

Huron River Watershed Council's Guide to the Model Wetland Ordinance

Introduction

To help local governments to enact their own ordinances to supplement the State program, the Huron River Watershed Council (HRWC) has developed a model wetlands ordinance. The ordinance will provide local governments with a legally sound tool to protect their wetlands and property owners with consistent, predictable treatment throughout the State.

The ordinance is a product of a year-long process of research and review by staff at the Huron River Watershed Council and members of an Advisory Committee composed of two attorneys, two environmental specialists, a local government elected official, two local government planning commissioners, a builder, two members of local wetlands review boards, and a local wetlands ordinance officer. The committee began with an existing ordinance enacted by Superior, Ann Arbor, and Salem townships (in Washtenaw County) and modified it to make it more consistent with State law, protective of wetlands, and legally defensible.

What are Wetlands?

Wetlands are unique ecosystems located in the transitional zone between upland and aquatic habitats. Wetlands provide a host of ecological services:

Water quality protection

Acting as living filters, wetlands filter pollutants from rain water and snow melt that flows off of developed areas and farm fields. Wetland plants remove phosphorus and nitrogen from the water. Wetlands also absorb bacteria, toxic metals, pesticides, and grease.

Protection from shoreline/ streambank erosion

Wetland plant roots stabilize soil and help prevent soil erosion. Vegetation dampens wave action along lakes and slows the current of rivers.

Aesthetics and recreation

Wetlands provide recreation such as hiking, birdwatching, nature photography, canoeing, hunting, fishing, and trapping, and generate revenues to the local community through these activities. Wetlands greatly enhance the value of neighboring properties.

Wildlife & plant habitat

Over half of Michigan's wildlife depends upon wetlands for food, shelter, or nesting habitat, including endangered and threatened species like the bald eagle, osprey, loon, and sandhill crane. Wetlands support some of the most diverse plant communities of all ecosystems.

Nearly all fish species and amphibians require wetlands for food and shelter, and they are the preferred habitats of muskrat, otter, beaver, mink, and raccoon

Flood & stormwater control

Wetlands hold rainwater and snow melt during wet times, decreasing flooding. They release the water in dry times, thus helping creeks maintain steady flows.

Groundwater recharge

Just as wetlands can hold water in wet time, they become sources of water during dry periods. They can serve as recharge areas to area aquifers, keeping our groundwater supplies constant.

Threats to Wetlands

Over 50% of Michigan's original wetlands have disappeared since European settlement due to filling, draining and ditching for agriculture and development.

Wetland loss continues today as residential and commercial development spreads out from urban areas. Conversion of wetlands and upland forests and fields to roads, lawns, rooftops and parking lots prevents the infiltration of rain and snow into the ground where plants take up water through their roots. Instead, rain and snowmelt, often carrying with it pollutants and eroding soils, runs off directly into waterways and wetlands, which significantly changes their hydrology and water quality. Non-native plants such as purple loosestrife follow development and crowd out native plants, reducing plant diversity and wildlife habitat.

The Need for Local Protection

Michigan's wetlands protection law requires a permit to drain or fill a wetland, but it only applies to wetlands over 5 acres or those adjacent to waterways. Yet, studies have found that smaller, isolated wetlands can provide as many ecological and water quality benefits as larger wetlands.

Also, it is difficult for State staff alone to monitor all the activities that can occur in wetlands throughout the entire State.

Local communities can enact ordinances that protect smaller, isolated wetlands and provide local oversight over development activities that impact wetlands.

A State Requirement Before a Community Enacts an Ordinance

Before enacting a wetlands ordinance, the community must create a wetlands map and make it available to the public, provide for public notice and comment opportunity prior to finalizing the map, and respond in writing to written comments regarding the contents of the map. Once the map is completed, the community must notify all property owners within the community that the map exists, where the map may be reviewed, that the owner may have property designated as a wetland on the map, and that the community has an ordinance regulating wetlands. The notice shall also inform the property owner

that the map does not necessarily include all of the wetlands within the community that may be subject to the wetland ordinance.

