

**PITTSFIELD CHARTER TOWNSHIP**  
**WASHTENAW COUNTY, MICHIGAN**

**ORDINANCE NO. 255**

**AN ORDINANCE TO ENACT A NEW ORDINANCE TO PROVIDE FOR THE  
PROTECTION OF WETLANDS LOCATED WITHIN THE TOWNSHIP.**

THE CHARTER TOWNSHIP OF PITTSFIELD, WASHTENAW COUNTY, MICHIGAN,  
ORDAINS:

Section 1. Enactment of New Wetlands Protection Ordinance. A new ordinance to protect wetlands located within the Township is hereby adopted to read in its entirety as follows:

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**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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TABLE OF CONTENTS

1.0	<u>Legislative Findings; Criteria to Be Considered in Administration of this Ordinance</u>
2.0	<u>Purpose and Intent</u>
3.0	<u>Definitions</u>
4.0	<u>Construction</u>
5.0	<u>Applicability</u>
6.0	<u>Prohibited Activities</u>
7.0	<u>Activities And Uses Not Requiring A Permit Under This Ordinance</u>
8.0	<u>Wetlands Use Permits for Activities Listed in Section 6.0</u>
8.1	<u>Permit Required</u>
8.2	<u>Submission of Complete Permit Application Required</u>
8.3	<u>Permit Application Deemed Withdrawn If Information Not Timely Submitted</u>
8.4	<u>Permit Application Fees; Escrow Fees</u>
8.5	<u>Permit Application – Required Information, Documents, and Materials</u>
8.6	<u>Permit Application Review Procedures</u>
8.6.1	<u>In General</u>
8.6.2	<u>Wetlands Use Permit Decisions by the Planning Commission or the Township Board</u>
8.6.3	<u>Wetlands Use Permit Decisions by the Township Ordinance Enforcement Officer</u>
8.7	<u>Permit Application Approval; Issuance of Permit</u>
8.8	<u>Permit Application Review; Required Determinations; Criteria for Review</u>
8.9	<u>Permit Application Review; Additional Standards, Procedures and Criteria For Wetlands Less Than 2 Acres In Size</u>
8.10	<u>Approval of Permit Subject to Conditions</u>
8.11	<u>Mitigation</u>
8.12	<u>Denial of Permit Application</u>
8.13	<u>Permit For Modification of Proposed Activity</u>

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 9.0 Administrative Appeals
- 10.0 Enforcement
  - 10.1 Township Inspection Authority; Right of Entry
  - 10.2 Notices of Violation and Orders
  - 10.3 Stop Work Orders
  - 10.4 Consent Orders
  - 10.5 Financial Assurances
  - 10.6 Municipal Civil Infractions
  - 10.7 Criminal Penalties; Imprisonment
  - 10.8 Continuing Violation
  - 10.9 Nuisance Per Se
  - 10.10 Reimbursement of Township
  - 10.11 Judicial Relief
  - 10.12 Cumulative Remedies
  - 10.13 Reporting and Record Keeping
  - 10.14 Township Ordinance Enforcement Officer Duties
  - 10.15 Compliance Docket
  - 10.16 Violation Docket
- 11.0 Township Wetlands Inventory Map
- 12.0 Wetlands Verification and Delineation
- 13.0 Natural Resources Commission
- 14.0 Wetlands Registry and Stewardship Program

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

1.0. Legislative Findings; Criteria to Be Considered in Administration of this Ordinance

1.1. The Township Board of Pittsfield finds that:

1.1.1. Wetlands conservation is a matter of Township concern because a wetland in one area of the Township may be affected by acts on a river, lake, stream, or wetlands in other areas of the Township.

1.1.2. Wetlands are indispensable and fragile resources, which in their natural state provide many benefits to the Township. The loss of a wetland may deprive the people of the Township of the benefits to be derived from the wetland, including, but not limited to, the following:

1.1.2.1. Flood and storm control by the hydrologic absorption and storage capacity of the wetland.

1.1.2.2. Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, fish, and waterfowl, including migratory waterfowl, and rare, threatened, or endangered animal and plant species.

1.1.2.3. Protection of subsurface water resources and provision of valuable watersheds and recharging ground water supplies.

1.1.2.4. Pollution treatment by serving as a biological and chemical oxidation basin.

1.1.2.5. Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

1.1.2.6. Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

1.1.3. The loss of wetlands and corresponding loss of the benefits to be derived therefrom constitutes a threat to the public health, safety and general welfare of the Township and the environment.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 1.1.4. Preservation of wetlands in an undisturbed and natural condition is necessary to maintain important physical, hydrological, aesthetic, recreational, and economic assets for existing and future residents of the Township.
- 1.2. The Township shall consider the findings and criteria provided in Section 1.1 in administering this Ordinance, and in all actions taken or decisions made pursuant to this Ordinance.

2.0 **Purpose and Intent**

- 2.1. Based on the findings set forth in Section 1.1 of this Ordinance, it is the purpose and intent of this Ordinance to regulate all wetlands within the Township (including, but not limited to, wetlands less than 2 acres in size) to the fullest extent authorized by local, state, and federal laws and regulations, so as to:
  - 2.1.1. Prevent the people of the Township from being deprived of any of the benefits derived from wetlands as set forth in Section 1.1.
  - 2.1.2. Provide the procedures and requirements to identify all wetlands within the Township, and to maintain an accurate and up-to-date inventory of all wetlands within the Township.
  - 2.1.3. Specify the activities that are prohibited in a wetland except as otherwise provided by this Ordinance or by a permit obtained from the Township as required by this Ordinance.
  - 2.1.4. Prevent a further loss of wetlands as provided by this Ordinance.
  - 2.1.5. Specify the activities that are allowed in a wetland without a permit under this Ordinance, subject to other local, state and federal laws and regulations.
  - 2.1.6. Require a permit for any use or development in a wetland that is not otherwise authorized without a permit as provided by this Ordinance.
  - 2.1.7. Establish procedures and requirements to review Wetlands Use Permit applications (including, but not limited to, applications for Wetlands Use Permits involving the proposed use of a wetland that is less than 2 acres in size) and impose conditions on Wetlands Use Permits, including mitigation.
  - 2.1.8. Establish all other procedures, requirements, standards, and conditions; financial assurance provisions; and fine, penalty, enforcement, and appeal provisions, as necessary and appropriate to accomplish the regulatory purposes and intent of this Ordinance.

Pittsfield Charter Township  
Wetlands Protection Ordinance

---

2.1.9. Create a Township Natural Resources Commission to assist in the protection of wetlands and to build public awareness and support for the values of wetlands.

2.1.10. Provide incentives for wetlands protection and recognition of the value of stewardship for the care and protection of wetlands.

2.2. Further, based on the findings set forth in Section 1.1, the Township Board declares a goal of no net loss of wetlands within the Township and a long term goal of a net gain in wetlands within the Township. These goals are to be accomplished through the use of all means available to the Township as authorized by applicable local, state and federal laws and regulations, including, but not limited to, the implementation of the regulatory purposes and intent of this Ordinance; the identification and review of degraded or destroyed wetlands in the Township; and the use of incentives, voluntary agreements, and other forms of cooperation between the Township and land owners to protect and restore wetlands to the greatest extent possible authorized under the law.

3.0 Definitions

As used in this Ordinance, the following words and phrases shall mean as follows:

*Activity* means any human use, operation, development, or action (including, but not limited to, filling, dredging, placing, depositing, dumping, pumping, drilling, constructing, erecting, mining, grading, paving, or excavating of material, buildings, or structures) that may result in or cause any change to property or result in or cause any impact or effect on a wetland.

*Adverse Effect or Adverse Impact* means anything that would destroy, harm, impair, diminish or degrade the ability of a wetland to provide the benefits as set forth in Section 1.1.

*Contiguous* means any of the following:

1. A permanent surface water connection or any other direct physical contact with an inland lake or pond, a river or stream.
2. A seasonal or intermittent direct surface water connection to an inland lake or pond, a river or stream.
3. A wetland that is partially or entirely located within five hundred (500) feet of the ordinary high water mark of an inland lake or pond, a river or stream, unless it is determined by the MDEQ, pursuant to R 281.924(4) of the Michigan Administrative Code, that there is no surface water or groundwater connection to these waters.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

4. Two or more areas of wetland separated only by barriers, such as dikes, roads, berms, or other similar features, but with any of the wetland areas contiguous under the criteria described in Subsections (1), (2) or (3) of this definition.

*Days* means calendar days, unless otherwise specified.

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

*Fill material* means soil, rocks, sand, gravel, clay, peat, debris, refuse, waste of any kind, or any other kind of material that displaces soil or water or reduces water retention potential.

*Inland lake or pond, a river or stream* means 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.

*MAC* means the Michigan Administrative Code.

*MDEQ* means the Michigan Department of Environmental Quality.

*Michigan Wetlands Protection Act (MWPA)* means NREPA Part 303 (“Wetlands Protection”).

*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. To be considered “minor drainage,” the drainage must be inconsequential to the wetlands.

*NREPA* means the Michigan Natural Resources and Environmental Protection Act (Act No. 451 of the Public Acts of Michigan of 1994, MCL §§ 324.30301 *et seq.*)

*Ordinance Enforcement Officer* means a person appointed by resolution of the Township Board to administer this Ordinance and to carry out the duties as provided by this Ordinance.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

*Owner* means any person who has dominion over, control of, title to and/or any other proprietary interest in wetlands and watercourse areas, or title to an obstruction, natural or otherwise, to wetlands and watercourse properties.

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

*Qualified* consultant, engineer, contractor or other entity. Where this Ordinance requires a permit applicant or other person to use or retain a “qualified” consultant, engineer, contractor or other entity in connection with a wetlands delineation, mitigation or other wetlands matter, the determination as to whether the consultant, engineer, contractor or other entity (hereinafter collectively referred to in this definition as the “consultant”) is qualified for purposes of this Ordinance shall be made by the Township based upon the Township’s consideration of factors including, but not limited to, the following: The consultant’s credentials, including the strength of the consultant’s background, education, training, and professional experience in hydrology, soil science, ecology, and botany, as relevant to wetlands; the consultant’s experience in dealing with other local governments or state and federal wetlands agencies with regard to wetlands issues; the consultant’s knowledge of applicable local, state and federal wetlands laws and regulations; the consultant’s references or other sources of information regarding the consultant’s wetlands qualifications; and such other factors as determined relevant and appropriate by the Township.

*Restoration* means the reestablishment of wetlands characteristics and functions at a site where they have ceased to exist through the replacement of wetlands hydrology, vegetation, or soils.

*Township* means Pittsfield Charter Township, Washtenaw County, Michigan. As used in this Ordinance, the term “Township” may also be used to refer generically to the Township body or designee of the Township (including the Township Board, the Township Planning Commission, the Township Ordinance Enforcement Officer, or the Natural Resources Commission) that reviews, decides, or takes other action with respect to particular applications for Wetlands Use Permits as specified by this Ordinance: In the context of permit approvals required in conjunction with a site plan, plat or other proposed land use, references to decisions or actions by the “Township” means by the Planning Commission or the Township Board, as applicable. In the context of permit approvals submitted in conjunction with activities that do not require approval by the Planning Commission and/or the Township Board, references to decisions or actions by the “Township” means by the Ordinance Enforcement Officer. In the context of appeals of decisions made by the Ordinance Enforcement Officer, the Planning Commission or the Township Board regarding Wetlands Use Permits, references to decisions or actions by the “Township” means by the Natural Resources Commission. For purposes of issuing a notice of violation and order or municipal civil infraction citation or notice, “Township” means the Ordinance Enforcement Officer or other authorized local official as provided by this Ordinance.

