

Charter Township of Orion

Ordinance No. 107

Wetlands Protection

Adopted May 16, 1994

AN ORDINANCE ENACTED TO PROTECT THE WETLANDS OF ORION TOWNSHIP, OAKLAND COUNTY, MICHIGAN; TO PROVIDE FOR THE PRESERVATION, MANAGEMENT, PROTECTION AND USE OF WETLANDS; TO PROTECT PROPERTY, AESTHETIC, RECREATIONAL AND OTHER NATURAL RESOURCE VALUES ASSOCIATED WITH THE WETLANDS OF ORION TOWNSHIP; TO PROVIDE PROCEDURES FOR REVIEWING THE USE OF THESE RESOURCE AREAS; TO REQUIRE PERMITS TO ALTER CERTAIN WETLANDS; AND TO PROVIDE PENALTIES FOR VIOLATION OF THIS ORDINANCE.

PREAMBLE

An Ordinance enacted to protect the wetlands of Orion Township, Oakland County, Michigan; to provide for the preservation, management, protection, and use of wetlands; to protect property, aesthetic, recreational, and other natural resource values associated with the wetlands of Orion Township; to provide procedures for reviewing the use of these resource areas; to require permits to alter certain wetlands; and to provide penalties for violation of this Ordinance.

This Ordinance is adopted to secure the public health, safety, and general welfare under the combined authority of Act 246 of the Public Acts of 1945 (Township Regulatory Ordinances), as amended, and Act 203 of the Public Acts of 1979 (Goemaere-Anderson Wetland Protection Act), as amended.

ARTICLE I - SHORT TITLE

Section 1.00

This Ordinance shall be known and may be cited as the Orion Township Wetlands Protection Ordinance and is referred to as Ordinance No. 107.

ARTICLE II - PURPOSE

Section 2.00

The purpose of this Ordinance shall be:

- A. To provide for the protection, preservation, proper maintenance, and use of Township wetlands in order to minimize disturbances to them and to prevent damage from erosion, turbidity or siltation; loss of fish or other beneficial aquatic organisms; loss of wildlife and vegetation; and to minimize destruction of the natural habitat thereof.
- B. To provide for the protection of the Township's potable fresh water supplies from the dangers of drought, overdraft, pollution or mismanagement which would negatively affect human, animal, or plant life.
- C. To provide for the issuance of permits and approval of activities and uses.
- D. To establish standards and procedures for the review of proposed activities and uses in wetland areas.
- E. To establish penalties for the violation of this Ordinance.

ARTICLE III - DEFINITIONS

Section 3.00

The following terms, phrases, words and derivatives shall have the meaning given herein, unless the context otherwise requires.

Aquatic Life - The plants and plant life forms which naturally occur in, at, near, or predominantly near water.

Commission - The Planning Commission of the Charter Township of Orion, organized under Act 168 of the Public Acts of 1959 (Township Planning Act).

Deposit - To fill, place, or dump.

Locate - To construct, place, insert, or excavate.

Material - Soil, sand, gravel, clay, peat moss, and other organic material.

Natural Obstruction - Any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within a wetland by a non-human cause.

Operation - The removal of materials, the depositing of materials, or any construction use or activity, or a combination thereof, which in any way modifies the conditions of wetlands subject to this Ordinance.

Owner - Any person who has dominion over, control of, or title to an obstruction or to wetland properties.

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

Remove - To dig, dredge, suck, pump, bulldoze, dragline, or blast.

Structure - Any assembly of materials above or below the surface of the land or water including, but not limited to, houses, buildings, plants, bulkheads, piers, docks, landing dams, and waterway obstructions.

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

- A. Contiguous to an inland lake or pond, or a river or stream.
- B. Not contiguous to an inland lake or pond, or river or stream; and more than two (2) acres in size.
- C. Not contiguous to an inland lake or pond, or a river or stream; and five (5) acres or less in size, if the Department of Natural Resources 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.
- D. Two (2) acres or less in size if the Township determines that the protection of the area is essential to the preservation of the natural resources of the Township from pollution, impairment, or destruction, and provided that the Township has made a determination that the wetland meets at least one of the criteria set forth in Section 5.00 (B) (1-10).

