

PART 37: ORDINANCE 1

SOIL REMOVAL ORDINANCE

SECTION 1: Purpose, Intent, And Title.**A. *Purpose and Authorization:***

An Ordinance to regulate mining operations and mining sites within the Township of Lenox, to provide for the issuance of permits for such activities, to provide for payment of fees, to prescribe rules and regulations and conditions for the issuance of permits, to provide for bonds, to insure compliance and satisfactory performance of the terms of said Ordinance, to provide for renewals of permits, to provide penalties for the violation of this Ordinance, and to provide for the relationship of this Ordinance to other laws and ordinances,

This Ordinance is enacted for the purpose of promoting the public health, welfare, and safety, of the residents of Lenox Township,

B. *Intent:*

In the preparation and development of this Ordinance, on the basis of the advice of experts and upon independent investigation, it has been recognized that there are activities and impacts which require regulation in view of the noise, dirt, dust and temporary and permanent changes to the topography and environment which are inherent in mining operations. It is the intent of the township to regulate, inspect and monitor mining operations in order to minimize the existence of dangerously steep slopes, shifting earth, impairments or pollution of ground water, surface water and the water shed, and to protect the air, water and natural resources and the public trust therein, and the health, safety and general welfare of the residents of Lenox Township, to meet these objectives, such mining operations shall be licensed and the fees required for licensure shall be utilized to offset costs and expenses including but not limited to monitoring, inspection, administration, engineering, hydro-geomorphology, and legal review.

C. *Title:*

This Ordinance shall be known and cited as the Lenox Township Soil Removal Ordinance and will be referred to hereinafter as "this Ordinance,"

SECTION 2: Definitions.

“*BERM*”, shall mean a landscaped earth embankment of at least eight (8) feet in height, designed to act as a visual and sound barrier, with a slope no steeper than 1 on 4, properly landscaped with turf grass, trees, shrubs, and the like.

“*COMPLETION OR CESSATION OF OPERATIONS*”, shall mean the removal from the site of less than one thousand (1,000) cubic yards of earth materials per month for a continuous period of at least six (6) months.

“*EARTH MATERIALS*”, shall mean any soil, topsoil, subsoil, sand, gravel, rock, clay, peat, minerals or other similar material.

“*FENCE*”, when required by this Ordinance shall mean a six (6) foot high, cyclone type fence; but in no instance shall a fence be of lesser quality than No. 11 farm fence of four (4) feet in height.

“*GREENBELT OR PLANTING*”, shall consist of a dense evergreen or similar plant material designed to provide an obscuring buffer.

“*MINING OPERATIONS*”, shall mean the excavation and/or removal from their existing site of any earth materials.

“*MINING SITE*”, shall mean a parcel of land where mining operations have been conducted that has not undergone reclamation and that is not covered by a performance, reclamation or reserves bond,

“*NUISANCE*”, shall mean anything that annoys, injures or endangers the safety, health, comfort or repose of the public, interferes with or destroys or renders dangerous any public thoroughfare, allows accumulation of noxious matter on private or public property, or in any way renders the public insecure.

“*OPERATOR*”, shall mean the owner of the site and/or the person who is responsible for the day-to-day activities at the mining site and/or the person responsible for payment of all application fees, annual permit fees, and performance bonds,

“*PIT OPERATIONS*”, shall mean any excavation where ponded water results or that lowers the surface to a point below the definition of a stripping operation,

“*PERFORMANCE BOND*”, shall mean cash, irrevocable letter of credit, or surety bond, acceptable to the Township Board, issued by a reputable surety company, authorized to do business in the State of Michigan,

“*PREMISES*”, shall mean a contiguous parcel of land in the same ownership,

“*RECLAMATION*”, shall mean the restoration of property in a fashion that makes its development possible by a use permitted in the applicable zoning district.

“*RECLAMATION BOND*”, shall mean a bond in the form of cash, letter of credit, or surety that guarantees the reclamation of a mining site to the standards of this Ordinance.

“*RESERVES BOND*”, shall mean a bond in the form of cash, letter of credit, or surety that guarantees the reclamation of a mining site that is not currently active but still contains marketable sand and/or aggregate reserves.

“*RESERVES SURVEY*”, shall mean an estimate, prepared by a geologist or civil engineer based upon soil borings or similar analytical methods that detail the types and approximate quantities of sand and or aggregate reserves on a mining site.

“*STRIPPING OPERATION*”, shall mean anyone of the following types of excavations where no ponded water results:

- 1) Any operation which results in the removal of all or part of a visible surface landform, or
- 2) Any operation which is limited to the removal of topsoil only and does not disturb the underlying subsoil, whether the subsoil is composed of sand, gravel, clay or other material, or
- 3) Any operation which removes the surface soil(s) no lower than a point at least 6 inches above the mean elevation of the centerline of the nearest existing or proposed street or road established or approved by the Macomb County Road Commission, or
- 4) Where there is no nearby street or road, an operation which removes the surface soils no lower than a point at least 6 inches above the mean elevation of the surrounding land within one quarter mile, as shown on United States Geological Survey Data.

SECTION 3: Removal Of Earth Materials.

A. *Removal Permits:*

After the effective date of this Ordinance, it shall be unlawful for any person to remove any earth material from any premises without a permit from the Township Board. No permit will be required where the removal of earth materials is carried on for the installation of the foundation and/or basement of any use permitted in the applicable zoning district, as regulated by the Lenox Township Zoning Ordinance, and covered by an active building permit. Usual and customary land balancing by cutting and filling, in preparation for immediately planned and approved development in accordance with this and other applicable ordinances and law, shall be exempted from the provisions of this section.

