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Township Law *E-Letter*

Impacting Wetlands: How to Handle Township Projects that Require Wetland Mitigation

*In an effort to preserve wetlands, restrictions and conditions have been placed on the use and development of wetland property in the form of wetland mitigation. Unfortunately, abiding by these stringent mitigation requirements can cause municipal projects to become more complicated, expensive, and time consuming. This **E-Letter** highlights township involvement in wetland mitigation and benefits received from wetland mitigation projects.*

There were 10.7 million acres of wetlands in Michigan before European settlement. Since the early 1800s, more than 4.2 million acres of wetlands in Michigan have been drained—that’s 3.5 times the size of the Grand Canyon National Park, which is only 1.2 million acres by comparison. (Chad Fizzell, *Status and Trends of Michigan’s Wetlands: Pre-European Settlement to 2005*, Michigan Department of Environmental Quality 1 (2015), http://www.michigan.gov/documents/deq/wrd-wetlands-status-trends_556006_7.pdf; *Park Statistics*, National Park Service, <https://www.nps.gov/grca/learn/management/statistics.htm> (last updated May 10, 2017)).

In an effort to preserve these natural resources, restrictions and conditions have been placed on the use and development of wetland property in the form of wetland mitigation. Unfortunately, abiding by these stringent mitigation requirements can cause municipal projects to become more complicated, expensive, and time consuming.

The Michigan Municipal Wetland Alliance (MMWA) can help. Developed specifically for Michigan municipalities, the MMWA was created to make wetland mitigation compliance less complicated, less expensive, and less time consuming. By purchasing credits from MMWA wetland mitigation banks—rather than completing your own mitigation or purchasing costly private bank credits—your township can fast-track infrastructure projects that impact wetlands and utilize tax payer dollars more efficiently.

WHAT EXACTLY IS A WETLAND?

Michigan’s wetland statute 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 referred to as a bog, swamp, or marsh.” Michigan’s wetland statute is Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. MCL 324.30301(1)(m). In simpler terms, “wetland” describes an area where land and water meet. These areas are not always easy to spot. Places with a high ground water table—like meadows, fields, and forests—may also qualify as wetlands, even if no standing water is visible. Generally, wetlands are characterized by the presence of three factors: (1) water, (2) wetland soils, and (3) wetland vegetation. (*How are wetlands identified?*, Michigan Department of Environmental Quality, http://www.michigan.gov/deq/0,4561,7-135-3313_3687-24314--,00.html (last visited Aug. 14, 2017)).

WHY ARE WETLANDS REGULATED?

Wetlands are a vital part of Michigan’s natural resources. Many terrestrial and aquatic organisms call wetlands home, including rare, threatened, and endangered species. Wetlands provide nutrients in water food cycles. Additionally, wetlands are a source of valuable watersheds and ground water supplies. Wetlands also help control the negative effects of storms, floods, pollution, and erosion by absorbing water and filtering chemicals and silt. Finally, wetlands are popular locations for a variety of recreational activities, including hiking, bird watching, and hunting. (*What are wetlands and why are they important?*, Michigan Department of Environmental Quality, http://www.michigan.gov/deq/0,4561,7-135-3313_3687-141296--,00.html (last visited Aug. 14, 2017)).

Despite their inherent value, over half of Michigan's wetlands have been drained or filled. Fizzell, *supra*. Therefore, restrictions and conditions have been placed on the use and development of wetland property in an effort to preserve these natural resources. Wetland mitigation is often required as a condition of many permits issued under both state law (Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended) and federal law (Section 404 of the Clean Water Act (CWA)). (*Wetland Mitigation Banking*, Michigan Department of Environmental Quality, http://www.michigan.gov/deq/0,4561,7-135-3313_3687-10426--,00.html (last visited Aug. 14, 2017)).

WHAT EXACTLY IS WETLAND MITIGATION?

Wetland mitigation is the replacement of wetland functions through the restoration or creation of wetlands. (*Wetland Mitigation*, Michigan Department of Environmental Quality, http://www.michigan.gov/deq/0,4561,7-135-3313_3687-86447--,00.html (last visited Aug. 14, 2017)). Mitigation is only considered after wetland impacts have been otherwise avoided or minimized. The goal of wetland mitigation is to replace wetland functions that provide public benefits—such as flood storage, water quality protection, fish and wildlife habitat, and groundwater recharge—so that there is ultimately “no net loss” of wetland functions. *Id.* Restoring existing wetlands is preferred over creating new wetlands where none previously existed, and the restored or newly created wetland must be of a similar ecological type as the impacted wetland where feasible and practical. *Id.*

WHEN WOULD MY TOWNSHIP PUBLIC PROJECT REQUIRE WETLAND MITIGATION?