The State does not specify the source of the wetlands map. Most communities in Washtenaw County that have wetlands ordinances obtained their maps from Washtenaw County Department of Planning and Environment, and they sent notices to their residents along with another existing mailing like the the annual notice of the property owner's property tax assessment

Section-by-Section Guide to the Ordinance and Its Relation to State Wetlands Law

Communities enacting local wetlands ordinances must be sure to include certain provisions in the ordinance as required by Michigan Wetlands Law (Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended). The following describes what each section of the ordinance does, and which parts of the ordinance are strictly required by State law. Those parts required by State Law are marked with a **.

SECTIONS 1 – 3, INCLUDING PURPOSE, DEFINITIONS, ETC.

The Findings, Purpose, etc. are adapted from existing ordinances in Superior and Ann Arbor Townships.

**Under definitions, the definition of a wetland is required to be the same as that in State Law.

The model ordinance regulates isolated wetlands (i.e. not contiguous to a lake or stream) under 5 acres (as described under the definition of “protected wetlands”), thus going further in its scope than does State Law. Communities can choose to merely regulate those wetlands regulated by the State, but many communities have chosen the range of protection provided in this ordinance, because much scientific evidence exists that smaller, isolated wetland provide the same ecological benefits that larger wetlands and wetlands contiguous to waterbodies do. The advantage of including wetlands of any size is that the decision whether to grant a permit in a wetland can be based on the wetland’s real value to the community, rather than an arbitrary size minimum.

**For isolated wetlands under two acres, the State requires local permits *be granted unless* the community determines that those wetlands meet certain standards listed in Section 7.6 of the model ordinance.

SECTION 3 - RELATIONSHIP TO STATE AND FEDERAL PERMIT REQUIREMENTS

This is “boilerplate” language describing how the local, state, and national wetland laws work together.

SECTION 4. ADMINISTRATION

** State Law requires a wetland map be created (see comment on page 2, above), but it does not have specific guidance on how the map is created or maintained.

Wetlands Map

This section:

- **Adopts the community's Wetlands Map as part of the ordinance.
- Describes the process by which the Wetlands Map can be verified or amended by either property owners or the community.
- Describes the process for delineating the boundaries of wetlands on a property proposed for development.
- Describes how the map may be amended.
- **Describes, as State Law requires, how the community shall notify each property owner in the community in the event of a change to the wetlands (see Section 4.1 C).

Wetlands Board

This section describes the formation of a wetlands board. The board typically meets on an ad hoc basis, as needed, to review appeals of permit decisions.

SECTION 5 - ACTIVITIES IN PROTECTED WETLANDS OR WATERCOURSES

Prohibited activities

The State law does not have any specific requirements regarding what activities require a wetland permit. The ordinance adapts the language from the current Superior, Ann Arbor, and Salem Township ordinances.

Permitted activities

**The ordinance must exempt from the wetlands ordinance the same activities as those exempt under State Law. Section 5.2 of the model ordinance repeats the exemptions found in State Law. Parts S and T, however, are not required by State Law, but recommended by the advisory committee.

Existing Non-conforming Lots, Uses and Structures

This section describes how the ordinance deals with existing lots that do not conform to the ordinance. It is directly from the current Superior, Ann Arbor, and Salem Township ordinances.

SECTION 6 - APPLICATION

This section includes:

- **The introduction states, as required by State Law, that applications for wetland permits must be concurrent with the application for approval, appeal, and issuance of other necessary [community] approvals.

