

**Policies and Procedures Governing
Easements and Licenses and
Non-Park Uses of
Midland County Parks and Recreation
Commission Property**



SECTION I

BACKGROUND STATEMENT

REGARDING JUSTIFICATION AND NEED FOR

POLICIES AND PROCEDURES GOVERNING

EASEMENTS AND LICENSES AND

NON-PARK USES OF MIDLAND COUNTY PARKS AND RECREATION

COMMISSION PROPERTY *

The Midland County Parks and Recreation Commission has experienced numerous requests, both public and private, to use County Park property for a wide variety of non-park uses and projects would adversely impact the park, the park users and the Commission.

Many of the non-park projects are necessary if not essential for the proper and orderly development and expansion of Midland and Isabella County area and of the lands adjoining County Park properties. Accordingly, the Parks and Recreation Commission is compelled to cooperate with and accommodate many of the agencies, corporations and individuals with respect to their needs.

However, left unchecked, these non-park uses and activities threaten the integrity of County Parks and the underlying property rights. These uses and activities tend to diminish the usefulness of the park property for regional park and recreational purposes, patrons, decrease the monetary value of the park property, and limit the Commission's choices with respect to future decisions about use of the property.

In addition, these non-park uses and activities threaten the Commission's ability to adequately maintain the affected park lands and facilities and to protect park patrons against safety and potential health hazards associated with some of the projects.

As a result, the Commission has established a licensing program under which it can regulate and control non-park uses and activities.

The purpose of this Manual is to state, the Commission's policies and procedures governing non-park uses of Midland County Parks and Recreation property and the granting of licenses and easements permitting those uses.

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The overall function of the licensing program and these underlying policies and procedures is to protect the integrity of the County Parks and Recreation areas and to preserve the land and other resources of the Commission which have been acquired and earmarked for County park purposes. Among other things, this manual and the policies and procedures contained therein will serve to:

- discourage unnecessary encroachments
- control activities of licensees,
- minimize inconvenience to park patrons,
- lessen damage to park land and facilities,
- place legal liability with licensees,
- establish and define standards for construction and restoration,
- enable the Commission to recover its administrative costs,
- enable the Commission to receive appropriate compensation for use of park property and for corresponding damages,
- allow for the fair and uniform administration of the licensing program, and
- inform prospective licensees, and the public in general, of the expectations and intentions of the Commission with respect to non-park uses and activities.

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POLICY ON EASEMENTS AND LICENSES FOR PARK LANDS

WHEREAS, the Midland County Parks and Recreation Commission has stewardship of land and other resources that belong to and serve the needs of the people of Midland County as well as many visitors from outside the County, such resources being acquired and developed for regional park purposes, and

WHEREAS, the Commission is acquiring land and water, and interests in the same, to improve park and open space opportunities and to enhance the environment of Midland County, and

WHEREAS, the Commission from time to time receives requests from public and private agencies and individuals for granting of permits, leases, easements, licenses or other authorizations to allow various uses in park lands, hereinafter referred to as “non-park uses”, and

WHEREAS, it is the desire and policy of the Commission to grant such non-park uses only when the best interest of the Commission and its public would be served.

NOW, THEREFORE, the Midland County Parks and Recreation Commission hereby adopts the following general statements of policy to guide the granting of non-park uses:

1. **Presumption of Best Use** – Park lands are acquired for their best and most necessary use and benefit, thus, those requesting other uses shall assume the burden of proof respecting the needs for such other uses. Unless otherwise specifically determined and approved by the Commission, park and related recreational uses shall be deemed to be the paramount uses of all Midland County Parks and Recreation Commission holdings.
2. **Incompatible Uses** – The Commission shall deny non-park uses which, in its sole opinion, would adversely affect its park lands and uses.
3. **Policy Subject to Outstanding Rights** – Any non-park uses granted shall be considered subject to pre-existing rights and interests held by others, including but not limited to the Federal Government and the State of Michigan as a result of grant assistance. When required, the Commission shall obtain federal and state government approval prior to the granting of non-park uses. To the greatest extent practicable, the Commission will give priority to existing licensees and other users provided this policy shall not serve to create new or additional rights or privileges running to the benefit of those existing licensees and other users.
4. **Policy Subject to Prior Commitments** – This policy shall not serve to terminate legally existing non-park uses or to invalidate prior commitments to allow non-park uses but shall take effect with respect to any renewals following the expiration of legally existing

uses or commitments. Further, the Commission reserves the right to apply its policies, procedures and regulations to existing non-park uses at the earliest renewal or negotiation of an agreement.

5. **Exceptions for Park and Recreation Commission Needs** – While the Commission will endeavor to follow these policies in all cases, it shall not be obligated to follow all of the conditions stated herein when easements or other out-conveyances are required in order to obtain utility services or roadways to serve County park needs.
6. **Uniformity in Administration** – These policies shall be administered as uniformly as possible with respect to all non-park uses of similar nature, whether requested by public, quasi-public or private agencies or individuals. Notwithstanding this principle, the Commission may waive or relax certain fees, formalities or procedures as it deems appropriate and in the best public interest, provided it would do so under equivalent circumstances for all other users. In addition, the Commission may establish appropriate reciprocity agreements with other public bodies with whom the Commission deals on a regular basis. Further, the Commission may establish special or streamlined permitting procedures for dealing with multiple facility users such as utility companies.
7. **Minimum Rights** – Non-park rights and uses granted shall be the minimum necessary to reasonably accomplish the objectives of any particular request.
8. **Minimum Term** – The term of licenses, permits, easements and other approvals shall be the minimum necessary to satisfy the needs of the requesting party. It shall not exceed the facility life of any structure, inclusive of maintenance.
9. **Granting of Interest in Land** – The granting of easements or other actual interests in County park land shall be discouraged but may be approved when deemed appropriate by the Commission. Generally, the Commission will not convey title to or easement rights in County park property. In most instances, it will grant revocable licenses or permits for a specified period of time. In any event, if federal or state grant funds were used in the acquisition and/or development of a given park project, no interest in the property can or will be granted without appropriate approvals under “conversion of use” regulations; except, however, that easements to improve and maintain storm drainage facilities maybe granted without such approvals provided the facilities would not have a significant adverse effect on the park, open space and recreation uses for which grant funds were received, and provided the proposed easement-holder assumes full responsibility for maintaining the storm drainage facilities on park property.
10. **Third Party Interests** – Non-park interests, rights and uses in park lands shall not be vested in third parties, i.e., assigned by the grantees. This policy shall not restrict the Commission from granting permits or other rights which, upon the satisfaction of certain requirements, automatically transfer to consenting third parties (such as public body operators of utilities).

