

- (1) Findings. The City Council of the City of Southfield finds that wetlands and watercourses are fragile natural resources which provide several public benefits including maintenance of water quality through nutrient cycling and sediment trapping as well as flood and storm water runoff control through temporary water storage, slow release, and groundwater recharge. In addition, wetlands provide pollution treatment by serving as oxidation basins, open space, passive outdoor recreation opportunities, wildlife habitat and environmental niches, and greenbelts. Many of the wetlands remaining in Southfield are of the forested type and are associated with floodplains.

Previous construction, land development and recent redevelopment have displaced, polluted or degraded many wetlands and forested floodplains. Preservation of the wetlands in a natural condition shall be and is necessary to maintain hydrologic, economic, recreational, and aesthetic assets for existing and future residents of the City of Southfield as well as for downstream landowners.

- (2) Purposes. The purposes of this Section are to provide for:
- (a) The protection, preservation, and proper use of wetlands and watercourses in the City of Southfield;
  - (b) The coordination of and support for the enforcement of applicable federal, state, and county statutes, ordinances and regulations including but not limited to:
    - 1. ~~Goemaere-Anderson Wetland Protection Act (Act 203, Public Acts of 1979, as amended), enforced by the Michigan Department of Natural Resources which is hereinafter referred to as the MDNR; (Amended Ordinance 1367 – 6/9/94)~~
    - 2. ~~Inland Lakes and Streams Act (Act 346, Public Acts of 1972, as amended), enforced by the MDNR;~~
    - 3. ~~Soil Erosion and Sedimentation Control Act (Act 347, Public Acts of 1972, as amended), enforced by the City of Southfield; and~~
    - 4. ~~Floodplain Regulatory Authority (Act 245, Public Acts of 1929, as amended), enforced by the MDNR. (Amended Ordinance 1367 –~~

~~6/9/94)~~

1. **Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (herein the Wetlands Protection Act), as amended;**
  2. **Part 17, Michigan Environmental Protection Act, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.1701 et. Seq. (herein the Michigan Environmental Protection Act), as amended**
- (c) Compliance with the ~~Michigan Environmental Protection Act (Act 127, Public Acts of 1970)~~ **Part 17, Michigan Environmental Protection Act, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.1701 et. Seq. (herein the Michigan Environmental Protection Act), as amended** which imposes a duty on government agencies and private individuals and organizations to prevent or minimize degradation of the environment which is likely to be caused by their activities.
- (d) The establishment of standards and procedures for the review and regulation of the use of wetlands and watercourses.
- (e) The establishment of penalties for the violation of this Section.
- (3) Validity and Necessity. The City Council declares that this Section is essential to the health, safety, economic and general welfare of the people of the City, and to the furtherance of the policy set forth in Article 4, Section 52 of the Constitution of the State of Michigan, the ~~Michigan Environmental Protection Act (Act 127, Public Acts of 1970) and the Goemaere-Anderson Wetland Protection Act (Act 203, Public Acts of 1979, as amended)~~ which is hereinafter referred to as Act 203. ~~(Amended – Ordinance 1367 – 6/9/94)~~ **Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (herein the Wetlands Protection Act); Part 17, Michigan Environmental Protection Act, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.1701 et. Seq. (herein the Michigan Environmental Protection Act)**
- (4) Construction and Application. The following rules of construction apply in the interpretation and application of this Section:
- (a) In the case of a difference of meaning or implication between the text of this

Section and any caption or illustration, the text shall control.

- (b) Particulars provided by way of illustration or enumeration shall not control general language.
  - (c) This Section shall be construed liberally in favor of the protection and preservation of natural resources of the City.
- (5) Definition of Terms. Terms not specifically defined in this Section shall have the meaning customarily assigned to them. The following words and phrases shall have the meaning respectively given as follows:

**ACTIVITY:** shall mean any use, operation, development or action caused by any person, including, but not limited to, constructing, operating or maintaining any use or development; erecting buildings or other structures; depositing or removing material; dredging; ditching; land balancing; draining or diverting water, pumping or discharge of surface water; grading; paving; vegetative clearing or excavation, mining or drilling operations.

**BOTTOMLAND:** shall mean the land area of a pond or lake which lies below the ordinary high-water mark and which may or may not be covered by water.

**CHANNEL:** shall mean the geographical area within the natural or artificial banks of a watercourse required to convey continuously or intermittently flowing water under normal or average flow conditions.

**CITY:** shall mean the City of Southfield.

**CITY COUNCIL:** shall mean the Southfield City Council.

**CITY PLANNER (ALSO KNOWN AS DIRECTOR OF PLANNING) AS APPOINTED BY THE CITY COUNCIL**

**CONTIGUOUS** shall mean any of the following: (Amended - Ordinance 1367 - 6/9/94)

- (a) A permanent surface water connection or other direct physical contact with an inland lake or pond, a river or stream.
- (b) A seasonal or intermittent direct surface water connection to an inland lake or

pond, a river or stream.