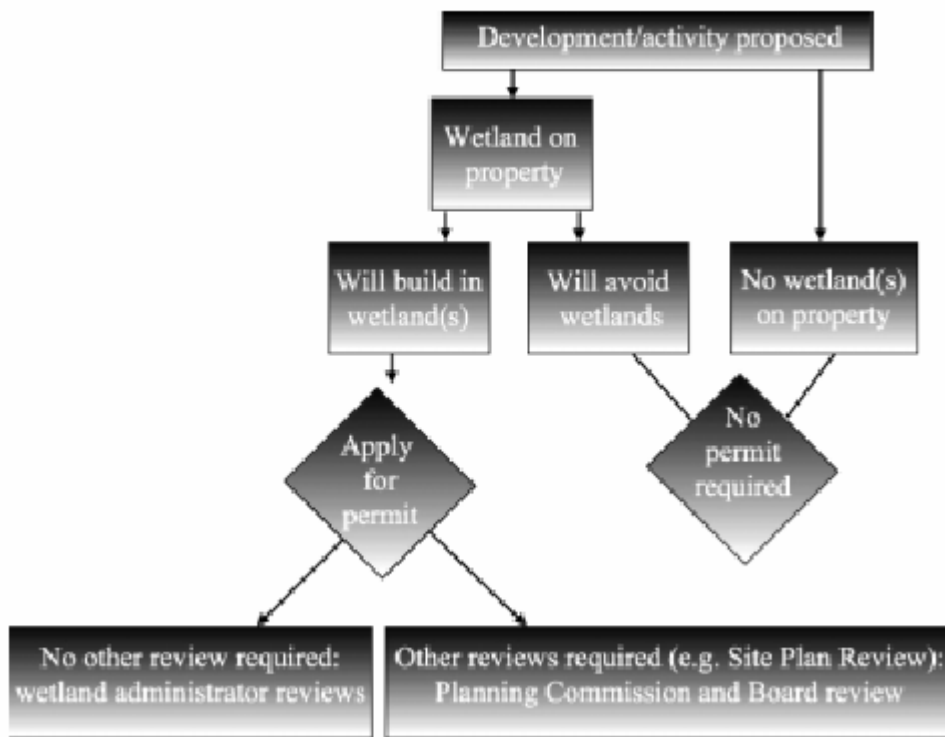
- Application requirements, including information needed on the application, etc.
- Mitigation plan requirements. The ordinance requires that any wetland loss be made up by the creation of new wetlands.
- **Part F sets forth a choice for the applicant of having their wetlands permit reviewed separately or concurrently with other land use reviews (like site plan review). The State requires that the community provide the second choice. The first choice is the property owner's right, but the ordinance makes clear that if the community grants a wetlands permit approval before it grants other land use approvals, and then the land use review requires significant change in the proposal, the wetlands permit be have to be reopened.
- Part G is specifically required by State Law.
- **The community must complete its review of a wetlands permit within 90 days of receiving a complete application. Part H makes clear that the 90-day review period does not start until the permit application is complete.

SECTION 7 - REVIEW

Method of Review and Decisions regarding Wetland Permit Application

This section describes the nut and bolts of how the application is submitted and reviewed.

The flow chart below is a simple illustration of the process.



Wetland Use Permit Decisions by the Wetland Administrator

For permits submitted for activities that do not require review by the planning commission or board (like building a house in a lot), the Wetland Administrator will decide on the permit. The wetland administrator has 90 days to make the decision.

Wetland Use Permit Decisions by Planning Commission or the [community] Board

For permits submitted for activities that require review by the planning commission or board (e.g. plats, PUDs, site condos, etc.), the planning commission or board will decide on the permit, within 90 days of submittal.

**The following are the parts of this section that are required by State Law:

- When a community receives a permit application, they must forward that application on to the MDEQ (see Section 7.1 F.1). It is helpful to use the MDEQ's application form for both the State and local wetlands application, and add a supplemental form for any additional information your community may require.
- The community must complete its review of a wetlands permit within 90 days of receiving a complete application. Sections 7.2 A and 7.3 D of the ordinance contain this time limit.
- If the community denies a permit, it must submit along with the denial a written statement of all reasons for denial. (See Sections 7.2 C and 7.3 E)
- The community must process wetland applications through the same entity that makes decisions on site plans, plats, and related matters. The applicant must not be required to submit to a hearing on the application before more than 1 decision-making body. The introductory paragraphs in Section 7.3 address this requirement.

Appeals Of Decisions Of The Wetland Administrator, Planning Commission, or Board

This section describes how the community will handle appeals of any permit decisions. Appeals are made to the Wetland Board, and must be made within 10 days after the decision.

No specific appeals process is required by State Law. The language in this section is from the current Superior, Ann Arbor, and Salem Township ordinances and is recommended by the advisory committee.

Wetland Use Permit Conditions

This section lists conditions placed on all permits. For instance, applicants must maintain delineation boundaries during construction. The section also allows for the community to place conditions on any permits granted, and to require the applicant to file a cash bond with the community in the event of damage to a wetland.

No specific guidance on permit conditions is provided by State Law. The language in this section is from the current Superior, Ann Arbor, and Salem Township ordinances and is recommended by the advisory committee.

Review Standards

This section lists the standards reviewers will use to decide on wetland permits.

