Chapter V

Land Use Regulations

Article 1. LAND DIVISION

Section 1.1 **Definitions**. For the purposes of this ordinance certain terms and words used herein shall have the following meaning:

a. "Applicant" - a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not.

b. "Designated Official" - Person or Persons appointed by the Sharon Township Board.

c. "Divide" or 'Division" - the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors or assigns, for the purpose of sale or lease of more than one year, or of the building development that results in one or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of Sections 108 and 109 of the Michigan Land Division Act. "Divide" and "Division" does not include a property transfer between two or more adjacent parcels, if the property taken from one parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of the Michigan Land Division Act, this ordinance, and other applicable ordinances.

d. "Exempt split" or "exempt division" - the partitioning or splitting of a parcel or tract of land by the proprietor thereof, or by his or her heirs, executors, administrators, legal representatives, successors or assigns, that does not result in one or more parcels of less than 40 acres or the equivalent; provided all resulting parcels are accessible for vehicular traffic and utilities from existing public roads through existing adequate roads or easements, or through areas owned by the owner of the parcel that can provide such access.

e. "Forty acres or the equivalent" - either 40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres.

f. "Governing body" - the Sharon Township Board. [1]

Section 1.2 **Prior Approval Requirement for Land Divisions.** Land in the Township shall not be divided without the prior review and approval of the designated official, in accordance with this ordinance and the Michigan Land Division Act; provided that the following shall be exempted from this requirement:

a. A parcel proposed for subdivision through a recorded plat pursuant to the Michigan Land Division Act and which complies with the minimum requirements of the zoning district therein located.

b. A lot in a recorded plat proposed to be divided in accordance with the Michigan Land Division Act

c. An exempt split as defined in this ordinance, or other partitioning or splitting that results in parcels of 20 acres or more if each is not accessible and the parcel was in existence on

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[1] Ord. No. 13, §3, adopted September 4, 1997

March 31, 1997 or resulted from exempt splitting under the Michigan Land Division Act. [2]

Section 1.3 Application for Land Division Approval. An applicant shall file all of the following with the Township Clerk or other official designated by the governing body for review and approval of a proposed land division before making any division either by deed, land contract, lease for more than one year, or for building development:

a. A completed application form on such form as may be approved by the Township Board.

b. Proof of fee ownership of the land proposed to be divided.

c. A tentative parcel map drawn to scale including an accurate legal description of each proposed division, and showing the boundary lines, approximate dimensions, and the accessibility of each division for automobile traffic and public utilities.

d. Proof that all standards of the Michigan Land Division Act and this Ordinance have been met.

e. The history and specifications of any previous land divisions of which the parcel to be divided was a part sufficient to establish that such parcel was lawfully in existence on March 31, 1997 or the earliest effective date of the Michigan Land Division Act, and that the number of divisions permitted under this Land Division Ordinance or the Michigan Land Division Act have not been exhausted.

f. If a transfer of division rights is proposed in the land transfer, detailed information about the terms and availability of the proposed division rights transfer.

g. The fee as may from time to time be established by resolution of the governing body of the Township for land division reviews pursuant to this ordinance to cover the costs of review of the application and administration of this Ordinance and the Michigan Land Division Act. [3]

Section 1.4 Procedure for Review of Applications for Land Division Approval. The Township shall approve or disapprove the land division applied for within 45 days after receipt of a complete application conforming to this Ordinance's requirements and the Michigan Land Division Act, and shall promptly notify the applicant of the decision, and if denied, the reasons for denial.

a. Any person or entity aggrieved by the decision of the designated official may, within 30 days of said decision appeal the decision to the Sharon Township Zoning Board of Appeals which shall consider and resolve such appeal by a majority vote of said Board at its next regular meeting or session affording sufficient time for a 20 day written notice to the applicant (and appellant where other than the applicant) of the time and date of said meeting and appellate hearing.

b. The Zoning Board of Appeals shall obtain written reports from the designated official, and others who the Zoning Board of Appeals deems necessary to provide information relevant to the appeal. The Zoning Board of Appeals shall review the decision and grant relief if it finds that the decision is arbitrary or capricious, an erroneous application of this Ordinance

c. An appeal shall only be granted if all the following standards are met:

(1) Special conditions and circumstances exist which are unique to the land, structures or buildings involved, and do not result from actions of the applicant;

(2) Literal interpretation of the Ordinance would deprive the applicant of rights commonly

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[2]Ord. No. 13, §4, adopted September 4, 1997

[3]Ord. No. 13, §5, adopted September 4, 1997

enjoyed by other property owners under the terms of this Ordinance;

(3) Granting the appeal will not confer upon the applicant any special privilege that is denied by this ordinance to other lands

(4) The existence of nonconforming parcels or uses of parcels, structures or building under the Township Zoning Ordinance or other regulatory ordinances shall not be considered grounds for the issuance of an appeal;

(5) An appeal granting a waiver or variance of the Ordinance shall be the minimum variance that will make possible a reasonable division of land in accordance with this Ordinance and would not compromise to the public interest.

d. The designated official shall maintain an official record of all approved and accomplished land divisions or transfers.

e. Approval of a division is not a determination that the resulting parcels comply with other ordinances or regulations.

f. The Township and its officers and employees shall not be liable for approving a land division if building permits for construction on the parcels are subsequently denied because of inadequate water supply, sewage disposal facilities or otherwise, and any notice of approval shall include a statement to this effect. [4]

Section 1.5 Standards for Approval of Land Divisions. A proposed land division shall be approved if the following criteria are met:

a. All parcels to be created by the proposed land division(s) fully comply with all applicable requirements of the Township Zoning Ordinance, including but not limited to, minimum lot (parcel) frontage/width, minimum road frontage, minimum lot (parcel) area, and maximum lot (parcel) coverage and minimum setbacks for existing buildings/structures or have received a variance from such requirement(s) from the Township Zoning Board of Appeals.

b. The proposed land division(s) comply with all requirements of the Michigan Land Division Act and this Ordinance.

c. All parcels created and remaining have existing adequate accessibility, or an area available therefor, to a public road for public utilities and emergency and other vehicles.

d. Proof of approval by the Sharon Township Board for any public road that is to be constructed to provide access to any of the lots created by the proposed land division.

e. The ratio of depth to width of any parcel created by the division does not exceed a four to one ratio exclusive of access roads, easements, or non-development sites. The depth of a parcel created by a land division shall be measured within the boundaries of each parcel from the abutting road right-of-way to the most remote boundary line point of the parcel from the point of commencement of the measurement. The width of a parcel shall be measured at the abutting road of right-of-way line, or as otherwise provided in any applicable ordinances. [5]

f. Easements serving more than one parcel must be at least 1000 feet apart. The Sharon Township Board may relax this requirement if the applicant can demonstrate that specific conditions unique to this property split would warrant further consideration.

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[4]Ord. No. 13, §6, adopted September 4, 1997

[5]Ord. No. 13, §7, adopted September 4, 1997

Section 1.6 Consequences of Noncompliance with Land Division Approval Requirement. Any division of land in violation of any provision of this Ordinance shall not be recognized as a land division on the Township tax roll and no construction thereon which requires the prior issuance of a construction or building permit shall be allowed. The Township shall further have the authority to initiate injunctive or other relief to prevent any violation or continuance of any violation of this Ordinance.

An unlawful division or split shall also be voidable at the option of the purchaser and shall subject the seller to the forfeiture of all consideration received or pledged therefor, together with any damages sustained by the purchaser, recoverable in an action at law [6]

Article 2. MINERAL EXTRACTION

Section 2.1 Findings. The Township finds that mineral extraction operations can negatively affect the health, safety, and welfare of Township residents unless such operations are adequately regulated. Mineral extraction operations can pollute the environment, damage the water supplies, cause noise nuisances, dust nuisances, damage the roads and create conditions that are dangerous to Township residents. If unregulated, completed mineral extraction operations can leave land in a condition that is unsightly and presents an attractive nuisance. The Township has authority to regulate mineral extraction operations to protect public health, safety and welfare pursuant to Public Act No. 246 of 1945, being section 41.181 of the Michigan Compiled Laws.

a. A Mineral License Board is established by this Ordinance to further the above purposes.

b. The Mineral License Board shall be composed of the Township Supervisor and four members appointed for two year terms by the Township Supervisor. The appointment of members 1 and 3 shall end on December 31, in odd numbered calendar years, and members 2 and 4 shall end on December 31, in even number years. [7]

Section 2.2 License Required. No person shall commence or continue a business activity involving mineral extraction from any property in the Township without first obtaining a mineral extraction license issued by the Mineral Extraction License Board pursuant to this ordinance.

a. For the purpose of this ordinance mineral extraction is defined as the mining, quarrying excavation or other removal or processing of sand, gravel, soil, or other minerals from the location of the mineral extraction site.

b. For the purpose of this ordinance, processing is defined as washing, sorting, crushing, aggregating, grinding or cutting.

c. A mineral extraction license does not permit other uses including but not limited to on-site processing of material from off-site, asphalt, cement or other manufacturing operations of any nature. [8]

Section 2.3 Compliance with License. No person who has been issued a license pursuant to this ordinance shall engage in activity contrary to the terms of the license or contrary to the terms of this ordinance. [9]

Section 2.4 License Application. A license shall only be issued based on an original signed

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[6]Ord. No. 13, §8, adopted September 4, 1997

[7]Ord. No. 14, §1, adopted December 4, 1997

[8]Ord. No. 14, §2, adopted December 4, 1997

[9]Ord. No. 14, §3, adopted December 4, 1997

application submitted to the Township Clerk together with four duplicates as stated below. Prior to submission of an Application, the Applicant shall attend a pre-application conference with Township Officials and pay a pre-application fee, as determined by resolution of the Township Board. To be complete each application must contain the following:

a. Names and full address of all parties having an interest in the land and/or an interest in the operation on the site. Evidence of such interest shall be provided along with any current partnership agreement, articles of incorporation or assumed name certificate. Written consent of the legal title holder is also required.

b. The applicants signature and date shall appear on the first page of the application original and on all duplicates submitted to the Township for review. In addition, each page of the complete application submittal shall include the original application date in the lower right hand comer. If the application is subsequently amended, each replacement page shall bear, in the lower right hand comer, the original application date and the date of the submittal of the page revision. All applications shall be made in a loose leaf, 3-ring binder in order to facilitate the replacement of pages.

c. A full legal description and drawing of the site prepared by a registered surveyor showing the number of acres on each portion of the site to be mined.

d. An aerial photo showing the property and adjacent areas within the 2,000 feet of the site and a map showing the property boundaries of all parcels within 500 feet of the site, including the name of the property owner and use of the site.

e. Detailed drawings, prepared by a registered land surveyor or registered professional engineer, showing the following:

    (1) Existing site improvements including buildings, drives, wells, and drain fields;

    (2) Existing topography at contour levels of five (5) feet, interpolated from US Geological Survey (USGS) data, unless an interval of less than five (5) feet is deemed necessary for review by the Township Engineer at the Pre-Application Conference.

    (3) Extent of future mining areas and depth thereof,

    (4) Location and description of structures and stationary and/or portable equipment to be located on the site during mining operations;

    (5) Location and description of soil types;

    (6) Tree areas and other natural features to be preserved;

    (7) Location and types of materials for visually screening the site;

    (8) Location and dimensions of drives;

    (9) Lane widening on public roads at intersections with drives;

    (10) Locations of test wells for monitoring water quality.

f. A complete description of proposed pollution and erosion control measures.

g. A map showing truck routes and/or private easements to the site and a letter of preliminary comments from the Road Commission(s) impacted by the truck routes.

h. The estimated average amount of gravel, sand, or other materials and the maximum amount of minerals, to be removed each year of the plan for mineral excavation.

i. Evidence that a bond or security deposit has been supplied to the Washtenaw County Road Commission in an amount sufficient for maintaining the truck haul route during the term of the license until reclamation has been completed.

j. The estimate average number of trucks per day, and the maximum number of trucks per day that are to haul minerals from the site each year of the plan.

k. A detailed reclamation plan showing that the entire property will be left in a form that is suitable for development with uses that are permitted in the district, relating such reuse to uses existing or probable for surrounding properties. The reclamation plan shall include the following elements:

(1) Proposed topography at contour intervals of two (2) feet for entire site;

(2) Schedule of progressive rehabilitation. After mining is completed on one specified area, quadrant, or cell, reclamation shall follow progressively in reasonable stages set forth in the plan before mining continues on other areas of the site;

(3) Proposed ground cover and other plantings to stabilize the soil surface and to beautify the restored area;

(4) Concept plan of the proposed use of the site when restored, drawn to scale, and prepared by a registered engineer, registered landscape architect, or registered architect. The Concept plan shall include the proposed circulation system, including location of internal roads and connection to the external road network, delineation of drainage patterns, identification of flood plains, and conceptual layout of lots (if residential is proposed). The use proposed in the Concept plan must be acceptable to the Mineral Licensing Board based on a review of the zoning district, Township Master Plan, surrounding land uses, and site characteristics. In addition, the applicant shall describe provisions for obtaining necessary permits and approvals for the future use(s). A landfill or other disposal or refuse site is not a suitable or satisfactory use;

(5) When the proposed future use, as deemed appropriate by the Mineral License Board, includes residential units or other uses requiring the use of septic fields, the Applicant shall provide a description of the construction and rehabilitation techniques that will be used to ensure that developable areas of the site have suitable soils to meet septic field standards established by the Washtenaw County Health Department. Also, provisions to supply the site with potable water for future uses shall also be described;

(6) Details as to how compliance with the Restoration Standards in Section 9 will be met.

(7) Description of methods and materials to be used in restoring the site;

(8) The proposed date for completing all extraction operations and the date for completing final restoration;

l. A proposed surety bond, irrevocable bank letter of credit in satisfactory form, or security deposit in an amount sufficient to guarantee restoration of the site. In fixing the amount of such surety bond, the mineral license board shall take into account the size and scope of the proposed excavation, probable cost of rehabilitating the premises upon default of the operator, recommendation of the Township Engineer, estimated expenses to compel operator to comply by court decree, and such other factors and conditions as might be relevant in determining the sum reasonable in the light of all facts and circumstances surrounding each application.

m. Michigan State Fire Marshall and/or Michigan State Police permit for the on-site storage or

transfer of fuels; or a written indication from the applicable agency that a permit is not required.

n. A proposed liability insurance policy of not less than $1,000,000 per incident for all liability claims arising out of the site.

o. An application fee, in an amount established by resolution of the Township Board, shall be provided at the time of the application submittal.

p. The first annual license fee, in an amount established by resolution of the Township Board, shall be provided at the time of application submittal and, if approved, subsequently on the anniversary date of the issuance of the mining permit. The fee shall be held in escrow pending decision on granting the application. The annual fee shall remain payable on all acreage not yet restored.

q. A description of the proposed operation including whether it is for mining and/or processing; and specifications of whether the applicant will perform extraction methods in a manner that does or does not require artificial means to lower the existing groundwater table.

r. Drawings, aerial photographs and plans submitted with an application shall be correlated by transparent overlays, combined maps or other means that clearly set forth site features and proposed features and requirements of this ordinance including setbacks.

s. Copy of permit from the Michigan Department of Natural Resources (DNR), or letter from the DNR showing that a permit is not required for the proposed mining or reclamation by the:

(1) Inland Lakes and Streams Act, being P.A. 346 of 1972, as amended,

(2) Goemaere-Anderson Wetland Protection Act, being P.A. 203 of 1979.

t. A hydrogeological analysis, prepared by a Registered Professional Engineer or Certified Professional Geologist with experience in hydrogeological studies, shall be provided for all projects that propose a dewatering operation during any phase of the mining development. The analysis shall demonstrate that the proposed operation will have no significant impact to existing private water supply wells within the influence of the site dewatering operations. The hydrogeological report shall include the following;

(1) Test pumping data at the site and analytical computations used to access potential dewatering impacts.

(2) A test well and computer model shall be used to determine the probable drawdown of the proposed dewatering. The hydrogeological report shall determine the direction and rate of flow of groundwater, the upgradient and down-gradient water quality, aquifer characteristics (when soil dewatering is planned), extent of dewatering influence, and impact on surrounding water supply wells. A minimum of three (3) monitor wells shall be installed according to the requirements of the Michigan Department of Environmental Quality. Locations of wells shall be improved by the Township Engineer.

(3) Well logs of existing wells within 2000 feet of the site boundaries.

(4) A written statement of the impact the proposed operation will have on private wells shall be provided, as well as a plan for mitigating measures in the event that existing wells are impacted by the dewatering operations.

(5) Groundwater testing of each well shall take place prior to commencing extraction operations to establish background water quality levels. Annual test of each well shall be performed and results shall be provided to the Township within 30 days of the anniversary of permit issuance. At a minimum, the ground water shall be tested

for the following: Benzene, Ethylene, Xylene, Toulene (BETX), and Polynuclear Aromatic Hydrocarbons (PNA).

(6) A description of the discharge rate and discharge location(s) of the dewatering operation, including an assessment of the potential for flooding in the area and downstream from the point of the discharge.