- (c) A wetland is partially or entirely located within five hundred (500') feet ~~(152.5 meters)~~ of the ordinary high-water mark of an inland lake or pond or a river or stream, unless it is determined by the City or **the MDNR Michigan Department of Environment, Great Lakes and Energy (EGLE)** in accordance with Rule 281.924 of the *Wetland Administrative Rules* **adopted promulgated in connection with Act 203** under the **Wetlands Protection Act** that there is no surface or groundwater connection to these waters.
- (d) Two (2) 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 Paragraphs (a), (b) or (c) of this definition.

DEPOSIT: shall mean to fill, place or dump.

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

**EGLE: MEANS DEPARTMENT OF ENVIRONMENT, GREAT LAKES AND ENERGY, OR EQUIVALENT DEPARTMENT**

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

FLOODPLAIN: shall have the same meaning as provided for in Section 5.5 (4) of this Chapter.

LAKE: shall mean an area of permanent open water which is five (5) acres ~~(2.025 hectares)~~ or more in size.

MAY: shall mean an auxiliary verb qualifying the meaning of another verb by expressing ability, permission, or possibility. The word "may" is indicative of discretion or choice between two (2) or more alternatives.

ORDINARY HIGH-WATER MARK: shall mean the line between upland and bottomland 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

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

PLANNING DEPARTMENT: shall mean the Planning Department of the City of Southfield.

PLANNING COMMISSION: shall mean the Southfield Planning Commission.

POND: shall mean any body of permanent open water one (1) acre (.405 hectares) to five (5) acres (2.025 hectares) in size.

**PROTECTED WETLANDS: shall mean any of the following: 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 is any of the following:**

- All wetlands subject to regulation by **the MDNR EGLE** including:
  1. Wetlands, **regardless of size, which are contiguous to any inland lake, stream, river, or pond, whether partially or entirely contained within the project site.**
  2. **Wetlands, regardless of size, which are partially or entirely within five hundred (500) feet (152.5 meters) of the ordinary high water mark of any lake, stream, river, or pond, unless it is determined by the MDNR EGLE that there is no surface water or groundwater connection between the wetland and the water body. Not contiguous to an inland lake or pond, or river or a stream; and more than five (5) acres in size.**
  3. **Wetlands which are larger than five (5) acres (2.025 hectares), whether partially or entirely contained within the project site, and which are not contiguous to any lake, stream, river, or pond. Not contiguous to an inland lake or pond, or river or a stream; and five (5) acres or less**

**in size if EGLE determines that the 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.**

4. Wetlands, regardless of size, which are not contiguous to any lake, stream, river, or pond, if the MDNR determines the protection of the wetland is essential to the preservation of the natural resources of the state from pollution, impairment or destruction.

(b) All wetlands subject to regulation by the City including: (Amended - Ordinance 1367 - 6/9/94)

1. Wetlands two (2) ~~to five (5)~~ acres ~~(.81 to 2.025 hectares)~~ **or greater** in size, whether partially or entirely contained within the project site, which are not contiguous to any lake, stream, river or pond.
2. Wetlands smaller than two (2) acres ~~(.81 hectares)~~ in size which are not contiguous to any lake, stream, river or pond and are determined to be essential to the preservation of the natural resources of the City as provided for in Paragraph (18) of this Section.

RUNOFF: shall mean the surface discharge of precipitation to a watercourse, drainageway, swale, or depression.

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

SOILS:

- (a) Poorly drained soils are those general organic soils from which water is removed so slowly that the soil remains wet for a large part of the time. The water table is commonly at or near the surface during a considerable part of the year. Poorly drained conditions are due to a high-water table, to a slower permeable layer within the soil profile, to seepage, or to some combination of these conditions.
- (b) Very poorly drained soils are those soils from which water is removed from

the soil so slowly that the water table remains at or on the surface a greater part of the time. Soils of this drainage class usually occupy larger or depressed sites and are frequently ponded.

- (c) Hydric soils are soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of wetland vegetation.

**STRUCTURE:** shall mean 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:** shall mean the land area which lies above the ordinary high-water mark, or well-drained land which supports upland vegetation.

**WATERCOURSE:** shall mean any waterway, drainageway, drain, river, stream, lake, pond or any body of surface water having definite banks, a bed and visible evidence of a continued flow or continued occurrence of water.

**WETLAND:** shall have the same meaning as provided for in **Section (2)(g) [not including sub paragraphs (i), (ii), and (iii)] of Act 203 and Rule 4(2) of the *Wetland Administrative Rules* promulgated in connection therewith, as amended. (Amended Ordinance 1367 – 6/9/94) Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (herein the Wetlands Protection Act)**

**WETLANDS MAP:** shall mean the City of Southfield's official map, as updated from time to time, which delineates the general location of wetlands and watercourses throughout the City.

