

Chapter 10

ENVIRONMENT AND NATURAL RESOURCES

Article I. In General

Secs. 10-1—10-18. Reserved.

Article II. Wetlands Protection

Division 1. Generally

Sec. 10-19. Short title.
Sec. 10-20. Definitions.
Sec. 10-21. Purpose.
Sec. 10-22. Legislative findings.
Sec. 10-23. Continuation of pre-existing nonconforming uses.
Secs. 10-24—10-49. Reserved.

Division 2. Administration and Enforcement

Sec. 10-50. Enforcement responsibilities.
Secs. 10-51—10-73. Reserved.

Division 3. Wetlands Map

Sec. 10-74. Wetlands Map preparation.
Sec. 10-75. Site surveys.
Sec. 10-76. Use of Map.
Secs. 10-77—10-95. Reserved.

Division 4. Prohibited and Permitted Activities

Sec. 10-96. Exemptions.
Sec. 10-97. Prohibited activities.
Sec. 10-98. Activities not requiring permit.
Sec. 10-99. Application submission procedures for use of wetlands or drainageways.
Sec. 10-100. Fees.
Sec. 10-101. Application review procedures.
Sec. 10-102. Review standards and criteria.
Sec. 10-103. Appeal procedures.
Sec. 10-104. Revaluation of property.
Secs. 10-105—10-121. Reserved.

Division 5. Wetland Mitigation, Marking, Encroachment and Erosion Control

Sec. 10-122. Wetland mitigation.
Sec. 10-123. On-site demarcation of protected wetlands and drainageways.

FABIUS TOWNSHIP CODE

- Sec. 10-124. Display of use approval certification; inspections.
- Sec. 10-125. Maintenance of erosion control measures.
- Secs. 10-126—10-148. Reserved.

Division 6. Violations and Penalties

- Sec. 10-149. Penalties for violation.
- Sec. 10-150. Stop work order.
- Sec. 10-151. Restoration requirements for illegal wetlands alteration.
- Sec. 10-152. Other remedies available to the Township.

ARTICLE I. IN GENERAL

Secs. 10-1—10-18. Reserved.

ARTICLE II. WETLANDS PROTECTION***DIVISION 1. GENERALLY****Sec. 10-19. Short title.**

This article shall be known and may be cited as the Township Wetlands Protection Article.

(Ord. No. 70, art. I, § 100, 4-21-1999)

Sec. 10-20. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Buffer area means all upland and bottom land areas within a 25-foot zone located on the site and adjacent to protected wetlands.

Contiguous means any of the following:

- (1) A permanent surface water connection or other direct physical contact;
- (2) A seasonal or intermittent direct surface water connection; or
- (3) A groundwater connection.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Drainageway means any drainage course, watercourse, drain, pipe, natural stream, creek, or swale which serves to transport stormwater runoff.

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

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

***State law references**—Wetlands protection, MCL 324.30301 et seq.; local wetland protection ordinances, MCL 324.30307 et seq.

Locally protected wetlands means any of the following:

- (1) Any wetlands regardless of size, contiguous to a river, canal, creek, stream, lake or pond including wetlands which are two acres or less in size;
- (2) Specially designated wetlands determined by the Township Board to be essential to the preservation of the natural resources from pollution, impairment or destruction according to the criteria as set forth in section 10-102(c);
- (3) In making this determination, the Township Board must find one or more of the following functions applies to the particular site:
 - a. It supports state or federal endangered or threatened plants, fish or wildlife;
 - b. It meets the Township's criteria for a unique ecosystem;
 - c. It serves as an important water storage or groundwater recharge area.

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

Mitigation of wetlands means any or all of the following:

- (1) Methods for eliminating or reducing potential damage or destruction to wetlands; or
- (2) Creation of wetlands from uplands to offset the loss.

Mitigation shall not be considered when it is feasible and prudent to avoid wetland impacts or when the impacts would be otherwise prohibited under federal, state and local wetlands protection regulations.

Ordinary high water mark means the line between upland and bottom land which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is markedly distinct from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation.

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

Planning Commission shall mean the Township of Fabius Planning Commission.

Pond means a natural or permanent artificial body that has permanent open water.