In the event that no dewatering is proposed, the applicant shall provide sufficient data to establish the direction of groundwater movement in the area. A minimum of three (3) monitor wells shall be installed according to the 3-point method, retained for future monitoring, and constructed according tot he requirements of the Michigan Department of Environmental Quality. Locations of wells shall be approved by the Township Engineer. In addition, the Applicant shall supply well logs of existing wells within 2,000 feet of the site boundaries. Groundwater testing shall be performed in accordance with Section 4.20.5 above.

u. Four duplicate copies of all of the above except the application fee, and the first annual license fee. One duplicate is for the Township Engineer for his review and report, one duplicate is the records of the Mineral Licensing Board; one duplicate is for the Mineral License Board to attach to the Applicant's License, if approved; and the final copy is to attach to the Township's copy of the License, if approved. The original is maintained in the Township Clerks records. [10]

Section 2.5 Review of Application by Mineral License Board. Once a complete application is submitted, the Mineral License Board shall, within 60 days:

a. Approve a license based on the following findings;

(1) The applicant can comply with this ordinance;

(2) The operation will not adversely affect the health, safety, and welfare, of the residents of the Township;

(3) The site will be restored so it is safe and harmonious with surrounding land uses;

(4) The necessary fees, bonds, security deposits and evidence of insurance have been submitted;

(5) The proposed operation will not adversely affect the water table or water quality or supply of any surrounding land;

(6) The use proposed in the reclamation plan is acceptable, based upon a review of the Township Zoning Ordinance, Township Master Plan, surrounding land uses and site characteristics

b. Disapprove the license based on one or more of the following findings that the applicant has failed to demonstrate that:

(1) The applicant can or will comply with this ordinance; or

(2) The operation will not adversely affect the health, safety, and welfare of the residents of the Township; or

(3) The site will be restored so it is safe and harmonious with the surrounding land uses; or

[10] Ord. No. 14, §4, adopted December 4, 1997

(4) The proposed operation will not adversely affect the water table or water quality or supply of any surrounding land; or

(5) The use proposed in the reclamation plan is acceptable to the Mineral License Board, based upon the Board's review of the Township Zoning Ordinance, Township Master Plan, surrounding land uses and site clearances.

c. Conditionally disapprove the license until the applicant submits revised document(s) providing that the license should be approved.

d. Extend the period of review for an additional 30 days based on a written determination that additional review is needed. [11]

Section 2.6 Issuance of License. If a license is approved, the Mineral License Board shall issue the license in duplicate upon depositing the required fee, bond, irrevocable letter of credit, or security deposit, and proof of insurance. One duplicate original will be provided to the applicant, and the other will be maintained by the Township Clerk. [12]

Section 2.7 Form of License. The license shall be prepared in duplicate originals and signed by the Township Supervisor and Township Clerk, after by a majority of the Mineral License Board, and contain the following:

a. A full description of the operation permitted by the license based on approved plans and drawing;

b. A full description of the restored site based on the approved plans and drawings;

c. Dates for the completion of the operations and the completion of restoration;

d. The dates for which the permit is valid based on the continual restoration schedule approved by the Board;

e. Signed commitments for compliance with the ordinance and the license by all parties having an interest in the land and the operation; and that the license will reimburse all legal, engineer and investigation costs incurred by the township in establishing any violations;

f. That Township agents, representatives, independent contractors and engineers are authorized to enter upon the property at any time for the purpose of inspection and may extract from the property such small samples of water, soil and other materials as may be necessary to assure compliance;

g. That it remains subject to required annual inspections by the Township Engineer and/or other agents of the Township and payment of annual license fees; and reimbursement of the Township Engineer's fees for monitoring to determine compliance with the license;

h. All required attachments to the application. [13]

Section 2.8 Compliance by Licensee. All persons or firms engaged in the activity of mineral extraction shall comply with the following;

a. Operate only with a license issued under this ordinance.

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[11]Ord. No. 14, §5, adopted December 4, 1997

[12]Ord. No. 14, §6, adopted December 4, 1997

[13]Ord. No. 14, §7, adopted December 4, 1997

b. Make payment to the Township Clerk, on each anniversary date of the license, of the annual permit fee established by resolution of the Township Board, to be held in escrow pending satisfactory results of the Township's annual inspection.

c. Operate only in compliance with the terms and limits of the license.

d. Operate only between 7:00 a.m. and 6:00 p.m. Monday through Saturday. No operations shall be permitted on Sundays or legal holidays.

e. Other than as specified in the application and license, no processing of any nature, shall be conducted at any time on site.

f. All fixed machinery and equipment and buildings shall be located at least 250 feet from any lot line and 500 feet from any existing residence. The Mineral License Board may approve the continued maintenance and use of facilities within the prescribed setback if they were installed and used at the proposed location prior to December 4, 1997.

g. No extraction, processing, loading, weighing, stockpiling or other operations or equipment storage or repair shall take place closer than 250 feet from any road right of way, 500 feet from a residence or 250 feet from any other property boundary, whichever is farther.

h. There shall be no excavation unless there is adequate lateral support for adjoining land as determined by the Township Engineer.

i. Stockpiles of soil to be used for the reclamation shall be seeded or otherwise maintained to avoid erosion.

j. Grading shall be maintained so that a drainage nuisance is not caused on adjacent property.

k. Operations shall be conducted so the noise from the site when measured outside its legal boundaries does not exceed 70 decibels ("a" scale) for a period longer than a minute. Equipment shall be installed, used and maintained so that noise and vibration emitted from the site do not exceed the level reasonably necessary for the operation of the equipment.

l. The operation shall be conducted so it will not cause any contamination or change in the quality of ground or surface water outside the site. The quality of ground water shall be monitored by adequate test wells as determined by the Township.

m. There shall be no excavation within 500 feet of any stream or waterway unless approved in writing by the Michigan Department of Natural Resources.

n. There shall be not more than one entrance way from a public road for each 660 feet of front lot line.

o. Each entranceway shall be located not less than 500 feet from an intersection of two or more public roads.

p. The site including ingress and egress shall be treated and maintained so that dust does not blow onto neighboring properties.

q. Berms, fences and landscaping shall be installed at all locations around the site which lack natural screening. The screening shall consist of one or any combination of the following:

(1) Earth berms constructed to a height of 6 feet above the mean elevation of the centerline of the adjacent highway or 6 feet above the general level of the terrain along the interior property lines, whichever is higher. Such berms shall have slopes that are not in excess of I foot vertical to 3 feet horizontal and shall be planted with grass, trees or shrubs.

(2) Plantings or evergreen trees or shrubbery in rows parallel to the boundaries of the property, not less than 4 feet in height at the time of the planting and which grow to not less than 6 feet in height at maturity and sufficiently spaced to provide effective sight barriers when 6 feet in height.

(3) Masonry walls or attractive solid fences made of uniform new materials, constructed to a height of not less than 6 feet and maintained in good repair.

r. Where an excavation leaves standing water with a depth of greater than 4 feet, the applicant shall erect a fence completely surrounding the portion of the site where the body of water extends, said fence to be not less than six (6) feet in height complete with gates, which gates shall be kept locked when operations are not being carried on.

s. Where quarrying operations result in a body of water, the owner or operator shall place appropriate "Keep-Out-Danger" signs around said premises not more than two hundred (200) feet apart.

t. All portions of the site not currently being mined (without mining activity for ninety days) shall be graded so that slopes are not steeper than one (1) foot vertical for each two (2) feet horizontal and shall be adequately covered and planted to prevent erosion.

u. All fuels, chemicals and other hazardous materials to be contained on site shall be noted in the application, including material, quality, use, and method of primary and secondary containment. All containment structures or devices shall be designed and operated to prevent groundwater pollution. The applicant shall also provide a written spill response plan, in the event that a hazardous materials spill occurs on site. Said plan shall indicate how any and all contaminated material will be collected and disposed.

v. Washtenaw County Health Department Community Right-to-Know Regulation of 1986 evidenced by copies of documentation and notices produced pursuant to said Act.

w. Only equipment or vehicles owned or leased by the operator shall be stored on the site overnight.

x. The truck and trailer license plates shall be washed or wiped clean before leaving the site on each trip.

y. Materials will only be loaded onto trucks reaching and leaving the site on truck routes specified on the license.

z. Be responsible for adequately treating against dust and improving and maintaining to Washtenaw County Road Commission standards the public roads. Bridges and culverts directly servicing the site; as necessitated by the truck traffic over the haul route to or from the site. Any roads used for the purpose of ingress and egress to said excavation site which are located within three hundred (300) feet of occupied residences shall be kept free by hardtopping with cement, bituminous substance or chemical treatment.

aa. Maintain a record or copy of the load ticket for each truck departing with extracted minerals from the site. These records must include driver and truck/trailer identification, date, time, and load; and must be made available to the Township upon demand for inspection and copying.

bb. Potable water supply and sanitary sewage disposal systems shall be approved for the site by the County Health Department.

cc. No material from outside the site shall be brought in for processing or storage.

dd. The operators must maintain the liability insurance approved with the license and annually provide proof of that insurance to the Township.

ee. No explosives shall be used on the site. [14]

Section 2.9 Reclamation. Reclamation in accordance with the following restoration standards must begin as soon as the mining of any area of the site is completed or mined to the limits shown on the application (whichever comes first);

a. The reclamation shall be in accordance with the license.

b. Ponding shall be avoided in all areas except in designated lake areas. This shall be accomplished by all excavation being either to a water-producing depth or shall be graded or backfilled to ensure that the excavated area will not retain or collect stagnant water. For the purposes of this subsection, a water-producing depth shall be defined as not less than ten (10) feet below the average summer level of water in the excavation.

c. In the event filling of the mined area is necessary in the course of reclamation, the fill material shall consist only of soil material, which is brought into the site in compliance with the following:

(1) A detailed statement indicating the quantities of material to be disposed of, and the exact locations from which the material will be brought.

(2) A report specifying in detail the testing to be undertaken by the applicant at each source location to ensure that the material being brought on site is not contaminated. The report shall include an opinion by a qualified independent soil scientist, soils engineer, hydrogeologist or geologist, confirming that the material from each source location is not contaminated.

(3) Set forth in detail the arrangement and nature of all operations, including the quantity of each type of material to be brought on site and the location from which it will be brought.

(4) Set forth a detailed explanation as to the routing of all vehicles bringing material to the site, and their size, weight and frequency of trips.

(5) Set forth in detail the precautions taken to ensure against any soil erosion or sedimentation control problems.

(6) Set forth in detail the contingency cleanup procedures to be utilized in the event of any contamination of the underlying groundwater or surface water.

d. In general, grades of areas which are not permanently submerged will be gently rolling to minimize soil erosion and shall be blended into existing grades in a harmonious manner, No unsubmerged grade shall exceed one (1) foot vertical to four (4) feet horizontal, unless an unmodified area remains on site that has a natural grade in excess of 1:4 and the Mineral License Board finds that modification of this area is not necessary. In addition to the above, the reclamation plan shall show an internal future development area of 200 feet from the site property lines. Within this area, site grades shall be reduced to a sufficient slope to support an internal road on residential lots fronting on at least one side of the road. This area may be reduced to 100 feet where the Mineral License Board finds that residential development is not feasible future land use for the site and the use proposed does not require a 200 foot area with less steep grades. Grades of all areas that are permanently submerged shall not exceed one (1) foot vertical to five (5) feet horizontal from the shore to the depth of five (5) feet below the annual low water elevation. Notwithstanding the above, the maximum depth shall not exceed fifty (50) feet.

e. Topsoil of a quality equal to that occurring naturally in the area shall be replaced on

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[14] Ord. No. 14, §8, adopted December 4, 1997

excavated areas not covered by water, roads or other structures. The depth of topsoil over the entire site shall be sufficient to allow sod to grow.

f. Vegetation shall be restored by the appropriate seeding of grasses and the planting of trees and shrubs to establish a permanent vegetative cover on the land surface, to minimize erosion, and ensure long term stability of any sloped areas.

g. Reclamation must be completed within 12 months of cessation of mining operations. All plant structures, buildings, stockpiles and equipment shall be removed; provided, however, that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the requirements of the zoning district in which the property is located may be retained. No further mining shall be permitted on a site when an area within the site subject to reclamation has not been restored within this time limit.

As part of the reclamation process, all site debris including tree stumps, man-made materials, etc. shall be removed from the site and properly disposed. [15]

Section 2.10 Revocation/Suspension. The Township Supervisor, in the case of a violation of this ordinance, may temporarily revoke a license issued under this ordinance for up to 30 days where the public health, safety or welfare may be affected. Otherwise revocation shall only occur after a warning, notice and a hearing before the Mineral License Board which has the authority to permanently revoke the license or temporarily suspend it where conditions are found to exist which indicate the licensee is operating in violation of the terms of his license, or this ordinance, or in a manner adversely affecting the health, safety, or welfare of the residents of the Township. [16]

Section 2.11 Appeal. Any applicant or affected property owner may appeal a decision of the Mineral License Board under this ordinance.

a. An appeal shall be decided by the Township Board after adequate notice, and a public hearing.

b. Based on facts presented at an appeal, the Township Board may make findings redetermining compliance with Section 5 of this Ordinance and remand the application to the Mineral License Board for granting of the license or other final disposition of license, extend time limits of this ordinance, and restore a revoked license. [17]

Section 2.12 Exemptions. This ordinance shall not apply to the following:

a. Operations that involve the removal of 100 cubic yards of less of material per year.

b. Usual and customary excavation associated with the construction of structures or septic tanks/fields under a permit from the Township and/or County.

c. The usual and customary balancing of land by cutting and filling on a site in preparation for a development approved by the Township in accordance with all Township ordinances and regulations. This exemption shall not permit the removal of more than 100 cubic yards of material from the site.

d. Usual and customary excavation of land in the public right-of-way, when associated with a public utility or public facility improvement.

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[15] Ord. No. 14, §9, adopted December 4, 1997

[16] Ord. No. 14, §10, adopted December 4, 1997

[17] Ord. No. 14, §11, adopted December 4, 1997

e. Ponds constructed in accordance with applicable provisions of the Zoning Ordinance. [18]

Section 2.13 Violations.

a. Persons violating this ordinance may be fined $500.00 and imprisoned for 90 days for each violation. Each day an operation is carried on in violation of the ordinance shall be considered a separate violation.

b. An official designated by the Township Board shall be responsible for investigating violations of this Ordinance, distributing notices of violations, and other related administrative functions. In general, when a violation has been identified and confirmed, the enforcement official shall issue a Notice of Violation to the owner and operator of the facility, advising a 15 day period to cease the violation and come into compliance with the Ordinance. If the violation continues, the enforcement official shall contact the Township Supervisor to schedule a Show-Cause hearing to be held by the Township Board to determine if the matter should be referred to the Township Attorney for immediate remedy through a court of competent jurisdiction. A Notice of Show-Cause hearing including date, time, and place of the hearing shall be sent to the owner and operator at least 10 days prior to conducting the Show-Cause hearing. Upon review of findings of fact, the Township Board shall take appropriate action to ensure the Ordinance standards and plan of approval is met. In the event that the violation requires immediate action in a court of competent jurisdiction, the Township Board may refer the matter to the Township Attorney for action without giving notices set forth above. The Township Attorney may seek injunctive or other appropriate relief. [19]

Section 2.14 Effective Date.

a. This ordinance shall take effect 30 days after the date of publication of the notice of adoption. Beginning with that date all persons or forms wishing to commence mineral extraction operations must comply with the ordinance.

b. Owners and operators of all extraction operations existing prior to the effective date of this ordinance must apply for the required license within 90 days of the effective date and must be in compliance with all provisions of this ordinance within 180 days of the effective date of this ordinance. [20]

Section 2.15 Severability. It is the intention that if any portion of this ordinance is found, for any reason, to be invalid, the remainder of the ordinance shall remain in effect. [21]

Section 2.16 Variances. When there are practical difficulties in the way of carrying out the strict letter of ordinance, the Township Board shall have the power to vary or modify the application of the provisions of this ordinance, in accordance with this section, so that the intent and purpose of the ordinance shall be observed, public safety secured, and substantial justice done.

Any applicant may apply for a variance from any provision of the ordinance by filing an application for variance with the Township Clerk and paying a variance application review fee. The Township shall hold a public hearing upon such application with-in forty-five (45) days from its filing. The Township Clerk shall give notice of the hearing to the owners of all property within three hundred (300) feet of the subject property. The notice shall be mailed to each such party by first class mail or hand delivered and shall be published in a newspaper of general circulation in the Township not later than

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[18]Ord. No. 14, §12, adopted December 4, 1997

[19]Ord. No. 14, §13, adopted December 4, 1997

[20]Ord. No. 14, §14, adopted December 4, 1997

[21]Ord. No. 14, §15, adopted December 4, 1997

seven (7) days prior to the hearing. The Township Board may attach reasonable conditions in granting the variance from any provision of the ordinance to insure that the standards and intent of the ordinance are met. Violation of conditions shall be considered a violation of the Ordinance and shall be subject to the penalties stated in Section 13. [22]

Section 2.17 **Relationship to Other Laws**. Whenever regulations or restrictions imposed by this Ordinance are either more or less restrictive than regulators or restrictions imposed by this or any other governmental authority through legislation, rule or regulation, the regulations, rules or restrictions which are more restrictive or which impose higher standards or requirements shall govern. However, wherever there is a conflict in determining which is the more restrictive or imposes the higher standard, the standards of this regulatory ordinance shall govern. Regardless of any other provision of this Ordinance, no land shall be used and no structure erected or maintained in violation of any state or federal control or environmental protection law or regulation. [23]

Article 3. TELECOMMUNICATIONS

Section 3.1 **Purpose**. The purpose of this ordinance is to regulate the access to and ongoing use or Public Rights-of-Way by Telecommunications Providers to ensure and protect the public health, safety, and welfare and to exercise reasonable control of the Public Rights-of-Way pursuant to the Michigan Telecommunications Act (Act No. 216 of the Public Acts of. 1995, as amended, being MCL 484.2101 et seq.), other State statutes (including, without limitation, MCL 247.183), and Article VII, § 29 of the 1963 Michigan Constitution by (1) minimizing disruption of the Public Rights-of-Way by regulating the access to and ongoing use of the Public Rights-of-Way by Telecommunications Providers and the construction, installation, operation, and use, of facilities in the Public Rights-of-Way to provide Telecommunication. Services, (2) ensuring that the Township and the public are protected from liability for use of the Public Rights-of-Way by Telecommunication Providers, (3) providing for the payment of nondiscriminatory permit fees which do not exceed the fixed and variable costs of granting permits and maintaining the rights-of-way used by Telecommunications Providers, and (4) assisting Telecommunications Providers in understanding the Township's requirements for use of the Public Rights-of-Way and providing a fair and non-discriminatory policy for permitting the use of the Public Rights-of-Way by such providers. [24]

Section 3.2 **Reservation of Rights.** The issuance of a Permit or Permits under this Ordinance and the access to and use of the Public Rights-of-Way by a Telecommunications Provider shall not constitute a waiver of or otherwise adversely affect the following reserved rights.

a. Right to Require Franchise. Article VII, §29 of the 1963 Michigan Constitution requires that ail public utilities obtain a franchise to conduct a local business within the Township. The applicability of this requirement to Telecommunications providers may be challenged under Section 102(dd) of the Michigan Telecommunications Act which purports to define telecommunications services as not constituting public utility services. Due to this and other legal and regulatory issues, and to avoid the expense and delay of litigation that may be unnecessary, the Township hereby determines that Telecommunications Providers shall not be required at this time to obtain franchises for the transaction of local business within the Township. Telecommunications Providers shall be required to obtain and maintain a Permit for access to and ongoing use of the Public Rights-of-Way and to otherwise comply with the terms of this Ordinance. Such a Permit shall not constitute a franchise. The Township reserves the right to require Telecommunications Providers to obtain a franchise in the future to transact local business within the Township. The Permittee shall not provide cable television service without obtaining a franchise from the Township.