ARTICLE IV - GENERAL PROVISIONS

Section 4.00 - Construction of Language

The following rules of construction shall apply to the text in this Ordinance:

- A. The word "**shall**" is always mandatory and not discretionary. The word "**may**" is permissive.
- B. Particulars provided by way of illustration or enumeration shall not control general language.
- C. Ambiguities, if any, shall be construed liberally, in favor of protecting the resources indicated in Article II.
- D. Words used in the present tense shall include the future and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
- E. Terms not specifically defined in this Ordinance shall have the meaning customarily assigned to them.
- F. In case of conflict between the Wetland Inventory Map and the definitions in this Ordinance, the definition shall control.

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

Section 4.01 - Abrogation and Conflict of Authority

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, 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.

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State statutes.

Section 4.02 - Compliance

Full compliance with the terms of this Ordinance and other applicable regulations, which apply to uses within the jurisdiction of this Ordinance, shall be met by all persons.

ARTICLE V - LANDS TO WHICH ORDINANCE APPLIES

Section 5.00

Those wetlands subject to the regulatory terms of this article include the following:

- A. Any wetland as defined in Article III (A-C).
- B. A wetland that is two (2) acres or less in size, if the Township determines that protection of the area is essential to the preservation of the natural resources of the Township from pollution, impairment, or destruction, and provided that the Township has made a determination that the wetland meets at least one (1) of the criteria which follow. If the Township so determines, it shall notify the applicant in writing of such finding and reasons for the Township determination.
 - 1. The site supports State or Federal endangered or threatened plants, fish, or wildlife appearing on a list specified in Section 6 of the Endangered Species Act of 1974, Act. No. 203 of the Public Acts of 1974, being Section 299.226 of the Michigan Compiled Laws.
 - 2. The site represents what is identified as a locally rare or unique ecosystem.
 - 3. The site supports plants or animals of an identified local importance.
 - 4. The site provides groundwater recharge documented by a public agency.
 - 5. The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.
 - 6. The site provides wildlife habitat by providing breeding, nesting, or feeding grounds or cover for forms of wildlife, waterfowl, including migratory water fowl and rare, threatened, or endangered wildlife species.
 - 7. The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
 - 8. The site provides pollution treatment by serving as a biological and chemical oxidation basin.
 - 9. The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
 - 10. The site provides sources of nutrients in water cycles and nursery grounds and sanctuaries for fish.

ARTICLE VI - WETLAND INVENTORY MAP**Section 6.00**

The Wetlands are hereby established as shown on the Wetland Inventory Map which accompanies this Ordinance and which map, with all notations, references, and the information shown thereon, shall be as much a part of this Ordinance as if fully described herein. If, because of scale or detail, there are ambiguities as to whether a particular area is part of a Wetlands, the determination shall be made by the body reviewing the use or activity for that area and after a boundary determination has been made.

Section 6.01

The Township Board may revise the Wetland Inventory Map at any time, by amendment to this Ordinance. Where the Wetland Inventory Map is amended and an individual property or several properties are affected, notice of the proposed Ordinance amendment shall be given to all owners of such property or properties, affording them an opportunity to be heard, at least fifteen (15) days before the final decision on said Ordinance amendment.

ARTICLE VII - ACTIVITIES OR USES FOR WHICH PERMITS ARE NOT REQUIRED**Section 7.00**

Wetland permits shall not be required for activities or uses set forth in Section 6 of Act No. 203, as amended.

ARTICLE VIII - ACTIVITIES OR USES WHICH REQUIRE A PERMIT**Section 8.00**

The following activities or uses require a permit issued by the Orion Township Planning Commission or Board of Trustees, as set forth in Article IX:

- A. Deposit, or permit to be deposited, any material, including structures, into, within or upon any wetland area.
- B. Remove, or permit to be removed, any material from any wetland area.
- C. Drain, dredge, flood, or otherwise alter a wetland area (excluding agricultural activity).
- D. Use land in ways other than outlined in Article VIII, or locate, extend, alter, or convert structures within, into, or upon any wetland area.

ARTICLE IX - PROCEDURE FOR REVIEW**Section 9.00 - Application**

An application for actions or uses which require a permit shall be submitted to the Township Building Department. The applicant shall complete all information requested on the form provided by the Michigan Department of Natural Resources and submit supporting documentation.