Prohibited activity includes:

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

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

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

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

Structure means any assembly of materials above or below the surface of the land or water, including, but not limited to, houses, buildings, bulkheads, piers, docks, rafts, landings, dams, sheds or waterway obstructions.

Upland means areas within 25 feet of protected wetlands, and natural drainageways.

Watercourse means any waterway, drainageway, drain, canal, river, stream, lake, or detention basin, or any body of surface water having well-defined banks, either continually or intermittently flowing.

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 an inland lake or pond, or a river or stream;
- (2) Not contiguous to an inland lake or pond, or a river or stream; and more than five acres in size; or
- (3) Not contiguous to an inland lake or pond, or a river or stream; and five acres or less in size if the Department determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the Department has so notified the owner.

Wetland district means all protected wetlands and buffer areas located on the site.

Wetland vegetation means plants, such as trees, shrubs, and grasses, that exhibit adaptations to allow, under normal conditions, germination or propagation and to allow growth with at least their root systems in water or saturated soil. Wetland vegetation is the macrophytic plant life that occurs in areas where permanently or periodically saturated conditions of sufficient duration to exert a controlling influence on the plant species present.

Wetlands Map means the Township Wetlands Map as included within the Township General Development Master Plan. The map, initially based on the National Wetlands Inventory published by the U.S. Department of Interior, Fish and Wildlife Service, shall be

updated from time to time, delineating the general location of wetlands and drainageways which may be subject to regulation under this article. Delineation of wetland boundaries on individual parcels or sites shall be the responsibility of persons applying for a wetland or drainageway use approval.

(Ord. No. 70, art. III, § 300, 4-21-1999; Ord. No. 143, § I.A, 1-14-2015)

State law reference—Definitions, MCL 324.30301.

Sec. 10-21. Purpose.

The purpose of this article is:

- (1) To provide for the protection and appropriate use of wetlands within the Township in order to minimize disturbance of these vital natural features.
 - (2) To coordinate the provisions of this article with state law as well as to provide for coordinated enforcement of Wetland Protection Laws and requirements by responsible Township, county and state officials.
 - (3) To assign responsibilities for assuring the protection of wetlands within the Township.
 - (4) To establish procedures for the processing of applications for permits involved in the permitted use of wetlands in the Township
- (Ord. No. 70, art. II, § 200, 4-21-1999)

Sec. 10-22. Legislative findings.

(a) The Township finds that:

- (1) Wetland conservation is a matter of Township concern because the quality of life, property values, tax base, recreational opportunities and wildlife habitat are enhanced by the presence of the lakes, rivers, streams, and wetlands within the Township.
- (2) A loss of wetland may deprive the people of the Township of some or all of the following benefits to be derived from the wetland:
 - a. Flood and storm control by the hydrologic absorption and storage capacity of the wetlands.
 - b. Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.
 - c. Protection of subsurface water resources and provision of valuable watersheds and recharging ground water supplies.
 - d. Pollution treatment by serving as a biological and chemical oxidation basin.

- e. Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
 - f. Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
- (3) Wetlands are valuable as an agricultural resource for the production of food and fiber, including certain crops which may only be grown on sites developed from wetland.

(b) The criteria of subsection (a) of this section shall be considered and kept in mind by all Township Officials and Boards concerned with administering this article.
(Ord. No. 70, art. IV, § 400, 4-21-1999)

Sec. 10-23. Continuation of pre-existing nonconforming uses.

A regulated activity that was lawful before the enactment of the ordinance from which this article is derived, but which is not in conformity with the provisions of this article, may be continued, provided that it is not:

- (1) Changed to another nonconforming location or operation;
 - (2) Reestablished after having been discontinued for one year;
 - (3) Expanded, except in conformity with this article; or
 - (4) Rebuilt or repaired after complete or partial destruction, when the destruction exceeds 50 percent of the fair market value immediately prior to damage.
- (Ord. No. 70, art. VII, § 700, 4-21-1999)

Secs. 10-24—10-49. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 10-50. Enforcement responsibilities.

The following responsibilities are assigned for the administration and enforcement of this article:

- (1) *Zoning Administrator.*
 - a. Reviews all applications for building permits, septic permits, dredging, earth change/soil erosion control permits, site plans, preliminary subdivision plats, special exception use permits, rezoning requests or similar actions and determines whether any wetlands are affected by or involved in the proposed action.

