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APPENDIX E: SAMPLE DEQ WETLAND ORDINANCE

PROVIDED BY: MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY and
HURON RIVER WATERSHED INITIATIVE

DATE: MARCH 2003

To find out if a wetlands inventory has been conducted by DEQ for your county, go to www.michigan.gov/deq and click on Water, then Wetlands Protection, the Preliminary Wetland Inventories, or call DEQ for more information at 517-241-8169 in Lansing or 1-800-662-9278.

WETLANDS PROTECTION

[COMMUNITY], MICHIGAN

Ord. No __ effective __

An Ordinance for the control and preservation of wetlands within the [community] and to protect the wetlands of the [community] from sedimentation, destruction, and misuse; to prescribe the powers, duties and functions of the [community] enforcing agency; 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.

THE [COMMUNITY] HEREBY ORDAINS:

SECTION 1. GENERAL

Section 1.1 - Findings

The Board of the [community] finds that wetlands are indispensable and fragile resources that provide many public benefits, including maintenance of water 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] wetlands is necessary to maintain hydrological, economic, recreational, and aesthetic natural resource values for existing and future residents of the [community], and therefore the [community] Board declares a policy of no net loss of wetlands. Furthermore, the [community] Board declares a long term goal of net gain of wetlands to be accomplished through review of degraded or destroyed wetlands in the [community], and through cooperative work with landowners, using incentives and voluntary agreements to restore wetlands.

To achieve these goals, and with authority from Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (hereinafter the Wetlands Protection Act), the [community] Board finds that local regulation of wetlands is necessary in [community]. Pursuant to Article 4, Section 52 of the Constitution of the State of Michigan, the conservation and development of

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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] Board therefore finds that this Ordinance is essential to the long term health, safety, and general welfare of the people of the [community], and to the furtherance of the policies set forth in Part 17, Michigan Environmental Protection Act, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.1701 et. seq. (hereinafter the Michigan Environmental Protection Act) and the Wetlands Protection Act.

Section 1.2 - Purpose

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]'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 Wetlands Protection Act, enforced by the Michigan Department of Environmental Quality which is hereinafter referred to as 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.
- E.** A procedure for appealing decisions.
- F.** The establishment of enforcement procedures and penalties for the violation of this Ordinance.
- G.** Creation of a board to assist in the protection of wetlands and to build public support for the values of wetlands.

Section 1.3 - Construction and Application.

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

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

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- C. It is the intent of this ordinance to allow reasonable use of private property.
- D. Any ambiguities perceived in this ordinance are to be resolved by the entity administering the ordinance, in accordance with Section 7.

Section 1.4 - Applicability to Private and Public Agency Activities and Operations.

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

SECTION 2 - DEFINITIONS

Section 2.1 - Definition of Terms

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

CONTIGUOUS means any of the following:

1. A permanent surface water connection or any other direct physical contact with an inland lake or pond, a river or stream, one of the Great Lakes, or Lakes St. Clair.
2. A seasonal or intermittent direct surface water connection to an inland lake or pond, a river or stream, one of the Great Lakes, or Lakes St. Clair.
3. A wetland is 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 or is within 1,000 feet of the ordinary high watermark of one of the Great Lakes or Lake St. Clair, unless it is determined by the MDEQ, pursuant to R. 281.924 of the administrative rules promulgated under the Wetlands Protection Act (hereinafter Wetlands Administrative Rules), that there is no surface water or groundwater connection to these waters.
4. Two (2) or more areas of wetlands 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.

ELECTRIC DISTRIBUTION LINE: means underground lines below 30 kilovolts and lines supported by wood poles.

ELECTRIC TRANSMISSION LINE: means those conductors and their necessary supporting or containing structures located outside of buildings that are used for transmitting a supply of electric energy, except those lines defined as a electric distribution line.

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FILL MATERIAL means soil, rocks, sand, waste of any kind, or any other material that displaces soil or water or reduces water retention potential.

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.

MINOR DRAINAGE: includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.

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

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

PIPELINES HAVING A DIAMETER OF 6 INCHES OR LESS: means a pipe which is equal to or less than what is commonly referred to as a 6-inch pipe and which has an actual measured outside diameter of less than 6.75 inches.