Generally, wetland mitigation is required for all Michigan Department of Environmental Quality (MDEQ) permitted projects impacting over 1/3 acre of wetland, or any MDEQ permitted project impacting under 1/3 acre of wetland if a reasonable opportunity for mitigation exists. Wetland mitigation is not required if the project falls under a general MDEQ permit category, or if the basic purpose of the project is to restore or create wetlands. *Id.*

Applicants for a MDEQ permit generally have three options to compensate for lost wetlands: (1) on-site mitigation, (2) off-site mitigation, and (3) mitigation banking. (United States Army Corps of Engineers, <http://www.nap.usace.army.mil/Portals/39/docs/regulatory/Mitigation/mitigation-qa.pdf> (last visited Aug. 14, 2017)). On-site mitigation is the restoration or creation of wetlands by the permit holder within the project limits of the impacted wetlands. Similarly, off-site mitigation is the restoration or creation of wetlands by the permit holder at another site within the same watershed or ecoregion. *Id.* Several requirements for on-site and off-site mitigation make these options both costly and time consuming. These include purchasing the property, designing and constructing the wetland, planting the appropriate aquatic vegetation, obtaining a conservation easement, and maintaining and monitoring the wetland in perpetuity. Additionally, several of these requirements usually demand the services of an engineer and environmental consultant. Mitigation banking, on the other hand, involves the purchase of credits from an already constructed wetland mitigation bank within the same watershed or ecoregion to offset the permitted impact to wetlands. *Wetland Mitigation Banking, supra.*

WHAT ARE THE BENEFITS OF WETLAND MITIGATION BANKING?

Establishing new wetland areas—or “banks”—before existing wetland areas are impacted is the preferred method of mitigation under state and federal statutes, including Part 303 of the NREPA and Section 404 of the CWA, respectively. (*Mitigation Banking Factsheet*, United States Environmental Protection Agency, <https://www.epa.gov/cwa-404/mitigation-banking-factsheet> (last visited Aug. 14, 2017)). Each new acre in an approved wetland mitigation bank represents a bank “credit,” which is then sold to a permit holder to satisfy any mitigation requirements associated with the permit. *Wetland Mitigation Banking, supra.*

Mitigation construction on a per project basis can be very complicated, expensive, and time consuming, and public infrastructure projects can be delayed or put on hold due to costly mitigation requirements. Wetland mitigation banking reduces permit processing time and costs, increases certainty regarding the availability of adequate mitigation sites, consolidates small mitigation projects into larger, better designed and managed units, and encourages integration of wetland mitigation projects with watershed-based resource planning. *Id.*

HOW CAN MY TOWNSHIP TAKE ADVANTAGE OF WETLAND MITIGATION BANKING?

In the past, Michigan municipalities had few opportunities to utilize wetland mitigation bank credits because their only option was to purchase privately owned wetland mitigation bank credits on the open market. The MDEQ maintains a registry of the established private wetland mitigation banks in Michigan. Currently, there are 19 bank sites on the MDEQ Registry. Please visit the MDEQ website at www.mi.gov/wetlands for more information regarding the availability of these credits. Unfortunately, these private bank credits are not available in some areas of the state, and they can be cost prohibitive. In fact, private bank credits cost up to \$100,000 per acre credit. (*The Cost of Wetlands for Business*, Huron Township Local Development Finance Authority, <http://hurontwpldfa.com/huron-township-michigan/the-cost-of-wetlands-for-business/> (last visited Aug. 14, 2017)). However, with assistance from the Michigan Department of Natural Resources (MDNR), the Michigan Municipal Wetland Alliance (MMWA) is able to offer a more affordable price point for townships who need to buy wetland mitigation bank credits.

WHAT EXACTLY IS THE MICHIGAN MUNICIPAL WETLAND ALLIANCE?

The MMWA is a non-profit organization engaging in a public-private partnership with the Michigan Department of Natural Resources (MDNR) to offer affordable wetland mitigation bank credit opportunities to Michigan municipalities. The MMWA is also working with the MDEQ to establish a small amount of wetland mitigation credits for blueberry growers who are planning for expansion. Additionally, the organization is working with the Natural Resources Conservation Service (NRCS) to develop a separate program to assist landowners who are out of compliance with the Swampbuster provision of the US Farm Bill. As a non-profit organization, the MMWA is utilizing grant funds from the MDEQ and the MDNR to create high-functioning, professionally managed and maintained wetland mitigation banks, encouraging long-term sustainability, high water quality, and biodiverse ecosystems. The MMWA is dedicated to preserving wetland habitat and enhancing outdoor recreation on MDNR public lands, while simultaneously addressing wetland impacts from Michigan municipalities throughout the state.

The organization is a coordination of effort between several member groups, including the Michigan Association of County Drain Commissioners (MACDC), the Michigan Association of Counties (MAC), the Michigan Townships Association (MTA), the Michigan Municipal League (MML), and the County Road Association of Michigan (CRA). Collaborators assisting in the advancement of the program include the Michigan Department of Natural Resources (MDNR), the Michigan Department of Environmental Quality (MDEQ), the United States Department of Agriculture (USDA), the Natural Resources Conservation Service (NRCS), the Michigan Department of Agriculture and Rural Development (MDARD), and Michigan Farm Bureau.

HOW CAN THE MICHIGAN MUNICIPAL WETLAND ALLIANCE HELP MY TOWNSHIP?