- b. Advises applicants if a wetlands and drainageway use application is required in connection with the requested permit or proposed activity. Consults with the Planning Commission or Wetland Protection Advisory Committee when questions arise.
- c. Reviews for completeness and accuracy all wetland/drainageway use applications, to include the conduct or authorization of a field inspection to verify accuracy of information received.
- d. Forwards applications that are beyond his authority to approve or disapprove to the Planning Commission in the case of site plans and subdivision plats, and in all other cases, to the Township Board for review and decision.
- e. Conducts necessary field inspections to ensure compliance with approved permits. Takes appropriate enforcement action. Reports violations promptly to the appropriate law enforcement officials of the Township, county, or state. Keeps Township Supervisor and Planning Commission informed of any problem areas.

(2) *Planning Commission.*

- a. Includes Township Wetlands Protection Map as part of the General Development Master Plan.
- b. Reviews, approves, or denies, within its authority, all special exception use requests, site plans, rezoning requests, and preliminary subdivision plats, taking into consideration the requirements of this article, as well as other applicable ordinances, laws, and regulations. In the case of subdivision plats, forwards its recommendations to the Township Board in accordance with provisions of the subdivision control ordinance and other applicable laws and regulations.
- c. Part 91 Soil Erosion Permits. A local agency or general law Township that issues Part 91 Soil Erosion permits shall notify the Township or Planning Commission immediately upon receipt of an application for a soil erosion permit that requires an earth change which disturbs wetlands regulated by the Township. A local agency or general law Township shall not issue a Part 91 Soil Erosion Permit to a person if the project involves wetlands until the Township or Zoning Board has approved the project.

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

- a. Arranging for the compiling and publication of the Township Wetlands Map and keeping it current. Forwarding copies of successive editions of the

Township Wetlands Map to the Planning Commission for reference as well as inclusion in the general development master plan, as well as providing to other Township Boards and Officials.

- b. Advising the Township Board on all matters pertaining to environmental and wetlands protection, to include road maintenance and construction, sanitary sewer construction, operation of land fills, soil erosion permits, and recycling facilities, and reviewing applications for wetlands/drainageway use.
- c. Advising the Planning Commission and other Township Boards and Officials on issues related to environmental and wetlands protection.
- d. Maintaining liaison with the State Department of Environmental Quality and other state, county, or local agencies concerning environmental and wetlands protection.
- e. Meet at least quarterly to carry out its responsibilities. (More frequent meetings will be required until the Wetlands Map is completed.)

(4) *Township Board.*

- a. The Township Board shall appoint at least five but not more than seven residents to be members of the Advisory Committee.
- b. Budgets, allocates, and approves expenditures for the administration, operation and training of the Environmental and Wetland Protection Advisory Committee and the preparation, publication, and maintenance of the Township Wetlands Map.
- c. The Township Board has the authority to enter into an agreement to make contracts with the federal government, other state agencies, municipalities, private agencies or persons for the purpose of making studies and/or maps for the efficient preservation, management, protection and use of wetland resources. Such a study shall be available as a public record for distribution at cost.
- d. The Township Clerk shall notify the Michigan Department of Environmental Quality of the adoption of this ordinance. The Township shall enter into an agreement with the Michigan Department of Environmental Quality providing for the exchange of information and for the coordination of permit and use approvals as required by Section 8 of the Goemaere-Anderson Wetland Protection Act (Act 203, Public Acts of 1979).

(Ord. No. 70, art. V, § 500, 4-21-1999; Ord. No. 93, §§ I—IV, 9-25-2002; Ord. No. 120, § II, 8-17-2007; Ord. No. 143, § I.B, 1-14-2015)

Secs. 10-51—10-73. Reserved.

DIVISION 3. WETLANDS MAP

Sec. 10-74. Wetlands Map preparation.

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

(Ord. No. 70, art. VIII, § 800, 4-21-1999)

Sec. 10-75. Site surveys.

(a) The Wetlands Map shall not be considered a substitute for on-site field inspection. The applicant for a use approval shall be responsible for identifying boundaries of protected wetlands, buffer areas, and drainageways located on the project site.