B. *Application for Annual Permit:*

- (1) Before the Township Board grants a permit, the Township Planning Commission shall review the plans and other data concerning such application and file its recommendation with the Township Board, in accordance with Section 4 of this Ordinance. For all new mining operations, it shall also be necessary to obtain special land use approval from the Planning Commission pursuant to Section 1816 of the Lenox Township Zoning Ordinances.
- (2) A separate permit shall be required for each separate site. Each application for a permit shall contain the following information as a condition precedent to the obligation to consider such request:
 - a. Full names and addresses of all parties of interest in said premises setting forth their legal or equitable interest. Proof of said legal and/or equitable interest;
 - b. Legal description of the property;
 - c. A boundary survey, sealed by a registered Land Surveyor, of the premises wherein the operations are proposed. Surveyor shall also set interior monuments at the 150' setback line to facilitate observation of compliance by the Township. Monuments shall be the same as those used to mark plat corners, and shall be preserved and protected by the operator during the life of the mining operation;
 - d. Topographical survey map at a scale of not less than one (1) inch equals two hundred (200) feet, showing existing and proposed grades at two (2) foot contour intervals or less, consistent with sound engineering practice. Said grades shall be prepared and sealed by a Civil Engineer or Land Surveyor, registered as such by the State of Michigan;
 - e. Calculations by a Registered Civil Engineer or Land Surveyor showing the cubic yards of the earth material to be removed and a detailed statement and engineering plan as to how the removal is to be accomplished; together with cross-section drawings showing proposed slopes after the removal operations are complete.

- f. Detailed site engineering plan at a scale of not less than one (1) inch equals two hundred (200) feet which: identifies all types of materials to be removed and/or redistributed; indicates the specific places on the property where the fill (redistributed material) is to be placed; indicates the maintenance areas, location of processing plants, storm drainage design including off-site ditch and drain elevations; includes the final grading plan, method of operation, such as wet or dry method; identifies the type of machinery or equipment to be used, and the estimated period of time that such operations will cover, including the location, timing, and other relevant details with respect to the phasing of work on the site. Where restoration is not complete, as-built drawings showing the present contours of the excavation shall be submitted with each subsequent year's request for permit renewal;
- g. Statement of other similar operations carried on by applicant, including location by municipality;
- h. The type and daily number of vehicles to be used in the proposed operations, both on-site and over adjoining Township roads;
- i. Detailed statement as to exactly what type of earth materials are proposed to be extracted.
- j. Identification of access roads, on-site roads, a drainage plan that identifies grades for proper drainage and any special drainage devices, fencing, any existing or proposed structures on the site, existing and proposed utilities.
- k. A detailed Reclamation Plan, at a scale of 1" = 100', showing that the entire property will be left in a form that is suitable for development with uses that are permitted in the zoning district, relating such reuse to uses existing or probable for surrounding properties. Among items to be included in such plan are feasible circulation patterns in and around the site, the treatment of the exposed soil or subsoil (including measures to be taken to replace topsoil in excavated areas) in order to make the property suitable for the proposed reuse, treatment of slopes to prevent erosion, and delineation of drainage ways and flood plains, which shall be left undisturbed.
- l. A map showing all parcels of property and names of each owner within 500 feet of the proposed mining site.
- m. A Community Impact Statement following the requirements in Section 330 of the Lenox Township Zoning Ordinance.

C. *Review Procedure:*

(1) The Township Clerk shall distribute the application copies as follows:

- 5 copies to Township Board
- 4 copies to Planning Commission
- 1 copy to Recording Secretary for Clerk's permanent file
- 1 copy to Police Department
- 1 copy to Fire Department
- 1 copy to Township Planner
- 4 copies to Township Engineer
- 1 copy to Township Attorney

(2) After receiving the reports of all Township departments and consultants, the application shall be considered by the Planning Commission and recommendation shall be made to the Township Board for approval, approval with conditions, or denial of the mining permit.

(3) After receiving the reports of all Township departments and consultants, the recommendation of the Planning Commission, and following such meetings or consideration as the Board deems appropriate with respect to the application, the Township Board may approve, approve with conditions, or deny the application for a mining permit.

D. *Permit Fees:*

To defray costs of engineering services, investigation, publication charges, and other administrative expenses incurred by processing such application, there is hereby established an initial application fee and an annual operating permit fee. Permits issued by the Township Board shall be for a period not to exceed one (1) year, expiring on December 31st of the second calendar year, and such permits may be renewed by the payment of an annual permit fee. The amount of the initial application fee shall be established from time to time by resolution of the Township Board. The annual permit fee shall be based on the surface area, in acres, of the proposed operation times the depth, in feet, of the pit as shown on the plans submitted for review. The annual permit fee may be limited to the volume of the cell or cells to be under excavation during the one year period. The amount of the fee per acre will be set from time to time by resolution of the Township Board. Such permits shall be renewed as herein provided for so long as the permittee complies with all of the provisions of this Ordinance, other Township ordinances, State Law, or other conditions of this permit.

E: *Issuance of Permits:*

- (1) After reviewing all of the information submitted by the applicant and other pertinent information and the recommendations of the Planning Commission, Township Engineer, Township Planner, Ordinance Enforcement Officer and/or Township Attorney, the Township Board shall determine whether the issuance of the permit would or would not detrimentally affect the public health, safety, and welfare and whether granting the permit, as proposed, would or would not:
 - (a) Permanently impair the intended land use potential of the property in question;
 - (b) Detrimentially affect the adjoining and adjacent properties;
 - (c) Be inconsistent with the planning, land use, and zoning of the area where the proposed operation is to be located; and
 - (d) Violate or defeat any of the requirements and standards set forth in this Ordinance.
- (2) Mining operations shall proceed in cells of 10 acres maximum. Each working cell shall be fully restored and rehabilitated prior to issuance of a permit for the next cell unless each working cell's performance bond is converted to a cash bond or irrevocable letter of credit and escrowed to the Township Board.
- (3) The commencement of operations during the time frame covered by the permit shall constitute acceptance of all limitations and conditions which the Township may impose as a part of the permit under Section 7 and/or 8 of this Ordinance.