[COMMUNITY] BOARD shall mean the legislative body of [community].

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 and which is any of the following:

1. All wetlands subject to regulation by the MDEQ including wetlands:
 - (a) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or a stream.
 - (b) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size; except this subparagraph shall not be of effect, except for the purpose of inventorying, in counties of less than 100,000 population until the MDEQ certifies to the commission it has substantially completed its inventory of wetlands in that county.
 - (c) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the MDEQ determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner; except this subparagraph may be utilized regardless of wetland size in a county in

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which subparagraph (ii) is of no effect; except for the purpose of inventorying, at the time.

2. Other wetlands subject to regulation by the [community] including:

- (a) Wetlands two (2) acres or greater in size, whether partially or entirely contained within the project site, which are not contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or a stream.
- (b) Wetlands smaller than two (2) acres in size which are not contiguous to the Great Lakes or Lake St. Clair, an lake or pond, or a river or a stream, and are determined to be essential to the preservation of the natural resources of the [community] as provided for in Section 7.6 of this Ordinance.

WETLAND CONSULTANT shall mean a person or persons knowledgeable in wetland protection and delineation who is identified by the [community] to make wetlands determinations, to delineate wetlands, and to advise the [community] on wetland resource policy, education, and restoration. Any firm or individual appointed on a contractual basis.

WETLAND VEGETATION means 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.

WETLANDS ADMINISTRATOR shall mean a person(s) knowledgeable in wetlands protection, appointed by the [community] legislative body to administer this Ordinance and to carry out certain duties hereunder. Any firm or individual appointed on a contract basis.

WETLANDS BOARD shall mean the body of the [community] which makes decisions on wetlands use permit appeals and advises the [community] on wetlands resource policy, education and restoration.

WETLANDS MAP refers to the [community] wetlands inventory map, based on the National Wetlands Inventory Map of the U.S. Fish and Wildlife Service; the Michigan Resource Information System Mapping (MIRIS) of the State of Michigan ; the soils maps of the Soil Conservation Service, aerial photography, and onsite inspections. *[community would explain here the sources of its map.]*

WETLANDS USE PERMIT shall mean the [community] approval required for activities in wetlands described in Section 7 of this Ordinance.

SECTION 3 - RELATIONSHIP TO STATE AND FEDERAL PERMIT REQUIREMENTS

Whenever persons requesting a wetlands use permit are also subject to state and/or federal permit requirements, the following shall apply:

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- A.** The [community] 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] Wetlands Map

The [community] Wetlands Map is a guide to the location of wetlands in [community]. The Wetlands Map shall be used in the administration of this Ordinance.

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

The Wetlands Map shall serve as a general guide for the location of wetlands. The Wetlands Map does not create any legally enforceable presumptions regarding whether property that is or is not included on the Wetlands Map is or is not a wetland.

The Wetlands Verification Process, as set forth herein, shall be used to verify wetlands on properties where wetlands are shown on the Wetlands Map or on properties where wetlands exist as defined in Section 2.1 herein. The Wetlands Delineation Process, as set forth herein, shall be used to establish the actual boundaries of wetlands in the [community]. The identification of the precise boundaries of wetlands on a project site shall be the responsibility of the applicant subject to review and approval by the [community] Wetland Consultant. Verification and delineation under this ordinance does not constitute a federal or state wetland jurisdiction or boundary decision.

A. Wetlands Verification Process

- 1.** The [community] or property owners of wetlands may initiate a verification of the areas shown on the Wetlands Map as wetlands or on properties where wetlands exist as defined in Section 2.1 herein. The verification shall be limited to a finding of wetlands or no wetlands by the Wetlands Administrator. The finding shall be based on, but not limited to, aerial photography, topographical maps, site plans, and field verification.
- 2.** In the event that there is a finding of no wetlands on the property, then no further determination would be required.

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- 3.** The applicant shall pay fees for the Wetlands Verification Process as established in Section 9.1.

