



Part III

Local Planning & Zoning

INTRODUCTION

Part I and Part II of this Guidebook described the opportunity that exists for local governments to take affirmative actions to protect specific elements of Michigan's unparalleled natural resources. This Part presents and explains a range of local environmental protection planning and regulatory options available to local government officials. It also presents other simple techniques that can be used to minimize negative impacts of land use decisions on sensitive natural resources.

These techniques can be used separately or in most cases together, to establish the amount of local natural resources protection effort a community is comfortable with. This effort can range from attempting total ecosystem or watershed protection to merely targeting the reduction of stormwater runoff into waterbodies. Every little bit can help, and as explained in Part I, all local government officials have a statutory responsibility to help prevent pollution, impairment or destruction of Michigan's natural resources. Whatever techniques are selected for use need to be crafted with professional planning and legal assistance to fit both the community and its natural resources. Additional reference materials are found in the Appendices.

COORDINATED PLANS AND PLANNING

The first step a local government can take to protect Michigan's natural resources is to prepare a future land use plan in cooperation with neighboring jurisdictions. Future land use plans (also known as comprehensive plans or master plans) should be based on a comprehensive inventory of natural resources and environmental features. The environment knows no jurisdiction boundaries, and like trying to put a square peg in a round hole, it is not amenable to being "forced" into an artificial box. If one

community along a river approves development in a floodplain, downstream communities are likely to be flooded. If one community on a lake adopts keyhole development regulations, but other communities abutting the same lake do not, then achieving the objective of preventing overuse of the surface of the lake is not likely to be achieved. If one community establishes a buffer zone around sensitive environmental areas, but abutting jurisdictions do not, then the benefits of the buffer zone will be limited. These examples demonstrate the importance of communities working cooperatively in the development of plans and implementation programs to protect our natural resources. See the appendices for specific information that needs to be gathered and evaluated as the basis for an environmentally sensitive future land use plan. The interconnectedness of natural resources and ecosystems with local land use planning and zoning becomes much more apparent with this type of approach.

A future land use plan sets forth the desired pattern of land uses in the community for the next 20-30 years. It shows where agricultural and forest land should be retained, where new residences, commercial and industrial areas should be constructed. It creates the basis for planning for new roads, sewer and water infrastructure to meet the needs of the land uses displayed on the map. Future land use can work with nature, or against it. Communities can plan to keep development out of floodplains and densities low along waterbodies. They can plan to preserve greenbelts for wildlife and vegetation along waterbodies to help filter stormwater runoff and provide space for trees to shade streams, keeping them cold enough for sportfish like trout. By planning with nature, they can preserve the characteristics of nature that immeasurably add to our quality of life.

Following is a list of key strategies that communities can follow in the development of local future land use plans to

help protect the environment and natural resources for use and enjoyment by both present and future generations:

- Prepare local future land use plans based on a comprehensive inventory of natural resources
- Coordinate planning with adjoining jurisdictions
- Keep density and intensity of land use low near and along watercourses
- Avoid developing in sensitive areas like floodplains, wetlands, environmental areas, sand dunes and high risk erosion areas
- Plan for greenbelts and buffers along watercourses
- Provide for links between natural areas so wildlife have safe corridors to move within
- Protect renewable natural resources like farm and forest land in large blocks
- Set forth the specific zoning and other land use regulations that should be adopted to promote wise natural resource management and environmental protection.

The future land use plan provides the legal foundation for local land use regulations. If the community wishes to protect natural resources and the environment through local land use regulations, then it must have a basis for these regulations in the future land use plan and then adopt zoning and related regulations consistent with the plan.

LOCAL ZONING

Zoning classifies land uses into zones or districts generally on the basis of land use intensity ranging from “high” (e.g. industrial) to “low” (e.g. nature preserve) intensity. The range of intensity is based largely on environmental impacts and infrastructure needs of the land use.