F: *Permit Content and Conditions:*

- (1) The permit shall contain the following:
 - (a) The name and address of the holder of the licensure permits, as well as the name and address of the land owner, if different from that of the licensure permit holder. In addition, the permit shall also include the name, address and phone number of the person designated as agent, for all notice, correspondence and communication.
 - (b) The legal description of the property to which the permit shall apply.
 - (c) The period for which the permit shall be valid, including its expiration date.

- (d) The allowable daily duration of operation.
- (e) The number of feet from all the property lines and rights-of-way within which no cuts or excavations shall be made.
- (f) The steepest horizontal to vertical grade on finished slopes where excavations are to be made.
- (g) The location of each working cell (10 acre maximum) and the order in which they are to be excavated.
- (h) A statement essentially corresponding to the following: "This permit may be suspended or revoked upon a hearing of the Township Board, with notice by regular mail of said hearing to the applicant, based upon a failure to comply with one or more of the requirements of the Lenox Township Soil Removal Ordinance, as amended, or other applicable law, ordinance or regulation, and/or the terms and conditions of this licensure permit, or upon the ground that the use constitutes a nuisance or danger to the public health, safety and/or welfare."
- (i) A statement to be countersigned by the applicant corresponding substantially to the following: "The undersigned has read this permit and understands and agrees that, incorporated by reference as a part of the terms and conditions hereof, are all the statements and contents of the application for the permit as approved by the Lenox Township Board, the terms and conditions of the Lenox Township Soil Removal Ordinance, as amended, and of any other applicable laws, ordinances or regulations, and, further, that Lenox Township employees and agents are permitted to come upon the premises at any reasonable time for the purpose of inspecting, monitoring and/or administering this Ordinance.
- (j) A statement of the condition that in no event shall the area being mined and unreclaimed exceed the lesser of forty (40) acres or fifty (50%) percent of the land constituting the subject of the permit.
- (k) A statement of the machinery, equipment and methods used in the operation.
- (l) Any additional reasonable condition deemed appropriate by the Township Board.

- (m) Failure or refusal to allow Township inspection of the mining operations site shall be deemed a violation of this Ordinance under Section 7 hereof.
- (2) The applicant shall provide the Township Board with a signed affidavit, in a form suitable for recording with the Macomb County Register of Deeds, binding the applicant, and all heirs, successors, assigns and transferees of the applicant to the terms and conditions of the licensure permit.

G. *Permit Renewal:*

- (1) A licensee may apply for renewal of a licensure permit. In order to promote uninterrupted operations, application shall be made to the Township Clerk, no less than sixty (60) days and no more than ninety (90) days, prior to the expiration of then effective licensure permit. The application for renewal shall be made on the form provided by the Clerk.
- (2) Upon receipt of an application, the Clerk shall refer copies thereof to the Lenox Township Board, the Ordinance Enforcement Officer, and to the township engineer. The Ordinance Enforcement Officer and the township engineer shall forthwith report in writing to the Township Board with respect to compliance by the applicant with all aspects of this Ordinance during the period of the licensure permit which is about to expire. If there has been compliance in all respects with this Ordinance, a renewal of the licensure permit may be granted. In the event there has not been compliance, the Township Board may, in its discretion, either deny the renewal or grant the renewal for a period determined to be appropriate by the township board upon stated conditions.
- (3) In all events, if it appears that protection of the public health, safety and general welfare and/or protection of the air, water and natural resources, and the public trust therein, requires denial of the licensure permit renewal, the Township Board may either deny renewal outright, or consider renewal upon conditions which vitiate the underlying cause for denial.

H. *Specific Requirements for Pit Operations:*

- (1) The applicant shall erect a fence with appropriate KEEP OUT - DANGER signs completely surrounding the portion of the site where the excavation takes place. In no event shall such signs be more than two hundred (200) feet apart. Said fence is to be a six (6) foot high, cyclone-type fence or a four (4) foot high, No. 11 woven wire fence along all property lines protected by lockable gates.

- (2) Any roads used for the purposes of ingress and egress to said excavation site shall be kept dust free at all times. This may be accomplished by surfacing with concrete or bituminous aggregate, or approved chemical treatment at a frequency sufficient to control any dust problems as specified by the Township Board.
- (3) Side slopes around the perimeter of the site and the banks adjacent to ponded water shall not have a slope exceeding one (1) vertical foot for each three (3) horizontal feet. The slope extending into the water shall not exceed one (1) vertical foot for each seven (7) horizontal feet from the edge of the water out to a depth of five (5) feet.
- (4) In order to protect water wells and the water supply of the Township of Lenox, the pumping or drainage of water from such mining operations and/or de-watering is absolutely prohibited. A method of quarrying approved by the Township Board shall be utilized.
- (5) All existing pit operations shall be at least fifty (50) feet away from the nearest street or highway right-of-way or property line. If the excavation is closer than 50 feet, the area shall be restored as part of the Reclamation Plan. No new cut or excavation shall be made closer than one hundred fifty (150) feet from the edge of the abutting street or highway right-of-way line or easement, or abutting property line; provided, however, that the Township Board may prescribe stricter requirements in order to prevent undermining surrounding property where sailor geographic conditions warrant it.
- (6) All equipment shall be located and operated no closer than one hundred fifty (150) feet to the nearest abutting property line.
- (7) All equipment and facilities used in the production, processing or transportation of earth materials shall be constructed, maintained, and operated, in such a manner as to eliminate, to the maximum extent practicable, noises, vibrations, or dust which are injurious or unduly annoying.
- (8) All trucks leaving the site shall have their loads covered to prevent blowing of material onto Township roads and/or private property.
- (9) The applicant shall acquire approval as to haul routes, bonding requirements, weight limits, speed limits, and other matters within the jurisdiction of the agencies responsible for the public roads.