*Township Board* means the legislative body of Pittsfield Charter Township.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

*Wetland* means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh, and which is any of the following:

1. Contiguous to a lake or pond, or a river or stream, regardless of size.
2. Not contiguous to a lake or pond, or a river or stream; and 2 acres or more in size.
3. Not contiguous to a lake or pond, or a river or stream; and less than 2 acres in size, if the Township determines that protection of the area is essential to the preservation of the natural resources of the Township from pollution, impairment, or destruction as provided by this Ordinance.

*Wetland Less Than 2 Acres In Size* means (1) a non-contiguous, single wetland that is less than 2 acres in size; or (2) multiple wetlands within 100 feet of each other whose combined area totals less than 2 acres, whether these are on the same parcel or multiple parcels; provided, however, that “wetland less than 2 acres in size” does not include any single wetland that is less than 0.2 acre in size; or multiple wetlands within 100 feet of each other whose combined area totals less than 0.2 acre.

*Wetlands Use Permit* means a permit issued by the Township for activities in a wetland as provided by this Ordinance.

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

#### 4.0 Construction

4.1. The rules of construction provided by this Section shall apply in the interpretation and application of this Ordinance by the Township, a reviewing court, or any other person. Consistent with regulatory purposes and intent of this Ordinance and other applicable local, state and federal laws and regulations:

4.1.1. The provisions of this Ordinance shall be construed and applied as liberally as possible in favor of the protection and preservation of wetlands located within the Township and of the benefits to be derived therefrom.

4.1.2. Conversely, the provisions of this Ordinance shall be construed and applied as strictly as possible against authorizing, approving or allowing any action or activity in a wetland that could result in adverse effects on a wetland.

4.1.3. In the case of a difference of meaning or implication between the text of this Ordinance and any caption or illustration, the text of this Ordinance shall control.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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4.1.4. In all cases, the Township's interpretation and application of the provisions of this Ordinance shall control.

5.0 Applicability

5.1. The provisions and requirements of this Ordinance, including, but not limited to, wetlands use prohibitions and wetlands use permit requirements shall apply to activities and operations proposed or carried out by any person.

5.2. The Township's authority to regulate wetlands within its boundaries as provided by this Ordinance is supplemental to the Township's existing authority as otherwise provided by applicable laws and the state constitution.

5.3. The Township's jurisdiction and authority over the regulation of wetlands as provided by this Ordinance is concurrent with, and for wetlands not regulated under state or federal law, in addition to, the jurisdiction and authority of the state and federal governments.

5.4. The issuance by the Township of a Wetlands Use Permit as provided by this Ordinance shall not relieve any person from obtaining a permit for activities in a wetland that may be required under any state or federal law or regulation; nor shall a permit or any approval for activities in a wetland issued under any state or federal law or regulation (or under any other local law or regulation) relieve any person from obtaining a Wetlands Use Permit required by this Ordinance.

5.5. Compliance with this Ordinance shall not relieve any person of the obligation to comply with any other applicable local, state, or federal law or regulation.

6.0 Prohibited Activities

6.1. Except as otherwise provided by this Ordinance, or by a permit obtained from the Township as provided by this Ordinance, a person shall not do any of the following (or cause any of the following to occur):

6.1.1. Deposit or permit the placing of fill material in a wetland.

6.1.2. Dredge, remove, or permit the removal of soil or minerals from a wetland.

6.1.3. Construct, operate, or maintain any use or development in a wetland.

6.1.4. Drain surface water from a wetland.

6.1.5. Mowing, cutting, removing, or causing to be removed or damaged, native vegetation or trees from the wetland, except for the mowing of a walkable path

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

not to exceed ten (10) feet wide, unless as an ecological restoration project approved by the Ordinance Enforcement Officer.

- 6.2. The scope of activities that are prohibited in the absence of a permit as provided by this Section shall be construed and applied as broadly and liberally as possible, and any exemptions from or exceptions to the requirement of obtaining a permit shall be construed and applied as narrowly and strictly as possible, consistent with applicable local, state and federal laws and regulations.

7.0 Activities And Uses Not Requiring A Permit Under This Ordinance

- 7.1. Activities that require a permit under NREPA Part 325 (“Great Lakes Submerged Lands”) or Part 301 (“Inland Lakes and Streams”), or a discharge that is authorized by a discharge permit under Sections 3112 or 3113 of NREPA Part 31 (“Water Resources Protection”), do not require a permit under this Ordinance.

- 7.2. The following uses are allowed in a wetland without a permit under this Ordinance subject to other applicable local, state and federal laws and regulations and subject to the owner’s regulation:

7.2.1. Fishing, trapping, or hunting.

7.2.2. Swimming or boating.

7.2.3. Hiking.

7.2.4. Grazing of animals.

7.2.5. Farming, horticulture, silviculture, lumbering, and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. Wetlands altered under this subsection shall not be used for a purpose other than a purpose described in this subsection without a permit from the Township.

7.2.6. Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to NREPA Part 303 or former Act No. 203 of the Public Acts of 1979.

7.2.7. Construction or maintenance of farm or stock ponds.

7.2.8. Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products:

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 7.2.8.1. An existing private agricultural drain.
- 7.2.8.2. That portion of a drain legally established pursuant to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws, which has been constructed or improved for drainage purposes.
- 7.2.8.3. A drain constructed pursuant to other provisions of NREPA Part 303 or former Act No. 203 of the Public Acts of 1979.
- 7.2.9. 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.
- 7.2.10. 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 expressly provided in this Ordinance, a wetland improved under this subsection after October 1, 1980 shall not be used for nonfarming 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 that the Township has determined by clear and convincing evidence to be a wetland that is necessary to be preserved for the public interest, in which case a permit is required.
- 7.2.11. 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.
- 7.2.12. Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of 6 inches or less, if the pipelines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.
- 7.2.13. 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.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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- 7.2.14. Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or constructed pursuant to NREPA Part 303 or former Act No. 203 of the Public Acts of 1979.
- 7.2.15. Construction of iron and copper mining tailings basins and water storage areas.
- 7.3. An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under this Ordinance.
- 7.4. A wetland that is incidentally created as a result of 1 or more of the following activities is not subject to regulation under this Ordinance:
- 7.4.1. Excavation for mineral or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on or adjacent to a water body of 1 acre or more in size.
- 7.4.2. Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.
- 7.4.3. 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.
- 7.5. Except as otherwise expressly exempted by Sections 7.1 through 7.4, above, no person shall engage in any of the prohibited activities in a wetland as provided by Section 6.0 without first obtaining a Wetlands Use Permit from the Township as provided by this Ordinance.
- 7.6. The scope of activities and uses that are permitted in a wetland without obtaining a permit as provided by this Section shall be construed and applied as narrowly and strictly as possible, and any exemptions from or exceptions to the requirement of obtaining a permit shall be construed and applied as narrowly and strictly as possible, consistent with applicable local, state and federal laws and regulations.
- 8.0 Wetlands Use Permits for Activities Listed in Section 6.0
- 8.1. Permit Required
- 8.1.1. Except as otherwise provided by this Ordinance, it shall be unlawful for any person to undertake or engage in any of the activities listed in Section 6.0 (or to cause any of those activities to occur) without first obtaining a Wetlands Use Permit as provided by this Ordinance.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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- 8.1.2. An application for a Wetlands Use Permit shall be submitted to the Township and shall be reviewed and approved, approved with conditions, denied, or modified by the Township as provided by this Ordinance.
  - 8.1.3. Before an application for a Wetlands Use Permit is submitted, it may be possible for the Ordinance Enforcement Officer (or other authorized Township designee) to determine the necessity of obtaining a permit by reference to the Township Wetlands Inventory Map.
  - 8.1.4. If a Wetlands Use Permit is required, the applicant may request a preliminary administrative meeting with the Township to review the proposed activity in light of the purposes, intent, standards and requirements of this Ordinance, prior to submittal of the application to the final decision-making body.
- 8.2. **Submission of Complete Permit Application Required**
- 8.2.1. Each person applying for a Wetlands Use Permit shall apply directly to the Pittsfield Township Municipal Services Department as provided by this Section and other applicable provisions of this Ordinance. The application shall be made on an application form supplied to the Township by the Michigan Department of Environmental Quality, and shall include or be accompanied by all information, documents, items and materials required by this Ordinance.
  - 8.2.2. Upon receipt of an application and after determining that the application is complete the Township shall:
    - 8.2.2.1. Date stamp the application.
    - 8.2.2.2. Advise the applicant of the applicant's obligation to post the subject property with a sign stating that an application for a Wetlands Use Permit for the property has been filed with the Township and the procedures and deadlines for submitting public comment. The sign shall be no less than ten (10) square feet and no more than eighteen (18) square feet in size; shall be placed at least ten (10) feet from other signs or obstructions to viewing the sign; shall include sufficient blank space to add the notice of the public hearing as required by Section 8.6.2.2.2., including the time, date, and place of the hearing; and shall be clearly visible and readable from the abutting streets.
    - 8.2.2.3. Forward a copy of the application and supporting materials to the Township's wetlands consultant, as applicable, to confirm the boundaries of the wetlands and review the proposal in light of the purposes, intent, standards and requirements of this Ordinance. Based on the wetlands consultant's review, the wetlands consultant shall

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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- prepare and transmit a report and recommendation to the Ordinance Enforcement Officer.
- 8.2.2.4. Forward a copy of the application to the Michigan Department of Environmental Quality, along with any State fees that may have been submitted under MWPA Section 30306.
- 8.2.2.5. Cause to be published a notice of the application and the date and time for submission of written public comments in a newspaper of general circulation in the Township.
- 8.2.3. A permit application shall not be deemed complete for purposes of this Section until the Township has determined that it has received all information requested on the application form, the fully paid application fee, the full amount of any required escrow fee, and any other requested documentation or information necessary for the Township to adequately review the application and reach a decision as authorized by this Ordinance. An application fee or escrow fee paid by check or money order, or in any form other than cash, shall not be considered received until the Township has confirmed that the full amount of the fee has been deposited in the Township's bank account.
- 8.2.4. If the Township determines that an application is not complete, the Township shall provide written notice to the applicant specifying what the applicant must do to complete the application.
- 8.2.5. The ninety (90) day period for approving, denying, or modifying an application as provided by this Ordinance shall not begin to run until the Township has determined that the application is complete as provided by this Section.
- 8.2.6. Where the Michigan Department of Environmental Quality forwards to the Township an application with respect to a wetland within the Township which was initially filed by the applicant with the MDEQ rather than to the Township, the Township, upon receipt of such application, shall proceed to determine whether the application has been officially received and is complete as provided by this Section. After the Township has determined that the application is complete for purposes of this Ordinance, the Township shall then review and approve, deny, or modify the application as otherwise provided by this Ordinance.
- 8.2.7. The filing of a permit application with the Township shall constitute permission from the owner for the Township to complete an on-site investigation of the property in question for purposes of this Ordinance.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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8.3. Permit Application Deemed Withdrawn If Information Not Timely Submitted

8.3.1. An application may be considered withdrawn and the file for the application may be closed by the Township if an applicant fails to respond to any written inquiry or request from the Township for information, documents, items or materials requested in connection with the application within 30 days of the request, or within any longer period of time as needed by the applicant to provide the requested information, documents, items or materials if the Township and the applicant agree in writing that an extension of time is appropriate and the amount of additional time is set forth in the agreement.