B. Wetlands Delineation Process

Prior to the issuance of any permit or land development approval for a property which is shown to include wetlands on the Wetlands Map, the applicant may be required to provide a wetlands delineation to the [community]. The Wetlands Administrator, in consultation with the Wetland Consultant, shall determine whether a delineation is required, based on the proximity and relationship of the project to the wetlands. A delineation shall be required when a wetlands use permit is requested.

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

C. Map Amendment

- 1.** The Planning Commission shall make recommendations to the [community] Board for revisions to the Wetlands Map whenever new and substantial data for wetlands become available.
- 2.** The [community] shall insure that each record owner of property on the property tax roll shall be notified of any amendment to the Wetlands Map. The notice shall include the following information:
 - (a)** the [community] Wetlands Map has been amended;
 - (b)** the location to review the map;
 - (c)** the owner's property may be designated as wetlands on the map;
 - (d)** the [community] has an Ordinance regulating wetlands;

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- (e) the map does not necessarily include all of the wetlands within the [community] that may be subject to the Wetlands Ordinance.

Section 4.2. Wetlands Board

There is hereby created a Wetlands Board:

- A. The Wetlands Board shall consist of five (5) residents of the [community] appointed by the [community] Board upon recommendation of the Planning Commission; four of whom shall have knowledge and experience in the areas of botany, soils, geology, hydrology, or natural resources. One member of the Wetlands Board shall be a member of the [community] Board. The initial terms of appointment shall be as follows: 2 individuals for 3 years, 2 individuals for 2 years, and 1 individual for 1 year. Thereafter, appointments shall be for a term of three years. The term of the [community] Board representative to the Wetlands Board shall be concurrent with the term of office.
- B. The Wetlands Board shall establish rules of procedure.
- C. The Wetlands Board is authorized to undertake activities to protect wetlands including the following:
 - 1. Conduct public hearings and review appeals of wetlands use permit, mitigation, and/or restoration decisions made by the Wetlands Administrator, the Planning Commission or the [community] Board.
 - 2. Serve in an advisory role in setting policy guidelines on wetlands issues in the [community].
 - 3. Identify conflicts between wetlands protection and present [community] ordinances, [community] operating procedures, and [community] activities.
 - 4. Provide recommendations and assist in map administration.
 - 5. Coordinate with the Michigan Department of Environmental Quality in keeping up-to-date on issues affecting wetlands protection.
 - 6. Recommend a program to protect and acquire important wetlands through tax incentives, donation, development rights, easements, land exchange, purchase, and other means.
 - 7. Develop education programs for the public and for [community] schools. The program should promote the values of wetlands and awareness of the hazards and threats to wetlands. The program should be particularly targeted to landowners with wetlands and emphasize how best to protect wetlands values on their property.

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- 8. Develop an adopt-a-wetlands program for interested citizens to participate more directly in preservation of specific wetlands.
- 9. Review degraded or destroyed wetlands in the [community] for possibility of rehabilitation or restoration.
- D. Members of the Wetlands Board shall receive a stipend as determined from time to time by resolution of the [community] Board.
- E. The [community] Board has sole and exclusive discretion for removal of members of the Wetlands Board with or without a hearing.

SECTION 5 - ACTIVITIES IN WETLAND

Section 5.1 - Activities Prohibited Without First Obtaining A Wetlands Use Permit

Except as otherwise provided by Section 5.2, it shall be unlawful for any person to do any of the following in a wetland unless and until a wetlands use permit is obtained from the [community] pursuant to this Ordinance.

- A. Deposit or permit the placing of fill material in a wetland.
- B. Dredge, remove or permit the removal of soil or minerals from a wetland.
- C. Construct, operate or maintain any use or development in a wetland.
- D. Drain surface water from a wetland.

Section 5.2 - Activities Not Requiring A Permit

Notwithstanding the prohibitions of Section 5.1, the following uses are allowed in a wetland without a wetlands 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. Wetlands altered under this subsection shall not be used for a purpose other than a purpose described in this subsection without a permit from [community].