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11. **Compensation** – The granting of non-park rights and uses in park land shall not be made without just compensation based on the fair market value of such rights or uses. The Commission reserves the right to negotiate to obtain from non-park users proffers or other alternative direct benefits in lieu of cash consideration. The Commission may establish such categories for compensation as it from time to time any deem appropriate. Such categories may include, without limitation, use fees which represents compensation for use and occupancy of the land, and administration fees which reflect the cost to the Commission’s out of pocket expenses for outside consulting services such as surveys, appraisals, legal fees, recordation fees, and engineering. In computing compensation, the Commission shall consider, among other things, diminished value and usefulness for park purposes; damages to park property; disruption and inconvenience to the Commission and park users; liquidated damages resulting from encroachment or noncompliance with permit requirements; as well as any coincidental enhancements to the value of park land which results from the granting of non-park uses. It shall be the policy of the Commission to recover 100% of the costs of administering non-park uses, and to preserve the total value of Commission assets. The Commission shall establish and from time to time may amend a set of procedures, schedules or methods for determining applicable compensation.
12. **Liability Requirements** – To the extent legally permitted, easements, licenses or other instruments granting non park interests or uses in County park lands shall contain “hold harmless” clauses stipulating that the grantee will assume all liability with respect to damages and injuries resulting from the interest or use granted by the Commission. When appropriate, the Commission may require that the grantee maintain liability insurance to support the hold harmless requirement.
13. **Bonding** – Easements, licenses or other instruments granting non-park interests or uses in park lands shall contain, where appropriate, requirements that the grantees provide assurances satisfactory to the Commission for the timely and proper completion of any work to be performed on parkland. Assurances under this policy may be in the form of cash bonds, surety bonds, corporate bonds, letters of credit or other means acceptable to the Commission. The Commission shall establish and from time to time may amend procedures, criteria and standards for the determining surety requirements.
14. **Reversionary Clause** – Easements or other instruments which convey an interest in park property shall contain reversionary clauses which provide that rights or interests granted shall revert to the Commission in event of abandonment or termination of use by the grantee.
15. **Roads and Surface Utilities** – Except as required for County park purposes, no highways, streets, roads or above ground utilities, including but not limited to overhead electric transmission lines, shall be approved through park property unless: (1) it is proven to the Commission that there is an absolute need for the road or surface utility, and (2) it is established and proven to the Commission that there is no feasible and prudent alternative to the use of park land for such road or surface utility, and (3) it is

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proven to the Commission that all possible planning has been carried out to minimize adverse and harmful effects to park land which would result from such roads or surface utilities. In no event shall any road be established or widened within park property unless it satisfies the following additional minimum criteria: In the sole judgment of the Commission, the prevailing circumstances demonstrate that the Commission would gain substantial benefits outweighing all adverse impacts which would result from the road project; or it is a public roadway shown on the comprehensive transportation plan of the jurisdiction and is an essential component of the planned road network required for the orderly development of the region or locality (as opposed to the development or enhancement of one or a limited number of properties); or, in the case of a proposed private road, there exists in the sole judgment of the Commission an overwhelming need for access through park property arising from a compelling claim of “right by necessity” or “right by prior use”; and, in all cases involving the Commission’s Linear Park, a grade separated crossing suitable to the Commission is established by the sponsor of the road project at no cost to the Commission. In addition, at its sole discretion, the Commission may grant approvals for new or improved road projects in “exchange” for the elimination or substantial upgrading of existing road projects, provided the net result for the Commission is an overall gain in park function or usefulness. The Commission shall establish and from time to time may amend administrative procedures, standards, criteria and guidelines for the implementation of these policies.

16. **Maintenance Requirements** – Instruments granting non-park rights and uses in park land shall require the grantee or its assigns, as approved by the Commission, to provide adequate maintenance of land or any structures during the life and use of same. In the event the Commission determines that it is impracticable for a grantee or its approved assign to maintain a facility or to ensure said maintenance over a long period of time, the Commission may require and accept from the grantee an appropriate maintenance/replacement fund which the Commission shall place in escrow to cover future maintenance or replacement costs it may incur.
17. **Restriction on Expansion or Reconstruction** – Instruments granting non-park rights and uses in park land shall not allow the expansion, upgrading or reconstruction of structures, improvements of facilities without the written approval of the Commission, which written approval may constitute separate or additional permits or licenses. The Commission reserves the right to determine if a new license or permit is necessary.
18. **Restoration of Surface** – Instruments granting non-park rights and uses in park lands which involve land-disturbing activities shall contain provisions that the Commission reserves the right to prescribe the final grade or conditions thereof to be established following any construction activities. The Commission shall establish and from time to time may amend standards, criteria and procedures for restoration of disturbed park lands and improvements.
19. **Removal of Structures** – When easements or other instruments granting non-park rights and uses in park lands allow the installation of structures, such instruments shall provide

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that, at the discretion of the Commission, the structures must be removed by the grantee upon the termination of use of the facility or the expiration of the easement or license, whichever time comes first.

20. **Locations of Utility Crossings** – Generally, and utility which crosses park lands shall do so at a location where the most direct route across the park occurs or, otherwise, where the minimum adverse impact is sustained. The Commission reserves the right to require crossings at locations where the maximum benefit could be attained by the Commission. Generally, the Commission prefers that utilities be placed within or adjacent to road rights-of-way or adjacent to other utility crossings. Generally compensation will be reduced to reflect the fact that utilities share rights-of-way with established roads or other utilities, or otherwise occur in areas of limited usefulness to the Commission. In the case of the Linear Park, linear runs shall be permitted in substantial effect on the value and usefulness of the property. The Commission shall establish and from time to time may amend standards, guidelines, valuation methods and administrative procedures for implementation of this policy.
21. **Application** – A request for non-park uses in park land shall be considered only after the requesting party has submitted satisfactory information which would allow the Commission to determine the extent and impact of the use requested. The Commission shall establish and from time to time may amend standards, criteria, guidelines, procedures and forms for receiving, reviewing and acting on applications for non—park uses of park property. Said standards, criteria, guidelines, procedures and forms may vary for differing uses or activities. The Commission may return, without action, any incomplete or deficient application and in so doing may retain that portion of administration fees intended for the review phase of the permitting process; provided the Commission will inform the Applicant of the general nature of deficiencies. In such event, any subsequent submission of the project will be considered a new and separate application.
22. **Recordation of Documents** – When considered appropriate by the Parks and Recreation Commission, easements, leases, licenses, and other instruments granting non-park uses shall be recorded in appropriate land records.
23. **Administration of Easements and Licenses Program** – The Parks and Recreation Director or his/her designated representative, shall have the day-to-day responsibility and authority to administer this policy and the related procedures covering licenses and easements. The Parks and Recreation Director shall be authorized and directed to develop all standards, criteria, guidelines, procedures and forms as may be required pursuant to these policies; and shall submit those items to the Licenses and Easements Committee which shall have the prerogative to amend or modify any items at its discretion. The Parks and Recreation Director, in conjunction with the Controller/Administrator, legal counsel, real estate consultant and others, shall be authorized to develop such fee schedules, valuation methods and other compensation proposals as may be prerequisite pursuant to these policies provided such items shall be