8.4. Permit Application Fees; Escrow Fees

8.4.1. A non-refundable application fee shall be submitted to the Township with the initial submittal of the permit application form. The application fee shall be in the amount established by resolution of the Township Board.

8.4.2. In addition, the applicant shall submit to the Township with the initial submittal of the permit application form an escrow fee in the amount determined by resolution of the Township Board for the estimated cost of consultants who may be retained by the Township in connection with the review of the application.

8.4.2.1. If the cost of the services of the Township's consultants is less than the escrow fee, the Township shall refund the balance to the applicant.

8.4.2.2. If the cost of the services of the Township's consultants exceeds the amount of the escrow fee, the applicant shall provide to the Township an additional escrow amount equal to no less than one-half the original escrow amount. All review by the Township of the wetlands use permit application shall cease until such additional escrow amount is deposited with the Township, and the number of days during which all review of the wetlands use permit application ceases shall be deducted from the 90 day period within which the Township would otherwise be obligated to act upon the application.

8.4.2.3. A denial of an application for a Wetlands Use Permit shall not affect the applicant's obligation to pay the escrow fees required by this section.

8.4.3. All fees shall be paid by cash, check or money order. All forms of payment other than cash shall be made payable to Pittsfield Charter Township.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

8.5. Permit Application – Required Information, Documents, and Materials

8.5.1. The applicant for a Wetlands Use Permit shall submit to the Township all of the following information, documents, items and materials (in as many copies as specified by the Township):

8.5.1.1. A completed application form (including all required maps, drawings, and project specific information prepared according to the instructions on the application form or as otherwise required by the Township).

8.5.1.2. An application fee in the full amount specified by the Township.

8.5.1.3. If requested by the Township, an escrow fee in the full amount specified by the Township.

8.5.1.4. A wetlands delineation including, but not limited to, the following information: dominant tree, sapling, shrub and herb vegetation; presence or lack of accepted wetlands hydrology indicators; analysis of soil including a description of the soil profile to at least 20 inches and comparison to Washtenaw County Soil Survey and maps of the wetlands mapped. Mapped data shall be represented in a manner that allows comparison to the Township's Wetlands Inventory Map.

8.5.1.5. Soil drainage and storm water management plans.

8.5.1.6. An environmental assessment of the proposed use or development which shall include the impacts upon wetland benefits and the impacts upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within a contiguous lake, river, or stream; and a detailed description of the mitigation efforts that will be taken to avoid or minimize such impacts if the permit is approved.

8.5.1.7. A cover letter signed by the applicant including the following information:

8.5.1.7.1. The name of project and brief description (one or two paragraphs).

8.5.1.7.2. The date upon which the activity is proposed to commence and the expected completion date (including proposed commence dates and expected completion dates for phases of a project, as applicable).

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.5.1.7.3. A detailed written explanation with supporting documentation as to how and why the applicant believes that the proposed project will meet all required determinations, criteria, standards and requirements that are prerequisite to permit approval as provided by this Ordinance.
- 8.5.1.7.4. A list of all federal, state, county or other local government permits or approvals required for the proposed project, including permit approvals, denials, or modifications already received, if any. Attach copies of all such approvals, denials or modifications, including all written findings supporting the action taken or conditions imposed, and copies of any permits which have been issued. If other required permits or approvals are still pending, indicate the status of the proceedings and an estimate as to when final action is expected for each.
- 8.5.1.7.5. Identification of any present litigation involving the property.
- 8.5.1.7.6. Identification of the person or persons financially responsible for the project, including names, addresses, daytime telephone numbers, and the names of any financial institution financing the project.
- 8.5.1.8. Such other documents, information, or materials as determined necessary by the Township to fully and adequately review and evaluate the application for purposes of this Ordinance.

8.6. **Permit Application Review Procedures**

8.6.1. **In General**

- 8.6.1.1. The Township shall review an application for a Wetlands Use Permit as provided by this Ordinance and shall approve, approve with conditions, deny, or request a modification to the application within 90 days after receipt of the completed application. If the Township does not approve, approve with conditions, deny, or request a modification to the completed permit application within 90 days after receipt, the application shall be considered approved by the Township. Notwithstanding any other provision of this Ordinance to the contrary, the 90 day review period within which the Township must act as

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

provided by this Section and MWPA Section 30307(6) may be extended for any additional period of time as mutually agreed upon in writing by the Township and the applicant, or as otherwise specifically provided by this Ordinance.

8.6.1.2. The Township shall process Wetlands Use Permit applications in a manner that ensures that the same Township entity makes decisions on site plans, plats, and related matters, and wetland determinations, and that the applicant is not required to submit to a hearing on the application before more than one Township decision making body. This requirement shall not apply, however, to either of the following:

8.6.1.2.1. A preliminary review by the Township Planning Department, Planning Commission, or Township planning consultant, prior to submittal of the application to the final decision-making body.

8.6.1.2.2. An appeal process that is provided for appeal to the Township Board or other body designated by the Township to hear appeals.

8.6.1.3. To the fullest extent possible, the application and review procedures for Wetlands Use Permits shall be concurrent with the application and review procedures for any other necessary Township approvals.

8.6.1.4. For a Wetlands Use Permit approval required in conjunction with a site plan, plat, or other proposed land use, the applicant shall at the time of application elect to have the application processed under either 8.6.1.4.1 or 8.6.1.4.2, as follows:

8.6.1.4.1. The Wetlands Use Permit application shall be reviewed, either prior to or concurrent with the review of the site plan, plat or other proposed land use submitted by the applicant, with the understanding that the land use review may not be completed at the time the decision is rendered on the Wetlands Use Permit application. Election of this alternative may require a reopening and reconsideration of the Wetlands Use Permit application, and possible revision of the permit, if the land use approval is inconsistent with the Wetlands Use Permit approval; or

8.6.1.4.2. The Wetlands Use Permit application shall be reviewed and acted upon concurrent with the review of the site

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

plan, plat or other proposed land use submitted by the applicant, and the applicant shall agree in writing that the ninety (90)-day review period as provided by Section 8.6.1.1 and MWPA Section 30307(6) shall thereby be extended accordingly.

8.6.2. Wetlands Use Permit Decisions by the Planning Commission or the Township Board

The following procedures shall apply to Wetlands Use Permit decisions by the Township Planning Commission or by the Township Board:

8.6.2.1. Wetlands Use Permit applications submitted in conjunction with a related land development activity shall be reviewed and decided by the same Township body that reviews and decides the related land development activity. The Planning Commission shall decide any Wetlands Use Permits in conjunction with special use permit applications and shall require that the delineation and Wetlands Use Permit application requests be submitted to the Township prior to the special use permit hearing so as to allow, to the fullest extent possible, timely, coordinated consideration of both matters. The Ordinance Enforcement Officer shall transmit application materials and the report and recommendation prepared by the Township's wetlands consultant to the Planning Commission or Township Board, as applicable.

8.6.2.2. After review and study of the completed application and the Township wetlands consultant's report and recommendation, the Township Planning Commission or Township Board, as applicable, shall hold a public hearing. The Wetlands Use Permit hearing shall be held in conjunction with a review of or hearing on any related land use requests. At the public hearing, the Planning Commission or Township Board, as applicable, may receive public comments regarding the application.

8.6.2.2.1. Notice of the hearing shall be provided as follows:

8.6.2.2.1.1. By posting at the Township administration building, and by publication in a newspaper of general circulation in the Township, not less than ten (10) days nor more than twenty (20) days prior to the date of the hearing.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.6.2.2.1.2. Notice shall also be sent by mail or personal delivery to the owners of property for which approval is being considered, and to all owners of property, as listed on the most recent tax roll, within five hundred (500) feet of the boundary of the property in question or five hundred (500) feet of the boundary down stream. Notice does not need to be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit shall receive notice. In the case of a single structure containing more than four (4) dwelling units, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure.
- 8.6.2.2.1.3. The notice shall indicate the place, time and subject of the hearing and the place and time the application for the Wetlands Use Permit may be examined.
- 8.6.2.2.2. At least ten (10) days prior to the hearing, the applicant shall post a notice of the hearing stating that an application has been filed for a Wetlands Use Permit and the time, date, and place of the hearing. The notice shall be posted on the sign placed on the subject property pursuant to Section 8.2.2.2. The sign shall be removed by the applicant upon approval or denial of the permit application.
- 8.6.2.3. The Planning Commission or Township Board, as applicable, shall proceed to review the permit application (along with the Township consultant's report and recommendation and any public comments received at the hearing) and approve, approve with conditions, deny, or modify the application in accordance with the standards, requirements, determinations, criteria and procedures as otherwise provided this Ordinance; provided that approval of a permit application by the Planning Commission or Township Board, as

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

applicable, shall not be issued or become effective until ten (10) days following the date of the approval.

8.6.2.4. Upon approval, approval with conditions, denial, or modification of a permit application by the Planning Commission or Township Board, as applicable, the Township shall post the decision at the Township Administration Building, and send written notice of the decision to:

8.6.2.4.1. The applicant;

8.6.2.4.2. Owners of property within five hundred (500) feet of the subject property;

8.6.2.4.3. Any other person who has submitted a written request to the Township to receive notice of the decision; and

8.6.2.4.4. MDEQ.

If the permit application has been denied or modified, the notice shall include a written statement of all reasons for the denial or modification.

8.6.3. Wetlands Use Permit Decisions by the Township Ordinance Enforcement Officer

The following process shall apply to Wetlands Use Permit decisions by the Ordinance Enforcement Officer:

8.6.3.1. Applications for Wetlands Use Permits that are submitted in conjunction with activities that do not require approval by the Planning Commission and/or Township Board, shall be reviewed and decided by the Ordinance Enforcement Officer.

8.6.3.2. Notice that the Ordinance Enforcement Officer has received and will review an application for a permit shall be provided as set forth in Sections 8.6.2.2.1.1 and 8.6.2.2.1.2. The notice shall state the expected time frame for the Ordinance Enforcement Officer's decision, the place and time the application for proposed Wetlands Use Permit may be examined, and the procedures and deadlines for submission of public comments.

