributes to the health, safety and general welfare of the residents. These regulations have been enacted to protect and enhance the functions of riparian areas by providing reasonable controls governing buildings, structures, uses, and related soil disturbing activities within a riparian setback or wetland setback.
- B. The specific purpose and intent of Section 38.01 is to regulate uses and developments within riparian and/or wetland setbacks that would impair the ability of those areas to:
 - 1. To protect adjacent private/public property from adverse effects from increased storm water and stream and wetland encroachment due to land development.
 - 2. Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
 - 3. Assist in stabilizing the banks of watercourses, reduce stream bank erosion, and the downstream transport of sediments eroded from such watercourse banks.
 - 4. Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in watercourses.
 - 5. Reduce pollutants in watercourses by filtering, settling, transforming, and absorbing pollutants in runoff before they enter watercourses.
 - 6. Provide watercourse habitats, including many of Ohio's endangered and/or threatened species, with shade and food by maintaining diverse and connected wetland and riparian vegetation.
 - 7. Benefit the Township by minimizing encroachment on wetlands and watercourses minimizing the need for costly engineering solutions or other invasive measures that may be necessary to protect persons, buildings, structures, and uses as well as to reduce the damage to real property and threats to overall public health and safety within the affected watershed.

8. Benefit the Township by contributing to preserving the scenic beauty of the environment in order to maintain the character of Painesville Township, the quality of life of the residents, and the corresponding property values.

38.03 APPLICABILITY

- A. The Regulations as set forth herein shall apply to:
 1. All riparian areas meeting the criteria as set forth herein.
 2. All zoning districts.
 3. All buildings, structures, uses, and related soil disturbing activities on lands containing a designated watercourse and/or wetland, as set forth in herein, except as otherwise provided herein.
 4. The use of any building, structure, or lot lawfully existing prior to the effective date of these regulations may be continued, pursuant to Section 7, Non-Conforming Uses.
 5. The repair, maintenance, extension, replacement, restoration, reconstruction or substitution of a building, structure or use lawfully existing prior to the effective date of these Regulations may be continued, expanded or completed, subject to the provisions of Section 7, Non-Conforming Uses.
- B. No Zoning Certificate in accordance with Section 11 of these Regulations or Conditional Use Permit in accordance with Section 12 of these Regulations shall be issued for any building, structure, or use on a lot containing, wholly or partly, a designated watercourse or wetland except in conformity with Section 38 as set forth herein.
- C. Due to the importance of properly functioning riparian areas, minimum riparian and/or wetland setbacks may be given preference over minimum front, side, or rear yard setbacks as specified in this Resolution in the consideration of a Conditional Use Permit or an Appeal for a Variance by the Board of Zoning Appeals.

38.04 DEFINITIONS

For the purpose of this regulation, the following terms shall have the meaning as provided herein:

- A. **CLASS III PRIMARY HEADWATER HABITAT STREAM:** The highest quality primary headwater habitat streams as described in the most current version of the *Ohio EPA Field Evaluation Manual for Ohio's Primary Headwater Habitat Streams*.
- B. **DAMAGED OR DISEASED TREES:** Trees that have split trunks; broken tops; heart rot; insect or fungus problems that will lead to imminent death; undercut root systems that put the tree in imminent danger of falling; lean as a result of root failure that puts the tree in imminent danger of falling; or any other condition that puts the tree in imminent danger of being uprooted or falling into or along a watercourse or onto a structure.
- C. **DESIGNATED WATERCOURSE:** A watercourse within Painesville Township that is in conformity with the criteria set forth in these regulations.
- D. **DRAINAGE DITCH:** An open channel, dug for the purpose of drainage of storm water and does not otherwise meet the Clean Water Rule: 40 CFR 230.3.
- E. **DUMPING:** The grading, pushing, piling, throwing, unloading or placing soil or other material.
- F. **FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA"):** The agency with overall responsibility for administering the National Flood Insurance Program.
- G. **FLOOD INSURANCE RATE MAPS ("FIRM"):** The official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.

