

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

ORDINANCE NO. 04-_____

AMENDING THE KANE COUNTY STORMWATER ORDINANCE

WHEREAS, pursuant to 55 ILCS 5/5-1062, the Kane County Board adopted Resolution No. 97-07 establishing the Kane County Stormwater Committee (the “Committee”), for the purpose of preparing a comprehensive countywide stormwater management plan and ordinance; and

WHEREAS, the plan prepared by the Committee and its Technical Advisory Committee was adopted by the County Board as the Kane County Stormwater Management Plan by the passage of Ordinance No. 98-251 on October 13, 1998; and

WHEREAS, the ordinance prepared by the Committee and its Technical Advisory Committee was adopted by the County Board as the Kane County Stormwater Ordinance by the passage of Ordinance No. 00-312 on November 14, 2000; and

WHEREAS, the Committee has recommended to the County Board several amendments to the Stormwater Management Ordinance; and

WHEREAS, copies of the working drafts and final draft of the proposed amendments to the Stormwater Ordinance have continuously been distributed and made available to all of the municipalities within the County, all of the organizations representing the development and agricultural communities within the County, and the general public; and

WHEREAS, the Committee has considered all of the testimony, comments and written material submitted in connection with the proposed amendments to the Stormwater Ordinance and has incorporated them into the ordinance where appropriate; and

NOW, THEREFORE, BE IT ORDAINED BY THE Chairman and the Kane County Board as follows:

§ 1. Section 104(18) is deleted in its entirety.

§ 2. Section 104(32) is amended to read as follows:

(32) ***development*** means any manmade change to the land and includes—

(A) the construction, reconstruction, ~~repair~~, or replacement of a building or an addition to a building;

(B) the installation of utilities, construction of roads, bridges or similar projects;

(C) drilling and mining;

(D) the construction or erection of levees, walls, fences, dams, or culverts;

(E) channel modifications, filling, dredging, grading, excavating, paving, or other nonagricultural alterations of the ground surface;

(F) the storage of materials and the deposit of solid or liquid waste;

(G) the installation of a manufactured home on a site, the preparation of a site for a manufactured home, or the installation of a recreational vehicle on a site for more than 180 days;

(H) any wetland impact; and

(I) any other activity of man that might change the direction, height, or velocity of flood or surface water, including the extensive removal of vegetation;

development, however, does not include—

(J) maintenance and repair of existing buildings and/or ~~facilities such as re-roofing or resurfacing of roads where;~~

(K) repair or replacement of an existing parking lot outside the floodplain provided that no new impervious surfaces are added, there is no increase in peak flows, and there is no change in the location of the stormwater discharge;

(L) resurfacing of streets and highways outside the floodplain;

(M) resurfacing of publicly owned streets and highways within the floodplain provided the difference between the elevation of the road surface after resurfacing and the elevation of the road surface on the effective date is not more than two inches;

(N) for agricultural uses, maintenance of existing drainage systems for the limited purpose of maintaining cultivated areas and crop production; or

(O) for agricultural uses, improvements undertaken pursuant to a written NRCS conservation plan;

§ 3. Section 104(67) is deleted in its entirety.

§ 4. The following is added as Section 104(103):

(103) **redevelopment** means development on a developed site devoted to an existing urban land use the stormwater from which discharges into an existing stormwater facility either owned or

maintained by a unit of local government, or discharges directly onto a regulatory floodplain; redevelopment includes the widening of an existing street or highway owned by a unit of local government;

§ 5. The following is added as Section 104(107):

(107) **restrictive bridge or culvert** means a bridge or culvert that crosses a floodplain and cannot convey the base flood without causing increases in the upstream flood profile;

§ 6. The following is added as Section 104(126):

(126) **topsoil** means the uppermost part of the soil, ordinarily moved in tillage, or its equivalent in uncultivated soils;

§ 7. Section 104(134) is amended to read as follows:

(134) **wetland impact** means—

(A) the dredging or filling of any wetland having an FQI greater than 25; or

(B) the dredging or filling of any other wetland if—

(i) the effect would be that cumulatively, since the effective date, 0.25 acres (10,890 sq. ft.) or more of ~~such wetland~~the wetlands on the site ~~has~~have been ~~or is to be~~ dredged or filled, ~~taking into account all prior dredging or filling of such wetland;~~ and

(ii) such wetland is not then regulated by COE; or

(iii) such dredging or filling is not an approved impact under a conservation plan administered by any federal agency under the Food Security Act, as amended (16 U.S.C. § 3801, *et seq.*);

§ 8. Subparagraphs 1 through 138 of Section 104 are renumbered to accommodate the amendments to Section 104 made in §§ 1 through 7 of this ordinance.