**WETLAND MITIGATION:** shall mean any or all of the following: (1) methods for eliminating potential damage or destruction to wetlands; or (2) creation of wetlands from uplands to offset the loss of protected wetlands.

**WETLAND USE PERMIT:** shall mean the City approval required for activities in wetlands and watercourses described in Paragraph (8) of this Section. (Amended - Ordinance 1367 - 6/9/94)

**WETLAND VEGETATION:** shall mean plants, including but not limited to trees, shrubs, and herbaceous plants, that exhibit adaptations to allow, under normal

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conditions, germination or propagation and to allow growth with at least their root systems in water or saturated soil.

- (6) Relationship to State and Federal Permit Requirements. Whenever persons requesting a wetland use permit are also subject to state and/or federal permit requirements, the following shall apply: (Amended - Ordinance 1367 - 6/9/94)
  - (a) Approvals under this Section shall not relieve a person of the need to obtain a permit from the **MDNR EGLE** and/or the U. S. Army Corps of Engineers, if required.
  - (b) Issuance of a permit by the **MDNR EGLE** and/or the U.S. Army Corps of Engineers shall not relieve a person of the need to obtain approval under this Section, if applicable.
  - (c) If requirements of federal, state, and local officials vary, the most stringent requirements shall be followed.
- (7) Applicability to Private and Public Agency Activities and Operations. The provisions of this Section, including wetland use permit requirements and criteria for wetland use permit approval, shall apply to activities and operations proposed by federal, state, local and other public agencies as well as private organizations and individuals. (Amended - Ordinance 1367 - 6/9/94)
- (8) Prohibited Activities. Except for those activities expressly permitted by Paragraph (9) it shall be unlawful for any person to do any of the following in a protected wetland or watercourse unless and until a wetland use permit is obtained from the City pursuant to this Section. (Amended - Ordinance 1367 - 6/9/94)
  - (a) Deposit or permit to be deposited any fill material or structures into any watercourse or within or upon any protected wetlands.
  - (b) Remove or permit to be removed any soil from any watercourse or from any protected wetland.
  - (c) Remove or permit to be removed any vegetation, including trees, from protected wetlands if such removal would adversely affect the nutrient cycling, sediment trapping, or hydrologic functions of such wetlands or cause disturbance of the soil. (Amended - Ordinance 1367 - 6/9/94)



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- (d) Dredge, fill or land balance watercourses or protected wetlands.
  - (e) Create, enlarge, diminish or alter a lake, pond, creek, stream, river, drain, or protected wetland.
  - (f) Construct, operate or maintain any development in or upon protected wetlands or watercourses.
  - (g) Erect or build any structure including but not limited to buildings, roadways, bridges, tennis courts, paving, utilities, or private poles or towers in or upon protected wetlands or watercourses.
  - (h) Construct, extend or enlarge any pipe, culvert, or open or closed drainage facility which discharges silt, sediment, organic or inorganic materials, chemicals, fertilizers, flammable liquids or any other pollutants to any lake, stream, protected wetland, or watercourse, except through a retention area, settling basin, or treatment facility designed to control and eliminate the pollutant. This Section shall apply to all land uses except single family uses.
  - (i) Construct, enlarge, extend or connect any private or public sewage or waste treatment plant discharge to any lake, stream, river, pond, watercourse, or protected wetland except in accordance with the requirements of Oakland County, State of Michigan and/or the United States, to the extent that such entities have jurisdiction.
  - (j) Drain, or cause to be drained, any water from a protected wetland or watercourse. (Amended - Ordinance 1367 - 6/9/94)
  - (k) Fill or enclose any ditch which would result in a significant reduction of storm water absorption and filtration into the ground or would otherwise have an adverse impact on receiving watercourses or wetlands. (Amended - Ordinance 1367 - 6/9/94)
- (9) Permitted Activities. Notwithstanding the prohibitions of Paragraph (8), the following activities are permitted within watercourses or protected wetlands without a wetland use permit, unless otherwise prohibited by statute, ordinance or regulation:
- (a) Fishing, swimming, boating, canoeing, hiking, horseback riding, bird-watching, or other similar recreational activities which do not require alteration of wetland vegetation or grading of soils.

