

## IV. WETLANDS

### Introduction

The importance of wetlands to water quality and the protection of our lakes and rivers can't be overstated. Wetlands large and small play a critical role in:

- Flood and storm water storage;
- Reducing the velocity of storm water, which protects shorelines and stream banks from erosive forces of waves and high water flows, and allows sediments to settle out of the water before entering lakes and streams;
- Protecting water quality by removing and breaking down sediments, nutrients, and toxins;
- Providing floral diversity and wildlife habitat protection;
- Creating fishery habitat, and habitat for reptiles and amphibians; and
- Offering aesthetics and recreational opportunities.



### Regulatory Considerations

Through the Natural Resources and Environmental Protection Act of 1994 (Act 451), state and federally protected wetland areas include those that are more than five acres, and wetlands of any size that are contiguous with other water bodies, such as streams, rivers, and lakes. However, this law also provides the legal authority for local governments to adopt more restrictive regulations for wetlands than is contained in the act.

While other natural features can be adequately protected through a number of mechanisms, adopting a wetlands ordinance is the only real way to regulate wetlands. This is because the ordinance applies local knowledge and resources to preservation of a local natural feature. It also helps the community to become more aware of the wetland resources within its boundaries, thus assisting in their protection. Local wetlands regulations can protect wetlands that are less than five acres, but are at least two acres in size. These ordinances can also protect wetlands that are less than two acres, but much more stringent standards must be met. It must be determined that these smallest wetlands are essential to the preservation of natural resources in the community, and this process requires a much greater degree of responsibility on the part of the community to do this. Therefore, the extent of the wetlands ordinance must be balanced with the community's desire and resources to provide such extensive evaluations.

The benefits wetlands provide listed above are often referred to as wetland "functions." If physical changes are made around a wetland that change the hydrological cycle, then the wetland may become incapable of performing the functions it had in the past. For example, certain wetland plants only grow in a limited range of water depth. If the wetland is used for storm water storage, and the water level is increased beyond this range, the plant mix will change, thus changing the wetland's ability to support certain kinds of wildlife. Therefore, in addition to a wetland protection ordinance, it is also important to have engineering standards that compliment the ordinance. These standards could require engineering approaches that preserve the existing functions of the wetland, such as maintaining the same water level, preserving water flow patterns through the wetland, and maintaining the same type of habitat.

### **Example Ordinance Language**

The following provides example language of all the components of a wetlands ordinance. Like any example, this language should only be used as a guide. Each community has a unique set of natural features and existing ordinances that this regulation needs to compliment. Therefore, each ordinance section is accompanied by general considerations for individualizing the ordinance.

## **WETLAND AND WATERCOURSE PROTECTION AND RESTORATION**

(COMMUNITY NAME), MICHIGAN

Ordinance No. \_\_\_\_\_

An Ordinance for the control and preservation of wetlands and watercourses within (Community Name) and to protect the wetlands of the (Community Name) from sedimentation, destruction, and misuse; to prescribe the powers, duties and functions of the (Community Name) enforcing agency; to provide for the promulgation of rules; to establish permits and a fee schedule; to establish design standards, specifications, and bond requirements; to provide for variance and exceptions; to provide for inspections and enforcement; to provide for violations, remedies and penalties thereof; and to provide for severability and effective date of the Ordinance.

**(COMMUNITY NAME) HEREBY ORDAINS:**

**SECTION I. GENERAL**

**Section 1.1 - Findings**

The (Community Name) Board/Council of (Community Name) finds that wetlands and watercourses of the (River Name(s)) watershed(s) and its tributaries are indispensable and fragile resources that provide many public benefits including maintenance of surface and groundwater quality through nutrient cycling and sediment trapping as well as flood and storm water runoff control through temporary water storage, slow release, and groundwater recharge. In addition, wetlands provide open space; passive outdoor recreation opportunities, fish and wildlife habitat for many forms of wildlife including migratory waterfowl; and rare, threatened or endangered wildlife and plant species; and pollution treatment by serving as biological and chemical oxidation basins.

Preservation of the remaining (Community Name) wetlands in a natural condition shall be and is necessary to maintain hydrological, economic, recreational, and aesthetic natural resource values for existing and future residents of (Community Name), and therefore the (Community Name) Board/Council declares a policy of no net loss of wetlands. Furthermore, the (Community Name) Board/Council declares a long term goal of net gain of wetlands to be accomplished through review of degraded or destroyed wetlands in the (Community Name), and through cooperative work with landowners, using incentives and voluntary agreements to restore wetlands.

**SIDEBAR TEXT**

- Goals should validate wetland regulations as a way to carry out mandated state statutes, such as controlling water pollution or reducing flooding.
- Tie wetland protection to protecting citizen's health, safety, and welfare
- Strengthen goals by using information specific to wetlands in the community, such as threatened or endangered plants or wildlife.

To achieve these goals, and with authority from Section 30307(4) of the *Natural Resources and Environmental Protection Act* (Act 451 Of 1994 [previously Section 8 (4) of the *Goemaere-Anderson Wetland Protection Act*, Act 203, Public Acts of 1979, as amended]), the (Community Name) Board/Council finds that it is desirable to regulate wetlands in (Community Name). Pursuant to Article 4, Section 52 of the Constitution of the State of Michigan, the conservation and development of natural resources of the state is a matter of paramount public concern in the interest of the health, safety, and general welfare of the people. The (Community Name) Board/Council therefore finds that this Ordinance is essential to the long term health, safety, and general welfare of the people of the (Community Name), and to the furtherance of the policies set forth in Section 1701 *et. seq.* of the *Natural Resources and Environmental Protection Act*

(Act 451 Of 1994 [previously the Michigan *Environmental Protection Act*, Act 127, Public Acts of 1970] hereinafter the *Michigan Environmental Protection Act* ) and Section 30301 *et seq.* of the *Natural Resources and Environmental Protection Act* (Act 451 of 1994 [previously the *Goemaere-Anderson Wetland Protection Act* , Act 203, Public Acts of 1979, as amended] hereinafter the *Wetland Protection Act*).