- (10) Reclamation with appropriate turf, vegetation, soil, overburden, shrubs and trees shall be implemented in a manner so as to prevent washout and erosion. Revegetation of the pit shall be started as soon as the first ten (10) acres are completely excavated and shall progress in stages as the excavation progresses. The slopes of the pit shall be graded, seeded and mulched in accordance with the approved Reclamation Plan and in a manner that prevents erosion. Topsoil shall not be removed from the site.
- (11) The Township Board shall require more stringent requirements where the Impact Assessment and/or Statement, or the report of the Township Engineer or Township Planner demonstrates the need for such, in the interest of the public health, safety and general welfare.
- (12) Operating hours shall be limited from 7:30 a.m. to 4:30 p.m. Monday through Friday and 7:30 a.m. to 12:00 noon on Saturday. There shall be no operations conducted on any Sunday nor on specific holidays prescribed by the Township Board.
- (13) In order to prevent all unnecessary dust and blowing of sand, there shall be no stockpiling of sand in piles in excess of one thousand (1000) cubic yards each and all stockpiles shall be restricted to a maximum height of fifteen (15) feet.

I. Specific Requirements for Stripping Operations:

- (1) No earth materials as defined herein, or similar materials, shall be removed in such manner as to cause water to collect or to exist in a place of danger or to become a menace to the public health. The premises shall at all times be graded so that surface water drainage off-site is maintained and is not interfered with.
- (2) Sufficient topsoil shall be stockpiled on said site so that the entire site, when stripping operations are completed, may be recovered with a minimum of four (4) inches of topsoil and the replacement of such topsoil shall be made immediately following the termination of the stripping operations each year (Topsoil need not be stockpiled for the area of building footprints, parking areas, drives and walks shown on an approved site plan). In the event however, that such stripping operation continues over a period of time greater than thirty (30) days, the operator shall replace the stored topsoil over the stripped areas, in two (2) acre increments, as he/she progresses.
- (3) Any roads used for the purpose of ingress and egress to said excavation site shall be kept dust free at all times. This may be accomplished by surfacing with concrete or bituminous aggregate, or approved chemical treatment at a frequency sufficient to control any dust problems as specified by the Township Board.

- (4) No stripping shall take place within one hundred fifty (150) feet from any street right-of-way line, adjoining residence, or any other property line; provided, however, that the Township Board may prescribe stricter requirements in order to protect nearby residences from any potential adverse impacts of the stripping operation.
- (5) All equipment shall be located and operated no closer than one hundred fifty (150) feet to the nearest abutting property line.
- (6) All equipment and facilities used in the production, processing or transportation of earth materials shall be constructed, maintained, and operated, in such manner as to eliminate, to the maximum extent practicable, noises, vibrations, or dust which are injurious or unduly annoying.
- (7) All trucks leaving the site shall have their loads covered to prevent blowing of material onto Township roads and/or private property.
- (8) The applicant shall obtain approval as to haul routes, bonding requirements, weight limits, speed limits, and other matters within the jurisdiction of the agencies responsible for the public roads.
- (9) In order to prevent all unnecessary dust and blowing of sand, there shall be no stockpiling of sand in piles in excess of one thousand (1000) cubic yards each and all stockpiles shall be restricted to a maximum height of fifteen (15) feet.
- (10) The Township Board shall prescribe more stringent requirements if deemed necessary in the interest of the public health, safety and welfare, as demonstrated by the Impact Assessment and/or Statement, or the report of the Township Engineer or the Township Planner.
- (11) Operating hours shall be limited from 7:30 a.m. to 4:30 p.m. Monday through Friday and 7:30 a.m. to 12:00 noon on Saturday. There shall be no operations conducted on any Sunday nor on specific holidays prescribed by the Township Board.

J. *Plans for Reclamation:*

- (1) Reclamation shall occur immediately upon completion of each 10 acre working cell. The property shall be fully reclaimed, in accordance with the approved Reclamation Plan, no later than one (1) year after extractive operations are complete. Non-compliance with this requirement shall be grounds for forfeiture of the operator's performance bond.

- (2) All excavations shall be made either to a water-producing depth of at least 8 feet below the low-water mark for at least 80 percent of the water area, or shall be graded or backfilled with earthen materials, to insure:
 - (a) That stagnant water in the excavated area shall not collect and be permitted to remain therein; or,
 - (b) That the surface of such area which is not permanently submerged is graded or backfilled as necessary so as to reduce the peaks and depressions thereof, and so as to produce a gently rolling surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area.
- (3) Vegetation shall be restored by the use of sufficient soil and overburden and by appropriate seeding of grasses or planting of shrubs or trees in all parts of the mining area where such area is not submerged under water.

K. *Operations Existing Prior to Passage of this Ordinance:*

All existing mining operators shall obtain a removal permit in conformance with the requirements of this Ordinance. In order to obtain a permit as required under this Ordinance, previously existing operations shall comply with all provisions of this Ordinance, except that in cases where excavations already exist which are closer to property lines or road right-of-ways than permitted in this Ordinance, such noncompliance will be permitted, but the excavation may not be extended in any manner which would increase the existing non-compliance. All existing operations shall provide the same information required in Section 7 of this Ordinance but will not be subject to Planning Commission review for special land use approval.

