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**FLOW Marks First Two Protective Ordinance Packages:
Addresses Fracking Impacts for Two Michigan Townships**

TRAVERSE CITY, MI - In late November, FLOW—the Great Lakes Basin's only public trust policy and education center—will roll out two ***Protective Ordinance Packages*** for two separate townships in Michigan. The ***Protective Ordinance Packages*** are designed to protect the townships' water, land, and air resources from impacts of the high volume hydraulic fracturing (HVHF) method for extracting oil and natural gas from deep shale reserves, commonly known as "fracking."

Gun Plain Charter Township in Allegan County and Cannon Township in Kent County are the first two townships to participate in FLOW's **Local Government Ordinance Program**. This participatory workshop series for citizens and local township and planning officials culminates in a tailor-made ***Protective Ordinance Package*** developed by FLOW to address community concerns and improve local regulations.

“Our goal was to educate our people and identify specific things we can do to alleviate the potential impacts and risks of fracking,” says Gun Plain Charter Township Supervisor Mike VanDenBerg. Gun Plain Charter Township partnered with FLOW in May to participate in the **Local Government Ordinance Program**.

The **Program** is unique because it enables communities to chart their own future, strengthen their existing local regulations, and preserve their rural and agricultural character. In a two-part workshop series, the program:

- *engages* and educates local government official and residents about the risks and impacts of fracking and specific legal strategies for communities to consider;
- *identifies* community priorities and related oil and gas activities to regulate (e.g., water withdrawals, chemical disclosure, roads/truck traffic impacts, pipelines, etc.); and
- *recommends* optimal strategies for integrating and amending the community's existing master plans, zoning and police power ordinances, and franchise agreements in the ***Protective Ordinance Package***.

The local planning commission and township board then use the ***Protective***

Ordinance Package as the foundation for drafting and adopting substantive ordinances protecting water, air, and land from fracking impacts and preserving their community.

Based on the past months' workshops and community input, the Gun Plain Charter Township **Protective Ordinance Package** identifies the following seven fracking related activities for the Township to regulate:

1. truck traffic and routes,
2. franchise agreements and consent to use roads,
3. chemical disclosure for hauling and emergency response plans,
4. surface water contamination,
5. noise and dust nuisance,
6. trout stream protections, groundwater conflicts, and the study of hydrogeologic impacts, and
7. contamination issues for first responders in case of emergency.

Similarly, the Cannon Township **Protective Ordinance Package** identifies nine areas, including:

1. high-volume water removal, on-site pumps, tanks, and handling facilities,
2. chemical disclosure and use, mixing tanks, and air emissions,
3. disclosure and consideration of impacts before permit approval,
4. incompatible ancillary industrial-type land uses and facilities, such as production and sweetening facilities, mixing tanks, pump stations, and pipelines,
5. access roads, truck traffic, and safety,
6. road use, truck routes, indemnity and bonds for spills, wear and tear of roads,
7. nuisance impacts, including noise, dust, light pollution, hours of operation, vibrations, and odors,
8. flow lines, gathering lines, and pipelines, and
9. accident prevention plans, fire and emergency response to chemical releases or related accidents.

“FLOW developed this program to both inform communities about the impacts and potential threats of fracking, and to provide local governments with solutions within the scope of their existing legal authority,” says FLOW Executive Director Liz Kirkwood.

“We get dozens of calls from township and county government leaders who want to address fracking threats but are concerned that it might be illegal to regulate all activities related to fracking.” she says, “Townships and counties do have the authority to regulate ancillary fracking activities, and FLOW’s program zeros in on these important local legal solutions in developing our **Protective Ordinance Packages**.”

After the several public meetings held in each township, FLOW evaluated the townships’ respective master plans, zoning and police power ordinances, and franchise agreements. Then FLOW considered the priorities identified by the community and leaders, and drafted the **Protective Ordinance Package** as a menu of recommendations for amending the existing laws and adopting new ordinances.