**Section 1.2 - Purposes**

The purposes of this Ordinance are to provide for:

- A. The protection, preservation, replacement, proper maintenance, restoration, and use in accordance with the character, adaptability, and stability of the (Community Name)'s wetlands, in order to prevent their pollution or contamination; minimize their disturbance and disturbance to the natural habitat therein; and prevent damage from erosion, siltation, and flooding.
- B. The coordination of and support for the enforcement of applicable federal, state, and county statutes, ordinances and regulations including, but not limited to, the:
  - 1. *Wetland Protection Act*, enforced by the Michigan Department of Environmental Quality which is hereinafter referred to as the MDEQ;
  - 2. *Inland Lakes and Streams Act*, Section 30101 *et seq.* of the *Natural Resources and Environmental Protection Act* (Act 451 of 1994 [previously Act 346, Public Acts of 1972, as amended]) enforced by the MDEQ;
  - 3. *Soil Erosion and Sedimentation Control Act*, Section 9101 *et seq.* of the *Natural Resources and Environmental Protection Act* (Act 451 of 1994 [previously Act 347, Public Acts of 1972, as amended]), enforced by the County of Macomb Public Works Office;
  - 4. *Floodplain Regulatory Authority*, incorporated into the *Natural Resources and Environmental Protection Act* (Act 451 of 1994 [previously Act 245, Public Acts of 1929, as amended]), enforced by the MDEQ.
- C. Compliance with the *Michigan Environmental Protection Act* which imposes a duty on government agencies and private individuals and organizations to prevent or minimize degradation of the environment which is likely to be caused by their activities.
- D. The establishment of standards and procedures for the review and regulation of the use of wetlands and watercourses.

- E. The establishment of penalties for violation of this Ordinance.
- F. A procedure for appealing decisions.
- G. The establishment of enforcement procedures and penalties for the violation of this Ordinance.
- H. Assurance that the right to reasonable use of private property is maintained.

### **Section 1.3 - Construction and Application**

The following rules of construction apply in the interpretation and application of this Ordinance:

- A. In the case of a difference of meaning or implication between the text of this Ordinance and any caption or illustration, the text shall control.
- B. Particulars provided by way of illustration or enumeration shall not control general language.

### **Section 1.4 - Applicability to Private and Public Agency Activities and Operations**

The provisions of this Ordinance, including wetland use permit requirements and criteria for wetland use permit approval, shall apply to activities and operations proposed by federal, state, local and other public agencies as well as private organizations and individuals.

## **SECTION 2 - DEFINITIONS**

### **SIDEBAR TEXT**

- Michigan’s wetland protection laws require that local governments define wetlands in the same way as they are defined under state statute. Note the definition of “Protected Wetlands,” and how different types of wetlands are protected by different jurisdictions.

### **Section 2.1 - Definition of Terms**

Terms not specifically defined shall have the meaning customarily assigned to them.

**CONTIGUOUS** means any of the following:

- A. A permanent surface water connection or any other direct physical contact with an inland lake or pond, a river or stream.
- B. A seasonal or intermittent direct surface water connection to an inland lake or pond, a river or stream.
- C. Partially or entirely located within five hundred (500) feet of the ordinary high water mark of an inland lake or pond or a river or stream, unless it is determined by the (Community Name) or the MDEQ in accordance with Rule 281.924 of the *Wetland Administrative Rules*, adopted in connection with the Wetland Protection Act, that there is no surface or groundwater connection to these waters.
- D. Two (2) or more areas of wetland shall be considered contiguous where separated only by barriers, such as dikes, roads, berms, or other similar features, but with any of the wetland areas contiguous under the criteria described in Subsections (1), (2), or (3) of this definition.

**DEPOSIT** means to fill, place or dump.

**LOT** means a designated parcel, tract, building site or other interest in land established by plat, subdivision, conveyance, condominium master deed, or as otherwise permitted by law, to be used, developed or built upon as a unit.

**MATERIAL** means soil, sand, gravel, clay, peat moss and other organic material.

**MITIGATION** means: (1) methods for eliminating or reducing potential impact to regulated wetlands; or (2) creation of new wetlands to offset unavoidable loss of existing wetlands.

**PERSON** means an individual, sole proprietorship, partnership, corporation, association, municipality, this state, any instrumentality or agency of this state, the federal government, or any instrumentality or agency of the federal government, or other legal entity.

**PROTECTED WETLANDS** means any of the following:

- A. All wetlands subject to regulation by the MDEQ including:
  - 1. Wetlands, regardless of size, which are contiguous to any lake, stream, river, or pond whether partially or entirely contained within the project site.
  - 2. Wetlands, regardless of size, which are partially or entirely within five hundred (500) feet of the ordinary high water mark of any lake, stream, river or pond unless it is determined by the MDEQ that there is no surface water or groundwater connection between the wetland and the water body.

3. Wetlands which are larger than five (5) acres, whether partially or entirely contained within the project site, and which are not contiguous to any lake, stream, river, or pond.
4. Wetlands, regardless of size, which are not contiguous to any lake, stream, river, or pond, if the MDEQ determines the protection of the wetland is essential to the preservation of the natural resources of the state from pollution, impairment or destruction.

**B.** All wetlands subject to regulation by the (Community Name) including:

1. Wetlands two (2) to five (5) acres in size, whether partially or entirely contained within the project site, which are not contiguous to any lake stream, river or pond.
2. Wetlands smaller than two (2) acres in size which are not contiguous to any lake, stream, river or pond and are determined to be essential to the preservation of the natural resources of the (Community Name) as provided for in Section 7.6 of this Ordinance.

**RUNOFF** means the surface discharge of precipitation to a watercourse, drainage way, swale, or depression.

**REMOVE** means to dig, dredge, suck, pump, bulldoze, drag line, or blast.

**RESTORATION** means to return from a disturbed or totally altered condition to a previously-existing natural or unaltered condition by some action of man.

**SEASONAL** means any intermittent or temporary activity which occurs annually and is subject to interruption from changes in weather, water level, or time of year, and may involve annual removal and replacement of any operation, obstruction, or structure.

**STRUCTURE** means any assembly of materials above or below the surface of the land or water, including but not limited to, buildings, bulkheads, boardwalks, piers, docks, landings, dams, waterway obstructions, paving, gravel, and roadways, poles, towers, cables, pipelines, drainage tiles, and other underground installations.

**(Community Name Board or Council)** means the legislative body of (Community Name), Macomb County, Michigan.

**(Community Name) WETLAND MAP** means the (Community Name) Wetland Map, based on the Macomb County Wetland Indicator map (which is based on the National Wetland Inventory Map of the U.S. Fish and Wildlife Service); the Michigan Resource Information System Mapping (MIRIS) of the Michigan Department of Environmental Quality; the soils maps of the Soil Conservation Service; SEMCOG information, aerial photography; and on-site inspections.

### **SIDEBAR TEXT**

- Macomb County has developed a wetlands map called the “Wetland Indicator Map” that is more accurate than the maps generated by the Federal government. Rather than developing an individual map, the wetlands ordinance could simply refer to the Macomb County Planning and Economic Development wetlands map. Note that this map is accessible through the County’s website at <http://macombcountymi.gov/gis/maps.htm>

**WATERCOURSE** means any waterway including a river, stream, lake, pond or any body of surface water having definite banks, a bed and visible evidence of a continued flow or continued occurrence of water.

**WETLAND** means 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.

**WETLAND ADMINISTRATOR** means a person(s) knowledgeable in wetland protection, appointed to administer this Ordinance and to carry out certain duties hereunder. Any firm or individual appointed on a contract basis.