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[22]Ord. No. 14, §16, adopted December 4, 1997

[23]Ord. No. 14, §17, adopted December 4, 1997

[24]Ord. No. 15, §2, adopted April 6, 2001

b. Rights Regarding Takings Claim. Certain cable or Telecommunications Providers have initiated or supported legal proceedings in which they contend that federal law grants them the right to physically occupy the rights-of-way and other property of a municipality for the purpose of providing telecommunications service without compensating the municipality for the use or value of the property so occupied or the cost of acquiring and maintaining such property. Municipalities, including the Township dispute that claim. The Township believes that if such a claim were sustained it would, among other things, constitute an unlawful taking by the United States in violation of the Fifth Amendment of the United States Constitution. The legal issues involved in such disputes have not been finally decided. The Township desires to act on applications for Permits granting access to its Public Rights-of-Way at this time rather than wait for determination of these issues, provided this can be done without waiver or loss of any rights of the Township or a Permittee. Therefore, notwithstanding any other provision hereof, a Permittee is not precluded by this Ordinance from seeking relief from the fee provisions of Section 8 from any court or agency of competent jurisdiction. If a Permittee seeks such relief the Township reserves the right to assert a takings claim and to take all action it deems necessary in support thereof. Neither this Ordinance nor the issuance or acceptance of a Permit hereunder constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either the Township or the Permittee in connection with these disputed issues, and the acceptance of a Permit constitutes an acknowledgment and agreement thereto by the Permittee. [25]

Section 3.3 Existing Maintenance Permits. Annual maintenance permits issued to a Telecommunications Provider shall not be renewed upon expiration. Upon expiration of the annual maintenance permit, Telecommunications Providers shall be required to comply with all terms and conditions of this Ordinance as it may be amended from time to time. [26]

Section 3.4 Terms Defined. The meaning of the terms used in this Ordinance shall be as follows:

a. “Affiliate” and "Affiliated” means any Controlling entity that is owned or Controlled by or is under common ownership or common Control with a Permittee.

b. "Township" means the Township of Sharon.

c. “Township Board" means the Township Board of the Township of Sharon or its designee. This subsection does not authorize delegation of any decision or function that is required by law to be made by the Township Board. In any case in which a hearing is held pursuant to this Ordinance, the Township Board may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the Board or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

d. “Township Clerk" means the Township Clerk or his or her designee.

e. “Control," "Controlling," and "Controlled" mean effective control by whatever means exercised, such as those, described in Report and Order and Further Notice of Proposed Rule Making in MM Docket 92-264, 8 FCC Red 6828 (1993) at paragraphs 22-28 (adopting broadcast transfer of control standards as then in effect).

f. “Local Exchange Service" means the provision of an access line and usage within a local calling area for the transmission of high quality two-way interactive switched voice or data communication.

g. "Permit" means a non-exclusive permit issued pursuant to this Ordinance for access to and

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[25] Ord. No. 15, §3, adopted April 6, 2001

[26] Ord. No. 15, §4, adopted April 6, 2001

ongoing use of Public Rights-of-Way by Telecommunications Providers for wires, poles, pipes, conduits, or other facilities designed or used to provide, Telecommunications Services. The term "Permit" does not include any other permits, licenses, or approvals required by the Township or other governmental entities.

h. “Permittee." means a Telecommunications Provider which has been issued a Permit pursuant to this Ordinance.

i. "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

j. "Public Rights-of-Way" means the surface and space above, on and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel park, parkway, waterway, dock, bulkhead, wharf, pier, public, easement, right-of-way or, any other public ground or water within or in which the Township now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated or otherwise acquired, may be used for the purpose of constructing, operating and maintaining a telecommunications facility. No reference herein or in any franchise agreement to a public right-of-way shall be deemed to be a representation or warranty by the Township that its interest or, other right to control the use of such property is sufficient to permit its use for such purposes and the Franchisee, Licensee or Permittee shall be deemed to acquire only those rights of a user of property in the Township and only as the Township may have the undisputed right and power to give.

k. "Reseller" refers to a person that provides one or more telecommunications services for hire, which are carried in whole or in part by means of the services of one or more other providers or over one or more telecommunications facilities in the public rights-of-way in which that person lacks a present possessor interest.

l. "Telecommunications Act" means Act No. 216 of the Public Acts of the State of Michigan of 1995, as amended from time to time.

m. "Telecommunications Facility" means that part of a tangible facility that occupies the public rights-of-way and is used to provide one or more telecommunications services or to transmit telecommunications signals. The term "telecommunications facility" includes any and all facilities used to transmit or carry telecommunications signals.

n. "Telecommunications Provider" means a Person who provides one or more Telecommunications Services for compensation.

o. "Telecommunications Services" means regulated and unregulated services offered to customers for the transmission of two-way, interactive communication and associated usage, including transmission by, optical fiber, coaxial cable or any other bounded, tangible means of information in electronic or optical form including, but not limited to voice, video or data. This includes telephone service but does not include over-the-air broadcasts to the public at large licensed by the Federal Communications Commission. "Telecommunications Services does not include one-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services for which has been obtained or must be obtained from a cable television franchise the Township.

p. "Telecommunications System means facilities designed or used to provide Telecommunications Services. Such facilities are tangible, bounded devices over or through which communications are transmitted, or which control or process transmissions of communications. [27]

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[27] Ord. No. 15, §5, adopted April 6, 2001

Section 3.5 **Permits.** Permit Required. No Person shall use the Public Rights-of-Way to provide Telecommunications Services without a Permit issued pursuant to this Ordinance. For purposes of this Ordinance, use of the Public-of-Way includes the installation, construction, maintenance, repair, or operation of a Telecommunications System within the Public Rights-of-Way. In addition, a Person providing Local Exchange Service or other local Telecommunications Services is using the Public Rights-of-Way for purposes of this Ordinance whether such Person owns the facilities in the Public Rights-of -Way outright or obtains the use of or access to the facilities from a third party under lease, contract, interconnection, or wholes, or retail or other similar arrangement, or acts as a Reseller of Telecommunications Services. Failure to comply with the Permit requirement of this Section shall constitute a violation of this Ordinance. A Person who violates this requirement shall comply with all requirements of this Ordinance applicable to a Permittee and shall pay the annual fee plus late payment charges as provided by Section 8 for the time period in, which the violator did not have a Permit plus the actual costs incurred by the Township in enforcing this Ordinance against the Person. [28]

Section 3.6 **Permit Application Procedures.**

a. Application. A Telecommunications Provider shall apply for a Permit pursuant to this Ordinance. The application shall be made on an application form provided by the Township. Fourteen (14) copies of the application shall be filed with the Township Clerk, and two (2) additional copies each shall simultaneously be filed with the Township Attorney.

b. Required Information. In addition to other information required by the application form or otherwise required by the Township or this Ordinance, the application shall include, without limitation, the following information:

(1) The name and address of the applicant and each Person exercising Control over the applicant, and if the applicant or any Person or Persons exercising Control is not a natural Person, each of its officers, directors, stockholders beneficially holding more than 5% of the outstanding voting shares, general partners, and limited partners holding an equity interest of more than 5%.

(2) Copies of the most recent financial statements of the applicant.

(3) A description of (i) the applicant's existing and proposed Telecommunications System and Telecommunications Services in the Township, (ii) the types of existing and proposed wires and other facilities in the Public Rights-of-Way, and (iii) a statement whether such facilities are owned by the applicant, or if not owned by the applicant, a copy of the agreement or legal instrument granting the applicant the right to the use of or access to such facilities.

(4) A map setting forth the specific location of the facilities in the Public Rights-of-Way. The map shall identify the location of above ground and underground facilities. The map shall be a detailed plan of the proposed work with the locations of all underground and overhead utilities prepared and sealed by a Registered Land Surveyor or Registered Professional Engineer. Additional information to include maintenance of traffic shall be included. Said plans shall be on 24" x 36" bond paper and be accompanied by a computer diskette or compact disc of the drawing in AutoCAD format compatible with the Township's geographic information system. All plans shall be submitted to the Township Supervisor for review.

c. Application Fee and Escrow Deposit. The application will be accompanied by a non-refundable application fee in an amount established by resolution of the Township Board. The non-refundable application fee shall be designed to reimburse the Township for the costs of reviewing an application for a Permit and issuance of a Permit in accordance with the procedures of this Ordinance. The applicant shall also submit an escrow deposit in an

[28] Ord. No. 15, §6, adopted April 6, 2001

amount established by Township Board resolution, to pay for the Township's costs for outside consultants to review the application including legal, engineering, accounting, planning and other consultants. Any amount remaining in the escrow deposit after the Township's consultant bills have been paid shall be returned to the applicant.

d. Administrative Completeness. An application shall not be deemed to be filed for purposes of the 90-day permit application review period in Section 251(3) of the Telecommunications Act unless and until the application is determined by the Township Clerk to be administratively complete. A determination whether the application is administratively complete shall be made by the Township Clerk within thirty (30) days after the application is received by the Township. If the Township Clerk determines that the application is not administratively complete, the Township Clerk shall so advise the applicant in writing and shall identify the items which must be furnished by the applicant for an administratively complete application.

e. Additional Information. The Township Clerk may request an applicant to submit such additional information that the Township Clerk deems reasonably necessary or relevant to review the application. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Township Clerk. If the applicant fails to provide the requested additional information by the deadline established by the Township Clerk, the 90-day period for acting on the application under Subsection 7.g. below shall be extended by the number of days after the deadline that the information was provided to the Township Clerk.

f. Misleading Statements. A Person who provides information to the Township in connection with a Permit application or any other matters under this Section 7 that contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this Ordinance, and shall be subject to all remedies for violation, of this Ordinance and the Township Code including, without limitation, denial of the requested action and Permit revocation pursuant to Section 15. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Ordinance.

g. Permit Approval or Denial. Within forty-five (45) days after the Township Clerk determines that the application is administratively complete (subject to any adjustments for delays in providing additional information as provided in Subsection 7.e. above), the Township Board shall hold a public hearing on the application. Notice of the public hearing shall be published in a newspaper in general circulation not less than ten (10) days before the public hearing. Notice of the public hearing shall also be mailed to the applicant not less than ten (10) days before the public hearing. Any report or recommendation on the application obtained or prepared by the Township Clerk and/or the Sharon Township Board shall be mailed to the applicant not less than ten (10) days before the public hearing. The applicant and any other interested parties may appear in person, by agent, or by letter at such hearing to submit comments on the application. Following the public hearing the Township Board shall approve, approve with conditions, or deny the application within 90 days after the Township Clerk determines that the application is administratively complete pursuant to Subsection 7.d., subject to any adjustments for delays in providing additional information as provided in Subsection 7.e. The Township Board shall not unreasonably deny an application for a Permit. The failure of the Township to comply strictly with the procedural requirements of this Section 7 for the review of Permit applications shall not invalidate the decision or proceedings of the Township.

h. Conditions. The Township Board may impose conditions on a Permit to protect the public health, safety and welfare. Without limitation, these conditions may include the posting of a performance guarantee by the Telecommunications Provider in an amount that shall not exceed the reasonable cost to ensure that the Public Rights-of-Way are returned to their original condition during and after the Telecommunications Provider's access and use, the requirement that the Telecommunications Provider place the Telecommunications System underground and the requirement that a Telecommunications Provider install its

Telecommunications System in a structure that will permit other Telecommunications Providers to co-locate.

i. Modification. The Township Board may in its discretion, grant a modification of a specific requirement of Sections 9, 10, 11 or 13 of this Ordinance if the applicant requests such modification in its application for a Permit and if the applicant demonstrates that: 1) there are exceptional or extraordinary circumstances that warrant a modification, 2) the modification will not be detrimental to the public health, safety and welfare, and 3) the modification, will not impair the intent and purposes of this Ordinance and its several Sections. The application shall describe the applicant's request for a modification and the reasons for the request with specificity. A modification granted by the Township Board pursuant to this Section shall expire upon the expiration of the Permit or earlier if so determined by the Township Board. A modification shall modify only those requirement expressly set forth in the approval of the Township Board and shall not modify any other provisions of this Ordinance. If a request for a modification is denied by the Township Board the Telecommunications Provider shall comply with all requirements of this Ordinance without exception.

j. Waiver. The Township Board may grant a waiver of any requirement of this Ordinance if an applicant or Permittee requests a waiver and the Township Board finds that: 1) unless waived the requirement will prohibit or have the effect of prohibiting the ability of the applicant or Permittee to provide any Telecommunications Service within the meaning of Section 253(a) of the Federal Telecommunications Act, 47 USC §253(a), 2) the requirement is not within the scope of any state or local authority referenced in Section 253(c) of the Federal Telecommunications Act, 47 USC §253(c), and 3) the requirement is not necessary to protect the public safety and welfare or safeguard the rights of consumers. A request for a waiver may be included in an application for a Permit. A request for a waiver shall include a detailed statement of the facts and circumstances forming the basis for the request, if the request is made in connection with an application for a Permit, the provisions of Sections 7.d. through 7.g. shall apply to the request, except that submission of a request for a waiver shall constitute consent that the time periods provided in Section 7.g. for holding a public hearing and acting on an application are extended by 90 days Sections 7.a., 7.c., and 7.f. shall apply to a waiver request that is not made in connection with a Permit application and the request may be denied for violation of or failure to comply with any those provisions. Section 7.g. shall also apply to such a request, with the exception of the 45 and 90 day time periods set forth in that Section, but the Township Board may by resolution establish different or additional procedures for conducting the public hearing and acting on the request. [29]

Section 3.7 Annual Permit Fees.

a. Establishment of Annual Fees; Payment. In addition. to the non-refundable application fee set forth in Section 7.c. and any other fees for other permits, or authorizations required by the Township Code, the Permittee shall pay an annual fee in an amount established by Ordinance or resolution of the Township Board. The annual fee may be modified from time to time by Ordinance or resolution of the Township Board. The amount of the annual fee shall not exceed the fixed and variable cost to the Township in maintaining the Public Rights-of-Way used by a Telecommunications Provider unless otherwise permitted by law. The annual fee shall be payable quarterly as follows:

1st quarter (Jan. 1 - March 31)	April 30
2nd quarter (April 1 - June 30)	July 31
3rd quarter (July 1 - Sept. 30)	October 31
4th quarter (Oct. 1 Dec. 31)	January 31

[29] Ord. No. 15, §7, adopted April 6, 2001

When a Permit is issued during a calendar year, the annual fee shall be prorated for the balance of the calendar year. In the event that a quarterly payment is not paid when due, the Permittee shall pay a late payment charge of the greater of $100 or interest at the rate of one percent (1%) over the prime rate then charged by Bank One or its successor bank and computed monthly. A Person who violates this Ordinance by failing to obtain a Permit shall pay the annual fee plus late payment charges, as required by this Section for the time period in which the violator did not have a Permit plus the actual costs of the Township in enforcing this Ordinance against the Person.

b. Records. All records (including those of Affiliates) reasonably necessary to verify the accuracy of annual fees paid by the Permittee under Section 8.a. shall be made available by a Permittee at a location within the Township. The Township, by itself or in combination with other municipalities, reserves the right to audit any Permittee (or any Affiliate of a Permittee) to verify the accuracy of annual fees paid or to be paid to the Township. Any additional amount due the Township shall be paid within 30 days of submission of an invoice. If the additional amount due exceeds two percent (2%) of the total annual fee which the audit determines should have been paid for a calendar year, the Permittee shall pay the Township's costs in, connection with the audit within 30 days of submission of an invoice.

c. Other Payments. The non-refundable application fees and the annual fees established pursuant to this Ordinance shall be in addition to any tax, charge, fee, or payment due, or to be come due to the Township by a Permittee under the Township Code or the laws of the State of Michigan.

d. Misleading Statements. A Person who provides information to the Township in connection with any matter under this Section 8 which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this Ordinance, and shall be subject to all remedies for violation of this Ordinance and the Township Code including, without limitation, Permit revocation pursuant to Section 15. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Ordinance. [30]

Section 3.8 Duration of Permit; Renewal. A Permit shall remain in effect until December 31 following the tenth anniversary of the issuance of the Permit (unless the Permit expires pursuant to Subsection 10.k. or the Permit is earlier revoked pursuant to Section 15). Applications for renewal of Permits shall be filed in the same manner as original applications in Section 7 and shall be filed with the Township not less than 120 days before the expiration of the Permit. The Township expressly reserves all rights to approve, approve with conditions, or deny applications for Permit renewals pursuant to this Ordinance and to impose additional conditions on renewed Permits. [31]

Section 3.9 Permit Terms and Requirements.

a. Non-Exclusive; Additional Permits. A Permit shall be non-exclusive. The Township expressly reserves the right to approve, at any time, additional Permits for access to and ongoing use of the Public Rights-of-Way by Telecommunications Providers and to enter into agreements and grant franchises for such access and use. The issuance of additional Permits, entry into agreements, or grant of franchises shall not be deemed to amend, modify, revoke, or terminate the terms and conditions of any Permits previously issued to Telecommunication Providers.

b. Expansion Requests. A Permit approved by the Township Board shall authorize access to and ongoing use of the Public Rights-of-Way described in the Permit, subject to strict