(b) The landowner is responsible for having the locations of protected wetlands, buffer areas, and drainageways on the project site identified and marked by qualified personnel of either the State Department of Environmental Quality or a consulting firm competent in this field. The Zoning Administrator, in consultation with the Planning Commission or Environmental and Wetlands Protection Advisory Committee, shall determine whether a level 1, 2, or 3 wetland assessment is required to adequately evaluate the project.

(Ord. No. 70, art. VIII, § 801, 4-21-1999; Ord. No. 120, § II, 8-17-2007)

Sec. 10-76. Use of Map.

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

(Ord. No. 70, art. VIII, § 802, 4-21-1999; Ord. No. 120, § II, 8-17-2007)

Secs. 10-77—10-95. Reserved.

DIVISION 4. PROHIBITED AND PERMITTED ACTIVITIES

Sec. 10-96. Exemptions.

(a) 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 article.

(b) A wetland that is incidentally created as a result of one or more of the following activities is not subject to regulation under this article:

- (1) Excavation for mineral or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on or adjacent to a water body of one acre or more in size.
- (2) Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.
- (3) A diked area associated with a landfill if the landfill complies with the terms of the landfill construction permit and if the diked area was not a wetland before diking.

State law reference—Similar provisions, MCL 324.30305(3), (4).

Sec. 10-97. Prohibited activities.

It shall be unlawful for any person to do any of the following unless and until written approval is obtained from the Township pursuant to this article:

- (1) Deposit or permit to be deposited any material or structures, into, within or upon any wetlands, or into any drainageway.
- (2) Remove or permit to be removed any soil or minerals from any protected wetland, or from or onto buffer areas adjacent to protected wetlands, or from or into any drainageway.
- (3) Create, enlarge, diminish or alter a lake, creek, stream, canal, river or any other naturally or artificially occurring water body or drainageway.
- (4) Construct or place a temporary, seasonal, or permanent use, structure, or development not in existence on October 1, 1980 or constructed pursuant to part 303 of the Natural Resources and Environment Protection Act (MCL 324.30301 et seq.) within any protected wetland or buffer area, except by special permit from the Fabius Township Board or except as allowed by this ordinance, e.g., seasonal docks in section 10-98.
- (5) Construct, extend, or enlarge any pipe, culvert or open or closed drainage facility except as allowed in section 10-98.

- (6) Construct, enlarge, extend or connect any private or public sewage or waste treatment plant discharge to any lake, stream, drainageway or watercourse, or wetland except in accordance with the requirements of the county, state and/or the United States, to the extent that such entities have jurisdiction.
 - (7) Drain, or cause to be drained, any water from a protected wetlands.
 - (8) Alter the flow of surface water or groundwater which is essential for sustaining wetland hydrology, wetland vegetation, or aquatic life.
 - (9) Any activity which would destroy, erode or harm a wetland area, such as, but not limited to, the riding of dirt bikes, ATVs, 4 by 4s or other vehicle types or similar related activities which result in the harm and destruction of a wetland area or its plants and soil.
- (Ord. No. 70, art. VI, § 600, 4-21-1999; Ord. No. 90, § 1, 4-16-2002; Ord. No. 120, § III, 8-17-2007; Ord. No. 143, § II.A, 1-14-2015)

Sec. 10-98. Activities not requiring permit.

(a) Activities that require a permit under part 325 (MCL 324.30305 et seq.) or part 301 (MCL 324.30305 et seq.) of the Natural Resources and Environmental Protection Act or a discharge that is authorized by a discharge permit under section 3112 (MCL 324.3112) or 3113 (MCL 325.3113) of the Natural Resources and Environmental Protection Act shall not require a permit under this article.