**WETLAND USE PERMIT** means the (Community Name) approval required for activities in wetlands and watercourses described in Section 7 of this Ordinance.

**WETLAND VEGETATION** means plants, including but not limited to, trees, shrubs, and herbaceous plants, that exhibit adaptations to allow, under normal conditions, germination or propagation and to allow growth with at least their root systems in water or saturated soil.

### **SECTION 3 - RELATIONSHIP TO STATE AND FEDERAL PERMIT REQUIREMENTS**

The following shall apply if an applicant requesting a wetland use permit is also subject to state and/or federal permit requirements:

- A.** The (Community Name) shall have jurisdiction for the regulation of wetlands under this Ordinance concurrent with the jurisdiction of the Michigan Department of Environmental Quality.
- B.** Approvals under this Ordinance shall not relieve a person of the need to obtain a permit from the MDEQ and/or the U.S. Army Corps of Engineers, if required.

- C. Issuance of a permit by the MDEQ and/or the U.S. Army Corps of Engineers shall not relieve a person of the need to obtain approval under this Ordinance, if applicable.

## **SECTION 4. ADMINISTRATION**

### **Section 4.1 -(Community Name) Wetland Map**

#### **SIDEBAR TEXT**

- A wetlands map is a requirement of a local wetlands ordinance. This map, in conjunction with aerial photographs and field inventories done on a case-by-case basis, are used to administer the wetland ordinance.
- The wetland map does not need to be absolutely precise. However, a disclaimer regarding its accuracy should be included on the map. As discussed above, Macomb County has a wetlands map that could be used instead of a community creating its own. The County’s map also has appropriate disclaimers.
- See the sidebar regarding wetland maps in the “Definitions” section above.

The (Community Name) Wetland Map is a guide to the location of wetlands in (Community Name). The Map shall be used in the administration of this Ordinance.

The (Community Name) Wetland Map, together with all explanatory matter thereon and attached thereto, as may be amended through the Wetland Verification and Delineation process, is hereby adopted by reference and declared to be a part of this Ordinance. The (Community Name) Wetland Map shall be on file in the office of the (Community Name) Clerk.

The (Community Name) Wetland Map shall serve as a general guide for the location of protected wetlands. The (Community Name) Wetland Map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not in fact a wetland.

The Wetland Verification Process, as set forth herein, shall be used to verify wetland on properties where wetland is shown on the Wetland Map or on properties where wetland exist as defined in Section 2.1 herein. The Wetland Delineation Process, as set forth herein, shall be used to establish the actual boundaries of wetlands in the (Community Name). The identification of the precise boundaries of wetlands on a project site shall be the responsibility of the applicant and verified by the Wetland Administrator.

#### **A. Wetland Verification Process**

1. The (Community Name) or property owners of wetland may initiate a verification of the areas shown on the (Community Name) Wetland Map as wetland or on properties where wetland exists as defined in Section 2.1

herein. The verification shall be limited to a finding of wetland or no wetland by the Wetland Administrator. The finding shall be based on, but not limited to, aerial photography, topographical maps, site plans, and field verification or Rapid Assessment techniques.

2. In the event that there is a finding of no wetland on the property, then no further determination would be required and the finding shall be included in the Map Amendment Process (found later in this Section).
3. In the event that there is a finding of wetland, then the establishment of the exact boundary through a wetland delineation shall be required to alter the (Community Name) Wetland Map through the Map Amendment Process.
4. The applicant shall pay fees for the Wetland Verification Process as established in Section 9.1.

#### **B. Wetland Delineation Process**

Prior to the issuance of any permit or land development approval for a lot which is shown to include a wetland on the (Community Name) Wetland Map, the applicant may be required to provide a wetland delineation to the (Community Name). The Wetland Administrator shall determine whether a delineation is required, based on the proximity and relationship of the project to the wetland.

1. To establish actual wetland boundaries on a property, the applicant shall provide a survey or dimensional site plan, drawn at an appropriate scale, showing property lines, buildings and any points of reference along with the wetland boundaries, according to one of the following:
  - (a) Wetland delineation by the Michigan Department of Environmental Quality (MDEQ).
  - (b) Wetland delineation by the applicant's wetland consultant subject to review and approval by the (Community Name)'s Wetland Consultant.
2. Where a wetland delineation is required by this Section, the (Community Name) Wetland Consultant shall establish wetland boundaries following receipt of the above required information and after conducting a field investigation.
3. The applicant shall pay fees for the Wetland Delineation Process as established in Section 9.1.

#### **C. Map Amendment**

1. The (Community Name) Wetland Map shall be updated when new data is available or when corrections are needed in order to maintain the integrity of the map.
2. The (Community Name) shall ensure that each record owner of property on the property tax roll shall be notified of any amendment to the (Community Name) Wetland Inventory Map on an annual basis. The notice shall include the following information:
  - (a) the (Community Name) wetland map has been amended;
  - (b) the location to review the map;
  - (c) the owner's property may or may not be designated as a wetland on the map;
  - (d) the (Community Name) has an ordinance regulating wetlands;
  - (e) the map does not necessarily include all of the wetlands within the (Community Name) that may be subject to the wetland ordinance.

#### **SIDEBAR TEXT**

- Frequently, the information shown in the wetland map can be verified in an aerial photo. Contact Macomb County Department of Planning & Economic Development at (586) 469-5285 to inquire.
- As a confirmation of the wetlands shown on the community maps, an administrative procedure should be set up so that a wetland field survey is conducted by a wetland scientist each time a site plan that includes wetlands comes up for review. As the actual boundaries of the wetland are identified through this process, this information could be used to update the community's wetland map.

### **SECTION 5 - ACTIVITIES IN A PROTECTED WETLAND OR WATERCOURSE**

#### **Section 5.1 - Activities Prohibited Without First Obtaining A Wetland Use Permit**

Except for those activities expressly permitted by Section 5.2, it shall be unlawful for any person to do any of the following in a protected wetland or watercourse unless and until a wetland use permit is obtained from the (Community Name) pursuant to this Ordinance.

- A. Deposit or permit to be deposited any material or structures into any watercourse or within or upon any protected wetlands.

