

cityofnovi.org

# CITY of NOVI CITY COUNCIL

Agenda Item 1  
February 22, 2010

**SUBJECT:** Consideration of City Code Amendment 09-125.22, to amend City of Novi City Code at Article V, "Wetlands and Watercourse Protection" of Chapter 12, "Drainage and Flood Damage Prevention", and adopt the updated Regulated Wetland and Watercourse Map. **FIRST READING**

**SUBMITTING DEPARTMENT:** Community Development Department - Planning <sup>Burb</sup>

**CITY MANAGER APPROVAL:** 

## **BACKGROUND INFORMATION:**

The Community Development Department has completed an update to the Regulated Wetland and Watercourse Map and Wetland Protection Ordinance. The City of Novi has had a long history of protecting natural resources through various ordinances, including the Wetland Protection Ordinance which was initially adopted in 1985. Throughout the years, this ordinance has allowed high quality developments to be constructed adjacent to and around the numerous watercourses and wetlands naturally existing through all areas of Novi.

The intent of the ordinance is to identify and protect wetlands and watercourses in the City. Wetlands and watercourses are considered indispensable and fragile natural resources, subject to floodwater capacity limitations, erosion, soil bearing capacity limitations and other hazards. The ordinance notes that, in their natural state, wetlands and watercourses provide many public benefits, such as the maintenance of water quality through nutrient cycling and sediment trapping, and flood and stormwater runoff control through temporary water storage, slow release and ground water recharge. The ordinance further notes that wetlands provide open space, passive recreation, fish and wildlife habitat, including habitat for migratory waterfowl and rare, threatened or endangered animal and plant species. The destruction and loss of wetlands and watercourses constitutes a distinct and immediate danger to the public's health, safety and general welfare.

Throughout the State, wetlands and watercourses have been lost or impaired by draining, dredging, filling, excavating, building, pollution, and by other acts that are inconsistent with the natural uses of such areas. Remaining wetlands are in jeopardy of being despoiled or impaired. It has been the policy of the City of Novi to prevent further net loss of wetlands that are:

- Contiguous to a lake, pond, river or stream
- Two acres in size or greater, or
- Less than two acres in size, but deemed essential to the preservation of the natural resources of the city.

The ordinance further provides standards and procedures for the review of proposed activities in wetlands and watercourses, and provides for the issuance of wetland use permits for approved activities. The ordinance requires coordination with other applicable ordinances, statutes and regulations (including the State's wetland regulations), and establishes penalties for violation of the ordinance.

The success of the ordinance can be seen not only in the attached updated map that shows the continued preservation of wetlands throughout the developed areas of Novi, but through the continued relationship the City's staff and consultants have with the State's employees who are also involved in wetlands regulations. Many times, the State will defer to the City's regulations and review procedures, as a level of trust has been established over the years, thereby allowing the State to expend attention to other areas. Developers, who are sometimes initially wary of the

City's regulations, have indicated after a development is completed, that the preservation and enhancement of natural wetlands and watercourses have made private developments more attractive to residents, employees and business owners.

We have also heard that the continued preservation of wetlands and natural resources have made Novi unique among developing communities. Last Fall, Novi was presented as the first recipient with the Oak Land Award from Oakland County. Novi was recognized for its ability to blend natural and built environments and for having made outstanding contributions and demonstrated successful efforts toward the planning, promotion, design, development or support of Green Infrastructure in Oakland County.

The mapping was last updated in 2001. This year's update process sought to identify wetland areas that have been altered or relocated, as well as to include any new areas of developing wetlands or constructed wetland mitigation projects. The mapping is used as a guideline for all development within the City, with the goal of protecting, conserving and preserving valuable environmental resources. Any applicant proposing development or alteration on a wetland site is required to provide a wetland delineation completed by a qualified environmental professional. This site specific delineation serves as the basis for all planning, design and engineering.

For the map update, Staff reviewed all areas of the City through use of Geographic Information Systems maps and an overlay of the City's most recent aerial photo information. Oakland County soils maps and federal floodplain maps were reviewed for pertinent information. All potential wetland areas were delineated and documented on a working copy of the map. The working map was then field verified throughout the City by Dr. John Freeland of Environmental Consulting and Technologies (ECT), and David Beschke, City of Novi Landscape Architect. Specific areas of concern raised by property owners and developers were field reviewed. One specific mapping question was recently reviewed; please see attached correspondence. Any necessary corrections or clarifications were completed on the draft final proposed map, as attached.

The existing Wetland Protection Ordinance has proven to be a solid document for the protection, conservation and management of wetland areas. Only minor alterations have been proposed in order to update terminology and bring the ordinance up to date. Recently, the State of Michigan introduced revisions to the State of Michigan's P.A. 451 of 1994, Natural Resources and Environmental Protection Act, (P.A. 451) Parts 301 (Lakes and Streams) and 303 (Wetland Protection), as amended. These changes to the State legislation were reviewed by city staff and the city's environmental consultant and were found to have no significant ramifications to the City's Wetland and Watercourse Map or Wetland Protection Ordinance. A letter of opinion in regard to the new State legislation by ECT, the City's environmental consultants is attached.

The proposed updated Regulated Wetland and Watercourse Map and Ordinance were displayed in the Civic Center Lobby and were exhibited at Fall for Novi. The map and ordinance information has been on the City of Novi website since August, 2009. A press release describing the intent, process and final recommendations was published and public comments were encouraged. The Planning Commission held a public hearing and has forwarded a favorable recommendation to the City Council for the approval and adoption of the updated Regulated Wetland and Watercourse Map and Article V - Wetland Protection Ordinance.

**STAFF RECOMMENDATION:** Approval of City Code Amendment 09-125.22, to amend City of Novi City Code at Article V, "Wetlands and Watercourse Protection" of Chapter 12, "Drainage and Flood Damage Prevention", and adopt the updated Regulated Wetland and Watercourse Map. **FIRST READING**

	1	2	Y	N
Mayor Landry				
Mayor Pro-Tem Gatt				
Council Member Crawford				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

**LETTER FROM ECT REGARDING  
RECENT CHANGES TO STATE LAW**



**Environmental Consulting & Technology, Inc.**

January 27, 2010

Ms. Barbara McBeth  
Deputy Director of Community Development  
City of Novi  
45175 West Ten Mile Road  
Novi, MI 48375

Re: P.A. 120 of 2009, Enrolled Senate Bill No. 785 and Its Impact on the Novi Wetland and Watercourse Ordinance

Dear Ms. McBeth:

At the City of Novi's (City) request, Environmental Consulting & Technology, Inc. (ECT) has been assisting the City with an update of its Wetland and Watercourse Ordinance (Ordinance), which has included both an update of the City's Regulated Wetland Map and minor revisions to the Ordinance text. As you know, the City's local wetland ordinance is authorized under the State of Michigan's P.A. 451 of 1994, Natural Resources and Environmental Protection Act, (P.A. 451) Parts 301 (Lakes and Streams) and 303 (Wetland Protection), as amended. The Michigan legislature enacted P.A. 120, Enrolled Senate Bill 785, effective October 15, 2009, which appears to significantly amend P.A. 451. This letter presents ECT's assessment of the impacts of P.A. 120 on wetland regulation according to Novi's Ordinance. As the City's Wetland Consultant, our assessment is based on our understanding of P.A. 120 from an operational perspective as wetland scientists and is not intended as legal advice.

**Key Points from P.A. 120**

1. **State Wetland Regulatory Criteria:** there appears to be no change in the criteria used to regulate wetlands in Michigan. Wetlands are regulated if they are "contiguous to the Great Lakes, or Lake St. Clair, an inland lake or pond, or a river or a stream." Wetlands are regulated if they are non-contiguous but are more than five acres in size. Wetlands are regulated if they are non-contiguous, five acres or less in size "if the department determines that protection of the area is essential to the preservation of the natural resources of the state from pollution, impairment, or destruction and the department has so notified the owner." Under the City Ordinance, all state-regulated wetlands are automatically regulated and other smaller, non-contiguous wetlands not otherwise regulated by the state may be regulated in Novi according to the wetland "essentiality criteria" found in the Ordinance. Nothing in P.A. 120 appears to change these criteria.
2. **Wetland Delineation Methodology:** A significant change contained in P.A. 120 pertains to technical methodology for doing wetland delineations. "The department and local units of government shall apply the technical wetland delineation standards set forth in the United States Army Corps of Engineers January 1987 wetland delineation manual, technical report Y-87-1 (1987 Manual), and appropriate regional United States Army Corps of Engineers supplements, in identifying wetland boundaries under this part, including, but not limited to,

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section 30307.” These two (2) documents replace the Michigan Department of Environmental Quality’s 2001 Wetland Delineation Procedures Manual (MDEQ Manual).

Technical Report Y-87-1 was prepared over twenty years ago. Since then, the U.S. Army Corps of Engineers has issued an “Interim Regional Supplement to Corps of Engineers Wetland Delineation Manual: Midwest Region, September 2008” (ERDC/EL TR-08-27) (Corps Supplement). The Corps Supplement contains numerous technical updates regarding field parameters used to delineate wetlands. It reflects, to some extent, over twenty years of scientific advancement in wetland science since publication of the 1987 Manual.

There are procedures in the 1987 Manual that would tend to exclude some wetlands previously delineated under the old MDEQ Manual, and the Corps Supplement contains new technical criteria that, when used, may result in areas meeting wetland criteria that wouldn’t have under the old MDEQ Manual. Without detailed field delineation of individual wetlands, ECT is not prepared to predict whether or not the new wetland delineation rules will result in more or less regulated wetland area in the City. The adding and subtracting influences of the new wetland delineation rules may essentially balance.

3. Wetland Mitigation Banks: P.A. 120 favors assisting local units of government with wetland mitigation banking. ECT believes this was done in an effort to expedite wetland permits in cases where compensatory wetland mitigation is required and options for potential mitigation sites are limited.

P.A. 120 says, “(t)he department shall implement a pilot program for assisting local units of government and partnering individuals or entities in the development of wetland mitigation banks. This assistance shall include, but not be limited to, supplying maps of potential wetland restoration areas for site selection, reviewing potential sites for mitigation banks, and, if the mitigation bank sponsor is a county with a population of 500,000 or more, expediting review of conceptual design plans. Within 180 days after the effective date of the amendatory act that added this section, the director shall designate 2 counties with a population of 500,000 or more. Those counties, or municipalities and partnering individuals or entities in those counties, are eligible to participate in the pilot program. A proposed designation under this subsection shall be posted on the department’s website for at least 21 days before the designation is made, for public review and comment.”

The City Ordinance requires that wetland mitigation for projects in Novi be mitigated in Novi. The development of a mitigation bank would not appear to offer an option for Novi developers, under the current Ordinance, unless the bank was located within the City limits.

4. Pilot Program: “The department shall implement a pilot program to facilitate the role of local units of government, conservation districts, nonprofit organizations, and wetland professionals in assisting persons seeking such assistance with completing permit applications, avoiding and minimizing impacts from a proposed project, using best management practices in a proposed project, and otherwise complying with this part. The goals of the pilot program include increasing the efficiency of the permitting process through better utilization of all available resources, including department staff, while protecting the wetland of this state. The pilot program shall not affect the department’s authority to make

regulatory decisions in any way." This appears to be authorization to form a committee to look into ways to make the wetland program more efficient. Until the program puts forth a set of actionable recommendations, it's not clear how the Pilot Program would affect the City.

