

**§ 399-15. Water hazard soils; wetlands.**

A. Water hazard soils control.

- (1) Purpose. The purpose of this section is to protect the public safety, health, and welfare by controlling the permitted uses in areas of the Township where water hazard soils, as defined in § 399-9 of this chapter, occur and where such areas are not contained within any designated Floodplain District as established in § 399-13 of this chapter.
- (2) Water Hazard Soils Overlay District.
  - (a) Areas within the Township composed of water hazard soils (i.e., Worsham, Wehadkee, and Chewacla) as shown on the Hydrology Map contained in the Township Comprehensive Plan of 1987, as amended, and that are not contained within any designated Floodplain District as established in § 399-13 of this chapter shall comprise and have the effect of an overlay district on the Township Zoning Map and the provisions of this section shall be supplemental to the applicable provisions with respect to the underlying district. **[Amended 6-15-1999 ]**
  - (b) In the event of a conflict between the requirements of this section and other provisions of this chapter and other applicable laws and regulations, the more restrictive provisions shall apply.
- (3) Permitted uses. The following uses and no other shall be permitted within any portion of the Water Hazard Soils District comprised of Worsham, Wehadkee, and/or Chewacla soils, provided that such uses comply with the provisions of the underlying zoning district and all other applicable provisions of this chapter: **[Amended 6-15-1999 ]**
  - (a) Any use permitted under the terms of § 399-13F(1) and (2).
  - (b) Accessory uses as permitted by this chapter in the R-1, R-2, and R-3 Residential Districts.
  - (c) Private driveways, provided that the Township Zoning Officer, in consultation with the Township Engineer, determines that no other access route is reasonably practical, and subject to such conditions and controls as may be reasonably required by the Township.
- (4) Boundary dispute. Where the exact location of the boundary of the Water Hazard Soils District in relation to a given parcel is in question, the Township Engineer shall evaluate all materials submitted, conduct such other investigations as necessary, and make a written report of the results of his determination, a copy of which shall be provided to the Board of Supervisors. Any party aggrieved by such determination of the Township Engineer may appeal to the Zoning Hearing Board under the provisions of Article XIX of this chapter. The burden of proof, as demonstrated by clear and convincing evidence, shall be on the appellant. **[Amended 6-15-1999 ; 12-30-2004 by Ord. No. 04-18 ]**

B. Wetlands.

- (1) Need and basis for delineation. **[Amended 12-30-2004 by Ord. No. 04-18 ]**

- (a) A wetlands examination and, as appropriate, delineation shall be performed on any site:
  - [1] Proposed for subdivision or land development;
  - [2] Where a determination of net tract or net lot area is required; and/or
  - [3] Where required by any other applicable permit or plan review process.
- (b) The existence of wetlands shall be indicated by any one or more of the following:
  - [1] National Wetlands Inventory mapping, as prepared by the U.S. Fish and Wildlife Service or any other governmental agency having jurisdiction;
  - [2] Hydric soils or soils with hydric inclusions, as depicted in the Soil Survey of Chester and Delaware Counties and/or in USDA NRCS Hydric Soils Lists; and
  - [3] The existence of hydrophytic vegetation or hydrologic conditions, as determined by on-site investigations performed in accordance with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands dated January 10, 1989, or as later amended.
- (2) Determination of wetland boundary. **[Added 12-30-2004 by Ord. No. 04-18<sup>1</sup>]**
  - (a) Examination of the site shall be performed by a qualified professional, who may be a licensed professional engineer, hydrogeologist, soil scientist, or similarly qualified party experienced in wetland ecology, selected by the applicant.
  - (b) Note of determination that wetlands are not located on the site.
    - [1] If, after examination of the site, a qualified professional determines that wetlands are not located on the site, the following note must appear on the plan or application being submitted:

"This site has been examined by  
[name and address], a qualified  
professional, and no wetlands were  
found to exist."
    - [2] Submissions containing this note must be accompanied by a written statement, signed by the examining professional and attesting to the fact that the site was examined in accordance with the Federal Manual for Identifying and Delineation Jurisdictional Wetlands, dated January 10, 1989, or as later amended, and no wetlands were found to exist. In addition, a written statement of the qualifications of the professional who examined the site shall accompany the submission.
  - (c) Should the Township suspect that wetlands exist on the site, contrary to the

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1. Editor's Note: This ordinance also redesignated Subsection B(2) and (3) as Subsection B(3) and (4), respectively.

applicant's findings as documented in Subsection B(2)(b), above, the Township shall, at its discretion, request that either the U.S. Army Corps of Engineers, Pennsylvania Department of Environmental Protection, the U.S. Fish and Wildlife Service, or a qualified professional selected by the Township review the applicant's findings and the basis for the Township's concerns. In the event it is determined that wetlands exist on the site, the applicant will be required to perform a delineation in compliance with the requirements of Subsection B(2)(d), below, and secure any required wetlands permits or waivers pursuant thereto. All costs associated with work necessitated by the terms of this subsection shall be borne by the applicant.

- (d) If, after examination of the site, a qualified professional determines that wetlands do exist on the site, a plan shall be submitted to the Township showing the delineation, indicating how the wetlands will be protected, and indicating any areas where disturbance cannot be avoided. The qualifications of the professional who examined the site shall accompany the submission.
  - (e) Should the Township Engineer or other qualified professional engaged by the Township to review the applicant's plan dispute the delineation performed by the applicant, the Township Engineer or qualified professional and the applicant may, through joint site inspections, arrive at a mutually agreeable boundary. All costs associated with work necessitated by the terms of this subsection shall be borne by the applicant. At no time shall the Township be held accountable for any additional boundary modifications imposed by state or federal agencies. The results of all joint site inspections shall be reported to the Planning Commission and Board of Supervisors.
  - (f) Should the applicant and Township not agree on a delineation, the applicant may appeal to the appropriate regulatory agencies, including but not limited to the U.S. Army Corps of Engineers, the Pennsylvania Department of Environmental Protection, and the U.S. Fish and Wildlife Service, for boundary confirmation. On the basis of the confirmed delineation, the applicant shall secure the requisite wetlands permits or waivers pursuant thereto from the appropriate regulatory agencies.
  - (g) All potential impacts on wetlands from the proposed activity shall be addressed in compliance with applicable regulations. Where wetlands exist and disturbance permits and/or mitigation activities are required, final plan approval or issuance of applicable permits from the Township shall be contingent upon the applicant receiving all necessary wetlands permits or waivers pursuant thereto, and/or the approval of the Township Engineer.
- (3) In no case shall wetland areas be filled or drained, nor shall sewer lines or other liquid transport pipelines be constructed in such areas, except to cross a wetland on the minimum traversal distance and then only if every precaution is taken to prevent leaks and to prevent any possible draining of the wetland.
- (4) Any road proposed to cross a delineated wetland must:

- (a) Clearly be providing access which is impossible from any other location;
- (b) Be designed and constructed to cause minimum disruption of the wetland area; and
- (c) Have a plan for the establishment of replacement wetland areas (on or off the site) that are twice the size of those lost to the road, or that will otherwise comply with applicable mitigation requirements imposed by the U.S. Army Corps of Engineers or the Pennsylvania Department of Environmental Protection.