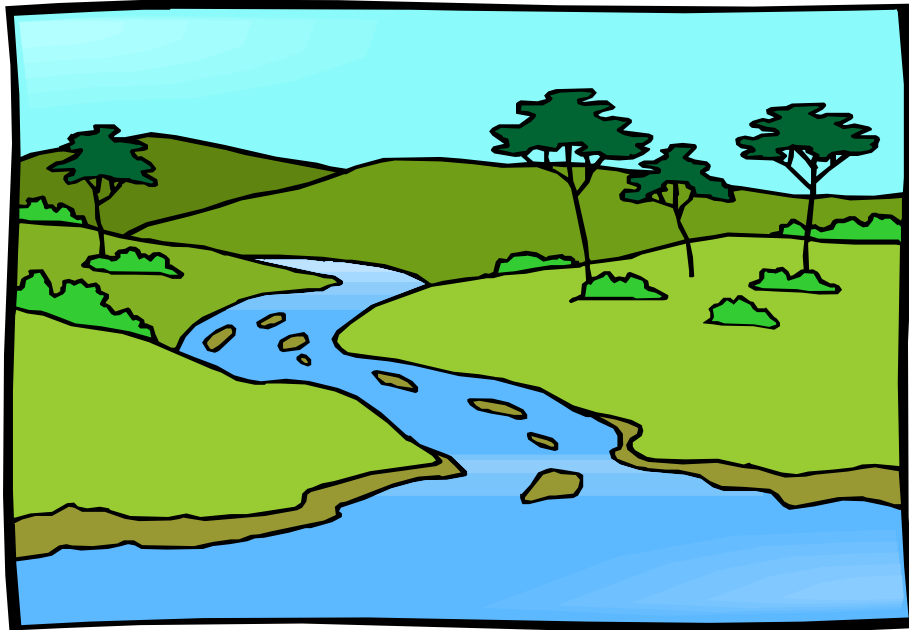


TOWNSHIP OF CANNON  
COUNTY OF KENT, MICHIGAN

**CANNON TOWNSHIP**  
**WETLANDS PROTECTION ORDINANCE**



Adopted 1-24-2005

# Township Wetlands Protection Ordinance

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TOWNSHIP OF CANNON  
COUNTY OF KENT, MICHIGAN

At a regular meeting of the Township Board of the Township of Cannon, Kent County, Michigan, held in the Cannon Township Center, 6878 Belding Road, in said Township on the 24th day of January, 2005 at 7:00 p.m.

PRESENT: Members: Barker, Bloom, Davies, LaPeer, MacGregor, and Shupe

ABSENT: Members: Jones

The following ordinance was offered by Shupe and supported by Bloom:

**ORDINANCE NO. 2005- 1**

**WETLANDS PROTECTION ORDINANCE**

**AN ORDINANCE TO REGULATE AND PROTECT WETLANDS IN THE TOWNSHIP OF CANNON, AND TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF.**

THE TOWNSHIP OF CANNON ORDAINS:

SECTION 1. SHORT TITLE. This ordinance shall be known and may be cited as the “Cannon Township Wetlands Protection Ordinance.”

SECTION 2. DEFINITIONS. The following words and phrases in this ordinance shall have the following respective meanings.

- (a) **Contiguous** means any of the following:
  - (1) A permanent surface water connection or other direct physical contact with an inland lake, a stream, a pond or a river.
  - (2) A seasonal or intermittent direct surface water connection to an inland lake or stream, a pond or a river.
  - (3) A wetland that is partially or entirely located within 500 feet of the ordinary high watermark of an inland lake or stream, a pond, or a river.
- (b) **Feasible and Prudent Alternative.** An alternative is feasible and prudent if both of the following provisions apply:
  - (1) The alternative is available and capable of being accomplished after taking into consideration cost, existing technology, and logistics; and

- (2) The alternative would have less adverse impact on wetlands, watercourses or waterbodies and the aquatic life associated therewith. A feasible and prudent alternative may include any or all of the following:
- (i) Use of a location other than the proposed location;
  - (ii) A different configuration;
  - (iii) A different size; or
  - (iv) A different method that will accomplish the proposed purpose or goal.
- (c) **Fill Material** means soil, rocks, sand, pilings, waste of any kind, or any other material which displaces soil or water, reduces water retention potential or reduces ability for wetland vegetation growth.
- (d) **Inland Lake or Stream** means a natural or artificial lake, pond, or impoundment; a river, stream, or creek which may or may not be serving as a drain; or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water. An inland lake or stream does not include a lake or pond that has a surface area of less than five acres.

Part 303 of the NREPA defines “Inland lake or pond, a river or stream” as meaning any of the following:

- (1) A river or stream which has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water.
  - (2) A natural or permanent artificial inland lake or impoundment that has definite banks, a bed, visible evidence of a continued occurrence of water, and a surface area of water that is more than 5 acres. This does not include lakes constructed by excavating or diking dry land and maintained for the sole purpose of cooling or storing water and does not include lagoons used for treating polluted water.
  - (3) A natural or permanent artificial pond that has permanent open water with a surface area that is more than 1 acre, but less than 5 acres. This does not include ponds constructed by excavating or diking dry land and maintained for the sole purpose of cooling or storing water and does not include lagoons used for treating polluted water.
- (e) **MDEQ** means the State of Michigan Department of Environmental Quality.
- (f) **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.