5. Unreasonable Cost of Feasible and Prudent Alternative. The City Ordinance states, in part, "A permit shall be issued if... (a) feasible and prudent alternative does not exist." The City Ordinance does not reference cost in judging what is or is not a feasible and prudent alternative. According to P.A. 120, "An alternative that entails higher costs... is not feasible and prudent if those higher costs are unreasonable..."

The change calls for the department to consider the increased cost of the alternative in relation to the overall cost of the project and whether or not the costs are atypical for that type of project. Although ECT has no reason to believe the City is required to adopt this change, it appears to be an available option.

6. Contracts with Local Governments and Others: "The department may enter into an agreement to make contracts with the federal government, other state agencies, local units of government, private agencies, or persons for the purposes of making studies for the efficient preservation, management, protection, and use of wetland resources. A study shall be available as a public record for distribution at cost as provided in section 4 of the freedom of information act, 1976 PA 442, MCL 15.234."

This is a notable item that may lead to mutually beneficial agreements between the City and the state.

7. Local Wetland Maps: Regarding local ordinances, wetland inventory maps are required. The City has recently updated its map to update the wetland changes that have occurred due to development over the past several years. The statement, "A wetland inventory map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not a wetland" appears in the state's wetland regulation, as well as in the City Ordinance. It is important for users of the Novi Wetland Map to understand that it does not substitute for a field wetland delineation.

### **Conclusion and Recommendations**

There are many textual changes in P.A. 120 that amend P.A. 451 Natural Resources and Environmental Protection Act and Parts 301 (Lakes and Streams) and Part 303 (Wetland Protection). While some, as listed above, appear significant, many of the changes appear subtle, for example, the replacement of the term "impacts" with the term "effects," which may be important in some contexts, but do not seem to affect the City Ordinance, in our opinion. To understand the full ramification of the amending legislation, ECT recommends P.A. 120 be reviewed by the City's attorney.

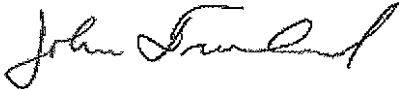
On October 8, 2009, Governor Granholm issued Executive Order 2009-45, which eliminated the Departments of Environmental Quality (MDEQ) and Natural Resources (MDNR), and created the Department of Natural Resources and Environment (DNRE). Although we have tried to capture the significant rule changes found in P.A. 120 that the City needs to know as it goes forward with an

updated wetland ordinance and inventory map, there may be future need to revisit this topic to clarify the changes in state regulations as administered by the newly created DNRE. We recommend that the City keep apprised of statements coming out of the DNRE as they relate to the City's Wetland Ordinance and be prepared to make amendments, as necessary.

If you have any questions regarding the contents of this letter, please contact us.

Respectfully,

**ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC.**



John A. Freeland, Ph.D., PWS  
Environmental Scientist

**STRIKE-THROUGH VERSION OF  
MODIFIED ORDINANCE LANGUAGE**



STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 09-\_\_\_\_\_

AN ORDINANCE TO AMEND ARTICLE V, "WETLANDS AND WATERCOURSE PROTECTION" OF CHAPTER 12, "DRAINAGE AND FLOOD DAMAGE PREVENTION" OF THE CITY OF NOVI CODE, TO PROVIDE NEW SUBSTANTIVE REGULATIONS CONCERNING REQUIREMENTS FOR WETLANDS AND WATERCOURSE PROTECTION WITHIN AND THROUGHOUT THE COMMUNITY.

**THE CITY OF NOVI ORDAINS:**

**PART I**

That Article V, "Wetlands and Watercourse Protection" of Chapter 12, "Drainage and Flood Damage Prevention" shall be amended in its entirety to read as follows:

**ARTICLE V. WETLANDS AND WATERCOURSE PROTECTION**

**DIVISION 1. GENERALLY**

**Sec. 12-151. Findings and purpose.**

- (a) The wetlands and watercourses of the city are indispensable and fragile natural resources subject to floodwater capacity limitations, erosion, soil bearing capacity limitations and other hazards. In their natural state, wetlands and watercourses provide many public benefits, such as the maintenance of water quality through nutrient cycling and sediment trapping, and flood and stormwater runoff control through temporary water storage, slow release and groundwater recharge. In addition, wetlands provide open space, passive recreation, fish and wildlife habitat, including migratory waterfowl and rare, threatened or endangered animal and plant species. The continued destruction and loss of wetlands and watercourses constitutes a distinct and immediate danger to the public health, safety and general welfare.
- (b) Throughout the state, considerable acreage of these important natural resources has been lost or impaired by draining, dredging, filling, excavating, building, pollution and other acts inconsistent with the natural uses of such areas.

Remaining wetlands and watercourses are in jeopardy of being despoiled or impaired. Consequently, it is the policy of the city to prevent a further net loss of those wetlands that are: (1) contiguous to a lake, pond, river or stream, as defined in Administrative Rule 281.921; (2) two (2) acres in size or greater; or (3) less than two (2) acres in size, but deemed essential to the preservation of the natural resources of the city under the criteria set forth in subsection 12-174(b).

- (c) Pursuant to Mich. Const. 1963, Art. IV, § 52, the conservation and development of natural resources of the state is a matter of paramount public concern in the interest of the health, safety and general welfare of the people. Pursuant to the Michigan Environmental Protection Act, MCL 324.1701, et seq., it is the responsibility of public and private entities to prevent the pollution, impairment or destruction of the air, water or other natural resources by their conduct. It is, therefore, the policy of the city to protect wetlands and watercourses while taking into account varying ecological, hydrologic, economic, recreational and aesthetic values. Activities which may damage wetlands and watercourses shall be located on upland sites outside of upland woodland areas, unless there are no less harmful, feasible and prudent alternatives to the proposed activity. When an activity will result in the impairment or destruction of a wetland, mitigation shall be required in accordance with section 12-173(e)1.b.
- (d) It is the purpose of this article to protect the public health, safety and welfare through the protection of wetlands and watercourses. To meet these purposes, this article establishes standards and procedures for the review of proposed activities in wetlands and watercourses, provides for the issuance of use permits for approved activities, requires coordination with other applicable ordinances, statutes and regulations and establishes penalties for the violation of this article.

**Sec. 12-152. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Activity* means any use, operation, or action including but not limited to filling, dredging, constructing, or excavating material and/or structures.

*Agricultural activity* means the production of plants and animals useful to humans, including forages and sod crops, feed crops, field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural activity includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural activity does not include the management and harvesting of a woodlot.

*Aquatic vegetation* means plants and plant life forms which naturally occur in, at, near or predominantly near water.

***Bona fide farming*** means the undertaking of good faith agricultural activity on land. In determining whether the activity occurring on land is bona fide, the following criteria shall be considered:

- (1) The length of time the land has been so utilized;
- (2) Whether the use has been continuous;
- (3) The size of the operation, as it relates to and as appropriate for the specific alleged agricultural activity;
- (4) Whether apparent effort has been made to care sufficiently and adequately for the land in accordance with generally accepted agricultural and management practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, etc.;
- (5) Whether the land is under lease for the conduct of the activity and, if so, the length, terms, and conditions of the lease; and
- (6) The agricultural activity must be a permitted (or approved conditional) or accessory use as set forth in the zoning ordinance.

***Bottomland*** means the land area of a lake, stream or watercourse which lies below the ordinary high water mark and which may or may not be covered by water.

***Channel*** means the geographical area within the natural or artificial banks of a watercourse required to convey continuously or intermittently flowing water under normal or average flow conditions.

***Contiguous*** means having a permanent or seasonal connection from a wetlands to a lake or stream, whether direct or indirect.

***Commercial farming*** means a farming operation designed to generate income to the owner, reported for tax purposes on an annual basis, from the agricultural activity.

***Cultivating*** means the normal physical methods of soil treatment employed after the crop is growing to aid and improve the growth, quality, and yield of farm or forest crops.

***Department of environmental quality (or MDEQ)*** means the Michigan Department of Environmental Quality created by Executive Reorganization Order No. 1995-16, MCL 324.99903; as the transferee of certain statutory authority, powers, duties, functions and responsibilities of the former Michigan Department of Natural Resources.

***Deposit*** means to fill, place or dump.

***Drainageway*** means any drain, pipe, stream, creek or swale which serves to transport stormwater runoff to the primary watercourse system.

***Essential wetland*** means a wetland that is determined by the city to meet one (1) or more of the criteria set forth in subsections 12-174(b)(1)--(10) to such a degree so as to be deemed essential to the preservation of the natural resources of the city.

**Farm** means the land, plants, animals, buildings, structures, including ponds used for agricultural or aquacultural activities, machinery, equipment, and other appurtenances used in the commercial production of farm products.

**Farm operation** means the operation and management of a farm or a condition or activity that occurs at any time as necessary on a farm in connection with the commercial production, harvesting, and storage of farm products, and includes, but is not limited to:

- (1) Marketing produce at roadside stands or farm markets.
- (2) The generation of noise, odors, dust, fumes, and other associated conditions.
- (3) The operation of machinery and equipment necessary for a farm including, but not limited to, irrigation and drainage systems and pumps and on-farm grain dryers, and the movement of vehicles, machinery, equipment, and farm products and associated inputs necessary for farm operations on the roadway as authorized by the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.
- (4) Field preparation and ground and aerial seeding and spraying.
- (5) The application of chemical fertilizers or organic materials, conditioners, liming materials, or pesticides.
- (6) Use of alternative pest management techniques.
- (7) The fencing, feeding, watering, sheltering, transportation, treatment, use, handling and care of farm animals.
- (8) The management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes.
- (9) The conversion from a farm operation activity to other farm operation activities.
- (10) The employment and use of labor.

**Farm product** means those plants and animals useful to human beings produced by agricultural activity and includes, but it is not limited to, forages and sod crops, grains and feed crops, field crops, dairy and dairy products, poultry and poultry products, cervidae, livestock, including breeding and grazing, equine, fish, and other aquacultural products, bees and bee products, berries, herbs, fruits, vegetables, flowers, seeds, grasses, nursery stock, trees and tree products, mushrooms and other similar products, or any other product which incorporates the use of food, feed, fiber or, fir, as determined by the Michigan Commission of Agriculture.

**Fill material** means soil, sand, gravel, clay, peat, debris and refuse, waste of any kind, or any other material which displaces soil or water or reduces water retention potential.

**Food, fiber, and forest products.** Agricultural, horticultural, silvicultural, lumbering and ranching products include agricultural commodities or row crops, fruit and vegetable crops, hay, sod, commercial pulp and timber products, and ornamental trees,

shrubs and flowers produced for a market. Agricultural, horticultural, silvicultural, lumbering and ranching products are typically produced in a normal rotational cycle, or as part of an ongoing farm, forest, or ranching operation, and do not include extracted materials such as peat or topsoil which are not specifically produced as a part of such operations.