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- F.** Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to the Wetlands Protection Act or former Act No. 203 of the Public Acts 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. 40 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 the Wetlands Protection Act 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 the Wetlands Protection Act, wetland improved under this subdivision after October 1, 1980 shall not be used for nonfarming purposes without a permit from [community]. 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 MDEQ 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 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

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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 constructed pursuant to the Wetlands Protection Act former Act No. 203 of the Public Acts of 1979 .
- O.** Construction of iron and copper mining tailings basins and water storage areas.
- P.** An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under this ordinance.
- Q.** A wetland that is incidentally created as a result of one or more of the following activities is not subject to regulation under this ordinance:
 - 1.** Excavation for mineral or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on or adjacent to a water body of 1 acre or more in size.
 - 2.** Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.
 - 3.** A diked area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the diked area was not a wetland before diking.

SECTION 6 - APPLICATION

Application for approval, appeal, and issuance of wetlands use permits shall be concurrent with the application for approval, appeal, and issuance of other necessary [community] approvals. The applicant for a wetlands use permit shall submit four copies of the following to the [community]:

- A.** An application completed in full, on a form supplied by the Michigan Department of Environmental Quality, together with any supplemental information necessary relative to isolated wetlands under 2 acres.
- B.** A wetlands 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 [county] County Soil Survey, and plan views of the wetland(s) delineated. Plan views shall be represented in a manner that allows comparison to the Wetlands Map.
- C.** Soil drainage and stormwater management plans.

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- D.** A mitigation plan, if the proposed activity will result in the loss of wetland resources. In order to adequately review a proposed mitigation plan, the following information shall be provided to the [community]:
1. A brief overview of the plan including the short-range and long-range objectives for vegetation, hydrology, grading, and monitoring.
 2. A schedule of all mitigation activities, including coordination with other local and state agencies, if applicable.
 3. A planting plan and plant list for the area(s) to be established. The use of native plants characteristic of local conditions is encouraged. Species should be selected based on the need for wildlife, restoration, landscaping, and recovery. The [community] Building Department shall, in consultation with knowledgeable persons, maintain and update a list of botanical species that are considered invasive. Mitigation activities shall be performed without the use of invasive species.
 4. A grading and soil erosion control plan including existing and proposed conditions.
 5. A description of all soils and materials to be used including their approximate volumes and origin.
 6. Hydro-geological information sufficient to determine the site's suitability for the mitigation.
 7. Construction detail drawings for planting, soil erosion control, stabilization, water conveyance, and all other items necessary to facilitate the review.
- E.** A cover letter signed by the applicant including the following information:
1. Name, address, and phone number of applicant.
 2. Name of project and brief description (one sentence).
 3. Date upon which the activity is proposed to commence.
 4. Explanation of why the project meets the wetlands use permit standards and criteria contained in this Ordinance.
 5. 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 that have been issued.
 6. Identification of any present litigation involving the property.
 7. Size of total wetland, size of affected wetland and cubic yards of fill.

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The following process shall apply to wetlands use permit decisions by the [community] Planning Commission or by the [community] Board:

- A. Wetlands 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. The Wetlands Administrator shall transmit application materials and the report and recommendation prepared by the Wetland Consultant to the Planning Commission or [community] Board as applicable.
- B. After review and study of the application materials, the Wetland Consultant's report and recommendation, the [community] Planning Commission or [community] Board as applicable may hold one public hearing after publication in a newspaper of general circulation in the [community] not less than ten (10) days nor more than sixty (60) 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 wetlands use permit may be examined. The wetlands use permit hearing may be held in conjunction with a review of the related land use requests.
- 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 600 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 at least eight (8) days prior to the hearing. The posting sign shall be no less than ten (10) square feet in size, shall be clearly visible from the abutting street(s), and shall state that an application has been filed for a wetlands use permit.
- D. After completing the review, the Planning Commission or [community] Board, as applicable, shall approve, approve with modifications, or deny the application within ninety (90) days after receipt of a complete application, in accordance with this Ordinance. If the [community] Planning Commission or the [community] Board, as applicable, does not make a final determination on the application within ninety (90) days after receipt of a complete application, then the permit application shall be considered approved, except where the 90-day limit has been extended pursuant to Section 6.F.2.
- E. Written notice shall be sent to the applicant and the MDEQ upon approval, approval with modifications, or denial of a wetlands use permit by the [community]. The denial of a permit shall be accompanied by a written statement of all reason for denial.

