

***Michigan's Wetland, Lakes and
Streams Regulatory Program
Existing Legal Framework***



Federal Clean Water Act

Section 404

- Requires permits for the “discharge of dredged or fill material” into waters of the United States, including wetlands.
- In 1977 Congress Amended the Clean Water Act to allow states to administer the 404 Program.
- Michigan was authorized in 1984 by USEPA to administer Section 404.

A state section 404 program must meet federal standards

CONSISTENCY
IS 

Section 404 Program in Michigan



Operates under a Memorandum of Agreement with the USEPA that defines the federal and state roles in the program.

- Administered under Michigan law: Parts 301 and 303 of the NREPA.
- Policies and procedures specific to state needs
- Some projects require EPA review.

USACE retains jurisdiction over Section 10 waters.

Part 301, Inland Lakes and Streams

Protects inland waters by regulating work in inland lakes and streams.



Michigan has over 36,000 miles of streams, and more than 11,000 lakes and ponds, providing fish and wildlife habitat, and recreational opportunities.

What is a Lake?

A natural or artificial lake, pond, or impoundment with a surface area of 5 or more acres.



- Does not include the Great Lakes or Lake St. Clair
- Ponds less than 5 acres may be regulated under Part 303

Regulated Activities:

- Dredge or fill bottomland.
- Construct, enlarge, extend, remove, or place a structure on bottomland.
- Construct, reconfigure, or expand a marina.
- Create, enlarge, or diminish an inland lake or stream.
- Structurally interfere with the natural flow of an inland lake or stream.
- Construct an artificial waterway that ultimately connects to or is within 500 feet of the OHWM of an existing inland lake or stream.
- Connect any natural or artificial water with an existing inland lake or stream.



What is Bottomland?

Bottomland is the area of land that lies below the OHWM and that may or may not be covered by water.

What is the Ordinary High-water Mark (OHWM)?

The OHWM is the line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland.

OHWM





Public Trust:

1. Right of the public to navigate and fish in navigable waters
2. The duty of the state to protect this right
3. Right of the public to the air, water, and other natural resources of the state
4. The duty of the state to protect these resources from pollution, impairment, or destruction

Riparian Rights:

Rights associated with the ownership of the bank or shore of an inland lake or stream.

Includes access, dockage, general use of the water, and title to natural accretions

Subject to the public trust.



Permitting Process

Section 30106: Permit Review Criteria

1. The department shall not issue a permit if the structure or project will adversely affect the public trust or riparian rights.



Section 30106: Permit Review Criteria

2. The possible effects on the inland lake or stream, and upon waters from which or into which its waters flow, and the uses of all such waters...

...including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry.



Section 30106: Permit Review Criteria

3. The department shall not grant a permit if a structure or project will unlawfully impair or destroy any of the waters or other natural resources of the state.



4. A project completed under this part shall not cause unlawful pollution as defined by Part 31.

Some of the types of projects the Division reviews include:

