

Part 52

52.000

WETLANDS PROTECTION ORDINANCE

An ordinance enacted under the Michigan Wetland Protection provisions of Act 451 of 1994, to provide for the preservation, management, protection and use of wetlands in the township of Porter, 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 for violation thereof.

THE TOWNSHIP OF PORTER, COUNTY OF CASS ORDAINS:

52.001

Short Title. This ordinance shall be known and may be cited as the "Porter Township Wetlands Protection Ordinance".

52.002

Purpose. The purpose of this Ordinance is:

1. To provide for the protection and appropriate use of wetlands within Porter Township in order to minimize disturbance of these vital natural features.
2. To coordinate the provisions of this Ordinance with state law as well as to provide for coordinated enforcement of wetland protection laws and requirements by responsible township, county and state officials.
3. To assign responsibilities for assuring the protection of wetlands within Porter Township.
4. To establish procedures for the processing of applications for permits involved in the permitted use of wetlands in Porter Township.

52.003

Definitions

A. Prohibited Activity shall mean:

1. Depositing or permitting the placing of fill material in a wetland.
2. Dredging, removing and permitting the removal of soil or minerals from the wetland.
3. Constructing, operating or maintaining a use or development in a wetland.
4. Draining surface water from a wetland.

B. Buffer Area shall mean all upland and bottom land areas within a 25-foot zone located on the site and adjacent to protected wetlands.

C. Contiguous shall mean any of the following:

1. A permanent surface water connection or other direct physical contact.
2. A seasonal or intermittent direct surface water connection; and/or,
3. A ground water connection.

D. Department means Department of Environmental Quality

E. Development shall mean any man-made change to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

F. Drainage way shall mean any drainage course, watercourse, drain, pipe, natural stream, creek, or swale, which serves to transport storm water runoff.

G. Fill material shall mean soil, sand, gravel, clay, peat, debris and refuse, waste of any kind, or any other material which displaces sod or water or reduces water retention potential.

H. Lake shall mean a natural or permanent artificial water body that has definite banks, a bed, and visible evidence of a continued occurrence of water.

I. Mitigation of Wetlands shall mean any or all of the following: (1) methods for eliminating or reducing potential damage or destruction to wetlands or (2) creation of wetlands from uplands to offset the loss. Mitigation shall not be considered when it is feasible and prudent to avoid wetland impacts or when the impacts would be otherwise prohibited under federal, state and local wetlands protection regulations.

J. Ordinary high water mark shall mean the line between upland and bottom land which 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 markedly distinct from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation.

K. Person shall mean an individual, firm, partnership, association, corporation, company, organization or legal entity of any kind, including governmental agencies conducting operations within the Township.

L. Pond shall mean a natural or permanent artificial body that has permanent open water.

M. Locally Protected wetlands shall mean any of the following:

a.) Any wetlands regardless of size, contiguous to a river, canal, creek, stream, lake or pond including wetlands which are two acres or less in size; or

b.) Specially designated wetlands determined by the Township Board to be essential to the preservation of the natural resources from pollution, impairment or destruction according to the criteria as set forth in Article XI, Section 1100(4).

c.) In making this determination, the Township Board must find that one or more of the following functions applies to the particular site:

- (1) It supports state or federal endangered or threatened plants, fish or wildlife;
- (2) It meets the township's criteria for a unique ecosystem
- (3) It serves as an important water storage or groundwater recharge area.

d.) Locally protected wetlands will be indicated on the Township Wetlands Map.

N. Special wetlands are those identified as locally rare or a unique ecosystem and shall be designated by the Township Board and delineated on the Township Wetlands Map.

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

P. Stream shall mean a waterway, which has definite banks, a bed and visible evidence of a continued flow or continued occurrence of water.