§ 9. Section 200 is amended to read as follows:

§ 200. General information

(a) All developments shall meet the requirements of § 201, § 202 and Articles 3 and 6.

(b) Developments shall comply with § 203 if—

(1) two or more one or two family residences are to be constructed on a site three or more acres in size;

(2) a single-family attached dwelling, apartment or condominium, attached townhome or other multifamily residential building comprised of more than two units is to be constructed on a site ~~more than one acre~~ or more in size;

(3) any non-residential land use is to be ~~constructed~~ developed on a site ~~more than one acre in size;~~

~~_____~~ (4) ~~development~~ or more in size, unless such development consists solely of the installation, repair or replacement of the underground or overhead lines of a public utility within a public right-of-way.

~~_____~~ (4) redevelopment after the effective date of this ordinance on a site one acre or more in size devoted to an existing multifamily or nonresidential land use exceeds in the aggregate 25,000 square feet; ~~or~~

(5) road development after the effective date of this ordinance in rights-of-way under the ownership or control of a unit of local government exceeds in the aggregate one acre; or

(6) the repair or replacement of an existing parking lot or privately owned road within the floodplain results in any additional impervious surface, an increase in peak flows, a change in the location of the stormwater discharge, or an increase in the elevation of the parking or driving surface.

(c) The developer of a ~~commercial redevelopment or industrial redevelopment~~ may ask that a fee-in-lieu of site runoff storage be approved under Article 13 and that the requirements of § 203(g) be waived if—

(1) the drainage plan will not increase peak discharges from the site, nor change the existing ~~flood damage conveyance of offsite flow~~; and

(2) the drainage plan provides a net benefit in water quality compared to the existing development.

(d) The developer of a development consisting only of mass grading may ask that a fee-in-lieu of site runoff storage be approved under Article 13 if—

(1) there is no net increase in impervious surfaces;

(2) no structure is constructed, reconstructed or improved; and

(3) the quality of site runoff is improved.

§ 10. Section 203(g)(1) is amended to read as follows:

(g) (1) The runoff from a 0.75 inch rainfall event over the hydraulically connected impervious area of the new development shall be stored below the elevation of the primary gravity outlet (retention) of the site runoff storage facility. The facility may be designed to allow for evapotranspiration or infiltration of this volume into a subsurface drainage system and shall not be conveyed through a direct positive connection to downstream areas. Wherever the retention depth is less than 3 ft. the retention facility shall be constructed by over-excavating the required retention volume by 1 ft. and replacing such volume with 1 ft. of topsoil suitable for growing wetland plants. Topsoil used shall be generally free from non-native and noxious seed bank. Native wetland plantings shall be introduced and shall not be dominated by or contain cumulatively more than 25% cover of the following species: Buckthorn (*Rhamnus cathartica* or *frangula*), Reed Canary Grass (*Phalaris arundinacea*), Purple Loosestrife (*Lythrum salicaria*), or Giant Reed (*Phragmites australis*). Within six months of the completion of the development a qualified wetland review specialist retained by the developer shall verify compliance with this section in a report submitted to the Administrator.

§ 11. The following is added as Section 404(b)(6):

(6) The Administrator may require the use of a floodplain study not yet approved by IDNR-OWR and FEMA if its use would establish a higher BFE than the approved study. This provision may necessitate that different analyses be prepared for other agencies having permitting jurisdiction over the floodplain/floodway.

§ 12. The following is added as Section 405(g):

(g) Fences within the floodplain shall not impede the base flood.

§ 13. Section 413(c) is amended to read as follows:

~~(c) Lost regulatory floodplain storage must be replaced as required in § 410 except that artificially created storage lost due to a reduction in head loss behind an existing~~ A restrictive bridge or culvert crossing shall not be required to be replaced, provided no flood damage will be incurred downstream may be altered to increase the conveyance of the base flood if an impact analysis is completed and approved in writing by the Administrator and the Director and all other required regulatory approvals are obtained.