A zoning map illustrates the location of various zones or districts within a given jurisdiction. Within each zone a range of land uses are permitted by right, or after some special review and approval process. The zoning ordinance establishes development standards for each mapped district. This includes the uses permitted, building height, bulk, lot size, setback, minimum yard and related standards. Zoning is the principal local tool for guiding land use change in a community. If the zoning ordinance has appropriate standards to protect natural resources and minimize harm to the environment as new development occurs, then not only the present generation, but also future generations will benefit.

The next section describes the major regulatory options that communities can choose among to implement environmental and natural resource protection objectives of a local future land use plan.

MAJOR LOCAL REGULATORY OPTIONS FOR BETTER NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Following are three regulatory options available to communities to better protect the part of Michigan’s 37 million acres they call home. These options are not mutually exclusive; communities could adopt some or all of the measures in the first option as well as some or all of the second or third options as well, or vice versa. Because of this flexibility and the potential complexity, it is important that properly trained planners and attorneys be involved in adapting sample ordinance language to a community’s planning and regulatory structure.

- The first option is model ordinance language that specifically addresses the eight natural resources

discussed in Part II. These models could be adopted as overlay zones in the zoning ordinance, or as a separate ordinance that applies to development in particular locations, in addition to zoning.

- The second option is a series of brief ordinance provisions that address common natural resource and environmental protection concerns. These provisions are commonly found in zoning ordinances across the state.
- The third option focuses on coordinating land use permit review and approval procedures between state Department of Environmental Quality and local zoning authorities. This approach is based on refining the local site plan review procedure (as are some of the techniques in the second option).

Each of these options are described in more detail in the following text.

OPTION 1 – ADOPT MODEL ORDINANCE LANGUAGE TARGETED AT A SINGLE NATURAL RESOURCE

Part II explained the separate statutory authority that exists for local units of government to adopt local regulations to protect the following natural resources:

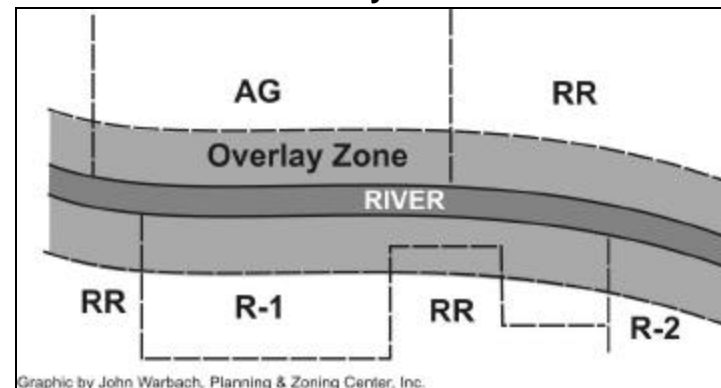
- Wetlands
- Environmental areas
- Soil erosion and sedimentation control
- Inland lakes and streams
- Natural rivers
- Floodplains
- High risk erosion areas
- Sand dunes.

The Department of Natural Resources, prior to its split into the DNR and Department of Environmental Quality (DEQ) in 1996, prepared model ordinance language to guide local

governments in the preparation of ordinance language applicable to each of these natural resources—except for environmental areas. These ordinances are included in the Appendices. There are many variations of some of these models.

All but the soil erosion and sedimentation model ordinance language is structured as an overlay zone. An example of an overlay zone is illustrated in Figure 3.1. In an overlay zone the special environmental provisions only apply in a limited area which is usually depicted on a map. For example, the floodplain regulations only apply to the area defined as a floodplain. This is usually an area that may be inundated by a flood with a frequency of occurrence of once each 100 years. The text in Part II explains where to find the mapped area for each of these eight special environments. In addition, the name and address of the DEQ or DNR office responsible for administering these provisions is found in the Appendices.

**Figure 3.1
Overlay Zone**



Graphic by John Warbach, Planning & Zoning Center, Inc.