**Harvesting** means the normal physical measures employed directly upon farm, forest, or ranch crops to bring about their removal from farm, forest, or ranch lands. For purposes of this subrule, harvesting does not include construction of farm or forest roads or construction of structures such as warehouses or other storage facilities, processing facilities, or loading facilities.

**Irrigation and irrigation ditching** means the placement and use of trenches or pipes and associated appurtenances such as pumps, siphons, and water control structures which are used solely to convey water to a field or forest on an intermittent basis to support farm or forest crops. Ditches which are used to drain water from a wetland and dikes, dams, and other structures which are used to flood an area on a permanent or semi-permanent basis are not irrigation or irrigation ditching.

**Minor drainage** means ditching and tiling for the removal of excess soil moisture incidental to the planting, cultivating, protecting, or harvesting of crops or improving the productivity of land in established use for agriculture, horticulture, silviculture, or lumbering. The installation of minor drainage may not result in the sidestepping or placement of spoil material in the wetland areas, but requires that such materials be placed in an appropriate upland location and stabilized, or replaced as backfill in a temporary excavation for the installation of tile lines.

**Mitigation** means the construction of new wetlands to offset the loss of natural wetlands in such a manner as will replicate with the replacement wetlands the structural and functional qualities of the impaired or destroyed natural wetlands.

**Ordinary high water mark** means the line between upland and bottomland which 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 markedly distinct from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On an inland lake which has a level established by law, the ordinary high water mark means the high establishing level. Where water returns to its natural level as a result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.

**Owner** means any person who has dominion over, control of, title to and/or any other proprietary interest in wetland and watercourse areas, or title to an obstruction, natural or otherwise, to wetland and watercourse properties.

**Person** means any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind, including governmental agencies conducting operations within the city.

**Plowing** means all forms of tillage, including moldboard, chisel, or wide-blade plowing, dicing, harrowing, and similar physical means used on farm, forest, or ranch land for the breaking up, cutting, turning over, or stirring of the soils to prepare it for planting crops. Plowing does not include land balancing or the redistribution of surface materials or recontouring the land by blading, grading, or any other means to fill in wetland areas.

**Restoration** means to re-establish a previously existing wetland to the satisfaction of the city through the removal of fill material, drainage and/or irrigation systems and non-wetland vegetation and the introduction of wetland plant species, wetland soils in areas previously dredged and similar activity necessary to re-establish a functioning wetland system.

**Runoff** means the excess portion of precipitation which does not infiltrate into the ground and which runs off reaching a wetland, watercourse or storm sewer.

**Seasonal** means any intermittent or temporary activity which occurs annually and is subject to interruption from changes in weather, water level, or time of year, and may involve annual removal and replacement of a device or structure.

**Seeding** means the sowing of seed or placement of seedlings to produce farm or forest crops. Changes to the physical landscape, including the construction of greenhouses, terraces, permanent raised beds, or cells separated by dikes, ditches or other structures require a permit and are not "seedling."

**Soils:**

**Poorly drained soils** means those soils from which water is removed so slowly that the soil remains wet for a large part of the time. The water table is commonly at or near the surface during a considerable part of the year. Poorly drained conditions are due to a high water table, to the existence of a less permeable layer within the soil profile, to seepage, or to some combination of these conditions. Poorly drained soils may be light gray from the surface downward with or without mottling.

**Very poorly drained soils** means those soils from which water is removed from the soil so slowly that the water table remains at or on the surface a greater part of the time. Soils of this drainage class usually occupy larger or depressed sites and are frequently ponded.

**Hydric soils** means those soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of wetland vegetation.

**Structure** means any assembly of materials above or below the surface of the land or water, including, but not limited to, houses, buildings, bulkheads, piers, docks, rafts, landings, dams sheds or waterway obstructions.

**Temporary** means a time period as specified in the use permit, or if unspecified, means an uninterrupted time period less than one (1) year in duration.

**Upland** means the land area adjoining a lake, stream, watercourse or wetland, above the ordinary high water mark, uses for which are essentially nonaquatic.

**Watercourse** shall mean any waterway, drainageway, drain, river, stream, lake, pond or detention basin, or any body of surface water having well-defined banks, whether continually or intermittently flowing.

**Wetland** means 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 bog, swamp or marsh.

**Wetland-inventory map Regulated Wetland and Watercourse Map** means that map completed by the city pursuant to section 12-156 of this Code.

**Cross references:** Definitions and rules of construction generally, § 1-2.

**Sec. 12-153. Notice to department of environmental quality.**

The city shall notify the state department of environmental quality of the adoption of this article. The city shall coordinate the processing of permit applications with the department of environmental quality, as required by Section 30307 of the Natural Resources and Environmental Protection Act, MCL 324.30307, as amended.

**Sec. 12-154. Interpretation, application.**

In the interpretation and application, the provisions of this article shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety, comfort, convenience or general welfare. It is not intended by this article to repeal, abrogate, annul or in any way impair or interfere with any existing provisions of law or ordinance, or with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to the law relating to activities within watercourses or wetland areas; provided, however, that where this article imposes a greater restriction than is required by an existing ordinance or rules, regulations or permits, the provisions of this article shall control.

The city, its officials, agents and employees may utilize the rules and regulations adopted by the department of environmental quality or its predecessor department of natural resources pursuant to Section 30319 of the Natural Resources and Environmental Protection Act, MCL 324.30319, as amended, or the predecessor Goemaere-Anderson Wetland Protection Act, 1979 PA 203, as amended.

**Sec. 12-155. Violations.**

- (a) *Penalties.* Any person, firm or corporation determined to have been in violation of the provisions of this article shall be responsible for a municipal civil infraction and subject to the provisions of section 1-11 of this Code.
- (b) *Declared nuisance.* Any use or activity in violation of the terms of this article is hereby declared to be a nuisance per se, and may be abated by order of any court of competent jurisdiction. The city ~~council~~council, in addition to other remedies, including those provided in subsection (c) of this section, may institute any appropriate action or proceeding to prevent, abate or restrain the violation. All costs, fees and expenses in accordance in connection with such action shall be assessed as damages against the violation.
- (c) *Power of city to order restoration.* In the event of a violation, the city shall have the power to order complete restoration of the wetland area involved by the person or agent responsible for the violation. If such responsible person or agent does not complete such restoration within the time specified in the order (not to exceed eighteen (18) months), the city shall have the authority to restore the affected wetlands to the prior condition wherever possible and the person or agent responsible for the original violation shall be held liable to the city for the cost of restoration.
- (d) *Liability of violator.* Any person violating the provisions of this article shall become liable to the city for any expense or loss or damage occasioned by the city by reason of such violation.

**Sec. 12-156. ~~Wetland inventory map.~~ Regulated Wetland and Watercourse Map**

- (a) The city shall, ~~no later than June 18, 1994,~~ complete and make available to the public at a reasonable cost an inventory of all wetland within the City of Novi. The city may utilize as such inventory map the official wetland and watercourse map adopted and revised pursuant to Ordinance No. 85-119.
- (b) A draft of the inventory map shall be made available to the public and an opportunity provided by public notice for comment regarding the inventory map prior to finalization of the inventory map. The city shall respond ~~in writing~~ to written comments regarding the proposed inventory map.
- (c) Upon completion of the inventory map, or any subsequent amendment, the city shall notify each record owner of property on the property tax roll of the city that the inventory map exists or has been amended, where the map may be reviewed, that the owner's property may be designated as a wetland on the inventory map, and that the city has an ordinance regulating wetland. The notice shall also inform the property owner that the inventory map does not necessarily include all of the wetlands within the city that may be subject to the wetland ordinance. The notice may be given by including the required information with the annual notice of the property owner's property tax assessment. In the event that the Regulated Wetland and Watercourse map is wholly revised, notice may be given through public announcement in the local newspaper.



- (d) The completion of the wetland inventory map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not in fact a wetland.
- (e) Navigable waterways or those bodies of water regulated by the Michigan Department of Environmental Quality shall remain under the jurisdiction of the State of Michigan.

**Sec. 12-157. Property inspection.**

The city, its officials, agents and employees may make reasonable entry upon any lands or waters within the city for the purpose of enforcement of this article or the conduct of any investigation, survey or study contemplated by this article.

**Sec. 12-158. Nonconforming activities.**

An activity that was unlawful before August 19, 1985, but which is not in conformity with the provisions of this article may be continued subject to the following:

- (1) No such activity shall be expanded, changed, enlarged, or altered in a way that increases its nonconformity with this article.
- (2) On a building or structure devoted in whole or in part to a nonconforming use or activity, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding fifty (50) percent or the assessed value of the building or structure.
- (3) If a nonconforming activity is discontinued for twelve (12) consecutive months, any resumption of the activity shall conform to this article.
- (4) If any nonconforming use or activity is destroyed, it shall not be resumed except in conformity with the provisions of this article.
- (5) Activities that are or become nuisances shall not be entitled to continue as nonconforming activities.

**Sec. 12-159. Taking of property without compensation.**

- (a) This article shall not be construed to abrogate rights or authority otherwise provided by law.
- (b) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and has been denied a permit or has been made subject to modifications or conditions in the permit pursuant to this article or the action or inactions of the city under this article may file an action in a court of competent jurisdiction.
- (c) If the court determines that an action of the city pursuant to this article constitutes a taking of the property of a person, then the court shall order the city, at the city's option, to do one (1) or more of the following:
  - (1) Compensate the property owner for the full amount of the lost value;
  - (2) Purchase the property in the public interest as determined before its value was affected by this article;
  - (3) Modify its action with respect to the property so as to minimize the detrimental effect to the property's value;

- (4) Modify its action with respect to the property so that the action will not constitute a taking of the property.
- (d) For the purposes of this section, the value of the property may not exceed that share which the area in dispute occupies in the total parcel of land, of the state equalized evaluation of the total parcel, multiplied by two (2), as determined by an inspection of the most recent assessment roll of the city.

Secs. 12-160--12-170. Reserved.