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

- (1) Fishing, trapping, or hunting.
- (2) Swimming or boating.
- (3) Placement of seasonal docks, rafts or boat hoists as governed by other state or federal regulations.
- (4) Grazing of animals.
- (5) Hiking.
- (6) 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. A wetland 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) Maintenance or operation of serviceable structures in existence on the effective date of the ordinance from which this article is derived, in existence under state law prior to October 1, 1980, or constructed pursuant to the ordinance from which this article is derived.
- (8) Construction or maintenance of farm or stock ponds.
- (9) Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural products:
 - a. An existing private agricultural drain.
 - b. That portion of a drain legally established pursuant to the Drain Code of 1956 (MCL 280.1 et seq.), which has been constructed or improved for drainage purposes.
 - c. A drain constructed pursuant to other provisions of this article.
- (10) 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 ensure that any adverse effect on the wetland will be otherwise minimized.
- (11) Drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this article, land improved under this subdivision after the effective date of the ordinance from which this article is derived or improved under state law prior to October 1, 1980, shall not be used for non-farming purposes without a permit from the Township. This subsection shall not apply to a wetland which is contiguous to a lake or stream, or to a tributary of a lake or stream or to a wetland which are determined to be locally protected wetlands, in which case a permit shall be required.
- (12) Maintenance or improvement of public streets, highways, or roads, within the right-of-way and in such a manner as to ensure 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.
- (13) Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of six inches or less, if the pipelines are constructed, maintained, or repaired in a manner to ensure that any adverse effect on the wetland will be otherwise minimized.

- (14) 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 ensure that any adverse effect on the wetland will be otherwise minimized.
- (15) Operation or maintenance, including reconstruction of recently damaged parts or serviceable dikes and levees in existence on the effective date of the ordinance from which this article is derived or constructed pursuant to this article.
- (16) Construction of iron and copper mining tailings basins and water storage areas.

(c) After the effective date of the ordinance from which this article is derived but immediately prior to the approval of a state program under section 404 of title 4 of the Clean Water Act of 1977, 33 USC 1344, where a project solely involved the discharge of fill material subject to the individual permit requirements of section 404 of title 4 of the Clean Water Act of 1977, 33 USC 1344, an additional permit shall not be required by this section. (Ord. No. 70, art. VI, § 601, 4-21-1999; Ord. No. 93, §§ V, VI, 9-25-2002; Ord. No. 143, § II.B—E, 1-14-2015)

State law reference—Similar provisions, MCL 324.30305.

Sec. 10-99. Application submission procedures for use of wetlands or drainageways.

Applications for approval to use wetlands or drainageways shall be submitted to the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee and shall consist of the following:

- (1) One copy of wetlands use permit application form of the U.S. Army Corps of Engineers and the State Department of Environmental Quality.
- (2) One copy of a drawing of the proposed activity, including at least the following:
 - a. Title block, including the applicant's name, name of body of water, section of Township, description of activity, scale of drawing, and date drawing was prepared. The title block shall indicate the name and professional credentials of the engineer, architect, planner, or other person preparing the site drawing and the name and professional credentials of the wetlands scientist or environmental specialist who has delineated wetlands boundaries and types.
 - b. Location and extent of protected wetlands, buffer areas and drainageways on the site, as identified through field survey and presented on a topographic map of suitable scale. For projects of five acres, a scale of at least one inches equals 100 feet is acceptable.
 - c. Types of wetlands on the site (e.g., forested, shrub, emergent marsh, wet meadow, and aquatic bed), identified by using methods approved by the State Department of Environmental Quality as set forth in the state Wetland Determination Manual Draft for Field Testing or other official publication.

- d. A site plan, subdivision plat, or planning map which overlays the proposed development or project onto the wetland district and drainageways. Existing and proposed structures shall be clearly identified in relation to existing shore features (length of frontage, water depth and bottom configuration). If existing structures were previously authorized by the Township, a state or federal permit showing corresponding permit numbers.
 - e. Typical cross sections of existing and proposed shoreline, waterline, structures, dredge cuts and fills, including dimensions and elevations, and location of wetlands.
 - f. Type, volume and area for proposed shoreline construction materials, dredge material, and fill materials.
 - g. Type and location of soil erosion control measures, such as silt fences, straw bale berms and sediment basins to be used during construction, including measures which will be used to trap sediment which might otherwise run off into wetlands.
 - h. If the proposed activity involved bulkhead construction, the distance along both property lines from the face of the bulkhead to the center line of a street or other definable reference point (e.g., northeast corner of concrete patio, 12-inch maple on west property line).
 - i. If the proposed activity involves dredging, the following:
 - 1. If the dredging material is to be placed on-site, outline the disposal areas of the drawing. If the dredge material is to be hauled away, provide a vicinity map showing the disposal area.
 - 2. Show method of containing dredge material to prevent reentry of the material into any drainageway or wetlands. Describe all procedures which the applicant will use to minimize adverse effects of construction.
- (3) Use applications shall be submitted to the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee on or before the date that the application is made for a preliminary review of subdivision plats, site plans, lot splits, grading approvals, or building permits.
- (4) Upon receipt, the Zoning Administrator shall review the use application for completeness. Applicants shall be notified of any missing items. Following a determination that a use application is complete, the Zoning Administrator shall specify the number of copies to be submitted by the applicant.
- (5) Upon receipt, the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee shall review the use application for completeness. Applicants shall be notified of any missing items. Following a determination that a