L. *Unreclaimed Mining Sites, Bond Required:*

- (1) It is understood that there may exist within the Township mining sites that have been disturbed but are not currently being operated and that are not protected by a performance bond, reclamation bond, or reserves bond. All such mining sites are hereby declared to be a nuisance, per se, until such time as they are covered by one of the following:
 - (1) a mining permit, reclamation plan, and performance bond, or
 - (2) a reclamation plan and reclamation bond, or
 - (3) a reserves survey and reserves bond.

- (2) The owner(s) of all unreclaimed mining sites shall be required to furnish a reclamation bond or a reserves bond to the Township in an amount determined by the township engineer to be reasonably necessary to return the site to a safe condition and one that is capable of supporting one or more uses permitted in the underlying zoning district.

M. *Performance Bond:*

- (1) The Township Board shall, to insure strict compliance with any regulations contained herein or required as a condition for the issuance of a permit for the removal of earth materials, require the operator to furnish a bond in the form of cash, an irrevocable bank letter of credit, or a surety bond acceptable in form and amount to the Lenox Township Board, executed by a reputable surety company authorized to do business in the State of Michigan. The amount of such bond shall be at least \$1,000 for each acre of land owned or leased by the operator and may be greater if deemed necessary by the Township Board to insure compliance with this Ordinance. In fixing the amount of such bond, the probable cost of rehabilitation the premises upon default of the operator, estimated expenses to compel the operator to comply with court orders, and any other relevant factors shall be considered. Excess cash funds, if any, shall be returned with interest to the depositor, upon completion of the rehabilitation of the premises. The operator shall insure that the surety company and/or the bank shall give the Township 30 days notice, in writing, of any cancellation of a surety bond or letter of credit.
- (2) The owner and/or operator shall submit the performance bond for the first cell of operation to the Township. When application is submitted for the next cell the first cell's performance bond shall be converted to a cash bond and escrowed with the Township unless the restoration of the first cell is complete. A new performance bond for the next cell shall be submitted to the Township before permit is issued to begin mining the next cell.

N. *Insurance Requirements:*

Insurance shall be a precondition to commencement of operations, and maintenance in full force and effect of insurance shall be a precondition to the right to continue operations. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried by an insurance company licensed to do business in the State of Michigan during all times that any reclamation is left to be done, and during all times any machinery and/or equipment remains on the site, or any structures, equipment or improvements to be removed remain on the site. This insurance shall be carried in amounts no less than one million dollars (\$1,000,000.00) for personal injury, and not less than one million dollars (\$1,000,000.00) for injury and

damage to more than one person's property arising out of a single occurrence. This insurance shall cover injury or damage occurring upon the site of the operation, as well as injuries occurring upon adjoining property as the result of conditions or activities conducted upon the subject property. The Township shall be named as an additional insured and the Township must receive a copy of the policy and/or the binder when it is issued.

SECTION 4: Dumping Of Earth Materials Or Other Materials.

A. Dumping Restriction:

No earth materials or other material of any sort shall be dumped or otherwise deposited on any property within Lenox Township except in conformance with a valid permit for a landfill issued by the Lenox Township Board. Nothing in this section shall prevent a person from improving their property by the application of topsoil, peat, or similar earth material when used as a soil conditioner or supplement.

SECTION 5: Excavations or Holes.

The existence within the limits of Lenox Township of any unprotected, unbarricaded, open or dangerous excavations, holes, pits, or wells which constitute a hazard to the public health, safety, or welfare, is hereby prohibited, and such excavations, holes, pits, or wells are hereby declared a public nuisance. However, the provisions of this Article shall not prevent excavations for which a permit has been issued pursuant to the provisions of this Ordinance or the Building Code of Lenox Township where such excavations are properly protected, and provided further, that this section shall not apply to drains created or existing by authority of the State of Michigan, Macomb County, Lenox Township, or by other governmental agencies.

When the Ordinance Enforcing Officer shall determine a nuisance to exist as herein defined, he shall notify the owner or the lessee as shown on the latest tax rolls in writing of such finding and require the owner or lessee to abate such nuisance within a reasonable time, in no event more than thirty (30) days.

SECTION 6: Drainage And Erosion Control.

Existing drainage patterns shall not be altered so as to result in flooding and/or interruption of flow of surface water to or across any adjacent or surrounding properties. All operations involving the moving or removal of earth materials shall comply fully with Act 347 of the Michigan Public Acts of 1972 (Soil Erosion and Sedimentation Control Act).

ARTICLE 7: Inspections.**A. *Enforcement Officer:***

The Ordinance Enforcement Officer or his/her designate or agent, shall be responsible for inspections under this ordinance and shall at all reasonable times have the right to peaceably enter upon the mining property for the purpose of conducting inspections to insure compliance with this Ordinance, and with all other applicable law, ordinances and/or regulations the Township is authorized to enforce. Any refusal to permit such inspection shall be deemed a violation of this Ordinance, and shall be cause for summary proceeding to suspend and/or revoke the license issued pursuant hereto pending such inspections. In addition to discretionary inspections, the Ordinance Enforcement Officer shall make regular inspections during operations and reclamation with such frequency as shall be necessary to insure and monitor compliance under all of the circumstances, and further, shall utilize the services of such experts as the Township Board shall authorize for such purpose. The Ordinance Enforcement Officer shall make annual reports to the Township Board concerning compliance with this Ordinance.