- H. LAKE COUNTY SOIL AND WATER CONSERVATION DISTRICT ("Lake SWCD"): An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Conservation District Board or its designated employee(s).
- I. OHIO ENVIRONMENTAL PROTECTION AGENCY ("Ohio EPA"): A state agency that protects the environment and public health by ensuring compliance with environmental laws and encouraging environmental stewardship.
- J. ONE HUNDRED (100) YEAR FLOODPLAIN: Any land susceptible to being inundated by water from a base flood. The base flood is the flood that has a one percent (1%) or greater chance of being equaled or exceeded in any given year. The one hundred year floodplain shall be identified by the Federal Emergency
- K. ORDINARY HIGH WATER MARK: The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. The ordinary high water mark defines the bed and bank of a watercourse.
- L. RIPARIAN AREA: Naturally vegetated and adjacent to designated watercourses that, if appropriately sized, helps to stabilize stream banks, limit erosion, reduce flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purposes of this regulation.
- M. RIPARIAN SETBACK: The real property adjacent to a water resource on which soil disturbing activities are limited as defined by the Lake County Subdivision Code or these Regulations whichever is more restrictive.
- N. RIPARIAN SETBACK MAP: A visual reference guide that illustrates how this regulation may affect public and private properties. Real world conditions on the landscape and the provisions in this regulation shall prevail over any information inferred from the map as some affected properties may not be illustrated on the map.
- O. SOIL DISTURBING ACTIVITY: Clearing, grading, excavating, filling, or other alteration of the earth's surface where natural or human made ground cover is destroyed and which may result in, or contribute to, erosion and sediment pollution.
- P. TOWNSHIP: Painesville Township or its designated representatives, boards, or commissions.
- Q. WATERCOURSE: A channel in which a flow of water occurs either continuously or intermittently.
- R. WATERSHED: The region drained by a watercourse.
- S. WETLAND: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas. (40 CFR 232, as amended).
- Category 1: Wetlands with minimal wetland function and/or integrity. Ohio Administrative Code (O.A.C.) Rule 3745-1-53(c) of the Ohio EPA.
 - Category 2: Wetlands with moderate wetland function and/or integrity. Ohio Administrative Code (O.A.C.) Rule 3745-1-53(c) of the Ohio EPA.
 - Category 3: Wetlands with superior wetland function and/or integrity. Ohio Administrative Code (O.A.C.) Rule 3745-1-53(c) of the Ohio EPA.
- T. WETLAND SETBACK: The real property adjacent to a water resource on which soil disturbing activities are limited as defined by the Lake County Subdivision Code or these Regulations whichever is more restrictive.

38.05 ESTABLISHMENT OF DESIGNATED WATERCOURSES

- A. *Designated watercourses*, shall be *only* those watercourses meeting any one (1) of the following criteria:

1. Watercourses draining an area equal to or greater than one (1) square mile; or

2. Watercourses draining an area less than one (1) square mile and having a defined bed, bank, and definite direction of flow, either continuously or intermittently flowing, including through culverts, bridges and other conveyance structures.
 3. Any watercourse newly constructed, altered, restored, or proposed in a development or as part of an overall development plan. Such projects must show compliance with all applicable local, state, and federal requirements.
- B. Riparian setbacks do not apply to drainage ditches constructed exclusively for road side drainage and that are generally parallel to road, except when there exists compelling reasons it should, as determined by the Township.
- C. In determining if watercourses meet the above criteria, Painesville Township may consult with a representative of the Lake SWCD or any other technical expert(s) as necessary.
- D. Final determination shall be made by the Zoning Inspector in accordance with the rules herein.

38.06 RIPARIAN SETBACKS

- A. Riparian setbacks shall be required on all land adjacent to designated watercourses. The setback distance, established as follows, will be determined by the size of the watershed that the watercourse drains.
1. A minimum of one hundred twenty (120) feet on each side of all designated watercourses draining an area equal to or greater than twenty (20) square miles.
 2. A minimum of seventy-five (75) feet on each side of all designated watercourses draining an area equal to or greater than 1 square mile and up to twenty (20) square miles.
 3. A minimum of twenty-five (25) feet on each side of all designated watercourses draining an area less than one (1) square mile and having a defined bed and bank as determined in these regulations.
 4. A minimum of fifty (50) feet on each side of all designated watercourses determined to be a Class III primary headwater habitat stream.