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subject to the approval of Parks and Recreation Commission except that the Parks and Recreation Director is authorized to implement any such item as deemed necessary on an interim basis pending action by the Commission. The Parks and Recreation Director is authorized to grant licenses or permits consistent with these policies and related standards, criteria, guidelines, procedures, fee schedules and valuation methods; and may delegate to the Parks Manager or other staff member reasonable responsibility and authority to issue routine licenses and permits; provided, however, that for any proposed license involving the installation of permanent facilities or structures, or involving a license term exceeding one year, or involving administration/use fees exceeding \$2,500, the Parks and Recreation Director will give Commission written notice of his/her intention to issue the license, and if any Commission member objects to the proposal or desires that it be considered as a Commission matter, the Parks and Recreation Director will suspend the issuance of the license pending consideration of the matter by the entire Commission. In addition, the Parks and Recreation Director is authorized to enter into negotiations on behalf of the Parks and Recreation Commission regarding the general administration of the licensing program.

24. **Easements and Licenses Committee** – The President of the Parks and Recreation Commission shall establish and appoint a Standing Committee of no less than three members one of who shall be the representative of the Planning Commission to be called the Licenses and Easements Committee which shall oversee the development and administration of licenses and easements policies, procedures, compensation plans and related activities of licenses and easements program. The Licenses and Easements Committee shall consider all proposals for policy amendments, conveyances of easements (except those required for providing utilities to serve park facilities, which may be approved by the President), compensation proposals and permit requests beyond the scope of established policies and procedures; and shall prepare recommendations thereon for consideration and action by the entire Commission.
25. **No Exceptions to be Made** – No exceptions to these policies shall be made without approval of a majority of the membership of the entire Parks and Recreation Commission.
26. **Notification to Interested Agencies** – Copies of this policy shall be furnished to all appropriate agencies of the State of Michigan, including the Department of Natural Resources and The Michigan Department of Transportation; official local, areawide and state planning bodies; and other agencies or organizations which might be interested in or affected by this policy.
27. **Construction** – To the greatest extent practicable, construction of non-park improvements on park property shall be carried out using any specialized methods, techniques, equipment and other appropriate means necessary to ensure the least possible impact on park lands, facilities or users. With respect to the Linear Park, it shall be the policy of the Commission that utilities across the trails shall be installed by means of boring or tunneling to prevent damage to the trail surfaces and to minimize inconvenience to trail users.

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SECTION III

PROCEDURES FOR ADMINISTERING EASEMENT AND LICENSE APPLICATIONS AND APPROVED PERMITS

Pre-Application – Generally, an application for a permit or easement is initiated by a letter or telephone call to the Parks and Recreation Commissions office. Such communications are referred to the Parks and Recreation Director who has day-to-day responsibility for administering the permits program. Upon receipt of such a request, the Director will provide the Applicant necessary application forms, fee schedules or requirements, and other information to assist the applicant in preparing a complete application. Generally the director will respond to pre-application inquires within five business days.

Application – The Applicant shall submit a written and signed application in a form approved by the Commission. The application shall contain such supporting plans, documents, assurances, fees and other material as required by established policies and procedures.

Upon receipt of an application, the Director will review and evaluate the application to determine whether all application requirements are satisfied and acknowledge receipt of the application or request such additional material, documentation or fees as may be required. In the event the required administration fee was not submitted with the application, the Director will advise the Applicant of the required amount to be deposited with the Commission. The goal for responding to applicants is ten business days. Note: It is recognized that application refinements or additional documentation, material or fees may be required at any time during the application review and permit preparation process. (See Policy 21.)

Review – Upon receipt of a completed application, including estimated administration fees, the Director will review all aspects of the application to determine whether the proposed project complies with established policies and standards of the Commission, to develop recommendations for changes in the project such that it would better satisfy the standards of the Commission, the develop recommendations as to compensation pursuant to established compensation methods, and to develop recommendations for approval, denial or conditional approval of the application. Generally, the review stage will involve a review and comments by the Parks Manager and/or staff members. The Director and/or other appropriate staff persons may visit the site and make such other inquiries as they deem appropriate. In addition, the review stage may include meetings with or review by outside engineers or other consultants for the Commission, as required to ensure that the necessary level of expertise is given to the review. Further, the review stage may involve one or more communications or meetings with the Applicant or Applicant's representatives to clarify or discuss modifications to the project. The goal for completing reviews for routine projects is thirty business days. Proposed road projects and other complex projects may require substantially more time.

Approval/Denial – Upon completion of the review stage the Director of Parks and Recreation may approve (with or without special conditions) or deny the application, or may refer it to the Easements and Licenses Committee or the Commission provided; however, that for any proposed license involving the installation of permanent facilities or structures, or involving a license term exceeding one year, or involving administration use fees exceeding \$2,500, the Director will give the Board written notice of his/her intention to issue the license, and if any Commission member objects to the proposal or desires that it be considered as a Commission matter, the Director will suspend the issuance of the license pending consideration of the matter by the entire Commission. In the case of projects beyond the scope of established policies and of those requiring conveyance of easements or other interests in park land, such projects shall be referred to the Easements and Licenses Committee. The Director may delegate to the Parks Manager or other appropriate staff person the authority to approve routine, short-term permits for access, test holes, surveying and similar activities. The goal for staff action on an application after completion of the review is fifteen businesses days; ten for projects not requiring Board notification.