The Township shall review the application and shall modify, approve, or deny the permit application within ninety (90) days after all data required on the application has been received. The denial of a permit shall be accompanied by a written reason for denial. Failure to supply complete information with a permit application may be reason for denial of a permit.

Section 9.01 - Wetland Boundary Verification

- A. Independent Boundary Verification. When it is determined that actions or uses anticipated will require review, plans shall be submitted which will permit verification of the wetland boundary. This submission may be made independently of the plans required in Section 9.00 or in conjunction with such submission. If an independent submission is made, the applicant may ask

for review and verification of the boundaries by the Planning Commission in accordance with the requirements of this Ordinance. Thereafter, the plan as required by Section 9.00, shall be submitted.

- B. Timing. Plans or information required by Paragraph A, above, shall be submitted in the following manner:
1. When land is to be platted, the submission shall precede or accompany the submission of the Tentative Preliminary Plat.
 2. When site plan review is required, the submission shall precede or accompany the submission of the site plan.
- C. Effect of Boundary Verification. If an independent boundary verification is made and approved by the Planning Commission, this shall not imply approval of the wetlands application nor abrogate the Township's determination of the effect of the proposed activity.

Section 9.02 - Review of Application by Planning Commission or Board of Trustees

- A. The Township Building Department shall submit the completed application and copies of the plan to the Orion Township Planning Commission.
- B. The Orion Township Planning Commission shall officially accept the completed application for processing and refer it to the Township Planner and Engineer.
- C. The Township Planner and Engineer shall review the application and plan and submit their recommendations to the Orion Township Planning Commission.
- D. In reviewing the application, consideration shall be given to the plans, as well as the probable effect of the proposed activity on the following:
1. Water quality, including filtering action.
 2. Fish or wildlife, including their habitats, damage, or change.
 3. Adjoining wetlands or drainage areas and water tables.
 4. Ability of the resource to store water, as well as the conveyance and replenishment functions.
 5. Economic impact.
 6. Recreational impact.
 7. Erosion control.
 8. Inundation upstream, inundation downstream, and ground water.
 9. Land use for which property is zoned.
 10. Other feasible or prudent alternatives.
- E. Planning Commission Approval. For those wetland permits required in connection with site plans, Special Land Uses, or Planned Unit Developments, as set forth in the Zoning Ordinance No. 78, the Planning Commission shall review and approve wetland permits.
- F. Board of Trustees Approval. For those wetland permits required in connection with subdivision plat and activities not included in Paragraph E above, permits shall be reviewed and approved by the Board of Trustees after a recommendation is received from the Planning Commission.
- G. A wetland application under this Ordinance shall not be approved unless the Planning Commission or Township Board finds that all the following exists:

1. The action or use is not likely to or will not pollute, impair, or destroy a wetland.
 2. There are no feasible or prudent alternatives to the proposed action.
 3. The approval is consistent with public interest, in light of the stated purposes of this Ordinance.
- H. If approval is granted, the Orion Township Planning Commission or Board of Trustees shall authorize the issuance of a permit and may establish reasonable conditions, including a cash or surety performance bond, on the manner and extent of the proposed operation, use, or structure, or use activity, as are necessary to ensure that the intent of this Ordinance is fulfilled.
- I. Appeal. In those instances where review and approval is to be given by the Planning Commission, and wetland boundary is not verified or a permit is denied, the applicant may appeal the decision to the Township Board of Trustees.

Section 9.03 - Review Fees

The Township Board shall establish fees and escrow requirements by resolution.

Section 9.04 - Non-Abrogation of Rights

This Ordinance shall not be construed to abrogate rights of authority otherwise protected by law.

Section 9.05 - Revaluation

A landowner who has been denied a permit under this Ordinance for proposed wetland use may request a revaluation of the affected property for assessment purposes to determine its fair market value under the use restriction. A landowner who is aggrieved by a determination, action, or inaction under this subsection may protest and appeal that determination, action, or inaction pursuant to the General Property Tax Act, Act 206 of the Public Acts of 1893, being Sections 211.1 to 211.157 of the Michigan Compiled Laws.