- (g) **Non-Contiguous Wetlands** are isolated wetlands surrounded by upland and that are at least 500 feet from the ordinary high watermark of a defined watercourse or waterbody,. These wetlands do not have a direct connection to an inland lake or stream.
- (h) **Non-Regulated Wetlands** are wetlands that the Township has determined not to regulate, based on their size, vegetative composition, physical features, and relatively minimal resource value, as compared to wetlands that the Township has determined to regulate.
- (i) **NREPA** means the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.
- (j) **Ordinary High Watermark** means the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is distinctly different from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake that has a level established by law, the ordinary high watermark means the high established level.
- (k) **Person** means an individual, sole proprietorship, partnership, limited liability company, corporation, association, or municipality; the State of Michigan; an instrumentality or agency of the State of Michigan; the federal government, an instrumentality or agency of the federal government; or other legal entity.
- (l) **Structure** means any assembly of materials above or below the surface of the land or water, including but not limited to buildings, bulkheads, piers, docks, landings, dams, waterway obstructions, paving and roadways, poles, fences, towers, cables, pipelines, drainage tiles, and other underground installations.
- (m) **Township Wetland Officer** means the Township’s initial enforcement agent for this Ordinance.
- (n) **Waterbody** means any body of water that has definite banks, a bed, and visible evidence of a continued occurrence of water. Waterbodies include both large and small lakes and ponds.
- (o) **Watercourse** means any body of water that has definite banks, a bed, and visible evidence of a continued flow. The flow may be visible throughout the year or intermittent and only visible during certain seasons of the year.
- (p) **Wetland** means (1) land that is five acres or less in area and that is not subject to regulation by the Michigan Department of Environmental Quality (MDEQ), or successor agency, under Part 303 of the Michigan Natural Resources and Environmental Protection Act (NREPA) of 1994, as amended; and (2) 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. Wetland is sometimes commonly referred to as a bog, swamp or marsh.

A wetland need not have standing water for support of vegetation, inasmuch as saturation of the soils below the surface of the ground may be sufficient for the support of wetland vegetation.

- (q) **Wetland Assessment** means an evaluation of wetland functions, values, benefits, and/or physical features. A wetland assessment may also include those services and evaluations provided by a wetland identification.
- (r) **Wetland Mitigation** (or mitigation) is the creation of wetland from upland to compensate for permitted impacts to wetland.

### SECTION 3. FINDINGS OF FACT.

- (a) The Township Board determines that wetlands are valuable resources that provide a multitude of benefits and values, including the following:
  - (1) Flood and storm control by the hydrologic absorption and storage capacity of the wetland;
  - (2) Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife and waterfowl;
  - (3) Protection of subsurface water resources and providing watersheds for recharging ground water supplies;
  - (4) Erosion control by serving as a sedimentation area and filtering basin, for the absorbing of silt and organic matter;
  - (5) Providing areas for passive and non-passive forms of recreation;
  - (6) Maintaining the overall quality of life for persons residing within the Township and also those who visit the Township to engage in recreation and for other purposes.
- (b) The Township Board further determines that the conservation and development of natural resources is a matter of paramount public concern in the interest of the health, safety, and general welfare of the Township.

### SECTION 4. PURPOSES. The purposes of this Ordinance include, but are not limited to, the following.

- (a) To provide for the protection and preservation of wetlands that are not regulated under state law.
- (b) To provide greater protection and preservation of all wetlands within the Township to better maintain their hydrological, biological, recreational, and aesthetic natural resource values.

- (c) To protect the many functions and benefits that wetlands provide, including the following:
  - (1) Flood and storm water control; recharging of ground water supplies;
  - (2) Filtering of sediment;
  - (3) Reducing the forces of erosion, specifically along watercourses and water bodies;
  - (4) Wildlife and fish habitat;
  - (5) Protection of subsurface water resources and watersheds;
  - (6) Treatment of pollutants by serving as biological and chemical oxidation basins;
  - (7) Places for passive and non-passive recreational activities.

SECTION 5. STATUTORY BASIS. This ordinance is adopted pursuant to Part 303, Wetland Protection, of the NREPA, P.A. 451 of 1994, as amended; and Part 17, Michigan Environmental Protection Act (“MEPA”), of the NREPA.

SECTION 6. ACTIVITIES REQUIRING A WETLAND USE PERMIT. It shall be unlawful for any person to conduct any activity listed below, within a wetland, without first obtaining a wetland use permit in accordance with the requirements of this ordinance.

- (a) Depositing or permitting the placement of fill material;
- (b) Grading of the surface profile of the land;
- (c) Dredging, removing, or permitting the removal of soil, vegetation or minerals;
- (d) Draining, or causing to be drained through artificial means, any water into or from a wetland;
- (e) Constructing, operating, or maintaining any use, activity or development that occupies space within a wetland and/or diminishes the ability of the wetland to function, but is not exempt under Section 7; any use, activity or development in a wetland that requires a building permit, sanitary sewage disposal permit or any other required state, county or township permit.