8.6.3.3. Any person wishing to comment on the application must submit comments in writing to the Ordinance Enforcement Officer, by filing those objections with the Municipal Services Department, prior to the date and time set forth in the notice as provided by Section 8.6.3.2.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.6.3.4. After review and study of the completed application, the Township wetlands consultant's report and recommendation, and any public comments received, the Ordinance Enforcement Officer shall proceed to and approve, approve with conditions, deny, or modify the application in accordance with the standards, requirements, determinations, criteria and procedures as otherwise provided in this Ordinance; provided that approval of a permit application by the Ordinance Enforcement Officer shall not be issued or become effective until ten (10) days following the date of the approval. If the Ordinance Enforcement Officer receives more than five (5) public comments on the application as provided by Section 8.6.3.3, the Ordinance Enforcement Officer shall not take final action to approve, approve with conditions, deny, or modify the application until a public hearing has first been held by the Ordinance Enforcement Officer. Except for being held by the Ordinance Enforcement Officer rather than the Planning Commission or the Township Board, the public hearing held by the Ordinance Enforcement Officer shall otherwise comply with all requirements of Section 8.6.2.2.
- 8.6.3.5. Any person wishing to receive notice of the Ordinance Enforcement Officer's decision must submit a written request to the Township.
- 8.6.3.6. Upon approval, approval with conditions, denial, or modification of a permit application by the Ordinance Enforcement Officer, the Township shall post the decision at the Township Administration Building, and send written notice of the decision to:
- 8.6.2.4.5. The applicant;
  - 8.6.2.4.6. Owners of property within five hundred (500) feet of the subject property;
  - 8.6.2.4.7. Any other person who has submitted a written request to the Township to receive notice of the decision; and
  - 8.6.2.4.8. MDEQ.
- 8.6.3.7. If the permit application has been denied or modified, the notice shall include a written statement of all reasons for the denial or modification.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

8.7. Permit Application Approval; Issuance of Permit

- 8.7.1. The Township may approve an application for a Wetlands Use Permit and issue a permit only if the Township finds that all of the following apply:
- 8.7.1.1. The applicant has supplied complete information with the permit application and has otherwise submitted a complete application as provided by Section 8.2.
  - 8.7.1.2. The Township has made all of the determinations as specified in Section 8.8.2.
  - 8.7.1.3. The applicant has borne the burden to show to the Township's satisfaction that all of the required conditions as provided by Section 8.8.4 have been met.
  - 8.7.1.4. For a wetland that is less than two (2) acres in size: the Township has determined that the wetland is not essential to the preservation of the natural resources of the Township as provided by Section 8.9.
  - 8.7.1.5. The Township has determined that all other conditions required for approval of the application as provided by this Ordinance or by state or federal laws and regulations have been met.
- 8.7.2. Following approval of an application, a Wetlands Use Permit shall be issued upon determination by the Township that all other requirements of ordinance and law have been met, including site plan, plat or other land use approval, as applicable, and, if required under the MWPA, that a state permit has been issued by the MDEQ. If a wetlands permit issued by the state allows activities on a wetland not permitted by the Wetlands Use Permit approval granted under this Ordinance, the more restrictive terms of the permit approval granted under this Ordinance shall control, as consistent with applicable law.

8.8. Permit Application Review; Required Determinations; Criteria for Review

- 8.8.1. The provisions of this Section shall apply to the review by the Township of all permit applications, except as expressly provided by Section 8.9 regarding the additional procedures and criteria which apply to applications for a permit involving a wetland that is less than two (2) acres in size.
- 8.8.2. A permit for an activity listed in Section 6.0 shall not be approved unless the Township determines that:
- 8.8.2.1. The issuance of a permit is in the public interest;

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.8.2.2. The permit is necessary to realize the benefits derived from the activity; and
  - 8.8.2.3. The activity is otherwise lawful under all other applicable local, state and federal laws and regulations.
- 8.8.3. 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 Township's concern for the protection of natural resources from pollution, impairment, and destruction. The Township shall consider the following general criteria in making its decision:
- 8.8.3.1. The relative extent of the public and private need for the proposed activity.
  - 8.8.3.2. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
  - 8.8.3.3. 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 wetland provides.
  - 8.8.3.4. The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
  - 8.8.3.5. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
  - 8.8.3.6. The size of the wetland being considered.
  - 8.8.3.7. The amount of remaining wetlands in the general area.
  - 8.8.3.8. Proximity to any waterway.
  - 8.8.3.9. Economic value, both public and private, of the proposed land change to the general area.
  - 8.8.3.10. Whether the wetland (regardless of size) is essential to the protection of the Township's natural resources.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.8.4. A permit shall not be issued unless the applicant shows to the Township's satisfaction that:
- 8.8.4.1. An unacceptable disruption will not result to the aquatic resources.
  - 8.8.4.2. And also that either of the following conditions apply:
    - 8.8.4.2.1. The proposed activity is primarily dependent upon being located in the wetland.
    - 8.8.4.2.2. A feasible and prudent alternative does not exist.
- 8.8.5. In determining whether the applicant has adequately made the showings required by Section 8.8.4, the Township shall consider the criteria set forth in Section 1.0 and Subsections 8.8.3 of this Ordinance. In addition, the following requirements and criteria shall apply to all permit applications:
- 8.8.5.1. A permit applicant shall completely define the purpose for which the permit is sought, including all associated activities. An applicant shall not so narrowly define the purpose so as to limit a complete analysis of whether an activity is primarily dependent upon being located in the wetland and of feasible and prudent alternatives. The Township shall independently evaluate and determine if the project purpose has been appropriately and adequately defined by the applicant, and shall process the application based on that determination.
  - 8.8.5.2. The Township shall consider a proposed activity as primarily dependent upon being located in the wetland only if the activity is the type that requires a location within the wetland and wetland conditions to fulfill its basic purpose; that is, it is wetland-dependent. Any activity that can be undertaken in a non-wetland location is not primarily dependent upon being located in the wetland.
  - 8.8.5.3. An alternative is feasible and prudent if both of the following provisions apply:
    - 8.8.5.3.1. The alternative is available and capable of being done after taking into consideration cost, existing technology, and logistics.
    - 8.8.5.3.2. The alternative would have less adverse impact on aquatic resources. A feasible and prudent alternative may include any or all of the following:

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.8.5.3.2.1. Use of a location other than the proposed location.
- 8.8.5.3.2.2. A different configuration.
- 8.8.5.3.2.3. A different size.
- 8.8.5.3.2.4. A different method that will accomplish the basic project purpose.

The applicant shall demonstrate that, given all pertinent information, there are no feasible and prudent alternatives that have less impact on aquatic resources. In making this demonstration, the applicant may provide information regarding factors such as alternative construction technologies; alternative project layout and design; local land use regulations and infrastructure; and pertinent environmental and resource issues. This list of factors is not exhaustive and no particular factor will necessarily be dispositive in any given case.

- 8.8.5.4. If an activity is not primarily dependent upon being located in the wetland, it shall be presumed that a feasible and prudent alternative exists unless an applicant clearly demonstrates that a feasible and prudent alternative does not exist.
- 8.8.5.5. Unless an applicant clearly demonstrates otherwise, it shall be presumed that a feasible and prudent alternative involving a non-wetland location will have less adverse impact on aquatic resources than an alternative involving a wetland location.
- 8.8.5.6. An area not presently owned by the permit applicant that could reasonably be obtained, used, expanded, or managed in order to fulfill the basic purpose of the proposed activity is a feasible and prudent alternative location.
- 8.8.5.7. An alternative may be considered feasible and prudent even if it does not accommodate components of a proposed activity that are incidental to or severable from the basic purpose of the proposed activity.
- 8.8.5.8. An alternative may be considered feasible and prudent even if it entails higher costs or reduced profit. However, the Township shall consider

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

the reasonableness of the higher costs or reduced profit in making its determination.

- 8.8.6. The permit applicant shall provide adequate information, including documentation as required by the Township, to support the determinations, demonstrations and showings required by this Section (Section 8.8). The Township shall independently evaluate the information provided by the applicant to determine if the applicant has met its burden to support the required determinations and make the required demonstrations and showings.
- 8.8.7. In considering a permit application, the Township shall give serious consideration to findings of necessity for the proposed activity which have been made by other local, state and federal governmental agencies; and shall also consider any relevant public input.
- 8.9. Permit Application Review; Additional Standards, Procedures and Criteria For Wetlands Less Than two (2) Acres In Size
- 8.9.1. Any wetland less than two (2) acres in size for which a permit application has been submitted shall be analyzed for the purpose of determining whether the site is essential to the preservation of the natural resources of the Township as provided by this Section.
- 8.9.2. Upon application for a Wetlands Use Permit in connection with a wetland that is less than two (2) acres in size, the Township shall approve the application as provided by this Ordinance, subject to all other applicable laws and regulations, unless the Township determines that the wetland is essential to the preservation of the natural resources of the Township and provides the findings as provided by Section 8.9.3, in writing, to the permit applicant stating the reasons for the Township's determination. A determination by the Township that a wetland which is less than two (2) acres in size is essential to the preservation of the natural resources of the Township shall, by itself, provide a sufficient basis for the Township to deny the application (or modify the application).
- 8.9.3. In making a determination that a wetland is essential to the preservation of the natural resources of the Township must find that one or more of the following exist at the particular site:
- 8.9.3.1. The site supports state or federal endangered or threatened plants, fish, or wildlife appearing on a list specified in Section 36505 of the Michigan Wetlands Protection Act.
- 8.9.3.2. The site represents what is identified as a locally rare or unique ecosystem.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.9.3.3. The site supports plants or animals of an identified local importance.
  - 8.9.3.4. The site provides groundwater recharge documented by a public agency.
  - 8.9.3.5. The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.
  - 8.9.3.6. The site provides wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.
  - 8.9.3.7. The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
  - 8.9.3.8. The site provides pollution treatment by serving as a biological and chemical oxidation basin.
  - 8.9.3.9. The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
  - 8.9.3.10. The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
- 8.9.4. In connection with the determination whether a wetland that is less than two (2) acres in size is essential to the preservation of the natural resources of the Township, the applicant shall choose and specify in writing to the Township whether the analysis and determination will proceed under Subsection 8.9.4.1 or 8.9.4.2, relative to the site.
- 8.9.4.1. Instead of having the Township (or the Township's consultant) proceed with the analysis and determination, the property owner may acknowledge in writing that one or more of the criteria in Section 8.9.3 exist at the site in question, and shall specify all of the criteria which do exist; or
  - 8.9.4.2. The property owner may elect to have the Township or its consultant proceed with the analysis of whether any of the criteria in Section 8.9.3 exist or do not exist at the site in question.
  - 8.9.4.3. The property owner's specification as to whether the analysis and determination will proceed under Subsection 8.9.4.1 or 8.9.4.2 as provided by this Section shall be binding upon the applicant, unless

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

determined otherwise by the Township. The property owner's failure or refusal to specify whether the analysis and determination will proceed under Subsection 8.9.4.1 or 8.9.4.2 as provided by this Section shall not, under any circumstances, prevent the Township from proceeding independently of the applicant to determine whether the wetland is essential to the preservation of the Township's natural resources as provided by Section 8.9.3.

8.9.5. Following the Township's determination whether or not a wetland is essential to the preservation Township's natural resources (or after a property owner's acknowledgement of the same ):

8.9.5.1. The Township shall provide the property owner (or the applicant if in response to a permit application) with the Township's written findings under Section 8.9.3 stating the reasons for the Township's determination.

8.9.5.2. The Township Wetlands Inventory Map shall be revised at the time the map is next amended to indicate the Township's determination.

8.9.6. If a Wetlands Use Permit has been (or is subsequently) applied for and the Township has determined that the wetland in question is essential to the preservation of the Township's natural resources, the permit application shall be subject to all of the procedures and requirements generally applicable to permit applications as provided by this Section (Section 8.0), including, but not limited to, the required determinations and criteria provided by Sections 8.8.

8.9.7. The Township may proceed with a determination as to whether a wetland is essential to the preservation of the Township's natural resources as provided by this Section even though no permit application has been submitted, such as where the wetland appears on the Township's Wetlands Inventory Map, or is otherwise identified during a field inspection by the Township.

8.10. Approval of Permit Subject to Conditions

8.10.1. The Township's approval of a permit shall be subject to any conditions determined necessary by the Township to implement the regulatory purposes and intent of this Ordinance.