Matters referred to the Easements and Licenses Committee or Commission will be acted upon as soon as practicable, given the Committee's and Commission's meeting schedule and the possible need for further submissions by the Applicant for further review as may be requested by the Committee or Commission. The usual turn-around time for matters referred to the Committee or Commission is approximately sixty days.

Upon approval, conditional approval or denial of an application, the Director will promptly notify the Applicant of such action and of the next steps in the licensing process.

Satisfaction of Prerequisites – Certain approved projects may require satisfaction of specified conditions prior to issuance of a permit. Examples of such prerequisites are:

- Applicant's payment of administration and use fees;
- Applicant's securing of bonds or other assurances;
- Applicant's preparation of permit exhibits;
- Applicant's securing Parks and Recreation Director's approval of construction plans;
- Applicant's modifications of project plans; and
- Applicant's or Commission's obtaining of approvals by other interested parties.

The Commission staff will diligently pursue necessary steps to satisfy any requirements which are the responsibility of the Commission, and will cooperate with the Applicant with respect to the satisfaction of conditions which are the responsibility of the Applicant.

Issuance of Permits – Upon notice to an Applicant of the Commission's approval of a permit, and the Applicant's acceptance of the terms and conditions and payment of applicable administration or permit preparation fees, the Director of Parks and Recreation shall prepare or cause to be prepared a written license agreement. Upon satisfaction of all required prerequisites for issuance of the permit, the Director will submit the proposed license agreement to the Applicant for acceptance and execution. Upon receipt of the License agreement executed on behalf of the Applicant and any third-party signees, and upon receipt of use fees, bonds and all

other outstanding requirements, the President of the Commission will execute the permit on behalf of the Commission and return a fully executed copy to the Applicant. The goal for preparation of a standard license agreement is ten business days; for returning an agreement signed by the Applicant – five business days.

Project Implementation – Upon issuance of the license, the Director of Parks and Recreation, the Parks Manager, and/or other appropriate staff persons shall conduct site inspections and otherwise monitor the Licensee’s activities on park property to ensure that all use, occupancy, construction, mitigating, measures, safety precautions, restoration, operations, maintenance and other work or actions are in compliance with the license agreement and applicable policies, standards, guidelines and procedures of the Commission. When deemed necessary and appropriate by the Director, the staff will engage outside engineers, inspectors or other consultants to assist in overseeing the licensee’s work.

Contract Enforcement – The Parks and Recreation Director shall have authority to enforce the conditions and requirements of licenses, permits, easements and other contracts permitting non-park use of Commission lands, and may draw upon any or all remedies available to the Commission including, without limitation, assessing liquidated damages, stop work orders, demanding payments under Licensee’s bonds, permit cancellations and initiating legal action. Except for the authority to initiate legal proceedings, the Director may delegate enforcement authority to other appropriate staff persons.

SECTION IV

ADMINISTRATION FEES APPLYING TO NON-PARK USES OF MIDLAND COUNTY PARKS AND RECREATION COMMISSION

Methods of Determining Fees

The purpose of administering fees is to recover 100% of the Commission's costs and expenses incurred in connection with administering non-park activities and uses, including staff costs, overhead and out-of-pocket expenses.

It is the intent of this policy that each respective non-park user pay the costs and expenses directly attributable to its project.

To achieve the above, the Commission will maintain cost records for each non-park Application/License project. The Applicant/Licensee shall pay, by prior deposit or reimbursement as set forth below, the administration fee reflected by such record keeping.

Administration costs and expenses will be accounted for in two principal categories:

- **Staff Costs and Overhead**- The Parks and Recreation Director and Administrator/Controller shall determine (subject to the approval of the Commission) staff expense factors which reflect the cost to the Commission of employing, housing, equipping and supporting personnel who have principal responsibilities relating to the administration of non-park uses. Such costs shall include, for each respective employee, salary, benefits, office space and overhead, vehicle use, and proportionate share of support costs such as secretarial assistance, accounting, personnel and supervision. Staff expense factors shall be expressed as functions of the respective employees' salaries. For example, the Parks and Recreation Directors expense factor has been determined to be 3.0; that is, three times his/her salary.

The following expense factors are adopted:

Parks and Recreation Director	3.0
Parks Manager	3.0
Parks Foreman	3.0

Annually (at the beginning of the fiscal year), the expense factors shall be converted to hourly expense rates, which shall be in effect the ensuing year. Each rate shall be determined by multiplying the expense factor by the respective employee's hourly salary rate, then rounding to the next highest five dollar increment.

Those staff persons who have principal responsibilities for administering non-park uses shall

maintain accurate time records (in increments of a quarter hour or fraction thereof) for work relating to specific application/license projects. Time records shall be maintained for such work activities as advising prospective applicants of Midland County Parks and Recreation Commission policies and procedures, reviewing and commenting on application, site inspections, meetings and correspondence with the applicant or affected third parties, staff meetings, meetings and correspondence with the E&L Committee and Commission, meetings and correspondence with Midland County Parks and Recreation Commission consultants, computation of fees, preparation and administration of “conversion of use” applicants to grant agencies, preparation of agreements, construction supervision and inspections, enforcement of permit provisions, and problem solving. Time records shall be submitted to the Parks and Recreation Director at least monthly.

- **Out-of-Pocket Expenses** – This consists of costs incurred by the Commission for printing, out-of-town travel, document recordation and other expenses directly attributable to a specific application/license project, plus the costs of engineering, legal, appraisal, surveying and other consulting services engaged by the Commission. The Parks and Recreation Director, in conjunction with the Controllers office, shall maintain accurate records of out-of-pocket costs relating to non-park projects.

Procedures for Payment of Fees

Upon receipt of a non-park permit application, the Parks and Recreation Director shall make an estimate as to the administration fee required for the proposed project for the application review and action (approval/denial) phases. The fee estimate shall be based on the then current Schedule for Estimated Permit Administration Fees, or the best estimate otherwise obtainable by the Parks and Recreation Director based on the experience of the Commission.

The Director shall inform the Applicant of the estimated fee and request a cash deposit of said amount, against which the Commission may draw its expenses as incurred. Except in the case of exceptional circumstances, the staff will suspend work on a permit application pending receipt of the fee deposit.