§ 14. Section 413(e) is amended to read as follows:

(e) For modification or replacement of existing structures in a regulatory floodway, the existing structure must first be evaluated in accordance with IDNR/OWR Rules (17 Ill. Adm. Code Part 3708) to determine if the existing structure is a source of flood damage. If the structure is a source of flood damage, the applicant's engineer shall justify allowing the damage to continue and evaluate the feasibility of relieving the structure's impact. Modifications to or replacement of structures, other than a restrictive bridge or culvert under § 413(c), shall not increase flood stages (0.0 feet) compared to the existing condition for all flood events up to and including the base flood event. The evaluation must be submitted to IDNR/OWR for review and approval before a permit is issued. The Director shall be copied on all related correspondence.

§ 15. Section 414(a) is amended to read as follows:

(a) Before any development in or near Waters of the U.S., or in or near isolated wetlands or farmed wetlands, a written report identifying and evaluating the boundaries, location, limits, area and quality of all onsite wetlands shall be submitted. The presence and limits of wetland areas shall be determined by a wetland delineation conducted in accordance with the 1987 Corps of Engineers Wetland Delineation Manual. Wetland delineations under this section shall be valid for three years. The presence of farmed wetlands shall be determined by NRCS.

§ 16. The following is added as Section 414(f):

(f) FQI assessments made before June 1 or after October 15 shall be considered to be preliminary. Buffer requirements based upon such assessments shall not be considered to be final unless maximum buffer widths are assumed.

§ 17. Section 418, Section 418(a)(3)(A)(i), Section 418(a)(3)(A)(iii) and Section 418(a)(3)(B)(i) are amended to read as follows:

§418. Buffer requirements

The requirements of this section are not applicable to ~~commercial or industrial~~ redevelopment projects on sites adjacent to the main channel of the Fox River. The requirements of this section are also not applicable to isolated wetlands or Waters of the U.S. that, in either case, are below the threshold size limitations for mitigation requirements under the COE § 404 permit program (currently, less than 0.25 acres).

* * * * *

(i) When the lineal Waters of the U.S. have a drainage area greater than 640 acres, measured at the downstream property line, or is designated as ADID because of high habitat biological value or an adjacent wetland has a calculated FQI greater than 16, the buffer shall be 50 feet.

* * * * *

(iii) If protective measures are installed along the perimeter of a buffer, the width may be reduced by up to 150% immediately adjacent to the protective measure. The reduction in width that may be applied due to installation of protective measures may not be applied where buffer width averaging has been used and the buffer would be more than 20% less than originally specified. Protective measures may consist of fencing, sediment basins, biological filter strips or other methods approved by the Administrator.

* * * * *

(i) If protective measures are installed along the perimeter of a buffer, the width may be reduced by up to 150% immediately adjacent to the protective measure. The reduction in width that may be applied due to installation of protective measures may not be applied where buffer width averaging has been used and the buffer would be more than 20% less than originally specified.

Protective measures may consist of fencing, sediment basins, biological filter strips or other methods approved by the Administrator.

§18. Section 500(a)(4) is amended to read as follows:

(a)(4) the development disturbs more than 5,000 square feet of ground or 250 cubic yards of soil, unless the development consists solely of—

(B) the installation, renovation or replacement of a septic system, potable water service line or other utility serving an existing structure;

~~(B) the excavation or removal of vegetation in rights-of-way or public utility easements for the purpose of installing or maintaining utilities not including storm sewers;~~

(C) the maintenance, repair or at grade replacement of existing lawn areas not otherwise requiring a stormwater permit under this ordinance;

(D) the maintenance of an existing stormwater facility, not requiring other state or federal permits or approvals.

§ 19. Section 502 is amended to read as follows:

§ 502. Required submittals

(a) Refer to Table 502 for the submittals required to accompany the permit application based upon

Table 502 - Permit submittal requirements

Type of Development	Required Submittals (refer to sections noted for specific requirements)								
	Section No./Description								
	503 Application and Project Overview	504 Plan Set Submittal	505 Stormwater Submittal	506 Floodplain Submittal	507 Wetland Submittal	508 Performance Security	509 Maintenance Schedule and Funding	510 Record Drawings	Art 15 Wetland Impacts & Mitigation
All requiring a permit	X	X				X	X	X	
All on sites with floodplain	X	X		X		X	X	X	
All on sites with or adjacent to waters of the United States	X	X			X	X	X	X	
All applications for variances	X	X	X	If on site	If on site	X	X	X	
All requiring site runoff storage	X	X	X			X	X	X	
All on sites having a wetland impact					X				X

the type of development. The Administrator may, in his or her discretion, modify the submittal requirements on a case by case basis considering the size, complexity and likelihood that a development will affect the discharge of stormwater. Such modifications shall be requested and approved in writing. The Administrator's response shall note the relevant findings and be specific as to what submittal requirements are changed. The Director shall be copied on all related correspondence. The Administrator may not modify submittal requirements for any aspect of the development requiring state or federal permits or approvals, nor for any application in which any variance is requested. The Director shall receive a copy of any wetland submittal under § 507 whether or not the County is the permitting authority.

