

WETLANDS PROTECTION

Protection of wetlands help prevent costly pollution, flooding, and erosion problems. In addition, wetlands provide many benefits, including water quality improvements, food and habitat for fish and wildlife, flood control, shoreline erosion control, and recreation. However, with the increased growth forecasted for Southeast Michigan, wetlands and the benefits they provide are threatened.

The *Water Quality Management Plan for Southeast Michigan* recognizes both the important functions of wetlands and the threats to these resources. It also emphasizes providing opportunities for preventing degradation of resources using sustainable practices. Wetland protection is a prime example of this type of pollution prevention.



Constructed wetland located in Inkster.

KEEPING IT CONNECTED

It's important that wetland protection is not done in a vacuum. Have you considered linking goals in your master plan for wetland protection with other environmental protection goals, such as storm water management and providing buffers along wetlands?

To take this further, consider connecting in your plans community buffers around natural features with walkability, aesthetic, and other quality of life goals for the community.

Planning and Regulatory Considerations

In 1979, the Michigan legislature passed the Goemare-Anderson Wetlands Protection Act, which is now Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act 1994 PA 451 (NREPA), as amended. The Michigan Department of Environmental Quality (MDEQ) has adopted administrative rules which provide clarification and guidance on interpreting Part 303. This law states that MDEQ has jurisdiction over wetlands of five acres or more and of wetlands within 500 feet or contiguous to a lake or stream.

In 1984, Michigan received authorization from the federal government to administer Section 404 of the Clean Water Act in most areas of the state. Whereas in other states, an applicant must apply to the U.S. Army Corps of Engineers and a state agency for wetland permits, applicants in Michigan generally submit only one wetland permit application to the MDEQ.

The U.S. Army Corps of Engineers retains federal jurisdiction over traditionally navigable waters including the Great Lakes, connecting channels, and other waters connected to the Great Lakes where navigational conditions are maintained.

While the state has jurisdiction over vast wetland areas, many smaller wetlands can only be protected through local action. Part 303 authorizes municipalities to regulate wetlands as long as they use the same wetland definition, regulatory standards (local governments can still regulate wetlands smaller than five acres), and application process as the state.

Tools for implementing wetlands protection

A variety of tools are available for a community interested in wetland protection. Although many environmental ordinances can have a protective wetland component, the most applicable tools that a community has for protecting wetlands are:

- Utilizing the master plan.
- Developing a wetland ordinance and inventory.

Utilizing the master plan

Because the master plan sets forth goals and policies to guide future land use and development of the community, it is important to articulate goals that will preserve wetlands. These goals are typically general in nature and could include maintaining the community's existing wetland resources, enhancing or restoring degraded wetlands, and allowing for development that respects the land's ability to support it.

After developing wetland protection goals, wetland protection policies based on these goals should be written. Often, these policies can be written to incorporate

various types of natural features protection. Examples of key policies to include in the master plan include:

- A primary determinant in any land use and development decision will be the natural capability of the land and physical support systems.
- Planning decisions shall recognize the interdependence of natural resource features and other community priorities (e.g., strong economy, safety). It is the intent of this plan to ensure the sustainability of ecosystems by preserving systems of open space, while maintaining other community priorities. Such an open space system may be any combination of natural features such as uplands, grasslands, streams, woodlands, water bodies, and wetlands.
- Encourage use of native species of vegetation in wetland restoration and other landscaping.

Another way to support natural resource preservation is to include areas of particular sensitivity on a map in the master plan. This should identify specific areas that the communities want to preserve. Two mechanisms are creating a separate land use category (e.g., resource conservation/residential) and creating a resource conservation overlay district. Both methods can promote preservation of natural systems while allowing low intensity land uses. These designations can also promote innovative development techniques such as open space

development, which preserve natural resources while allowing reasonable use of the land. (Source: Wetland Stewardship for Local Governments, Clinton River Watershed Council.)