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- (b) Grazing and/or watering of animals.
  - (c) Education, scientific research, and nature study.
  - (d) Installation for noncommercial use of temporary seasonal docks, rafts, diving platforms and other recreational devices customarily used for residential purposes.
  - (e) Maintenance or repair of lawfully located roads, sewers, ditches, structures and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telecommunication, or other services, provided that such roads, sewers, ditches, structures, or facilities are not materially changed or enlarged, and provided that the work is conducted using best management practices to ensure that flow and circulation patterns, and chemical and biological characteristics of watercourses and wetlands are not impaired and that any adverse effect on the aquatic environment will be minimized. (Amended - Ordinance 1367 - 6/9/94)
  - (f) Excavation and filling of no more than fifty (50) cubic yards (38.25 cubic meters) of material if necessary for the repair and maintenance of bridges, walkways, and other existing structures, provided that such structures allow for the unobstructed flow of water and preserve the natural contour of the protected wetland, except as authorized by permit.
  - (g) Improvement or maintenance of the Rouge River or its tributaries when such operations are organized or sponsored by the City and are specifically intended to preserve natural resources. Such permitted activities shall include, but not be limited to: (1) removal of materials which may cause diverted flows and bank erosion, including the removal of trees, brush, and debris; (2) bank stabilization projects which require minimal disturbance of existing conditions; and (3) wildlife and aquatic habitat improvement projects.
  - (h) A wetland use permit shall not be required for any use which is exempt from a permit under ~~Section 6 of Act 203. (Amended – Ordinance 1367 – 6/9/94)~~ **Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (herein the Wetlands Protection Act)**
- (10) Wetlands Map. The City hereby incorporates into this Section and makes a part hereof by reference an official map of wetland areas and watercourses showing the

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general location of wetlands and watercourses in the City. Said wetlands map shall be updated when substantial new data is available or corrections are needed in order to maintain the integrity of the wetlands map. (Amended - Ordinance 1367 - 6/9/94)

In revising the wetlands map, the City Council shall satisfy the requirements of Act 207, Public Acts of 1921, as amended, relative to the amendment of zoning ordinance maps. The wetlands map shall serve as a general guide for locating wetlands and watercourses. Field investigations to delineate the precise boundaries of wetlands and watercourses on a project site shall be the responsibility of the applicant. In cases where the City needs additional information to complete a wetland use permit application review, the City may complete on-site investigations of protected wetlands and watercourses. (Amended - Ordinance 1367 - 6/9/94)

- (11) Application for a Wetland Use Permit. (Amended - Ordinance 1367 - 6/9/94)
- (a) An application for a wetland use permit shall be filed with the Planning Department. Both permit application forms, the "Application for a Local Wetland Permit" and the **MDNR EGLE** "Application for Permit," shall be submitted to the City as required by Act 203.
  - (b) Upon receipt, the Planning Department shall forward a copy of each completed application to the **MDNR. EGLE**.
  - (c) When a site is proposed for development or activity necessitating review and approval of a site plan, plat or other proposed land use pursuant to City Code, said application for a wetland use permit shall be made at the same time as the site plan, plat or other proposed land use submittal. The application for a wetland use permit shall consist of the following:
    - 1. Four (4) copies of the wetland use permit application for each project.
    - 2. For a wetland 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 Subsection (i) or Subsection (ii) below:
      - (i) The wetland 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 wetland use permit application. Election of this alternative may require a reopening of the wetland use permit application if the land use approval is inconsistent with the wetland use permit approval; or

- (ii) The wetland use permit application shall be reviewed and acted upon concurrent with the review of the site plan, plat or other proposed land use submitted by the applicant, and the 90-day review period limitation specified in **Section 6 (6) of Act 203 Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (herein the Wetlands Protection Act)** shall thereby be extended accordingly.
3. Twenty (20) copies of a drawing of the proposed activity for projects which require City Council review and approval; or four (4) copies of a drawing of the proposed activity for projects which require administrative review and approval. Each drawing must contain the following elements:
- (i) Title block, including the applicant's name, name of waterway, section of City, description of activity, scale of drawing, date drawing was prepared, name and professional credentials of the engineer, architect, or planner preparing the site drawing and the name and professional credentials of the wetlands scientist or environmental specialist who has delineated the wetland boundaries.
  - (ii) Location and extent of protected wetlands and watercourses as identified through field investigation and presented on a topographic map of suitable scale. A scale of at least one (1) inch (**2.54 centimeters**) equals fifty (50) feet (**15.25 meters**) is required for all projects.
  - (iii) Types of wetlands on the site, e.g., forested, shrub, emergent marsh, wet meadow, and aquatic bed, identified by using methods approved by the **MDNR EGLE, as set forth in the**

Michigan "*Wetland Determination Manual Draft for Field Testing*" or other official publications.