- B.** Remove or permit to be removed any material from any watercourse or from any protected wetland.
- C.** Dredge, fill or land balance watercourses or protected wetlands.
- D.** Create, enlarge, diminish or alter a lake, pond, creek, stream, river, drain or protected wetland.
- E.** Construct, operate or maintain any development in or upon protected wetlands or watercourses.
- F.** Erect or build any structure, including but not limited to, buildings, roadways, bridges, tennis courts, paving, utilities, or private poles or towers in or upon protected wetlands or watercourses.
- G.** Construct, extend or enlarge any pipe, culvert, or open or closed drainage facility which discharges silt, sediment, organic or inorganic materials, chemicals, fertilizers, flammable liquids or any other pollutants to any lake, stream, pond, creek, river, protected wetland, or watercourse, except through a retention area, settling basin, or treatment facility designed to control and eliminate the pollutant. This Subsection shall apply to all land uses except single family uses.
- H.** Construct, enlarge, extend or connect any private or public sewage or waste treatment plant discharge to any lake, stream, river, pond, watercourse, or protected wetland except in accordance with the requirements of Macomb County, State of Michigan and/or the United States, to the extent that such entities have jurisdiction.
- I.** Drain, or cause to be drained, any water from a protected wetland or watercourse.
- J.** Fill or enclose any ditch which would result in a significant reduction of storm water absorption and filtration into the ground or would otherwise have an adverse impact on receiving watercourses or wetlands.

**Section 5.2 - Permitted Activities**

**SIDEBAR TEXT**

- The local ordinance may not require a permit for uses that are otherwise authorized under Act 451.
- Amendments to Act 451 were added in 2003 to address low lake levels in the Great Lakes and Lake St. Clair. Property owners along Lake St. Clair may conduct limited “beach maintenance” activities between the ordinary high water mark and the current water’s edge (that is, on exposed bottomlands which are public trust lands belonging to the State of Michigan) without obtaining a permit. However, a permit may be required from the Army Corps of Engineers. Communities with Lake St. Clair shoreline may want to consider adding language to address this new topic.

- 1) Notwithstanding the prohibitions of Section 5.1, the following activities are permitted within watercourses or protected wetlands without a wetland use permit, unless otherwise prohibited by statute, ordinance or regulation:
- A. Fishing, trapping, or hunting.
  - B. Swimming or boating.
  - C. Hiking.
  - D. Grazing of animals.
  - E. Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. Wetland altered under this subdivision shall not be used for a purpose other than a purpose described in this subsection without a permit from the department.

**SIDEBAR TEXT**

- Note that if a wetland is disturbed by a permitted agricultural use, this disturbance may not later be the basis for developing the property for another use that is prohibited without a permit.

- F. Maintenance or operation of serviceable structures in existence by October 1, 1980 or constructed pursuant to this part of former Act No. 203 of the Public Act of 1979.

- G.** Construction or maintenance of farm or stock ponds.
- H.** Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products:
  - 1.** An existing private agricultural drain.
  - 2.** That portion of a drain legally established pursuant to the drain code of 1956, Act No. 203 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws, which has been constructed or improved for drainage purposes.
  - 3.** A drain constructed pursuant to other provisions of this part or former Act No. 203 of the Public Acts of 1979.
- I.** Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to assure that any adverse effect on the wetland will be otherwise minimized.
- J.** Drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this part, wetland improved under this subdivision after October 1, 1980 shall not be used for non-farming purposes without a permit from the department. This subdivision shall not apply to a wetland which is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a wetland that the department has determined by clear and convincing evidence to be a wetland that is necessary to be preserved for the public interest, in which case a permit is required.
- K.** Maintenance or improvement of public streets, highways, or roads, within the right-of-way and in which in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road.
- L.** Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of 6 inches or less, if the pipelines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.

- M.** Maintenance, repair, or operation of electric transmission and distribution power lines and construction of distribution power lines, if the distribution power lines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.
  - N.** Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or construction pursuant to this part or former Act No. 203 of the Public Acts of 1979.
  - O.** Construction of iron and copper mining tailings basins and water storage areas.
- 2) An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has been continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under his part.
  - 3) A wetland that is incidentally created as a result of 1 or more of the following activities is not subject to regulation under his part:
    - A.** Excavation for material or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on a lot adjacent to a water body of 1 acre or more in size.
    - B.** Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.
    - C.** A dike area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the dike area was not a wetland before diking.

### **Section 5.3 - Existing Non-conforming Lots, Uses and Structures**

Lots, uses and structures lawfully existing at the effective date of this Ordinance shall be subject to the requirements of this Ordinance, except as follows:

- A.** Plats that have received tentative preliminary or later approval and site plans and condominium plans approved prior to the effective date of this Ordinance shall be entitled by right to all uses authorized by those approvals according to the zoning district in which the property is located, and provided that said lots have buildable sites outside of the wetland. Lots which do not have a buildable site outside of the wetland shall require a wetland use permit prior to any construction on said lot.
- B.** Any activity, structure, or use lawfully existing prior to the effective date of this Ordinance, but not in conformity with the provisions of this Ordinance, may be continued, maintained and operated.

- C. Any structure lawfully existing prior to the effective date of this Ordinance damaged by fire, explosion, act of God, or other causes beyond the control of the owner, may be restored, rebuilt, or repaired without obtaining a wetland use permit.

## **SECTION 6 - APPLICATION**

Application for approval, appeal, and issuance of wetland use permits shall be concurrent with the application for approval, appeal, and issuance of other necessary (Community Name) approvals. This is the procedure except that:

- 1) In the case of any such application for another approval which is pending on the effective date of this Ordinance; and
- 2) Which has not been approved, and
- 3) Which, by the terms of this Ordinance, would require a wetland use permit application,
- 4) The applicant shall be notified by the Wetland Administrator that an application for a wetland use permit is required, and processing of the other application shall not proceed until the wetland use permit application has been filed.

The applicant for a wetland use permit shall submit four copies of the following to the (Community Name):

- A. An application completed in full, on a form supplied by the Michigan Department of Environmental Quality.
- B. A wetland delineation including, but not limited to the following information: dominant tree, sapling, shrub and herb vegetation; presence or lack of accepted wetland hydrology indicators; analysis of soil including a description of the soil profile to at least 20 inches and comparison to Macomb County Soil Survey and maps of the wetland(s) mapped. Mapped data shall be represented in a manner that allows comparison to the (Community Name) Wetland Map.
- C. Soil drainage and storm water management plans.
- D. A mitigation plan, if the proposed activity will result in the loss of wetland resources.
- E. A cover letter signed by the applicant including the following information:
  1. Name of project and brief description.
  2. Date upon which the activity is proposed to commence.
  3. Explanation of why the project meets the wetland use permit standards and criteria contained in this Ordinance.

4. List of all federal, state, county or other local government permits or approvals required for the proposed project including permit approvals or denials already received. In the event of denials, the reasons for denials shall be given. Attach copies of all permits which have been issued.
  5. Identification of any present litigation involving the property.
- F.** The wetland use permit application shall be reviewed, either prior to or concurrent with the review of the site plan, plat or other proposed land use submitted by the applicant, with the understanding that the land use review may not be completed at the time the decision is rendered on the wetland use permit application. Election of this alternative may require a reopening of the wetland use permit application if the land use approval is inconsistent with the wetland use permit approval; or,
- G.** Copies of wetland permit applications filed with the MDEQ and forwarded to the (Community Name) in accordance with Section 30307(6) of Wetland Protection Act shall become part of the application for a (Community Name) wetland use permit.