B. *Noncompliance, Notice, Hearing, Suspension or Revocation:*

- (1) Should the Ordinance Enforcement Officer, discover any noncompliance with the terms and conditions of this Ordinance and/or the licensure permit issued hereunder, and/or with any other applicable law, ordinance or regulation, the Ordinance Enforcement Officer shall prepare a notice of this fact detailing the violations, shall send copies of same to the licensee and to the Township Board. Within fifteen (15) days following such notice, the licensee shall advise the Township, in writing, whether or not it concurs that a violation exists; and, if it is agreed that a violation does exist, the licensee shall take steps to remedy the violation. If the licensee does not agree, it shall, within the same period of time, state the reasons for such lack of agreement.
- (2) The licensee shall correct any and all violations forthwith, and in all events in a period not to exceed sixty (60) days from the date of the violation notice unless, due to circumstances beyond licensee's control, completion of the corrective measures are not possible within such period, in which event the licensee may, upon approval of the Township Board, and if sought within the sixty (60) day period, be granted reasonable additional time within which to make the correction.
- (3) In the event of a dispute with respect to the existence of a violation, the Township Board shall set a reasonable time for a hearing, and shall notify the licensee of the time, date and place of the hearing. After a review of the reasons stated by the licensee for its position that no violation exists, the Township may, in its discretion, include in the notice of hearing, responsive allegations with respect to the claimed violation.

- (4) In the event the licensee has concurred that a violation exists, but has not remedied the same in a timely manner as provided for herein, a notice of violation shall be sent and a hearing thereon established utilizing the same form and procedure as set forth above with respect to the notice and hearing on a violation.
- (5) At the Township Board meeting, the matter of the disputed violation, of the failure to timely cure a violation, shall be considered, which consideration may be adjourned from time-to-time. Such consideration shall include a hearing conducted at the meeting or meetings, and shall further include the opportunity of the licensee to appear in person, or by a duly authorized representative to present argument, witnesses and other evidence on behalf and in the defense of the licensee, or, in addition to or in lieu thereof, to file a written presentation prior to the commencement of the meeting. The licensee shall also be afforded the opportunity to examine individuals who have made statements or submitted other evidence supporting the existence of a violation or the failure to timely cure a violation, provided, such examination shall be limited in scope to matters relating directly to the statements made and evidence supporting the existence of a violation or the failure to timely cure a violation. The Township Board shall ascertain whether the licensee made a reasonable effort to prevent the occurrence of the violation, or to cure the same in a timely manner.
- (6) In the event the Township Board shall determine that a violation of this Ordinance exists, or that the licensee has failed to cure a violation in a timely manner, the Township Board is authorized to take action in the following manner, taking into consideration whether the licensee made a reasonable effort to prevent the occurrence of a violation and/or cure the same in a timely manner.
 - (a) If the violation constitutes the first uncured violation, and/or the first failure to cure a violation in a timely manner, and the same has not resulted in damage to person or property, the Board is authorized to suspend the license for a period of up to one (1) month.
 - (b) If the license has previously had one (1) uncured violation and/or one (1) failure to cure a violation in a timely manner, and there is an additional uncured violation and/or failure to cure a violation in a timely manner, and/or if any violation or failure to cure a violation results in property damages, the Board is authorized to suspend the license for a period of up to three (3) months.

- (c) If the licensee is found to be in violation of this ordinance on a third occasion, and/or if the licensee is found to *have* failed to cure a violation in a timely manner for the third time, or any combination of these, and/or if there are violations and/or failure to cure in excess of three (3), and/or if a violation has resulted in personal injury of one (1) or more individuals, the Township Board may suspend the license for a period of up to one (1) year, or revoke the license permanently.
- (7) In the event the Township Board shall determine, in its discretion, that serious and irreparable harm and damage is likely to occur to person or property, or that an impairment or pollution of the environment is likely to occur, the Township Board may order an emergency summary suspension of the license, which shall become effective upon service of same upon the licensee. The Township Board shall thereafter, as soon as is practical, conduct a hearing with the same notice and procedural standards set forth *above* for violation hearings, to determine whether:
- (a) To revoke the suspension order:
- (b) To continue the suspension order for a fixed period of time; or
- (c) To revoke the license permanently.
- (8) The board shall state reasons for its determination. If the licensee wishes to expedite the hearing procedure, the licensee may waive the advanced notice requirement and proceed immediately to a hearing.
- (9) Following the entry of a determination by the Township Board to suspend or revoke licensure, the institution of a lawsuit in the circuit court, or other court, shall not constitute a stay of the suspension or revocation, as the case may be.
- (10) The procedures and remedial action authorized under this section shall be in addition to, and not in lieu of, additional actions the Township may seek pursuant to other Township ordinances or laws of the State of Michigan,

SECTION 8: Violation And Penalties.

A. *Penalties:*

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days, or both such fine and such imprisonment, as determined by the court, together with costs.

B. *Separate Offense:*

A separate offense shall be committed upon each calendar day during which a violation shall occur or continue.

C. *Rights & Remedies:*

The rights and remedies provided in this section are cumulative and in addition to such other remedies provided in this Ordinance, and/or in equity. The Township shall not be prohibited from pursuing any lawful remedy it may have in order to bring about compliance with this ordinance.

SECTION 9: Validity.

This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, subsection, phrase, or clause is adjudged unconstitutional or invalid, it is hereby provided that the remainder of this Ordinance shall not be affected thereby. The Township Board hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence, and clause thereof irrespective of the fact that anyone or more parts, section, subsection, phrases, sentences, or clauses be declared invalid,

SECTION 10: Relationship to Other Laws and Ordinances.

Whenever regulations or restriction imposed by this Ordinance are either more or less restrictive than regulations or restrictions imposed by governmental authority through legislation, rule or regulation, the more restrictive regulations or those which impose higher standards shall govern,

ARTICLE 11: Effective Date.

This Ordinance shall take effect thirty (30) days following publication of a summary of its regulatory effect, as provided by law.

{Adoption Date:	September 7, 1999
Publish Date:	September 15, 1999
Effective Date:	September 22, 1999}

PART 37: ORDINANCE 2

WETLANDS ORDINANCE

AN ORDINANCE to provide for the preservation, management, protection and use of wetlands; to require permits to alter certain wetlands; to provide for a plan for the preservation, management, protection, and use of wetlands; and to provide remedies and penalties.