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[30] Ord. No. 15, §8, adopted April 6, 2001

[31] Ord. No. 15, §9, adopted April 6, 2001

compliance with the conditions of the Permit, the requirements of this Ordinance, and any other applicable requirements of the Township Code or applicable state and federal law. The Permittee shall not use any Public Rights-of-Way not expressly authorized by the Permit. Any use of the Public Right-of-Way (including any installation, construction, maintenance, repair, or operation of a Telecommunication System within the Public Rights-of-Way) to provide Telecommunications Services shall be performed only as authorized by the Permit. A Permittee may, however, expand its Telecommunications System to Public Rights-of-Way not described in its Permit, by obtaining approval of an amended Permit from the Township. Such approval may be granted in writing by the Township Board in response to a written request from the Permittee for expansion to specific portions of named Public Rights-of-Way. The Township Board may establish by resolution a non-refundable application fee for such a request. The Township Board may grant, grant with conditions, or deny such request. The Township, Board shall not unreasonably deny any such request. Any expansion into additional Public Rights-of-Way shall be subject to all terms and conditions of the original Permit and this Ordinance including without limitation, the application of the annual fee to the expanded Public Rights-of-Way used by the Permittee.

c. Construction Permit. A Permittee shall not commence construction upon, over, across or under the Public Rights-of--Way in the Township without first obtaining a construction permit as required under the Township Code for construction within the Public Rights-of-Way.

d. Lease or Use of Facilities; Overcasting. A Permittee shall not lease, sublease, license or otherwise allow the use of wires, conduit, poles or facilities in the Public Rights-of-Way by a Person who is required to obtain a Permit Under Section 6 of this Ordinance or is required by law to obtain the Township's permission or consent to transact local business in the Township, and who lacks such Permit, permission or consent. A Permittee shall not allow the property of a third party or non-Telecommunications System wires or any other facilities to be overpassed, affixed or attach to any portion of a Permittee's Telecommunications System or allow other actions with a similar result without the written consent of the Township Clerk.

e. “As Built” Maps. Without expense to the Township, a Permittee shall provide the Township with "as built” maps, records, and plans showing its Telecommunications System or portions thereof within the Township, including those of Affiliates used by the Permittee, and maps and descriptive information of facilities of other Persons used by the Permittee. The Township Clerk may waive part or all of this requirement if satisfactory records of the location of the Telecommunications System were previously provided to the Township. The "as-built" maps, records and plans shall be provided within sixty [60) days of the completion of the Telecommunications System and any extensions, additions, or modifications to the Telecommunications System. In addition to the foregoing, a Permittee without expense to the Township, shall upon forty-eight (48) hours notice, give the Township access to all “as-built" maps, records, plans and specifications showing its Telecommunication Systems or portions, thereof within the Township. Upon request by the Township, a Permittee shall inform the Township as soon as possible (but no more than one business day after the request) of any changes from previously supplied maps, records, or plans and shall mark up maps provided by the Township so as to show the location of its Telecommunications System. As built plans shall be submitted on Mylar (minimum 3 mils thick) accompanied by a computer diskette or compact disc of the drawings in AutoCAD format, compatible with the Township’s geographic information system. All plans shall be submitted to the Township Supervisor for review.

f. No Recourse. A Permittee shall have no recourse whatsoever against the Township for any loss, cost, expense or damage arising out of the failure of the Township to have the authority to grant all or any part of a Permit or the authority to grant permission to use all or part of the Public Right-of-Way. A Permittee expressly acknowledges that on accepting a Permit it did so relying, on its own investigating and understanding of the power and authority of the Township.

g. No Inducement. By acceptance of a Permit, a Permittee acknowledges that it has not been induced to obtain the Permit by any understanding or, promise or other statement, whether verbal or written, by or on behalf of the Township or by any third Person concerning any term

or condition of a Permit not expressed in this Ordinance.

h. Acceptance of Terms and Conditions. Permittee acknowledges by the acceptance of a Permit that it has carefully read its terms and conditions and does accept all of such terms and conditions.

i. No Priority. A Permit does not establish any priority of use of the Public Rights-of-Way by a Permittee over any present or future Permittee or parties having agreements, with the Township or franchises for such use. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the Township, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between Permittees, other Permit holders, parties having agreements with the Township, and franchisees, as determined by the Township in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

j. Future Use by Township. A Permittee acknowledges, by accepting a Permit, that it obtains no rights to or further use of the Public Rights-of-Way other than those expressly granted herein. Each Permittee acknowledges and accepts as its own risk that the Township may make use in the future of the Public Rights-of-Way which a Permittee is using or in which a Permittee's Telecommunications System is located in a manner inconsistent with the Permittee's use of such Public Rights-of-Way and that in such event the Permittee will not be entitled to compensation from, the Township.

k. Expiration of Permit. Unless the Township grants an extension, a Permit shall expire one year from the date of issuance unless prior thereto the Permittee either (1) commences construction, installation, or operation of its Telecommunications System within the Public Rights-of-Way authorized by the Permit and diligently pursues completion of construction or installation, or (2) commences use of the Public Right-of-Way to provide Telecommunications service as authorized by the Permit.

l. Access to Telecommunications System. A grantee shall permit connections to the Telecommunications System from any Township Buildings, police stations, fire stations, other public buildings, traffic signals, each school licensed by the State of Michigan and each public library within five hundred (500) feet of the Telecommunications System for the purpose of obtaining services on terms and conditions set forth in the permit. [32]

Section 3.10 Use of Public Rights-of-way by Permittee.

a. No Burden on Public Rights-of-Way. A Permittee and its contractors and subcontractors and a Permittee's Telecommunications System, shall not unduly burden or interfere with the present or future use of any of the Public Rights-of-Way within the Township. A Permittee shall erect and maintain its Telecommunications System so as to cause minimum interference with the use of the Public Rights-of-Way and with the rights and reasonable convenience of property owners. Permittee's cables and wires shall be suspended or buried so as to not endanger or injure persons or property in the Public Right-of-Way. If the Township in its reasonable judgment determines that any portion of the Telecommunications System constitutes an undue burden or interference, the Permittee at its sole cost and expense shall modify its Telecommunications Systems or take such other actions as the Township may determine are in the public interest to remove or alleviate the burden and the Permittee shall do so within the time period established by the Township. The Permittee may be required, if deemed necessary by the Township, to directionally bore portions of the Telecommunication System underground where such boring will protect existing trees within the Public Rights-of-Way.

b. Restoration of Property. A Permittee and its contractors and subcontractors shall immediately

[32] Ord. No. 15, §10, adopted April 6, 2001

restore at the Permittee's sole cost and expense and in a manner approved by the Township any portion of the Public Rights-of-Way that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Telecommunications System to as good or better condition than that which existed prior to the disturbance. In the event that the Permittee, its contractors or subcontractors fail to do so within the time specified by the Township, the Township shall be entitled to complete the work and the Permittee shall reimburse the Township for the costs of doing so.

c. Easements. Any easements over or under private property necessary for the construction or operation of a Telecommunications System shall be arranged and paid for by the Permittee. The Permittee shall provide a copy of said easements to the Township. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by the Permittee and a violation of this Ordinance. Any easements over or under property owned by the Township other than the Public Rights-of-Way shall be separately negotiated with the Township.

d. Tree Trimming. A Permittee may trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with its Telecommunications System. The Permittee shall minimize the trimming of trees to trimming only those trees that are essential to maintaining the integrity of its Telecommunications System. No trimming shall be done in the Public Rights-of-Way without previously informing the Township. The Permittee's right to trim trees is subject to the supervision of the appropriate authority that has jurisdiction over the road and the Township Supervisor.

e. Pavement Cut Coordination/Additional Fees. Open cuts of any pavement shall generally not be allowed. If expressly permitted in writing by the Township, state of the art directional boring methods shall be utilized wherever possible. A Permittee shall coordinate all construction work in the Public Rights-of-Way with Washtenaw County's program for street construction, rebuilding, resurfacing and repair (collectively, "Street Resurfacing"). A Permittee shall meet with the official of the Township primarily responsible for the Public Rights-of-Way at least twice per year to this end. The goals of such coordination shall be to require a Permittee to conduct all work in the Public Rights-of-Way in conjunction with or immediately prior to any street resurfacing planned by the Township or County, and to prevent the Public Right-of-Way from being disturbed by a Permittee for a period of years after such Street Resurfacing.

In addition to any other fees or payments required by this Ordinance, a Permittee shall pay to Washtenaw County the sum established by the County's "Schedule of Permit Fees" for each such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the Public Rights-of-Way and is in addition to all other fees required by this Ordinance or the Township Code.

f. Marking. A Permittee shall mark any installations of its Telecommunications System which occur after the effective date of this Ordinance as follows:

(1) Aerial portions of its Telecommunications System shall be marked with a marker on its lines on alternate poles which shall state the Permittee's name and provide a toll-free number to call for assistance.

(2) Direct buried underground portions of its Telecommunications System shall have (I) a conducting wire placed in the ground at least several inches above the Permittee's cable (if such cable is nonconductive) (ii) at least several inches above that a continuous colored tape with the Permittee's name and a toll-free phone number and a statement to the effect that there is buried cable beneath, and (iii) stakes or other appropriate above-ground markers with the Permittee's name and a toll-free number indicating that there is buried telephone cable below.

(3) Portions of its Telecommunications System located in conduit, including facilities of others used by a Permittee, shall be marked at each manhole with the Permittee's

name and toll-free telephone number to call for assistance.

g. Compliance with Laws. A Permittee shall comply with all laws, statutes, Ordinances, rules and regulations regarding the installation, construction, ownership and use of its Telecommunications System whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any Ordinance requiring the installation of additional conduit when a Permittee installs underground conduit for its Telecommunications System). Before any installation is commenced the Permittee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Township or other governmental entity as may be required by law, including without limitation, all utility line permits and highway permits. A Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition), and the National Electric Code (latest edition). A Permittee shall comply with all zoning and land use Ordinances and historic preservation ordinances as may exit or may hereafter be amended.

h. Street Vacation. If the Township vacates or consents to the vacation of Public Rights-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of a Permittee's facilities in the vacated right-of-way the Permittee shall as a condition of the permit, consent to the vacation and move its facilities at its sole cost and expense when ordered to do so by the Township or a court of competent jurisdiction. The Permittee shall relocate its facilities to such alternate route as the Township acting reasonably and in good faith, shall designate.

i. Relocation. If the Township requests a Permittee to relocate, protect, support, disconnect, place underground or remove its facilities because of street or utility work, or other public projects, the Permittee shall relocate, protect, support, disconnect, place underground or remove its facilities, at its sole cost and expense to such alternate route as the Township, acting reasonably and in good faith, shall designate. The work shall be completed within the time period designated by the Township.

j. Public Emergency. The Township shall have the right to sever, disrupt, dig-up or otherwise destroy facilities of a Permittee, without any prior notice, if such action is deemed necessary by the Supervisor or as recommended to the Supervisor by the Township Clerk, Police Chief or Fire Chief or their designees because of a public emergency. A public emergency shall be any condition which in the opinion of any of the officials named, poses an immediate threat to life, health or property caused by any natural or man-made disaster including, but not limited to storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc. The Permittee shall be responsible for repair at its sole cost and expense of any of its facilities damaged pursuant to any such action taken by the Township.

k. Miss Dig. If eligible to join, a Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

l. Use of Existing Facilities; Underground Placement. To the maximum extent possible, the Telecommunications System shall be placed underground. To the extent the Permittee establishes to the satisfaction of the Township in the Township's sole discretion that the Telecommunications System, cannot be placed underground the Telecommunications System shall be placed within and along the existing duly franchised public utility company facilities. A Permittee shall utilize existing poles, conduits, and other facilities wherever practicable and shall not construct or install any new, different, or additional poles or other facilities unless expressly authorized by the Permit. If the Permittee locates underground along a public right-of-way, the Permittee may be required to construct the underground Telecommunications System in a manner determined by the Township Board, to allow other Telecommunications Providers to co-locate. Where utility wiring is located underground, either at the time of initial construction or subsequent thereto, a Permittee's Telecommunications System shall also be located underground unless otherwise expressly

authorized by the Permit. All under grounding shall be at the sole cost and expense of Permittee.

m. Underground Relocation. If a Permittee has its facilities on poles of the duly authorized public utility or, other public utility company and the duly authorized public utility authority relocates its facilities, underground, the Permittee shall relocate its facilities underground in the same location at Permittee's sole cost and expense.

n. Pole/Conduit License Agreement; Notification. If a Permittee forfeits or otherwise loses its rights under a pole/conduit License agreement with the duly authorized public utility or other entity, then Permittee shall, notify the Township Clerk in writing within thirty (30) days.

o. Identification. All personnel of a Permittee and its contractors or Subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. A Permittee shall account for all identification cards at all times. Every service vehicle of a Permittee and its contractors or subcontractors shall be clearly identified as such to the public with the Permittee name and telephone number.

p. 9-1-1 Emergency Service. As a condition of a Permit, a Permittee providing Local Exchange Service shall provide 9-1-1 service within the Township in accordance with the provisions of the applicable 9-1-1 Service Plan and the rules and orders of the Michigan Public Service commission. [33]

Section 3.11 No Township Liability; Indemnification.

a. Township Not Liable. The Township, and its officers, agents, elected or appointed officials, employees, departments, boards, and commissions, shall not be liable to a Permittee or to its Affiliates or customers for any interference with or disruption in the operation of a Permittee's Telecommunications System or the provision of Telecommunications Services, or for any damages arising out of a Permittee's use of the Public Rights-of-Way.

b. Indemnification. As a condition of a Permit, a Permittee shall defend, indemnify, protect, and hold harmless the Township, its officers agents, employees, elected and appointed officials departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of the Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the Permittee, its officers, agents, employees, contractors, successors, or assigns. [34]

Section 3.12 Insurance.

a. A Permittee shall obtain and maintain in full force and effect for the duration of a Permit the following insurance covering all insurable risks associated with its ownership or use of its Telecommunications System.

(1) A comprehensive general liability insurance policy, including Completed Operations, Liability, Independent Contractors Liability, Contractual Liability coverage and coverage for property damage, from perils of explosion, collapse or damage to underground utilities, commonly known as XC coverage, in an amount not less than Ten Million Dollars ($10,000,000.00).

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[33] Ord. No. 15, §11, adopted April 6, 2001

[34] Ord. No. 15, §12, adopted April 6, 2001

(2) An Automobile Liability Insurance Policy covering any vehicles used in connection with its activities under its Permit in an amount not less than One Million Dollars ($1,000,000.00).

(3) Workers' Compensation and Employer's Liability Insurance with statutory limits.

b. The Township shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to the Township. A Permittee shall provide the Township with a certificate of insurance evidencing such coverage as a condition of issuance of the Permit and shall maintain on file with the Township a current certificate. All insurance shall be issued by insurance carriers licensed to do business by the state of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

c. Each policy which is to be endorsed, to add the Township as an additional insured hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable then this policy shall, cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

d. If the insurance policies required by this Section are written with deductibles in excess of $50,000, the deductibles shall be approved in advance by the Township. A Permittee agrees to indemnify and save harmless the Township from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Ordinance.

e. The Permittee shall, require that its contractors and subcontractors working in Public Rights-of-Way carry in full force and effect workers compensation and employer liability, comprehensive general liability and automobile liability insurance coverages of the types which Permittee is required to obtain under Section 13.a. with appropriate limits of coverage.

f. The Permittee's insurance coverage shall be primary insurance with respect to the Township, its officers, agents, employees, elected, and appointed officials, departments, boards, and commissions. Any insurance or self-insurance maintained by any of them shall be in excess of the Permittee's insurance and shall not contribute to it.[35]

Section 3.13 No Assignment or Transfer of Control Without Township Consent. A Permittee shall not assign or transfer a Permit or any of its rights under a Permit, in whole or in part, voluntarily, involuntarily or by operation of law, including by merger or consolidation or by other means, nor shall there be a transfer of Control of a Permittee or its business, without the prior written consent of the Township, which shall not be unreasonably withheld. The Permittee shall reimburse the Township for reasonable, actual costs incurred in the review of a request by the Permittee for consent to an assignment or transfer of the Permit or a transfer of Control of a Permittee or its business. Notwithstanding, anything in this Section to the contrary, the Permittee may grant a security interest in its rights under a Permit in favor of a third party without first obtaining the consent of the Township. If a Permit or any rights thereunder is assigned or transferred in whole or in part, with the approval of the Township, the terms and conditions of the Permit and of this Ordinance shall be binding upon the successors and assigns of the Permittee.[36]

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[35]Ord. No. 15, §13, adopted April 6, 2001

[36]Ord. No. 15, §14, adopted April 6, 2001

Section 3.14 Revocation. In addition to all other rights, and powers reserved or pertaining to the Township, the Township reserves as an additional separate and distinct remedy the right to revoke a Permit and all rights and privileges of a Permittee in any of the following events or for any of the following reasons:

a. A Permittee fails after sixty (60) days prior written notice to comply with any of the provisions of the Permit or this Ordinance (except Sections 7f or 8e) or

b. A Permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or

c. All or part of a Permittee's facilities are sold under an instrument to secure a debt and are not redeemed by the Permittee within ninety (90) days from such sale; or

d. A Permittee violates Section 7.f. or 8.e. of this Ordinance or otherwise attempts to or does practice any fraud or deceit in its conduct or relations with the Township; or

e. The Township condemns all of the property of a Permittee within the Township by the lawful exercise of eminent domain; or

f. A Permittee abandons its Telecommunication System or fails to seek renewal of its Permit; or

g. A Permittee fails to pay any fines due for violations of this Ordinance; or

h. A Permittee fails to pay any civil fines imposed by a court of competent jurisdiction, such as pursuant to an Ordinance providing for civil infractions; or

i. The Township provides for termination, with or without cause, by delivering notice at least sixty (60) days prior, to the effective date of such termination.