use application is complete, the Zoning Administrator and the Environmental and Wetlands Protection Advisory Committee shall specify the number of copies to be submitted by the applicant.

- (6) Township approvals for preliminary subdivision plats, site plans, lot splits, grading approvals, or building permits shall not be granted until approval for the use of protected wetlands, buffer areas, or drainageways has been obtained.

(Ord. No. 70, art. IX, § 900, 4-21-1999; Ord. No. 93, §§ VII—IX, 9-25-2002; Ord. No. 143, § III, 1-14-2015)

Sec. 10-100. Fees.

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

(Ord. No. 70, art. IX, § 901, 4-21-1999)

Sec. 10-101. Application review procedures.

(a) At the request of the applicant or any Township resident, an administrative meeting may be held to review the proposed activity in light of the purposes of this article.

(b) Upon receipt of a complete application, the Township Zoning Administrator shall examine the Wetlands Map and may conduct or authorize the completion of a field inspection to verify the accuracy of information received. The receipt of a use application shall comprise permission from the owner to complete a wetlands and drainageways inspection.

(c) If a proposed project does not require Planning Commission review and approval, the approval or disapproval of use applications shall be the responsibility of the Zoning Administrator designated by the Township Supervisor. The Township review shall be completed within 30 days from the time of submittal of a complete application. Applicants shall be notified in writing of the Township decision, including reasons for denial of the use application, if applicable.

(d) If a proposed project requires Township Board review and approval in accordance with the Zoning Ordinance, subdivision control ordinance, or other Township ordinance, the Planning Commission shall be responsible for reviewing the use application and recommending approval, approval with conditions, or disapproval to the Township Board.

(e) Upon the receipt of a recommendation from the Planning Commission, the Township Board shall be responsible for the final approval, approval with conditions, or disapproval of applications to use wetlands or drainageways. Applicants shall be notified in writing of the Township decision, including reasons for denial of the use application, if applicable.

(f) Approvals to use wetlands or drainageways granted by the designated Township administrative official or the Township Board in accordance with this article shall not take effect until seven days following the granting of the approval.

(g) If a proposed project requires a permit from the State Department of Environmental Quality or the U.S. Army Corps of Engineers. Township Officials may delay consideration and use approval until after state and/or federal permits have been obtained.

(h) If a proposed project affects protected wetlands that are not subject to state and/or federal permit review, Township review and approval procedures shall be initiated upon receipt of a complete use application.

(Ord. No. 70, art. X, § 1000, 4-21-1999; Ord. No. 120, § II, 8-17-2007)

Sec. 10-102. Review standards and criteria.

(a) In arriving at a determination with respect to a proposed wetlands and drainageways use application, Township Officials shall take into consideration at least the following standards and criteria:

- (1) A permit shall be issued only if the proposed project or activity is clearly in the public interest, and is otherwise lawful in all respects.

- (2) In determining whether the activity is in the public interest, the benefit which would reasonably be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity, taking into consideration the local, state and national concern for the protection and preservation of natural resources from pollution, impairment and/or destruction. The following general criteria shall be applied in undertaking this balancing test:
- a. The relative extent of the public and private need for the proposed activity.
 - b. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity, including alternatives which are off-site or on other commercially available properties.
 - c. The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private use to which the area is suited, including the benefits the wetland provides.
 - d. The probable impact on the proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
 - e. The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
 - f. The size and quality of the wetland being considered.
 - g. The amount and quality of the wetland being considered.
 - h. Proximity to any waterway.
 - i. Extent to which upland soil erosion adjacent to protected wetlands or drainageways is controlled.
 - j. Economic value, both public and private, of the proposed land change to the general area.
 - k. Findings of necessity for the proposed project which have been made by other state or local agencies.
- (b) An approval shall not be granted unless it is shown that an unacceptable disruption will not result to the aquatic resources. An approval shall not be granted unless the applicant also shows either of the following:
- (1) The proposed activity is primarily dependent upon being located in the wetlands; or
 - (2) A feasible and prudent alternative does not exist.
- (c) Upon application for a wetland use permit for locally protected wetlands, approval shall be granted unless the Township Board, with the advice of the Environmental and Wetland Protection Advisory Committees, determines that the wetland is essential to the preservation of the natural resources of the Township. The following criteria shall be considered in making the determination:
- (1) The site supports state or federal endangered or threatened plants, fish or wildlife appearing on a list specified in section 36505 of the Natural Resources and Environmental Protection Act (MCL 324.36505).