Watershed Size (In Square Miles)	Setback Distance (Minimum)
Greater than twenty (20)	One Hundred Twenty (120) Feet
One (1) to twenty (20)	Seventy-Five (75) Feet
Less than One (1)	Twenty-Five (25) Feet
Class III Primary Headwater Habitat Stream	Fifty (50) Feet

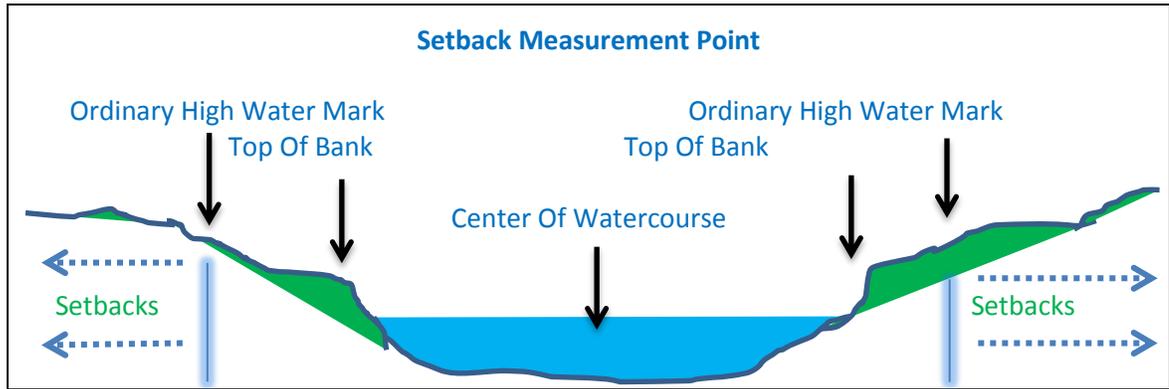
- B. Riparian Setback Map. Painesville Township shall provide a map or visual reference guide that illustrates how this regulation may affect public and private properties. The map shall be utilized as a guide or reference document in determining when a riparian setback applies and shall be on file and available for public inspection at Township Hall.
1. Real world conditions on the landscape and the provisions in this regulation shall prevail over any information inferred from the map as some affected properties may not be illustrated on the map. If any discrepancy is found between the Riparian Setback Map and the on-site conditions, the criteria set forth in these regulations shall prevail.
 2. Nothing herein shall prevent the Township from amending the Riparian Setback Map from time to time as may be necessary.

3. In reviewing and interpreting the Riparian Setback Map, Painesville Township may consult with a representative of the Lake SWCD or any other technical expert(s) as necessary.

C. The following regulations shall apply to riparian setbacks.

1. Riparian setbacks shall be measured in a horizontal direction outward from the ordinary high water mark of a designated watercourse. See Table 1 below.

Table 1



2. Except as otherwise provided in this Regulation, riparian setbacks shall be preserved in their natural state.
3. Where the 100-year floodplain is wider than the minimum riparian setback on either or both sides of a designated watercourse, the minimum riparian setback shall be extended to include the outermost boundary of the 100-year floodplain as delineated on the Flood Insurance Rate Maps (FIRM) of Lake County, Ohio administered by FEMA.

38.07 WETLAND SETBACKS

A. The following regulations shall apply to wetland setbacks.

1. Where proposed projects indicate impacts to wetlands, the wetlands shall be delineated using protocols accepted by the U.S. Army Corp of Engineers. Such delineation is a requirement of the U.S. Army Corp of Engineers and the Ohio Environmental Protection Agency.
 - a. All Wetlands identified by the State of Ohio and/or the of Engineers shall have the following setbacks as measured from the jurisdictional boundary:
 - i. Category 3 Wetland: Fifty (50) feet extending beyond the outermost boundary.
 - ii. Category 2 Wetland: Thirty (30) feet extending beyond the outermost boundary.
 - iii. Category 1 Wetland: Ten (10) feet extending beyond the outermost boundary.