No revocation, except for reason of condemnation shall be effective unless the Township Board shall have adopted a resolution setting forth the reason for the revocation and the effective date, which resolution shall not be adopted without sixty (60) days prior notice to the Permittee and a hearing at which the Permittee receives rudimentary due process. [37]

Section 3.15 Removal.

a. Removal; Underground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, the Permittee may remove any underground Cable from the Public Rights-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of Cable to be removed. Except as otherwise provided, the Permittee shall not remove any underground Cable or conduit which requires trenching or other opening of the Public Rights-of-Way along the extension of Cable to be removed. The Permittee shall remove, at its sole cost and expense, any underground Cable, or conduit which is ordered to be removed by the Township based upon a determination, in the sole discretion of the Township that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Township to remove Cable or conduit shall be mailed to the Permittee not later than thirty (30) calendar days following the date of revocation or expiration or the Permit. A Permittee shall file written notice with the Township Clerk not later than thirty (30.) calendar days following the date of expiration or termination of the Permit of its intention to remove Cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Township. Removal shall be completed not later than twelve (12) months following the date of revocation or expiration of the Permit. Underground Cable and conduit in the Public Rights-of-Way which is not

[37] Ord. No. 15, §15, adopted April 6, 2001

removed within such time period shall be deemed abandoned and, at the option of the Township, title shall be vested in the Township. For purposes of this subsection, "Cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

b. Removal; Above Ground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, a Permittee, at its sole cost and expense, shall unless relieved of the obligation by the Township, remove from the Public Rights-of-Way all above ground elements of its Telecommunication System, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

c. Permits; Restoration; Completion. A Permittee shall apply for and obtain such encroachment, permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable law or Ordinances of the Township, shall conduct and complete the work of removal in compliance with all such applicable law or Ordinances, and shall restore the Public Rights-of-Way to the same condition they were in before the work of removal commenced.

d. Performance Guarantee. The Permittee shall be required to post a surety bond, irrevocable bank letter of credit or security deposit, in an amount to be specified by the Township as being sufficient to ensure that the costs associated with the removal of the Telecommunications System shall be covered in the event the Permittee goes out of business. In fixing the amount of such surety bond, letter of credit or security deposit, the Township shall take into account the probable cost of removing the Telecommunication System as estimated by the Township Engineer, the estimated expenses to compel the Permittee to comply by court decree, and such other factors and conditions as might be relevant in determining the sum reasonable in the light of all facts and circumstances surrounding each application. [38]

Section 3.16 Other Provisions Not Waived.

a. Nothing in this Ordinance shall be construed as a waiver of any ordinances, codes, or regulations of the Township or the Township's right to require Permittee or Persons utilizing the Telecommunication System or Telecommunications Services to secure appropriate permits or authorization for such use.

b. The Township fully reserves its police powers to ensure and protect the public health, safety, and welfare and fully reserves its authority and power to amend this Ordinance at any time. The terms and conditions of any Permit shall be subject to compliance with any future amendments of this Ordinance. The Township fully reserves its right to exercise the reasonable control of the Public Rights-of-Way pursuant to Article VII, 29 of the 1963 Michigan Constitution.

c. Nothing in this Ordinance or any Permit shall limit any right the Township may have to acquire by eminent domain any property of a Telecommunications Provider.

d. Nothing in this Ordinance or any Permit shall limit the authority of the Township to impose a tax, fee, or other assessment of any kind on any Person. A Telecommunications Provider shall pay all fees necessary to obtain all Federal, State, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its Telecommunications System within the Public Rights-of-Way. [39]

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[38]4Ord. No. 15, §16, adopted April 6, 2001

[39]Ord. No. 15, §17, adopted April 6, 2001

Article 4. DEVELOPMENT RIGHTS

Section 4.1 Findings and Declaration of Purpose. The Board of Trustees finds that:

a. Sharon Township is a desirable place to live, work and visit in large part because of the availability of farmland and the relief that agricultural fields bring. Scenic views. agriculture, open spaces and wildlife habitat are all considered invaluable natural' and aesthetic resources and should be protected.

b. The climate, variety of soils and terrain make the Township well suited to the production of a great number of row crops, specialty crops and livestock. including many foods available for direct human consumption. These resources include several thousand acres of land currently in agricultural production, and other woodland, wetland and open lands adjacent to these farmlands. Such lands provide unique, aesthetic and economic benefits to the citizens of the Township and are an important part of the Township's natural and agricultural heritage.

c. Sharon Township is experiencing substantial residential development, however, because of its location to the highly urbanized areas of southeast Michigan, its attractive landscapes and its excellent public schools. The same characteristics which have made this area so desirable for agricultural production and recreation also make it attractive for residential sites.

d. The agricultural industry in Sharon Township provides the opportunity to harvest locally grown foods to sell at roadside stands, farmer's markets, local retail food stores and other local outlets in the area. Land suitable for farming is an irreplaceable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is converted to residential or other more developed uses which do not require those special characteristics, a critical community resource is permanently lost to the citizens of Sharon Township.

e. It is the policy of the State of Michigan and Sharon Township to protect, preserve and enhance agricultural lands as evidenced by the Township General Development Plan, the Township Zoning Act, MCLA 125.271 et seq. and other state and local statutes and policies. Ordinances regulating land use by zoning and subdivision control enacted by the Township also serve these purposes. These measures by themselves, however, have not been effective in providing long-term protection of farmland under the pressure of increasing residential development.

f. Agriculture in Sharon Township produces a notable at ray of products, from corn and soybeans to vegetables and fruit to cattle. The Township's agricultural acreage contributes tens' of thousands of dollars to the local economy in direct sales of agricultural products at the farm gate.

g. Generally, farmlands which are close to urban centers have a greater market value far future residential development than their market value for farming or open space Prime agricultural land often has the same features (such as perkable soils) that are components of desirable residential areas This fact encourages the speculative purchase of these lands at high pries for future residential development, regardless of the current zoning of such lands. Farmland which has a market value greater than its agricultural value does not attract sustained agricultural investment and eventually this land is sold by farmers and removed from agricultural uses.

h. The permanent acquisition of voluntarily offered interests in farmland within the Township, as provided in this Ordinance and as authorized by the Constitution and statutes of the State of Michigan, will permit these lands to remain in agricultural use near developing urban areas and provide long-term protection for the public interests which are served by farmland in the Township.

i. Properties on which the Township has purchased the development rights should remain substantially undeveloped in order to promote their agricultural use.

j. The acquisition of interests in farmland as provided in this Ordinance is a . public purpose of Sharon Township as provided in this Ordinance and financing such acquisition requires that the Township enter into purchases or installment purchases not to exceed statutory limits.

k. This ordinance is authorized by Sections 31 to 33 of the Township Zoning Act, MCL, 125.301 – 125.303.

Section 4.2 Definitions.

a. "Supervisor" means the Sharon Township Supervisor.

b. "Agricultural Rights" means an interest in and the right to use and possess land for purposes and activities related to open space, natural habitat, horticultural and other agricultural uses

c. "Agricultural Use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including fruits, nuts, vegetables, greenhouse plants, Christmas trees and lumber, forages and sod crops, grains and feed crops, dairy and dairy products, livestock (including breeding and grazing), poultry and other similar uses and activities,

d. "Appendix A" of this Ordinance means the maps which describe types and locations of farmland for purposes of priority of acquisition as provided in this Ordinance. Official large-scale maps describing such areas in detail are available through the Township and are incorporated herein by this reference. Smaller scale maps generally illustrating such areas are appended to this Ordinance for more readily accessible public reference

e. "Chairperson" means the member of the Farmland Preservation Board who is elected Chairperson by the Preservation Board.

f. "Board of Trustees" means the Sharon Township Board of Trustees.

g. "Development" means an activity which materially alters or affects the existing conditions or use of any land.

h. "Development Rights" means an interest in and the right to use and subdivide land for any and all residential, commercial and industrial purposes and activities which are not incident to agriculture and open space.

i. "Development Rights Easement" means a grant by an instrument whereby the owner relinquishes to the public in perpetuity the right to develop the land as may be expressly reserved in the instrument, and which contains a covenant running with the land not to develop, except as this right is expressly reserved in the instrument.

j. "Eligible Land" means farmland for which the purchase of "development rights easements" with tax funds and other monetary sources are authorized pursuant to this Ordinance.

k. "Farmland and Open Space Land" means those lands shown in the Township Master Plan as being zoned for agricultural and Resource Conservation uses, as adopted and amended from time to time by the Township Planning Commission

l. "Farmland and Open Space Preservation Board"means the board formed pursuant to Section 6 of this Ordinance to advise the Board of Trustees in the selection of Eligible Lands for easement purchases.

m. "Full Ownership" means fee simple ownership.

n. "Governmental Agency" means the United States or any agency thereof', the State of Michigan or any agency thereof or any Township, City or municipal corporation.

o. "Owner" means the party or parties having the fee simple interest in land.

p. "Parcel" means all property under a single ownership that is included in the application.

q. "Permitted Use" means any use contained within a development rights easement essential to the farming.

r. "Residential Development Rights" means the right to sell portions of a property, or to construct houses on a property, for residential uses not related to the agricultural use of the property.

s. "Substantially Undeveloped Land" means land on which there is no more than one residential dwelling unit (exclusive of housing units directly associated with the fanning operation) for each 40 acres of land

t. "Value of Development Rights" means the difference between the fair market value of full ownership of the land (excluding the buildings thereon) and the fair market value of the agricultural rights plus any residential development rights to be retained by the owner. [40]

Section 4.3 Authorization.

a. The Board of Trustees is hereby authorized to expend revenues to acquire property interests in the farmland described and prioritized in Section 5 of this Ordinance. The property interest acquired may either be the development rights, or any lesser interest, easement, covenant or other contractual right. Such acquisition may be accomplished by purchase, gift, grant, bequest, devise, covenant or contract.

b. The Township is authorized to enter into cash put chase and/or installment purchase contracts, and agreements for the receipt of tax deductible donations of easements, consistent with applicable law. When installment purchases are made, the Township is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract for the tax-exempt status of such interest.

c. The Board of Trustees is further authorized to contract with recognized and legally established nonprofit land trusts (for example, American Farmland Trust and Washtenaw Land Trust) or other experienced and qualified nonprofit groups to participate jointly in the acquisition of interests in eligible lands.

d. The Township may contract with recognized and legally established nonprofit land trusts or other experienced and qualified nonprofit groups that would share in the process of negotiating easements and establishing both the baseline studies and the procedures for monitoring of any conservation easements acquired under this Ordinance and would be done in accordance with The Standards and Practices Guidebook" issued in 1989 by the Land Trust Alliance. [41]

Section 4.4 Retained Residential Development Rights.

a. To promote "agricultural use" of properties on which the Township has purchased the Development Rights, it has been determined that such properties should remain substantially undeveloped.

b. It may be in the best interest of property owners and of the program to purchase

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[40] Ord. No. 16, §2, adopted December 5, 2002

[41] Ord. No. 16, §3, adopted December 5, 2002

development rights that property owners retain some residential development rights so long as the land remains substantially undeveloped. When property owners retain some development rights their land value remains higher than it would be if they sold all their development rights and the value of the development rights to be purchased is correspondingly reduced.

c. Applications for the sale of development rights may include a provision to retain the right to build residential dwellings (residential development rights), provided that no retained residential development rights would result in more than one dwelling unit per forty (40) acres of land (exclusive of housing units directly associated with the farming operation). This is not to preclude the sale of all the remaining dwelling units in excess of one dwelling unit per forty acres of land.

d. The building locations for retained residential development rights may be restricted in the negotiated "conservation easement" in order to protect other important features of the property. Building locations and lot sizes must also conform to existing zoning in the Township where the property is located. [42]

Section 4.5 Eligible Lands and Priority of Acquisition. Revenues shall be used to purchase property interests in the following lands in the following order of their priority subject to the provisions of Section 7

a. Primary Criteria That All Properties must Meet: Land for sale on the open market or voluntary application by the property owner and those lands shown in the Township Master Plan as being zoned for agricultural or resource conservation uses, or as rural residential where agriculture is practiced on larger parcels. as adopted and amended from time to time by the Township Planning Commission.

b. Criteria for Selection: The following criteria shall be used in determining the order in which applications will be prioritized in any Selection Round to purchase development rights on all eligible lands for which complete applications have been received by the Township. This numerical ranking system has been developed to prioritize sites for the purchase of conservation easements. After an initial screening (for hazardous waste and agricultural zoning, e.g.), sites will be evaluated using this system. It is the intention of the users of this system to direct efforts toward high quality farmland and open space in areas of the Township where its preservation is most appropriate. Appropriateness is determined by favorable natural conditions and location factors which make farming a viable undertaking both currently and in the future Areas targeted for preservation are those lands shown in the Township General Development Plans as being zoned for agricultural or resource conservation uses, as adopted and amended from time to time by the Township Planning Commission.

c. Description of the System. The farmland ranking system consists of four sections as follows. The maximum point value is I00, with some additional points possible in the event of a tie.

PART		TOTAL POINTS
I	Characteristics of the Farmland.	34
II	Stewardship of the Land.	22
III	Pressure for Conversion to Nonfarm Use.	12
IV	Long-range Planning Considerations..	32
V	Tiebreakers.	10

[42] Ord. No. 16, §4, adopted December 5, 2002

d. Priorities. The point value arrived at through the use of this system will be used to prioritize farm sites for purchase of conservation easements. Higher point values indicate higher priority for purchase. Ln the case of a tie using the I00 point scale, the tiebreaking categories may be used. All property in a single ownership may be included in one application. Contiguous properties under the same ownership will be treated as a single entity.

Note: An explanation of terms and parameters used in the system appears in Appendix B.

PART I
CHARACTERISTICS OF THE FARMLAND
MAXIMUM POINTS = 34

A Type of Agricultural Land (See Appendix for explanation of terms)

Category	Score
Essential.	15
Secondary.	7
Reserve..	3

B Size of Parcel Offered for Development Rights Purchase (See Appendix)

Acreage	Score
80 acres or more.	8
40 to 79.9 acres..	5
20 to 39.9 acres..	2

C. Proximity to Protected Land (See Appendix)

Distance	Score
Adjacent or within one mile.	7
Between one and two miles.	4
More than two miles.	1

D. Farm Buildings

Buildings	Score
Usable, functional farm buildings on site..	4
Usable, functional farm buildings within two miles.	2

PART II
STEWARDSHIP OF THE LAND
MAXIMUM POINTS = 22

A. Conservation Plans (See Appendix)

Extent of Conservation Plan	Score
Conservation plan fully implemented or conservation practices used to the fullest extent necessary.	8
Conservation plan partially implemented or some practices used.	4

B. Livelihood

Dependence on Farm Income	Score
Farming contributes 50% or more of owner's gross annual income..	4
Farming contributes less than 50% of owner's gross annual income.	2

C. Commitment to Farming (See Appendix)

Enrollment in P.A 116 or Duration of Ownership	Score
Farm is enrolled in P.A. 1 16 and land has been in the same ownership for at least 50 years.	10
Farm is enrolled in PA. 116 or has been in the same ownership for at least 50 years.	6

PART III
PRESSURE FOR CONVERSION TO NONFARM USE
(OR SITE DEVELOPMENT CAPABILITIES AND LIMITATIONS)
MAXIMUM POINTS = 12

A. Amount of Road Frontage

Frontage	Score
1,000 feet or more..	4
501 to 999 feet.	2

B Percentage of Site Containing Steep Slopes (See Appendix)

Steep Slopes	Score
0 to 9.9%.	4
10 to 19.9%.	2

C Amount of Wetlands and/or Floodplain

Wetlands/Floodplain	Score
0 to 9.9%.	4
10 to 39.9%.	2

PART IV
LONG-RANGE PLANNING CONSIDERATIONS
MAXIMUM POINTS = 32

A. Current Adjacent Zoning Classification

Percent of Perimeter in Agricultural or Resource Conservation Zoning	Score
90% or more.	5
75-89%.	3
50-74%.	2
25-49%.	1

B. Current Adjacent Land Use

Percent of Perimeter in Agricultural or Resource Conservation Use	Score
90% or more.	5
75-89%.	3
50-74%.	2
25-49%.	1

C. Current Adjacent Enrollment in P.A. 116 (See Appendix)

Percent of Perimeter in P.A 116	Score
90% or more.	5
75-89%.	3

50-74%.	2
25-49%.	1

D. Proximity to Water and/or Sewer Lines

Distance	Score
One-half mile to two miles..	5
Two miles to five miles.	2

E. Scenic, Historical or Architectural Features (See Appendix)

Features	Score
Site provides a vista or has unique historical or architectural structures.	4
Site provides an accent..	2

F Natural Features

Features	Score
Stream corridors, woodlots or rare species present.	4

G Groundwater Recharge Area

Percent of Property Serving as Groundwater Recharge	Score
50 to 100%.	4
10 to 49%.	2

PART V
TIEBREAKERS
MAXIMUM POINTS = 10

A Ability to Attract Matching Funds (See Appendix)

Funds Availability	Score
Matching funds are available..	5

B Owner Willingness to Accept Less Than Market Value (See Appendix)

Owner Willingness	Score
Owner willing to accept below-market offer.	5

[43]

Section 4.6 **Farmland Preservation Board.** The Sharon Township Board of Trustees shall serve as the Farmland Preservation Board (the "Preservation Board").[44]

Section 4.7 **Selection.** The Farmland Preservation Board shall conduct a voluntary property selection process (herein called the "Selection Round") generally as follows:

a. In each selection round the development rights on all eligible land properties shall be eligible for purchase in all selection rounds, properties of higher priority shall be purchased with available funds before properties of lower priority are purchased, provided:

(1) The Preservation Board may negotiate for a lower price and/or seek outside funding for the purchase of development rights on any parcel offered.