- (iv) A site plan, subdivision plat, or planning map which overlays the proposed development or project onto wetlands and watercourses. Existing and proposed structures and utilities on or directly adjacent to the site shall be clearly identified in relation to existing wetland features and topography.  
(Amended - Ordinance 1367 - 6/9/94)
  - (v) Typical cross sections of existing and proposed structures, dredge cuts and fills, including dimensions and elevations, and location of wetlands.
  - (vi) A description of construction materials such as: type (concrete, stone, wood, etc.), thickness or depth, size, weight, slope; and a description of cut, filled or dredged materials such as: type (yellow clay, sand, silt, etc.), volume, depth and areas impacted.
  - (vii) Identification of type and location of soil erosion control measures to be used during construction, including measures which will be used to trap sediment which might otherwise run off into wetlands.
  - (viii) Identification of disposal areas for dredged material, if any, vicinity map showing the disposal area if off-site disposal is proposed, and method for containing dredge material to prevent reentry into wetlands or watercourses.
  - (ix) Bridge or culvert cross section, if any, including the location of wetlands, and a profile of the proposed structure showing the proposed end treatment and bank stabilization locations.
  - (x) Identification and description of all mitigation areas, if any, whether on-site or off-site.
4. Four (4) copies of a cover letter signed by the applicant including the following information:

- (i) Name of project and brief description (one sentence).
  - (ii) Date upon which the activity is proposed to commence.
  - (iii) Explanation of why the project meets the wetland use permit standards and criteria contained in Paragraph (18) of this Section.
  - (iv) List of all federal, state, county or other local government agency permits or approvals required for the proposed project including permit approvals or denials already received. In the event of denials, the reasons for denials shall be given. Attach copies of all permits which have been issued.
  - (v) Identification of any present litigation involving the property.
  - (iv) Signature of applicant.
- (12) Planning Department Review. The Planning Department shall process a wetland use permit application as follows: (Amended - Ordinance 1367 - 6/9/94)
- (a) The Planning Department shall review the wetland use permit application to verify that all required information has been provided. At the request of the applicant or the City, an administrative meeting may be held to review the proposed activity in light of the purposes of this Section.
  - (b) Upon receipt of a complete application, the Planning Department shall:
    - 1. Initiate review procedures for the wetland use permit application.
    - 2. Forward a copy of each application to the **MDNR EGLE** as required by **Act 203- Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (herein the Wetlands Protection Act).**
    - 3. Conduct or authorize a field investigation to review and verify the accuracy of information received and during such review shall refer to the wetlands map. The receipt of a wetland use permit application shall comprise permission from the owner to complete an on-site

- investigation.
4. Coordinate field investigations and data with **MDNR EGLE** personnel when feasible.
  5. Modify, approve or deny the application within ninety (90) days after receipt of the completed application subject to the provisions of this Section.
  6. Provide a written reason for the denial of any wetland use permit. Failure to supply complete information with an application may be reason for denial of a permit.
  7. Notify the **MDNR EGLE** of its decision.
- (c) Plans for wetland mitigation shall not be considered unless and until the requirements of Paragraphs (18), (19) and (20) of this Section have been met.
- (d) It shall be the responsibility of the Planning Department to employ a qualified wetlands consultant or retain qualified staff to conduct wetland field investigations and complete assessments on behalf of the City.
- (13) **Planning Commission Review of Wetland Use Permit Application.** After the Planning Department has completed its review of a wetland use permit application as provided for in Paragraph (12) of this Section, said application shall be referred to the Planning Commission if it relates to a proposed development or activity which requires a site plan review by said Commission pursuant to the terms of this Chapter or a preliminary plat pursuant to Chapter 47 of the City Code. A public hearing with regard to the wetland use permit application shall be held by the Planning Commission at the same meeting at which it considers the related site plan or preliminary plat with notice of such hearing being sent to owners of adjoining property by first-class mail which notice shall be sent at least fifteen (15) days prior to the hearing. A legal notice of the public hearing shall be published in a local newspaper not less than five (5) days nor more than fifteen (15) days prior to the public hearing. The Planning Commission after conducting the public hearing shall make a recommendation to the City Council with regard to whether the wetland use permit application shall be issued and relating to a favorable recommendation may suggest conditions or a mitigation plan in accordance with Paragraphs (19) and (20) of this Section. (Amended - Ordinance 1367 - 6/9/94)

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- (14) City Council Review of Wetland Use Permit Application. Upon receipt of the Planning Commission recommendation with regard to a wetland use permit application and the related site plan or preliminary plat or upon receipt of a wetland use permit application which relates to a proposed development or activity which requires a soil removal or landfill permit pursuant to Chapter 46 of the City Code, the City Council shall hold a public hearing with regard to the wetland use permit application at the same meeting at which it considers the related site plan, preliminary plat or soil removal or landfill permit application with notice of such hearing being sent to owners of adjoining property by first-class mail which notice shall be sent at least fifteen (15) days prior to the hearing. A legal notice of the public hearing shall be published in a local newspaper not less than five (5) days nor more than fifteen (15) days prior to the public hearing. The City Council may approve, deny, or approve the wetland use permit application with conditions or in conjunction with a mitigation plan as provided for in Paragraphs (19) and (20) of this Section. (Amended - Ordinance 1367 - 6/9/94)
  