Wetland Category	Setback Distance (Minimum)
Category 3	Fifty (50) feet
Category 2	Thirty (30) feet
Category 1	Ten (10) feet

2. The Township may consult with any department or agencies and professionals to determine wetlands within a riparian setback, or at the Township's discretion, wetlands shall be delineated through a site survey prepared by a qualified wetlands professional retained by the landowner

using delineation protocols accepted by the U.S. Army Corp of Engineers at the time an application is made under this regulation.

- a. Any costs associated with the review or obtaining of the necessary wetlands delineation, review, or plan shall be assessed to the Applicant.
3. Setbacks are required on all wetlands, natural, enhanced or created, that will remain on site when development activities have ceased. Wetlands, or portions of wetlands that have been lawfully impacted, filled or otherwise eliminated thorough the course of development, do not require a setback. Or in the case of lawfully boundaries, the new boundary shall be the beginning point of the setback.
4. No approvals or permits shall be issued by the Township prior to delineation of wetland setbacks in conformance with this regulation.
5. Final determination shall be made by the Zoning Inspector in accordance with the rules herein.

38.08 APPLICATIONS AND SITE PLAN

- A. When making an application for a Zoning Certificate or a Conditional Use Permit for a building, structure or use regulated by this resolution that impacts a designated water course or wetlands, the owner or applicant shall be responsible for identifying riparian setbacks, proposed stream crossings and stream bank stabilization as required by these regulations. The owner or applicant shall indicate such setback distance in accordance with this regulation on all site plans submitted to the Zoning Inspector.
- B. In determining if the site plan meets the criteria of this section, Painesville Township may consult with a representative of the Lake SWCD or any other technical expert(s) as necessary.
- C. If land development or soil disturbing activities will occur within fifty (50) feet of the outer boundary of the applicable riparian setback as specified in this regulation, the riparian setback shall, subject to the discretion of the Zoning Inspector, be required to be clearly identified by the applicant on site with construction fencing as shown on the site plan. Such identification shall be completed prior to the initiation of any soil disturbing activities and shall be maintained on the lot until the completion of such development or soil disturbing activities.

38.09 PERMITTED USES WITHIN RIPARIAN AND WETLAND SETBACKS

- A. *Permitted Uses Not Requiring A Zoning Permit.* The following buildings, structures, uses, and related soil disturbing activities may be permitted within a riparian and/or wetland setback without a Zoning Certificate.
 1. Recreational Activities. Hiking, fishing, hunting, picnicking, picnic tables, trails, walkways, and paths for non-motorized vehicles constructed of pervious materials.
 2. Removal of Damaged or Diseased Trees. Damaged or diseased trees and other associated debris may be removed in accordance with any and all other Federal, State, or local laws or regulations.
 3. Revegetation and/or Reforestation. Riparian setbacks may be revegetated and/or reforested with native, noninvasive plant species in accordance with any and all other Federal, State, or local laws or regulations.
 4. Maintenance and Repairs. Maintenance and repair on lawfully existing buildings, structures, and uses; roads; driveways; bridges; culverts; trails; walkways; paths; wastewater treatment plants and appurtenances; water wells; water treatment plants and appurtenances; storm sewers; and on-site sewage systems.
 5. Maintenance and Cultivation of Lawns and Landscaping. The maintenance of existing, and the cultivation of new, lawns, landscaping, shrubbery, and trees.
 6. Open Space. Passive open space to preserve the riparian setback area in its natural state.