- Q. Structure** shall mean any assembly of materials above or below the surface of the land or water, including, but not limited to, houses, building, bulkheads, piers, docks, rafts, landings, dams, sheds or waterway obstructions.
- R. Upland** shall mean areas within 25 feet of protected wetlands, and nature drainage ways.
- S. Watercourse** shall mean any waterway, drainage way, drain, canal, river, stream, lake, or detention basin, or any body of surface water having well-defined banks, either continually or intermittently flowing.
- T. 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 an inland lake or pond, or a river or stream.
 - b.) Not contiguous to 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 department certifies to the commission it has substantially completed its inventory of wetlands in that county.
 - c.) Not contiguous to an inland lake or pond, or a river or stream; and 5 acres or less in size if the department 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 which subparagraph (ii) is of no effect; except for the purpose of inventorying, at the time."
- U. Wetland district** shall mean all protected wetlands and buffer areas located on the site.
- V. Wetlands Map** shall mean the Township wetlands map as included within the Township General Development Master Plan. The map, initially based on the National Wetlands Inventory published by the U.S. Department of Interior, Fish and Wildlife Service, shall be updated from time to time, delineating the general location of wetlands and drainage ways, which may be subject to regulation under this ordinance. Delineation of wetland boundaries on individual parcels or sites shall be the responsibility of persons applying for a wetland or drainage way use approval.
- W. Wetland vegetation** shall mean plants, such as trees, shrubs, and grasses, 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. Wetland vegetation is the macrophysics plant life that occurs in areas where permanently or periodically saturated conditions of sufficient duration to exert a controlling influence on the plant species present.
- X. Zoning Enforcement Officer** shall mean the Township of Porter Zoning Enforcement Officer.
- Y. Planning Commission** shall mean the Township of Porter Planning Commission.

52.004 BASIS FOR WETLAND PROTECTION

52.005 Legislative Findings Porter Township finds that:

- a.) Wetland conservation is a matter of Township concern because the quality of life, property values, tax base, recreational opportunities and wildlife habitat are enhanced by the presence of the lakes, rivers, streams, and wetlands within the Township.
- b.) A loss of wetland may deprive the people of the Township of some or all of the following benefits to be derived from the wetland:
 - (1) Flood and storm control by the hydro logic absorption and storage capacity of the wetlands;
 - (2) 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.
 - (3) Protection of subsurface water resources and provision of valuable watersheds and recharging ground water supplies.
 - (4) Pollution treatment by serving as a biological and chemical oxidation basin.
 - (5) Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
 - (6) Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
- c.) Wetlands are valuable as an agricultural resource for the production of food and fiber, including certain crops, which may only be grown on sites developed from wetland.
- d.) The above criteria shall be considered and kept in mind by all Township officials and boards concerned with administering this ordinance.

52.006 PORTER TOWNSHIP RESPONSIBILITIES FOR WETLANDS PROTECTION

52.007 The following responsibilities are assigned for the administration and enforcement of this Ordinance in Porter Township

1. Zoning Administrator.

- a.)Reviews all applications for building permits, septic permits, dredging, earth change/soil erosion control permits, site plans, preliminary subdivision plats, special exception use permits, rezoning requests or similar actions and determines whether any wetlands are affected by or involved in the proposed action.
- b.)Advises applicants if a wetlands and drainage way use application is required in connection with the requested permit or proposed activity. Consults with the Planning Commission and the Wetland Protection Advisory Committee, when questions arise.
- c.)Reviews for completeness and accuracy all wetland/drainage way use applications, to include the conduct or authorization of a field inspection to verify the accuracy of information received.
- d.)Forwards applications that are beyond his/her authority to approve or disapprove to the Planning Commission in the case of site plans and subdivision plats, the Planning Commission and in all other cases, to the Township Board for review and decision.

1. Zoning Enforcement Officer Conducts necessary field inspections to insure compliance with approved permits. Takes appropriate enforcement action. Reports violations promptly to the appropriate law enforcement officials of the township, county, or state. Keeps Township Board and Planning Commission informed of any problem areas.

3. Planning Commission

a.) Includes Township Wetlands Protection Map as part of the General Development Master Plan.

b.) Reviews, approves, or denies within its authority, all special exception use requests, site plans, rezoning requests, and preliminary subdivision plats taking into consideration the requirements of Wetlands Protection Ordinance, as well as other applicable ordinances, laws, and regulations. In the case of subdivision plats, forwards its recommendations to the Township Board in accordance with provisions of the Subdivision Control Ordinance and other applicable laws and regulations.