During the application review process, the Director will monitor expenses vs the fee deposit, and will authorize a refund or request a further deposit if there arises a substantial difference between projected and actual incurred administration costs.

In the event a permit application is denied or withdrawn, the Director will promptly arrange for an appropriate refund of or billing for the difference between the fee deposit and actual expenses.

In the event the application is approved, the Director will make an estimate of the administration fee required for the agreement development, construction and other implementation phases of the project. The estimate shall be based on the then current Schedule of Estimated License Administration Fees, or the best estimate otherwise obtainable by the Director based on experience of the Commission.

The Director will inform the Application/Licensee of the required additional fees, and request a deposit of the estimated amount. Upon receipt of the fee deposit, the staff will resume implementation of the license project.

The Director will monitor the status of actual vs projected administration expenses during the course of the implementation stage, and will arrange for an appropriate refund of or billing for any substantial difference.

Upon completion of a license project (see below), the Director, in conjunction with the Controllers Office, will make a detailed and accurate accounting of staff expenses and overhead and out-of-pocket costs incurred by the Commission in connection with the project, and will bill the Licensee for any fee shortfall or arrange for the refund of any fee overpayment. Upon request, the Licensee shall be provided an accounting of the Commission's expenses.

Miscellaneous Considerations

For purposes of imposing administration fees, a license project generally will be deemed to have been completed when active use of park property has ceased and all restoration and outstanding implementation actions are completed. For a project involving construction on park property, this generally would occur simultaneously with the release of the performance bond.

After "completion" of a license project, administration fees will not usually be imposed for ordinary, routine and ongoing activities (such as maintaining utility location records, mowing around drainage structures, maintaining use fee records and supervising minor maintenance activities of the Licensee) required of the Commission in connection with Licensee's passive use and occupancy of park property. However, the Commission reserves the right to impose additional administration fees at any time when significant unplanned actions by the Commission become necessary. Examples of occurrences which might generate additional administration fees after project "completion" are problem solving, resolution of conflicts, replacement or removal of Licensee's facilities, and licenses enforcement.

In any case where circumstances are extraordinary and/or where administration fees are anticipated to be quite large (say more than \$10,000), and upon the request of the Applicant/Licensee, the Parks and Recreation Director may establish a ceiling which limits the level of administration fees for which the Applicant/Licensee is responsible without it further approval; provided, however, the Commission may suspend further action on the implementation of the Applicant/Licensee's project pending Applicant Licensee's agreement to pay reasonable fees exceeding the ceiling. The Director is authorized to negotiate and approve lump sum, one-time administration fees for projects of routine or low-risk (in terms of predictability of Midland County Parks and Recreation Commission expenses) nature, provided the fees so established reflect the best estimate, based on experience, of the administration costs and expenses the Commission will incur. The Director will document such determinations. This method will not be used unless agreed to by both the Applicant/Licensee and the Commission. Such pre-determined fees shall no longer prevail if the nature or scope of the project changes materially, or if the Commission is required to assume or perform activities, work or services (such as contract enforcement or problem solving) not contemplated when the negotiated fees were established.

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SECTION V

USE FEES APPLYING TO NON-PARK USES OF MIDLAND COUNTY PARKS AND RECREATION COMMISSION PROPERTY

Valuation Principles

Use fees shall be based on factors, which influence impact on park property, park use, park patrons, and land values and land rights. Principal factors include:

- Value of park property or values of adjoining lands
- Duration (term) of use and impacts
- Area (size) of park property affected
- Nature of non-park use and its relationship to fee ownership
- Nature of impacts on property, park users and operations
- Damages: land, severance, incidental, etc.

Except otherwise provided herein, use fees shall be based on the highest supportable value as determined by sound, uniformly applied valuation methods and principles.

Use fees shall be adjusted for qualifying public and quasi-public projects using or occupying Linear Park property due to necessity as opposed to convenience.

Use fees for such qualifying public and quasi-public projects shall be further discounted when the project occupies certain areas of “limited park usability” – for example, a road right-of-way.

Use fees shall be in the form of annual or other periodic “rentals” when park property is occupied for private, profit-motivated purposes generating ongoing revenues; except the Commission reserves the right to enter into contracts requiring one-time use fee payments, which reflect the present value of the long-term use, when deemed by the Commission to be in its best interest.

At its sole discretion, the Commission may make downward adjustments in computing use fees when it determines that substantial enhancements to park property or other benefits will be derived by the Commission as a result of Licensee’s project.

Use fees shall not be imposed for the replacing or upgrading of existing storm drainage ways, systems or facilities provided:

- the facility or system follows the natural or historical water course as determined by the Commission and,
- the facility or system occupies the minimum space required to convey the water, and

- the facility or system is designed for the ultimate storm flow projected for the watershed, and
- the facility or system will not have a significant adverse effect on park property or users, and
- the facility or system is designed to be as visually appealing as possible under the circumstances, and
- the Licensee assumes responsibility in perpetuity for the maintenance of the facility or system, and
- the storm water is piped when feasible.

Use fees may include “damages” when a non-park use results in substantial impacts adversely affecting the property value, the quality of the recreation/park experience of users, maintenance and operational activities of the Commission and other elements relating to the usability and function of the park.

The Commission reserves the right to negotiate lump-sum or other special use fee arrangements when projects involve multiple-uses or other complex circumstances.

Methods of Determining Use Fees

The Commission shall use its best efforts to determine and establish the equitable and appropriate use fees for non-park uses and activities. The Parks and Recreation Director is authorized to engage outside real estate appraisers and other experts to assist the Commission establishing use fees on a case-by-case bases and/or establishing valuation guidelines which the Commission or staff can utilize to determine fees.

Long-Term Considerations

Generally, the Commission first will establish a present value for a given long-term use, and when annual rentals will apply to that use, convert the long-term value to an annual rental sum.

Long-term uses will be viewed as “easement interests”, and corresponding long-term use values will be determined much the same as values for easement rights. In cases where “licenses” and “permits” are under consideration, a slight downward adjustment from an “easement” value generally will be made, reflecting the theoretical right of cancellation of licenses and permits. Frequently the long-term-use value will be expressed as a function of the “fee” value of real estate (example – 30% of fair market value), or reduced to a square-foot value.