SECTION 7. ACTIVITIES NOT REQUIRING A WETLAND USE PERMIT The following uses and activities are permitted in a wetland without a wetland use permit, subject to laws of the State and applicable Township ordinances:

- (a) Fishing, trapping, or hunting.
- (b) Swimming or boating.
- (c) Hiking.

- (d) Grazing of animals.
- (e) Farming, horticulture, silviculture and lumbering, 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 subsection (e) shall not be used for a purpose other than a purpose described in this subsection without a permit obtained under the terms of this ordinance.
- (f) Maintenance or operation of a serviceable structure in existence or under construction on October 1, 1980 pursuant to Part 303 of NREPA.
- (g) The construction or maintenance of farm or stock ponds.
- (h) Maintenance, operation, or improvement, that includes straightening, widening or deepening, of the following, where necessary for the commercial 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, which has been constructed or improved for drainage purposes;
  - (3) A drain constructed pursuant to other provisions of Part 303 of the NREPA.
- (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 adverse effects 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 if the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in Part 303 of the NREPA, wetland areas improved under this subsection after October 1, 1980, shall not be used for non-farming purposes without a permit from the MDEQ. This subsection shall not apply to a wetland that is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a wetland which the MDEQ has determined to be necessary to be preserved for the public interest, in which case a permit shall be 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 width of the right-of-way; or deviating from the existing location of the street, highway, or road. Any new construction of public streets, highways or roads shall require the necessary permits, which may include a wetland use permit.
- (l) Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of six 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 constructed pursuant to Part 303 of the NREPA or former Act No. 203 of the Public Acts of 1979.
- (o) 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, bona fide farming operation.
- (p) Incidental creation of a wetland as a result of one or more of the following activities:
  - (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 one 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 8. ADDITIONAL ACTIVITIES NOT REQUIRING A WETLAND USE PERMIT.**  
The following uses are permitted in a wetland without a wetland use permit subject to laws of the State and applicable Township ordinances:

- (a) Any structure lawfully existing prior to the effective date of this Ordinance that is damaged by fire, explosion, act of God, or other causes beyond the control of the owner. Such a structure may be restored, rebuilt, or repaired, but only to the size, extent and area that existed prior to such damage. Reconstruction shall commence within two years from the date the structure was damaged and all other necessary Township, State and federal permits shall be obtained and complied with.
- (b) Any use, activity or development approved by the Township after January 1, 2003 and prior to the effective date of this Ordinance.
- (c) The cutting of vegetation within the right-of-way of maintained public streets, highways or roads for the purpose of vehicular safety.
- (d) Dredging, placement of fill material or structures, cutting of vegetation, draining, and/or maintained use or development within a non-regulated wetland or a wetland created as

part of a stormwater detention/retention basin or landscaping project approved by the Township.

- (e) A use, activity or development in a wetland, where the wetland is less than one-quarter acre in area, unless Section 14(b) applies.

#### SECTION 9. TOWNSHIP WETLAND INVENTORY MAP.

- (a) A Township wetland inventory map shall be prepared by the Wetland Review Board, assisted by the Township wetland officer; the inventory map shall be subject to approval and adoption by the Township Board. The map shall be used in the administration of this Ordinance, but shall serve only as a guide to the general location of wetlands and potential wetlands in the Township.
- (b) The wetland inventory map shall be based on the best information then available to the Township.
- (c) The wetland inventory map shall be on file in the Township office and be available for review during normal business hours. Copies of the wetland inventory map shall be made available to the public at a reasonable cost.
- (d) The Township shall provide for public notice and public comment prior to finalizing the wetland inventory map, and shall respond in writing to written comments received regarding the contents of the inventory.
- (e) The Township shall notify each record owner of property on the property tax roll that the inventory map exists (or has been amended), where the map may be reviewed, that the owner's property may be designated as a wetland on the inventory map, and that the Township has an ordinance regulating wetlands. The notice shall also inform the property owner that the inventory map does not necessarily include all of the wetlands within the Township that may be subject to the wetlands ordinance. The notice may be given by including the required information with the annual notice of the property owner's property tax assessment.
- (f) The Township wetland inventory map shall be amended from time to time, in the following manner:
  - (1) Proposed amendments in the wetland inventory map shall be prepared by the Wetland Review Board, assisted by the Township wetland officer.
  - (2) Such proposed amendments in the wetland inventory map shall be submitted by the Wetland Review Board to the Township Board, and shall be subject to the Board's approval and adoption. Upon such approval and adoption, the amendments shall be incorporated into the wetland inventory map.

## SECTION 10. WETLAND IDENTIFICATION.

The wetland identification process, as set forth herein, may be used to determine whether a parcel of land contains or does not contain wetland. This process can be used to assist property owners in identifying whether or not they need to obtain a wetland use permit. This process can also be used to identify whether a property shown as wetland on the Township wetland inventory map contains or does not contain a wetland.