This model ordinance language can be incorporated into a separate section or article of the local zoning ordinance or adopted as an independent police power ordinance. The police power is the power of government to adopt laws that

protect the public health, safety and general welfare. A zoning ordinance is a police power regulation, as is a dog license, or noise ordinance. Cities, villages, townships, and to a lesser extent counties in Michigan have authority to adopt police power regulations. The public purpose of the regulation must be stated in the ordinance and must advance one or more aspects of the public health, safety and general welfare. Some communities adopt environmental regulations as separate ordinances outside of the local zoning ordinance in order to “shelter” the zoning ordinance from any legal attacks that may be directed at the ordinance. Should a judge find that the community had adopted or was administering the ordinance improperly, the judge could invalidate all or part of the ordinance without in any way affecting or undermining the integrity of the local zoning ordinance. This is an important consideration in some communities. Another reason that some communities choose to adopt separate police power ordinances is because they do not have to protect nonconforming uses (unless the statute they are operating under specifically requires protecting them). A nonconforming use is one that pre-existed the zoning ordinance or an amendment to the zoning ordinance. Such a use is considered “grandparented” and is allowed to continue in the future in the same manner and to the same extent as it did when it became nonconforming. When nonconforming uses are not protected, then even without a proposed change to the property it could be required to be brought into conformance with the new regulations.

OPTION 2 – ZONING ORDINANCE PROVISIONS THAT TARGET A WIDE RANGE OF ENVIRONMENTAL PROTECTION CONSIDERATIONS

Many local units of government are unwilling to take on the significant administrative responsibilities and potential liability associated with implementation of some or all of the model ordinance language described in the first option

above. Nevertheless they cherish protection of Michigan’s environment and natural resources as much as the next community and want to do their part in ensuring it is protected. What follows are short, relatively simple approaches to environmental and/or natural resources protection that may be useful in your community. Each is briefly described here and sample ordinance language to implement each approach is included in the Appendices.

Environmental Assessment Requirements

When large projects are proposed or when small projects are proposed in or adjacent to sensitive natural resources, some communities require applicants to submit an environmental assessment which details the impact of the proposed development on natural resources. Communities that have plans and zoning regulations based on a solid environmental inventory are able to set the threshold for future environmental assessments at a defensible level. Without such a basis, an environmental assessment may be considered arbitrary as there is little context for the requirement. An environmental assessment can be a valuable source of information, and in some cases an important tool for ensuring that new development is designed in such a way that unavoidable environmental impacts are properly mitigated. Environmental assessments can also be viewed as an affirmative tool for helping a local government meet its responsibility for preventing pollution, impairment or destruction of the environment. See Appendices.

Fees for Professional Reviews

Small towns and rural townships rarely have the kind of professional staff available to perform a thorough technical review of all the complex elements of many contemporary development proposals. Everything from issues associated with stormwater retention, sewage disposal or water supply, or the impacts on wetland species from partially filling a wetland for an access road, may be beyond the scope of

local zoning staff. In these cases, a community needs to hire outside professionals to perform reviews of development applications to ensure conformance with ordinance requirements. Communities are often unwilling to hire outside experts because they don't want the cost to be borne by existing taxpayers. A recent appellate court decision has demonstrated that a community can collect fees in escrow to pay the cost of professional reviews, provided the community has a provision enabling such fees in its zoning ordinance, and it returns to the applicant any unused fees (see *Cornerstone Investments v. Cannon Township*, 459 Mich 908 (1998); after remand, 239 Mich App98, 1999). This ruling means no community need go without the professional expertise necessary to ensure a project meets ordinance requirements. See Appendices.