4. Township Environmental and Wetlands Protection Advisory Committee. An Environmental and Wetlands Protection Advisory Committee of at least five and not more than seven residents shall be established to perform the following functions:

a) Arranging for the compiling and publication of the Township Wetlands Map and keeping it current. Forwarding copies of successive editions of the Township Wetlands Map to the Planning Commission for reference as well as inclusion in the General Development Master Plan, as well as providing to other township boards and Officials.

b) Advising the Township Board on all matters pertaining to Environmental and Wetlands Protection, to include road maintenance and construction, sanitary sewer construction, operation of land fills, soil erosion permits, and recycling facilities, and reviewing applications for wetlands/drainage way use that is outside the purview of the Planning Commission.

c) Advising the, Planning Commission and other townships boards and officials on issues related to environmental and wetlands protection.

d) Maintaining liaison with the Michigan Department of Environmental Quality and other state county, or local agencies concerning environmental and wetlands protection.

e) Meet at least semi-annually to carry out its responsibilities. Additional meetings may be called by two members of the Wetlands Advisory Committee or Committee Chairman.

5. Township Board

a.) The Township Board shall appoint at least five but not more than seven to be members of the Advisory Committee.

b.) Budgets, allocates, and approves expenditures for the administration, operation and training of the Environmental and Wetland Protection Advisory Committee and the preparation, publication, and maintenance of the Township Wetlands Map.

52.008 **Studies and Agreements.** The Township Board may enter into an agreement to make contracts with the federal government, other state agencies, municipalities, private agencies or persons for the purpose of making studies and/or maps for the efficient preservation, management, protection and use of wetland resources. Such a study shall be available as a public record for distribution at cost.

52.009 **Notice to Michigan Department of Environmental Quality** The township clerk shall notify the Michigan Department of Environmental Quality of the adoption of this ordinance. The township shall enter into an agreement with the Michigan Department of Environmental Quality providing for the exchange of information and for the coordination of permit and use approvals as required by Section 8 of the Goemaere-Anderson Wetland Protection Act (Act 203, Public Acts of 1979).

52.010 **PROHIBITED AND PERMITTED ACTIVITIES**

52.011 **Prohibited Activities.** It shall be unlawful for any person to do any of the following unless and until written approval is obtained from the township pursuant to this ordinance.

1. Deposit or permit to be deposited any material or structures, into, within or upon any wetlands; or into any drainage way.
2. Remove or permit to be removed any soil or minerals from any protected wetlands; or from or onto buffer areas adjacent to protected wetlands or from or onto any drainage way.
3. Create, enlarge, diminish or alter a lake, creek, stream, canal, river or any other naturally or artificially occurring water body or drainage way.
4. Construct or place a temporary, seasonal or permanent use or development not in existence on October 1, 1980 or constructed pursuant to Act 207 of 1979 within any protected wetland or buffer area, except by special permit from the Porter Township Board.
5. Construct, extend, or enlarge any pipe, culvert or open or closed drainage facility except as allowed in Section 601.
6. Construct, enlarge, extend or connect any private or public sewage or waste treatment plant discharge to any lake, stream, drainage way or watercourse, or wetland except in accordance with the requirements of, Cass County, State of Michigan and/or the United States, to the extent that such entities have jurisdiction.
7. Drain or cause to be drained, any water from a protected wetlands.
8. Alter the flow of surface water or groundwater, which is essential for sustaining wetland hydrology, wetland vegetation, or aquatic life.
9. Any activity which would deliberately destroy, erode, or harm a wetland area, which could result in the harm and destruction of a wetland area or it's plants and soil.

52.012 **Activities Not Requiring Permit**

1. Activities, which require a permit under Act No. 247 of the Public Acts of 1955, as, amended; being Sections 322.701 to 322-715 of the Michigan Compiled Laws Act No., 346 of the Public

Acts of 1972, being Sections 281.965 of the Michigan Compiled Laws, shall not require a permit under this ordinance.