- (a) An applicant may choose to have any of the following entities perform a wetland identification:
  - (1) MDEQ staff in accordance with the MDEQ's program.
  - (2) A qualified wetland consultant experienced with the MDEQ's wetland identification procedures.
  - (3) The Township wetland officer. If this option is chosen, the applicant shall submit a request for a wetland identification, on a form supplied by the Township, and shall pay any required application fee.
- (b) The wetland identification shall include a brief report explaining the methods used in identifying whether the property contains or does not contain wetland
- (c) A wetland identification performed by the MDEQ or the applicant's wetland consultant shall be subject to the review and approval of the Township wetland officer. If not approved by the wetland officer, it shall have no further effect under the terms hereof.
- (d) If the Township wetland officer conducts the wetland identification, the Township shall provide a response to the applicant within 30 days of receipt of a complete application, except when a greater period of time is permitted under subsection (f). The letter shall identify whether or not a wetland exists on the property, and whether a permit will be required.
- (e) The findings of the wetland identification process, if different than those shown on the Township wetland inventory maps, shall be reflected in the next subsequent amendment of the Township wetland inventory map.
- (f) The Township may defer completion of a wetland identification beyond the 30-day period stated in subsection (d), if snow cover, frozen ground or other weather conditions inhibit or prevent the wetland identification. A letter shall be sent to the applicant explaining the delay. The Township shall continue processing the application, as soon as site conditions permit, as determined by the Township.

## SECTION 11. WETLAND USE PERMIT APPLICATIONS.

- (a) An application for a wetland use permit shall be submitted prior to any use, activity or development that, under the terms of Section 6, is subject to the issuance of the permit.

The application shall be similar in format to the MDEQ's joint permit application pursuant to Part 303 of the NREPA.

- (b) Property owners of properties shown on the Township wetland inventory map as containing wetland shall submit a wetland use permit application for any of the uses or activities, described in Section 6. Properties shown as not having wetland on the Township wetland inventory map may or may not contain wetland. The wetland identification process may be used at any time in order to determine whether a wetland use permit is required for a proposed use, activity or development. An application is not required for those properties that are defined as non-regulated wetland, or are included in one of the exemptions listed in Section 7 or Section 8 of this Ordinance.
- (c) An applicant for a wetland use permit shall submit the following to the Township Wetland Review Board:
  - (1) An application completed in full, on a form provided by the Township, and including the following information and any other information required by the Wetland Review Board:
    - (i) The applicant's and property owner's full legal name, mailing address, and telephone number.
    - (ii) A statement of the location of the subject property.
    - (iii) The legal description of the property on which any wetland or development is to be made, and the property tax identification numbers of such properties.
    - (iv) A statement and appropriate drawings describing the proposed wetland development (e.g., top view, side view, and cross-sectional drawings that show length, width, and height, and the square footage of area to be impacted).
    - (v) Written authorization for the Township and its agents to enter upon the property for the purpose of evaluating the application.
    - (vi) A written explanation, including alternative site plans, showing that the proposed land use or development is the least environmentally damaging alternative available.
    - (vii) Copies of all wetland assessments, applications, permits, and correspondence with the MDEQ and other relevant documents pertaining to the subject property.
  - (2) A wetland assessment of the proposed land use, activity or development. The wetland assessment shall be prepared by a qualified wetland expert and, among other matters, it shall identify the effects of the proposed uses and activities upon

the wetland functions and benefits. The wetland assessment shall include, though it is not limited to the following:

- (i) Dominant vegetation in the tree, shrub, and herb layers.
  - (ii) Presence or lack of wetland hydrology indicators.
  - (iii) Analysis of soil, including a description of the soil profile to at least 12 inches and comparison to the Kent County Soil Survey.
  - (iv) A discussion and summary of the effects of the proposed use or activity on water quality, wildlife and fish habitat, threatened and endangered species, flood storage, nutrient uptake and other functions and benefits of the wetland.
  - (v) Maps of the wetland area(s). Mapped data shall be represented in a manner that allows comparison to the Township wetland inventory map. Direction, section number, township, parcel number, and tax identification number shall also be included.
- (3) A wetland assessment shall not be required for the proposed construction and use of a single-family detached dwelling on a lot or parcel on which such use is permitted under the terms of the Township Zoning Ordinance.
- (d) Mitigation plans, if the proposed activity will result in the loss of wetland resources.
  - (e) Payment of the fee or other Township charges for conducting the review of the wetland use permit application, and otherwise responding to the application, including reimbursement of Township expenses for the same, if such reimbursement is authorized by Township Board resolution. Further, the Township Board may implement this subsection by adopting, from time to time, resolutions establishing fees, charges, reimbursement procedures, establishment of escrow accounts by applicants and other requirements pertaining to fees, charges and expenses.