- (2) The site represents what is identified as a locally rare or unique ecosystem.
- (3) The site supports plants or animals of an identified local importance.
- (4) The site provides groundwater recharge documented by a public agency.
- (5) The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.
- (6) The site provides wildlife habitat by providing breeding, nesting or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened or endangered wildlife species.
- (7) The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
- (8) The site provides pollution treatment by serving as a biological and chemical oxidation basin.
- (9) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
- (10) The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

(d) A request for the approval of uses in the buffer area of the wetland district shall be considered favorably for erosion control structures, storm water management facilities, and water-dependent structures, provided that the flow of water is not diverted from wetlands. The use of the buffer area for permanent structures and earth-moving activities shall be discouraged.

(e) Each permit approval shall specifically state the effective period of its validity, and shall be restricted to the shortest period possible to allow the permitted activity while protecting the wetland resources and purposes of this article.

(Ord. No. 70, art. XI, § 1100, 4-21-1999; Ord. No. 93, § X, 9-25-2002; Ord. No. 120, § III, 8-17-2007)

State law reference—Similar provisions, MCL 324.30310.

Sec. 10-103. Appeal procedures.

(a) An applicant who is aggrieved by a decision of the Zoning Administrator, Planning Commission, or other Township official concerning the use of wetlands and drainageways may appeal the decision to the Township Board. In reviewing the appeal, the Township Board shall determine whether the review criteria and standards set forth in this division have been met. The Township Board, based upon its appellate review, may reverse, affirm

or modify the approval granted by the Zoning Administrator, Planning Commission, or other Township official. An appeal under this section must be brought within 21 days of the administrative decision.

(b) An applicant who is aggrieved by a decision of the Township Board concerning the use of wetland and drainageways may make an appeal to the county circuit court. In reviewing the appeal, the Township Board shall determine whether the review criteria and standards set forth in this article have been met. An appeal under this section must be brought within 21 days of the decision of the Township Board.

(Ord. No. 70, art. XII, § 1200, 4-21-1999; Ord. No. 120, § II, 8-17-2007)

Sec. 10-104. Revaluation of property.

A landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction if a permit for any locally protected wetlands is denied by the Township for a proposed wetland use.

State law reference—Mandatory provisions, MCL 324.30310.

Secs. 10-105—10-121. Reserved.

DIVISION 5. WETLAND MITIGATION, MARKING, ENCROACHMENT AND EROSION CONTROL

Sec. 10-122. Wetland mitigation.

(a) Prior to considering a proposal for wetland mitigation, the applicant shall submit evidence that all of the following requirements have been satisfied:

- (1) That all feasible and prudent efforts have been made to avoid the loss of wetland resource values;
- (2) That all practical means have been considered to minimize impacts; and
- (3) That it is practical to replace the wetland resource values which will be unavoidably eliminated.

(b) If the reviewing authority determines that it is practical to replace the wetland resource values which will be unavoidably impacted, the following criteria shall be considered when reviewing an applicant's mitigation proposal:

- (1) Mitigation shall be provided on-site where practical and beneficial to the wetland resources. If mitigation on-site is not practical and beneficial, mitigation in the immediate vicinity of the permitted activity may be considered. In all cases, mitigation shall be provided within the jurisdiction of the Township.