Section 7.4 - Appeals Of Decisions Of The Wetlands Administrator, Planning Commission, or Board

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The following process shall apply to appeals of decisions made by the Wetlands Administrator, the Planning Commission, or the [community] Board as applicable:

- A.** Any person who is aggrieved by the approval, approval with modifications, or denial of a wetlands use permit by the Wetlands Administrator, the Planning Commission, or by the [community] Board, may appeal the decision to the Wetlands Board. A written letter containing the specific reasons for appeal shall be filed with the [community] Clerk within ten (10) calendar days after the date of the decision to be appealed. Timely filing of an appeal shall have the effect of suspending the effect of the permit pending the outcome of the appeal. In the event that the person(s) filing the appeal do not own property within 600 feet of the wetland affected, the Planning Commission shall determine whether the person(s) are aggrieved.
- B.** Standard of Review. Based upon the record, in considering the appeal, the Wetlands Board shall affirm the original decision unless it finds an abuse of discretion by the entity deciding the wetlands use permit.
- C.** After a hearing, the Wetlands Board shall determine that the decision of the Wetlands Administrator, Planning Commission, or [community] Board be affirmed, affirmed with modification, or reversed. The Wetlands Board's decision shall be based on written findings.

Section 7.5 - Wetlands Use Permit Conditions

- A.** The Wetlands Administrator, the Planning Commission, or the [community] Board, 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 nature resources and processes within the wetlands, 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 Wetlands Administrator, the Planning Commission, or the [community] Board, as applicable, shall fix a reasonable time to complete the proposed activities.
- C.** If the Wetlands Administrator, the Planning Commission, or the [community] Board, as applicable determines that there is a potential for adverse impacts to wetlands not authorized by the wetlands use permit or off-site property, they will require the applicant to file with the [community] a cash bond or irrevocable bank letter of credit in an amount, estimated by the Wetland Consultant to be required to address those impacts.
- D.** A wetlands use permit shall be conditioned upon compliance with all other requirements of ordinance and law, including site plan, plat or land use approval as applicable, and issuance of a permit by the MDEQ, if required under the Wetlands Protection Act. In cases where a MDEQ permit allows activities not permitted by the wetlands use permit approval granted under this Section, the restrictions of the approval granted under this Section shall govern.

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- E.** Wetlands use permits for seasonal operations need not be renewed annually unless otherwise stated in the permit.
- F.** Any change that materially increases the size or scope of the operation and that affects the criteria considered in approving the permit as determined by the Wetlands Administrator, the Planning Commission, or the [community] Board, as applicable, shall require the filing of a new wetlands use permit application.
- G.** 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 wetlands use permit automatically voided.
- H.** Any permit granted under this Ordinance may be revoked or suspended by the Planning Commission or [community] Board ,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.
- I.** An applicant who has received a wetlands use permit under this Ordinance shall comply with the following in connection with any construction or other activity on the property for which the wetlands 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 provide for periodic inspections throughout the duration of the project.
 - 2.** Maintain clear delineation of the wetlands (so marked by the Wetlands Administrator or 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 wetlands use permit containing the conditions of issuance, in a conspicuous manner such that the wording of said permit is available for public inspection.
- J.** The wetlands use permit shall remain effective for a time period coincidental with any other land use permit reviewed and approved concurrent with the wetlands 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.

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- K.** When there is no other activity or permit involved, the wetlands use permit shall remain effective for one (1) year. A maximum of a one (1) year extension may be approved.

Section 7.6 - Regulation Criteria For Non-Contiguous Wetlands Less Than (2) Two Acres In Area.

- A.** A wetlands 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] Board determines that the wetland is essential to the preservation of the natural resources of the [community]. 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.
- 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], shall be analyzed for the purpose of determining whether such areas are essential to the preservation of the natural resources of the [community]. If there is to be a denial of a wetlands 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], 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]. In order to make such a determination, there shall be a finding that one (1) or more of the following exist 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 Part 365, Endangered Species Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.
 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, or 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.