## SECTION 12. REVIEW OF WETLAND USE PERMIT APPLICATIONS.

- (a) Members of the Wetland Review Board and the wetland officer and, if a permit denial is appealed, members of the Township Board, may make reasonable entry upon the subject lands and waters for the purposes of making any investigation, inventory, or study necessary to evaluate a wetland use permit application.
- (b) The Township wetland officer shall determine that all required information and the application fee have been submitted. The submission of the application shall constitute permission from the owner for the Wetland Review Board and the wetland officer, and, if a permit denial is appealed, the members of the Township Board, to conduct an on-site investigation.
- (c) Upon receipt of a complete permit application, the Wetland Review Board shall:

- (1) Transmit one copy of the application to the MDEQ.
- (2) Perform or arrange for the performance of any one or all of the following tasks:
  - (i) Review the wetland land use permit application with respect to all applicable sections of this Ordinance.
  - (ii) Take photographs of the proposed development area and wetland that may be impacted by the proposed activities.
  - (iii) Prepare a report and map of the wetland on the property. The report may include recommendations or comments, for consideration by the applicant with respect to the following:
    - (A) Suggested alternative locations, configurations, and methods that could minimize impacts on the aquatic and natural resources of the land while still accomplishing the apparent goals of the proposed use, activity or development.
    - (B) Other suggested actions that may benefit the wetland resources.
- (3) Approve, approve with conditions, or deny a wetland use permit application within 90 days after receipt of a complete permit application, except when a greater period of time is permitted under subsection (e). Applications involving wetlands of two acres or more shall be reviewed according to the criteria stated in Section 13. Applications involving wetlands of less than two acres shall be reviewed according to the criteria stated in Section 14. When a wetland use permit is approved, approved with conditions, or denied, a written notice thereof shall be sent to the applicant. The denial of a permit shall be accompanied by a statement of the reasons for denial.
- (4) Send a copy of the decision, including any maps showing the wetlands on the property, to the applicant.
- (d) If the Wetland Review Board does not approve, approve with conditions, or deny the permit application within the 90-day time period provided in subsection (c)(3), or within the greater period of time permitted by subsection (e), the permit application shall then be considered approved, but with a permit condition requiring that each acre of wetland impacted shall be mitigated by the establishment of 1.5 acres of new wetland. The Wetland Review Board may waive mitigation requirements for a use, activity or development approved under this subsection if the impact area is less than 11,000 square feet (.25 acre).
- (e) The Wetland Review Board may defer the review of and decision on a wetland use permit application, without regard to the 90-day time limit, if there is a significant amount of snow cover or frozen ground which limits the ability of the wetland officer to accurately assess proposed activities on the property. A notice of such deferral shall be sent to the applicant. The Wetland Review Board shall continue reviewing the

application and the proposed use, activity or development, as soon as site conditions permit, as determined by the Wetland Review Board.

### SECTION 13. REVIEW OF APPLICATIONS INVOLVING WETLAND AREAS OF TWO ACRES OR MORE.

- (a) A permit for any activity listed in Section 6 shall not be approved unless the proposed activity is in the public interest and is lawful in all respects. The reasonable use of the property involved, in accordance with applicable local ordinances and State law, shall also be considered.
- (b) 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 foreseeable detriments of the activity, including potential harm to natural resources from pollution, impairment, or 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 that 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 the activity 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, on the public health, welfare, and safety, and on fish and/or wildlife, including the probable impact on the wetland functions, values and benefits stated in Section 4(c) of this Ordinance.
  - (6) Economic value, both public and private, of the proposed land change to the general area.
  - (7) Findings of necessity for the proposed activity which may have been made by other agencies.
  - (8) Amount and quality of wetland remaining in the general area and proximity to a waterway.
  - (9) The size of the wetland in question.
- (c) A wetland use permit shall not be issued if the Wetland Review Board determines that the proposed use, activity or development would result in an unacceptable disruption or degradation of the wetland, watercourses or waterbodies or the aquatic life dependent thereon or associated therewith. In making such determination, the Wetland Review

Board shall consider, among other factors, the criteria stated in subsection (b) of this section and the purposes of this ordinance, as stated in Section 4.

(d) A wetland use permit shall not be issued unless the applicant demonstrates either of the following:

(1) That the proposed use or activity is primarily dependent upon being located in the wetland. For purposes of this subsection (d) a proposed use or activity shall be determined as primarily dependent upon being located in the wetland only if the use or activity, by its type or nature, requires that it be located within the wetland in order to substantially achieve its proposed purpose or result.

(i) An application for a wetland use permit shall include sufficient information with respect to the proposed use or activity so as to enable the Township to analyze and consider the relevant facts bearing upon a determination whether the use or activity is primarily dependent upon being located in the wetland.

(ii) An applicant shall not so narrowly define or explain the purpose or scope of the use or activity so as to limit the Township in a complete analysis of whether the activity is primarily dependent upon being located in the wetland. Accordingly, the application shall fully describe the purposes for which the permit is sought, including associated uses and activities.

(iii) In its review of the application, the Township shall evaluate and determine whether the purpose and scope of the proposed use or activity have been adequately described by the applicant, and the Township shall then further consider the application based on such determination.

(2) That a feasible and prudent alternative does not exist.

(i) An alternative is feasible and prudent if both of the following apply:

(A) The alternative is available and capable of being accomplished, after taking into consideration the costs thereof, the available technology and the logistics likely to be involved in accomplishing the alternative; and

(B) The alternative would have less adverse impact on aquatic resources, as compared to the proposed use or activity.

(ii) A feasible and prudent alternative may include any or all of the following:

(A) The use of location other than the proposed location;

(B) The use of a different configuration, arrangement, design or type of construction as compared to the proposed configuration



arrangement, design or construction of the proposed use or activity.