- (15) City Planner Review of Wetland Use Permit Application. When a wetland use permit application is not related to a development or activity necessitating review and approval of a site plan, plat or a soil removal or landfill permit by the City Council pursuant to the City Code, the City Planner shall be responsible for granting or denying the application. Prior to his or her decision, notice of the wetland use permit application shall be sent to owners of adjoining property by first-class mail at least fifteen (15) days before the City Planner makes his or her decision which notice shall indicate where and when the wetland use permit application may be examined and which shall further indicate that said owner(s) may file a written objection thereto with the Planning Department. The City Planner may approve, deny or approve the wetland use permit application with conditions or in conjunction with a mitigation plan as provided for in Paragraphs (19) and (20) of this Section. (Amended - Ordinance 1367 - 6/9/94)
  
- (16) Appeal from Decision of City Planner. The City shall not issue a wetland use permit approved by the City Planner until ten (10) days have passed following such approval. Any person denied a wetland use permit by the City Planner, or any owner of property adjoining the property upon which the activity is proposed (including property directly across public rights-of-way and easements) when a wetland use permit is approved for issuance, may appeal to the City Council. An appeal must be filed with the City Clerk's Office, in writing, within ten (10) days of the date of the decision being appealed. Timely filing of an appeal shall have the effect of suspending the issuance of a wetland use permit pending the outcome of the appeal. The City Council, upon review, shall determine, with findings, whether or not there



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has been compliance with the requirements and standards of this Section, and based upon its findings, it may affirm, reverse or modify the decision rendered by the City Planner. (Amended - Ordinance 1367 - 6/9/94)

- (17) Wetland Use Permit Conditions. Whenever the Planning Commission recommends issuance of a wetland use permit or the City Council or City Planner approves the issuance of a wetland use permit, the Planning Commission, the City Council or the City Planner shall: (Amended - Ordinance 1367 - 6/9/94)
- (a) Attach any reasonable conditions considered necessary to insure that the intent of this Section will be fulfilled, to minimize or mitigate damage or impairment to, encroachment in or interference with natural resources and processes within the protected wetlands or watercourses, or to otherwise improve or maintain the water quality. Any conditions related to wetland mitigation shall follow the provisions of Paragraphs (19) and (20) of this Section.
  - (b) Fix a reasonable time to complete the proposed activities.
  - (c) Require the applicant to file with the City a cash or corporate surety bond or irrevocable bank letter of credit in an amount, if any, determined necessary to insure compliance with the wetland use permit approval conditions and this Section.
  - (d) Require that final approval of a wetland use permit application shall be contingent upon receipt of evidence by the City that required state and federal permits, if any, have been obtained by the applicant.
- (18) Wetland Use Permit Standards and Criteria. (Amended - Ordinance 1367 - 6/9/94)
- (a) A wetland use permit shall be approved with respect to a non-contiguous wetland less than two (2) acres (~~.81 hectares~~) in area unless the Planning Department determines that the wetland is essential to the preservation of the natural resources of the City. **It shall not be the burden of the property owner to prove the wetland is not essential to the preservation of the natural resources of the community.**
  - (b) All non-contiguous wetland areas of less than two (2) acres (~~.81 hectares~~) which appear on the wetlands map, or which are otherwise identified during a field inspection by the City, shall be analyzed for the purpose of determining whether such areas are essential to the preservation of the natural resources of

the City. If there is to be a denial of a wetland use permit in a non-contiguous wetland area of less than two (2) acres (~~.81 hectares~~), then, on the basis of data presented by the applicant, or supplemental data gathered by **or on behalf of** the City, findings shall be made in writing and given to the applicant stating the basis for the determination that such wetland is essential to preservation of the natural resources of the City. In order to make such a determination, there shall be a finding that one (1) or more of the following exist within such wetland:

1. The site supports state or federal endangered or threatened plants, fish, or wildlife appearing on a list specified in **Section 6 of the Endangered Species Act of 1974, Act No. 203 of the Public Acts of 1974, being Section 299.226 of the Michigan Compiled Laws Section 36505, Endangers Species Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.**
2. The site represents what is identified as a locally rare or unique ecosystem.
3. The site supports plants or animals of an identified local importance.
4. The site provides groundwater recharge documented by a public agency.
5. The site provides flood and storm 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.
- (c) The data which must be submitted by the applicant for purposes of making the determination whether the wetland is essential to the preservation of the natural resources of the City, **the property owner shall make shall include** an election and response under Subparagraph 1 or 2 below, relative to each non-contiguous wetland area less than two (2) acres (~~.81 hectares~~).
1. **In lieu of having the City of Southfield or it's wetland consultant proceed with the analysis and determination, the property owner may acknowledge** ~~An acknowledgement~~ that one (1) or more of the criteria in Subparagraphs (b-1) through (b-10) above, exist on the wetland in question, including a specification of the one or more criteria which do exist; or
  2. ~~An analysis prepared by the applicant's qualified wetlands consultant, with respect to each~~ **An election to have the City of Southfield or it's wetland consultant proceed with the analysis of each of the** criteria in Paragraphs (b-1) through (b-10), ~~detailing whether each of the criteria in Paragraphs (b-1) through (b-10)~~ exist or do not exist in the wetland in question, including specific reasons for the conclusion in respect to each criteria.
- (d) If the City determines that the wetland is not essential to the preservation of the natural resources of the City, the City's decision shall be so noted on the Wetland Map, at the time it is amended. The requested activity shall be approved subject to all other applicable laws and regulations.
- (e) If the City determines the wetland is essential to the preservation of the natural resources of the City, and the City has found that one or more of the criteria set forth exist on the site, the City shall notify the applicant in writing stating the reasons for determining the wetland to be essential to the preservation of the natural resources.