8.10.2. In general, such permit conditions include, but are not limited to, conditions designed:

8.10.2.1. To prevent or remove an impairment to the benefits to be derived from a wetland.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.10.2.2. To mitigate the impact on a wetland of a discharge of fill material or other prohibited activity.
- 8.10.2.3. To otherwise improve the water quality.
- 8.10.2.4. To ensure compliance with this Ordinance, or with any permit issued pursuant to this Ordinance.
- 8.10.3. Other specific permit conditions which may be required by the Township include, but are not limited to, the following:
  - 8.10.3.1. The Township may establish a reasonable time when the construction, development, or use is to be completed or terminated.
  - 8.10.3.2. A permit may be subject to a stated maximum duration and may require the permittee to reapply at specified intervals or apply for an extension of the permit term.
  - 8.10.3.3. The Township may require an applicant to file with the Township a cash or corporate surety bond or irrevocable bank letter of credit in an amount determined necessary by the Township to ensure compliance with the permit or any permit conditions. If the Township determines that there is a potential for adverse impacts effects to a wetland or wetlands benefit, the Township shall require the applicant to file a cash bond or irrevocable bank letter of credit in an amount, estimated by the Township (or the Township's wetlands consultant) to be required for restoration.
- 8.10.4. All approvals by the Township of a permit application shall be subject to the following conditions:
  - 8.10.4.1. The Township's final approval of a Wetlands Use Permit application shall be contingent upon receipt of evidence by the Township that all required state and federal permits have been obtained by the applicant.
  - 8.10.4.2. No Wetlands Use Permit shall be issued by the Township that would allow a more extensive alteration of a wetland than allowed by state and federal laws and regulations.
  - 8.10.4.3. A Wetlands Use Permit shall remain effective for a time period coincidental with other land use permits reviewed and approved concurrent with the Wetlands Use Permit. If applied for prior to the expiration date and concurrent with the expiring land use permit,

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

the applicant may be granted an extension that corresponds to additional time granted for the underlying land use permit. The maximum number of extensions shall coincide with the maximum number allowed for the underlying land use permit. If there is no other activity or permit involved, the Wetlands Use Permit shall remain effective for one (1) year. A maximum of a one (1) year extension may be approved.

- 8.10.4.4. Wetlands Use Permits for seasonal operations must be renewed annually unless otherwise stated in the permit.
- 8.10.4.5. Any temporary, seasonal, or permanent operation that is discontinued for two (2) consecutive years or two (2) consecutive seasons shall be deemed abandoned and, upon such a determination of abandonment by the Township, the Wetlands Use Permit for the operation shall automatically become void and of no further effect.
- 8.10.4.6. Any change that increases the size or scope of the operation and that affects the criteria considered in approving the permit as determined by the Township may require the filing of a new Wetlands Use Permit application.
- 8.10.4.7. A permittee shall comply with all the following in connection with any construction or other activity on the property for which the Wetlands Use Permit has been issued:
  - 8.10.4.7.1. Maintain soil erosion control measures in accordance with the Township Soil Erosion and Sediment Control Ordinance, as well as any best management practices required by the Wetlands Use Permit.
  - 8.10.4.7.2. Maintain clear delineation of the wetland (as marked by the Ordinance Enforcement Officer or Township wetlands consultant) so that its location and boundaries are visible to all construction workers.
  - 8.10.4.7.3. Post on the site, prior to commencement of work on the site and continuing throughout the duration of the project, a copy of the approved Wetlands Use Permit containing the conditions of issuance, in a

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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conspicuous manner such that the wording of the permit is available for public inspection.

8.10.4.8. A permit approved under this Ordinance may be revoked or suspended by the Township, after notice and an opportunity for a hearing, for any of the following causes:

8.10.4.8.1. A violation of any condition of the permit.

8.10.4.8.2. Misrepresentation or failure to fully disclose all relevant facts in the permit application.

8.10.4.8.3. A change in a condition that requires a temporary or permanent change in the activity. This includes, but is not limited to, withdrawal of the site plan or cancellation of the project by the permittee.

8.11. Mitigation

8.11.1. The Township may consider mitigation as a permit condition only after all of the following conditions are met:

8.11.1.1. The wetland impacts are otherwise permissible under Sections 1.1, 8.8 and 8.9 of this Ordinance;

8.11.1.2. There is no feasible and prudent alternative to avoid wetland impacts or the loss of wetlands; and

8.11.1.3. The applicant has used all practical means to minimize impacts to wetlands, including, but not limited to, the permanent protection of wetlands on the site not directly impacted by the proposed activity.

8.11.2. Notwithstanding anything to the contrary in Section 8.11.1, the Township may consider mitigation as a permit condition if the wetland is the subject of a court-ordered mitigation as a part of restitution for conviction of a violation of this Ordinance or applicable state and federal laws or regulations.

8.11.3. If the conditions of Section 8.11.1 are met, the Township shall in all cases require mitigation as a condition of a Wetlands Use Permit issued under this Ordinance; except that the Township may waive the mitigation condition if either of the following provisions applies:

8.11.3.1. No reasonable opportunity for mitigation exists; or

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.11.3.2. The basic purpose of the permitted activity is to create or restore wetlands or to increase wetlands habitat.
- 8.11.4. The Township shall require mitigation to compensate for unavoidable wetlands impacts permitted under this Ordinance using one or more of the following methods:
  - 8.11.4.1. The restoration of previously existing wetlands shall be the required method of mitigation if feasible and prudent as determined by the Township. If the Township determines that restoration of previously existing wetlands is not feasible and prudent, then either of the following methods may be used (listed in descending order of preference):
    - 8.11.4.1.1. The creation of new wetlands.
    - 8.11.4.1.2. The acquisition of approved credits from a wetlands mitigation bank established under MAC R 281.951 et seq.
    - 8.11.4.1.3. The preservation of existing wetlands, subject to the provisions of Section 8.11.5.
  - 8.11.4.2. For purposes of this Section, wetlands restoration means the reestablishment of wetland characteristics and functions at a site where they have ceased to exist through the replacement of wetlands hydrology, vegetation, or soils.
  - 8.11.4.3. The enhancement of existing wetlands shall not be considered mitigation.
- 8.11.5. The preservation of existing wetlands may be considered as mitigation only if the Township determines that all of the following conditions are met:
  - 8.11.5.1. The wetlands to be preserved perform exceptional physical or biological functions that are essential to the preservation of the natural resources of the Township or the preserved wetlands are an ecological type that is rare or endangered.
  - 8.11.5.2. The wetlands to be preserved are under a demonstrable threat of loss or substantial degradation due to human activities that are not under the control of the applicant and that are not otherwise restricted by applicable laws and regulations.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.11.5.3. The preservation of the wetlands as mitigation will ensure the permanent protection of the wetlands that would otherwise be lost or substantially degraded.
- 8.11.6. An applicant shall submit a mitigation plan when requested by the Township. The plan shall be prepared in accordance with good engineering practice as determined sufficient by the Township and shall state whether construction is necessary, as well as identify measures that can be completed without construction. The Township may incorporate all or part of the proposed mitigation plan as permit conditions. At a minimum, the mitigation plan shall include all of the following elements:
- 8.11.6.1. A detailed statement of mitigation goals and objectives, including the wetland types to be restored, created, or preserved. The mitigation plan shall specify the wetland's functional values to be lost, if any (for example, ordinary, forested, adjacent, or rare), and, if determined feasible and prudent by the Township, provide for the substantial replacement of those functional values.
- 8.11.6.2. Information regarding the mitigation site location and ownership (including general and legal descriptions of the site; acreage of site; acreage of wetlands on the site; means or route of access to the site; name, mailing address and telephone number of property owner).
- 8.11.6.3. A site development plan.
- 8.11.6.4. A list of the specific tasks to be completed and itemized costs.
- 8.11.6.5. A list of the contractors that will perform the mitigation work (including qualifications, names, addresses and telephone numbers). The proposed contractors must be approved by the Township or come from a list of qualified contractors pre-approved by the Township.
- 8.11.6.6. A description of baseline conditions at the proposed mitigation site, including a vicinity map showing all existing rivers, lakes, and streams, and a delineation of existing surface waters and wetlands within the proposed mitigation area.
- 8.11.6.7. Performance standards to evaluate the mitigation.
- 8.11.6.8. A monitoring plan. All mitigation projects shall be monitored for a period of five (5) years. Unless the Township determines that

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

monitoring reports must be submitted more frequently, in the first two (2) years, the permittee shall submit monitoring reports to the Township every six (6) months; thereafter monitoring reports shall be submitted by the permittee once per year.

- 8.11.6.9. A schedule for commencing and completing the mitigation, including reference to specific mitigation tasks, and cross-reference to the time-table for the original project for which the Wetlands Use Permit was required. The schedule must be approved by the Township and shall be binding unless a change is approved in advance by the Township. The schedule shall include enforceable timetables for a sequence of actions or operations leading to full implementation of the plan. The following steps or phases shall be included in the schedule of compliance as determined necessary by the Township:
- 8.11.6.9.1. Retain a qualified engineer and/or consultant.
  - 8.11.6.9.2. Obtain any engineering or scientific investigation or surveys deemed necessary.
  - 8.11.6.9.3. Prepare and submit a preliminary plan to achieve mitigation.
  - 8.11.6.9.4. Prepare plans and specifications, working drawings, or other engineering or architectural documents that may be necessary to achieve mitigation.
  - 8.11.6.9.5. Establish a time to let any contract necessary for any construction.
  - 8.11.6.9.6. Establish completion times for any construction necessary.
  - 8.11.6.9.7. Establish a time limit to achieve mitigation pursuant to the plan.
  - 8.11.6.9.8. If a phase or unit of construction or implementation may be effected independently of another phase or unit, establish separate timetables for the phases or unit.
- 8.11.6.10. Provisions for the management and long-term protection of the site.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

8.11.6.11. Financial assurance provisions as determined necessary and appropriate by the Township to ensure the mitigation is timely and properly completed, that the mitigation is thereafter managed, monitored, and protected, as provided by the mitigation plan, and to guarantee compliance with the plan. At a minimum, the financial assurance provisions shall require a signed and sealed cost estimate for the mitigation project, and security in an amount sufficient to cover the estimated costs of the project. The security shall be in the form of a surety bond, letter of credit, or such other type of surety determined appropriate and approved by the Township.

8.11.6.12. Any other documents, plans, or information determined necessary and appropriate by the Township.

A mitigation plan which is approved by the Township and incorporated as a condition to a permit shall not be revised or amended without the Township's prior review and written approval. If a proposed revision or amendment would result in a change in a mitigation project that involves less than ten percent (10%) of the overall cost of the project and less than ten percent (10%) of the area of the total project, then the amendment may be reviewed and approved by the Ordinance Enforcement Officer (with the assistance and/or recommendation of the Township's wetlands consultant, as determined necessary by the Ordinance Enforcement Officer). Otherwise, a proposed revision or amendment to an approved plan shall be reviewed and approved by the original decision-maker.

8.11.7. An applicant shall provide mitigation to assure, at a minimum, that upon completion, there will be no net loss of wetlands. The mitigation shall meet the following criteria as determined by the Township:

8.11.7.1. Mitigation shall be provided on the site of the project where it is practical to mitigate on-site and where beneficial to the wetland resources.