- (C) A different size, area or scope of the proposed use or activity.
- (D) The use of a different method or manner of proceeding that will nevertheless accomplish the basic purpose of the proposed use or activity.

- (iii) The applicant shall demonstrate that, given all pertinent information, there is no feasible and prudent alternative that has less impact on aquatic resources. In this regard, the applicant may provide information regarding such factors as alternative construction technologies; alternative project layout and design; the effect of Township zoning provisions; and environmental and natural resource issues, among other matters.
- (iv) An alternative may be considered feasible and prudent even if it does not accommodate every element or component of a proposed use or activity that is incident to or severable from the basic purpose of the proposed use or activity.
- (v) An alternative may be considered feasible and prudent even if it may involve greater cost, but the Township shall consider the amount and reasonableness of the higher cost in making its determination.

#### SECTION 14. REVIEW OF APPLICATIONS INVOLVING WETLAND AREAS OF LESS THAN TWO ACRES.

- (a) Where a person proposes to perform a regulated use or activity in a wetland of less than two acres, and if the wetland is not exempt from regulation under the terms of Section 8, a wetland use permit shall be applied for and a permit for such use or activity shall be required; provided, however, that this section shall not apply to wetlands of less than one-quarter acre unless subsection (b) applies; and also provided that the Wetland Review Board shall approve the wetland use permit unless the Wetland Review Board determines that the wetland is essential to the preservation of the natural resources of the Township and provides findings thereon in writing to the applicant, stating the reasons for the determination. In making the determination, the Wetland Review Board shall find that one or more of the following factors exist at the site of the wetland:
  - (1) The site supports state or federal endangered or threatened plants, birds, fish, or wildlife appearing on the list specified in MCL 324.36505 of the NREPA, 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 water control by the hydrologic absorption and storage capacity of the wetland.
  - (6) The site provides habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife.
  - (7) 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.
  - (8) The site provides protection of subsurface water resources and valuable watersheds, for recharging groundwater supplies and for other purposes.
  - (9) The site provides pollution treatment by serving as a biological and chemical oxidation basin.
  - (10) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
  - (11) The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
- (b) With respect to a use or activity in a wetland that is less than one-quarter acre in area and that is not subject to regulation by MDEQ, the Wetland Review Board may determine that the wetland is not exempt from regulation under Section 8 and that a wetland use permit shall be applied for and a permit for the use or activity shall be required. In making the determination, the Wetland Review Board shall find that all of the following factors exist at the site of the wetland:
- (1) That the wetland is essential to the preservation of natural resources of the Township (and the Wetland Review Board shall provide findings thereon in writing to the applicant);
  - (2) That one or more of sub-paragraphs (1) through (11) of subsection (a) apply; and
  - (3) That the wetland is of such overriding importance in the preservation of the natural resources of the Township that its small size should not constitute a basis for the use or activity in the wetland to be exempt from regulation by the Township under the terms of this ordinance.

#### SECTION 15. CONDITIONS INCLUDED IN WETLAND USE PERMITS.

- (a) The Wetland Review Board or Township Board, as applicable, shall include in any wetland use permit such reasonable conditions to ensure that the permitted use or activity will be consistent with the intent and purposes of this Ordinance. Such conditions may include required methods, construction work sequence, and other measures necessary to ensure the permitted activities are carried out in a manner that will minimize damage to

or impairment of wetlands, or that will ensure that such damage or impairment will be sufficiently mitigated.

- (b) A permit shall be issued upon a determination that all requirements of this Ordinance and the law have been complied with, including issuance of all other required permits by the Township, the MDEQ and other governmental agencies.
- (c) A wetland use permit may include a required performance bond or letter of credit sufficient to assure that the permitted activities, wetland mitigation, or other permit conditions are completed in full and timely compliance with the permit.
- (d) If an applicant engages in any activity or makes any change that might affect the criteria for approval of the wetland use permit, the applicant shall notify the Township wetland officer of that activity or change. Any use or activity that increases the size or scope of permitted activities or adversely affects the criteria considered in approving the permit shall require the filing and consideration of a new wetland use permit application.
- (e) A permit shall include provisions for required inspections by the Township at appropriate stages of the construction or installation of the permitted use or activity, including provisions requiring that the applicant notify the Township at such time as specified stages of construction or installation are ready for inspection. Such inspections shall include a final inspection and approval by the Township, after the use or activity has been constructed or installed. A subsequent stage of construction shall not be commenced until after Township approval of the previous stage.

#### SECTION 16. REVOCATION OF PERMITS; DURATION OF APPROVAL.

- (a) Any permit granted under this Ordinance may be revoked or suspended by the Township wetland officer after notice and an opportunity for a hearing, for any of the following:
  - (1) A violation of a condition of the permit.
  - (2) Misrepresentation or failure to fully disclose relevant facts in the application that the Wetland Review Board, or the Township Board in the case of an appeal, concludes may have resulted in the approval of the permit, or approval of the permit with less than all appropriate conditions, where the permit may have been denied or may have been approved with other or more stringent conditions, if the applicant had not misrepresented or failed to fully disclose such facts.
- (b) An applicant who has received a wetland use permit shall comply with the following in connection with any construction or other activity on the property:
  - (1) Maintain soil erosion control structures and measures to minimize impacts to wetlands as approved by the Kent County Soil Erosion and Sedimentation Control Agent for the MDEQ, pursuant to Part 91 of the NREPA.
  - (2) Maintain flagging or staking of the protected wetland.