SECTION 1: Definitions.

- A. "Fill material" means soil, rocks, sand, waste of any kind, or any other material which displaces soil or water or reduces water retention potential.
- B. "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.
- C. "Local Unit" means a city, village, or township.
- D. "Person" means an individual, sole proprietorship, partnership, corporation, association, municipality, this state, an instrumentality or agency of this state, the federal government, or an instrumentality or agency of the federal government, or other legal entity.
- E. "Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support and that under normal circumstances does support wetland vegetation or aquatic life and is commonly referred to as a bog, swamp, or marsh and which is any of the following:
1. Contiguous to the Great Lakes or Lake St. Clair, an inland lake or pond, or a river or stream.
 2. Not contiguous to the Great Lakes, an inland lake or pond, or a river or stream and more than 5 acres in size.
 3. 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 Local Unit 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 local unit has so informed the owner.

SECTION 2: Intent and Purpose.

- A. The governing body of the local unit finds that:
- (1) Wetland conservation is a matter of local concern since a wetland may be affected by acts on a river, lake, stream, or wetland.
 - (2) A loss of a wetland may deprive the people of the local unit of some or all of the following benefits to be derived from the wetland.
 - (a) Flood and storm control by the hydrologic absorption and storage capacity of the wetland.
 - (b) Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or endangered wildlife species.
 - (c) Protection of subsurface water resources and provision of valuable watersheds and recharging ground water supplies.
 - (d) Pollution treatment by serving as a biological and chemical oxidation basin.
 - (e) Erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
 - (f) Sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.
 - (3) Wetlands are valuable as an agricultural resources for the production of food and fiber, including certain crops which may only be grown on sites developed from wetland.
 - (4) That the extraction and processing of non-fuel minerals may necessitate the use of a wetland, if it is determined pursuant to section 5 that the proposed activity is dependent upon being located in the wetland, and that a prudent and feasible alternative does not exist.
- B. In the administration of this ordinance, the local unit shall consider the criteria provided in Subsection A.

SECTION 3:

- A. Except as otherwise provided by this Ordinance, a person shall not:
- (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. The following uses shall be allowed in a wetland without a permit subject to other local and state laws and the owner's regulation:
- (1) Fishing, trapping, 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.
 - (6) Maintenance or operation of serviceable structures in existence on the effective date of this ordinance or constructed pursuant to this act.
 - (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 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.
 - (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 this act, land improved under this subdivision after the effective date of this ordinance shall not be used for non-farming purposes without a permit from the local unit. 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 local unit 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.
- (11) Maintenance or improvement of public streets, highways, or roads, within the right of way and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes; increasing the right of way; or deviating from the existing location of the street, highway, or road.
- (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 the effective date of this Ordinance or constructed pursuant to this ordinance.

SECTION 4:

- A. Except as provided otherwise, to obtain a permit for a use or development listed in Section 2, the person desiring the permit shall file an application with the local unit on a form provided by the local unit accompanied by a fee of \$25.00. The application shall include:
 - (1) The person's name and address.
 - (2) The location of the wetland.
 - (3) A description of the wetland on which the use or development is to be made.
 - (4) A statement describing the proposed use or development.
 - (5) The wetland owner's name and address.

- (6) An environmental assessment on a form supplied by the local unit of the proposed use or development, if requested by the local unit, which shall include effects upon wetland benefits and the effects upon the water quality, flow, and levels, and the wildlife, fish, and vegetation within a contiguous lake, river, or stream.
- B. For the purposes of subsection A., a proposed use or development of a wetland shall be considered a single permit, application under this ordinance if the scope, extent, and purpose of a use or development are made known at the time of the application for the permit.

Within 60 days after receipt of the completed application and fee, the local unit may hold a hearing. Notice of the hearing shall be made in the manner required by state law. The local unit may approve or disapprove a permit application without a public hearing unless a person requests a hearing in writing within 20 days after the mailing of notification of the permit application as required by subsection (3), or the local unit determines that the permit application is of significant impact to warrant a public hearing.

- C. An applicant for a permit under this ordinance shall also be required to apply or and obtain a wetlands permit from the Michigan Department of Natural Resources.
- D. The local unit shall not issue a building permit for any purpose requiring a building permit until the applicant has obtained a wetlands permit pursuant to this ordinance, or until a determination is made by the local unit that a wetlands permit is not required.
- E. If a hearing is not held, the local unit shall approve or disapprove the permit application within 90 days after the completed permit application is filed with the local unit. If a hearing is held, the local unit shall approve or disapprove the permit application within 90 days after the conclusion of the hearing. The local unit may approve a permit application, request modifications in the application, or deny the permit application. If the local unit approves the permit application, the local unit shall prepare and send the permit to the applicant. If the local unit denies, or requests a modification of the permit application, the local unit shall send notice of the denial or modification request and the reasons for the denial or the modifications requested to the applicant. Local unit approval may include the issuance of a permit containing conditions necessary for compliance with this ordinance. If the local unit does not approve or disapprove the permit applications within the time provided by this subsection, the permit application shall be considered approved, and the local unit shall be considered to have made the determination required. The action taken by the local unit may be appealed. A property owner may, after exhaustion of administrative remedies, bring the appropriate legal action in a court of competent jurisdiction.

- F. A person who desires notification of pending permit applications may make a written request to the local unit accompanied by an annual fee of \$25.00 which shall be credited to the general fund of the local unit, the local unit shall prepare a bi-weekly list of the applications made during the previous 2 weeks and shall promptly mail copies of the list for the remainder of the calendar year to the persons who requested notice. The biweekly list shall state the name and address of each applicant, the location of the wetland in the proposed use or development including the size of both the proposed use or development and of the wetland affected, and a summary statement of the purpose of the use or development.