Among the criteria to be considered in establishing long-term values are (these are not necessarily mutually exclusive):

- degree of land disturbance
- degree of ongoing user disturbance
- permanent physical damage to park lands and facilities
- planned duration of the use/activity
- perceived duration of the use/activity

SECTION V

- volatility of the non-park facility
- ease of relocation of the non-park facility
- level of facility operator’s ongoing activity (maintenance)
- visual/aesthetic impact
- location in an area of limited park usability
- necessity vs convenience
- Commission assumption of new maintenance/operation liabilities
- Commission assumption of new legal liabilities
- depth of underground facilities

“Rule-of-thumb” long-term non-park use values (expressed in terms of percent of “fee value”) to be used to guide the Commission in making license fee determination are:

➤ Streets, road and driveways	100
➤ Parking	100
➤ Landscaping	20
➤ Sanitary sewer (subsurface)	33
➤ Sanitary sewer surface structure	75
➤ Water line (subsurface)	30
➤ Water facility surface structure	75
➤ Gas pipeline	40
➤ Gas facility surface structure	100
➤ Cable TV (subsurface)	25
➤ Cable TV (overhead)	33
➤ Cable TV surface structure	50
➤ Telephone (subsurface)	25
➤ Telephone (overhead)	33
➤ Telephone surface structure	50
➤ Fiber optic facility (subsurface)	33
➤ Fiber optic facility (overhead)	37
➤ Fiber optic surface structure	65
➤ Electric (subsurface)	33
➤ Electric (overhead)	37
➤ Electric surface structure	65
➤ Storm water (subsurface)	55
➤ Storm water (surface)	80
➤ Storm water surface structure	100

*Note: For purposes of the manual, these percentages will be referred to as “Impact Factors”.

Short-Term Considerations

The calculation of non-park uses fees shall include consideration of any short-term effects, which may be greater than the ongoing impacts of a facility once it is in place. Such short-term impacts may arise when a larger area is occupied or impacted, where there is a higher degree of disturbance to the land, or where the project disturbs or otherwise inconveniences park patrons. This most likely will occur when the project involves construction.

The Commission will establish a value for the short-term use/occupancy/disturbance of any additional property, using the same principles and methods used to value long-term occupancy. When short-term use areas overlap long-term use areas, and appropriate adjustments will be made in computing the use fees.

Damages

The element of “damages” may occur when a non-park use or activity is so overwhelming and extensive that it permanently disrupts or destroys the value and usefulness of park property, or severely affects the quality of the recreation experience for park patrons, or creates severe new burdens on the Commission. Damages may occur when park property is severed, the aesthetic qualities of the park are destroyed, park patrons are permanently inconvenienced, and new legal or operating liabilities are imposed upon the Commission.

The Commission will evaluate and assess damages on a case-by-case basis. To a certain degree, damages are subjective and may be subject to negotiation with the non-park user. The Parks and Recreation Director and Civil Counsel is authorized to negotiate on behalf of the Commission.

Computation of Use Fees

Use fees, if determined on a one-time fee basis, will generally be a function of (a) type of use (see schedule above), (b) duration of use, (c) real estate values, and (d) space occupied. As discussed above, valuations will take into account any higher levels of impacts and/or larger area occupied on a short-term basis.

Determination of Areas Affected

By definition, the “space occupied” shall encompass the area occupied by or reserved for the non-park use. In the case of utilities, the area to be used in computing use fees shall reflect the usual “easement” width reserved by the utility operator in similar conditions over private land. Where utilities are required to be installed and maintained by means of boring or tunneling, the Commission may define a license area width narrower than the usual width required for open cut installations. The Commission may engage outside engineers to assist in determining the required area or width to be “reserved” for a utility or other non-park use. In no event shall the width of a utility facility be deemed less than then feet.

Application of Real Estate Values

Real estate values used to compute use fees shall be based on value estimates provided by qualified real estate appraisers or experts. The land value to be considered in any given instance shall be the value of the affected park property or the average value of equivalent nearby property, whichever is greater. An exception to this principle may be made when the non-park use is an essential public or quasi-public facility crossing of Linear Park property by reason of necessity as opposed to convenience, and otherwise qualifying to have the use fee based on the lesser of the values.

Adjustment of Project Occupying Area of Limited Park Usability

The Commission may make a downward adjustment in the level of the use fee for any qualifying facility installed within an area or space of substantial limited usefulness to the Commission. Examples would be the placing of facilities within an existing highway right-of-way or permanent drainage system. Qualifying uses or facilities are specified elsewhere in Commission easements and licenses policies.

Annual Rentals and Short-Term Use Conversions

Annual rentals and short-term use fees generally will be computed as a fraction or percentage of the corresponding long-term use fee for that type of use. The Commission may engage real estate or financial advisory to assist in arriving at annual rental and short-term use conversions. A “rule-of-thumb” factor for annual rentals is ten percent (10%) of the long-term use fee; for monthly rentals, one percent (1%) of the long-term use fee.

Special Adjustments for “Public” Utility Crossings of the Linear Park

In recognition of public dependence upon certain utilities and services provided by regulated public service corporations and governmental bodies, and the linear nature of the Pere Marquette Rail-Trail of Mid-Michigan, the Commission will grant special use fee reductions to those non-park users establishing facilities across that Park. Such fee reductions will apply only when the use of park property arises from “necessity” to cross the Linear Park (as confirmed by the Commission) as opposed to mere convenience, when the utility follows the most direct alignment feasible and when the utility can be aligned, installed and operated in a manner not unreasonably detrimental to the Commission.

Adjustments applicable to such qualifying facilities shall include:

- A. In applying the following formula in calculating use fees, use of the lesser of land values, as between the value of park property compared with that of adjoining lands;
- B. An automatic one-third (1/3) reduction in the impact factor as set forth in the foregoing schedule (or as may otherwise be determined if not listed in the schedule);
- C. An additional fifty percent (50%) discount against the applicable use fee, when the utility is placed within an area (such as a roadway) having substantial limited usefulness to the Commission; and
- D. The sponsors of such qualifying facilities shall have the option of making on-time use fee payments for long-term permits, in lieu of annual rentals.

These adjustments shall not apply to linear installations along the Linear Park.