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[43]Ord. No. 16, §5, adopted December 5, 2002

[44]Ord. No. 16, §6, adopted December 5, 2002

(2) In the interest of protecting a significant amount of agricultural land, the Preservation Board may determine not to buy all of any of the development rights on a particular parcel if the Preservation Board makes a finding that it is in the best interest of the program to protect a larger number of acres rather than a smaller number of acres of higher valued development rights

(3) The Preservation Board may receive and act on appeals of any factual nature by affected property owners.

b. The Preservation Board shall begin each selection round by giving notice in one newspaper of general circulation in Sharon Township. 'I he notice shall describe the properties eligible for purchase in the selection round; the general procedure to be followed in the selection process (including art estimated time schedule for the steps in the process), and shall invite the owners of such properties to make application for purchase of development rights by the Township and to describe the property interest which the owner is willing to sell, including any residential development rights to be retained by the owner Applications shall be submitted to a location to be specified by the Preservation Board and stamped with the date of receipt.

c. Upon dosing of the application period, the Preservation Board shall review each application which has been received to determine the eligibility and priority classification of each property interest and to verify ownership by tax records.

d. For those properties which meet the requirements of Section 5. the Preservation Board shall cause an appraisal of the applicant's property interest to be made. A "before and after" appraisal shall be made to determine the value of development rights One appraisal shall determine the fair market value of full ownership of the land (excluding buildings thereon) and one shall determine the fair market value of the agricultural rights plus any specifically retained residential development rights.

e. Appraisals shall be made by State certified appraisers selected by the Preservation Board. The selected appraiser shall not have a property interest, personal interest or financial interest in eligible lands The same appraiser shall conduct the before and after appraisals.

f. Appraisals shall be in writing and shall be furnished to the respective owners for review. Errors of fact in any appraisal may be called to the attention of the appraiser by the Preservation Board or by owners of the property appraised, but corrections of the appraisal maybe made only by the appraiser. If an owner of property believes it has not been adequately appraised, such owner may, within the time allowed on the selection schedule, have a review appraisal be made at the owner's expense by a State certified appraiser The appraisal shall then be filed with the Preservation Board. The Preservation Board shall use both appraisals to reach an agreement as to the appropriate value of the development rights.

g. Terms and conditions of sale and information on the effect of the sale may he discussed by the entire Preservation Board with owners prior to the submission of written applications.

h. Written applications by owners who desire to have their development rights purchased by the Township shall be submitted on forms provided by the Preservation Board. These written offers shall include any development options desired to be retained by the owners.

i. Upon receiving the recommendations of the Preservation Board, the Board of Trustees shall take final action on such recommendations.

j. Once action to select properties for the purchase of development rights has been taken by the Board of Trustees, the Preservation Board shall draft a baseline documentation report describing through photographic, pictorial and narrative means the condition of the property at the time of the grant and a development rights easement. The baseline report shall contain a signature page where the Owner and the Supervisor sign to state that the report is an accurate description of the property at the time of grant. The easement shall similarly feature a page where the signatures of the Owner and the Supervisor are notarized, following which

the easement shall be recorded with the county register of deeds so that it is effective on all current and future owners.

k. Upon the completion of a purchase of development rights transaction, the Township assessor will be notified of the development rights purchase. [45]

Section 4.8 Duration of Acquired Interests.

a. Development rights acquired pursuant to this Ordinance shall be held in trust by the Township for the benefit of its citizens in perpetuity, provided however that a property owner who has sold Development Rights to the Township may repurchase those Rights upon the following conditions:

(1) Fifty (50) years have passed since the Development Rights were sold: and

(2) The Township Board or Trustees determines that the property may not be reasonably used for Agricultural Use and based on the following factors:

(a) That because of the quality of the farmland. agricultural production cannot be made economically viable with generally accepted agricultural and management practices;

(b) That surrounding conditions impose physical obstacles to the agricultural operation or Prohibit essential agricultural practices;

(c) That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland;

(d) That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable.

(3) The repurchase of the development rights is consistent with the purpose of the Township's PDR program as determined by the Township Board of Trustees; and

b. Once the Township Board of Trustees determines that a property is eligible to have its Development Rights repurchased, the owner shall pay the fair market value of those rights at the time of their return. as determined by a State Certified Appraiser. The property owner may not challenge this appraisal. If the Appraiser has a conflict of interest associated with a potential appraisal, he/she shall report the conflict to the Township and the Township shall select another Appraiser to complete the appraisal. The Township will deposit the proceeds from any repurchases into a separate fund that shall be used to purchase additional Development Rights or for other agriculture land preservation means available within the Township.

c. A repayment received shall be allocated to all original contributing fund partners in the same proportion as the proportion for the original purchase of the development rights of the parcel.

d. The Township may convey development rights acquired pursuant to this Ordinance to a conservation, open space preservation, historic preservation or similar organization under terms ensuring that the public benefits for which the Township purchased the development lights will be maintained. [46]

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[45]Ord. No. 16, §7, adopted December 5, 2002

[46]Ord. No. 16, §8, adopted December 5, 2002, amended by Ordinance 2007-2, adopted February 1, 2007.

Section 4.9 **Related Costs.** The costs of appraisal, engineering, surveying, planning, financial. legal and other services lawfully incurred incident to the acquisition of interests in eligible lands by the Township may be paid by the Township. The Township shall not be responsible for expenses incurred by the owner incident to this transaction. [47]

Section 4.10 **Supplemental Funds.** Supplemental or matching funds from other governmental agencies or private sources may become available to pay a portion of the cost of acquiring development rights, or some lesser interest in eligible lands or to supplement or enlarge such acquisition The Farmland Preservation Board is hereby authorized to utilize such funds to purchase interests in eligible lands or to otherwise supplement Township funds in the manner provided by this Ordinance and in accordance with the applicable laws or terns governing such grant. [48]

Section 4.11 **Purpose.** The Board of Trustees finds and declares that the use of Township funds for the purpose of paying in whole or in part the cost of acquisition of interests in eligible lands as set forth herein, including any costs necessarily incident to such acquisition, and the monitoring and enforcement of development rights easements, or to participation with any party for such purposes will promote the public health, safety and general welfare of the people of Township. [49]

Section 4.12 **Development Rights Funding Sources and Acquisition Fund.**

a. Funding for purchasing development rights may come from one or more of the following sources:

(1) General appropriations by the township.

(2) Proceeds from the sale of development rights by the township subject to Section 8(f) of this Ordinance.

(3) Grants.

(4) Donations.

(5) Bonds or notes issued under subsections 12(b) to (f)

(6) General fund revenue.

(7) Special assessments under subsection 12(h).

(8) Other sources approved by the township board and permitted by law.

b. The township board may borrow money and issue bonds or notes under the municipal finance act, Act No. 202 of the Public Acts of 1943, being sections 131.1 to 139.3 of the Michigan Compiled Laws, subject to the general debt limit applicable to the township The bonds or notes may be revenue bonds or notes; general obligation limited tax bonds or notes, subject to section 6 of article IX of the state constitution of 1963, general obligation unlimited tax bonds or notes; or bonds or notes to refund in advance bonds or notes issued under this section.

c. The township board may secure bonds or notes issued under this section by mortgage, assignment, or pledge of property including, but not limited to, anticipated tax collections, revenue sharing payments, or special assessment revenues. A pledge made by the township

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[47] Ord. No. 16, §9, adopted December 5, 2002

[48] Ord. No. 16, §10, adopted December 5, 2002

[49] Ord. No. 16, §11, adopted December 5, 2002

board is valid and binding from the time the pledge is made. The pledge immediately shall be subject to the lien of the pledge without a filing or further act. The lien of the pledge shall be valid and binding as against parties having claims in tort, contract, or otherwise against the township, irrespective of whether the parties have notice of the lien Filing of the resolution, the trust agreement, or another instrument by which a pledge is created is not required.

d. Bonds or notes issued under this section are exempt from all taxation in this state except inheritance and transfer taxes, and the interest on the bonds or notes is exempt from all taxation in this state, notwithstanding that the interest may be subject to federal income tax.

e. The bonds and notes issued under this section may be invested in by the state treasurer and all other public officers, state agencies and political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees, and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for all purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is in addition to all other authority granted by law.

f. The township board may borrow money and issue bonds or notes for refunding all or part of existing bond or note indebtedness only if the net present value of the principal and interest to be paid on the refunding bonds or notes, excluding the cost of issuance, will be less than the net present value of the principal and interest to be paid on the bonds or notes being refunded, as calculated using a method approved by the department of treasury.

g. The township board may finance the purchase of development rights by special assessments. A special assessment district may be established if both of the following requirements are met:

(1) A petition is filed with the township board containing all of the following:

(a) A description of the development rights to be purchased, including a legal description of the land from which the purchase is to be made.

(b) A description of the proposed special assessment district.

(c) The signatures of the owners of at least 66% of the land area in the proposed special assessment district.

(d) The amount and duration of the proposed special assessments.

(2) The township board specifics how the proposed purchase of development rights will specially benefit the land in the proposed special assessment district.

h. All revenues for purchasing development rights on farmland and open space land shall be placed in a designated Development Rights Acquisition Fund to be hereafter created in the office of the Treasurer of "Township (here and after "Acquisition Fund"). Money in such acquisition fund may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money.

i. The revenues and any interest received from the deposit or investment of such revenues shall be applied and used solely for the purposes set forth in this Ordinance. [50]

Section 4.13 Appendix B

Part I: Characteristics of the Farmland

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[50] Ord. No. 16, §12, adopted December 5, 2002

Type of Agricultural Land. In 1981, the Washtenaw County Metropolitan Planning Commission developed a system of ranking agricultural land The delineation utilized both physical and cultural factors to avoid having good soil characteristics become the sole criterion for determining the distribution of prime agricultural lands. In the study of Washtenaw County agriculture, land within the townships but outside the year 2000 sanitary sewer service area wasdivided into quarter sections (160 acres). This was deemed most appropriate for a study at a county-wide scale. Public lands and other major areas committed to present use (e.g., the Chrysler Proving Grounds) were deleted from consideration of potential agricultural land

Three categories of agricultural lands were utilized: essential, secondary and reserve. Six factors were used to select these agricultural lands. Three physical factors are related to soil characteristics and were derived from the Natural Resources Conservation Service (NRCS) Soil Survey of Washtenaw County The remaining three factors have a cultural origin, which can change rapidly.

The three physical criteria included soils capable of producing 100 bushels of corn or more per acre where farmers practice good management techniques, soils with a Class II agricultural capability as determined by the NRCS and prime agricultural areas depicted on the 1980 NRCS map of Washtenaw County.

The three cultural criteria included existing farms that are well operated and viable as determined by personnel of the Michigan State University Extension Service and later supplemented by input from the county Agricultural Lands Committee, parcels of land that exceed 80 acres in size and farmlands whose owners have applied to enroll in the Michigan Farmland and Open Space Preservation Act program (P.A 116)

Essential Agricultural Lands include all those with one of three physical criteria and which contain an existing farm that is well operated and viable.

Secondary Agricultural Lands also must contain one of the three physical criteria or contain a well operated farm plus have parcels of 80 acres or more or be enrolled in P.A. 116.

Reserve Agricultural Lands must also contain one of the three physical criteria or contain a well-operated farm.

Where more than 50 percent of a quarter section could be designated under one of these three agricultural land divisions, the entire 160 acres was given a particular classification.

Before the final map was completed, quarter sections that were designated in one of the three categories, but in which more than 50 percent of the land was in parcels smaller than 10 acres, were deleted. This comprised only a few cases, but the decision was based on the premise that viability of farms is limited where land ownership is highly fragmented.

While certainly much has changed in the 20 years since this process was completed, it still serves as a basis for making determinations on targets for agricultural land preservation today.

Qualification for a particular type of agricultural land will be determined by having a majority of the parcel offered for development rights purchase in that designation

Size of Parcel. According to the 1997 U.S. Census of Agriculture, the average size of all farms in Washtenaw County was 175 acres

Protected Land. Protected land is defined as that which is permanently protected through private or public means. Types of protected land include nature preserves, public park and recreation lands, lands restricted by conservation easement with land trusts and conservancies and other lands with development rights secured through purchase or donation.

Part II: Stewardship of the Land

Conservation Plans. In the absence of NRCS plans, the Farmland Preservation Board will determine

the extent of conservation practices by consulting with experts in the field and other appropriate means.

Enrollment in P.A. 116. Michigan's Farmland and Open Space Preservation Act (P.A. 116 of 1974) enables a landowner to enter into a development rights agreement (for farmland) or a development rights easement (for open space) with the state. These agreements and easements are designed to ensure that the land remains in a particular use or uses for an agreed upon period. In return for maintaining the land in a particular use, the landowner is entitled to certain income of property tax benefits.

Part III: Likelihood of Conversion to Nonfarm Use

Percentage of Farm Containing Steep Slopes. Steep slopes are defined as those of greater than 12 percent

Part IV: Long Range Planning Considerations

Scenic, Historical or Architectural Features.

a) Vista: a broadly sweeping view including a variety of vegetation types (woodland, farm fields) combined with topographical variations. This view is visible from a major highway and/or rural road.

b) Historical or Architectural: pre-Civil War houses and round barns are examples of this category.

c) Accent: An attractive view but narrower in scope and weaker in impact than a vista

d) No contribution: hidden or screened by man-made or natural features.

Part V: Tiebreakers

Matching Funds. Matching funds are defined as other financial contributions from private or public sources that could be applied to a property's application and result in a lower local cost for development rights purchase.

Market Value. Refers to an owner's willingness to accept an offer for development rights at a percentage lower than the full market value. [51]

[51] Ord. No. 16, Appendix B, adopted December 5, 2002

Article 5. WETLANDS PROTECTION

Section 5.1 General.

a. *Findings.* The Board of Sharon Township finds that wetlands are indispensable and fragile resources that provide many 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 open space; passive outdoor recreation opportunities; fish and wildlife habitat for many forms of wildlife, including migratory waterfowl, and rare, threatened or endangered wildlife and plant species; and pollution treatment by serving as biological and chemical oxidation basins.

Preservation of the remaining Sharon Township wetlands is necessary to maintain hydrological, economic, recreational, and aesthetic natural resource values for existing and future residents of Sharon Township, and therefore Sharon Township Board declares a policy of no net loss of wetlands. Furthermore, Sharon Township Board declares a long term goal of net gain of wetlands to be accomplished through review of degraded or destroyed wetlands in Sharon Township, and through cooperative work with landowners, using incentives and voluntary agreements to restore wetlands.

To achieve these goals, and with authority from 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) (hereinafter the Wetlands Protection Act), Sharon Township Board finds that local regulation of wetlands is necessary in Sharon Township. Pursuant to Article 4, Section 52 of the Constitution of the State of Michigan, the conservation and development of natural resources of the state is a matter of paramount public concern in the interest of the health, safety, and general welfare of the people. Sharon Township Board therefore finds that this Ordinance is essential to the long term health, safety, and general welfare of the people of the Sharon Township, and to the furtherance of the policies set forth in Part 17, Michigan Environmental Protection Act, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended MCL 324.1701 et. seq. (hereinafter the Michigan Environmental Protection Act) and the Wetlands Protection Act.

b. *Purpose*. The purposes of this Ordinance are to provide for:

(1) The protection, preservation, replacement, proper maintenance, restoration, and use in accordance with the character, adaptability, and stability of Sharon Township's wetlands, in order to prevent their pollution or contamination; minimize their disturbance and disturbance to the natural habitat therein; and prevent damage from erosion, siltation, and flooding.

(2) The coordination of and support for the enforcement of applicable federal, state, and county statutes, ordinances and regulations including but not limited to the Wetlands Protection Act, enforced by the Michigan Department of Environmental Quality which is hereinafter referred to as the MDEQ.

(3) Compliance with the Michigan Environmental Protection Act 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.

(4) The establishment of standards and procedures for the review and regulation of the use of wetlands.

(5) A procedure for appealing decisions.

(6) The establishment of enforcement procedures and penalties for the violation of this Ordinance.

(7) Creation of a board to assist in the protection of wetlands and to build public support for the values of wetlands.

c. *Construction and Application*. The following rules of construction apply in the interpretation and application of this Section:

(1) 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.

(2) Particulars provided by way of illustration or enumeration shall not control general language.

(3) It is the intent of this ordinance to allow reasonable use of private property.

(4) Any ambiguities perceived in this ordinance are to be resolved by the entity administering the ordinance, in accordance with Section 7.

d. *Applicability to Private and Public Agency Activities and Operations.* The provisions of this Ordinance, including wetlands use permit requirements and criteria for wetlands use permit approval, shall apply to activities and operations proposed by federal, state, local and other public agencies as well as private and public organizations and individuals except as may be exempt by law.

Section 5.2 Definitions

a. *Definition of Terms*. Terms not specifically defined shall have the meaning customarily assigned to them:

(1) CONTIGUOUS means any of the following:

(a) A permanent surface water connection or any other direct physical contact with an inland lake or pond, a river or stream, one of the Great Lakes, or Lakes St. Clair.

(b) A seasonal or intermittent direct surface water connection to an inland lake or pond, a river or stream, one of the Great Lakes, or Lakes St. Clair.

(c) A wetland is partially or entirely located within five hundred (500') feet of the ordinary high water mark of an inland lake or pond or a river or stream or is within 1,000 feet of the ordinary high watermark of one of the Great Lakes or Lake St. Clair, unless it is determined by the MDEQ, pursuant to R. 281.924 of the administrative rules promulgated under the Wetlands Protection Act (hereinafter Wetlands Administrative Rules), that there is no surface water or groundwater connection to these waters.

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

(2) ELECTRIC DISTRIBUTION LINE means underground lines below 30 kilovolts and lines supported by wood poles.

(3) ELECTRIC TRANSMISSION LINE means those conductors and their necessary supporting or containing structures located outside of buildings that are used for transmitting a supply of electric energy, except those lines defined as a electric distribution line.

(4) FILL MATERIAL means soil, rocks, sand, waste of any kind, or any other material

that displaces soil or water or reduces water retention potential.

(5) LOT: means a designated parcel, tract, building site or other interest in land established by plat, subdivision, conveyance, condominium master deed, or as otherwise permitted by law, to be used, developed or built upon as a unit.

(6) MINOR DRAINAGE includes ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering.

(7) MITIGATION shall mean:

(a) methods for eliminating or reducing potential impact to regulated wetlands; or

(b) creation of new wetlands to offset unavoidable and permitted loss of existing wetlands.