2. The following uses shall be allowed in a wetland without a permit subject to other laws of this state and the owner's regulation:

- a.) Fishing, trapping, or hunting.
- b.) Swimming or boating.
- c.) Placement of seasonal docks, rafts or boat hoists as governed by other state or federal regulations.
- d.) Hiking.
- e.) Grazing of animals.
- f.) Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, seeding, cultivating, harvesting, for the production of food, fiber, and forest products, or upland soils and water conservation practices. Wetlands altered under this subsection shall not be used for a purpose other than one described in this subsection without a permit.
- g.) Maintenance or operation of serviceable structures in existence on the effective date of this ordinance, in existence under state law prior to October 1, 1980 or constructed pursuant to this Ordinance.
- h.) Construction or maintenance of farm or stock ponds.
- i.) Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production of harvesting of agricultural products.
 - (1) An existing private agricultural drain.
 - (2) That portion of a drain legally established, which has been constructed or improved for drainage purposes.
 - (3) A drain constructed pursuant to other provisions of this ordinance.
- j.) 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.
- k.) 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 ordinance, land improved under this subdivision after the effective date of this ordinance or improved under state law prior to October 1, 1980 shall not be used for non-farming purposes without a permit from the Township. This subsection 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, which are determined to be locally protected wetlands in which case, a permit shall be required.
- l.) 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.

- m.) Maintenance repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter if 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 minimized.
 - n.) 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.
 - o.) Operation or maintenance, including reconstruction of recently damaged parts or serviceable dikes and levees in existence on the effective date of this ordinance or constructed pursuant to this ordinance.
3. After the effective date of this ordinance but immediately prior to the approval of a state program under Section 404 of Title 4 of the Clean Water Act of 1977, 33 USC 1344, where a project solely involved the discharge of fill material subject to the individual permit requirements of Section 404 of Title 4 of the Clean Water Act of 1977, 33 USC 1344, an additional permit shall not be required by this ordinance.

52.013 Continuation of pre-existing non-conforming uses.

1. A regulated activity that was lawful before the enactment of this ordinance, but which is not in conformity with the provisions of this ordinance, may be continued provided that it is not:
- a.) Changed to another non-conforming location or operation;
 - b.) Reestablished after having been discontinued for one (1) year;
 - c.) Expanded, except in conformity with this ordinance; nor
 - d.) Rebuilt or repaired after complete or partial destruction, when the destruction exceeds fifty (50) percent of the fair market value immediately prior to damage.

52.014 Wetlands Map Preparation The township shall prepare and make available for public inspection, a map that shows the general location of protected wetlands and drainage ways subject to township approval requirements. The accuracy and scale of information presented on the map shall be stated. The map shall be updated from time to time and included within the Porter Township General Development Master Plan.

52.015 Site Surveys

1. The Wetlands Map shall not be considered a substitute for on-site field inspection. The applicant for a use approval shall be responsible for identifying boundaries of protected wetlands, buffer areas, and drainage ways located on the project site.
2. The landowner is responsible for having the locations of protected wetlands, buffer areas, and drainage ways on the project site identified and marked by qualified personnel of either the Michigan Department of Environmental Quality or a consulting firm competent in this field. The Zoning Administrator, in consultation with the Environmental and Wetlands Protection Advisory Committee, shall determine whether a Level 1, 2, or 3 Wetland Assessment is required to adequately evaluate the project.

52.016

Use of Wetlands Map The Wetlands Map will be used by township boards and officials to identify areas, which may be subject to federal, state and local regulation. When the Zoning Administrator, Planning Commission, Township Board, or other township official determines that protected wetlands, buffer areas, or drainage ways may be affected by a requested building permit, special exception use permit, site plan, subdivision plat, or other application or activity, the Zoning Administrator will notify the applicant in writing that an application for a wetlands/drainage way permit is required, unless such application accompanies the request submitted. All township review and approval procedures shall be suspended until such time as a complete wetlands and drainage ways use application has been received, or until satisfactory evidence has been presented to show that protected wetlands or drainage ways are not located on the site.

52.017

Application Submission Procedures for use of Wetlands or Drainage ways. Applications for approval to use wetlands or drainage ways shall be submitted to the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee and shall consist of the following:

1. One (1) copy of Wetlands use permit application form of the U.S. Army Corps of Engineers and the Michigan Department of Environmental Quality
2. One (1) copy of a drawing of the proposed activity, including at least the following.
 - a.) Title block, including the applicant's name, name of body of water, section of township, description of activity, scale of drawing, and date drawing was prepared. The title block shall indicate the name and professional credentials of the engineer, architect, planner, or other person preparing the site drawing and the name and professional credentials of the wetlands scientist or environmental specialist who has delineated wetlands boundaries and types.
 - b.) Location and extent of protected wetlands, buffer areas and drainage way on the site, as identified through field survey and presented on a topographic map of suitable scale. For projects five (5) acres, a scale of at least one (1) inch equals one hundred (100) feet is acceptable.
 - c.) Types of wetlands on the site, Le. forested, shrub, emergent marsh, wet meadow, and aquatic bed, identified by using methods approved by the Michigan Department of Environmental Quality as set forth in the Michigan "Wetland Determination Manual Draft for Field Testing" or other official publication.
 - d.) A site plan, subdivision plat, or planning map which overlays the proposed development or project onto the wetland district and drainage ways. Existing and proposed structures shall be clearly identified in relation to existing shore features (length of frontage, water depth and bottom configuration). If existing structures were previously authorized by township, state or federal permit show corresponding permit numbers.
 - e.) Typical cross sections of existing and proposed shoreline, waterline, structures, dredge cuts and fills, including dimensions and elevations, and location of wetlands.
 - f.) Type, volume and area for proposed shoreline construction materials, dredge material, and fill materials.

- g.) Type and location of soil erosion control measures, such as silt fences, straw bale berms and sediment basins to be used during construction, including measures which will be used to trap sediment which might otherwise run off into wetlands.
 - h.) If the proposed activity involved bulkhead construction, show the distance along both property lines from the face of the bulkhead to the center line of a street or other definable reference point (e.g. northeast corner of concrete patio, twelve-inch maple on west property line).
 - i.) If the proposed activity involves dredging, furnish the following:
 - (1) If the dredging material is to be placed on-site, outline the disposal areas of the drawing. If the dredge material is to be hauled away, provide a vicinity map showing the disposal area.
 - (2) Show method of containing dredge material to prevent reentry of the material into any drainage way or wetlands. Describe all procedures which the applicant will use to minimize adverse effects of construction.
3. Use applications shall be submitted to the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee on or before the date that the application is made for a preliminary review of subdivision plats, site plans, lot splits, grading approvals, or building permits.
 4. Upon receipt, the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee shall review the use application for completeness. Applicants shall be notified of any missing items. Following a determination that a use application is complete, the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee shall specify the number of copies to be submitted by the applicant.
 5. Township approvals for preliminary subdivision plats, site plans, lot splits, grading approvals, or building permits shall not be granted until approval for the use of protected wetlands, buffer areas, or drainage ways has been obtained.

52.018 Fees With the filing of an application, a non-refundable application fee shall be paid to the Township, in an amount specified by resolution of the Township Board, to cover Administration and inspection costs related to the use application.

52.019 Application Review Procedures

- a.) At the request of the applicant or any township resident, an administrative meeting may be held to review the proposed activity in light of the purposes of this ordinance.
- b.) Upon receipt of a complete application, the Township Zoning Administrator shall examine the Wetlands Map and may conduct or authorize the completion of a field inspection by the Township Zoning Enforcement Officer to verify the accuracy of the information received. The receipt of a use application shall comprise permission from the owner to complete a wetlands and drainage ways inspection.
- c.) If a proposed project does not require Planning Commission review and approval, approval or disapproval of use applications shall be the responsibility of the Zoning Administrator designated by the Township Board. The Township review shall be

completed within ninety (90) days from the time of submittal of a complete application. Applicants shall be notified in writing of the township decision, including reasons for denial of the use application, if applicable.

- d.) If a proposed project requires Planning Commission review and approval in accordance with the Zoning Ordinance, Subdivision Control Ordinance, or other Township Ordinance, the Planning Commission shall be responsible for reviewing the use application and recommending approval, approval with conditions, or disapproval to the Township Board.
- e.) Upon the receipt of a recommendation from the Planning Commission, the Township Board shall be responsible for the final approval, approval with conditions, or disapproval of applications to use wetlands or drainage ways. Applicants shall be notified in writing of the township decision, including reasons for denial of the use application, if applicable.
- f.) Approvals to use wetlands or drainage ways granted by the designated Township administrative official or the Township Board in accordance with this ordinance shall not take effect until seven (7) days following the granting of the approval.
- g.) If a proposed project requires a permit from the Michigan Department of Environmental Quality or the US Army Corps of Engineers, Township Officials may delay consideration and use approval until after state and/or federal permits have been obtained.
- h.) If a proposed project affects protected wetlands which are not subject to state and/or federal permit review, Township review and approval procedures shall be initiated upon receipt of a complete use application.