Typical Calculation

In a typical case where a non-park use, activity or facility will occupy park land for a term of forty years or more, the following formulas would be used to determine the use fee. NOTE: Land Values and Areas Occupied are expressed in terms of square feet.

$$\begin{aligned} \text{USE FEE} &= \\ &\text{LONG-TERM USE VALUE} + \text{SHORT TERM USE VALUE} + \text{DAMAGES} \\ &\text{LONG-TERM USE VALUE} = \\ &\text{LAND VALUE} \times \text{AREA OCCUPIED} \times \text{IMPACT FACTOR} \\ &\text{SHORT-TERM USE VALUE} = \\ &\text{LAND VALUE} \times \text{AREA OCCUPIED}^* \times \text{IMPACT FACTOR} \times 1\% \times \text{MONTHS USED} \\ & \quad (*\text{Adjusted for overlap with longer term use}) \\ &\text{DAMAGES} = \\ & \quad (\text{Subject to Determination on a Case-by-Case Basis}) \end{aligned}$$

SECTION VI

ADDITIONAL INFORMATION PERTAINING TO THE PERE MARQUETTE RAIL-TRAIL OF MID-MICHIGAN

On August 15, 1990, the County of Midland took title to the CSX Transportation rail-line right-of-way from Dublin Road in Midland County to a point just southeast of the Isabella County/Clare County line. This property, acquired through a gift from the Midland Foundation, is approximately 26.5 miles in length and approximately 100 feet in width and is known as the Pere Marquette Rail-Trail of Mid-Michigan (linear park).

The Midland County Parks and Recreation Commission has been charged by the Midland County Board of Commissioners to manage and develop this property as parkland. The County and the Midland Foundation entered into a JOINT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS concerning the property also on August 15, 1990. The following is an excerpt from Paragraph 1, USE RESTRICTIONS: the property shall be used solely for public park purposes as a Linear Park. Such park shall consist of a continuous and uninterrupted trail running the full length of the property and shall permit and accommodate the following specific uses:

- A. hiking
- B. bicycling
- C. horseback riding
- D. running
- E. cross-country skiing
- F. nature observation
- G. picnicking
- H. general recreation

The Owners agree to use their best efforts to ensure that the Property is not used for any purpose inconsistent or incompatible with the above specified uses.

The property was acquired with the understanding that park use was its highest and best use. Therefore the Commission will zealously and vigilantly protect the property against unauthorized use and encroachment. Further, it will manage the property for the specified uses listed in the JOINT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, and in such a manner as to protect the public benefits associated with these uses.

As a general rule, non-park uses will only be permitted where the best interest of the linear park and the public will be served thereby. This philosophy of management will preserve, and insure the public benefits associated with the Linear Park.

October 7, 1992

At their regularly scheduled meeting of October 7, 1992, the Midland County Parks and Recreation Commission adopted the following resolution with respect to governing the property:

WHEREAS, the former CSX Railroad right-of-way has been donated by the Midland Foundation to the County of Midland for the use and benefit of the citizens of Midland County as a Linear Park; and

WHEREAS, intrusions upon the geographic integrity of the parkland, known as the Pere Marquette Rail-Trail of Mid-Michigan, tends to erode its usefulness and benefit to the public; and

WHEREAS, the Midland County Parks and Recreation Commission has been designated responsibility governing Midland County parkland including the Pere Marquette Rail-Trail of Mid-Michigan.

NOW THEREFORE, be it resolved that it is the policy of the Midland County Parks and Recreation Commission that the Pere Marquette Rail-Trail of Mid-Michigan (being that land formerly a part of the CSX right-of-way) as same has been conveyed to the County of Midland, be preserved and protected against all intrusions and use of any nature whatsoever inconsistent with the Joint Declaration of Covenants, Conditions and Restrictions executed by the between the County of Midland and Midland Foundation on or about August 15, 1990; Guidelines for Granting Surface Licenses and Easements to Cross the Pere Marquette Rail-Trail of Mid-Michigan and other Linear Park properties.

When reviewing request for surface crossings of Linear Park properties, the Parks and Recreation Commission shall consider the following and base their decision accordingly:

- A. If granted, to what degree will the crossing compromise public interests in the parks?
- B. To what degree will the crossings have a negative impact on the safety of park users?
- C. To what degree will the aesthetic and recreational value of the park be compromised if the crossing is granted?

Specifically the Commission shall maintain the parks integrity and corridor continuity by restricting crossings in accord with the following guidelines:

- 1. Federal and State Highway Crossings.**
Easements shall be granted only for non-grade crossings and shall either be over or under the park.
- 2. County Road Crossings.**
Consideration shall be given to establishing non-grade crossings whenever feasible. When not feasible, other crossing alternatives shall be investigated. When other crossing alternatives are not feasible, guidelines that emphasize safety shall apply.
- 3. Local Municipality Crossings.**
Consideration shall be given to establishing non-grade crossings whenever feasible. When not feasible, other crossing alternatives shall be investigated. When other crossing alternatives are not feasible, guidelines that emphasize safety shall apply. Licenses may be granted when:

- a. There is no other crossing within a reasonable distance.
- b. The crossing is at right angles to the trail.
- c. Proper warning and regulatory signs, as determined by the Commission, shall be installed at the expense of the local municipality.

4. Private Driveway Crossings.

- a. Licenses may be granted only if no other possible access is available. A circuitous drive of less than one mile is generally deemed most acceptable.
- b. Multiple driveways shall not be permitted. Developers must plan frontage roads when necessary.
- c. Licenses will not be granted across areas of environmental sensitivity as so designated by the Midland Department of Natural Resources, Department of Transportation, or other State department or agency under whose jurisdiction such determinations are made.
- d. Proper warning and regulatory signs, as determined by the Commission, shall be installed at the expense of the licensee.

SECTION VII

VACANT

October 7, 1992

SECTION VII

SECTION VIII

EXAMPLES OF NON-PARK USES AND ACTIVITIES REQUIRING MIDLAND COUNTY PARKS AND RECREATION COMMISSION LICENSE

(Applies to Both Public and Private Uses)

- Road and Street Improvements
- Driveways
- Parking
- Landscaping
- Fencing
- Sanitary Sewer Facilities
- Storm Sewer and Drainage Improvements
- Water Service Facilities
- Gas Service Facilities
- Telephone/Communication Service Facilities
- Cable TV Service Facilities
- Electric Service Facilities
- Transitional Grading or Other Earth Disturbing Work
- Sidewalks and Trails
- Trail Connections
- Curb/Gutter Improvements
- Storage
- Ingress/Egress – Temporary or Long-Term
- Surveying
- Locating Utilities
- Soil/Geotechnical Studies and Testing

**INSTRUCTIONS FOR SUBMITTING
APPLICATION FOR NON-PARK USE OF
MIDLAND COUNTY PARKS AND RECREATION
COMMISSION PROPERTY**

Developers, utility companies, private individuals, government agencies and entities and others who desire to use Midland County Parks and Recreation Commission property for non-park purposes must obtain licenses from the Commission. Examples of uses requiring licenses are:

- Sanitary Sewer Facilities
- Water Line Installations
- Gas Line Installations
- Telephone Facilities
- Electric Facilities
- Cable Television Facilities
- Roadways – Public and Private
- Installation of Fencing
- Installation of Landscaping Improvements
- Connector
- Sidewalk Crossing and Connections
- Storm Drainage Facilities and Improvements
- Grading and Other Earth Disturbing Activities
- Surveying
- Soil Testing and Geotechnical Studies
- Locating Underground Utilities (Test Holes)
- Replacing, Upgrading and Relocating Existing Utilities and Improvements

Licenses are required for both temporary and permanent uses.