(8) PERSON means an individual, sole proprietorship, partnership, corporation, association, municipality, this state, and instrumentality or agency of this state, the federal government, or an instrumentality or agency of the federal government, or other legal entity.

(9) PIPELINES HAVING A DIAMETER OF 6 INCHES OR LESS means a pipe which is equal to or less than what is commonly referred to as a 6-inch pipe and which has an actual measured outside diameter of less than 6.75 inches.

(10) SHARON TOWNSHIP BOARD shall mean the legislative body of Sharon Township.

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

(a) All wetlands subject to regulation by the MDEQ including wetlands:

(i) Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or a stream.

(ii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and more than 5 acres in size; except this subparagraph shall not be of effect, except for the purpose of inventorying, in counties of less than 100,000 population until the MDEQ certifies to the commission it has substantially completed its inventory of wetlands in that county.

(iii) Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream; and 5 acres or less in size if the MDEQ determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner; except this subparagraph may be utilized regardless of wetland size in a county in which subparagraph (ii) is of no effect; except for the purpose of inventorying, at the time.

(b) Other wetlands subject to regulation by Sharon Township including:

(i) Wetlands two (2)acres or greater in size, whether partially or

entirely contained within the project site, which are not contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or a stream.

(ii) Wetlands smaller than two (2) acres in size which are not contiguous to the Great Lakes or Lake St. Clair, an lake or pond, or a river or a stream, and are determined to be essential to the preservation of the natural resources of the Sharon Township as provided for in Section 7.6 of this Ordinance.

(12) WETLAND CONSULTANT shall mean a person or persons knowledgeable in wetland protection and delineation who is identified by Sharon Township to make wetlands determinations, to delineate wetlands, and to advise Sharon Township on wetland resource policy, education, and restoration. Any firm or individual appointed on a contractual basis.

(13) WETLAND VEGETATION means plants that exhibit adaptations to allow, under normal conditions, germination or propagation and to allow growth with at least their root systems in water or saturated soil.

(14) WETLANDS ADMINISTRATOR shall mean a person(s) knowledgeable in wetlands protection, appointed by Sharon Township legislative body to administer this Ordinance and to carry out certain duties hereunder. Any firm or individual appointed on a contract basis.

(15) WETLANDS BOARD shall mean the body of Sharon Township which makes decisions on wetlands use permit appeals and advises Sharon Township on wetlands resource policy, education and restoration.

(16) WETLANDS MAP refers to Sharon Township wetlands inventory map, based on the National Wetlands Inventory Map of the U.S. Fish and Wildlife Service; the Michigan Resource Information System Mapping (MIRIS) of the State of Michigan ; the soils maps of the Soil Conservation Service, aerial photography, and onsite inspections.*[community would explain here the sources of its map.]*

(17) WETLANDS USE PERMIT shall mean Sharon Township approval required for activities in wetlands described in Section 7 of this Ordinance.

Section 5.3 Relationship to State and Federal Permit Requirements. Whenever persons requesting a wetlands use permit are also subject to state and/or federal permit requirements, the following shall apply:

a. Sharon Township shall have jurisdiction for the regulation of wetlands under this Ordinance concurrent with the jurisdiction of the Michigan Department of Environmental Quality.

b. Approvals under this Ordinance shall not relieve a person of the need to obtain a permit from the MDEQ and/or the U.S. Army Corps of Engineers, if required.

c. Issuance of a permit by the MDEQ and/or the U.S. Army Corps of Engineers shall not relieve a person of the need to obtain approval under this Ordinance, if applicable.

Section 5.4 Administration

a. *Sharon Township Wetlands Map*. Sharon Township Wetlands Map is a guide to the location of wetlands in Sharon Township. The Wetlands Map shall be used in the administration of this Ordinance.

The Wetlands Map, together with all explanatory matter thereon and attached thereto, as may be amended through the Wetlands Verification and Delineation process, is hereby

adopted by reference and declared to be a part of this Ordinance. The Wetlands Map shall be on file in the office of Sharon Township Clerk.

The Wetlands Map shall serve as a general guide for the location of wetlands. The Wetlands Map does not create any legally enforceable presumptions regarding whether property that is or is not included on the Wetlands Map is or is not a wetland.

The Wetlands Verification Process, as set forth herein, shall be used to verify wetlands on properties where wetlands are shown on the Wetlands Map or on properties where wetlands exist as defined in Section 1.2 herein. The Wetlands Delineation Process, as set forth herein, shall be used to establish the actual boundaries of wetlands in Sharon Township. The identification of the precise boundaries of wetlands on a project site shall be the responsibility of the applicant subject to review and approval by Sharon Township Wetland Consultant. Verification and delineation under this ordinance does not constitute a federal or state wetland jurisdiction or boundary decision.

(1) *Wetlands Verification Process*.

(a) Sharon Township or property owners of wetlands may initiate a verification of the areas shown on the Wetlands Map as wetlands or on properties where wetlands exist as defined in Section 2.1 herein. The verification shall be limited to a finding of wetlands or no wetlands by the Wetlands Administrator. The finding shall be based on, but not limited to, aerial photography, topographical maps, site plans, and field verification.

(b) In the event that there is a finding of no wetlands on the property, then no further determination would be required

(c) The applicant shall pay fees for the Wetlands Verification Process as established in Section 9.1

(2) *Wetlands Delineation Process.* Prior to the issuance of any permit or land development approval for a property which is shown to include wetlands on the Wetlands Map, the applicant may be required to provide a wetlands delineation to Sharon Township. The Wetlands Administrator, in consultation with the Wetland Consultant, shall determine whether a delineation is required, based on the proximity and relationship of the project to the wetlands. A delineation shall be required when a wetlands use permit is requested.

(a) To establish actual wetlands boundaries on a property, the applicant shall provide a survey or dimensional site plan, drawn at the scale required by Sharon Township's site plan review requirements, showing property lines, buildings and any points of reference along with the wetlands boundaries, according to one of the following:

(i) Wetlands delineation by the Michigan Department of Environmental Quality (MDEQ).

(ii) Wetlands delineation by the applicant's wetlands consultant subject to review and approval by the Wetland Consultant.

(b) Where a wetlands delineation is required by this Section, the Wetland Consultant shall establish wetlands boundaries following receipt of the above required information and after conducting a field investigation.

(c) The applicant shall pay fees for the Wetlands Delineation Process as established in Section 9.1.

(3) *Map Amendment.*

(a) The Planning Commission shall make recommendations to Sharon Township Board for revisions to the Wetlands Map whenever new and substantial data for wetlands become available.

(b) Sharon Township shall insure that each record owner of property on the property tax roll shall be notified of any amendment to the Wetlands Map. The notice shall include the following information:

(i) Sharon Township Wetlands Map has been amended;

(ii) the location to review the map;

(iii) the owner's property may be designated as wetlands on the map;

(iv) Sharon Township has an Ordinance regulating wetlands;

(v) the map does not necessarily include all of the wetlands within Sharon Township that may be subject to the Wetlands Ordinance.

b. *Wetlands Board*. There is hereby created a Wetlands Board:

(1) The Wetlands Board shall consist of five (5) residents of Sharon Township appointed by Sharon Township Board upon recommendation of the Planning Commission; four of whom shall have knowledge and experience in the areas of botany, soils, geology, hydrology, or natural resources. One member of the Wetlands Board shall be a member of Sharon Township Board. The initial terms of appointment shall be as follows: 2 individuals for 3 years, 2 individuals for 2 years, and 1 individual for 1 year. Thereafter, appointments shall be for a term of three years. The term of Sharon Township Board representative to the Wetlands Board shall be concurrent with the term of office.

(2) The Wetlands Board shall establish rules of procedure.

(3) The Wetlands Board is authorized to undertake activities to protect wetlands including the following:

(a) Conduct public hearings and review appeals of wetlands use permit, mitigation, and/or restoration decisions made by the Wetlands Administrator, the Planning Commission or Sharon Township Board.

(b) Serve in an advisory role in setting policy guidelines on wetlands issues in the Sharon Township.

(c) Identify conflicts between wetlands protection and present Sharon Township ordinances, Sharon Township operating procedures, and Sharon Township activities.

(d) Provide recommendations and assist in map administration.

(e) Coordinate with the Michigan Department of Environmental Quality in keeping upto-date on issues affecting wetlands protection.

(f) Recommend a program to protect and acquire important wetlands through tax incentives, donation, development rights, easements, land exchange, purchase, and other means.

(g) Develop education programs for the public and for Sharon Township schools. The program should promote the values of wetlands and awareness of the hazards and threats to wetlands. The program should be

particularly targeted to landowners with wetlands and emphasize how best to protect wetlands values on their property.

(h) Develop an adopt-a-wetlands program for interested citizens to participate more directly in preservation of specific wetlands.

(i) Review degraded or destroyed wetlands in Sharon Township for possibility of rehabilitation or restoration.

(4) Members of the Wetlands Board shall receive a stipend as determined from time to time by resolution of Sharon Township Board.

(5) Sharon Township Board has sole and exclusive discretion for removal of members of the Wetlands Board with or without a hearing.

Section 5.5 Activities in Wetland.

a. *Activities Prohibited Without First Obtaining A Wetlands Use Permit*. Except as otherwise provided by Section 5.2, it shall be unlawful for any person to do any of the following in a wetland unless and until a wetlands use permit is obtained from Sharon Township pursuant to this Ordinance.

(1) Deposit or permit the placing of fill material in a wetland.

(2) Dredge, remove or permit the removal of soil or minerals from a wetland.

(3) Construct, operate or maintain any use or development in a wetland.

(4) Drain surface water from a wetland.

b. *Activities Not Requiring A Permit*. Notwithstanding the prohibitions of Section 5.1, the following uses are allowed in a wetland without a wetlands use permit, unless otherwise prohibited by statute, ordinance or regulation:

(1) Fishing, trapping, or hunting.

(2) Swimming or boating.

(3) Hiking.

(4) Grazing of animals.

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

(6) Maintenance or operation of serviceable structures in existence on October 1, 1980 or constructed pursuant to the Wetlands Protection Act or former Act No. 203 of the Public Acts of 1979.

(7) Construction or maintenance of farm or stock ponds.

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

(a) An existing private agricultural drain.

(b) That portion of a drain legally established pursuant to the drain code of 1956, Act No. 40 of the Public Acts of 1956, being sections 280.1 to 280.630 of the Michigan Compiled Laws, which has been constructed or improved for drainage purposes.

(c) A drain constructed pursuant to other provisions of the Wetlands Protection Act or former Act No. 203 of the Public Acts of 1979.

(9) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to assure that any adverse effect on the wetland will be otherwise minimized.

(10) Drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in the Wetlands Protection Act, wetland improved under this subdivision after October 1, 1980 shall not be used for nonfarming purposes without a permit from Sharon Township. This subdivision shall not apply to a wetland which is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a wetland that the MDEQ has determined by clear and convincing evidence to be a wetland that is necessary to be preserved for the public interest, in which case a permit is required.

(11) Maintenance or improvement of public streets, highways, or roads, within the right-ofway and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road.

(12) Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of 6 inches or less, if the pipelines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.

(13) Maintenance, repair, or operation of electric transmission and distribution power lines and construction of distribution power lines, if the distribution power lines are constructed, maintained, or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.

(14) Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on October 1, 1980 or constructed pursuant to the Wetlands Protection Actor former Act No. 203 of the Public Acts of 1979.

(15) Construction of iron and copper mining tailings basins and water storage areas.

(16) An activity in a wetland that was effectively drained for farming before October 1, 1980 and that on and after October 1, 1980 has continued to be effectively drained as part of an ongoing farming operation is not subject to regulation under this ordinance.

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

(a) Excavation for mineral or sand mining, if the area was not a wetland before excavation. This exemption does not include a wetland on or adjacent to a

water body of 1 acre or more in size.

(b) Construction and operation of a water treatment pond or lagoon in compliance with the requirements of state or federal water pollution control regulations.

(c) 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.

Section 5.6 Application. Application for approval, appeal, and issuance of wetlands use permits shall be concurrent with the application for approval, appeal, and issuance of other necessary Sharon Township approvals. The applicant for a wetlands use permit shall submit four copies of the following to the Sharon Township:

a. An application completed in full, on a form supplied by the Michigan Department of Environmental Quality, together with any supplemental information necessary relative to isolated wetlands under 2 acres.

b. A wetlands delineation including, but not limited to the following information: dominant tree, sapling, shrub and herb vegetation; presence or lack of accepted wetland hydrology indicators; analysis of soil including a description of the soil profile to at least 20 inches and comparison to [county] County Soil Survey, and plan views of the wetland(s) delineated. Plan views shall be represented in a manner that allows comparison to the Wetlands Map.

c. Soil drainage and stormwater management plans.

d. A mitigation plan, if the proposed activity will result in the loss of wetland resources. In order to adequately review a proposed mitigation plan, the following information shall be provided to Sharon Township:

(1) A brief overview of the plan including the short-range and long-range objectives for vegetation, hydrology, grading, and monitoring.

(2) A schedule of all mitigation activities, including coordination with other local and state agencies, if applicable.

(3) A planting plan and plant list for the area(s) to be established. The use of native plants characteristic of local conditions is encouraged. Species should be selected based on the need for wildlife, restoration, landscaping, and recovery. The Sharon Township Building Department shall, in consultation with knowledgeable persons, maintain and update a list of botanical species that are considered invasive. Mitigation activities shall be performed without the use of invasive species.

(4) A grading and soil erosion control plan including existing and proposed conditions.

(5) A description of all soils and materials to be used including their approximate volumes and origin.

(6) Hydro-geological information sufficient to determine the site's suitability for the mitigation.

(7) Construction detail drawings for planting, soil erosion control, stabilization, water conveyance, and all other items necessary to facilitate the review.

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

(1) Name, address, and phone number of applicant.

(2) Name of project and brief description (one sentence).

(3) Date upon which the activity is proposed to commence.

(4) Explanation of why the project meets the wetlands use permit standards and criteria contained in this Ordinance.

(5) List of all federal, state, county or other local government 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 that have been issued.

(6) Identification of any present litigation involving the property.

(7) Size of total wetland, size of affected wetland and cubic yards of fill.

f. For a wetlands use permit approval required in conjunction with a site plan, plat or other proposed land use, the applicant shall at the time of application elect to have the application processed under either Subsection (1) or (2) below:

(1) The wetlands use permit application shall be reviewed either prior to or concurrent with the review of the site plan, plat or other proposed land use submitted by the applicant. Sharon Township will need to complete the review within the 90-day review period limitation pursuant to the Wetlands Protection Act. However, the land use review may not be completed at the time the decision is rendered on the wetlands use permit application. Therefore, election of this alternative may require a reopening of the wetlands use permit application if the land use approval is inconsistent with the wetlands use permit approval; or,

(2) The wetlands 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 the Wetlands Protection act shall thereby be extended accordingly.

g. Copies of wetland permit applications filed with the MDEQ and forwarded to the Sharon Township in accordance with Section 30307(6) of Wetlands Protection Act shall become part of the application for a Sharon Township wetlands use permit.

h. An Application shall not be considered properly received by Sharon Township, nor shall the 90-day review period limitation specified in the Wetlands Protection Act commence until all information required by this section has been submitted.

Section 5.7 Review.

a. *Method of Review of Wetlands Use Permit Application.*

(1) Whenever a wetlands use permit is required, applicant may request an administrative meeting with the Wetlands Administrator to review the proposed activity in light of the purposes of this Ordinance.

(2) Upon receipt of an application, Sharon Township shall insure that all required information including a wetlands delineation has been submitted. The receipt of the application shall constitute permission from the owner to complete an on-site investigation. Applicant will pay fees as established in Section 9.1.

(3) Sharon Township Clerk shall transmit one copy of the application and supporting materials to Sharon Township Wetland Consultant to confirm the boundaries of the wetland and to review the proposal in light of the purpose and review standards of Section 7 and other applicable sections of this Ordinance.

(4) The Wetland Consultant shall prepare and transmit a report and recommendation to the Wetlands Administrator documenting the review required by Section 7.1 D.

(5) Upon receipt of an application, Sharon Township Clerk shall:

(a) Transmit one copy of the application, along with any state fees received, to the MDEQ.

(b) Cause to be published a notice of the application and the date and time for submission of written public comments in a newspaper of general circulation in the Sharon Township, except for activities proposed on a single family lot.

(c) Advise the applicant of his/her obligation to post the subject property with a sign that shall be no less than ten (10) square feet in size. The sign shall be clearly visible from the abutting street(s) and shall state that an application has been filed for a wetlands use permit on the property.

b. *Wetlands Use Permit Decisions by the Wetlands Administrator.* The following process shall apply to wetlands use permit decision by the Wetlands Administrator:

(1) For wetlands use permit applications submitted in conjunction with activities that do not require approval by the Planning Commission and/or Sharon Township Board, the Wetlands Administrator shall approve, approve with modifications, or deny the application within 90 days after receipt of an application. If the Wetlands Administrator does not make a final determination on the application within ninety (90) days after receipt of a complete application, then the permit application shall be considered approved, except where the 90-day limit has been extended pursuant to Section 6.F.2

(2) Persons wishing to comment on the application must submit their comments in writing to the Wetlands Administrator prior to the date and time set in the notice. Persons wishing to receive notice of the Wetlands Administrator's decision must submit a written request to the Wetlands Administrator.

(3) After completing the review and reviewing the written comments, the Wetlands Administrator shall approve, approve with modifications or conditions, or deny the wetlands use permit application in accordance with the standards of this Ordinance. The denial of a permit shall be accompanied by a written statement of all reasons for the denial. The Wetlands Administrator shall report the decision to the Wetlands Board, Sharon Township Planning Commission and Sharon Township Board, and the MDEQ.

(4) When a wetlands use permit is approved, approved with modifications, or denied, written notice shall be sent to the applicant and to all persons who have requested notice of the Wetlands Administrator's decision.

c. *Wetlands Use Permit Decisions by Planning Commission or Sharon Township Board*. The following process shall apply to wetlands use permit decisions by Sharon Township Planning Commission or by Sharon Township Board:

(1) Wetlands use permit applications submitted in conjunction with a related land development activity shall be decided by the same entity that decides the related land development activity. The Wetlands Administrator shall transmit application materials and the report and recommendation prepared by the Wetland Consultant to the Planning Commission or Sharon Township Board as applicable.