## **SECTION 7 - REVIEW**

### **Section 7.1 - Method of Review of Wetland Permit Application**

<p><b>SIDEBAR TEXT</b></p> <ul style="list-style-type: none"> <li>• Communities with wetland ordinances become responsible for reviewing and issuing permits for wetlands covered by the ordinance.</li> <li>• The local unit of government must keep MDEQ informed of wetland permit applications and the results of these applications.</li> <li>• A wetland application must be made on a form provided by MDEQ.</li> </ul>
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- A.** Before a wetland use permit application is submitted, the necessity of the wetland use permit shall be determined by the Wetland Administrator or designee by reference to the "(Community Name) Wetland Map".
- B.** Whenever a wetland use permit is required, the applicant may request an administrative meeting with the Wetland Administrator to review the proposed activity in light of the purposes of this Ordinance.

- C. Upon receipt of an application, the (Community Name) shall ensure that all required information including a wetland determination has been submitted. The receipt of the application shall constitute permission from the owner to complete an on-site investigation. Applicant will pay fees as established in Section 9.1.
- D. The (Community Name) Clerk shall transmit one copy of the application and supporting materials to the (Community Name) Wetland Consultant to confirm the boundaries of the wetland and to review the proposal in light of the purpose and review standards of Section 7 and other applicable sections of this Ordinance. If an application is not complete, the applicant may be granted additional time to complete the application provided that the applicant agrees that the additional time shall not be charged against the (Community Name)'s 90-day time limit for making a decision. The receipt of the application shall constitute permission from the owner to conduct an on-site investigation of wetlands.

**SIDEBAR TEXT**

- It is important that a qualified professional, such as a wetland scientist or consultant, complete a wetland delineation on the wetland in question.
- A community can make this step the applicant's responsibility, or they can hire a wetland consultant to provide a professional review for each site plan. If the community hires its own consultant, the associated fees can be part of the wetland permit fee schedule and charged to the applicant.
- The review process the wetland consultant uses should be spelled out in the ordinance.

- E. The (Community Name) Wetland Consultant shall prepare and transmit a report and recommendation to the Wetland Administrator documenting the review required by Section 7.1 D.
- F. Upon receipt of an application, the (Community Name) Clerk shall:
1. Transmit one copy of the application to the Michigan Department of Environmental Quality.
  2. Advise the applicant of his/her obligation to post the subject property with a sign that shall be no less than two (2) square feet in size. The sign shall be clearly visible from the abutting street(s) and shall state that an application has been filed for a wetland use permit on the property.

**Section 7.2 - Wetland Use Permit Decisions by the Wetland Administrator**

The following process shall apply to wetland use permit decisions by the Wetland Administrator:

- A. For wetland use permit applications submitted in conjunction with activities that do not require approval by the Planning Commission and/or (Community Name) Board/Council, the Wetland Administrator shall approve, approve with conditions or deny the application within 90 days after receipt of an application.
- B. Persons wishing to comment on the application must submit their comments in writing to the Wetland Administrator prior to the date and time set in the notice. Persons wishing to receive notice of the Wetland Administrator's decision must submit a written request to the Wetland Administrator.
- C. After completing the review and reviewing the written comments, the Wetland Administrator shall approve, approve with modifications or conditions, or deny the wetland use permit application in accordance with the standards of this Ordinance.
- D. When a wetland use permit is approved, approved with modifications or conditions, or denied, written notice shall be sent to the applicant and to all persons who have requested notice of the Wetland Administrator's decision. A permit approved by the Wetland Administrator shall not be issued or effective until ten (10) calendar days following the date of approval.

**Section 7.3 - Wetland Use Permit Decisions by Planning Commission or the Governing Body**

The following process shall apply to wetland use permit decisions by the (Community Name) Planning Commission or governing body:

- A. Wetland use permit applications submitted in conjunction with a related land development activity shall be decided by the same entity that decides the related land development activity consistent with the Wetland Protection Act. The Planning Commission or governing body shall decide any wetland use permits in conjunction with special use permit applications or site plan applications and shall require that the delineation and wetland use permit application requests be submitted prior to the special use permit hearing. The Wetland Administrator shall transmit application materials and the report and recommendation prepared by the (Community Name) Wetland Consultant to the Planning Commission or governing body as applicable.

### **SIDEBAR TEXT**

- The same entity (such as the Planning Commission) that makes decisions on site plans, plats and related matters must also make decisions on wetland applications. The applicant cannot be required to submit to a hearing on the application by more than one decision-making body. However, the local government may have a preliminary review completed by a planning department, planning consultant or Planning Commission before submittal to the decision-making body. Also, an appeals process may be developed for appeal to the body designated to hear appeals.

- B.** After review and study of the application materials and the (Community Name) Wetland Consultant's report and recommendation, the (Community Name) Planning Commission or governing body, as applicable, may hold one public hearing after publication in a newspaper of general circulation in the (Community Name) not less than five (5) days nor more than fifteen (15) days prior to the date of the hearing. Such notice shall indicate the place, time and subject of the hearing and the place and time the proposed wetland use permit may be examined. The wetland use permit hearing may be held in conjunction with a review of the related land use request(s).
- C.** In the event of a public hearing, notice shall be sent by mail or personal delivery to the owners of property for which approval is being considered, and to all owners of property, as listed on the most recent tax roll, within three hundred (300) feet of the boundary of the property in question. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit shall receive notice. In the case of a single structure containing more than four (4) dwelling units, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure. A notice containing the time, date, place and purpose of the hearing shall be posted on the subject property by the applicant at least eight (8) days prior to the hearing. The posting sign shall be no less than two (2) square feet in size, shall be clearly visible from the abutting street(s), and shall state that an application has been filed for a wetland use permit.
- D.** After completing the review and holding one public hearing, if so required, the Planning Commission or governing body as applicable shall approve, approve with conditions or deny the application within ninety (90) days after receipt of an application, in accordance with this Ordinance.

**SIDEBAR TEXT**

- In conjunction with site plan review, the community must review the application within a 90-day time frame. However, the land use review may not be complete at the same time. This may require the re-opening of the wetland application if the land use review results in a conflicting decision.

- E. Written notice shall be sent to the applicant upon approval, approval with conditions or denial of a wetland use permit by the (Community Name). The denial of a permit shall be accompanied by a written reason for denial.

**SIDEBAR TEXT**

- If the applicant does not submit all the information required by the permit application, this is a valid reason for either delay or denial of the permit.
- A landowner has a right to seek a revaluation of the affected property for assessment purposes to determine its fair market value if a permit has been denied for a proposed wetland use.

- F. A permit approval by the Planning Commission or governing body, as applicable, shall not be issued or effective until ten (10) calendar days following the date of the approval and compliance with Section 7.5 of this Ordinance.