The public-private partnership between the MMWA and the MDNR helps to make compliance with strict wetland mitigation requirements less complicated, less expensive, and less time consuming for Michigan municipalities. With grant funds from the MDEQ and the MDNR, the MMWA is establishing wetland mitigation bank sites across the state to help expedite municipal infrastructure projects and make the cost of compliance cheaper. The MMWA will build the wetland mitigation banks and serve as the bank sponsor, while the MDNR will maintain ownership of the land and maintain the wetland mitigation banks in perpetuity, which means that townships can rest assured that their wetland mitigation requirements have been properly fulfilled.

The MMWA is currently constructing four new wetland mitigation banks on MDNR lands specifically for Michigan municipalities. By using state-owned lands, the MMWA is able to save the purchase price of the bank sites. In this way, the benefit of the public-private partnership between the MDNR and the MMWA is passed on to the tax payer in the form of substantial savings. Once the sites have been constructed and approved by the MDEQ, MMWA bank credits will cost municipalities \$30,000 per acre credit. By purchasing these credits through the MMWA, your township will be able to accelerate infrastructure projects with unavoidable wetland impacts more affordably.

WHERE CAN MY TOWNSHIP GET MORE INFORMATION?

If your township is planning a project with unavoidable wetland impacts, or if you have specific questions regarding any of the MMWA wetland mitigation banks, please visit the MMWA website at www.michiganwetlands.com. You can use the credit availability maps to determine if any MMWA wetland mitigation bank credits are currently available in your watershed or ecoregion. More sites will be added in the years to come, with demand being a strong factor in determining future locations for those new sites. Therefore, it is important to contact the MMWA when your township begins planning a project with unavoidable wetland impacts, even if no MMWA wetland mitigation bank credits are currently available in your location.

You can call the MMWA at 517.853.5806 or send an email to info@michiganwetlands.com for more information. While the MMWA is constructing its first four bank sites on MDNR lands, the non-profit organization is interested in opportunities to build wetland mitigation banks on other public land as well. Please contact the MMWA if your township owns property that may be suitable for a wetland mitigation bank site.

-- Stacy Hissong and Rachel Kovel

BREAKING NEWS: NEW MINIMUM ASSESSING REQUIREMENTS

The State Tax Commission (“STC”), the agency responsible for ensuring substantial compliance with the requirements of the General Property Tax Act, has set new standards when conducting an audit of minimum assessing requirements (“AMAR”). All local units of government should make themselves aware of these new requirements, as a failure to meet one or more of them may result in repercussions. If you are unaware of when your local unit of government is scheduled to be audited by the STC, click here to view a schedule through 2022. Although your local unit of government may not be scheduled for an immediate audit, we recommend ensuring compliance with the new requirements.

It is important to clarify that all the minimum assessing requirements are based upon pre-existing statutes or STC rules, policies, bulletins, and publications. Thus, local units of government may already have existing policies and resolutions set in place. These requirements are only “new” in so much as the STC is only now reviewing them when conducting an audit.

For your convenience, the chart below will provide a broad overview of the new and continuing minimum assessing requirements. If you have any questions relating to the minimum assessing requirements, or if your local unit of government would like assistance drafting policies and resolutions relating to the minimum assessing requirements, please feel free to contact our office as we would be happy to assist you.

DESCRIPTOR	NEW OR CONTINUING	EXPLANATION
<i>Principal Resident Exemption</i>	New	The local unit must have a policy adopted relating to the distribution of interest collected when a property owned is denied a PRE.
<i>Property Exemptions</i>	New	The local unit must have written procedures relating to real property exemptions.
<i>Economic Condition Factors</i>	Continuing	The local unit must properly calculate and document economic condition factors.
<i>Land Value Maps</i>	Continuing	The local unit must have accurate land value maps.
<i>Land Value Determinations</i>	Continuing	The local unit must correctly document and calculate Land Value Determinations.
<i>True Cash Value</i>	Continuing	The local unit’s true cash value on record must agree with true cash value indicated on the assessment roll.
<i>Personal Property Canvas</i>	New	The local unit must conduct an annual personal property canvas.
<i>Small Business Taxpayer Exemption</i>	New	If a local unit grants a small business taxpayer exemption, the local unit must properly process the exemptions received.
<i>Poverty Exemptions</i>	New	If a local unit grants a poverty exemption, the local unit must have guidelines which include an asset level test. The local unit must grant the exemptions according to statutory requirements and the local unit policy.
<i>Board of Review</i>	New	The July and December Board of Review must meet statutory requirements under MCL 211.53b.
<i>Property Transfer Affidavit</i>	New	The local unit must satisfy statutory requirements when levying the interest and penalty for failing to file a property transfer affidavit. The local unit may waive the intent and penalty by resolution and the resolution must be kept on file.

-- Ross Bower

Fahey Schultz Burzych Rhodes PLC, Your Township Attorneys, is a Michigan law firm specializing in the representation of Michigan townships. Our lawyers have more than 150 years of experience in township law, and have represented more than 150 townships across the state of Michigan. This publication is intended for our clients and friends. This communication highlights specific areas of law, and is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

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