These **Protective Ordinance Packages** come at a time when both Gun Plain Charter Township and Cannon Township are in the process of their five-year review of their townships’ master plans.

Gun Plain Charter Township and Cannon Township first approached FLOW about participating in the program in March and April 2013, respectively.

FLOW President and Chair of the Board of Directors, Jim Olson, gave a presentation to a group of Supervisors in Allegan County back in March, speaking to the risks and impacts of fracking and the legal strategies and tools available to citizens and leaders. This is where Gun Plain Charter Township officials

first learned of and showed interest in FLOW's program.

Combined, FLOW staff Olson and Kirkwood have delivered this informative legal strategies and tools presentation to more than ten communities across Michigan in the past ten months, reaching hundreds of community leaders and citizens. FLOW has also partnered with land-use planner and hydrogeologist, Dr. Christopher Grobbel in making presentations and evaluating optimal ordinance strategies.

“Our phones are ringing off the hook,” says Kirkwood, “and the interest in our informational presentation and **Local Government Ordinance Program** continues to grow. People are really concerned about what is going to happen to their community's natural resources after a fracking permit gets approved and they need solutions before this stage.”

Since 2010, the nature of fracking operations in Michigan have changed dramatically in terms of land-use impact and water used to fracture and release natural gas in the tight shale formations. For example, the Pioneer well in Missaukee County used 6.7 millions gallons of water, and now pending permit applications plan to use up to 35 million gallons of water forever lost to the water cycle.

“Regulating the industrial related impacts of fracking is just like regulating any other industrial activity at the local level.” observes Kirkwood, “Imagine if local governments allowed sand and gravel pits, shopping malls, cell towers and other industrial uses to come into their communities and do business unregulated.”

FLOW's program is designed to protect the rural and agricultural character of the communities in Michigan that are most vulnerable to the negative spillover effects of fracking happening on adjacent state land or neighboring private land.

The package, program, and presentation all stem from FLOW's November 2012 report: [*Horizontal Fracturing for Oil and Gas in Michigan: Legal Strategies and Tools for Communities and Citizens.*](#)

Early on, FLOW recognized the growing and urgent need to develop sound legal strategies and policies for local governments to safeguard their communities against the unprecedented, huge, and cumulative impacts of fracking.

Fracking occurs in the context of little to no regulatory oversight; the natural gas and oil industry is largely exempt from key federal environmental laws, including the Safe Drinking Water Act and Clean Water Act.

The industry is also largely exempt from key water statutes like Michigan's codification of the Great Lakes Compact. Furthermore, under Michigan's Zoning Enabling Act, local governments also are prohibited from enacting or enforcing an ordinance that regulates permit issues related to the location, drilling, operation, completion, or abandonment of oil and gas wells. Despite the Zoning Enabling Act's prohibition to regulate oil and gas wells or operations, townships do maintain some zoning authority to regulate related oil and gas activities.

The two principal statutes delegating local government legal authority to address oil and gas development like hydraulic fracturing and related processes include the Michigan Zoning Enabling Act of 2006 and the Township Ordinance Act of 1945.

The Township Ordinance Act authorizes a township to adopt police power ordinances, which are distinct from zoning ordinances, because they can only regulate harms and activities rather than land uses.

Thus, townships can adopt police power ordinances that reasonably relate to the transport, disposal, and transfer, diversion, use, or handling of “produced” water and chemical mixing for fracking.

After producing the legal report, it made sense for FLOW to produce a presentation of the findings and share it with concerned local government leaders.

“The overwhelming response we got to the first few presentations was that of ‘What can WE do?’ from citizens and officials alike,” says Olson. “That’s when we started to develop the program and work directly with townships to help them take the leap and take positive action,” he says.

For more information about FLOW’s work on legal strategies for addressing fracking at the local, state, and federal level, please visit flowforwater.org/fracking.



Jim Olson, left, addresses Cannon Township Supervisors and Citizens in June. Photo credit: © Liz Kirkwood/FLOW

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