SECTION 5:

- A. A permit for an activity listed in Section 2 shall not be approved unless the local unit 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.
- B. In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the local, State and National concern for the protection of natural resources from pollution, impairment, and destruction. The following general criteria shall be considered:
- (1) The relative extent of the public and private need for the proposed activity.
 - (2) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
 - (3) The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.
 - (4) The probably impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
 - (5) The probable impact on recognized historic, cultural, scenic, ecological, or recreational values and on the public health or fish or wildlife.
 - (6) The size of the wetland being considered.

- (7) The amount of remaining wetland in the general area.
 - (8) Proximity to any waterway.
 - (9) Economic value, both public and private, of the proposed land change to the general area.
- C. In considering a permit application, the local unit shall give serious consideration to finding d of necessity for the proposed activity which have been made by state agencies.
- D. A 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 2 and Subsection B. shall be considered. A permit shall not be issued unless the applicant also shows either of the following:
- (1) The proposed activity is primarily dependent upon being located in the wetland.
 - (2) A feasible and prudent alternative does not exist.

SECTION 6:

- A. The local unit, after notice and opportunity for a public hearing, may issue general permits for a category of activities if the local unit determines that the activities are similar in nature, will cause only minimal adverse environmental effect is when performed separately, and will have only minimal cumulative adverse effect on the environment. A general permit issued under this subsection shall be based on the requirements of this ordinance and the rules promulgated under this ordinance, and shall set forth the requirements and standards which shall apply to an activity authorized by the general permit.
- B. The local unit may impose conditions on a permit for a use or development if the conditions are designed to remove an impairment to the wetland benefits, to mitigate the impact of a discharge of fill material, or to otherwise improve the water quality.
- C. The local unit may establish a reasonable time when the construction, development, or use is to be completed or terminated. A general permit shall not be valid for more than 5 years.

SECTION 7:

- A. A general permit may be revoked or modified if, after opportunity for a public hearing, the local unit determines that the activities authorized by the general permit have an adverse impact on the environment or the activities would be more appropriately authorized by an individual permit.
- B. A permit may be terminated or modified for cause, including:
 - (1) A violation of a condition of the permit.
 - (2) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts.
 - (3) A change in a condition that requires a temporary or permanent change in the activity.

SECTION 8:

- A. If, on the basis of information available to the local unit, the local unit finds that a person is in violation of this act or a condition set forth in a permit, the local unit shall issue an order requiring the person to comply with the prohibitions or conditions or the local unit shall bring a civil action under Section 9.
- B. An order issued under Subsection A. shall state with reasonable specificity the nature of the violation and shall specify a time for compliance, not to exceed 30 days, which the local unit determines is reasonable, taking into account the seriousness of the violation and good faith efforts to comply with applicable requirements.

SECTION 9:

- A. The local unit may commence a civil action for appropriate relief, including injunctive relief.
- B. A person who violates this ordinance is guilty of a misdemeanor, punishable by a fine of not more than \$500.00.
- C. A person who willfully or recklessly violates a condition or limitation in a permit issued by the local unit under this ordinance, or a corporate officer who has knowledge of or is responsible for a violation, is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 per day of violation, or by imprisonment for not more than 90 days, or both.

- D. In addition to the penalties provided under subsections A, B, and C, the court may order a person who violates this ordinance to restore as nearly as possible the wetland which was affected by the violation, to its original condition immediately before the violation. The restoration may include the removal of fill material deposited in the wetland or the replacement of soil, sand or minerals.

SECTION 10:

- A. If a permit is denied for a proposed wetland activity, the landowner may request a re-evaluation of the affected property for assessment purposes to determine its fair market value under the use restriction.

SECTION 11: Enforcement / Review.

- A. The local unit shall promulgate and enforce rules to implement this ordinance.
- B. If a person is aggrieved by any action or inaction of the local unit, the person may request a formal hearing on the matter involved.
- C. A determination, action, or inaction by the local unit following the hearing, shall be subject to judicial review.
- D. This Section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the State against any person when necessary to protect the wetland owner's rights.

SECTION 12: Record of Completed Inventories.

- A. As inventories of wetland are completed, the inventories shall be used as one of the criteria by the local unit in issuing permits. The inventories shall be periodically updated. The maps, ground surveys, and descriptions of wetlands included in the inventories shall be submitted to the county register of deeds and shall become a public document available to review by any member of the public.
- B. Aerial photographs and satellite telemetry data reproductions shall be made available to the county register of deeds for cost as determined by the local unit.

SECTION 13: Record of Preliminary Inventory.

- A. The local unit shall make or cause to be made a preliminary inventory of all wetlands in the local unit and file the inventory with the agricultural extension office, register of deeds and county clerk.

- B. At least two (2) hearings shall be held. The hearing shall be held by the local unit after publication and due notice so that interested parties may comment on the inventory. After the hearings, the local unit shall issue a final inventory which shall be sent and kept by the agricultural extension office, register of deeds and County Clerk.
- C. Before an inventory is made, interested persons may request the local unit to inspect property and the local unit shall make a written wetland determination. The determination shall be made within a reasonable time after the request. Completion of the inventory shall not delay implementation of this ordinance.

SECTION 14: Notification of Wetland Status.

- A. As wetland inventories are completed as specified in Section 14, owners of record as identified by the current property tax roll shall be notified of the possible change in the status of their property. Notification shall be printed on the next property tax bill mailed to property owners in the local unit. It shall contain information specifying that a wetland inventory has been completed and is on file with the agricultural extension official register of deeds and County Clerk and that the property owners may be subject to regulation under this Ordinance.

SECTION 15: Authority.

- A. This act shall not be construed to abrogate rights or authority otherwise provided by law.