- (3) Post a copy of the wetland use permit on-site in a conspicuous manner prior to commencement of the permitted work until completion thereof.
- (c) A wetland use permit shall be valid for a period of two years unless otherwise extended by the Wetland Review Board. A permit may be extended for not more than three years in addition to the original two years.

#### SECTION 17. WETLAND MITIGATION.

- (a) A wetland use permit may include requirements for wetland mitigation, and the preparation and submission of a mitigation plan.
- (b) The Township wetland officer shall review an Applicant's mitigation plan. Mitigation shall not, however, be considered a substitute for the applicant demonstrating that no other feasible and prudent alternatives exist to otherwise minimize wetland impacts.
- (c) A wetland mitigation plan shall include all reasonable attempts to replace all of the wetland resource functions, values, or benefits that will be impacted by the use, activity or development.
- (d) Wetland mitigation shall be provided on-site where practical and beneficial to the wetland resources. If wetland mitigation on-site is not practical and beneficial, then wetland mitigation in the immediate vicinity may be considered for approval. If neither option is practical, mitigation elsewhere may be considered under subparagraph (e).
- (e) Wetland mitigation shall be located in the Township, if practical and beneficial, but in any event, mitigation shall be located within the same watershed as the affected wetland, unless some other location is specifically approved by the Wetland Review Board, upon a determination that a location within the same watershed is not reasonably available or would not be practical or beneficial.
- (f) The wetland mitigation plan shall comply with all applicable federal, state, and local laws.
- (g) The wetland mitigation plan shall require monitoring and corrective actions be taken for a period of five years to assure that the wetland mitigation will be successful. If the wetland mitigation is demonstrated to be successful before the end of the five-year time period, the remaining monitoring of the site may be waived by the Wetland Review Board. The applicant shall submit monitoring reports to the Wetland Review Board by August 1 of each year, unless otherwise specified.
- (h) Wetland mitigation and monitoring plans shall be a condition of the wetland use permit.
- (i) Wetland mitigation shall be completed before commencement of other permitted activities unless a phased concurrent schedule is authorized by the terms of the permit. The terms of and schedule for completion of required mitigation shall be included as conditions of the permit.

- (j) Wetlands impacted by a proposed use or activity and that are at least 11,000 square feet in size shall be mitigated at a ratio of 1.5 acres of newly established wetland for each one acre of existing wetland impacted by the use or activity.

#### SECTION 18. PENALTIES; STOP WORK ORDERS; ENFORCEMENT.

- (a) A violation of this ordinance or a violation of any permit granted hereunder is a municipal civil infraction, for which the fine shall be not be less than Two Hundred Fifty Dollars (\$250) nor more than Five Hundred Dollars (\$500) for the first offense and not less than Five Hundred Dollars (\$500), nor more than One Thousand Dollars (\$1,000) for a subsequent offense, in the discretion of the Court, and in addition to all other costs, damages, expenses and actual attorneys fees incurred by the Township in enforcing the ordinance and/or remedying the violation of the ordinance. For purposes of this section, subsequent offense means a violation of this ordinance committed with respect to a separate incident by the same person within twelve (12) months after a previous violation of the ordinance for which said person admitted responsibility or was adjudicated to be responsible. Each day that a violation occurs shall constitute a separate offense.
- (b) A violation of this ordinance or a violation of any permit granted hereunder is hereby declared to be a nuisance per se. In addition to other penalties and remedies, the Township may seek injunctive relief against the violator, in addition to other relief provided by law.

#### SECTION 19. APPEALS PROCESS.

- (a) A landowner may request the Township to reevaluate the affected property, for property tax assessment purposes, to determine its then fair market value if a wetland use permit application is denied by the Township.
- (b) An applicant may appeal to the Township Board a wetland use permit application decision made by the Wetland Review Board, or a wetland identification decision made by the wetland officer.
  - (1) The appeal shall be commenced by filing with the Township Board a written statement containing the specific reasons for the appeal within 30 days following the date of the decision being appealed. The timely filing of an appeal shall have the effect of staying any permit issued under this Ordinance pending the outcome of the appeal.
  - (2) After review and study of the application materials, comments and recommendations, the Township Board shall consider the same at a public meeting of the Board.
  - (3) After completing the review and considering the appeal at a public hearing, the Township Board shall affirm, affirm with conditions, or reverse the original decision, action or inaction, in accordance with this Ordinance.

- (4) The Township Board shall make its decision on the appeal in writing and shall send a copy thereof to the applicant. If the appeal is denied, the decision shall include the reasons for the denial.
- (c) An applicant may appeal the decision to Kent County Circuit Court, if such appeal is permitted by law. Any such appeal shall be filed not later than the period of time specified by law and court rule.