8.11.7.2. If 8.11.7.1 does not apply, then an applicant shall provide mitigation at a site according to the following, if practical and beneficial to the wetland resources, listed in descending order of preference:

8.11.7.2.1. On public lands located within the Township.

8.11.7.2.2. On other private property located within the Township.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.11.7.2.3. On MDEQ approved land bank areas.
- 8.11.7.2.4. If all of the above are not practical and beneficial to the wetland resources, then on other lands located within the same watershed as the location of the proposed project. For purposes of this Section, a watershed refers to a drainage area in which the permitted activity occurs where it may be possible to restore certain wetland functions, including hydrologic, water quality, and aquatic habitat functions. Watershed boundaries shall be as shown in Figure 1 of MAC R 281.951.
- 8.11.7.3. The Township shall require that mitigation be of a similar ecological type as the impacted wetland where feasible and practical.
- 8.11.7.4. If the replacement wetland is of a similar ecological type as the impacted wetland, then the Township shall require that the ratio of acres of wetland mitigation provided for each acre of permitted wetland loss shall be as follows:
  - 8.11.7.4.1. Restoration or creation of five (5.0) acres of mitigation for one (1.0) acre of permitted impact on wetland types that are rare or imperiled on a statewide basis.
  - 8.11.7.4.2. Restoration or creation of two (2.0) acres of mitigation for one (1.0) acre of permitted impact on forested wetland types, and wetlands that border upon inland lakes.
  - 8.11.7.4.3. Restoration or creation of one and a half (1.5) acres of mitigation for one (1.0) acre of permitted impact on all other wetland types.
  - 8.11.7.4.4. Ten (10) acres of mitigation for one (1.0) acre of impact in situations where the mitigation is in the form of preservation of existing wetlands as defined in Section 8.11.5.
- 8.11.7.5. The Township may adjust the ratios prescribed by this rule as follows:

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 8.11.7.5.1. The ratio may be increased if the replacement wetland is of a different ecological type than the impacted wetland.
- 8.11.7.5.2. If the Township determines that an adjustment would be beneficial to the wetland resources due to factors specific to the mitigation site or the site of the proposed activity, then the Township may increase or decrease the number of acres of mitigation to be provided by no more than twenty percent (20%). This shall not limit the amount which a ratio may be increased under Section 8.11.7.5.1.
- 8.11.7.6. The mitigation shall give consideration to replacement of the predominant wetland benefits lost within the impacted wetland.
- 8.11.7.7. The Township shall double the required ratios if a permit is issued for an application accepted where work has been done in violation of a permit requirement and restoration is not ordered by the Township.
- 8.11.7.8. The Township shall determine mitigation ratios for wetland dependent activities on a site-specific basis.
- 8.11.8. An applicant shall complete mitigation activities before initiating other permitted activities, unless a concurrent schedule is agreed upon between the Township and the applicant, and an adequate financial assurance mechanism as determined by the Township is provided by the applicant.
- 8.11.9. The Township may require the applicant to provide financial assurances as provided by Section 8.11.6.11 to ensure that mitigation is accomplished as required by the Township.
- 8.11.10. An applicant shall protect the mitigation area by a permanent conservation easement or similar instrument that provides for the permanent protection of the natural resource functions and values of the mitigation site, unless the Township determines that such controls are impractical to impose.
- 8.11.11. An applicant, with the approval of the Township, may provide all or a portion of the mitigation through the acquisition of approved credits from a wetlands mitigation bank established under MAC R 281.951 et seq. One credit shall be utilized for each acre of mitigation required under subrule (7) of this rule.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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8.12. Denial of Permit Application

- 8.12.1. The Township shall deny an application for a Wetlands Use Permit if any one of the following conditions apply:
  - 8.12.1.1. The Township determines any of the following (as provided by Section 8.8.2.):
    - 8.12.1.1.1. That the issuance of the permit is not in the public interest.
    - 8.12.1.1.2. That the permit is not necessary to realize the benefits derived from the activity.
    - 8.12.1.1.3. That the activity is not otherwise lawful under all other applicable local, state and federal laws and regulations.
  - 8.12.1.2. The applicant fails to show to the Township's satisfaction any of the following (as provided by Section 8.8.4.):
    - 8.12.1.2.1. That an unacceptable disruption will not result to the aquatic resources.
    - 8.12.1.2.2. That the proposed activity is primarily dependent upon being located in the wetland.
    - 8.12.1.2.3. That a feasible and prudent alternative does not exist.
  - 8.12.1.3. For a wetland that is less than two (2) acres in size: the Township determines that the wetland is essential to the preservation of the natural resources of the Township (as provided by Section 8.9).
  - 8.12.1.4. The applicant has failed to supply complete information with a permit application, or otherwise has failed to submit a completed application, as provided by Section 8.2.
  - 8.12.1.5. The Township determines that any other condition exists which supports a denial of the application as authorized by this Ordinance or as otherwise authorized by state or federal laws and regulations.
- 8.12.2. The denial by the Township of a permit application shall be accompanied by a written statement of all reasons for the denial.
- 8.12.3. If a Wetlands Use Permit is denied by the Township, a landowner may appear at the annual Board of Review for the purpose of seeking a re-valuation of the

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

affected property for assessment purposes to determine its fair market value under the use restriction. A landowner who is aggrieved by a determination, action, or inaction under this subsection (8.12.3) may protest and appeal that determination, action, or inaction pursuant to the general property tax act (Act No. 206 of the Michigan Public Acts of 1983).

**8.13. Permit For Modification of Proposed Activity**

- 8.13.1. The Township may offer to an applicant a permit for a modification of an activity proposed in the application if the activity as originally proposed in the application cannot be permitted under the applicable standards and criteria listed in Sections 8.8 and 8.9 of this Ordinance, and if the activity as modified makes the activity consistent with those standards and criteria and approvable under Section 8.7.1.
- 8.13.2. The modification of a permit application shall be accompanied by a written statement of all reasons for the modification.
- 8.13.3. The applicant may accept the permit for the modification of the proposed activity by signing it and returning it to the Township within thirty (30) days of the date of the offer. The permit shall be considered issued upon countersignature by the Township.
- 8.13.4. The permit application shall be considered denied if the applicant does not sign and return the permit for the modification of the proposed activity to the Township within thirty (30) days of the date of the offer. The permit applicant may then appeal the denial as provided by this Ordinance.
- 8.13.5. The date on which the modification is offered shall be considered the date of the Township's approval or disapproval of the application for purposes of Section 8.6.1. of this Ordinance.

**9.0 Administrative Appeals**

- 9.1. The procedures provided by this Section shall govern administrative appeals of final decisions made by the Ordinance Enforcement Officer, the Planning Commission, or the Township Board, as applicable, in approving, approving with conditions, denying, or modifying a permit application pursuant to this Ordinance.
- 9.2. Any person who is aggrieved by a decision to approve, approve with conditions, deny or modify a Wetlands Use Permit application by the Ordinance Enforcement Officer, the Planning Commission, or the Township Board, may appeal the final decision to the Natural Resources Commission.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 9.3. The appeal shall be filed in writing with the Township Clerk within ten (10) days of the date of the decision appealed, or the right to appeal shall be deemed waived. The written appeal shall state in detail the grounds for the appeal and provide specific reasons why the person is aggrieved by the decision. If a particular permit provision is objected to, the appeal must specify the reasons for the objection, and the alternative provision, if any, sought to be placed in the permit.
- 9.4. If an appeal is timely filed, the permit in question shall not be issued or become effective pending the outcome of the appeal.
- 9.5. Prior to a hearing before the Natural Resources Commission regarding an appeal, the original decision-maker (the Ordinance Enforcement Officer, the Township Planning Commission, or the Township Board, as applicable) shall transmit to the Commission a written summary of all previous action taken in connection with the decision being appealed. The Commission may, at the Commission's discretion, request the original decision-maker to provide further information regarding the decision that is the subject of the appeal.
- 9.6. The Natural Resources Commission shall fix a reasonable time for the hearing of the appeal. Notice of the hearing shall be provided to require the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. Any testimony taken at the hearing shall be under oath and recorded. A copy of the transcript of the hearing shall be made available at cost to any person upon payment of applicable charges for the transcript. The Commission shall decide the appeal within a reasonable time.
- 9.7. After a hearing and consideration of the provisions and requirements of this Ordinance, and the record on appeal, including any information provided by the person appealing and by the original decision-maker:
- 9.7.1. The Natural Resources Commission may affirm, affirm with modification or reverse the decision appealed. For that purpose, the Commission shall have all the powers of the original decision-maker from whose decision the appeal is taken. The Natural Resource Commission's decision to affirm, affirm with modification or reverse shall be in the form of a ruling based on written findings, and shall be considered final action for purposes of judicial review.
- 9.7.2. Alternatively, if the Natural Resources Commission determines that a permit or any provision of a permit should be reconsidered by the original decision-maker, the Commission may remand the matter to the original decision-maker for further action as determined appropriate by the Commission. Specific provisions of a permit that are remanded by the Commission for reconsideration by the original decision-maker shall be stayed pending further final action taken by the original decision-maker as required by the decision of

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

the Commission. A decision of the Commission not to remand any matter shall be considered final administrative action for purposes of judicial review.

- 9.8. All action taken by the Natural Resources Commission shall be by a majority vote of the members of the Commission.

10.0 Enforcement

10.1. Township Inspection Authority; Right of Entry

10.1.1. For the purposes of implementing and administering this Ordinance, and upon reasonable cause or obtaining a search warrant, the Ordinance Enforcement Officer and/or other authorized Township representatives are authorized to enter on, upon, or through and inspect: any property for which a Wetlands Use Permit or a mitigation plan has been approved under this Ordinance; or any property on which an activity listed in Section 6.1 is located; or any property on which information required to be maintained under Section 10.1.2 is located. This right of entry shall include all power and authority as necessary to determine, independent of information supplied by the permittee, property owner, or other persons, compliance or noncompliance with the permit or mitigation plan, this Ordinance, and other applicable laws and regulations, as relevant to the preservation, management, protection, and use of wetlands resources and benefits, including, but not limited to, the right of the Township to take or cause to be made such examinations, surveys or samplings as deemed necessary by the Township.

10.1.2. The holder of a permit shall be required to provide any information the Township reasonably requires to obtain compliance with this Ordinance.

10.2. Notices of Violation and Orders

10.2.1. If, on the basis of information available to the Township, the Township finds that a person is in violation of this Ordinance or a term or condition of any permit or mitigation plan approved under this Ordinance, the Township may issue a notice of violation and order (“NOV/Order”) requiring the person to comply with the requirements of this Ordinance, the permit, or the plan.

10.2.2. An order issued under Section 10.2.1 shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed thirty (30) days, which the Township determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 10.2.3. The person served with the NOV/Order shall, within the period of time stated in NOV/Order, permanently cease all violations.
- 10.2.4. Unless otherwise specified by the NOV/Order, the following provisions shall apply:
- 10.2.4.1. Within fifteen (15) days of the date of the NOV/Order, the person served with the NOV/Order shall submit to the Township an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions.
- 10.2.4.2. Submission of the required plan shall not in any way relieve the person of liability for any violations occurring before or after receipt of the Notice of Violation.
- 10.2.4.3. The Township shall review and approve or reject the proposed plan after receipt thereof.
- 10.2.5. Failure to comply with any requirement of a NOV/Order shall constitute a separate violation of this Ordinance.
- 10.2.6. Nothing in this Section shall limit the authority of the Township to take any action, including emergency actions or any other enforcement action, without first issuing an NOV/Order.
- 10.2.7. The Township may issue an order to any person to perform any affirmative action or to refrain from acting as determined by the Township to be appropriate under the circumstances, as provided by this Section and as determined necessary by the Township to comply with the intent and purposes of this Ordinance or other applicable laws and regulations.
- 10.2.8. The Township may implement whatever action is necessary to halt the illegal activity that is the subject of an NOV/Order. The person responsible for the illegal activity shall be assessed for any penalties, fines, charges, expenses, or losses incurred by the Township due to the illegal activity as provided by this Ordinance.
- 10.2.9. In the event of a violation involving illegal alteration of a wetland under this Section, the Township shall have, among the other powers and remedies available to the Township as provided by this Ordinance, the power to order the person or agent responsible for the violation to restore as nearly as possible the wetland that was affected by the violation to its original

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

condition. The restoration may include, but shall not be limited to, the removal of fill material deposited in the wetland or the replacement of soil, sand, or minerals. 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 wetland to its prior condition, if possible, and the person or agent responsible for the original violation shall be liable for and shall fully reimburse the Township for the cost of restoration.