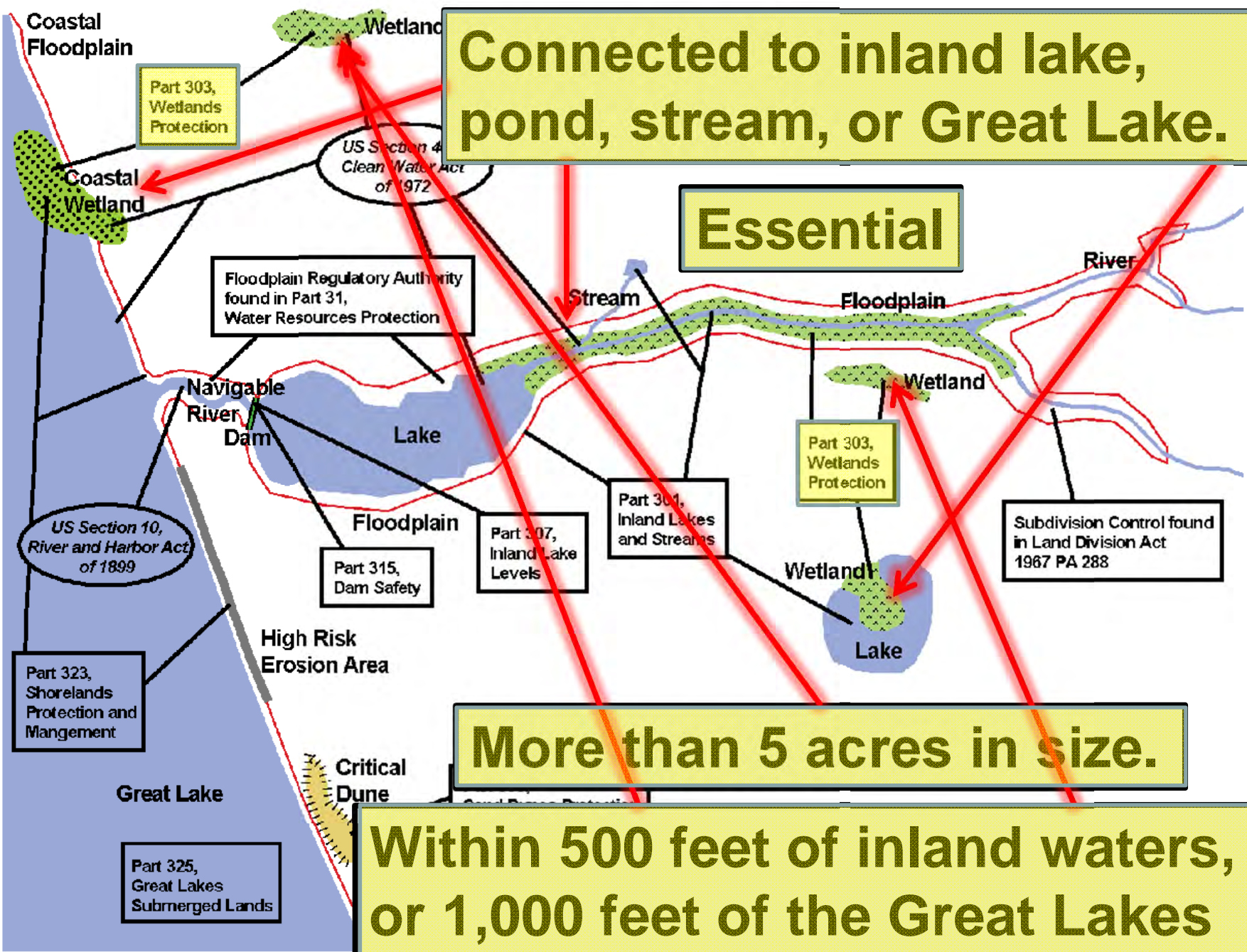
- Boat ramps
- Bridges and culverts
- Dams
- Dredge and fill
- Marinas
- Cofferdams
- Temporary bridges
- Docks
- Shoreline protection
- Streambank stabilization



Part 303, Wetlands Protection

Protects wetland functions and values by requiring permits for activities within *regulated* wetlands. Michigan law clearly defines what wetlands are regulated.





Connected to inland lake, pond, stream, or Great Lake.

Essential

More than 5 acres in size.

Within 500 feet of inland waters, or 1,000 feet of the Great Lakes

What is a Wetland?

**Part 303, Wetlands
Protection, of the Natural
Resources and
Environmental Protection
Act, 1994 PA 451, as
amended.**

At it's most basic:

When Frequency + Duration
of water results in
Wetland vegetation or aquatic life



Wetland Types

Emergent



Wetland Types

Scrub-shrub, wet meadow, forested, vernal pool, bog, fen, etc.