(2) After review and study of the application materials, the Wetland Consultant's report and recommendation, Sharon Township Planning Commission or Sharon Township

Board as applicable may hold one public hearing after publication in a newspaper of general circulation in Sharon Township not less than ten (10) days nor more than sixty (60) days prior to the date of the hearing. Such notice shall indicate the place, time and subject of the hearing and the place and time the proposed wetlands use permit may be examined. The wetlands use permit hearing may be held in conjunction with a review of the related land use requests.

(3) In the event of a public hearing, notice shall be sent by mail or personal delivery to the owners of property for which approval is being considered, and to all owners of property, as listed on the most recent tax roll, within 600 feet of the boundary of the property in question. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different persons, one (1) occupant of each unit shall receive notice. In the case of a single structure containing more than four (4) dwelling units, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure. A notice containing the time, date, place and purpose of the hearing shall be posted on the subject property at least eight (8) days prior to the hearing. The posting sign shall be no less than ten (10) square feet in size, shall be clearly visible from the abutting street(s), and shall state that an application has been filed for a wetlands use permit.

(4) After completing the review, the Planning Commission or Sharon Township Board, as applicable, shall approve, approve with modifications, or deny the application within ninety (90) days after receipt of a complete application, in accordance with this Ordinance. If Sharon Township Planning Commission or Sharon Township Board, as applicable, does not make a final determination on the application within ninety (90) days after receipt of a complete application, then the permit application shall be considered approved, except where the 90-day limit has been extended pursuant to Section 6.F.2.

(5) Written notice shall be sent to the applicant and the MDEQ upon approval, approval with modifications, or denial of a wetlands use permit by Sharon Township. The denial of a permit shall be accompanied by a written statement of all reason for denial.

d. *Appeals Of Decisions Of The Wetlands Administrator, Planning Commission, or Board*. The following process shall apply to appeals of decisions made by the Wetlands Administrator, the Planning Commission, or Sharon Township Board as applicable:

(1) Any person who is aggrieved by the approval, approval with modifications, or denial of a wetlands use permit by the Wetlands Administrator, the Planning Commission, or by the Sharon Township Board, may appeal the decision to the Wetlands Board. A written letter containing the specific reasons for appeal shall be filed with Sharon Township Clerk within ten (10) calendar days after the date of the decision to be appealed. Timely filing of an appeal shall have the effect of suspending the effect of the permit pending the outcome of the appeal. In the event that the person(s) filing the appeal do not own property within 600 feet of the wetland affected, the Planning Commission shall determine whether the person(s) are aggrieved.

(2) Standard of Review. Based upon the record, in considering the appeal, the Wetlands Board shall affirm the original decision unless it finds an abuse of discretion by the entity deciding the wetlands use permit.

(3) After a hearing, the Wetlands Board shall determine that the decision of the Wetlands Administrator, Planning Commission, or Sharon Township Board be affirmed, affirmed with modification, or reversed. The Wetlands Board's decision shall be based on written findings.

e. *Wetlands Use Permit Conditions*.

(1) The Wetlands Administrator, the Planning Commission, or Sharon Township Board, as applicable, shall attach any reasonable conditions considered necessary to ensure that the intent of this Section will be fulfilled, to minimize or mitigate damage or impairment to, encroachment in or interference with nature resources and processes within the wetlands, or to otherwise improve or maintain the water quality. Any conditions related to wetland mitigation shall follow the provisions of Section 8 of this Ordinance.

(2) The Wetlands Administrator, the Planning Commission, or Sharon Township Board, as applicable, shall fix a reasonable time to complete the proposed activities.

(3) If the Wetlands Administrator, the Planning Commission, or Sharon Township Board, as applicable determines that there is a potential for adverse impacts to wetlands not authorized by the wetlands use permit or off-site property, they will require the applicant to file with Sharon Township a cash bond or irrevocable bank letter of credit in an amount, estimated by the Wetland Consultant to be required to address those impacts.

(4) A wetlands use permit shall be conditioned upon compliance with all other requirements of ordinance and law, including site plan, plat or land use approval as applicable, and issuance of a permit by the MDEQ, if required under the Wetlands Protection Act. In cases where a MDEQ permit allows activities not permitted by the wetlands use permit approval granted under this Section, the restrictions of the approval granted under this Section shall govern.

(5) Wetlands use permits for seasonal operations need not be renewed annually unless otherwise stated in the permit.

(6) Any change that materially increases the size or scope of the operation and that affects the criteria considered in approving the permit as determined by the Wetlands Administrator, the Planning Commission, or Sharon Township Board, as applicable, shall require the filing of a new wetlands use permit application.

(7) Any temporary, seasonal, or permanent operation that is discontinued for two (2) years or two (2) seasons shall be presumed to have been abandoned and the wetlands use permit automatically voided.

(8) Any permit granted under this Ordinance may be revoked or suspended by the Planning Commission or Sharon Township Board ,as applicable, after notice and an opportunity for a hearing, for any of the following causes:

(a) A violation of a condition of the permit.

(b) Misrepresentation or failure to fully disclose relevant facts in the application.

(c) A change in a condition that requires a temporary or permanent change in the activity.

(9) An applicant who has received a wetlands use permit under this Ordinance shall comply with the following in connection with any construction or other activity on the property for which the wetlands use permit has been issued:

(a) Maintain soil erosion control structures and measures, including but not limited to, silt fences, straw bale berms, and sediment traps. The permittee shall provide for periodic inspections throughout the duration of the project.

(b) Maintain clear delineation of the wetlands (so marked by the Wetlands

Administrator or Wetland Consultant during the on-site inspection) so that such locations are visible to all construction workers.

(c) Post on the site, prior to commencement of work on the site and continuing throughout the duration of the project, a copy of the approved wetlands use permit containing the conditions of issuance, in a conspicuous manner such that the wording of said permit is available for public inspection.

(10) The wetlands use permit shall remain effective for a time period coincidental with any other land use permit reviewed and approved concurrent with the wetlands use permit. If applied for prior to the expiration date and concurrent with the expiring land use permit, the applicant may be granted an extension that corresponds to additional time granted for the underlying land use permit. Extensions shall be approved by the same person or body that made the original decision. The maximum number of extensions shall coincide with the maximum number allowed for the underlying land use permit.

(11) When there is no other activity or permit involved, the wetlands use permit shall remain effective for one (1) year. A maximum of a one (1) year extension may be approved.

f. *Regulation Criteria For Non-Contiguous Wetlands Less Than (2) Two Acres In Area*.

(1) A wetlands use permit shall be approved with respect to a non-contiguous wetland less than two (2) acres in area unless the Planning Commission or Sharon Township Board determines that the wetland is essential to the preservation of the natural resources of the Sharon Township. It shall not be the burden of the property owner to prove that the wetland is not essential to the preservation of the natural resources of the community.

(2) All non-contiguous wetland areas of less than two (2) acres which appear on the Wetlands Map, or which are otherwise identified during a field inspection by the Sharon Township, shall be analyzed for the purpose of determining whether such areas are essential to the preservation of the natural resources of Sharon Township. If there is to be a denial of a wetlands use permit in a non-contiguous wetland area of less than two (2) acres, then, on the basis of data gathered by or on behalf of Sharon Township, 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 Sharon Township. In order to make such a determination, there shall be a finding that one (1) or more of the following exist within such wetland:

(a) The site supports state or federal endangered or threatened plants, fish, or wildlife appearing on a list specified in Section 36505 of Part 365, Endangered Species Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

(b) The site represents what is identified as a locally rare or unique ecosystem.

(c) The site supports plants or animals of an identified local importance.

(d) The site provides groundwater recharge documented by a public agency.

(e) The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.

(f) The site provides wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.

(g) The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.

(h) The site provides pollution treatment by serving as a biological and chemical oxidation basin.

(i) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.

(j) The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

(3) In connection with the determination whether the wetland is essential to the preservation of the natural resources of Sharon Township, the property owner shall make an election and response under Subsection 1 or 2 below, relative to each non-contiguous wetland area less than two (2) acres.

(a) In lieu of having Sharon Township or its Wetland Consultant proceed with the analysis and determination, the property owner may acknowledge that one (1) or more of the criteria in Subsections (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

(b) An election to have Sharon Township or its Wetland Consultant proceed with the analysis of whether each of the criterion in Subsections (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

(4) If Sharon Township determines that the wetland is not essential to the preservation of the natural resources of Sharon Township, Sharon Township'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.

(5) If Sharon Township determines that the wetland is essential to the preservation of the natural resources of Sharon Township, and Sharon Township has found that one or more of the criteria set forth exist at the site, Sharon Township 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 Sharon Township, the wetland use permit application shall be reviewed according to the standards in Section 7.7.

g. *Review Standards for Wetlands Use Permits*. The criteria to evaluate wetlands use permits under this Ordinance and to determine whether a permit is granted are as follows:

(1) A permit for any activity listed in Section 5.1 shall not be approved unless the Sharon Township determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

In determining whether the activity is in the public interest, the benefit that reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national, state, and local concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:

(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.

(c) The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetlands provide.

(d) The probable impact of each 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 of the wetland being considered.

(g) The amount of remaining wetland in the general area.

(h) Proximity to any waterway.

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

(j) Findings of necessity for the proposed project that have been made by federal or state agencies.

(2) A wetlands use permit shall not be issued 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 and Subsection A of this section shall be considered. A permit shall not be issued unless the applicant also shows either of the following:

(a) The proposed activity is primarily dependent upon being located in the wetland.

(b) A feasible and prudent alternative does not exist.

Section 5.8 Wetland Mitigation

(1) *Findings That Wetland Loss Is Unavoidable*. Mitigation shall not be considered a substitute for making all prudent attempts to avoid wetland impacts.

(2) Prior to considering a proposal for wetland mitigation, the Wetlands Administrator, the Planning Commission or Sharon Township Board, as applicable shall make all of the following findings:

(a) That all feasible and prudent efforts have been made to avoid the loss of wetland.

(b) That all practical means have been considered to minimize wetland impacts.

(c) That it is practical to replace the wetland which will be unavoidably eliminated.

(d) That all alternatives for preserving wetlands have been evaluated and found to be impractical, inappropriate, or ineffective.

(3) To ensure no net loss of wetlands in Sharon Township, mitigation shall be required

in instances where there are losses of wetland resources and where the Wetlands Administrator, the Planning Commission or Sharon Township Board, as applicable have made the findings required in Section 8.1.A.

b. *Criteria For Approving Proposals For Wetland Mitigation*. If the Wetlands Administrator, Planning Commission or Sharon Township Board, as applicable, determines that it is practical to replace the wetlands that will be impacted, mitigation plans shall be approved only if all of the following criteria are met:

(1) That the mitigation plan provides for the substantial replacement of the predominant functional values of the wetland to be lost. Mitigated wetlands shall be replaced at a minimum of 1.5 new acres of wetland to 1 lost acre. A larger replacement ratio may be required if the lost wetlands are deemed to have exceptional value.

(2) That the mitigation plan provides for no net loss of wetland resources unless the Wetlands Administrator, the Planning Commission or Sharon Township Board, as applicable determines that the net loss will result in a minimum negative impact upon wetlands, and attendant natural resources under all of the circumstances.

(3) Mitigation shall be provided on-site where practical and beneficial to the wetland resources. If mitigation on-site is not practical and beneficial, then mitigation in the immediate vicinity, within the same watershed, of the permitted activity may be considered. Only if all of these options are impractical shall mitigation be considered elsewhere.

(4) The mitigation plan will comply with all applicable federal, state, and local laws.

(5) A plan to monitor preserved and replacement wetlands over a minimum of five years has been specified. The plan shall include the following information:

(a) 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 years. A report and recommendation on the hydrologic conditions of the site should be submitted to Sharon Township annually.

(b) 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 years. A report and recommendation on the plant establishment of the site should be submitted to Sharon Township annually.

(c) 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-year period.

c. *Other Mitigation Requirements*.

(1) Wetland mitigation and monitoring plans shall become conditions to the wetlands use permit and shall be the responsibility of the applicant.

(2) Financial assurances that mitigation is accomplished as specified by the permit condition may be required by Wetlands Administrator, Planning Commission or Sharon Township Board, as applicable.

(3) Any mitigation activity shall be completed before initiation of other permitted activities, unless a phased concurrent schedule can be agreed upon between the Wetlands Administrator, Planning Commission or Sharon Township Board, as applicable, and the applicant.

(4) Wetland mitigation plans that create less than two (2) acre wetlands shall be designed and constructed to meet one of the conditions listed in Section 7.6 B.1-10.

Section 5.9 Fees, Penalties and Enforcement.

a. *Fees.* Applications for a wetlands use permit under this Section shall be accompanied by a nonrefundable administrative application fee in an amount specified from time to time by resolution of Sharon Township. In addition an applicant shall pay an escrow fee in an amount determined from time to time by resolution of Sharon Township Board for the estimated cost of outside consultant(s) who may be retained by Sharon Township 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 provide to the Sharon Township and additional escrow amount equivalent to no less than one-half (1/2) the original escrow amount. All review of the wetlands use permit application shall cease until such additional escrow amount is deposited with Sharon Township, and the number of days during which all review of the wetlands use permit application is ceased shall be deducted from the time limits within which Sharon Township would otherwise act upon the application. In the event the cost of the services of the consultant(s) is less than the subsequent escrow fee(s), the applicant shall be refunded the balance. A denial of an application for a wetlands use permit shall not affect the applicant's obligation to pay the fees provided for in this Section.

b. *Penalties And Enforcement.*

(1) *Penalties.*

(a) If, on the basis of information available to Sharon Township, Sharon Township finds that a person is in violation of this Ordinance or of a condition set forth in a permit, Sharon Township shall issue an order requiring the person to comply with the prohibitions or conditions, or Sharon Township shall take such enforcement action as it deems appropriate.

(i) If a person acts in violation of this ordinance Sharon Township may issue a stop work order on construction or shall refuse a certificate of occupancy or other construction permits related to the project whenever there is a failure to comply with the provisions of this Ordinance.

(ii) An order issued under subsection (1) shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which Sharon Township determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with acceptable requirements.

(b) A person who violates any provision of this Ordinance shall be responsible for a civil infraction for which the court may impose a civil fine of not less than $100.00 nor no more than $10,000 per day of violation plus all costs, direct or indirect, which Sharon Township has incurred in connection with the violation.

(c) In addition to the penalties provided in subsection (3), the court may order a person who violates this Ordinance to restore as nearly as possible the wetland affected by the violation to its original condition immediately before the violation, and may issue any other orders permitted by law. The restoration may include the removal of fill material deposited in a wetland or the replacement of soil, sand, minerals, or plants.

(2) *Injunction*. Any activity conducted in violation of this section is declared to be a nuisance *per se*, and Sharon Township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation, and/or requiring restoration of the wetland as nearly as possible to its condition before the violation.

c. *Reporting and Record Keeping*.

(1) Any citizen observing what he or she believes or suspects may be an instance of noncompliance with the provisions of this Ordinance may report the observation to any official or employee of Sharon Township.

(2) Any report received pursuant to Subsection A of this Section shall be forwarded immediately to Sharon Township Ordinance Officer and Sharon Township Clerk.

(3) Sharon Township Ordinance Officer Duties

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

(b) Sharon Township Ordinance Officer shall complete an entry for the report into the Compliance Docket.

(c) Sharon Township Ordinance Officer may enlist the expertise of the Wetlands Administrator if necessary to determine whether a violation of this Ordinance has occurred.

(d) Sharon Township Ordinance Officer shall take any actions within his or her authority necessary to ensure this Ordinance is enforced.

(4) *Compliance Docket*. Sharon Township Ordinance Officer shall maintain a Compliance Docket at the Township Office. The Docket shall be used to identify all properties or uses of properties which have been evaluated for compliance with this Ordinance. The Docket shall be available to the public upon demand during normal business hours. The Docket shall contain the following information:

(a) Date: the date the Docket entry was initiated.

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

(c) Permit or Docket Number: If it has been determined that the use being made of the property does not require a wetlands use permit from Sharon Township, a Docket number shall be assigned. Otherwise, the Permit number shall be maintained.

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

(5) Sidwell property number.

(6) *Violation Docket*. Sharon Township Ordinance Officer shall maintain a Violation Docket at the Sharon Township Office. The Docket shall be used to track the status of violations of this Ordinance. The Violation Docket shall contain the following information, as it becomes available:

(a) Date: the date the Docket entry was initiated

(b) The permit or Docket number: This number shall be the same number as is used to identify the property in the Compliance Docket.

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

(d) Nature of violation.

(e) Date violation confirmed.

(f) Name of person confirming the violation.

(g) Enforcement action taken.

(h) Date of enforcement action taken.

(i) Outcome of enforcement action: If outcomes are appealed by the property owner or any other party, each appeal shall be noted, and its outcome shall also be noted under this heading.

Section 5.10 State Notification. Sharon Township shall notify the MDEQ of the adoption of this Ordinance. Sharon Township shall cooperate with the MDEQ in the enforcement of the Wetlands Protection Act as to wetlands under the MDEQ's jurisdiction as defined under this Ordinance.

Section 5.11 Ordinance Conflict. Nothing in this Ordinance shall be interpreted to conflict with present or future state statutes in the same subject matter; conflicting provisions of this Ordinance shall be abrogated to, but only to, the extent of the conflict. Moreover, the provisions of this Ordinance shall be construed, if possible, to be consistent with and in addition to relevant state regulations and statutes. If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such finding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force. Rights and duties that have matured, penalties which have been incurred, proceedings which have begun and prosecutions for violations of law occurring before the effective date of this Ordinance are not affected or abated by this Ordinance.

Section 5.12 Property Tax Assessment. If a wetlands use permit is denied by Sharon Township, 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.

Section 5.13 Effective Date. This Ordinance shall take full force and effect upon June 7, 2007, following final publication of said Ordinance.