§ 20. The following is added as Section 503(a)(7) and the remainder of Section 503 is renumbered accordingly:

(7) A statement of opinion by a Qualified Wetlands Review Specialist as to the presence of wetlands on or near the site. This requirement may be waived if the Qualified Engineer Review Specialist determines in writing that it is obvious from the nature of the development or redevelopment that wetlands cannot be located on or near the site;

§ 21. Section 504(b)(10) is amended to read as follows:

(10) existing Waters of the U.S. including wetlands, a certified wetland determination obtained from NRCS if the development occurs on agricultural land wetlands and aquatic resources identified in ADID, and required buffers;

§ 22. Section 507(a) is amended to read as follows:

(a) The applicant shall obtain a permit for all federally regulated activities involving Waters of the U.S. from the appropriate federal authorities. The applicant shall obtain a permit from the the County (or community certified under this ordinance to administer Article 15), for all developments having a wetland impact. The applicant shall indicate on the plan set the location of any onsite wetland mitigation required by a COE permit and, in narrative form, the location of all onsite ~~onsite~~ mitigation.

§ 23. Section 600 is amended to read as follows:

§ 600. Long-term maintenance

~~Unless maintenance responsibility has been delegated to and accepted by another person under this section, t~~The owner shall maintain that portion of a stormwater drainage system, including any special management areas, located upon his land. With the approval of the Administrator the stormwater drainage system and special management areas, or specified portions thereof, may be—

(a) dedicated or otherwise transferred to and accepted by the permitting authority or other public entity; or

(b) conveyed or otherwise transferred to and accepted by a homeowner's association, or similar entity, the members of which are to be the owners of all of the lots or parcels comprising the development; or

(c) conveyed to one or more persons or in one or more undivided interests to one or more persons.

Except for those portions of the stormwater drainage system and special management areas to be dedicated or otherwise transferred to the permitting authority or other public entity, included in the application for a stormwater permit shall be a plan for the long term management, operation and maintenance of the stormwater drainage system and special management areas and a description of the sources of funding therefor. Amendments to the plan must be approved by the Administrator.

§ 24. Section 602 is amended to read as follows:

§ 602. Transfer to homeowner's or similar association

If any portion of the stormwater drainage system or special management areas are to be conveyed or otherwise transferred to a homeowner's or similar association under § 600(b) then—

(a) appropriate easements for ingress and egress to and maintenance of such portions shall be reserved for the benefit of such association and the permitting authority on the final plat;

(b) the final plat shall contain a legend imposing the maintenance obligations of this section upon the association and its successors in interest as a covenant running with the land and incorporating by reference the plan of long term maintenance set forth in the application for a stormwater management permit, with approved amendments;

(c) the final plat shall contain a legend reserving the right of the permitting authority to enter upon the land to perform the maintenance required in this section if the association does not do so and to place a lien against the land for the cost thereof;

(d) the association shall be duly incorporated and a copy of the Certificate of Incorporation, duly recorded, and bylaws, and any amendment to either of them, shall be delivered to the Administrator;

(e) the bylaws of the association shall, at a minimum, contain—

(1) a provision acknowledging and accepting the association's obligation to maintain those portions of the stormwater drainage system and special management areas conveyed or otherwise transferred to it under this ordinance;

(2) a mechanism for imposing an assessment upon the owners of all of the lots or parcels comprising the development sufficient, at a minimum, to provide for the maintenance of those portions of the stormwater drainage system and special management areas conveyed or otherwise transferred to it under this ordinance; and the payment of all taxes levied thereon;

(3) a provision adopting the plan of long term maintenance set forth in the application for a stormwater management permit, with approved amendments;

(4) a provision identifying the officer of the association responsible for carrying out the obligations imposed upon the association under this ordinance;

(5) a provision requiring the consent of the permitting authority to any amendment of the bylaws changing any of the provisions of the bylaws required by this ordinance; and

(6) a provision requiring the consent of the permitting authority to the dissolution of the association; and

(f) any conveyance or other instrument of transfer delivered under § 600(b) shall include a covenant affirmatively imposing upon the association the obligations set forth in this section and the association's affirmative acceptance thereof.