#### SECTION 20. WETLAND REVIEW BOARD.

- (a) The Township Board hereby establishes the Wetland Review Board.
  - (1) The Wetland Review Board shall consist of three persons, one of whom shall be a member of the Township Planning Commission, one of whom shall be a member of the Township Board of Zoning Appeals, and one of whom shall be a Township resident who is not a member of either of the above-stated bodies or of the Township Board. The members shall be appointed by the Township Board. Any vacancies shall be filled by appointment by the Township Board, for the remainder of the unexpired term.
  - (2) The members of the Wetland Review Board shall serve three-year terms, except that the terms of the persons first appointed shall be staggered, so as to permit differing expiration dates of terms. Of the persons first appointed, two shall be appointed for three years each, two shall be appointed for two years each and one shall be appointed for one year. The terms of the persons appointed from the Planning Commission and the Board of Zoning Appeals shall terminate when their respective terms on those bodies terminate.
  - (3) The member of the Wetland Review Board who is not a member of the Planning Commission or the Zoning Board of Appeals shall, insofar as practicable, have background, experience or expertise in matters pertaining to wetlands. Accordingly, in considering appointments of such members, the Township Board shall give particular consideration to persons who have experience or expertise in any one or more of the following categories:
    - (i) Education in the natural resources field or in comparable fields;
    - (ii) Employment in the area of natural resource management, or a comparable field, either currently or previously;
    - (iii) Volunteer service or other participation in environmental and/or conservation groups or projects;
    - (iv) A demonstrated interest in wetlands, natural resources, environmental protection or comparable fields;
    - (v) An understanding of the functions and value of wetlands as a part of the natural ecosystem; and

- (vi) Other background, experience or knowledge of particular value or usefulness for the work and responsibilities of the Wetland Review Board.
- (b) The Wetland Review Board shall have the following duties and responsibilities:
  - (1) Approve, approve with conditions or deny applications for wetland use permits;
  - (2) Annually review the performance of the Township wetland officer;
  - (3) Provide recommendations to the Township Board concerning the appointment, continued service, or other actions of the Township wetland officer;
  - (4) Serve an advisory role in setting policy guidelines on wetland issues in the Township;
  - (5) Identify conflicts between wetland protection efforts and present Township ordinances, operating procedures, and activities within the Township; and
  - (6) Identify and propose solutions to problems associated with wetland management.
- (c) The Wetland Review Board shall adopt rules of procedure for its meetings. It shall elect from its membership a chairperson and secretary. It shall convene meetings at such times as it may determine. The presence of two members shall constitute a quorum. The Board shall keep and maintain minutes of its proceedings.
- (d) Decisions by the Wetland Review Board shall be made by a majority of the members of the Board.

#### SECTION 21. AMENDMENTS.

- (a) The Township Board may amend this ordinance at any time, in its discretion.
- (b) The Township wetland officer and the Wetland Review Board may review this ordinance periodically and, in their discretion or in the discretion of either of them, may recommend amendments for consideration by the Township Board. Any such proposed amendments may be forwarded to the Township Board for its review.

#### SECTION 22. NOTICE TO THE MDEQ.

- (a) The Township shall notify the MDEQ of the adoption of this Ordinance. The Township shall cooperate with the MDEQ in the enforcement of the NREPA as to wetlands under the jurisdiction of the MDEQ, as defined under this Ordinance.
- (b) The Township wetland officer shall notify the MDEQ of its decisions on all wetland use permit applications.

SECTION 23. ABROGATION AND CONFLICT OF AUTHORITY. Nothing in this Ordinance shall be interpreted to conflict with present or future state statutes on the same subject matter; conflicting provisions of this Ordinance shall be abrogated 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.

SECTION 24. OTHER FEDERAL, STATE, AND LOCAL PERMITS.

Issuance of a wetland use permit by the Township does not obviate the need of the property owner or applicant to obtain other State, federal, and local permits that may be required by other statutes, ordinances, or regulations.

SECTION 25. DISCLAIMER OF LIABILITY.

This Ordinance shall not be construed to abrogate rights or authority otherwise provided by law. No officer, agent or employee of the Township shall be personally liable for any damage that may occur to any person as a result of any act required or permitted in the discharge of duties in the enforcement of this Ordinance.

SECTION 26. SEVERABILITY.

This Ordinance and its various provisions are declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

SECTION 27. EFFECTIVE DATE.

A summary of the regulatory effect of this ordinance shall be published in a newspaper of general circulation in the Township. The ordinance shall become effective 30 days after such publication.

AYES:           Members:     Bloom, Davies, LaPeer, MacGregor, and Shupe

NAYS:           Members:     Barker

ABSENT:        Members:     Jones

ORDINANCE DECLARED ADOPTED.

\_\_\_\_\_  
Bonnie L. Shupe, Township Clerk

STATE OF MICHIGAN    )  
                                  ) ss.  
COUNTY OF KENT        )

I hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the Township Board of the Township of Cannon at a regular meeting held on the date first stated above, and I further certify that public notice of such meeting was given as provided by law.

\_\_\_\_\_  
Bonnie L. Shupe, Township Clerk