- (2) Any proposal shall ensure that, upon completion, there shall be no net loss to the wetland resources.
- (3) The proposal shall give consideration to replacement of the predominant functional values lost within the impacted wetlands.
- (4) Any mitigation activity shall be completed before initiation of other permitted activities, unless a phased concurrent schedule can be agreed upon between the Township and the applicant.
- (5) Monitoring to establish documentation of the functional performance of the mitigation may be required as permit conditions, as well as necessary corrective action required, to deliver the wetland resource values identified.

(c) Wetland impact mitigation and monitoring plans shall become conditions of use approval.

(d) All costs for preparing and carrying out mitigation and monitoring plans shall be the responsibility of the applicant.

(Ord. No. 70, art. XIII, § 1300, 4-21-1999)

Sec. 10-123. On-site demarcation of protected wetlands and drainageways.

Through staking or other means, the landowner shall identify the location of protected wetlands, buffer areas, and drainageways on the project site. (See also section 10-74.)

(Ord. No. 70, art. XIV, § 1400, 4-21-1999)

Sec. 10-124. Display of use approval certification; inspections.

A certificate or authorization for activities in protected wetlands buffer areas and drainageways shall be prominently displayed at the project site. The owner shall display the certificate or authorization continuously while authorized activities are conducted and for ten days following completion. The owner shall allow Township representatives to enter and inspect the premises at any reasonable time, and failure to allow inspections shall constitute a violation of this section.

(Ord. No. 70, art. XIV, § 1401, 4-21-1999)

Sec. 10-125. Maintenance of erosion control measures.

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

(Ord. No. 70, art. XIV, § 1402, 4-21-1999)

Secs. 10-126—10-148. Reserved.

DIVISION 6. VIOLATIONS AND PENALTIES

Sec. 10-149. Penalties for violation.

Unless a use approval has been granted by the Township, any of the activities listed in division 4 of this article shall be considered a violation. Any person who violates, disobeys, neglects or refuses to comply with any provision of this article, any administrative decision made under this article, or any permit or approval issued under this article, including any conditions imposed thereon, or who causes, allows, or consents to any of same, shall be deemed to be responsible for a violation of this article. Any person responsible for a violation of this article whether as an owner (by deed or land contract), lessee, licensee, agent, contractor, servant, employee, or otherwise, shall be liable as a principal. A violation of this article shall constitute a municipal civil infraction as defined by state statute and shall be punishable by a civil fine determined in accordance with the following schedule:

	<i>Minimum Fine</i>	<i>Maximum Fine</i>
1st offense	\$ 75.00	\$500.00
2nd offense	150.00	500.00
3rd offense	325.00	500.00
4th or more offense	500.00	500.00

Separate offenses defined. Each act of violation, and every day upon which violation shall occur, shall constitute a separate offense.

(Ord. No. 70, art. XV, § 1500, 4-21-1999; Ord. No. 120, § V, 8-17-2007; Ord. No. 143, § IV.A, 1-14-2015)

State law references—Penalty for ordinance violations, MCL 41.183; municipal civil infractions, MCL 600.8701 et seq.

Sec. 10-150. Stop work order.

The Township Zoning Administrator may issue a stop work order or withhold issuance of a certificate of occupancy, permits or inspections until the provisions of this article, including any conditions attached to a use approval, have been fully met.

(Ord. No. 70, art. XV, § 1503, 4-21-1999)

Sec. 10-151. Restoration requirements for illegal wetlands alteration.

In the event of a violation involving illegal alteration of wetlands protected under this article, the Township Zoning Administrator shall have the power to order complete restoration of the wetland area by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration within a reasonable time following the order, the Township shall have the authority to restore the affected wetlands to their prior condition wherever possible, and the person or agent responsible for the original

violation shall be held liable to the Township for the cost of restoration. Requirements and specifications for wetland restoration ordered by the Township shall be coordinated with state and/or federal agency requirements and specifications for wetland restoration, if any. (Ord. No. 70, art. XV, § 1504, 4-21-1999)

Sec. 10-152. Other remedies available to the Township.

Injunction—Any activity conducted in violation of this article is declared to be a nuisance per se, and the township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation. The penalties provided for in this article shall not be exclusive and the Township shall be entitled to seek any and all other remedies available at law or in equity in connection with the violation of this article.

(Ord. No. 70, art. XV, § 1505, 4-21-1999; Ord. No. 143, § IV.B, 1-14-2015)