52.020 Review Standard and Criteria

- 1. In arriving at a determination with respect to a proposed wetlands and drainage ways use application, township officials shall take into consideration at least the following standard and criteria:
 - a.) A permit shall be issued only if the proposed project or activity is clearly in the public interest, and is otherwise lawful in all respects.
 - b.) In determining whether the activity is in the public interest, the benefit which would reasonably be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity, taking into consideration the local, state and national concern for the protection and preservation of natural resources from pollution, impairment and/or destruction. The following general criteria shall be applied in undertaking this balancing test.
 - (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, including alternatives, which are off-site, or on other commercially available properties.

- (3) The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private use to which the area is suited, including the benefits the wetland provides.
- (4) The probable impact on the proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
- (5) The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
- (6) The size and quality of the wetland being considered.
- (7) The amount and quality of the wetland being considered.
- (8) Proximity to any waterway.
- (9) Extent to which upland soil erosion adjacent to protected wetlands or drainage ways is controlled.
- (10) Economic value, both public and private, of the proposed land change to the general area.
- (11) Findings of necessity for the proposed project, which have been made by other state or local agencies.

2. An approval shall not be granted unless it is shown that an unacceptable disruption will not result to the aquatic resources. An approval shall not be granted unless the applicant also shows either of the following:

- a.) The proposed activity is primarily dependent upon being located in the wetlands or
- b.) A feasible and prudent alternative does not exist.

3. Upon application for a wetland use permit for locally protected wetlands, approval shall be granted unless the Township Board, with the advice of the Environmental and Wetland Protection Advisory Committee, determines that the wetland is essential to the preservation of the natural resources of the Township. The following criteria shall be considered in making the determination:

- a.) The site supports state or federal endangered or threatened plants, fish or wildlife appearing on a list specified in Section 36060 of the Act.
- b.) The site represents what is identified as a locally rare or unique ecosystem.
- c.) The site supports plants or animals of an identified local importance.
- d.) The site provides groundwater recharge documented by a public agency.
- e.) The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.

- f.) 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.
 - g.) The site provides protection of subsurface water resources and provision of valuable watersheds and recharging underground supplies.
 - h.) The site provides pollution treatment by serving as a biological and chemical oxidation basin.
 - i.) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
 - j.) The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
4. A request for the approval of uses in the buffer area of the wetland district shall be considered favorably for erosion control structures, storm water management facilities, and water-dependent structures, provided that the flow of water is not diverted from wetlands. The use of the buffer area for permanent structures and earth-moving activities shall be discouraged.
5. Each permit approval shall specifically state the effective period of its validity, and shall be restricted to the shortest period possible to allow the permitted activity while protecting the wetland resources and purposes of this ordinance.

52.021 Appeal Procedures

1. An applicant who is aggrieved by a decision of the Zoning Administrator, Planning Commission, or other township official concerning the use of wetlands and drainage ways may appeal the decision to the Township Board. In reviewing the appeal, the Township Board shall determine whether the review criteria and standards set forth in this ordinance have been met. The Township Board, based upon its appellate review, may reverse, affirm or modify the approval granted by the Zoning Administrator, Planning Commission, or other township official. An appeal under this section must be brought within 21 days of the administrative decision.
2. An applicant who is aggrieved by a decision of the Township Board concerning the use of wetland and drainage ways may make an appeal to the Cass County Circuit Court. In reviewing the appeal, the township board shall determine whether the review criteria and standards set forth in this ordinance have been met. An appeal under this Section must be brought within 21 days of the decision of the Township Board.

52.022 Wetland Mitigation

1. Prior to considering a proposal for wetland mitigation, the applicant shall submit evidence that all of the following requirements have been satisfied.
 - a.) That all feasible and prudent efforts have been made to avoid the loss of wetland resource values.
 - b.) That all practical means have been considered to minimize impacts.
 - c.) That it is practical to replace the wetland resource values which will be unavoidably eliminated.