Section 9.06 - Judicial Review

If a permit applicant is aggrieved by a determination, action, or inaction, by the municipality, regarding the issuance of a permit, that person may seek judicial review in the same manner as provided in the Administrative Procedures Act of 1969, Act No. 306 of the Public Acts of 1969, being Sections 24.201 to 24.328 of the Michigan Compiled Laws.

ARTICLE X - SEVERABILITY

Section 10.00

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

ARTICLE XI - PENALTIES AND ENFORCEMENT

Section 11.00

Any person found guilty of violating any of the provisions of this Ordinance shall be punished by a fine not to exceed Five Hundred Dollars (\$500) or imprisonment not to exceed ninety (90) days, or by both such fine and imprisonment, in the discretion of the Court.

The Township Board, in addition to other remedies, may institute any appropriate action or proceeding to prevent, abate, or restrain the violation.

Section 11.01

Each day's continuance of a violation shall be deemed a separate and distinct offense.

ARTICLE XII - REPEAL OF OTHER ORDINANCE**Section 12.00**

The provisions of Orion Township Ordinance No. 55 are repealed to the extent that such provisions are inconsistent with the provisions of this Ordinance.

ARTICLE XIII - EFFECTIVE DATE**Section 13.00**

The provision of this Ordinance shall take effect after thirty (30) days have elapsed after the publication of this Ordinance, as provided by law.

Section 13.01

Adopted by the Township Board of Trustees of the Charter Township of Orion, Oakland County, Michigan, on this 16th day of May, 1994.

ATTACHMENT 1

The following uses were listed in the Goemaere-Anderson Wetland Protection Act, Act No. 203 of the Public Acts of 1979, as amended in 1993, as being uses or activities allowed in a wetland area without a permit:

1. Activities which require a permit under the Great Lakes Submerged Lands Act, Act No. 247 of the Public Acts of 1955, as amended, being Sections 322.701 to 322.715 of the Michigan Compiled Laws, or the Inland Lakes and Streams Act, Act No. 346 of the Public Acts of 1972, being Sections 281.951 to 281.965 of the Michigan Compiled Laws, shall not require a permit under this Act.
2. Fishing, trapping, or hunting.
3. Swimming or boating.
4. Hiking.
5. Grazing of animals.
6. Farming, horticulture, silviculture, lumbering and ranching activities, including plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices. Wetland altered under this subdivision shall not be used for a purpose other than a purpose described without a permit from the Department of Natural Resources.
7. Maintenance or operation of serviceable structures in existence on the effective date of this Act or constructed pursuant to this Act.
8. Construction or maintenance of farm or stock ponds.
9. Maintenance, operation, or improvement which includes straightening, widening, or deepening of the following which is necessary for the production or harvesting of agricultural purposes:
 - 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, as amended, 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 this Act.
10. Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to ensure that any adverse effect on the wetland will be otherwise minimized.
11. Drainage necessary for the production and harvesting of agricultural products, if the wetland is owned by a person who is engaged in commercial farming and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this Act, wetland improved under this subdivision after the effective date of this Act shall not be used for non-farming purposes without a permit from the Department. 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 which the Department has determined, by clear and convincing evidence, to be a wetland which is necessary to be preserved for the public interest, in which case a permit shall be required.
12. Maintenance or improvement of public streets, highways, or roads, within the right-of-way and in such a manner as to ensure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes; increasing the right-of-way; or deviating from the existing location of the street, highway, or road.
13. Maintenance, repair, or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of six (6) inches or less if the pipelines are constructed, maintained, or repaired in a manner to ensure that any adverse effect on the wetland will be otherwise minimized.

14. Operation or maintenance, including reconstruction of recently damaged parts of serviceable dikes and levees in existence on the effective date of this Act or constructed pursuant to this Act.
15. Construction of iron and copper mining tailings basins and water storage areas.
16. After the effective date of Act 403 (Goemaere-Anderson), but immediately prior to the approval of a State program under Section 404 of Title 4 of the Clean Water Act of 1977, 33 U.S.C. 1344, where a project solely involves the discharge of fill material subject to the individual permit requirements of Section 404 of Title 4 of the Clean Water Act of 1977, 33 U.S.C. 1344, an additional permit shall not be required by this Act.