**Section 7.4 - Appeals Of Decisions Of The Wetland Administrator, Planning Commission or Governing Body**

The following process shall apply to appeals of decisions made by the Wetland Administrator, the Planning Commission, or governing body, as applicable:

- A. A person who is aggrieved by the determination of the body who reviewed the wetland permit application may request an appeal of their decision to the (governing body or appellate body).

**SIDEBAR TEXT**

- If the governing body, such as the City/Village Council or Township Board, makes decisions on wetland permits, then the appellate body should be the community's board of appeals.

- B.** A request for appeal must be filed within ten (10) days following the Wetland Administrator's or governing body's decision. If an appeal is requested during such ten-day period, the effectiveness of the permit shall be suspended pending the outcome of the appeal.
- C.** The (governing body or appellate body) shall determine whether to consider the appeal based upon the minutes of the governing body's meeting(s), or based upon an entirely new hearing.
- D.** If the (governing body or appellate body) determines to consider the appeal based upon the minutes of the governing body's meeting(s), the applicant, and other interested parties shall be entitled to be heard prior to the (governing body or appellate body)'s determination.
- E.** If a new hearing shall be conducted, notice shall be sent by mail or personal delivery to the owners of property for which appeal is being considered, and to all owners of property, as listed on the most recent tax roll, within three hundred (300) feet of the boundary of the property in question. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit shall receive notice. In the case of a single structure containing more than four (4) dwelling units, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure. A notice containing the time, date, place and purpose of the hearing shall be posted on the subject property by the applicant at least eight (8) days prior to the hearing. The procedure for the hearing shall be the same as set forth in Section 7.1 above, governing the procedure before the (governing body or appellate body).
- F.** The (governing body or appellate body), based upon its appellate review, may reverse, affirm or modify the determination and/or permit issued by the governing body.

#### **Section 7.5 - Wetland Use Permit Conditions**

- A.** The Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable, shall attach any reasonable conditions considered necessary to ensure that the intent of this Section will be fulfilled, to minimize or mitigate damage or impairment to, encroachment in or interference with natural resources and processes within the protected wetlands or watercourses, or to otherwise improve or maintain the water quality. Any conditions related to wetland mitigation shall follow the provisions of Section 8 of this Ordinance.

- B.** The Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable, shall fix a reasonable time to complete the proposed activities.
- C.** The Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable, may require the applicant to file with the (Community Name) a cash or corporate surety bond or irrevocable bank letter of credit in an amount, if any, determined necessary to ensure compliance with the wetland use permit approval conditions and this Section.
- D.** The Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable, shall require that final approval of a wetland use permit application shall be contingent upon receipt of evidence by the (Community Name) that required state and federal permits, if any, have been obtained by the applicant.
- E.** At no time shall the Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable, issue a wetland use permit that allows a more extensive alteration of the wetland than permitted by state or federal law. In cases where a state permit allows activities not permitted by the wetland approval granted under this article, the restrictions of the approval granted under this article shall govern.
- F.** Wetland use permits for seasonal operations need not be renewed annually unless otherwise stated in the permit.
- G.** Any change that increases the size or scope of the operation and that affects the criteria considered in approving the permit as determined by the Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable, may require the filing of a new wetland use permit application.
- H.** Any temporary, seasonal, or permanent operation that is discontinued for two (2) years or two (2) seasons shall be presumed to have been abandoned and the wetland use permit automatically voided.
- I.** Any permit granted under this Ordinance may be revoked or suspended by the Wetland Administrator, Planning Commission or (Community Name) Board/Council, as applicable, after notice and an opportunity for a hearing, for any of the following causes:
  - 1.** A violation of a condition of the permit.
  - 2.** Misrepresentation or failure to fully disclose relevant facts in the application.

3. A change in a condition that requires a temporary or permanent change in the activity.
- J.** An applicant who has received a wetland use permit under this Ordinance shall comply with the following in connection with any construction or other activity on the property for which the wetland use permit has been issued:
1. Maintain soil erosion control structures and measures, including but not limited to, silt fences, straw bale berms, and sediment traps. The permittee shall permit periodic inspections throughout the duration of the project by the (Community Name) or its representatives.
  2. Maintain clear delineation of the protected wetlands and wetland setbacks (so marked by the Wetland Administrator or (Community Name) Wetland Consultant during the on-site inspection) so that such locations are visible to all construction workers.
  3. Post on the site, prior to commencement of work on the site and continuing throughout the duration of the project, a copy of the approved wetland use permit containing the conditions of issuance, in a conspicuous manner such that the wording of said permit is available for public inspection.
- K.** The wetland use permit shall remain effective for a time period coincidental with any other land use permit reviewed and approved concurrent with the wetland use permit. If applied for prior to the expiration date and concurrent with the expiring land use permit, the applicant may be granted an extension that corresponds to additional time granted for the underlying land use permit. Extensions shall be approved by the same person or body that made the original decision. The maximum number of extensions shall coincide with the maximum number allowed for the underlying land use permit.
- L.** When there is no other activity or permit involved, the wetland use permit shall remain effective for one (1) year. A maximum of a one (1) year extension may be approved by the granting authority upon request of the applicant.

**Section 7.6 - Review Standards And Criteria For Non-Contiguous Wetlands Less Than Two (2) Acres In Area.**

**SIDEBAR TEXT**

- Standards for wetlands less than two acres in size are provided by state statute. The purpose of these standards is to determine if the wetland is essential to the preservation of the natural resources of the community.
- If the wetland is found to be essential, then the permit request is evaluated using the standards in Section 7.7.

- A.** A wetland use permit shall be approved with respect to a non-contiguous wetland less than two (2) acres in area unless the Planning Commission or (Community Name) Board/Council determines that the wetland is essential to the preservation of the natural resources of the (Community Name). It shall not be the burden of the property owner to prove that the wetland is not essential to the preservation of the natural resources of the (Community Name).
- B.** All non-contiguous wetland areas of less than two (2) acres which appear on the wetlands map, or which are otherwise identified during a field inspection by the (Community Name), shall be analyzed for the purpose of determining whether such areas are essential to the preservation of the natural resources of the (Community Name). If there is to be a denial of a wetland use permit in a non-contiguous wetland area of less than two (2) acres, then, on the basis of data gathered by or on behalf of the (Community Name), findings shall be made in writing and given to the applicant stating the basis for the determination that such wetland is essential to preservation of the natural resources of the (Community Name). In order to make such a determination, there shall be a finding that one (1) or more of the following exists within such wetland:
1. The site supports state or federal endangered or threatened plants, fish, or wildlife appearing on a list specified in Section 36505 of the Natural Resources and Environmental Protection Act (Act 451 of 1994 [previously Section 6 of the Endangered Species Act of 1974, Act No. 203 of the Public Acts of 1974, being Section 299.226 of the Michigan Compiled Laws]).
  2. The site represents what is identified as a locally rare or unique ecosystem.
  3. The site supports plants or animals of an identified local importance.
  4. The site provides groundwater recharge documented by a public agency.
  5. The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.