10.2.10. An NOV/Order shall be served upon a person as provided by this Section.

10.2.10.1. Service shall be by personal delivery or certified mail (return receipt requested), addressed to the person's last known address as shown by Township records. The person served shall sign and date the NOV/Order and shall return the signed original copy to the Township; provided, that the failure to do so shall not affect the person's obligation to comply with the NOV/Order. Further, an NOV/Order served by mail may not actually be received, but this shall not nullify any enforcement action subsequently taken by the Township under authority of this Ordinance.

10.2.10.2. Notwithstanding anything in Section 10.2.10.1 to the contrary, an order to immediately cease and desist prohibited action or other emergency order where delay might endanger the public health, safety and welfare or the environment may be oral and may be served by telephone (to be followed within five (5) days by written confirmation of the order by the Township). Such an order shall have immediate effect if the actual or threatened activity presents, or may present, imminent or substantial endangerment to the public health, safety and welfare or the environment.

10.2.11. A person served with an NOV/Order may request additional information from the Township regarding the contents or requirements of the NOV/Order. However, a request for additional information shall not extend the time for compliance with an NOV/Order.

10.3. **Stop Work Order**

The Township may also issue a stop work order or withhold issuance of a Certificate of Occupancy, permits or inspection until the provisions of this Ordinance, including any conditions attached to a Wetlands Use Permit, have been fully met. Failure to obey a stop-work order shall constitute a separate violation of this Ordinance.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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10.4. Consent Orders

The Township may enter into a consent order with a person to resolve disputed claims and address identified and potential deficiencies in the person's compliance status. The order shall be in the form of a written agreement between the Township and person and may contain appropriate provisions, including, but not limited to, compliance schedules and stipulated fines and remedial actions.

10.5. Financial Assurances

In addition to the authority of the Township to require financial assurances as provided elsewhere in this Ordinance, the Township may require a noncompliant permittee to post a performance bond (or other form of surety acceptable to the Township) sufficient to cover expenses that might reasonably be incurred as a result of future violations.

10.6. Municipal Civil Infractions

10.6.1. Violation; Municipal Civil Infraction. Except as provided by Section 10.7, and notwithstanding any other provision of the Township's laws, ordinances and regulations to the contrary, a person who violates any provision of this Ordinance (including, but not limited to, any permit, permit condition, mitigation plan, or NOV/Order issued or approved by the Township under this Ordinance) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than one thousand dollars (\$1,000.00) per day for each infraction and not more than ten thousand dollars (\$10,000.00) per day for each infraction, plus costs and other sanctions.

10.6.2. Repeat Offenses; Increased Fines. Increased fines may be imposed for repeat offenses. As used in this Section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this Ordinance (i) committed by a person within any three hundred sixty-five (365) day period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this Ordinance shall be as follows:

10.6.2.1. The fine for any offense that is a first repeat offense shall be not less than two thousand five hundred dollars (\$2,500.00) plus costs.

10.6.2.2. The fine for any offense that is a second repeat offense or any subsequent repeat offense shall be not less than five thousand dollars (\$5,000.00) plus costs.

10.6.3. Amount of Fines. Subject to the minimum fine amounts specified in Sections 10.6.2.1 and 10.6.2.2, the following factors shall be considered by a court in

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this Ordinance: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

10.6.4. Authorized Township Official. Notwithstanding any other provision of the Township's laws, ordinances and regulations to the contrary, the following persons are designated as the authorized Township officials to issue municipal civil infraction citations (or municipal civil infraction notices, as applicable) for violations of this Ordinance:

10.6.4.1. The Ordinance Enforcement Officer;

10.6.4.2. Any other Township representative designated by the Ordinance Enforcement Officer or the Township Board; or

10.6.4.3. Any police officer.

10.6.5. Other Requirements and Procedures. Except as otherwise provided by this Section, the requirements and procedures for commencing municipal civil infraction actions; issuance and service of municipal civil infraction citations or notices; determination and collection of court-ordered fines, costs and expenses; appearances and payment of fines and costs; failure to answer, appear or pay fines; disposition of fines, costs and expenses paid; and other matters regarding municipal civil infractions shall be as set forth in other applicable township ordinances and Act No. 236 of the Public Acts of 1961, as amended.

10.7. **Criminal Penalties; Imprisonment**

Any person who (1) 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; or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this Ordinance, or in any other correspondence or communication, written or oral, with the Township regarding matters regulated by this Ordinance; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

or monitoring device or record required to be maintained by this Ordinance; or (4) commits any other act under this Ordinance that is punishable under state law by imprisonment for more than ninety (90) days; shall, upon conviction, be guilty of a misdemeanor punishable by a fine of five hundred dollars (\$500.00) per violation, per day, or imprisonment for up to ninety (90) days, or both in the discretion of the court.

10.8. Continuing Violation

Each act of violation, and each day or portion of a day that a violation of this Ordinance, or of any permit, permit condition, mitigation plan, or NOV/Order issued or approved under this Ordinance is permitted to exist or occur, constitutes a separate violation and shall be subject to fines, penalties and other sanctions as provided by this Ordinance.

10.9. Nuisance Per Se

A violation of this Ordinance, or of any permit, order, notice or agreement issued or entered into under this Ordinance, is deemed to be a nuisance per se. The Township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation, and/or requiring restoration of the wetland as nearly as possible to its condition before the violation.

10.10. Reimbursement to the Township

10.10.1. Any person who violates any provision of this Ordinance, or who causes or contributes to a violation of this Ordinance, including, but not limited to, any permit, permit condition, mitigation plan, or NOV/Order issued or approved by the Township under this Ordinance, shall be liable to and shall fully reimburse the Township for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the Township as a result the violation. The costs that must be reimbursed to the Township shall include, but shall not be limited to, all of the following:

10.10.1.1. All costs incurred by the Township in responding to the violation, including, expenses for any labor or equipment as a result of the violation.

10.10.1.2. All costs incurred by the Township for monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any violation.

10.10.1.3. The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the Township by any governmental agency or third party as a result of the violation.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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- 10.10.1.4. The full value of any Township staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the Township attorney and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any violation or otherwise enforcing the requirements of this Ordinance.
- 10.10.2. Further, the Township is authorized to correct any violation of this Ordinance or damage or impairment to the environment caused by a violation of this Ordinance and to bill the person causing the violation or discharge for the amounts to be reimbursed to the Township. The bill shall specify the date by which payment must be received by the Township. The costs reimbursable under this Section shall be in addition to fees, amounts or other costs and expenses required to be paid by users under other Sections of this Ordinance.
- 10.10.3. Any costs to be reimbursed to the Township as provided by this Section may be billed to the person as provided by Section 10.10.2, or otherwise in conjunction with an enforcement action, or in such other manner as determined appropriate by the Township.
- 10.10.4. The failure by any person to pay any amounts required to be reimbursed to the Township within any specified payment period as provided by this Section shall constitute an additional separate violation of this Ordinance.

10.11. **Judicial Relief**

- 10.11.1. The Township may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this Ordinance or of any permit, permit condition, mitigation plan, or NOV/Order issued or approved by the Township under this Ordinance. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The Township may also seek collection of fees, fines, penalties and any other amounts due to the Township that a person has not paid.
- 10.11.2. Further, the Township may bring a civil proceeding to recover costs and damages incurred by the Township as a result of a person's violation of this Ordinance. The action may include a claim for reimbursement and/or indemnification if the person's activities result or may result in the imposition of fines, costs, penalties or damages (including the cost of remediation) by any regulatory agency, citizen, citizen group, or other party against the Township. In addition, the Township may seek equitable relief, such as the issuance of an injunction necessary to remedy a violation or to prevent future violations, and may seek reimbursement for the actual cost of obtaining such relief.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

---

- 10.11.3. In the event of a violation involving illegal alteration of a wetland under this Section, the Court may, among the other relief at law or equity that a court may impose, order the person or agent responsible for the violation to restore as nearly as possible the wetland that was affected by the violation to its original condition. The restoration may include, but shall not be limited to, the removal of fill material deposited in the wetland or the replacement of soil, sand, or minerals.
- 10.11.4. Nothing in this Section shall be construed to limit in any way the ability or authority of the Township to seek judicial relief at law or equity in connection with the administration and enforcement of this Ordinance.
- 10.11.5. If an applicant for a Wetlands Use Permit is aggrieved by a determination, action, or inaction by the Township regarding the issuance of a permit, the applicant may seek judicial review in the same manner as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.
- 10.11.6. If a court determines that an action of the Township pursuant to this Ordinance constitutes a taking of property without just compensation, then the court shall order the Township, at the Township's option to do one or more of the following:
- 10.11.6.1. Compensate the property owner for the full amount of the lost value.
- 10.11.6.2. Purchase the property in the public interest as determined before its value was affected by this Ordinance or the action or inaction of the Township pursuant to this Ordinance.
- 10.11.6.3. Modify its action or inaction with respect to the property so as to minimize the detrimental affect to the property's value.

For the purposes of this Section, the value of the property may not exceed that share of the state equalized valuation of the total parcel that the area in dispute occupies of the total parcel of land, multiplied by two (2) as determined by an inspection of the most recent Township assessment roll.

10.12. Cumulative Remedies

The imposition of a single fine, penalty, notice of violation, order, or cost reimbursement or damage claim, upon any person for a violation of this Ordinance (or of any permit, permit condition, mitigation plan, or NOV/Order issued or approved by the Township under this Ordinance), shall not preclude the imposition by the Township or a court of

Pittsfield Charter Township  
Wetlands Protection Ordinance

---

competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or Township administrative proceeding, conference, or hearing regarding the person.

10.13. Reporting and Record Keeping

Any person may report a violation of this Ordinance, or any permit, mitigation plan, or NOV/Order issued or approved under this Ordinance. Each report shall be made in writing or reduced to writing by the Ordinance Enforcement Officer and be placed on file in the Municipal Services Department for public inspection. Any reported violations found to be invalid by the Ordinance Enforcement Officer examining the reported violations shall held for one (1) year after final action and then destroyed. All reported violations confirmed by the Ordinance Enforcement Officer shall be held by the Township for at least five (5) years

10.14. Township Ordinance Enforcement Officer Duties

10.14.6. The Township Ordinance Enforcement Officer shall inspect the site of a suspected noncompliance as soon as is reasonably practical, but in no case later than the close of five (5) business days after receiving the report.

10.14.7. The Township Ordinance Enforcement Officer shall complete an entry for the report into the Compliance Docket.

10.14.8. The Township Ordinance Enforcement Officer may enlist the expertise of a wetlands consultant if necessary to determine whether a violation of this Ordinance has occurred. If the Ordinance Enforcement Officer sustains the suspected noncompliance the costs of the consultant will be charged to the violator.

10.14.9. The Township Ordinance Enforcement Officer shall take any actions within his or her authority necessary to ensure this Ordinance is enforced.

10.15. Compliance Docket

10.15.6. The Township Municipal Services Department shall maintain a Compliance Docket at the Township Office. The Docket shall be used to identify all properties or uses of properties which have been evaluated for compliance with this Ordinance. The Docket shall be available to the public upon demand during normal Township business hours.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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10.15.7. The Compliance Docket shall contain the following information:

10.15.2.1. Date: the date the Docket entry was initiated.

10.15.2.2. Address/Location of Property: the street address, if available, or descriptive text or vicinity map sufficient to enable citizens to identify the property in question.

