

Commercial inc

Taking Control of Your Wetlands Property

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Few experiences are less pleasant than the discovery of wetlands on a newly-purchased property intended for development. Usually the presence of extensive wetlands will preclude any attempts to build on the property without prior express permission either from the state or federal government, or both.

Although recent decisions by the U.S. Supreme Court and federal appeals courts may signal favorable changes in the law, Michigan wetlands property owners should still be wary. Following is an outline of key steps and considerations for those faced with a wetland problem:

1. **Do you have regulated wetlands on your property?** Michigan's Wetland Protection Act regulates more than just the obvious swamps and marshes found near lakes, rivers and streams. Large, isolated wetlands and artificially-created wetlands may also be regulated at the local or municipal level. In general, wetland indicators include certain soil types, vegetation and wildlife adapted to wet conditions, and the presence of water saturating the soil.

2. **Determine whether the proposed activity is regulated.** In general, the answer to this question for developers will be "yes." Dredging, draining or filling, usually required prior to building on a wetland, are prohibited without a state permit.

3. **Apply for a permit long before you fill, dredge, build or sink pilings.** Otherwise, you risk fines up to \$10,000 for each day you are in violation of the Wetland Protection Act. You may also be ordered to remove structures or return the wetland to its previous, natural condition.

4. **Exhaust your administrative remedies.** If the DNR denies your request for a permit, usually

you must appeal the decision to an administrative law judge and the Natural Resources Commission before you can bring a case in the state courts. Failure to pursue your administrative rights, according to DNR regulations, may send you back to the beginning of the process, or deprive you of the right to a further appeal.

5. **Pursue a claim for the "taking" of your property after a final denial of a wetlands permit.** Generally, there are two important questions concerning a taking through a denial of a wetlands permit:

A. Is the wetland portion of the parcel sufficient to affect the use and value of the entire parcel?

B. Is all economic value taken by the denial of a wetlands permit? It is not enough to show that denial of a wetlands permit prevents an owner from carrying out a particular project in a particular manner. The court must be convinced that denial of the wetlands permit requested effectively prevents any economically feasible use of the property.

6. **Remedies for a "taking."** If you convince the court that a "taking" of your property has occurred by the denial of a wetlands permit, the state has three options: Issue the permit as requested; Issue a modified permit with restrictions that do not prevent reasonable use of the property; Pay the owner the reasonable value of the property taken (not to exceed two times the state equalized value of the property).

7. **Reduce the assessed value of the property.** If you have been denied a permit for activities in your wetlands, your property has lost value, and the assessment should reflect that fact. ■