§ 25. Section 604 is amended to read as follows:

§ 604. Incorporation of maintenance obligations in stormwater management permit

The provisions of this Article section shall be incorporated by reference in the stormwater management permit and the applicant's acceptance of the permit shall be deemed to be the applicant's acceptance and assumption of the obligations imposed under this Article section. At the option of the Administrator, the stormwater management permit may be recorded.

§ 26. Section 605 is amended to read as follows:

§ 605. Funding of long-term maintenance of stormwater facilities

Unless (a) a public entity has accepted primary maintenance responsibility for the stormwater drainage system and special management areas to be constructed, installed or preserved under the permit, or (b) a public entity has agreed and so states in the permit, to accept maintenance responsibility in the event the person designated by the applicant as having primary maintenance responsibility fails to adequately carry out its duties, the Administrator will require, as a condition of approving of any application for a stormwater management permit, the establishment of a special service area pursuant to 35 ILCS 200/27-5, et seq, either as the primary means of providing for the long term maintenance of the facilities, or as a backup vehicle in the event the person designated by the applicant as having primary maintenance responsibility fails to adequately carry out its duties. If the establishment of a special service area is required, the Administrator shall make a good faith estimate of the tax rate required to produce a tax to be levied upon all taxable property within the area, sufficient for the long term maintenance of the facilities and submit the same to the permitting authority which shall incorporate such rate into its enactment of the ordinances necessary for the establishment of the area. The ordinances to be enacted by the permitting authority shall be substantially in the form set forth in Appendix D. On or before August 1 of each year thereafter, the Administrator shall submit to the permitting authority a good faith estimate of the amount of tax required to be levied upon all taxable

property within the area for the next fiscal year for the continued maintenance of the stormwater drainage system.

§ 27. Section 702(b) is amended to read as follows:

(b) Whenever the Administrator or Director, as the case may be, determines that a permit violation exists, he shall serve notice of the violation in the manner prescribed in § 1006 ~~to~~ on the permittee. Such notice shall state the nature of the violation and fix a date not less than 10 days after the date of the notice ~~when the site will be reinspected by which the violation shall be corrected and the site reinspected,~~ except in the case of a violation of Article 3, in which case the notice may require the correction of the violation and reinspection of the site within as little as two days.

§ 28. Section 703 is amended to read as follows:

§ 703. Offenses - penalties; remedies

(a) ~~A~~ The Administrator or Director may pursue any one or more of the following remedies against any person found by him or her to be guilty of an offense under this ordinance shall pay:

(1) The Administrator or Director may impose a civil fine upon such person in an amount not less than \$25 and not more than \$750. Each calendar day during which such violation continues to exist shall constitute a separate offense.

~~(2) In addition to any fine imposed under this section, t~~ The Administrator or the Director may revoke any stormwater management permit issued to such person.

~~(3) In addition to any fine imposed or permit revocation undertaken pursuant to this section, t~~ The Administrator or the Director may issue an order requiring the suspension of any further work on the site. Such stop-work order shall be in writing, shall indicate the reason for its issuance, and shall specify the action, if any, required to be taken in order to resume work. One copy of the stop-work order shall be posted on the site in a conspicuous place and one copy shall be served in the manner prescribed in § 1006 upon the permittee, if any, or if none, upon the person in whose name the site was last assessed for taxes as disclosed by the records of the Supervisor of Assessments.

~~(4) In addition to any fine imposed under this section, t~~ The Administrator or the Director may require that the area impacted be fully restored to its condition existing prior to such development, disturbance or impact. In the case of a wetland impact the area's pre-existing condition shall be determined by reference to a creditable wetland assessment performed within two years of such impact.

(5) The Administrator or Director may recover all costs and expenses, including reasonable attorney fees, incurred in the enforcement of this ordinance.

~~—~~ (e) In the enforcement of this ordinance require the person to apply “after the fact” for the appropriate permit for an unpermitted development, disturbance or impact. In the case of a wetland

impact the FOI of the wetland impacted shall be determined by the Director and mitigation shall be provided accordingly.

(b) In order to enforce any of the remedies set forth in the preceding paragraph, the Administrator or the Director may bring any action, legal or equitable, including an action for injunctive relief, as they deemed necessary. In any such action, in addition to any fine or other relief, the Administrator or the Director may recover all costs and expenses, including reasonable attorney fees, incurred.