## **DIVISION 2. USE PERMIT**

### **Sec. 12-171. Required.**

- (a) It shall be unlawful for any person to conduct any activities within a watercourse or wetland location without first having obtained a use permit upon proper application. Activities requiring a use permit include but are not limited to the following:
  - (1) Depositing or permitting the depositing of any material including structures into, within or upon any watercourse or wetland;
  - (2) Dredging, removing or permitting the dredging or removal of any material or minerals from a watercourse or wetland, including land balancing;
  - (3) Erecting or building any structure including but not limited to buildings, marinas, roadways, tennis courts, pavings, utility or private poles, towers or transmission lines within or upon any watercourse or wetland;
  - (4) Constructing, operating or maintaining any land use or development in a wetland or watercourse;
  - (5) Enlarging, diminishing or altering any lake, stream or other naturally occurring watercourse;
  - (6) Creating, enlarging or diminishing any natural or artificially constructed canal, channel, ditch, lagoon, pond, lake or other waterway for navigation or any other purpose, whether or not connected to an existing lake, stream or watercourse;
  - (7) Constructing, placing, enlarging, extending or removing any temporary, seasonal or permanent operation or structure upon bottomlands or wetlands, except seasonal docks, rafts, diving platforms and other water recreational devices customarily owned and used by individual households;
  - (8) Constructing, extending, enlarging or connecting any conduit, pipe, culvert, or open or closed drainage facility carrying stormwater runoff from any site, or any other land use permitting discharge of silt, sediment, organic or inorganic material, chemicals, fertilizers, flammable liquids or other polluting substances except in accordance with requirements of county, state and federal agencies and the city;
  - (9) Constructing, enlarging, extending or connecting any private or public sewage or waste treatment plant discharge to any lake, pond, stream, watercourse or wetland, except in accordance with requirements of county, state and federal agencies and the city;

- (10) Pumping surface waters for irrigation or sprinkling of private or public uses, other than for individually owned single-family residences, from lakes, ponds, rivers, streams or waterways, except when the water body is wholly contained within the user's property;
  - (11) Draining or causing to be drained, any water from a wetland;
  - (12) Cutting or removing, or permitting the cutting or removing of any vegetation, including trees, from a wetland, except as permitted in subsection (b)(5) below. Of particular concern is the cutting or removing of vegetation that is threatened or endangered and is protected by state or federal law, and the removing of vegetation so as to adversely affect the nutrient cycling or sediment trapping function of the wetland.
  - (13) The conversion of a farm operation on land developed under subsection (b)(5) below to a use other than a farm operation without first completing the restoration of the affected wetland areas to the satisfaction of the city.
- (b) The prohibition of subsection (a) of this section notwithstanding, the following activities are permitted in watercourse and wetland areas without a use permit, subject to all other laws of this state and the owner's regulation:
- (1) Fishing, trapping or hunting.
  - (2) Swimming or boating.
  - (3) Hiking.
  - (4) Grazing of animals.
  - (5) Bona fide farming, horticulture, silviculture, lumbering and ranching activities, including plowing, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices, if registered with the city pursuant to Chapter 8 of this Code. Wetlands altered under this subsection shall not be used for a purpose other than a purpose described in this subpart without a permit from the city.
  - (6) Maintenance or operation of serviceable structures in existence on August 19, 1985, or constructed pursuant to this article.
  - (7) Construction or maintenance of farm or stock ponds.
  - (8) Maintenance, operation or improvement which includes straightening, widening or deepening of the following which is necessary for the production or harvesting of agricultural products:
    - a. An existing private agricultural drain.
    - b. That portion of a drain legally established pursuant to the drain code of 1956, Act No. 40 of the Public Acts of 1956, as amended, being sections 280.1 to 280.630 of the Michigan Compiled Laws, which has been constructed or improved for drainage purposes.
    - c. A drain constructed pursuant to 1979 PA 203, as amended.
  - (9) Construction or maintenance of farm roads, forest roads or temporary roads for moving mining or forestry equipment, if the roads are constructed and maintained in a manner to assure that any adverse effect on the wetland will be otherwise minimized.
  - (10) Drainage necessary for the production and harvesting of agricultural products if the wetland is owned by a person who is engaged in

commercial farming registered under Chapter 8 and the land is to be used for the production and harvesting of agricultural products. Except as otherwise provided in this article, a wetland improved under this subpart after August 19, 1985, shall not be used for nonfarming purposes without a permit. This subpart shall not apply to a wetland which is contiguous to a lake or stream, or to a tributary of a lake or stream, or to a wetland which the city has determined by clear and convincing evidence to be a wetland which is necessary to be preserved for the public interest, in which case a permit shall be required.

- (11) Construction, maintenance, repair or improvement of public streets, highways or roads by a governmental entity (a government, governmental subdivision or agency, or public corporation) within the right-of-way. All work shall be conducted in compliance with state law and all City of Novi Ordinances and in such manner as to assure that any adverse effect on the wetland will be otherwise minimized.
- (12) Construction, maintenance, repair or improvement by a governmental entity (a government, governmental subdivision or agency, or public corporation) of a sewer system, drainage system or water main facility. All work shall be conducted in compliance with state law and all City of Novi Ordinances and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized.
- (13) Maintenance, repair or operation of gas or oil pipelines and construction of gas or oil pipelines having a diameter of six (6) inches or less, if the pipelines are constructed, maintained or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.
- (14) Maintenance, repair or operation of electric transmission and distribution power lines and construction of distribution lines if the distribution power lines are constructed, maintained or repaired in a manner to assure that any adverse effect on the wetland will be otherwise minimized.
- (15) Operation or maintenance, including reconstruction of recently damaged parts, of serviceable dikes and levees in existence on August 19, 1985, or constructed pursuant to this article.
- (16) Construction of iron and copper mining tailings basins and water storage areas.
- (17) Installation for noncommercial use of any type of dock, boat hoist, ramp, raft or other recreational structure which is placed in a watercourse and removed at the end of the boating season.
- (18) Activities within a wetland or watercourse solely for the purpose of creating additional wetland areas on adjacent land for mitigation purposes.
- (19) Activities within stormwater control or sedimentation basins necessary for the continued maintenance of the basin or built stormwater control structures.

**Sec. 12-172. Contents of application, site plan, map, fee.**

- (a) A use permit applicant shall submit the following materials to the planning department:

- (1) A use permit application, completed in full, on an application form prescribed by the city. Such form shall correspond to any application form promulgated by the department of environmental quality or its predecessor department of natural resources, for local ordinances pursuant to Section 30307 of the Natural Resources and Environmental Protection Act, MCL 324.30307, or the predecessor Goemaere-Anderson Wetland Protection Act, 1979 PA 203, as amended;
  - (2) A use permit application fee, in an amount set by resolution of the council, for the costs of reviews, inspections and administration of wetland use permits;
  - (3) A wetland plan; and
  - (4) Whenever the removal of material, placement of fill material or grading is proposed, a topographic map; and
  - (5) A list of all federal, state, county or other local government permits or approvals required for the proposed activity, including those already the subject of approvals or denials. For those the subject of a denial, the reasons for the denial shall be provided. Copies of approved permits shall be attached.
- (b) Use permit applications shall include the following information:
- (1) The name, address and telephone number of the applicant and of the applicant's agent;
  - (2) The name, address and telephone number of the owner of the property;
  - (3) The project location including, as applicable, the street, road or highway, section number, name of subdivision, and name of any watercourse which will or may be impacted;
  - (4) A detailed description and statement of purpose of the proposed activity;
  - (5) The amount and type of material to be removed or deposited;
  - (6) Where site plan or subdivision approval is also sought, the applicant shall, at the time of submission, elect to have the application processed under one of the following procedures:
    - a. The wetland application shall be reviewed immediately, either prior to or concurrent with the review of the site plan, plat or other proposed land use submitted by the applicant, with the understanding that the land use review may not be completed at the time the decision is rendered on the wetland application. Election of this alternative may require a reopening of the wetland application if the land use approval is inconsistent with the wetland approval; or
    - b. The wetland application shall be reviewed and acted upon concurrent with the review of the site plan, plat or other proposed land use submitted by the applicant, and the ninety-day review period limitation specified in Section 30307(6) of the Natural Resources and Environmental Protection Act, MCL 324.30307(6), as amended, shall be extended as necessary to accommodate such concurrent review.

- (7) Where the applicant proposes an activity in a noncontiguous wetland of less than two (2) acres, ~~the~~ applicant shall have an opportunity to submit data for the purposes of making the determination whether the wetland is essential to the preservation of the natural resources of the city. The applicant may make an election and response relative to each noncontiguous wetland less than two (2) acres, as follows:
  - a. In lieu of having the municipality or its consultant proceed with the analysis and determination, the applicant may acknowledge that one (1) or more of the criteria in subparts 12-174(b)(1)--(10) exist on the wetland in question, including a specification of the one (1) or more criteria which do exist; or
  - b. An election to have the municipality or its consultant proceed with the analysis on whether each of the criteria in subparts 12-174(b)(1)--(10) exist or do not exist in the wetland in question, including specific reasons for the conclusion with respect to each ~~eriterium-~~criterion.

~~(c)~~ Wetland plans shall include the legal property description, zoning classification including the zoning of adjacent parcels, existing structures, existing watercourse and wetland areas, the location and nature of any existing easements, the size and location of all elements of the proposed activity, and, where applicable, any MDEQ permit applications or issued permits. In preparing the wetland plan, the applicant shall perform a field survey of existing wetland boundaries and watercourse locations and provide the same to the city.

(d) Topographic maps shall be prepared by a registered land surveyor or civil engineer to a scale of not less than 1:360 (one (1) inch equals thirty (30) feet) and shall contain:

- (1) Location and dimensions of all boundary lines for the affected property and adjoining properties, including properties directly across any road. The graphic scale, north arrow and date shall be shown;
- (2) Existing contour data for the entire property with a vertical contour interval of not more than two (2) feet, and vertical contour data at an interval of not more than one (1) foot for all areas to be disturbed by the proposed activity, extending for a distance of at least fifty (50) feet beyond the limits of such areas. Indicated elevations shall be based on United States Geological Survey datum;
- (3) Specification of the extent of all areas to be disturbed, the depths at which removal or deposition activities are proposed, and the angle of repose of all slopes of deposited materials and/or sides of channels or excavations resulting from removal operations;
- (4) An area map at a scale of not less than 1:200 (one (1) inch equals two hundred (200) feet) showing property lines; normal high water line boundary and elevation; proposed changes in location and extent of existing watercourses, wetlands and drainageways; and all existing and proposed structures. If existing structures were previously authorized by city, state or federal permit, show corresponding permit number;
- (5) Existing soil conditions throughout the parcel;

- (6) Location and dimensions of all setback areas, existing and proposed public and private utilities, proposed shorelines, waterlines, structures and dredge cuts and fills.
- (7) Cross sections (including dimensions, elevations and wetland locations) of critical areas, existing and proposed shorelines, waterlines, structures and dredge cuts and fills.
- (8) Identification of disposal areas for dredged material, (including a vicinity map if disposal is off site), and depiction of the method of containment to prevent the re-entry of dredged material into any wetland or watercourse.
- (9) Cross sections of any bridge or culvert, including the depiction of wetland locations, profile of the proposed structure and bank stabilization.
- (e) When an applicant is not the owner of the property, an application shall be accompanied by a written authorization from the owner permitting the proposed activity.
- (f) Upon filing of the application, the applicant shall have the boundary lines of any watercourses or wetlands on the property flagged or staked. The flagging or staking shall remain in place throughout the conduct of the permit activity

**Sec. 12-173. Review of applications.**

- (a) ~~The city administration~~ Planning Commission ~~city administration~~ or its designees shall review the submitted use permit application to ensure that all required information has been provided. ~~Upon receipt, the city shall forward a copy of each application to the department of environmental quality.~~ At the request of the applicant or the city, an administrative review meeting may be held to review the proposed activity in light of the purpose and review standards of this article. ~~The city administration~~ Planning Commission ~~city administration~~ or its designees shall, after review of the proposed activity, submit a report and recommendations as to the propriety of the proposed use under the review standards of section 12-174.
- (b) The granting or denying of use permit applications shall be by the following departments or bodies. The granting or denying of all use permits shall be governed by the standards contained in section 12-174.
  - (1) *Residential minor use permit.* The granting or denying of residential minor use permits shall be the responsibility of the ~~department of building and safety.~~ Community Development Department. A residential minor use permit is a permit for activity on property used for a single one-family residence. Provided, that if the activity for which a residential use permit is sought exceeds the limits contained within subpart 12-173(b)(2)a., the permit shall be submitted to the planning commission.
  - (2) *Nonresidential minor use permit.* The granting or denying of nonresidential minor use permits shall be the responsibility of the ~~department of planning and community development.~~ Community Development Department. A nonresidential minor use permit is a permit for activities consisting of no more than one (1) of the following activities which have a minimal environmental effect:

- a. Minor fills of three hundred (300) cubic yards or less and not exceeding ten thousand (10,000) square feet in a wetland area, providing the fill consists of clean, nonpolluting materials which will not cause siltation and do not contain soluble chemicals or organic matter which is biodegradable, and providing that any upland on the property is utilized to the greatest degree possible. All fills shall be stabilized with sod, or seeded, fertilized and mulched, or planted with other native vegetation, or riprapped as necessary to prevent soil erosion.
  - b. Installation of a single water outfall provided that the outlet is riprapped or otherwise stabilized to prevent soil erosion.
  - c. Watercourse crossings by utilities, pipelines, cables and sewer lines which meet all of the following design criteria.
    - (i) The method of construction proposed is the least disturbing to the environment employable at the given site;
    - (ii) The diameter of pipe, cable or encasement does not exceed 20 inches;
    - (iii) A minimum of thirty (30) inches of cover will be maintained between the top of the cable or pipe and the bed of the stream or other watercourse on buried crossings; and
    - (iv) Any necessary backfilling will be of washed gravel.
  - d. Extension of a wetland/watercourse permit previously approved by the planning commission.
  - e. Replacement of a culvert of an identical length and size, and at the same elevation. If the proposed culvert is of a greater length or size than the existing culvert, or is a new culvert altogether, it must meet the conditions of subpart c., above, to qualify for a nonresidential minor use permit.
  - f. Temporary impacts where the encroachment into protected areas is less than five hundred (500) feet.
- (3) *Determination of essentiality.* In a procedure separate from those otherwise described in this subsection, an applicant may seek a determination of whether a wetland is essential or nonessential under the criteria set forth in subsection 12-174(b).
- a. *Application.* An applicant shall submit the following materials to the ~~planning department~~ Community Development Department:
    - (i) An essentiality determination application, completed in full, on an application form prescribed by the city.
    - (ii) The name, address and telephone number of the applicant, owner, if different than the applicant, and the applicant's agent.
    - (iii) The wetland(s) location including, as applicable, the street, road or highway, section number, name of subdivision, and name of any watercourse within the subject property.



- (iv) Location and dimensions of all boundary lines for the affected property. The graphic scale, north arrow and date shall be shown.
    - (v) Upon filing of the application, the applicant shall have the subject wetland boundary lines flagged or staked.
  - b. *Decision.* The determination of essentiality, using the criteria set forth in subsections 12-174(b)(1)--(10), shall be made by the city wetland consultant. If the wetland is deemed essential, any proposed activity will require the approval of a use permit. Findings shall be made in writing and given to the applicant stating the basis for the determination that such wetland is essential to preservation of the natural resources of the city. If the wetland is deemed nonessential, a permit shall be granted allowing any activity within the wetland that complies with all ordinances and law. Said permit shall remain valid for a period of twelve (12) months.
  - c. *Appeal.* The applicant may appeal the determination made by the city wetland consultant as to whether the wetland is deemed essential or nonessential to the planning commission. A request for appeal must be filed within ten (10) calendar days following the determination. The planning commission, upon review, may reverse or affirm the determination.
- (4) *Other use permits.* The granting or denying of all other use permits, shall be the responsibility of the planning commission, except in those instances where the underlying activity relates to a plat, site plan or special land use which must be approved by the city council, in which case the use permit shall be granted or denied by the city council after recommendation by the planning commission.
- (c) Prior to a determination by the planning commission on a use permit application, or recommendation by the planning commission to the city council on a use permit application, notice of the application and the date, time and location of a planning commission meeting at which the application will be considered shall be published in a paper of general circulation within the city. A copy of the notice shall be mailed to those persons to whom real property adjacent to the proposed activity is assessed. Prior to a determination on a minor use permit application by the ~~department of building and safety or the department of planning and community development~~ department, a notice of the pending application shall be mailed to those persons to whom real property adjacent to the proposed activity is assessed. The notice shall indicate a date prior to which written comments regarding the application may be submitted to said department.
- (d) A use permit application shall be approved, denied or modified within ninety (90) days of its receipt, unless the ninety-day period is extended pursuant to subpart 12-172(b)(6). Whenever a use permit is denied, the reasons for denial shall be transmitted in writing to the applicant. The failure to provide complete information with a permit application may be reason for denial. ~~The city shall notify the Michigan Department of Environmental Quality of its decision.~~

- (e) Whenever a use permit application is granted, the body or department granting the permit shall:
- (1) Impose such conditions on the manner and extent of the proposed activity or use as are necessary to ensure that the intent of this article is carried out and that the activity or use will be conducted in such a manner as will cause the least possible damage, encroachment, or interference with natural resources and natural processes within the watercourse and/or wetland area.
    - a. A condition to every permit shall be that the grantee, by acceptance of the permit, consents to entry onto the premises by representatives of the city and any law enforcement officers to inspect the activities conducted pursuant thereto.
    - b. When an activity results in the impairment or destruction of wetland areas of one-quarter-acre or greater that are determined to be: (1) essential under subsection 12-174(b); (2) two (2) acres in size or greater; or (3) contiguous to a lake, pond, river or stream, mitigation shall be required, in accordance with section 12-176. Where an activity results in the impairment or destruction of wetland areas of less than one-quarter-acre that are determined to be essential under subsection 12-174(b), are two (2) acres in size or greater or are contiguous to a lake, pond, river or stream, additional planting or other environmental enhancement shall be required on-site within the wetlands or wetland and watercourse setback where the same can be done within the wetland and without disturbing further areas of the site.
    - c. In those instances where the permit requires the preservation of a watercourse or wetland area, the grantee shall provide the city a conservation easement for such area in such form as is acceptable to the city engineer, city wetland consultant and city attorney;
    - d. A condition to every permit shall be that the activity is conducted in accordance with all applicable laws and ordinances, and in accordance with the Guidebook of Best Management Practices for Michigan Watersheds, promulgated by the Michigan Department of Natural Resources Surface Water Quality Division, as the same may be amended by the department of environmental quality.
  - (2) Fix a reasonable time within which any construction, removal or deposition operations must be completed;
  - (3) Except as provided below, require the filing with the city of a performance guarantee in accordance with the provisions of chapter 26.5 in such amount as determined necessary by the city to ensure compliance with the approved use permit; and
  - (4) When the use permit application is granted by the ~~department of building and safety~~ Community Development Department, send written notice of the granting of the permit to all persons who have submitted written comments on the application to the department.

- (f) When a use permit application is approved, the permit shall not be issued until ten (10) calendar days following the date of the department, commission or council approval. The applicant may request an appeal of the decision to deny a use permit to the council. A request for appeal must be filed within ten (10) calendar days following the grant or denial. If an appeal is requested during such ten-day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The council, upon review, may reverse, affirm or modify the determination and/or permit issued. In addition to the ten-day appeal period provided above, when a use permit application is approved, the permit shall only be issued upon a determination that all other requirements of ordinance and law have been met relative to the proposed activity, including but not limited to site plan, plat or other land use approval, and including issuance of a permit by the department of environmental quality. If a permit granted by the department of environmental quality allows activities not allowed by the use permit granted under this article, the restrictions of the permit granted under this article shall govern. If a permit granted by the department of environmental quality imposes additional restrictions upon the activities, such restrictions shall be conditions of the permit granted under this article.
- (g) Permits approved under this article shall be issued upon the posting of the financial guarantee required and the securing of any additional permits or approvals for the activity to be undertaken. Any and all permits issued by the city under this article shall be declared null and void if commencement of work so permitted is not started within a reasonable time after issuance, but not to exceed six (6) months. Permits generally shall remain valid for a period of twelve (12) months, provided, that if a permit is approved in conjunction with a plat or site plan approval, the issued permit shall expire upon expiration of such plat or site plan approval, and shall be deemed extended upon the extension of such plat or site plan approval. Permits which expire shall become null and void and future work will require a new application. For purposes of this section a permit shall be used when the work authorized by the permit is completed.

**Sec. 12-174. Review standards.**

- (a) The following standards shall govern the granting or denial of a use permit:
- (1) A permit shall be approved when it is determined that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.
  - (2) In determining whether the activity is in the public interest, the benefit which reasonably may be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the activity. The decision shall reflect the national, state and local concern for the protection of natural resources from pollution, impairment and destruction. The following general criteria shall be considered:
    - a. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
    - b. The relative extent of the public and private need for the proposed activity.

- c. The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides.
  - d. The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
  - e. The probable impact on recognized historic, cultural, scenic, ecological or recreational values and on the public health or fish or wildlife. This shall include evaluation of:
    - 1. Whether the proposed activity will increase flooding, erosion, siltation, pollution or storm-water runoff volumes;
    - 2. Whether the proposed activity will adversely interfere with the natural functions of wetlands and watercourses, including the flow of water and nutrients between wetlands and watercourses;
    - 3. Whether the activity will adversely interfere with existing trees and vegetation by increased deposition of stormwater, increased duration of stormwater encroachment or other factors;
    - 4. Whether the proposed activity will unnecessarily alter the natural grade or soils of any wetland or watercourse, or alter the flow of surface or subsurface water to or from the wetland at any season of the year;
    - 5. Whether the proposed activity will result in the impairment or destruction of wildlife and waterfowl habitat, including migratory waterfowl and rare, threatened or endangered wildlife species;
    - 6. Whether the proposed activity will interfere with public rights to the enjoyment and use of public waters.
  - f. The size of the wetland being considered.
  - g. The amount of remaining wetland in the general area.
  - h. Proximity to any waterway.
  - i. Economic value, both public and private, of the proposed land change to the general area.
- (3) A permit shall be issued if an applicant shows that unacceptable disruption to the aquatic resources will not result. In determining whether a disruption to the aquatic resources is unacceptable, the criteria set forth in subsection (2) shall be considered. A permit shall not be issued unless the applicant also shows either of the following:
- a. The proposed activity is primarily dependent upon being located in the wetland.
  - b. A feasible and prudent alternative does not exist.
- (4) Where the proposed activity is the platting of a residential subdivision, the boundaries of platted lots shall not extend into a wetland or watercourse. This shall not prohibit the inclusion of wetland or watercourse areas as

common areas within a plat. Where the proposed activity is the development of a site condominium, the boundaries of building sites, as defined in section 2407 of the City of Novi Zoning Ordinance, shall not extend into a wetland or watercourse. This shall not prohibit the inclusion of wetland or watercourse areas as common areas within a site condominium development.