- B. *Permitted Uses Requiring A Zoning Permit.* The following buildings, structures, and uses may be permitted within a riparian and/or wetland setback in accordance with the following Regulations and such other applicable Regulations contained in this Zoning Resolution.
1. Signs in accordance with Section 28 of the Painesville Township Zoning Resolution.
 2. Fences and walls in accordance with Sections 34 and 35 of the Painesville Township Zoning Resolution
 3. Crossings of designated watercourses through riparian setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means may be permitted provided such crossings minimize disturbance in riparian setbacks and mitigate any necessary disturbances.
 - a. Crossings shall only be undertaken upon approval and consultation with the Lake SWCD.
 - b. Work occurring below the ordinary high water mark of designated watercourses will require proof of compliance to the Zoning Inspector with the applicable conditions of a of Engineers Section 404 Permit (either a Nationwide Permit, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification). Proof of compliance shall be:
 - i. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
 - ii. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
 - iii. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
 - c. Any cost associated with the review of the Crossing Plan shall be assessed to the Applicant.
 4. Stream bank stabilization projects along designated watercourses may be permitted subject to other regulations contained in this resolution and the regulations enforced by the Lake SWCD.
 - a. Stream bank stabilization projects shall only be undertaken upon approval and consultation with the Lake SWCD.
 - b. Work occurring below the ordinary high water mark of designated watercourses will require proof of compliance to the Zoning Inspector with the applicable conditions of a U.S. Army Corps of Engineers Section 404 Permit (either a Nationwide Permit, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification). Proof of compliance shall be:
 - i. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
 - ii. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
 - iii. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
 - c. Any cost associated with the review of the stream stabilization project shall be assessed to the Applicant.

38.10 PROHIBITED USES WITHIN RIPARIAN AND WETLAND SETBACKS

- A. Any building, structure, use, or related soil disturbing activity not permitted under this Regulation shall be prohibited within a riparian setback. The following buildings, structures, and uses are specifically prohibited; however, prohibited uses are not limited to those examples listed here.
1. Construction. There shall be no structures of any kind, except as otherwise permitted under this Resolution.
 2. Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquid, or solid materials, except for non-commercial composting of uncontaminated natural materials, and except as otherwise permitted under this Resolution.
 3. Roads or Driveways. There shall be no roads or driveways permitted in riparian and/or wetland setback area, except as otherwise permitted under this Resolution. There shall be no roads or driveways or roads permitted in wetlands or watercourses without a permit issued by the U.S. Army Corps of Engineers and/or the Ohio EPA.
 4. Motorized Vehicles. There shall be no use of motorized vehicles, except as otherwise permitted under this Resolution.
 5. Disturbance of Natural Vegetation. There shall be no disturbance, including mowing, of the natural vegetation, except for such conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with this regulation; for such disturbances as are approved under the PERMITTED USES IN RIPARIAN AND WETLAND SETBACKS section of these regulations; and for the passive enjoyment, access, and maintenance of landscaping or lawns existing at the time of passage of this regulation. Nothing in this regulation shall be construed as requiring a landowner to plant or undertake any other activities in riparian and wetland setbacks.
 6. Parking Lots. There shall be no parking lots or other human-made impervious cover, except as otherwise permitted under this Resolution.
 7. New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Riparian and wetland setbacks shall not be used for the disposal or treatment of sewage except in accordance with local county Board of Health regulations in effect at the time of application of this regulation.

38.11 NOTICE AND INSPECTION

- A. The owner shall notify the Zoning Inspector at least ten (10) working days prior to the initiation of any construction, land development or soil disturbing activities on a lot containing an approved site plan submitted by the owner or applicant in accordance with Section 38 herein.
- B. The Zoning Inspector shall be permitted to make an on-site inspection of the delineation of riparian setbacks, prior to the initiation of any construction, land development, or soil disturbing activities, on an affected lot.
- C. The Zoning Inspector and/or its agents, with prior notice and the authorization of the owner, may enter the affected lot from time to time to conduct on-site inspections to ensure compliance with these Regulations.

38.12 VARIANCE

- A. In accordance with Section 9 the owner or applicant may apply for a variance to the Board of Zoning Appeals.

38.13 PENALTY

- B. In accordance with Section 3, Enforcement, the owner or applicant may be subject to penalties for failing to comply with the terms and requirements of this Zoning Resolution.