After determining that a wetland less than two (2) acres in size is essential to the preservation of the natural resources of the City, the wetland use permit application shall be reviewed according to the standards in Paragraph (f) below.

(d)(f) The Planning Commission in making a recommendation with respect to a wetland use permit application and the City Council or City Planner in making a determination whether to approve a wetland use permit application shall consider the following standards and criteria:

1. A wetland use permit shall be issued only if the proposed project or activity is 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:
  - (i) The relative extent of the public and private need for the proposed activity.
  - (ii) The availability of feasible and prudent methods and alternative locations, other than the project site, to accomplish the expected benefits from the activity.
  - (iii) 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 protected wetland provides.
  - (iv) The probable impact of the proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
  - (v) The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
  - (vi) The size and quality of the protected wetland being considered.
  - (vii) The amount and quality of remaining wetland in the area.

(viii) Proximity to any waterway.

~~(ix)~~ Extent to which upland soil erosion adjacent to protected wetlands or drainageways is controlled.

~~(x)~~(ix) Economic value, both public and private, of the proposed land change to the general area.

~~(xi)~~(x) Findings of necessity for the proposed project which have been made by federal, state or local agencies.

3. A wetland use permit shall not be granted unless it is shown that: **an unacceptable disruption will not result to the aquatic resources. In determining whether a disruption to the aquatic resources is unacceptable, the criteria set forth in Section 30302 of the Wetlands Protection Act, as amended and Section (f) above shall be considered. A permit shall not be issues unless the applicant also shows either of the following:**

~~(i)~~ An unreasonable disruption of aquatic resources will be avoided; and

~~(ii)~~(i) The proposed activity is primarily dependent upon being located in the protected wetland; and

~~(iii)~~(ii) A feasible and prudent alternative does not exist; and

~~(iv)~~(iii) The manner in which the activity is proposed to be undertaken will result in the minimum negative impact upon protected wetlands, watercourses, and attendant natural resources under all of the circumstances; and

~~(e)~~(g) Following approval of the application, a wetland use permit shall be issued upon determination that all other requirements of ordinance and law have been met, including site plan, plat or land use approval is applicable, and including issuance of a permit by the **MDNR, EGLE**, if required under **Act 203 Section 30307(4) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.30307(4) (herein the Wetlands Protection Act)**. In cases where a **MDNR EGLE** permit allows activities not permitted by the wetland use permit approval granted under this Section, the restrictions of the approval granted under this Section shall govern.

- (19) Consideration of Proposals for Wetland Mitigation. Prior to considering a proposal for wetland mitigation, the Planning Commission, the City Council or the City Planner shall make all of the following findings: (Amended - Ordinance 1367 6/9/94)
- (a) That all feasible and prudent efforts have been made to avoid the loss of protected wetland.
  - (b) That all practical means have been considered to minimize protected wetland impacts.
  - (c) That it is practical to replace the protected wetland which will be unavoidably eliminated.
  - (d) That all alternatives for preserving protected wetlands and watercourses have been evaluated and found to be impractical, inappropriate, or ineffective.
- (20) Criteria for Approving Proposals for Wetland Mitigation. If the Planning Commission, the City Council or the City Planner determines that it is practical to replace the protected wetlands which will be impacted, mitigation plans shall be approved only if all of the following criteria are met: (Amended - Ordinance 1367 -6/9/94)
- (a) That the mitigation plan provides for the substantial replacement of the predominant functional values of the protected wetland to be lost. **Mitigated wetlands shall be replaced at a minimum of 1.5 new acres of wetland to 1 acre lost. A larger replacement ratio may be required if the lost wetlands are deemed to have exceptional value.**
  - (b) That the mitigation plan provides for no net loss of protected wetland resources and watercourses unless the Planning Commission, the City Council or the City Planner determines that the net loss will result in a minimum negative impact upon protected wetlands, watercourses, and attendant natural resources under all of the circumstances.

