

Frequently Asked Questions Regarding Local Wetland Protection

What does a local program add to current wetlands protection provided by state law?

- The state does not have adequate resources to protect all wetlands. Furthermore, its jurisdiction over wetlands not contiguous to waterbodies is limited to wetlands greater than 5 acres. Small, non-contiguous wetlands, often very valuable to the community for water quality protection, flood minimization and wildlife habitat, may not be protected unless there is a local program.
- Local officials and citizens often have “local knowledge” of the value of wetlands within their jurisdiction. Local knowledge, applied through a local program, can improve wetland protection.
- Local officials already inspect land use activities. They can watch for alterations to wetlands and can take steps in time to prevent irreparable harm.

Can a local program be efficient in terms of cost and time?

- A community should consider the cost of not protecting its wetlands, especially the costs resulting from flooding and degraded water quality.
- Communities that do not have local programs miss out on the synergistic benefits of working with the Michigan Department of Environmental Quality (MDEQ).
- A substantial part of the costs of a local program is recoverable from fees.
- In a survey of Southeast Michigan communities with local ordinances, 12 out of 13 communities reported no or very little additional administrative costs or time spent on implementing their ordinance.

Can a local government require setbacks from wetlands and other natural features?

- Michigan courts have recognized that local governments have authority under the Michigan Constitution to require setbacks from natural features.
- There must be an independent justification for the setback from natural feature(s) aside from the protection of wetland (e.g, the interrelationship between the setback and other natural resources such as plant and animal species).
- The natural feature setback should not be included in the wetlands ordinance. It can be included in other setback regulations established by the community.
- Many communities with wetlands ordinances have also enacted setback requirements as part of their zoning ordinances. Example language is available from the Huron River Watershed Council website, www.hrwc.org.

Does a local wetlands program make a local government vulnerable to lawsuits?

- When local regulations have been reasonable in terms of scope and administration, litigation over wetland issues has been minimal.
- A local government is much less vulnerable if it develops a Master Plan in which it shows how it wants the community to be developed and environmental resources protected. Judges defer to communities when they see the connection between a regulation, such as a wetlands ordinance, and the overall plan.
- Documenting decisions shows a judge the basis for the local government’s decisions, increasing the judge’s willingness to defer to the local board.

- A review of legal challenges to local wetland regulations over the past twenty years by Huron River Watershed Council did not find a single instance in which a local wetlands ordinance was struck down by Michigan courts as being unconstitutional. Plaintiffs have occasionally succeeded, either through out-of-court settlements or court decisions, in getting some of what they asked for in terms of wetlands alterations, but the study did not find even one case in which a local government was held to have taken private property without just compensation. See *Legal Cases Related to Wetlands in Michigan*, Huron River Watershed Council, March 31, 2002 (www.hrwc.org).

The state wetlands law requires that we prepare a local wetlands inventory. Is there an inexpensive and quick way to complete the inventory?

- The local wetlands inventory required for establishing a local program is not a jurisdictional map of wetlands and can be prepared without field inspections.
- Local governments can get the information they need for the inventory from the National Wetlands Inventory Maps (NWI), the Michigan Center for Geographic Information (MGCI), the NRCS County Soil Surveys, aerial photos and USGS topo maps.
- County Environment or Planning Departments may have even more detailed data available and may be able to assist with the mapping.
- Note that field inspections, although not required for the inventory will be needed to make site-level decisions on permit applications.

Should a local government hire a consultant or have staff do wetland delineations and project review?

- Local governments have found both options to be successful depending on their own needs. Many local governments work with consulting firms on wetland delineations and project review. Other local governments have combined wetland protection programs with other environmental programs such as soil erosion and stormwater and have staff to support the program.

Can a local government modify the MDEQ permit application form?

- No, a local government cannot modify the MDEQ form but can add a supplement page to the application asking for additional information that the local government needs.

What if a local board believes it should deny a permit application that MDEQ has approved? Won't the local government lose in court if its decision conflicts with the state's decision?

- The requirement that a person get approvals from both the state and the local government, if there is a local ordinance, is another reason a local government benefits from having a local ordinance. The MDEQ reviews a permit application from a statewide and regional perspective. Courts recognize that local governments have authority to protect wetlands that are important locally and that a local permit denial is reasonable even when the state has granted its approval.

Prepared by the Huron River Watershed Council (www.hrwc.org) and the East Michigan Environmental Action Council (www.emecac.org)

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