6. The site provides wildlife habitat by providing breeding, nesting, feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.
  7. The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
  8. The site provides pollution treatment by serving as a biological and chemical oxidation basin.
  9. The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
  10. The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
- C.** In connection with the determination whether the wetland is essential to the preservation of the natural resources of the (Community Name), the property owner shall make an election and response under Subsection 1 or 2 below, relative to each non- contiguous wetland area less than two (2) acres.
1. In lieu of having the (Community Name) or its consultant proceed with the analysis and determination, the property owner may acknowledge that one ( 1) or more of the criteria in Subsections B1) through (B- 10) above, exist on the wetland in question, including a specification of the one or more criteria which do exist; or
  2. An election to have the (Community Name) or its consultant proceed with the analysis of whether each of the criteria in Subsections (B-1) through (B-10) exist or do not exist in the wetland in question, including specific reasons for the conclusion in respect to each criteria.
- D.** If the (Community Name) determines that the wetland is not essential to the preservation of the natural resources of the (Community Name), the (Community Name)'s decision shall be so noted on the (Community Name) Wetland Map, at the time it is amended. The requested activity shall be approved subject to all other applicable laws and regulations.

When a wetland under two (2) acres in size has been determined to be essential to the natural resources of the (Community Name) and the (Community Name) has found that one or more of the criteria set forth exist at the site, the (Community Name) shall notify the applicant in writing stating the reasons for determining the wetland to be essential to the preservation of the natural resources.

After determining that a wetland less than two (2) acres in size is essential to the preservation of the natural resources of the (Community Name), the wetland use permit application shall be reviewed according to the standards in Section 7.7.

### **Section 7.7 - Review Standards for Wetland Use Permits**

#### **SIDEBAR TEXT**

- Standards used to determine whether a use requiring a permit is approved or not are provided by state statute.

The criteria to evaluate wetland use permits under this Ordinance and to determine whether a permit is granted are as follows:

- A.** A permit for any activity listed in Section 5.1 shall not be approved unless the proposed activity is in the public interest and is otherwise lawful in all respects. Public input shall be evaluated in approving, approving with conditions, or denying the application. The reasonable use of the property involved in accordance with applicable local ordinances and state law shall also be considered.

In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national, state, and local concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

- 1.** The relative extent of the public and private need for the proposed activity.
- 2.** The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
- 3.** The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetlands provide.
- 4.** The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
- 5.** The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.

6. The size and quality of the protected wetland being considered.
  7. The amount and quality of remaining wetland in the area.
  8. Proximity to any waterway.
  9. Extent to which upland soil erosion adjacent to protected wetlands or drainage ways is controlled.
  10. Economic value, both public and private, of the proposed land change to the general area.
  11. Findings of necessity for the proposed project which have been made by federal, state or local agencies.
- B.** A wetland use permit shall not be granted unless it is shown that:
1. An unreasonable disruption of aquatic resources will be avoided; and
  2. The proposed activity is primarily dependent upon being located in the protected wetland; and
  3. A feasible and prudent alternative does not exist; and
  4. The manner in which the activity is proposed to be undertaken will result in the minimum negative impact upon protected wetlands, watercourses, and attendant natural resources under all of the circumstances.
- C.** Following approval of the application, a wetland use permit shall be issued upon determination that all other requirements of ordinance and law have been met, including site plan, plat or land use approval as applicable, and including issuance of a permit by the MDEQ, if required under the Wetland Protection Act. In cases where a MDEQ permit allows activities not permitted by the wetland use permit approval granted under this Section, the restrictions of the approval granted under this Section shall govern.

## **SECTION 8 - WETLAND MITIGATION AND RESTORATION**

### **Section 8.1 - Findings That Wetland And Watercourse Loss Is Unavoidable**

Mitigation shall not be considered a substitute for making all prudent attempts to avoid wetland impacts.

**SIDEBAR TEXT**

- One way communities can be assured that a mitigated wetland is constructed per plan is to require a bond before the mitigation project begins. Then if the work isn't completed satisfactorily, then the bond can be used to complete the work.

- A.** Prior to considering a proposal for wetland mitigation, the Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable, shall make all of the following findings:
1. That all feasible and prudent efforts have been made to avoid the loss of protected wetland.
  2. That all practical means have been considered to minimize protected wetland impacts.
  3. That it is practical to replace the protected wetland which will be unavoidably eliminated.
  4. That all alternatives for preserving protected wetlands and water courses have been evaluated and found to be impractical, inappropriate, or ineffective.
- B.** To ensure no net loss of wetlands in the (Community Name), mitigation shall be required in instances where there are losses of wetland resources and where the Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable have made the findings required in Section 8.1.A.

**Section 8.2 - Criteria For Approving Proposals For Wetland Mitigation**

If the Wetland Administrator, Planning Commission or the (Community Name) Board/Council, as applicable determines that it is practical to replace the protected wetlands which will be impacted, mitigation plans shall be approved only if all of the following criteria are met:

**SIDEBAR TEXT**

Additional guidelines for wetland mitigation include:

- The location of the mitigated wetland should be constructed nearby within the immediate area, and provide the same benefits as the lost wetland in the immediate area.
- A new wetland should be the same size or larger than the existing wetland.
- The new wetland should be constructed to have specific soil, elevation and hydrologic characteristics that will allow it, over time, to replicate the natural wetland.

- The plant mix in the new wetland should be of the same or better quality, and in the same proportions and density as the existing wetland.
- Replacement standards should include “success” standards that the newly constructed wetland must meet by a certain time. Maintenance of the new wetland, such as removing undesirable exotic invasive plants, should also be included.

- A. That the mitigation plan provides for the substantial replacement of the predominant functional values of the protected wetland to be lost.
- B. That the mitigation plan provides for no net loss of protected wetland resources and watercourses unless the Wetland Administrator, the Planning Commission or the (Community Name) Board/Council, as applicable determines that the net loss will result in a minimum negative impact upon protected wetlands, watercourses, and attendant natural resources under all of the circumstances.
- C. Mitigation shall be provided on-site where practical and beneficial to the wetland resources. If mitigation on-site is not practical and beneficial, then mitigation in the immediate vicinity, within the same watershed, of the permitted activity may be considered. Only if all of these options are impractical shall mitigation be considered elsewhere.
- D. The mitigation plan will comply with all applicable federal, state, and local laws.
- E. A plan to monitor preserved and replacement wetlands over a minimum of five years has been specified.