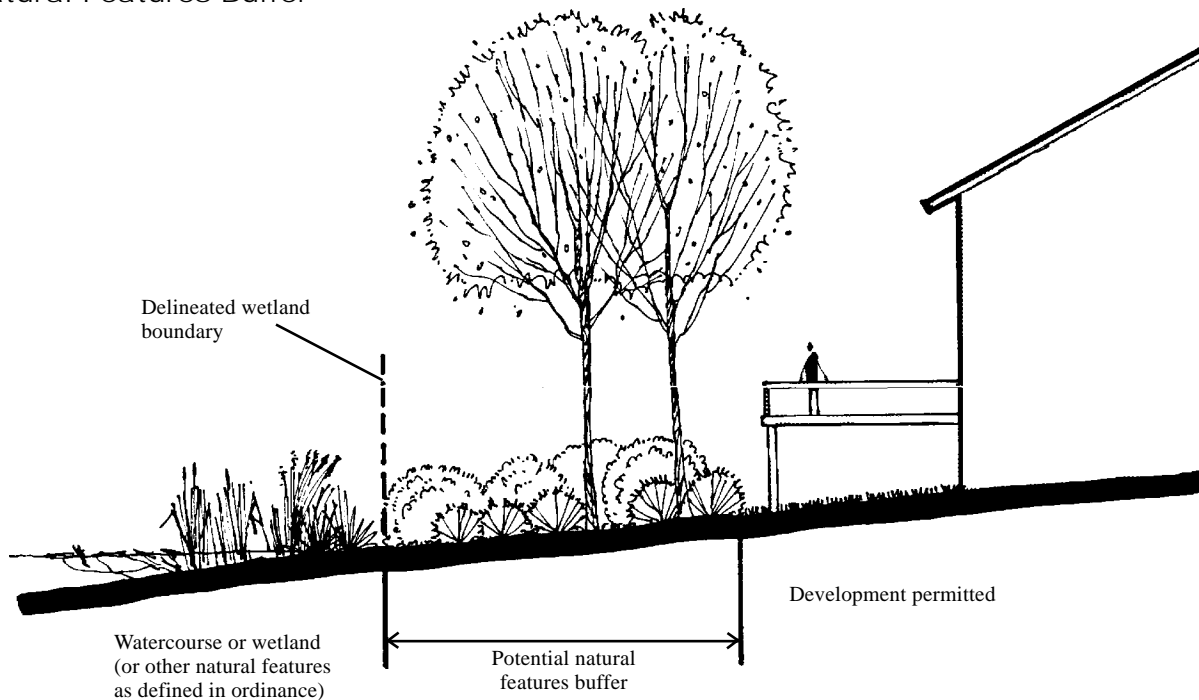
Developing a wetland ordinance and inventory

Although state and federal laws protect many Southeast Michigan wetlands, local communities can build on these laws and provide protection for smaller or isolated wetlands that would otherwise be threatened by development. These smaller wetlands are placed into two categories: wetlands less than five acres but at least two acres in size and wetlands under two acres in size. (Note that state law applies special standards for determining if wetlands less than two acres are essential to preserving of natural resources in the community.)

Components of a wetlands ordinance

Statement of wetland protection goals. As with any ordinance, a list of goals for wetland protection should be stated at the beginning of the ordinance to set the stage for the rules that follow. Ties between wetland protection and protecting citizen health, safety, and general welfare should also be made by stating the values that wetlands bring each community and the problems that can arise if wetlands are not properly protected.

Figure 26
Wetland Protection and Regulations:
Natural Features Buffer



Source: Planning and Zoning Center, Inc.

Definition of wetland. Part 303 of NREPA requires that local governments use the same definition as state statute. State law defines a wetland as “land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly known as a bog, swamp, or marsh.” (Part 303, Wetland Protection, of the Natural Resources and Environmental Protection Act.)

A wetland inventory map. Another requirement of communities that adopt wetland ordinances is to create a wetlands map that inventories wetlands throughout the community. This map, in conjunction with aerial photographs and field inventories on a case-by-case basis, is used to administer the wetland ordinance. Many communities utilize existing resources when developing wetland maps.

Following is a list of existing sources:

- Natural Resource Conservation Service soil surveys indicating hydric soils.
- U.S. Fish and Wildlife Service national wetlands inventory maps.
- SEMCOG’s land use map showing wetlands. (Although readily available, this information is generalized and should not be used as a map showing exact locations of wetlands).