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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], 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] or its Wetland Consultant proceed with the analysis and determination, the property owner may acknowledge that one (1) or more of the criteria in Subsections (B-1) 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] or its Wetland Consultant proceed with the analysis of whether each of the criterion 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] determines that the wetland is not essential to the preservation of the natural resources of the [community], the [community]'s decision shall be so noted on the Wetland Map, at the time it is amended. The requested activity shall be approved subject to all other applicable laws and regulations.
- E. If the [community] determines that the wetland is essential to the preservation of the natural resources of the [community], and the [community] has found that one or more of the criteria set forth exist at the site, the [community] 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], the wetland use permit application shall be reviewed according to the standards in Section 7.7.

Section 7.7 - Review Standards for Wetlands Use Permits

The criteria to evaluate wetlands 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 [community] determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

In determining whether the activity is in the public interest, the benefit that reasonably may be expected to accrue from the proposal shall be balanced against the reasonably

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

Section 8.2 - Criteria For Approving Proposals For Wetland Mitigation.

If the Wetlands Administrator, Planning Commission or the [community] Board, as applicable, determines that it is practical to replace the wetlands that will be impacted, mitigation plans shall be approved only if all of the following criteria are met:

- A. That the mitigation plan provides for the substantial replacement of the predominant functional values of the wetland to be lost. Mitigated wetlands shall be replaced at a minimum of 1.5 new acres of wetland to 1 lost acre. A larger replacement ratio may be required if the lost wetlands are deemed to have exceptional value.
- B. That the mitigation plan provides for no net loss of wetland resources unless the Wetlands Administrator, the Planning Commission or the [community] Board, as applicable determines that the net loss will result in a minimum negative impact upon wetlands, 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. The plan shall include the following information:
 - 1. Schedule and list of activities to be contracted and conducted related to the site's hydrology, including sub-surface and surface water for a period of at least five years.

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A report and recommendation on the hydrologic conditions of the site should be submitted to the [community] annually.

2. Schedule and list of activities to be contracted and conducted related to the site's plant establishment and control of invasive exotic species for a period of at least five years. A report and recommendation on the plant establishment of the site should be submitted to the [community] annually.
3. To assure that the objectives established in the mitigation plan are successful, the monitoring plan should indicate the mechanisms necessary to execute the recommendations from the annual reports and provide for additional monitoring after the five-year period.

Section 8.3 - Other Mitigation Requirements

- A. Wetland mitigation and monitoring plans shall become conditions to the wetlands 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 Wetlands Administrator, Planning Commission or [community] Board, 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 Wetlands Administrator, Planning Commission or [community] Board, as applicable, and the applicant.
- D. Wetland mitigation plans that create less than two (2) acre wetlands shall be designed and constructed to 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 wetlands 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]. In addition an applicant shall pay an escrow fee in an amount determined from time to time by resolution of the [community] Board for the estimated cost of outside consultant(s) who may be retained by the [community] 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 provide to the [community] and additional escrow amount equivalent to no less than one-half (1/2) the original escrow amount. All review of the wetlands use permit application shall cease until such additional escrow amount is deposited with the [community], and the number of days during which all review of the wetlands use permit application is ceased shall be deducted from the time limits within which the [community] would otherwise act upon the application. In the event the

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cost of the services of the consultant(s) is less than the subsequent escrow fee(s), the applicant shall be refunded the balance. A denial of an application for a wetlands use permit shall not affect the applicant's obligation to pay the fees provided for in this Section.

Section 9.2 - Penalties And Enforcement

A. Penalties

1. If, on the basis of information available to the [community], the [community] finds that a person is in violation of this Ordinance or of a condition set forth in a permit, the [community] shall issue an order requiring the person to comply with the prohibitions or conditions, or the [community] shall take such enforcement action as it deems appropriate.
 - (a) If a person acts in violation of this ordinance [community] may issue a stop work order on construction or shall refuse a certificate of occupancy or other construction permits related to the project whenever there is a failure to comply with the provisions of this Ordinance.
 - (b) An order issued under subsection (1) shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the [community] determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with acceptable requirements.
2. A person who violates any provision of this Ordinance shall be responsible for a civil infraction for which the court may impose a civil fine of not less than \$100.00 nor no more than \$10,000 per day of violation plus all costs, direct or indirect, which the [community] has incurred in connection with the violation.
3. In addition to the penalties provided in subsection (3), the court may order a person who violates this Ordinance to restore as nearly as possible the wetland affected by the violation to its original condition immediately before the violation, and may issue any other orders permitted by law. The restoration may include the removal of fill material deposited in a wetland or the replacement of soil, sand, minerals, or plants.