(b) Notwithstanding the above, a use permit application for a noncontiguous wetland that is less than two (2) acres in size shall be approved unless the body acting upon the permit determines that the wetland is essential to the preservation of the natural resources of the city. It shall not be the burden of the applicant to prove that the wetland is not essential to the preservation of the natural resources of the city. All noncontiguous wetland areas of less than two (2) acres which appear on the wetlands inventory map, or which are otherwise identified during a field inspection by the city, shall be analyzed for the purpose of determining whether such areas are essential to the preservation of the natural resources of the city. If there is to be a denial of a permit to dredge, fill, construct or otherwise undertake an operation, in a noncontiguous wetland area of less than two (2) acres, then, on the basis of data gathered by or on behalf of the city, findings shall be made in writing and given to the applicant stating the basis for the determination that such wetland is essential to preservation of the natural resources of the city. In making the determination, the city shall find that one (1) or more of the following exist at the particular site:

- (1) The site supports state or federal endangered or threatened plants, fish or wildlife appearing on a list specified in Section 36505 of the Natural Resources Environmental Protection Act (Act 451 of 1994) [previously section 6 of the endangered species act of 1974, Act No. 203 of the Public Acts of 1974, being section 229.226 of the Michigan Compiled Laws].
- (2) The site represents what is identified as a locally rare or unique ecosystem.
- (3) The site supports plants or animals of an identified local importance.
- (4) The site provides groundwater recharge documented by a public agency.
- (5) The site provides flood and storm control by the hydrologic absorption and storage capacity of the wetland.
- (6) The site provides wildlife habitat by providing breeding, nesting or feeding grounds or cover for forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened or endangered wildlife species.
- (7) The site provides protection of subsurface water resources and provision of valuable watersheds and recharging groundwater supplies.
- (8) The site provides pollution treatment by serving as a biological and chemical oxidation basin.
- (9) The site provides erosion control by serving as a sedimentation area and filtering basin, absorbing silt and organic matter.
- (10) The site provides sources of nutrients in water food cycles and nursery grounds and sanctuaries for fish.

After determining that a wetland less than two (2) acres in size is essential to the preservation of the natural resources of the city, the wetland use permit

application shall be reviewed according to the standards in subsection 12-174(a), above.

**Sec. 12-175. Revaluation requests.**

- (a) A landowner may request a revaluation of property for assessment purposes to determine its fair market value under the use restriction if a use permit is denied for a proposed wetland use. A landowner who is aggrieved by a determination, action or inaction under this subsection may protest and appeal that determination, action or inaction pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.
- (b) If a permit applicant is aggrieved by a determination, action or inaction regarding the issuance of a use permit, that person may seek judicial review in the same manner as provided in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.
- (c) This section does not limit the right of a wetland owner to institute proceedings in any circuit of the circuit court of the state against any person when necessary to protect the wetland owner's rights.

**Sec. 12-176. Mitigation.**

- (a) In those cases where an activity results in the impairment or destruction of wetland areas of one-quarter ( 1/4) acre or greater that are determined to be: (1) essential under subsection 12-174(b); (2) two (2) acres in size or greater; or (3) contiguous to a lake, pond, river or stream, mitigation shall be required, and the applicant shall submit for approval a mitigation plan which provides for the establishment of replacement wetlands at a ratio of 1:1 through 2:1 times the area of the natural wetland impaired or destroyed. The replacement ratio shall be determined using the criteria set forth in subsection (b), below. Where an activity results in the impairment or destruction of wetland areas of less than one-quarter acre that are determined to be essential under subsection 12-174(b), are two (2) acres in size or greater or are contiguous to a lake, pond, river or stream, additional planting or other environmental enhancement shall be required on-site within the wetlands or wetland and watercourse setback where the same can be done within the wetland and without disturbing further areas of the site. Mitigation shall be provided on-site where practical and beneficial to the wetland resources. If on-site mitigation is not practical and beneficial, mitigation in the immediate vicinity, within the same watershed, may be considered. Mitigation at other locations within the city will only be considered when the above options are impractical. A mitigation plan shall include the following:
  - (1) Depiction and delineation of existing wetlands and watercourses in the vicinity of the proposed mitigation area.
  - (2) Depiction of existing contour data within the mitigation area as well as within any adjacent wetlands or watercourses, extending for a distance of at least seventy-five (75) feet into the wetland interior.

- (3) Proposed contour data within mitigation areas using one-foot contours. Spot elevations shall be provided at critical locations (e.g. inverts of water control structures).
  - (4) A graphic scale, north arrow and date. The scale shall be one (1) inch equals fifty (50) feet or larger.
  - (5) ~~Gross~~Cross sections of critical areas.
  - (6) Identification of disposal areas for dredged material and depiction of the method of containment.
  - (7) A cost estimate for the purpose of establishing a bond amount, including, but not limited to, the cost of clearing, grading, soil placement, stabilization, planting and monitoring.
  - (8) Data indicating the expected hydrologic cycle, identifying the source of expected water levels, as well as the invert elevation of all water control structures.
  - (9) The limits of disturbance and methods of stabilization and erosion control.
  - (10) A list of proposed plant materials, which shall include the botanical and common names, quantities, size and spacing of plants and type of plants (e.g. bare root, balled and burlapped, containerized, etc.)
- (b) The city has embraced the policy of no net loss to valuable wetlands. The mitigation proposed must have a mitigation plan that is sufficient to compensate for the original wetland losses. The city shall provide a consistent approach to reviewing and implementing this no net loss policy. For the purposes of determining a wetland replacement ratio, technical information shall be submitted regarding the following criteria when submitting a mitigation plan:
- (1) Size of habitat type impacted;
  - (2) Current predominant vegetation (e.g., submerged, floating, persistent, emergent, scrub/shrub or forested wetland etc.);
  - (3) Assessment of the overall functional quality of the wetland; and
  - (4) Soil analysis.
- The wetland replacement ratio shall be determined on a case-by-case basis taking into account the totality of the facts and information available. The ratio shall be no less than 1:1 and no greater than 2:1. If the impairment or destruction is the result of an unpermitted violation of this article, mitigation shall be at a ratio of two (2) times the natural wetland impaired or destroyed.
- (c) The applicant shall also provide a written summary of the goals and objectives of the mitigation plan. This summary shall include a description of the size and type of wetland to be constructed, the hydrology expected, and shall include a timetable for construction and plantings, as well as a guarantee of plant materials for two (2) years. The city shall evaluate the adequacy of the plan, including consideration of all characteristics of the wetland proposed to be established
- (d) The applicant shall also provide as a part of the mitigation plan, a program to monitor the status of the replacement wetland for up to five (5) years after the wetland mitigation has been planted in the mitigation area. The monitoring program shall include annual progress reports submitted no later than December 1st of each year to the body approving the permit, which provide the following information:

- (1) A measure of the percentage of coverage of wetland species versus upland species.
  - (2) A measure of vegetation diversity.
  - (3) A description of vegetation and animal community structure.
  - (4) A record and description of hydrological development.
  - (5) A written summary of wetland development describing the progression of wetland development.
  - (6) A photographic record of the wetland for each year.
- (e) Should the replacement wetland fail to become established after one (1) complete growing season or fail to satisfactorily progress to a self-sustaining wetland system as designed, the applicant shall:
- (1) Assess the problem and its probable cause.
  - (2) Develop reasonable and necessary corrective measures as a revision to the original plan.
  - (3) Submit a copy of proposed corrective measures to the city for approval.
  - (4) Upon evaluation by the city, immediately implement corrective measures as are approved.
- (f) A condition of every permit shall be the completion of mitigation prior to the granting of a temporary certificate of occupancy, unless seasonal conditions precludes work within such time period. In such cases, a report regarding the status of such mitigation work shall be provided to the body approving the permit, and mitigation shall be completed within six (6) months of the granting of such temporary certificate of occupancy. In any case, completion shall be a condition to the granting of a final certificate of occupancy. In the case of a plat, mitigation shall be completed within one (1) year of final plat approval. As to all permits, actual construction of the replacement wetland shall be conducted prior to, or concurrently with, the rough grading of the permitted activity area.

Secs. 12-177--12-180. Reserved.

## **PART II**

**Savings Clause.** That the amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

## **PART III**

**Severability.** That should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

## **PART IV**



UPDATED MAP


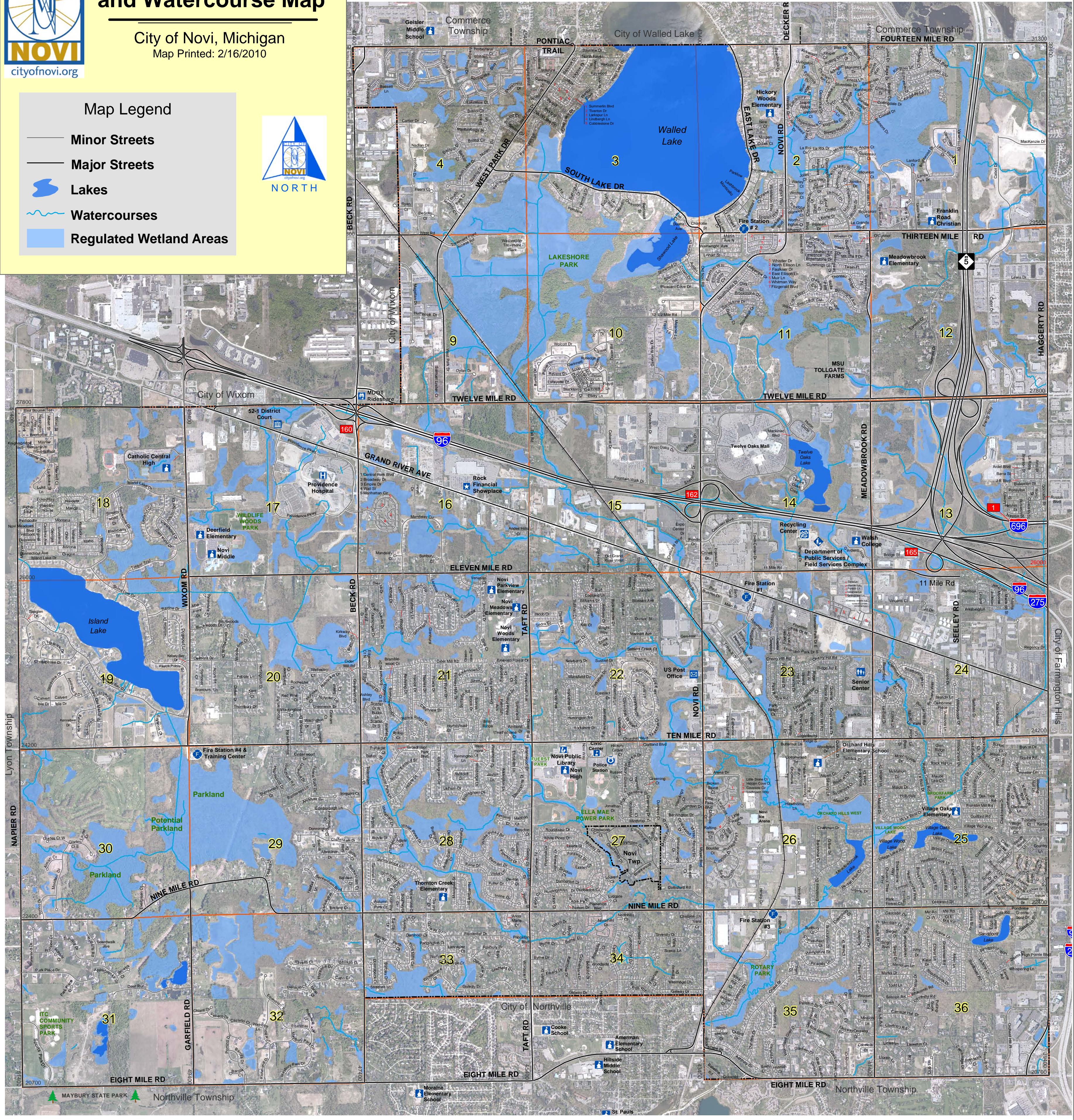


# Regulated Wetland and Watercourse Map

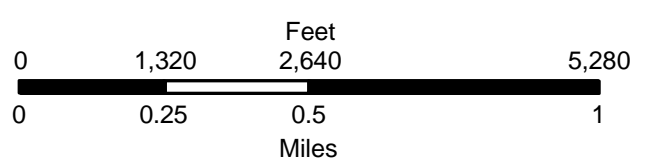
City of Novi, Michigan  
Map Printed: 2/16/2010