### **Section 8.3 - Other Mitigation Requirements**

- A. Wetland mitigation and monitoring plans shall become conditions to the wetland use permit and shall be the responsibility of the applicant.
- B. Financial assurances that mitigation is accomplished as specified by the permit condition may be required by the Wetland Administrator, Planning Commission or (Community Name) Board/Council, as applicable.
- C. Any mitigation activity shall be completed before initiation of other permitted activities, unless a phased concurrent schedule can be agreed upon between the Wetland Administrator, Planning Commission or (Community Name) Board/Council, as applicable, and the applicant.
- D. Wetland mitigation plans that create less than two (2) acre wetlands shall meet one of the conditions listed in Section 7.6 B. 1-10.

## SECTION 9 - FEES, PENALTIES AND ENFORCEMENT

### Section 9.1 - Fees

Applications for a wetland use permit under this Section shall be accompanied by a non-refundable administrative application fee in an amount specified from time to time by resolution of the (Community Name) Board/Council. In addition an applicant shall pay an additional escrow fee in an amount determined by resolution of the (Community Name) Board/Council for the estimated cost of outside consultant(s) who may be retained by the (Community Name) in connection with the review of the application. In the event the cost of the services of the consultant(s) is less than the escrow fee, the applicant shall be refunded the balance. In the event the cost of the services of the consultant(s) exceeds the amount of the escrow fee, the applicant shall pay the deficiency to the (Community Name) prior to the issuance of a wetland use permit. A denial of an application for a wetland use permit shall not affect the applicant's obligation to pay the escrow fee provided for in this Section.

### Section 9.2 - Penalties And Enforcement

#### SIDEBAR TEXT

- Penalties can include fines and/or a requirement that the affected wetland area be restored or mitigated in some way. A mitigation penalty becomes a much bigger consideration for a contractor.
- A significant minimum fine will help deter contractors from damaging a protected wetland.
- Money collected from fines can be used to restore the impacted area to its previous condition if the contractor is not required to do so.

- A. Restoration Requirements for Illegal Wetland Alteration. In the event of a violation involving illegal alteration of a watercourse or protected wetland under this Section, the (Community Name) shall have the power to order complete restoration of the watercourse or protected wetland area by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration within a reasonable time following the order, the (Community Name) shall have the authority to restore the affected watercourse or protected wetland to their prior condition wherever possible, and the person or agent responsible for the original violation shall be held liable to the (Community Name) for the cost of restoration. Requirements and watercourse or protected wetland restorations order by the (Community Name) shall be coordinated with state and/or federal agency requirements and specifications for watercourse or wetland restoration.

- B. Penalties.** In addition to the rights and remedies herein provided to the (Community Name) any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding Five Hundred Dollars (\$500.00), or be imprisoned in the county jail for a period not exceeding ninety (90) days, or be both so fined and imprisoned. Each day such violation is continued or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
- C. Injunction.** Any activity conducted in violation of this Section is declared to be a nuisance per se, and the (Community Name) may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation, and/or requiring restoration of the protected wetland or watercourse as nearly as possible to its condition before the violation.
- D. Stop-Work Order.** The (Community Name) may also issue a stop-work order or withhold issuance of a Certificate of Occupancy, permits or inspection until the provisions of this Ordinance, including any conditions attached to a wetland use permit, have been fully met. Failure to obey a stop-work order shall constitute a violation of this Ordinance.
- E. Appearance Tickets.** In all arrests and prosecutions for violation of this Ordinance, appearance tickets and the appropriate procedures set forth in Act 147, Michigan Public Acts of 1968, as amended, may be used.

**SIDEBAR TEXT**

- Enforcement is the key to wetland protection. Periodic field inspections need to be made during construction activities to ensure that wetlands are properly protected, or if a mitigation project, that the new wetland is functioning properly.
- Field visits to confirm that required actions have been taken will also provide the community with an updated evaluation of the condition of its wetlands.

- F. Enforcement.** The Wetlands Administrator or his/her agent, officer or employee shall have authority under this Ordinance to enter upon privately-owned land for the purpose of performing the (Community Name)'s duties under this ordinance and may take or cause to be made such examinations, surveys or samplings as are deemed necessary.

**SECTION 10 - STATE NOTIFICATION**

**Section 10.1 - Notice to the Michigan Department of Environmental Quality**

The (Community Name) shall notify the MDEQ of the adoption of this Ordinance. The (Community Name) shall cooperate with the MDEQ in the enforcement of the Wetland Protection Act as to wetlands under the MDEQ's jurisdiction as defined under this Ordinance.

## **SECTION 11 - ORDINANCE CONFLICT**

### **Section 11.1 - Abrogation and Conflict of Authority**

Nothing in this Ordinance shall be interpreted to conflict with present or future state statutes in the same subject matter; conflicting provisions of this Ordinance shall be abrogated to, but only to, the extent of the conflict. Moreover, the provisions of this Ordinance shall be construed, if possible, to be consistent with relevant state regulations and statutes. If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such holding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force. Rights and duties which have matured, penalties which have been incurred, proceedings which have begun (except as set forth in Section 5.3 and Section 6 herein) and prosecutions for violations of law occurring before the effective date of this Ordinance are not affected or abated by this Ordinance.

## **SECTION 12 - PROPERTY TAX ASSESSMENT**

If a wetland use permit is denied by the (Community Name), a landowner may appear at the annual (appellate body) for the purpose of seeking a reevaluation of the affected property for assessment purposes to determine its fair market value under the use restriction.

## **SECTION 13 - EFFECTIVE DATE**

This Ordinance shall take full force and effect upon \_\_\_\_\_, 20\_\_, following final publication of said ordinance.

## **SECTION 14- CERTIFICATION**

I, (Clerk's Name), Clerk of (Community Name, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the (Community Name) Board/Council at a regular meeting on \_\_\_\_\_, 20\_\_.

Published \_\_\_\_\_, 20\_\_

## Macomb County Communities with a Wetlands Ordinance

The following communities in Macomb County are considering or have adopted a wetlands ordinance:

- 1) **Ray Township.** Contact: Clerk, (586) 749-5171.

### Additional Resources

- 1) **U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds.** [www.epa.gov/owow/wetlands](http://www.epa.gov/owow/wetlands).
- 2) **Michigan Department of Environmental Quality.** Wetlands protection information can be found at [www.michigan.gov/deq](http://www.michigan.gov/deq) and pressing the “Wetlands Protection” button.
- 3) **Clinton River Watershed Council.**
- 4) **Books:**

**Dean, Lillian F.** *Protecting Wetlands at the Local Level: Options for Southeast Michigan Communities.* Rouge River Watershed Council. June, 1991.

**Tip of the Mitt Watershed Council.** *Living With Michigan’s Wetlands: A Landowner’s Guide.* 1996

**Tip of the Mitt Watershed Council.** *Preserving Michigan’s Wetlands: Options for Local Governments.* 1997.