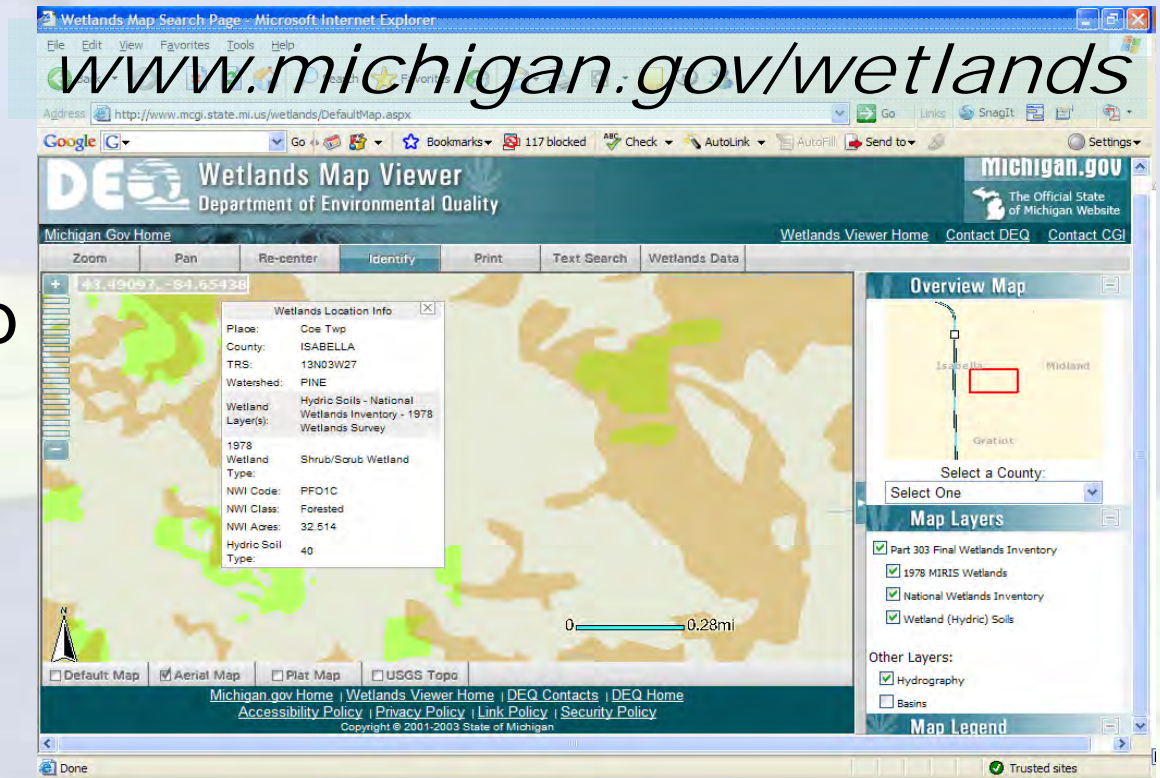
Identification Resources

The following identify areas that *might* be wetland:

NWI

Aerial Photos

DEQ Wetlands Map Viewer



Actual field investigation is required to determine if an area is definitively a wetland.

DEQ Wetland Identification Program (WIP)

Regulated Activities

Defined in statute

FILL



DRAIN



A wetland permit is required from the DEQ to:

- ◆ Place fill material in a wetland
- ◆ Remove soil or minerals from a wetland
- ◆ Construct, operate or maintain a use/development in a wetland
- ◆ Drain surface water from a wetland

Permitting Process


- **Consolidated Joint Permit Application**
Submittal of one application with review and authorizations under multiple parts of the Natural Resources and Environmental Protection Act.
 - Inland lakes and streams, wetlands, floodplains, dams, dunes, high risk erosion areas, and Great Lakes (Parts 301, 303, 31, 315, 323, 325, and 353)
- Single application fee for most projects.
- Coordination with EPA and Corps of Engineers when required.
- Results in an efficient, cost effective, streamlined permitting process for applicants.

Permitting Process

A permit issued by Michigan typically carries with it the following authorizations, at no additional expense, time, or paperwork for the applicant:

- Authorization under Section 404 of the Clean Water Act
- Water Quality Certification under Section 401 of the Clean Water Act
- Coastal Management Program Certification
- Screening and coordination for
 - state and federal endangered species programs
 - federal historic preservation program





In general, a permit applicant must follow this Mitigation Sequence, in this order:

1. Avoidance

2. Minimization

3. Mitigation

Protecting Michigan's Natural Resource Functions and Values



Filling the Gaps

The Importance of Local Protection



- Local governments well suited to integrate local resource protection into land use decisions and site planning.
- Local level knowledge and support.

Benefits to the Resource:

- Protection for critical and unique local resources and/or isolated wetlands not subject to state or federal jurisdictions
- Local zoning regulations can require setbacks and greenbelts to protect the ecological integrity of wetlands, lakes, streams, and habitat corridors
- Local involvement allows for early integration of resource protection during the development of site plans – “conservation planning”

Natural Shoreline Protection

Benefits to the Resource:

- ***Ecological Benefits***

- Improved Fish Habitat
- Lessens Invasive Species
- Allows Wildlife Access
- Links Wildlife Corridors



- ***Water Quality Benefits***

- Removes Nutrients
- Prevents Sediment Loading
- Reduces Erosion
- Reduces Flooding



Benefits to the Applicant:

- Reduced costs and time delays resulting from proper planning
- Local government can provide incentives (density bonuses, variances, etc)
- Complete applications may expedite state and federal processes
- Violations / conflicts with other laws may be avoided
- Nature sells!

Benefits to the Community:

- Enhances the quality of life.
- Helps foster better land use decisions
- Improves water quality, reduces flood damage, protects wildlife habitat, and preserves valuable open space, unique features, and recreational areas
- Increases dollars spent in the community on recreational activities
- Reduces tax payer dollars spent replacing lost functions & values

Natural Shoreline Protection Benefits to the Community:

- Reduced cost compared to conventional landscape maintenance.
- Discourages geese
- Strengthens community experiences through:
 - Bringing natural experiences to the public in urban areas
 - Creating unique identity
 - Increasing marketing potential



QUESTIONS?

For more program info see:

- Permit Application – www.mi.gov/jointpermit
- Wetlands Protection - www.mi.gov/wetlands
- Inland Lakes and Streams – www.mi.gov/deqinlandlakes
- Great Lakes – www.mi.gov/deqgreatlakes
- On-line Tracking System for Joint Permit Applications (CIWPIS) - www.deq.state.mi.us/ciwpis/