10.15.2.3. Permit or Docket Number: If it has been determined that the use being made of the property does not require a Wetlands Permit from the Township, a Docket number shall be assigned. Otherwise, the Permit number shall be maintained.

10.15.2.4. Compliance Status: A record shall be made of whether the use being made of the property is in compliance with the provisions of this Ordinance, the date the determination was made, and the name(s) of the Township official and/or consultant who made the determination.

10.15.2.5. County tax identification numbers shall be used to identify the property.

10.16. Violation Docket

10.16.1. The Township Municipal Services Department shall maintain a Violation Docket at the Township Office. The Violation Docket shall be used to track the status of violations of this Ordinance. The Violation Docket shall contain the following information, as it becomes available:

10.16.1.1. The permit or Docket number: This number shall be the same number as is used to identify the property In the Compliance Docket.

10.16.1.2. Address and Location of property: The street address, if available, or descriptive text or vicinity map sufficient to enable citizens to identify the property in question.

10.16.1.3. Nature of violation

10.16.1.4. Date violation confirmed.

10.16.1.5. Name of person confirming the violation.

10.16.1.6. Enforcement action taken.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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10.16.1.7. Date of enforcement action taken.

10.16.1.8. Outcome of enforcement action: If a required corrective action or other enforcement order is appealed by the property owner or any other party, each appeal shall be noted, and its outcome shall also be noted under this heading.

11.0 Township Wetlands Inventory Map

11.1. The Township has completed and made available to the public an inventory of all wetlands within the Township as provided by NREPA Section 30308(1). This inventory shall be known as, and is referred to in the Ordinance as, the Pittsfield Township Wetlands Inventory Map.

11.2. Upon completion of the Wetlands Inventory Map, the Township notified each record owner of property on the Township property tax roll:

11.2.1. That the map exists;

11.2.2. Where the map may be reviewed;

11.2.3. That the owner's property may be designated as a wetland on the inventory map:

11.2.4. That the Township has adopted this Ordinance regulating wetlands; and

11.2.5. That the map does not necessarily include all of the wetlands within the Township that may be subject to this Ordinance.

11.3. The Wetlands Inventory Map shall be amended by the Township at least once per year, unless the Township determines, based upon the Ordinance Enforcement Officer's recommendation and the number of applications, that more frequent or less frequent amendments are necessary to keep the map as accurate and as up-to-date as reasonably possible. Upon any amendment of the Wetlands Inventory Map, the Township shall provide notice to each record owner of property on the Township property tax roll that the Map has been amended. The notice shall also provide the property owner with all of the information as set forth in subsections 11.2.2 through 11.2.5.

11.4. The Wetlands Inventory Map shall serve as a general guide to the location of wetlands within the Township and shall be used in the administration of this Ordinance. However, the Map may not necessarily include all of the wetlands within the Township that are subject to this Ordinance. Further, the Map shall not, nor shall it be construed to, create any legally enforceable presumptions regarding whether property that is or is not included on the Map is or is not a wetland.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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12.0 Wetlands Verification and Delineation

12.1. The Wetlands Verification Process as provided by this Section, shall be used to verify wetlands on properties where wetlands are shown on the Wetlands Inventory Map or on properties where wetlands may otherwise exist as defined by this Ordinance. The Wetlands Delineation Process, as also provided by this Section, shall be used to establish the actual boundaries of wetlands in the Township. The identification of the actual boundaries of wetlands on a project site (delineation) shall be the responsibility of the applicant. All wetlands delineations prepared for purposes of complying with this Ordinance shall be subject to review and approval by the Township Ordinance Enforcement Officer or the Township's wetlands consultant.

12.2. Wetlands Verification Process

12.2.1. The Township, the owners of wetlands, or owners of property within three thousand (3,000) feet of a wetland, may initiate verification of the areas shown on the Township Wetlands Inventory Map as wetlands, or on properties where wetlands may exist. The verification shall be limited to a finding of wetlands or no wetlands by the Township Enforcement Officer, the Township's wetlands consultant or other Township designee. The finding may be based on sources of information as determined appropriate by the Township, including, but not limited to, aerial photography, topographical maps, USDA annual reports, historical maps, site plans, and field verification.

12.2.2. If it is found that there are no wetlands on the property, then no further determination shall be required and the finding shall be included on the Township Wetlands Inventory Map.

12.2.3. If a wetland is found on the property, then the exact boundaries of the wetland shall be established through a wetlands delineation and the Township Wetlands Inventory Map shall be amended accordingly.

12.3. Wetlands Delineation Process

12.3.1. To establish the actual boundaries of a wetland on a property, the applicant shall provide a survey or dimensional site plan, drawn at an appropriate scale, showing property lines, buildings and any points of reference along with the wetland's boundaries, according to one of the following:

12.3.1.1. A wetlands delineation prepared by the MDEQ.

12.3.1.2. A wetlands delineation prepared by a qualified wetlands consultant. The qualifications of the consultant shall be subject to prior approval by the Township Ordinance Enforcement Officer.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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12.3.2. If delineation of a wetland is required by and for purposes of this Ordinance, the Township Ordinance Enforcement Officer shall establish the boundaries of the wetland following receipt of the above-required information and after conducting a field investigation.

12.3.2.1. The applicant shall pay to the Township the applicable fees for the establishing the wetland boundary as provided by this Section. The fee shall be paid in the amount as established from time to time by resolution of the Township Board.

12.3.2.2. The boundaries of the wetland shall be marked by untreated wooden stakes driven into the ground at least twenty four (24) inches and extending above the ground at least forty (40) inches, with at least one stake placed every sixty (60) feet around the boundaries. Untreated cotton flags, bright orange or red in color, shall be permanently attached to the top of the stakes. The stakes may not be removed without the prior written permission of the Ordinance Enforcement Officer.

13.0 **Natural Resources Commission**

13.1. The Pittsfield Township Natural Resources Commission is hereby created. It shall consist of seven (7) adult residents of the Township appointed by the Township Board. At least two (2) members of the Natural Resources Commission shall have knowledge and experience in the areas of botany, soils, geology, hydrology, or other natural resources. One member of the Natural Resources Commission shall be a member of the Township Board. The members of the Natural Resources Commission shall serve at the discretion of the Township Board. The member of Natural Resources Commission member who is also a member of the Township Board member may not serve in that position except when in office as a Township Board member.

13.2. The Natural Resources Commission shall establish its own rules of procedure, provided that such rules may not conflict with the provisions of this Ordinance.

13.3. The Natural Resources Commission is authorized to undertake the following activities:

13.3.1. Hear appeals of decisions made by the Ordinance Enforcement Officer, the Planning Commission or the Township Board regarding Wetlands Use Permits.

13.3.2. Provide recommendations to the Township Ordinance Enforcement Officer, the Planning Commission and the Township Board, planning and assisting in wetlands policy administration.

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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- 13.3.3. Serve in an advisory role in setting policy guidelines on wetlands issues in the Township.
  - 13.3.4. Identify conflicts between wetlands protection and Township policies, ordinances, operating procedures, and activities.
  - 13.3.5. Coordinate with MDEQ in keeping up-to-date on issues affecting wetlands protection.
  - 13.3.6. Recommend plans and programs to protect and acquire important wetlands through incentives, donation, development rights, easements, land exchange, purchase, and other means.
  - 13.3.7. Develop educational programs for the public and for area schools to promote the values of wetlands and awareness of the hazards and threats to wetlands. Such programs should be particularly targeted to landowners or building promoters or construction contractors with wetlands and emphasize how best to protect wetlands values on their property
  - 13.3.8. Oversee the development and administration of the voluntary Wetlands Registry and Stewardship Program to be established as provided by this Ordinance, and create incentives for participation. Develop procedures for interested citizens to participate directly in stewardship and preservation of specific wetlands.
  - 13.3.9. Review degraded or destroyed wetlands in the Township for possible rehabilitation or restoration; prioritize sites, and seek grants and donations to fund restoration.
- 13.4. Members of the Natural Resources Commission shall receive a stipend as determined from time to time by resolution of the Township Board.
- 13.5. Members of the Natural Resources Commission may be removed at any time at the discretion of the Township Board.
- 14.0 **Wetlands Registry and Stewardship Program**
- 14.1. A Pittsfield Township Wetlands Registry and Stewardship Program shall be established by resolution of the Township Board. Voluntary registration by residents and landowners of wetlands located within the Township will establish a public-private partnership to promote the use of best management practices for protection of wetlands.
- 14.2. Pursuant to their participation in the registry and program, residents and landowners will have the opportunity, among other things, to:

**Pittsfield Charter Township**  
**Wetlands Protection Ordinance**

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- 14.2.1. Provide identifying data to allow the entry of parcels into the Township's GIS database and digital mapping system.
- 14.2.2. Agree to have parcel information validated against the Township wetlands map.
- 14.2.3. Pledge to protect their wetlands using best management practices.
- 14.2.4. Receive regular communications from the Township, including, but not limited to, invitations to participate in ongoing scientific assessment programs through grants and academic projects.
- 14.2.5. Receive donations of labor or funds from registered volunteer stewards.
- 14.2.6. Receive periodic benefits, as established by the Pittsfield Township Natural Resources Commission, that may include assistance with recording conservation easements, native trees and plants, root or seed stock from historic species, bird houses; registry plaques or signs, restoration assistance, and recognition for public service.

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**Section 2. Severability.** Sections of this Ordinance shall be deemed severable and should any section, clause or provision of this Ordinance be declared to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid. Further, nothing in this Ordinance shall be interpreted to conflict with state statutes on the same subject matter. Conflicting provisions of this Ordinance shall be abrogated only to the extent of the conflict. If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such holding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force.

**Section 3. Saving Clause.** The amendment or repeal by this Ordinance of any ordinance or ordinance provision shall have no effect upon prosecutions commenced prior to the effective date of this Ordinance or prosecutions based upon actions taken by any person prior to the effective date of this Ordinance. Those prosecutions shall be conducted under the ordinance provisions in effect prior to the effective date of this Ordinance. Penalties which have been incurred, and prosecutions for violations of law occurring before the effective date of this Ordinance are not abated by this Ordinance.

**Section 4. Conflict.** Except as otherwise expressly provided, the provisions of this Ordinance shall control in the event of any inconsistency or conflict between this Ordinance and any other provision of other Township ordinances.

**Section 5. Publication.** This Ordinance shall be published by publishing a summary of the Ordinance, including the designation in the publication of the location in the Township where a true copy of the Ordinance can be inspected or obtained, as authorized by State law.

Pittsfield Charter Township  
Wetlands Protection Ordinance

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**Section 6. Effective Date.** This Ordinance shall become effective thirty (30) days after publication.

Ayes: Brostrum, Burhop, Conner, Lirones, Marine, Skrobola, Walter.  
Nays: None  
Absent: None

Adopted by the Pittsfield Charter Township Board of Trustees at a Regular meeting on the 28th day of January, 2003.

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James R. Walter  
Pittsfield Township Supervisor

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Christina L. Lirones  
Pittsfield Township Clerk

First Reading: January 14, 2003  
First Publication (Posting): January 21, 2003  
Second Reading: January 28, 2003  
Second Publication (Posting): February 3, 2003  
Effective Date: March 5, 2003

State of Michigan     )  
                                  ) ss  
County of Washtenaw)

I, the undersigned, the duly qualified Clerk of the Charter Township of Pittsfield, Washtenaw County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of the proceedings taken by the Township Board at a Regular meeting held on the 28th day of January, 2003.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this 29th day of January, 2003.

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Pittsfield Township Clerk