B. Injunction

Any activity conducted in violation of this section is declared to be a nuisance *per se*, and the [community] 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 wetland as nearly as possible to its condition before the violation.

Section 9.3 Reporting and Record Keeping

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- A.** Any citizen observing what he or she believes or suspects may be an instance of noncompliance with the provisions of this Ordinance may report the observation to any official or employee of the [community].
- B.** Any report received pursuant to Subsection A of this Section shall be forwarded immediately to the [community] Ordinance Officer and the [community] Clerk.
- C.** [community] Ordinance Officer Duties
 - 1.** The [community] Ordinance Officer shall inspect the site of the suspected noncompliance as soon as is reasonably practical, but in no case later than the close of business five (5) business days after receiving the report.
 - 2.** The [community] Ordinance Officer shall complete an entry for the report into the Compliance Docket.
 - 3.** The [community] Ordinance Officer may enlist the expertise of the Wetlands Administrator if necessary to determine whether a violation of this Ordinance has occurred.
 - 4.** The [community] Ordinance Officer shall take any actions within his or her authority necessary to ensure this Ordinance is enforced.

D. Compliance Docket

The [community] Ordinance Officer shall maintain a Compliance Docket at the [community] Office. The Docket shall be used to identify all properties or uses of properties which have been evaluated for compliance with this Ordinance. The Docket shall be available to the public upon demand during normal business hours. The Docket shall contain the following information:

- 1.** Date: the date the Docket entry was initiated.
- 2.** Address/Location of Property: the street address, if available, or descriptive text or vicinity map sufficient to enable citizens to identify the property in question
- 3.** Permit or Docket Number: If it has been determined that the use being made of the property does not require a wetlands use permit from [community], a Docket number shall be assigned. Otherwise, the Permit number shall be maintained.
- 4.** Compliance Status: A record shall be made of whether the use being made of the property is in compliance with the provisions of this Ordinance, the date the determination was made, and the name(s) of the [community] official and/or consultant who made the determination.
- 5.** Sidwell property number.

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E. Violation Docket

The [community] Ordinance Officer shall maintain a Violation Docket at the [community] Office. The Docket shall be used to track the status of violations of this Ordinance. The Violation Docket shall contain the following information, as it becomes available:

1. Date: the date the Docket entry was initiated
2. The permit or Docket number: This number shall be the same number as is used to identify the property in the Compliance Docket.
3. Address/Location of property: The street address, if available, or descriptive text or vicinity map sufficient to enable citizens to identify the property in question.
4. Nature of violation.
5. Date violation confirmed.
6. Name of person confirming the violation.
7. Enforcement action taken.
8. Date of enforcement action taken.
9. Outcome of enforcement action: If outcomes are appealed by the property owner or any other party, each appeal shall be noted, and its outcome shall also be noted under this heading.

SECTION 10 - STATE NOTIFICATION

Section 10.1 - Notice to the Michigan Department of Environmental Quality

The [community] shall notify the MDEQ of the adoption of this Ordinance. The [community] shall cooperate with the MDEQ in the enforcement of the Wetlands 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 and in addition to relevant state regulations and statutes. If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent

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jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such finding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force. Rights and duties that have matured, penalties which have been incurred, proceedings which have begun 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 wetlands use permit is denied by the [community], a landowner may appear at the annual Board of Review for the purpose of seeking a re-valuation 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 [date], following final publication of said Ordinance.

SECTION 14 - CERTIFICATION

I, _____, Clerk of the [community], do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted at first reading by the [community] Board at a regular meeting on _____ and adopted at second and final reading by said Board at a regular meeting of said Board on _____.