

Chapter 602 – Wetlands

Section 602.1 – Title

An Ordinance to provide for the preservation, management, protection, and use of wetlands; to require permits to alter certain wetlands; to provide for a plan for the preservation, management, protection, and use of wetlands; and to provide remedies and penalties.

Section 602.2 – Intent

A. The Lenox Township Board finds that:

1. Wetland conservation is a matter of local concern since a wetland may be affected by acts on a river, lake, stream, or wetland.
2. A loss of a wetland may deprive the people of the Lenox Township of some or all the following benefits to be derived from the wetland.
 - a. Flood and storm control by the hydrologic absorption and storage capacity of the wetland.
 - b. Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.
 - c. Protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
 - d. Pollution treatment by serving as a biological and chemical oxidation basin.
 - e. Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
 - f. Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
3. Wetlands are valuable as an agricultural resource to produce food and fiber, including certain crops which may only be grown on sites developed from the wetland.
4. That the extraction and processing of non-fuel minerals may necessitate the use of a

wetland if it is determined pursuant to Section 5 that the proposed activity is dependent upon being in the wetland, and that a prudent and feasible alternative does not exist.

- B. In the administration of this Ordinance, Lenox Township shall consider the criteria provided in Subsection A.

Section 602.3 – Definitions

Fill material – Soil, rocks, sand, waste of any kind, or any other material which displaces soil or water or reduces water retention potential.

Minor drainage – 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.

Municipality – Lenox Township, Macomb County, Michigan

Person – An individual, sole proprietorship, partnership, corporation, association, municipality, this state, an instrumentality or agency of this state, the federal government, or an instrumentality or agency of the federal government, or other legal entity.

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:

- A. Contiguous to the Great Lakes or Lake St. Clair, and inland lake or pond, or a river or stream.
- B. Not contiguous to the Great Lakes, and inland lake or pond, or a river or stream and more than five (5) acres in size.
- C. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and five (5) acres or less in size if Lenox Township 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 Township has so informed the owner.

Section 602.4 – Exceptions

- A. Except as otherwise provided by this Ordinance, a person shall not:

1. Deposit or permit the placing of fill material in a wetland.
 2. Dredge, remove or permit the removal of soil or minerals from a wetland.
 3. Construct, operate, or maintain any use or development in a wetland.
 4. Drain surface water from a wetland.
- B. The following uses shall be allowed in a wetland without a permit subject to other local and state laws and the owner's regulation:
1. Fishing, trapping, hunting.
 2. Swimming or boating.
 3. Hiking.
 4. Grazing of animals.
 5. Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating minor drainage, harvesting to produce food, fiber, and forest products, or upland soil and water conservation practices.
 6. Maintenance or operation of serviceable structures in existence on the effective date of this Ordinance or constructed pursuant to this act.
 7. Construction or maintenance of farm or stock ponds.
 8. Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products.
 - a. An existing private agricultural drain.
 - b. That portion of a drain legally established pursuant to Act No. 40 of the Public Acts of 1956, as amended, being Sections 280.1 to 280.630 of the Michigan Compiled Laws, which has been constructed or improved for drainage purposes.
 - c. A drain constructed pursuant to other provisions of this Act.
 9. 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.

10. Drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this act, land improved under this subdivision after the effective date of this ordinance shall not be used for non-farming purposes without a permit from the Township. This subdivision shall not apply to a wetland that is contiguous to a lake or stream, to a tributary of a lake or stream, or to a wetland that the Ideal unit 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 shall be required.
11. 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.
12. Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of six (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.
13. 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.
14. Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on the effective date of this Ordinance or constructed pursuant to this Ordinance.