- (c) That the mitigation ~~plan has been coordinated with requirements of state agencies, if applicable.~~ **Shall comply with all applicable federal, state, and local laws.**
  - (d) That a plan to monitor preserved and replacement wetlands **over a minimum of five (5) years** has been specified. **The plan shall include the following information:**
    - 1. **Schedule and list of activities to be contracted and conducted related to the site's hydrology, including sub-surface and surface water for a period of at least five (5) years. A report and recommendation on the hydrologic conditions of the site should be submitted to the City annually.**
    - 2. **Schedule and list of activities to be contracted and conducted related to the site's plant establishment and control of invasive exotic species for a period of at least five (5) years. A report and recommendation on the plant establishment of the site should be submitted to the City annually.**
    - 3. **To assure that the objectives established in the mitigation plan are successful, the monitoring plan should indicate the mechanisms necessary to execute the recommendations from the annual reports and provide for additional monitoring after the five (5) year period.**
  - (e) Wetland mitigation and monitoring plans have been made conditions of the wetland use permit **and shall be the responsibility of the applicant.**
  - (f) **Financial assurances that mitigation is accomplished as specified by the permit condition may be required by the City.**
  - (g) **Any mitigation activity shall be completed before the initiation of other permitted activities, unless a phased concurrent schedule can be agreed upon between the City and applicant.**
  - (h) **Wetland mitigation plans that create less than two (2) acre wetlands shall be designed and constructed to meet one of the conditions listed in Paragraph 18(b)(1-10)**
- (21) Protection of Wetlands and Watercourses During and After Construction. An applicant who has received a wetland use permit under this Section shall comply with the following in connection with any construction or other activity on the property for which the wetland use permit has been issued: (Amended - Ordinance 1367 -6/9/94)
- (a) Maintain soil erosion control structures and measures, including but not limited to silt fences, straw bale berms, and sediment traps. The landowner shall provide for periodic inspections throughout the duration of the project.
  - (b) Through staking or other means acceptable to the Planning Department, clearly identify the locations of protected wetlands or watercourses on the project site so

that such locations are visible to all construction workers. The visible identification of protected wetlands and watercourses shall be in place prior to the grading of any land or issuance of any construction permit.

- (c) Assure that there is no encroachment of equipment or earth-moving activities into protected wetlands or watercourses except as provided in the wetland use permit.
  - (d) Prominently display at the site a copy of the wetland use permit or other evidence that a wetland use permit has been obtained. The owner shall display a copy of the wetland use permit or other certification continuously when authorized activities are conducted and for ten (10) days following completion. The owner shall allow City representatives to enter and inspect the premises at any reasonable time, and failure to allow inspections shall constitute a violation of this Section.
- (22) Fees. Applications for a wetland use permit under this Section shall be accompanied by a non-refundable administrative application fee in an amount specified from time to time by resolution of the City Council. In addition, an applicant shall pay an additional escrow fee in an amount determined by the Planning Department to pay for the estimated cost of outside consultant(s) who may be retained by the City in connection with the review of the application. In the event the cost of the services of the consultant(s) is less than the escrow fee, the applicant shall be refunded the balance. In the event the cost of the services of the consultant(s) exceeds the amount of the escrow fee, the applicant shall pay the deficiency to the City prior to the issuance of a wetland use permit. A denial of an application for a wetland use permit shall not affect the applicant's obligation to pay the escrow fee provided for in this Section. (Amended - Ordinance 1367 - 6/9/94)
- (23) Restoration Requirements for Illegal Wetland Alteration. In the event of a violation involving illegal alteration of a watercourse or protected wetland under this Section, the City shall have the power to order complete restoration of the watercourse or protected 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 City shall have the authority to restore the affected watercourse or protected wetland to their prior condition wherever possible, and the person or agent responsible for the original violation shall be held liable to the City for the cost of restoration. Requirements and watercourse or protected wetland restorations ordered by the City shall be coordinated with state and/or federal agency requirements and specifications for watercourse or wetland restoration. (Amended - Ordinance 1367 - 6/9/94)
- (24) Injunction. Any activity conducted in violation of this Section is declared to be a nuisance per se, and the City 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 protected wetland or watercourse as nearly as possible to its condition before the violation.
- (25) Stop-Work Order. The City may also issue a stop-work order or withhold issuance of a



Certificate of Occupancy, permits or inspections until the provisions of this Section, including any conditions attached to a wetland use permit, have been fully met. Failure to obey a stop-work order shall constitute a violation of this Section. (Amended - Ordinance 1367 - 6/9/94)

- (26) Relationship to Floodplain Regulations; Conflict. In the event of conflict or disparity between any provisions and regulations of this Section and those contained in Section 5.49 of this Chapter, Floodplain Controls, with respect to a proposed activity which is regulated under both sections, the more stringent provision or regulation shall apply.
- (27) Property Tax Assessment. If a wetland use permit is denied, a landowner may appear at the annual Board of Review for the purpose of seeking a re-valuation of the affected property for assessment purposes to determine its fair market value under the use restriction.