**Map Legend**

- Minor Streets
- Major Streets
- Lakes
- Watercourses
- Regulated Wetland Areas

Map Printed by the City of Novi  
Geographic Information Services  
Department of Information Technology  
45175 W. Ten Mile Road  
Novi, MI 48375  
Produced By: Eric Costa, City GIS Tech.  
Map Print Date: 1/29/2010  
Proposed Wetland Update Areas Designated by  
Environmental Consulting & Technology, Inc. on 06/15/2009



**MAP INTERPRETATION NOTES - THIS IS A DRAFT FOR REVIEW PURPOSES ONLY**

Wetland areas were identified through land use inventory and soil survey classifications. This map is a guide and not a substitute for a site-specific, wetlands delineation. It should be interpreted according to the Novi Code of Ordinances Section 12-156. Contact the City of Novi Department of Community Development for more information about this map product. This map shall not be reproduced or redistributed without approval of the City of Novi.  
City of Novi, Michigan - Copyright 2009

EXCERPT FROM  
PLANNING COMMISSION MINUTES  
SEPTEMBER 30, 2009



**Excerpt From:**  
**PLANNING COMMISSION MINUTES**

Approved

**CITY OF NOVI**

**Regular Meeting**

**Wednesday, September 30, 2009 | 7 PM**

**Council Chambers | Novi Civic Center | 45175 W. Ten Mile**

**(248) 347-0475**

**1. ZONING ORDINANCE TEXT AMENDMENT 09-125.22**

Public Hearing for Planning Commission's recommendation to City Council for an ordinance to amend Article 5, Wetlands and Watercourse Protection, to amend the City Code related to an update to the Wetland and Watercourse Protection Ordinance and revised Regulated Wetland and Watercourse Map.

Planner Kapelanski stated that she was here to introduce the proposed map and amendments. The Community Development Department in conjunction with the city's Environmental Consultant, ECT recently completed an update to the Wetland and Watercourse Map and also to the Wetland Protection Ordinance, which is Chapter 12 of the City Code. In light of the recent woodland map and ordinance revisions and because the regulated wetland map has not been updated in a number of years, the city staff felt it appropriate to update the wetland map to ensure that all area's that may contain regulated wetlands are identified. Both the amended map and the proposed ordinance changes were also presented to the Environmental Committee. The Committee reviewed both documents and is in support of the map amendments and the ordinance amendments. Lastly, a significantly amount of public involvement was also done as part of the update process and this included posting the amended map and comment form on the city's website as well as posting materials and comment forms on a table located in the atrium of the Civic Center and soliciting input and presenting information at the recent Fall for Novi event. The Planning Commission is asked this evening to hold the public hearing and make a recommendation to the City Council. Dr. John Freeland of ECT and David Beschke, the city's Landscape Architect are here this evening to go over the specifics of the map update itself as well as the ordinance changes.

Chair Pehrson stated that this is a public hearing and if anyone would like to speak, please step forward at this time.

Matthew Sosin, Northern Equities Group, stated that he sent a letter to the Planning Commission as this is an important issue for Northern Equities and that it affects a large portion of their land. As he stated in his letter, Mr. Sosin does not want to talk about the ordinance itself, as the changes are minimal. At the end of the day, the Haggerty Corridor Corporate Park has more wetlands today then it did when it was developed in the mid 1990s. Mr. Sosin stated that he appreciated the meeting with Ms. McBeth and Mr. Beschke and thinks that we will end up doing a walk-through of some of the items he pointed out in his letter. Mr. Sosin stated that he is sure some changes to the map will be made once we've all gone through it. It is an important issue and the map should be right and it does create expectations on the part of the public as to what is there, and what's not there. Mr. Sosin's concern is that the map is correct, so that in the future, there are no issues with what is there and with what is not there.

Member Greco stated that we have one filled out questionnaire that was submitted by Amber King who is a resident of Section 18. She has comments regarding the regulated wetland and watercourse map. Ms. King essentially wants to maintain as many wetlands as possible and not have the map reflect doing away with or destroying wetlands. Ms. King has asked that the city keep whatever wetlands we have left in her Section in the city and does not want another subdivision.

Correspondence was received from Duane Bennett, President of D. Bennett Enterprises, Inc. He is writing to the city on behalf of his client at Ten and Beck, LLC who are the owners of the property at 47430 Ten Mile Road which is located at the northwest corner of Ten Mile Road and Beck Road. Mr. Bennett wanted to provide some comments regarding the proposed wetlands and watercourse map and indicated that the map was last revised in August 2003 and that it shows a small pocket at the southwest corner designated as open water. With the proposed map, it is regulated and relabeled as regulated wetlands and the letter indicates it is a natural topographic low spot and that the natural drainage conditions feed water into this low area creating a wet pocket. The development plans that they have for the property are to use that wet pocket as a retention basin. Mr. Bennett's concern, on behalf of his client, is that if the area is designated as a regulated wetland, it will increase the review and approval process beyond what he and his client feel is necessary. Mr. Bennett requests Mr. Beschke, or the city contact himself or Mr. David Goldberg.

The next correspondence received via email from Northern Equities Group, from Mr. Matthew Sosin who addressed

the public hearing. Mr. Sosin did address the Commission at the public hearing; however, Member Greco summarized his letter. Mr. Sosin represents properties along the Haggerty corridor and is concerned about the designation of wetlands in the area and indicates that the updated map may misrepresent the size of some existing wetlands. Mr. Sosin also indicated the map showed the presence of a wetland, where there are none. Mr. Sosin has been out to particular areas that are indicated on the map, to verify for himself, whether or not he believes it is an actual wetland. A map is attached to the letter, which is very helpful identifying nine locations and indicating Mr. Sosin's concerns with the respect to the designation on the proposed wetland map. It appears that Mr. Sosin and the city are going to be going out to these particular areas to look at his concerns.

Chair Pehrson stated that they would close the public hearing at this point and turn it over to the Planning Commission for their consideration.

Member Cassis asked for clarification on the two issues mentioned as part of the public hearing.

Landscape Architect Beschke stated that he is aware of the two letters Member Cassis is referring to and that we did get a few questions about the map and ordinance update. The city advertised this very heavily and kept it very public, so that we could get all the necessary input. Part of our process now is to go back and look at the areas that have been questioned. We will go out to each of those sites and look at them to see if modifications are necessary. We have met with Duane Bennett. We also met with Blair Bowman regarding questions on two different properties. On one of the properties, Mr. Bowman is doing exactly what we like to see done, and that is to delineate the wetland, so we will know exactly where it is. If the map needs to be altered, we will do it at that time.

Member Cassis asked in lieu of what we are going to approve tonight, is there something legal here.

Landscape Architect Beschke stated that the lines may change only slightly at the scale of this map since we are talking about almost 32 square miles. When you zoom in on the computer, you can see a lot more. We can get very close, but it doesn't actually delineate the wetland line itself and there is a disclaimer in the ordinance and on the map that represents the likelihood that there are probably wetlands in the vicinity of these lines. Every project that comes in to develop a site has to do a wetland delineation and show us exactly where those lines are. That's the science that the design, planning, and engineering are based upon.

Member Cassis asked specifically about Ten Mile Road and Beck Road and the statements from the property owner about the standing water.

Landscape Architect Beschke stated that Ten Mile Road and Beck Road is the one of the areas that is being delineated. We will know more about that in the near future. From what we saw, there is the pocket puddle out there that is semi-wooded and then there is also another larger system off to the corner which will probably be where the applicant will send the detention water. The applicant will be performing some additional study next week.

Member Lynch stated that this was presented to the Environmental Committee and there were several questions. Member Lynch thinks Landscape Architect Beschke and Dr. Freeland of ECT indicated that the current wetland map has been around since 1984. This is more of an administrative type thing, and you really cannot do a complete delineation of the wetlands until you have your boots on the ground. The city needed to update the wetland map, due to verbiage from the 1980's that had to be changed. Staff and consultants did the best they could, taking the information that they had and when someone comes and develops, they will do a detailed job of defining where the wetlands are. Another question that was brought up was if the wetland map takes away any existing buildable area, and the answer to that is no. My understanding is that this is more of an update, indicating the likelihood of a wetland area. But, as far as taking away buildable area, this map does not do that. This is a lot of tedious work and I appreciate what staff has done to get the map and the ordinance updated. I am sure staff will work with the applicants once a development is proposed and work through the normal process of identifying the wetland areas and regulated woodland areas. Overall, I think the Committee was happy with what has been done, and there is a disclaimer. I am satisfied and want to commend the group and Dr. Freeland for all the work done on this project.

Member Meyer wondered if Landscape Architect Beschke spoke to Mr. Sosin of Northern Equities.

Landscape Architect Beschke answered that he did speak to Mr. Sosin.

Member Meyer stated that in Mr. Sosin's letter, it states this map creates public expectations and perceptions that are difficult to change once presented with a development plan which may have wetland issues. Furthermore, designation of wetlands impairs the value of the land even if it is incorrect. Member Meyer asked Landscape Architect Beschke if staff was able to address that.

Landscape Architect Beschke stated that the city has to make it clear to the public that the map is just a generalization. It doesn't change what can or cannot be done on the property. Mr. Sosin's issue was that if you show it on the map, then people were going to get the perception that it is wetlands. If staff and consultants go out on the site and there are areas that are truly uplands, they would not be regulated. There is a disclaimer on the map and in the ordinance that says it is really the in-field delineation that will stand.

Member Meyer stated, so in essence, it does not impair the value of Mr. Sosin's land.

Landscape Architect Beschke said that it does not. However, we do want to show it as accurately as we can. If it means changing a few sites, that is fine. Adjustments were made to the woodlands map when it was updated.

Moved by Member Lynch, seconded by Member Larson:

**In the matter of Text Amendment 09-125.22, a motion to recommend approval to City Council for an ordinance to amend Article 5, Wetlands and Watercourse Protection, to amend the City Code related to an update to the Wetland and Watercourse Protection Ordinance and revised Regulated Wetland and Watercourse Map.**

City Attorney Kolb wanted to make a clarification on the motion that it is a recommendation for approval to the City Council.