Sensitive Area Protections

Instead of targeting specific natural resources for protection by means of a single regulatory approach (as in Option One above), many communities have folded basic separation distances (setback provisions) into sensitive area or natural features provisions. These regulations list a set of sensitive areas or natural features that exist in the community and then require that all new structures or intensive use areas of the proposed development be set back at least a certain specified distance from the identified natural feature. Such provisions have been applied to shoreline, waterfront, floodplain, wetland, woodland, sand dune, and high risk erosion areas. Because of an Attorney General opinion (No. 6892, March 5, 1996) that says setbacks from wetlands may not be required under a wetland ordinance, but may be required if properly crafted as part of a zoning ordinance regulating natural features, it is important for communities to be very careful about how natural features are defined and how such regulations are crafted. In some ordinances these provisions are called buffer strip or greenbelt provisions. See Appendices.

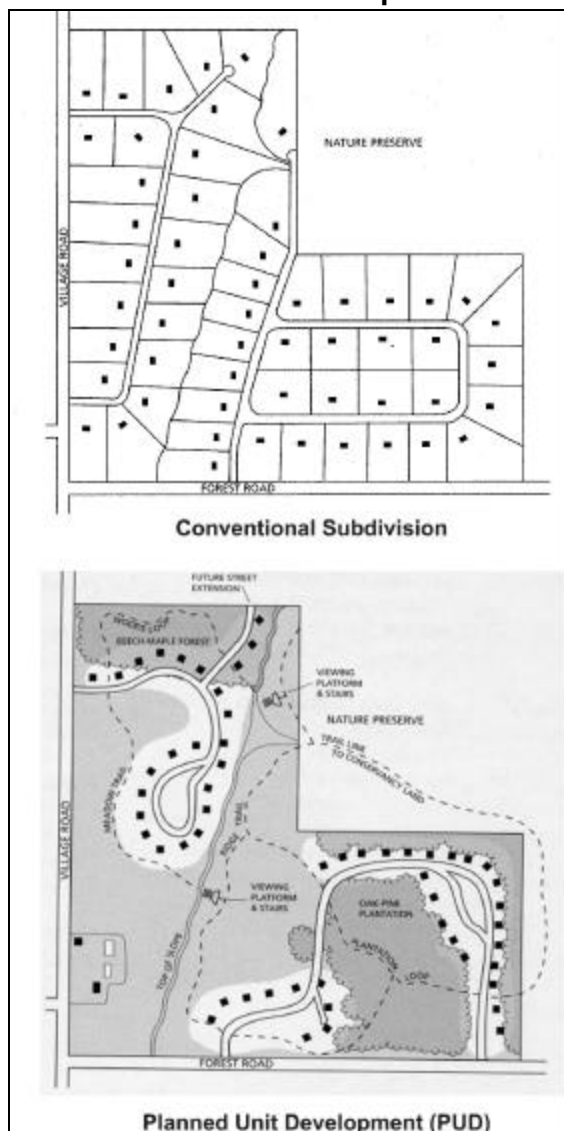
Shoreline Protection Provisions

More refined shoreline provisions may address a host of other environmental protection issues such as the application of fertilizers or weed killers in near shore areas, the trimming of shoreline vegetation for views, prohibitions on removal or replacement of natural shoreline vegetation with grass or ornamental landscaping, or requiring restoration of damaged natural vegetation in near shore areas and the like. These regulations tend to vary dramatically across the state, but for the most part, provide some measure of protection from overuse or removal of natural vegetation near the shore. These may also be called buffer strip or greenbelt provisions. See Appendices.

Planned Unit Developments and Cluster Developments

Planned unit developments (PUDs) and cluster developments are forms of land design that usually focus on integration of the natural features of a site with the new development to be constructed on the site. See Figure 3.2. Most PUDs are largely residential, although increasingly they are mixed use—usually with some commercial uses mixed with residential. The combination of a golf course with a residential subdivision or site condominium is the most common form of PUD in Michigan. Commercial, office and industrial PUDs are also becoming common, especially in urban and suburban locations along freeways. In suburban and rural Michigan, PUDs are increasingly designed around a sensitive natural feature like a small pond or wetland. Good design with a large natural vegetation buffer area around the sensitive resource can result in its protection as an asset to the PUD.