§ 29. Section 1002(c) is amended to read as follows:

(c) use qualified engineer review specialists and qualified wetland review specialists for the review of permit applications and consider their recommendations in granting or denying any permit under this ordinance, unless the review of the developer's qualified wetland review specialist indicates that there are no wetlands on site in which case the Administrator may rely upon that review without having it independently verified;

§ 30. Section 1100 is amended to read as follows:

(a) The County shall enforce all of the provisions of this ordinance within (1) the unincorporated areas of the County, (2) within the limits of any County highway, County right-of-way or any highway or right-of-way upon which the County is constructing or causing to be constructed a highway improvement or appurtenance, (3) in connection with the development of any site owned by the County, (4) within any portion of an uncertified community that lies within the County, and (5) ; pursuant to intergovernmental agreement, within any portion of an uncertified community that lies outside the County. For the purposes of this section the terms "highway" and "right-of-way" shall have the meanings ascribed to them under the Illinois Highway Code (605 ILCS 5/1-101 et seq.).

(b) Unless such community has been certified under this Article to administer Article 15 before January 1, 2006, the County shall enforce the provisions of Article 15 within that portion of any certified community that lies within the County and, pursuant to intergovernmental agreement, within that portion of any certified community that lies outside the County.

(c) A community certified under this Article shall enforce all of the provisions of this ordinance within the community for which it has received certification.

§ 31. Section 1102(g) is deleted in its entirety.

§ 32. Section 1200(a) is amended to read as follows:

(a) To secure the performance of the developer's obligation to complete the construction of the stormwater facilities required by the stormwater management permit, and to pay all costs, fees and charges due under this ordinance, and to fully and faithfully comply with all of the provisions of this ordinance, the applicant shall, prior to the issuance of a stormwater management permit—

(1) post the security provided in § 1201; and

(2) post the security provided in § 1202 if an erosion and sediment control plan is required under this ordinance; and

(3) post the security provided in § 1203 if mitigation for a wetland impact is required under this ordinance and the applicant chooses to mitigate within a wetland mitigation facility.

§ 33. Section 1301(c) is amended to read as follows:

(c) Fees paid in lieu of site runoff storage may be expended to plan, design, construct or improve stormwater management systems. A preference will be given to projects within the watershed in which the development for which they were paid was located if such expenditure is consistent with a watershed or interim watershed plan or floodplain study. fee was paid.

§ 34. Section 1503(b) is amended to read as follows:

(b) Wetland impacts upon wetlands with an FQI of less than 7 shall be mitigated at a ratio of 1:1. The applicant may request permission to mitigate within the site runoff storage facility area. The applicant may earn wetland credits by enhancing preserved wetlands with an FQI of 5 or less at the ratio of one-quarter wetland credit per one acre of wetland enhanced. If this option is chosen the entire wetland shall be enhanced even if credit in excess of that required for the development is generated. The enhanced wetland shall meet the performance standards of § 1506. For purposes of this section, a farmed wetland is assumed to have an FQI less than 7.

§ 35. The following is added as Section 1503(h):

(h) FQI assessments made before June 1 or after October 15 shall be considered to be preliminary. Mitigation requirements based upon such preliminary assessments shall not be considered to be final unless an FQI of 16 is assumed or the Director (or Administrator in a community certified to administer Article 15), accepts such security as he shall deem appropriate to ensure that the required mitigation will be achieved.

§ 36. The following is added as Section 1503(i):

(i) The applicant may propose an alternative mitigation plan combining wetland creation, purchase of credits from a wetland mitigation bank, payment of a fee-in-lieu of wetland mitigation, and/or enhancing existing wetlands either onsite or offsite. The Director (or Administrator in a community certified to administer Article 15), shall determine if a proposed alternative mitigation plan meets the requirements of this section and his or her decision shall be final.

§ 37. Section 1506(d) is amended to read as follows:

(d) A wetland mitigation facility shall not be dominated or contain cumulatively more than 25% cover of the following species: Buckthorn (*Rhamnus* cathartica ~~cathertica~~ or *frangula*), Reed-Canary

Grass (~~*Phalaris*~~ *Phalaris arundinacea*), Purple Loosestrife (*Lythrum salicaria*), or Giant Reed (*Phragmites australis australis*).

Passed by the Kane County Board this _____ day of _____, 2004.

Chairman, Kane County Board

County Clerk