Member Lynch answered correct.

**ROLL CALL VOTE ON MOTION TO RECOMMEND APPROVAL OF ZONING ORDINANCE TEXT AMENDMENT 09-125.22..**

**In the matter of Text Amendment 09-125.22, a motion to recommend approval to City Council for an ordinance to amend Article 5, Wetlands and Watercourse Protection, to amend the City Code related to an update to the Wetland and Watercourse Protection Ordinance and revised Regulated Wetland and Watercourse Map. *Motion carried 8-0.***

RECENT CORRESPONDENCE  
REGARDING MAP UPDATE  
FEBRUARY 11, 2010



February 11, 2010

Mr. Blair Bowman  
NOBE Property Group, LLC  
46100 Grand River Avenue  
Novi, MI 48374

Re: Wetland Ordinance and Map Update

Dear Mr. Bowman:

This letter is in response to your February 4, 2010 letter to Clay Pearson regarding the updates to the Wetland Protection Ordinance and Map, specifically as the updates relate to the property commonly known as the Beck House site on the east side of Beck Road, north of Eleven Mile Road, and south of Central Park Estates. Our conversations with you regarding this topic date back to September 2009 when the Ordinance and Map updates were presented to the Planning Commission for a public hearing and recommendation to the City Council. Following a meeting with you on this matter, departmental staff and the City's environmental consultant visited the site to personally review the wetland mapping. The wetland mapping for that site was refined based on visual observations in the field at that time.

Your letter further details your concerns and we appreciate its clarity. This letter responds directly to the concerns identified in your letter.

To reference your first point, staff has reviewed the City's copy of the private development site plan for Central Park Estates, Visions Spa Salon and the Beck House, as approved in 2001. The plan shows preserved woodland and wetland areas, and identifies the Novi-Lyon Drain that runs primarily east/west through the south part of the property as well as several drainage courses in the vicinity of the planned Beck House. The wetland areas identified on the plan are very similar to the copy of the DEQ file for the property received August 6, 1999 for the area proposed for the Beck House. It appears that a couple of wetland swales were proposed to be filled, some wooded wetland areas were to remain, and the Novi-Lyon Drain would remain. During recent site visits, staff noted that the storm line installation did take place on the Beck House site, as part of the Central Park Estates construction.

Any wetland permits issued for the property by either the City or the State would have expired within the ten years that have elapsed since first issued. Given the decade since that wetland permit issuance, it can naturally be expected that any future development of the site will require a new wetland delineation and permitting process if a site plan proposes to fill or modify any regulated wetlands or watercourses. The City's wetland consultant has often stated that wetland systems are dynamic and it would not be unusual for wetlands to change in configuration and quality over time.

To reference your second point, we have confirmed with the Engineering Division that surveying, water main installation and grading of the ditch line along Beck Road did occur in this area in 2006. The files show that the grading of the ditch was adjusted several times to assure proper drainage. Plan sheets were reviewed again recently by Engineering staff to verify that the area grades were not adversely affected and would not cause Thompson, Carr and Huber

**CITY COUNCIL**

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City Clerk  
Maryanne Cornelius

City of Novi  
45175 W. Ten Mile Road  
Novi, Michigan 48375  
248.347.0460  
248.347.0577 fax

cityofnovi.org



documents that the grading was completed appropriately and the work done at that time actually improved the area drainage from its original condition prior to the project. That public improvement work has been closed.

With regard to your final point, additional field verification was performed on February 5, 2010 and the proposed wetland and watercourse map has been further refined to delete a portion approximately 400 feet in length of the watercourse designation from the Beck Road east ditch line as well as the northernmost extension into the site. Other minor mapping adjustments were made, as well, to provide the most accurate view of the wetlands that exist today, which may still be greater than the wetlands delineated in 2001 (see attached map detail). If you have an up-to-date field delineation, we invite you to provide it at this time for further review against the wetland map. Additionally, further inspection on February 5<sup>th</sup> of the concern regarding the water main installation along the Beck Road ROW confirms that the ditch appears to be functioning properly.

We note that when development is proposed for the site, the applicant will need to formally verify the wetland delineations at that time for approval and permitting. We also note that the wetland delineation may well be different than the map indicates. Please recall, the Regulated Wetland Map contains a disclaimer that states,

*Wetland areas were identified through land use inventory and soil survey classifications. This map is a guide and not a substitute for a site-specific, wetlands delineation. It should be interpreted according to the Novi Code of Ordinances Section 12-156.*


The ordinance section referenced further contains the statement,

*The completion of the wetland inventory map does not create any legally enforceable presumptions regarding whether property that is or is not included on the inventory map is or is not in fact a wetland.*

We trust that these statements will make it clear that the map is used as a guide for identifying potentially regulated wetland areas, and that a professionally prepared wetland delineation is required to be submitted and reviewed by the City prior to or concurrent with submittal of a site plan for a development project. We believe that after the two site visits and further review, the map as currently presented represents an accurate guide of conditions.

We hope that this letter and attachments address your concerns. Please feel free to contact the department if you have any questions. We expect that the final ordinance and map update will proceed to the City Council for consideration in the near future.

Sincerely,



Barbara McBeth  
Deputy Director of Community Development

- C Clay Pearson, City Manager
- Charles Boulard, Director of Community Development
- Rob Hayes, Director of Public Services
- Tom Schultz, City Attorney
- David Beschke, Landscape Architect
- John Freeland, ECT

Attachments MDEQ file 99-10-854, FTC&H letter dated 2/16/07, updated wetland map

## **NOBE Property Group, L.L.C.**

*A limited liability company*

*46100 Grand River Ave.*

*Novi, Michigan 48374*

*Phone: (248) 348-5600*

*Facsimile: (248) 347-7720*

February 4, 2010

Clay Pearson, City Manager  
City of Novi  
45175 West Ten Mile Rd.  
Novi, MI 48375

### **RE: Wetland Ordinance and Map Amendment**

Dear Clay:

I just wanted to follow-up and summarize both the content of our conversation and the history as it relates to what is commonly known as the Beck House site, approximately 7 +/- acres of RM2 zoned property at the southwest corner of the Central Park Estates development. The site history is that this parcel was site planned along with the Central Park Estates apartments and ultimately accommodated the Visions Spa Salon facility also. These three projects, on a combined 50+/- acre parcel, accommodated the preservation of nearly 100% of the wetlands and almost 90% of the woodlands. We also dedicated a large preservation easement area directly to the east of the Beck House site and at the south end of the Central Park site. Further, this parcel was the subject of a DEQ permit for the development of the Beck House plan which included the installation of certain utilities such as storm water and water main which will serve both parcels. It is important to note that while the Beck House development itself did not proceed the installation of the utilities did occur including the storm water connection into the Lyon drain.

Secondly and of equal importance, is that when the City of Novi and its contractors completed certain improvements in the area, which there was a series of including installation and alteration of utilities and improvements to the road bed of Beck Road, roadside ditches and culverts were altered and/or installed. This resulted in concerns being expressed by other property owners and ourselves that the previously existing drainage had been altered or interrupted and was causing backup of water on our sites particularly along the east side of Beck Road. This was the subject of correspondence, emails and phone conversations in the January, February, March and April timeframe of 2007. These correspondences were with you, Aaron from the City of Novi and Karen Ellis from a third party engineering firm. The results of these discussions and

correspondence was that although directly contrary to the actual conditions being experienced in the field we were assured drainage was if anything "improved" from that which previously existed. Our only concern then was to avoid exactly the situation that we are experiencing now where for whatever reason the City or some authority would attempt to regulate the site and indicate that there were expanded areas of wetlands even though we had then a MDEQ permit and delineations that did not show these areas at that time.

Finally, the proposed map is simply incorrect in that one of the connections it shows does not exist. I know that you are busy however I truly believe that a personal site visit with five minutes of your time would be worthwhile to look at the area that is being now called this "mosaic".

As I'm sure you can appreciate we have been paying taxes on this property as if it were a fully developable, highly valuable parcel of land and we intend, when the market allows, to proceed with a development of a high quality project on this location.

I hope this helps clarify once again our position relating to this matter. If you have any questions please do not hesitate to contact me.

Very truly yours,  
**NOBE PROPERTY GROUP, LLC**

A handwritten signature in black ink, appearing to read 'Blair Bowman', with a long horizontal flourish extending to the right.

**Blair Bowman**

CC: Barb McBeth  
David Beschke  
William Mayer

February 16, 2007  
Project No. G05143C1

Mr. Blair Bowman  
NOBE Property Group  
46100 Grand River Avenue  
Novi, MI 48374

Re: Beck Road Water Main Replacement Project  
Drainage Concerns

Dear Mr. Bowman:

On behalf of the City of Novi (City), Fishbeck, Thompson, Carr & Huber, Inc. (FTC&H), the engineering firm associated with the Beck Road Water Main Replacement project, would like to address your concerns with regard to drainage along the east side of Beck Road.

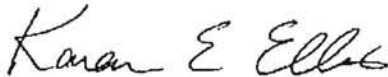
FTC&H has conducted pre-construction and post-construction as-built surveys of the drainage ditch along the east side of Beck Road. The scope of the construction and survey work included no activity outside the City's right-of-way. The project did not include the boardwalk in front of the Central Park Estates property, nor the area east of the boardwalk. Please note that there is no roadway drainage being directed to leave the City's right-of-way. The 24-inch cross culvert under Beck Road just south of the Central Park Estates property (Station 16+90 on the enclosed drawing) was not disturbed as part of this project. Therefore, the pre-construction and current elevation of the cross culvert is the same. The 24-inch cross culvert is the outlet for the drainage north and east of the culvert, including Beck Road and the Central Park Estates property.

The enclosed drawing illustrates the pre-construction and as-built survey of the drainage ditch from the Remax property to south of the Central Park Estates property at the 24-inch cross culvert.

The survey indicates an overall slope of 0.4% percent from the Remax property to the 24-inch cross culvert under Beck Road on pre-construction as well as post-construction record drawings. The post-construction inverts of the drainage ditch and driveway culverts are slightly lower than the pre-construction inverts. Therefore, the drainage in this area was improved from that of pre-construction conditions.

If you have any questions or require additional information, please call our office at 248-324-2090.

Sincerely,



Karen E. Ellis, P.E.

krn

Enclosures

By UPS

cc/enc: Mr. Robert Hayes - City

Mr. Aaron Staup - City

cc: Mr. Thomas L. Gray II, P.E. - FTC&H

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# Wetland Areas

## Vicinity of Central Park Estates - Section 15

### Map Legend

-  Wetland Areas
-  Minor Streets
-  Major Streets
-  Railroad
-  Watercourses



1 inch = 200 feet



**City of Novi**  
 Community Development  
 45175 W Ten Mile Rd  
 Novi, MI 48375  
 cityofnovi.org

Map Author: Christopher Blough, GIS Manager  
 Date: February 5, 2010  
 Project: Wetland Area Review  
 Version #: 1.0

#### MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.