2. If the reviewing authority determines that it is practical to replace the wetland resource values, which will be unavoidably impacted, the following criteria shall be considered when reviewing an applicant's mitigation proposal:
 - a.) Mitigation shall be provided on-site where practical and beneficial to the wetland resources. If mitigation on-site is not practical and beneficial, mitigation in the immediate vicinity of the permitted activity may be considered. In all cases, mitigation shall be provided within the jurisdiction of Porter Township.
 - b.) Any proposal shall assure that, upon completion, there shall be no net loss to the wetland resources.
 - c.) The proposal shall give consideration to replacement of the predominant functional values lost within the impacted wetlands.
 - d.) Any mitigation activity shall be completed before initiation of other permitted activities, unless a phased concurrent schedule can be agreed upon between the township and the applicant.
 - e.) Monitoring to establish documentation of the functional performance of the mitigation may be required as permit conditions, as well as necessary corrective action required, to deliver the wetland resource values identified.
3. Wetland impact mitigation and monitoring plans shall become conditions of use approval.
4. All costs for preparing and carrying out mitigation and monitoring plans shall be the responsibility of the applicant.

WETLAND MARKING, ENCROACHMENT AND EROSION CONTROL

52.023 On-Site Demarcation of Protected Wetlands and Drainage ways Through staking or other means, the landowner shall identify the location of protected wetlands, buffer areas, and drainage ways on the project site. (See also Section 801.)

52.024 Display Of Use Approval Certification; Inspections A certificate or authorization for activities in protected wetlands buffer areas and drainage ways shall be prominently displayed at the project site. The owner shall display the certificate or authorization continuously while authorized activities are conducted and for ten (10) days following completion. The owner shall allow township representatives to enter and inspect the premises at any reasonable time, and failure to allow inspections shall constitute a violation of this ordinance.

52.025 Maintenance of Erosion Control Measures Maintenance of erosion control measures, including but not limited to silt fences, straw bale berms, and sediment traps shall be the responsibility of the landowner. The same shall be maintained throughout the wetland and buffer area.

52.026 ADMINISTRATION, ENFORCEMENT AND PENALTIES

52.027 Penalties For Violation Unless a use approval has been granted by the Township, any of the activities listed in 52.010 of this ordinance shall be considered a violation. Any person convicted of a violation of any provision of this ordinance shall be responsible for a municipal civil infraction.

52.028 Separate Offenses Defined Each act of violation, and every day upon which any violation shall occur, shall constitute a separate offense.

- 52.029 Injunction** Any activity conducted in violation of this ordinance is declared a nuisance per se, and the Township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation.
- 52.030 Stop-Work Order** The Building Department, Township Zoning Administrator, or Zoning Enforcement Officer may issue a stop-work order or withhold issuance of a certificate of occupancy, permits or inspections until the provisions of this ordinance, including any conditions attached to a use approval, have been fully met.
- 52.031 Restoration Requirements for Illegal Wetlands Alteration** In the event of a violation involving illegal alteration of wetlands protected under this ordinance, the Porter Township Board shall have the power to order complete restoration of the wetland area by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration within a reasonable time following the order, the Township shall have the authority to restore the affected wetlands to their prior condition wherever possible, and the person or agent responsible for the original violation shall be held liable to the Township for the cost of restoration. Requirements and specifications for wetland restoration ordered by the Township shall be coordinated with state and/or federal agency requirements and specifications for wetland restoration, if any.
- 52.032 Other Remedies Available to the Township** The penalties provided for in this article shall not be exclusive and the Township shall be entitled to seek any and all other remedies available at law or in equity in connection with the violation of this ordinance.
- 52.033 Severability** Should any provision or section of this ordinance be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, and the remaining portions of this ordinance shall be enforceable unless the court determines that the sections held to be unconstitutional or invalid require the invalidation of the balance of the ordinance.
- 52.034 Enactment and Effective Date** This ordinance is hereby declared to have been adopted by the Porter Township Board at a regular meeting held on June 12 2007, thereof, and is ordered to be given publication in the manner prescribed by law. This Ordinance shall take effect and be in force from after 30 days after publication.
- 52.035 Repeal Clause** All Ordinances inconsistent with the provisions of this Ordinance are hereby repealed. All previous Wetlands Ordinances are hereby repealed.

ADOPTED: June 12, 2007