Applications for licenses shall be in a form designated by the Commission and shall contain such information as the Commission may require to enable it to fully evaluate the nature of the proposed work and its impact on park property and users. Supplemental information generally required as part of a non-park use application includes:

- Map of Commission property showing park boundaries and All existing park improvements and land features.
- Profile drawings showing relationships between existing grades and improvements and proposed grades and new facilities.
- Typical sections (at equal horizontal and vertical scales) showing relationships of existing roads and trails to proposed new grads and facilities.
- Certification that Applicant's property boundaries conform to Commission's boundary survey.
- Application review fees as determined by the Commission
- Aerial photograph of the affected and surrounding area.
- Photographs of the affected and surrounding area.

Applications are administered by Midland County Parks and Recreation Commission staff pursuant to adopted policies and procedures. Staff may act on (approve or deny) routine applications. Usual turn-around time for routine matters is +/- sixty days.

Utilities shall follow the shortest feasible route (cross the Linear Park at right angles), be placed within public roadways, be placed underground, and installed by boring or tunneling unless determined by the Commission to be unfeasible. Generally, surface structures are prohibited.

Certain projects involving the granting of permanent interests in or substantial impacts on park lands financed with state or federal grant funds are subject to review and approval by the grant agencies. In addition, such projects are subject to "replacement land" requirements whereby the Licensee will be required to provide the Commission fee interest in suitable land of at least equivalent size, value and usefulness. Turn-around time for such projects is six months to one year.

In most circumstances, the Applicant will be required to pay administration/inspection fees to cover the Commission's costs in administering and application and any subsequent license. The Applicant may be required to deposit an estimated fee against which the Commission can draw its costs and expense. Applicants are CAUTIONED that the level of administration fees is directly related to the accuracy and completeness of the Applicant's application and other submittal to the Commission.

Upon approval of permits, the Licensee may be required to pay use fees reflecting compensation for use of Commission property and any related "damage".

**PARTIAL LISTING
OF STANDARDS AND CRITERIA FOR
WORK AND CONSTRUCTION ON
MIDLAND COUNTY PARKS AND RECREATION COMMISSION
PROPERTY**

For work where encroachment into park property is restricted or limited, Licensee shall survey and stake-out Midland County Parks and Recreation Commission property boundary (as defined by Commission survey) or other limits of limited access.

Licensee then shall install (and shall maintain for the duration of Licensee's work) a safety fence or other barrier suitable to the Commission to prevent Licensee and Licensee's employees and contractors from encroaching into the restricted area.

For work by or on behalf of an adjoining landowner, Licensee shall take such steps as necessary (including boundary survey research and achieving adjustments in the adjoining landowner's deed description) to demonstrate that his/her common boundary with Midland County Parks and Recreation Commission property conforms to the Commission's property description.

For grading, excavating, trenching or other earth disturbing work by Licensee or for any other work activity affecting Commission property boundary markers or identifying features (such as fences, tree lines, etc.), Licensee, upon completion of his/her work shall engage a registered surveyor to reestablish the boundary as defined by the Commission's survey with iron pipes corresponding witness posts, place on the line at all corners (but in no event spaced further apart than 200 feet) along the full distance of the affected area.

All sanitary sewers, storm sewers, water lines, gas pipelines, electric lines, telephone communication lines, cable TV lines, and like facilities installed across any paved or other hard surfaced road, walkway or trail which is heavily used and not readily re-locatable, shall be installed using boring or tunneling methods approved by the Commission. Unless the Commission determines it is unfeasible to do so, all such facilities installed across the Linear Park shall be installed by boring or tunneling across the Park's full width and by operations outside the limits of the park.

Utilities and roadways (when permitted) shall cross park property in the shortest and most direct manner, unless otherwise directed by the Commission. In the case of the Linear Park, such improvements shall be placed at right angles to the Park boundaries, except when utilities are placed in or adjacent to existing roadways, the utilities may parallel the roadways.

To the greatest extent possible, utilities through or across park properties shall be placed within

existing road rights-of-way or similar areas of “limited usefulness” as determined by the Commission.

Utilities shall be placed underground, and no surface structures shall be permitted except when it is demonstrated to the satisfaction of the Commission that no feasible alternatives exist.

When exceptions to Park and Recreation Commission standards are granted, use and administration fees shall be adjusted upward to reflect the added effects and impacts of the nonstandard work on park property and on Commission administration activities.

Unless a permit specifically provides for and allows soil testing, utility line locating and surveying, all such work shall be covered by a separate permit to be obtained by the contractor performing the work.

Old Business No. 6

cc: C Lardo
B Silman

December 14, 1992

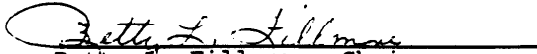
To the Honorable Chairman and
Members of the Board of Commissioners


Agenda Item: 293-12-92

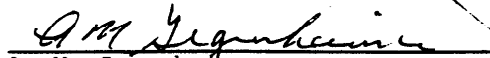
Ladies and Gentlemen:


We your Physical and Economic Development Committee recommend the Board of Commissioners adopt the policies and procedures governing easements and licenses and non-park uses of Midland County Parks and Recreation Property.

Respectfully submitted,


Betty G. Fillmore, Chairman


Earth Beaver


A. M. Gegenheimer


Otis Wilson

Physical and Economic Development Committee

mkm

ADOPTED

Midland County Board
Of Commissioners

Date 12-15 1992

Attested: 

County Clerk and
Clerk of the Board of Commissioners