Figure 3.2
Planned Unit Developments



Cluster development is a form of PUD that is usually exclusively residential and surrounded by large amounts of open space. Recent amendments to Michigan's zoning enabling acts require many communities to adopt cluster development provisions that permit projects with at least 50% open space in townships and counties and 20% open space in cities and villages by "right". This means without any special review and approval process. Communities can define what constitutes permissible open space, but it cannot include land in a golf course. See for example MCL 125.286h in the Township Zoning Act, MCL 125.584f in the County Zoning Act, and MCL 125.584f in the City-Village Zoning Act.

PUDs and cluster development can be a very effective way for communities to permit some development in areas with sensitive natural resources without seriously undermining the integrity of the natural features. Notice in Figure 3.2 the difference in land consumption patterns and conserved areas between the conventional subdivision and the PUD. This takes careful design, attention to mitigation, good site plan review standards and experienced professionals reviewing the proposed site plans to get the best result. There are many different sample PUD and cluster development ordinances in use throughout Michigan. One example of each type is found in the Appendices.

Site Plan Review

Next to placing land into various zoning districts, site plan review is the most powerful planning and natural resource protection tool. Easily enforced, site plan review is a way for communities to ensure what is approved on a site plan is what will be built.

A site plan is a plan, drawn to scale, showing the layout of proposed uses and structures. Site plans include lot lines, streets, building sites, existing structures, reserved open space, utilities, and any other required information.

Communities can require landscaping information, use of native plant species, on-site stormwater treatment, percentage of allowable impervious coverage, and a host of other environmental design considerations through the use of site plan review.

The information provided from a natural features inventory comes into play again with the use of site plan review. To effectively address environmental considerations, planning officials must have information on topography, soils, drainage, wetlands, relationship to surrounding land uses and habitat, and a variety of other factors to evaluate a site plan. Thus, maps of environmental features, as well as of public facilities, and land use that is gathered as part of the preparation of the future land use map are critical for implementing site plan review requirements.

Most ordinances automatically call for site plan review of industrial, office, commercial, and multi-family uses. But communities can require that other uses, even uses allowed by right, go through site plan review.

For example, proposed single family home construction in areas where wetlands, critical habitat, sand dunes, or other unique natural features exist, can be regulated to protect these features through the site plan review process. Communities can also adopt provisions addressing preservation of mature trees, preventing light pollution, and other design mechanisms which in turn protect community character.

For environmental as well as aesthetic concerns in a community, site plan review is one of the best overall zoning tools that can be implemented by local governments. Site plan review is a good way of eliminating any development “surprises” and also serves as a mechanism for working with a community’s natural features.

Standards specific to each of the environmental features addressed in Part II and in Option One above, could be included in the local zoning ordinance. In most cases, this would be through buffer zone and greenbelt provisions and implemented through site plan review as described above.

Groundwater Protection Standards

The Michigan Departments of Public Health and Natural Resources, and more recently the Department of Environmental Quality have widely collaborated with hundreds of Michigan communities to develop and implement groundwater protection standards as a part of the local site plan review process. In most cases, communities adopting sample ordinance language also included standards to ensure protection of surface waters from land uses that had the potential to pollute, impair or destroy soil and water resources. These standards have many parallels to the objectives of this publication and the cooperative effort between the state and local governments on this issue has piloted the way for continuing this approach on a wider scale. Groundwater protection standards are fundamental public health and safety measures that should be adopted by local governments throughout the state. See example in Appendices.