Section 602.5 – Application Requirements

- A. Except as provided otherwise, to obtain a permit for a use or development listed in Section 602.2, the person desiring the permit shall file an application with the Township on a form provided by the Township accompanied by a fee as established by the Township. The application shall include:
 1. The person's name and address

2. The location of the wetland.
 3. A description of the wetland on which the use or development is to be made.
 4. A statement describing the proposed use or development.
 5. The wetland owner's name and address.
 6. An environmental assessment on a form supplied by the Township of the proposed use or development, if requested by the Township, which shall include effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within a contiguous lake, river, or stream.
- A. For the purposes of Section 602.5(A), the proposed use or development of a wetland shall be considered a single permit application under this Ordinance if the scope, extent, and purpose of a use or development are made known at the time of the application for the permit.
 - B. Within sixty (60) days after receipt of the completed application and fee, the Township may hold a hearing. Notice of the hearing shall be made in the manner required by state law. The Township may approve or disapprove a permit application without a public hearing unless a person requests a hearing in writing within twenty (20) days after the mailing of the notification of the permit application as required by Subsection (3), or the Township determines that the permit application is of significant impact to warrant a public hearing.
 - C. An applicant for a permit under this Ordinance shall also be required to apply and/or obtain wetlands permit from the Michigan Department of Natural Resources.
 - D. The Township shall not issue a building permit for any purpose requiring a building permit until the applicant has obtained wetlands permit pursuant to this Ordinance, or until a determination is made by the Township that wetlands permit is not required.
 - E. If a hearing is not held, the Township shall approve or disapprove the permit application within ninety (90) days after the completed permit application is filed with the Township. If a hearing is held, the Township shall approve or disapprove the permit application within 90 days after the conclusion of the hearing. The Township may approve a permit application, request modifications in the application, or deny the permit application. If the Township approves the permit application, the Township shall prepare and send the permit to the applicant. If the Township denies or requests a modification of the permit application, the Township shall send notice of the denial or modification request and the reasons for the denial, or the modifications requested to the applicant. Township approval may include the issuance of a permit containing conditions necessary for compliance with this Ordinance. If the Township does not approve or disapprove the

permit applications within the time provided by this subsection, the permit application shall be considered approved, and the Township shall be considered to have made the determination required. The action taken by the Township may be appealed. A property owner may, after exhaustion of administrative remedies, bring the appropriate legal action in a court of competent jurisdiction.

- F. A person who desires notification of pending permit applications may make a written request to the Township accompanied by an annual fee of twenty-five (\$25.00) dollars which shall be credited to the general fund of the Township. The Township shall prepare a biweekly list of the applications made during the previous two (2) weeks and shall promptly mail copies of the list for the remainder of the calendar year to the persons who requested notice. The biweekly list shall state the name and address of each applicant, the location of the wetland in the proposed use or development including the size of both the proposed use or development and the wetland affected, and a summary statement of the purpose of the use or development.

Section 602.6 – Public Interest Requirements

- A. A permit for an activity listed in Section 602.2 shall not be approved unless the Township 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.
- B. In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the Local, State, and National concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:
 - 1. The relative extent of the public and private need for the proposed activity.
 - 2. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
 - 3. The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which they are suited, including the benefits the wetland provides.
 - 4. The impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.

5. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health of fish or wildlife.
 6. The size of the wetland being considered.
 7. The amount of remaining wetland in the general area.
 8. Proximity to any waterway.
 9. Economic value, both public and private, of the proposed land change to the general area.
- C. In considering a permit application, the Township shall give serious consideration to finding a necessity for the proposed activity which has been made by state agencies.
- D. A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. In determining whether disruption to the aquatic resources is unacceptable, the criteria set forth in Section 602.6(B) shall be considered. A permit shall not be issued unless the applicant also shows either of the following:
1. The proposed activity is primarily dependent upon being in the wetland.
 2. A feasible and prudent alternative does not exist.

Section 602.7 – General Permits

- A. The Township, after notice and opportunity for a public hearing, may issue general permits for a category of activities if the Township determines that the activities are similar in nature, will cause only minimal adverse environmental effect is when performed separately, and will have an only minimal cumulative adverse effect on the environment. A general permit issued under this subsection shall be based on the requirements of this Ordinance and the rules promulgated under this Ordinance and shall set forth the requirements and standards which shall apply to an activity authorized by the general permit.
- B. The Township may impose conditions on a permit for a use or development if the conditions are designed to remove an impairment to the wetland benefits, to mitigate the impact of a discharge of fill material, or to otherwise improve the water quality.
- C. The Township may establish a reasonable time when the construction, development, or use is to be completed or terminated. A general permit shall not be valid for more than five (5) years.

