DEPARTMENT OF ENVIRONMENTAL QUALITY ♦ LAND AND WATER MANAGEMENT DIVISION
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When can preservation be accepted as mitigation?

Rule 5 (4)(d) of the administrative rules for Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, states that "The preservation of existing wetlands may be considered as mitigation only if the department determines that all of the following conditions are met:

(i) The wetlands to be preserved perform exceptional physical or biological functions that are essential to the preservation of the natural resources of the state or the preserved wetlands are an ecological type that is rare or endangered.

(ii) The wetlands to be preserved are under a demonstrable threat of loss or substantial degradation due to human activities that are not under the control of the applicant and that are not otherwise restricted by state law.

(iii) The preservation of the wetlands as mitigation will ensure the permanent protection of the wetlands that would otherwise be lost or substantially degraded."

In accordance with the mitigation rules no net loss statement, it was not intended that credit for the preservation of existing wetlands be given routinely. All three of the criteria listed above must be met to approve preservation of existing wetlands as mitigation. The wetland to be preserved could be on site or at another property, as long as it meets the criteria. The required mitigation ratio is 10 acres of wetland preservation for 1 acre of permitted wetland impact.

The criteria in Rule 4, for the determination of wetlands that are essential to the preservation of the natural resources of the state, can be used to identify the exceptional physical or biological functions needed for the approval of preservation as mitigation. The following functions can be considered exceptional physical or biological functions:

"(a) It supports state or federal endangered or threatened plants, fish, or wildlife specified in Section 36501 of Act Number 451 of the Public Acts of 1994, as amended, being §324.36501 of the Michigan Compiled Laws.

(b) It represents what the state has identified as a rare or unique ecosystem.

(c) It supports plants or animals of identified regional importance.

(d) It provides groundwater recharge documented by a public agency."

Wetlands that are of an ecological type that is rare or endangered are found on the below list of Michigan rare and endangered natural communities. Wetlands that either provide exceptional physical or biological functions or are on the rare or endangered community list would meet the first condition of Rule 5(4)(d).

Many activities on the applicant's property would be considered "under the control of the applicant." Activities not under the control of the applicant could include such things as county drain projects, hydrologic changes, increased pollutant loading resulting from adjacent development, or other outside disturbances. Activities regulated by Part 303 would be considered restricted by state law. Any wetland (including a wetland under state jurisdiction)

threatened by unregulated activities not under the control of the applicant would meet the second condition.

For mitigation credit to be given for preservation, a plan must be developed by the applicant to permanently protect the wetland. This would include a conservation easement and any other means needed to monitor and protect the wetland from future degradation or threats. If an acceptable plan is developed that would permanently protect the wetland, the third condition would be met.

An example of a wetland that would meet the preservation conditions would be a regulated fen or peatland that supports listed species and is threatened by stormwater runoff from adjacent development. Permanent protection of the wetland from both runoff and potential human disturbance of the listed species would be necessary. Another example would be the protection of a noncontiguous interdunal wetland threatened by off-site activities (such as a housing development) where the applicant could show that the wetland would be protected by a buffer zone, stormwater management, conservation easement, etc. In this case, the buffer zone required for permanent protection must be included in the conservation easement. However, the acreage of the buffer would not count as mitigation credit.

List of Rare and Endangered Michigan Natural Communities:

Great Lakes marsh
Southern wet meadow
Inland salt marsh
Intermittent wetland [Boggy seepage wetland]
Coastal plain marsh
Interdunal wetland
Lakeplain wet prairie
Lakeplain wet-mesic prairie
Northern wet-mesic prairie
Wet-mesic prairie
Wet prairie
Prairie fen
Northern fen
Patterned fen
Poor fen
Muskeg
Rich conifer swamp
Relict conifer swamp
Hardwood-conifer swamp
Northern swamp
Southern swamp
Southern floodplain forest
Inundated shrub swamp
Wooded dune and swale complex
Boreal forest
Mesic southern forest [Southern hardwood forest]
Mesic northern forest [Northern hardwood forest; Hemlock-hardwood forest]
Dry-mesic southern forest [Oak-hardwood forest]
Dry-mesic northern forest [Pine-hardwood forest]
Lakeplain oak openings
Sand/gravel beach
Cobble beach [Cobble shore]
Alvar [Alvar grassland]
Basalt bedrock glade
Igneous bedrock glade
Limestone bedrock glade [Alvar glade]
Sandstone bedrock glade
Volcanic conglomerate bedrock glade
Basalt bedrock lakeshore
Igneous bedrock lakeshore
Limestone bedrock lakeshore [Alvar pavement]
Volcanic conglomerate bedrock lakeshore
Sinkhole
Dry southern forest [Oak forest]
Dry northern forest [Pine forest]
Oak openings
Great Lakes barrens
Lakeplain mesic sand prairie
Mesic sand prairie
Mesic prairie
Hillside prairie
Woodland prairie
Dry sand prairie
Oak barrens
Oak-pine barrens
Pine barrens
Northern bald [Krummholz ridgetop]
Open dunes
Moist acid cliff
Moist non-acid cliff
Dry acid cliff
Dry non-acid cliff
Basalt lakeshore cliff
Sandstone lakeshore cliff
Volcanic conglomerate lakeshore cliff
Cave
Bur oak plains