Section 7.6 provides standards for wetlands smaller than 2 acres.

****If a community decides to regulate wetlands smaller than 2 acres in size (as recommended by the advisory committee), the State requires local permits *be granted unless* the community determines that those wetlands meet certain standards.**

****These standards follow State Law.**

Section 7.7 provides standards for wetlands larger than 2 acres. For these wetlands, permits shall *not* be granted unless the proposal is in the public interest based on the listed review standards, and unless it is shown that an “unreasonable disruption of aquatic resources will be avoided.”

****The review standards listed in Section 7.7 of the ordinance are required by State Law.**

SECTION 8 - WETLAND MITIGATION AND RESTORATION

This section describes requirements for mitigation of wetlands, if the community decides to grant a permit.

State Law mandates no specific requirements for addressing mitigation in local ordinances. The language in this section is adapted from the current Superior, Ann Arbor, and Salem Township ordinances and is recommended by the advisory committee.

SECTION 9 - FEES, PENALTIES AND ENFORCEMENT

State Law mandates no specific provisions for fees, penalties and enforcement in local ordinances. The language in this section is adapted from the current Superior, Ann Arbor, and Salem Township ordinances and is recommended by the advisory committee.

SECTION 10 - STATE NOTIFICATION

****This section is required by State Law.**

SECTION 11 - ORDINANCE CONFLICT

The language in this section is adapted from the current Superior, Ann Arbor, and Salem Township ordinances and is recommended by the advisory committee.

SECTION 12 - PROPERTY TAX ASSESSMENT

This section is required by State Law.

SECTION 13 & 14

The language in this section is adapted from the current Superior, Ann Arbor, and Salem Township ordinances and is recommended by the advisory committee.

Potential Variations on Model Wetlands Ordinance:

Permitted activities a community could add (to Section 5.2):

- C. Education, scientific research, and nature study.
- D. Installation for noncommercial use of temporary seasonal docks, rafts, diving platforms and other recreational devices customarily used for residential purposes.
- F. Excavation and filling of no more than fifty (50) cubic yards of material if necessary for the repair and maintenance of bridges, walkways, and other existing structures, provided that such structures allow for the unobstructed flow of water and preserve the natural contour of the protected wetland, except as authorized by permit or in connection with Section G (below).
- G. Improvement or maintenance of the _____ River or _____ River [insert River(s) within your community] or its tributaries when such operations are organized or sponsored or approved by the [community] and are specifically intended to preserve natural resources. Such permitted activities shall include, but not be limited to: (1) removal of materials which may cause diverted flows and bank erosion, including the removal of trees, brush, and debris; (2) bank stabilization projects which require minimal disturbance of existing conditions; and (3) wildlife and aquatic habitat improvement projects; and (4) removal of pernicious, invasive plant species (e.g. purple loosestrife).

Re: Section 7.1 F (3):

Community may choose to oblige applicant to post a sign with size specifications of their choosing, or the community may want to post the sign themselves.

Wetlands Setback Requirement Vital to Protection

Legal experts are divided over whether a setback from a wetland can be required in a wetlands ordinance. However, wetlands experts are united in recommending that buffers be required in order to fully protect wetlands from polluted runoff and other impacts from development. It is also undisputed that, through the zoning enabling acts, local governments can impose setback regulations to protect their natural resources and public health. Therefore, HRWC strongly recommends that communities enacting a wetlands ordinance *also* add language to their zoning ordinance requiring setbacks from wetlands. Ann Arbor Township, in Washtenaw County (as well as many other communities), has enacted a “natural features setback ordinance” that requires a vegetated buffer strip of 25 feet and a building setback of 100 feet from all waterways. This ordinance is available from HRWC and distributed along with the model wetlands ordinance.

For More Information

For more information about wetlands protection and wetlands ordinances, HRWC recommends communities obtain the publication *Preserving Michigan's Wetlands: Options for Local Governments*, by the Tip of the Mitt Watershed Council 1997. Call 616-347-1181 for a copy.

The Michigan Department of Environmental Quality's wetlands web site (http://www.michigan.gov/deq/0,1607,7-135-3313_3687---,00.html) offers information about the State Wetlands Law and about local ordinances, including an overview of State Law links to the actual provisions of the law and the regulation promulgated from the law and a list of communities that have wetlands ordinances.