Some communities choose to make their wetlands map by using these three maps and digitally entering them into a geographical information system (GIS). Using GIS, the maps are overlapped and where two or more of these sources overlap there is high likelihood that a wetland exists. This new map is then used by the community as their wetland map. Other options include hiring a consultant to map your wetlands based on such sources as color infrared aerial photographs and field identifications.

On the map itself, the local community should note that this map shows approximate location of wetlands and were not delineated in the field. Therefore, there may or may not be a wetland on the property, but it is used as an indicator that a wetland assessment should be done on the property prior to alteration of land.

A list of prohibited and permitted uses. Michigan law distinguishes between exempted uses (uses that do not require a permit) and activities that need a permit. There are certain uses that can occur in a protected wetland that do not require a permit. The local ordinance may not require a permit for those uses that are allowed under state law. The law allows farming, fishing, hunting, trapping, boating, installation of seasonal docks, rafts, hiking, bird-watching, and similar recreational activities that do not alter the wetland. It also allows grazing of animals; most lumbering activities; maintenance, op-

eration, and improvement of drains; drainage necessary for agriculture; and road or street maintenance.

Uses that require a permit include depositing fill material in a wetland; dredging or removing soil or minerals from a wetland; constructing, operating, or maintaining any use or development in a wetland; and draining surface water from a wetland.

Permit application, review, and administration.

With the decision to develop a wetlands ordinance, comes the responsibility for implementing and enforcing of the ordinance. Following are the steps the community should undertake in reviewing wetlands permits:

- The applicant submits a wetland application (utilizing a form provided by MDEQ) directly to the local government.
- The local government forwards a copy of the application to MDEQ, who will begin their review process, depending on the wetland in question.
- The local government reviews the application and must approve or deny the application within 90 days. If the permit is denied, the local government must provide a written statement giving the rationale for denial.

Also, with a wetland permit application, it is important that a qualified professional complete a wetland delineation on the wetland in question. A community can make this step the applicant’s responsibility, or they can hire a wetland consultant and charge the applicant as part of the wetland permit fee schedule.

A section on penalties. Most ordinances include penalties for violations of the wetlands ordinance. Penalties can include fines and/or a requirement that the affected wetland area be restored or mitigated in some way. Minimum and maximum fine amounts should be considered.

Lastly, enforcement is the key to wetland protection. Field inspections should be made by those enforcing the ordinance to ensure wetlands are properly protected during construction.

Source: Wetland Stewardship for Local Governments, Clinton River Watershed Council.

CASE EXAMPLE

Natural Features Advisory Committee and Wetland and Watercourse Protection and Restoration Ordinance

Community: Ann Arbor Township

Contact: Diane O'Connell, (734) 462-4400 ext. 5238

The Ann Arbor Township Board of Trustees established the Natural Features Advisory Committee in 1997. This committee develops long-term policies and strategies for protecting natural features such as wetlands, woodlands, streams, farmland, and open spaces. The committee develops and recommends to the township board, ordinances and regulations that protect natural features. The committee also promotes the importance of and methods for preservation of natural features by designing and implementing educational initiatives for township residents.

In 1998, the township board approved the wetland and watercourse protection and restoration ordinance. The ordinance was the product of more than 12 months of study and design effort by the Natural Features Committee. This included mapping township wetlands, extensive community education, and public hearings on the importance of wetlands and watercourse protection to the quality of life in Ann Arbor Township. This ordinance has become an important factor when development is proposed on lands with wetlands or watercourses, and has led to substantial improvements in wetland protection.



Novi wetland replacement project.

Other communities in Southeast Michigan with wetland ordinances are Addison Township, Ann Arbor, Auburn Hills, Bloomfield Township, Brighton Township, Franklin, Genoa Township, Grosse Ile Township, Hamburg Township, Independence Township, LaSalle Township, Milford Township, Novi, Oakland Township, Orchard Lake, Orion Township, Oxford Township, Pinckney, Rochester Hills, Salem Township, Scio Township, Southfield, Superior Township, Waterford Township, West Bloomfield Township, White Lake Township, and Wixom.

Source: Michigan Department of Environmental Quality, October 2001.

Additional Resources

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