Section 602.8 – Revocation or Termination of a General Permit

- A. A general permit may be revoked or modified if after an opportunity for a public hearing the Township determines that the activities authorized by the general permit have an adverse impact on the environment or the activities would be more appropriately authorized by an individual permit.
- B. A permit may be terminated or modified for cause, including:
 - 1. A violation of a condition of the permit.
 - 2. Obtaining a permit by misrepresentation or failure to fully disclose relevant facts.
 - 3. A change in a condition that requires a temporary or permanent change in the activity.

Section 602.9 – Compliance with Conditions

- A. If based on information available to the Township, the Township finds that a person is in violation of this act or a condition set forth in a permit, the Township shall issue an order requiring the person to comply with the prohibitions or conditions or the Township shall bring a civil action under Section 9.
- B. An order issued under Subsection A. shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the Township determines is reasonable, considering the seriousness of the violation and good faith efforts to comply with applicable requirements.

Section 602.10 – Punishments of Violations

- A. The Township may commence a civil action for appropriate relief, including injunctive relief.
- B. A person who violates this Ordinance is guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500.00).
- C. A person who is willfully or recklessly violates a condition or limitation in a permit issued by the Township under this Ordinance, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500.00) per day of violation, or by imprisonment for not more than ninety (90) days or both.

- D. In addition to the penalties provided under Sections 602.10(A-C), the court may order a person who violates this Ordinance to restore as nearly as possible the wetland, which was affected by the violation, to its original condition immediately before the violation. The restoration may include the removal of fill material deposited in the wetland or the replacement of soil, sand, or minerals.

Section 602.11 – Re-evaluations

- A. If a permit is denied for a proposed wetland activity, the landowner may request a re-evaluation of the affected property for assessment purposes to determine its fair market value under the use restriction.

Section 602.12 – Enforcement / Review

- A. The Township shall promulgate and enforce rules to implement this Ordinance.
- B. If a person is aggrieved by any action or inaction of the Township, the person may request a formal hearing on the matter involved.
- C. A determination action or inaction by the Township following the hearing shall be subject to judicial review.
- D. This Section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person when necessary to protect the wetland owner's rights.

Section 602.13 – Record of completed Inventories

- A. As inventories of wetland are completed, the inventories shall be used as one of the criteria by the Township in issuing permits. The inventories shall be periodically updated. The maps, ground surveys, and descriptions of wetlands included in the inventories shall be submitted to the county register of deeds and shall become a public document available to review by any member of the public.
- B. Aerial photographs and satellite telemetry data reproductions shall be made available to the county register of deeds for cost as determined by the Township.

Section 602.14 – Record of Preliminary Inventory

- A. The Township shall make or cause to be made a preliminary inventory of all wetlands in the Township and file the inventory with the agricultural extension office, register of deeds, and county clerk.
- B. At least two (2) hearings shall be held. The hearing shall be held by the Township after publication and due notice so that interested parties may comment on the inventory. After the hearings, the Township shall issue a final inventory which shall be sent and kept by the agricultural extension office, register of deeds, and county clerk.
- C. Before an inventory is made, interested persons may request the Township to inspect the property and the Township shall make a written wetland determination. The determination shall be made within a reasonable time after the request. Completion of the inventory shall not delay implementation of this Ordinance.

Section 602.15 – Notification of Wetland Status

- A. As wetland inventories are completed as specified in Section 602.14, owners of record as identified by the current property tax roll shall be notified of the possible change in the status of their property. The notification shall be printed on the next property tax bill mailed to property owners in the Township. It shall contain information specifying that a wetland inventory has been completed and is on file with agricultural extension official register of deeds and county clerk and that the property owners may be subject to regulation under this Ordinance.