OPTION 3 – COORDINATED PERMIT REVIEW AND APPROVAL PROCEDURES

A very effective way to combine the strength of local zoning with the weight of state environmental permitting and enforcement is for local governments to coordinate zoning decisions with the DEQ and DNR when sensitive natural features are involved. When local governments have appropriate, but limited environmental protection standards in the zoning ordinance, they can condition final development approval on receipt of necessary permits from the DEQ (or in the case of the natural rivers program, from the DNR). This type of coordinated review and approval process helps ensure key environmental and natural

resources are protected as new development occurs. Many communities have informally been working with the DEQ/DNR this way for years. In some cases, more formal coordinated review procedures are desirable and can be beneficial to all involved parties. One form for such an agreement is a memorandum of understanding that spells out state and local responsibilities.

This approach is possible because all three zoning enabling acts permit local governments to condition approval of zoning permits generally and site plan review specifically, on approvals under statutes administered by other governmental agencies (see for example MCL 125.286e(4) and (5), the Township Zoning Act; MCL 125.216.e (4) and (5) of the County Zoning Act and MCL 125.584d (4) and (5) of the City-Village Zoning Act).

This approach is especially desirable because local governments can be additional “eyes and ears” for natural resource protection, while leaving the environmental permit and enforcement decisions to the state agencies that have the technical wherewithal, the statutory responsibility and the ability to absorb any liability for the decisions made. For small and rural communities especially, these are huge considerations. In the end, development proposals that do not meet both state environmental standards, and local zoning standards are not approved. Projects whose site plans do meet the standards of both local zoning ordinance and state regulations must be approved.

OTHER ZONING CONSIDERATIONS

Following is a brief description of four other common zoning techniques that have significance as regards to certain decisions affecting natural resource protection and environmental protection.

REZONING

The process of changing from one zoning district classification to another is called rezoning. The most fundamental question which must be asked regarding a rezoning request, is whether the area proposed to be rezoned is an appropriate area for the permitted uses in the proposed zone. Typically, rezoning requests are made for the purpose of increasing the intensity of the use of a parcel. In coastal areas, where there are significant, fragile natural features such as critical habitats, wetlands, and sand dunes, rezoning from a low-intensity use classification to a high-intensity use classification can have devastating ecological impacts.

This is particularly important in areas with access to Blue Star Highway, Red Arrow Highway, and other roadways that parallel the coastline and are vulnerable to high-intensity use development, such as commercial, industrial, and multi-family developments.

SPECIAL LAND USES

Special land uses are uses of land that are allowable within a particular zone only when the proposed activity meets a defined set of standards that are particular to that use and are included in the zoning ordinance. Also called conditional uses, special uses, or special exception uses, site-specific issues can be addressed as opposed to more general considerations in a zone or district.

The dominant land use in a district is usually a use “by right”, such as farmland in an agricultural district. Special use provisions can provide communities with the opportunity to control certain activities not allowed “by right”, but commonly associated with “by right” uses. Typical special land uses include communication towers, churches, junkyards, private airfields, etc.

Marinas are another type of activity that can be controlled through special land use permits. A community can establish provisions for dock length, number of allowable slips, types of boats, setbacks, and a number of other environmental considerations. By defining special use standards for such activities, local governments can determine what type of marina will be allowed in their community prior to development.

Special land uses often prompt concerns from the public regarding potential effects on surrounding property values, traffic, noise, litter, and neighborhood character. It is very important for planning officials to consider if a special land use is consistent with the character of the area and if it consists with the future land use element of the master plan before permitting them.

VARIANCES

A variance is a legal license to violate the zoning ordinance. If a community grants a variance, it permits one property owner to do something that is otherwise not permitted in the zoning ordinance. As a result, the zoning enabling acts, most zoning ordinances and court cases have a very narrow set of circumstances that must exist before a variance can be lawfully granted. In most cases if a property owner can use the land for the desired use, or place a structure or addition elsewhere on the land without a variance, then the variance is not appropriate. As you can easily see, the improper grant of variances can quickly undermine the integrity of the zoning ordinance. This is even more consequential when the variance has the effect of undermining the integrity of natural resources. For that reason, all of the model ordinances in the Appendices addressing the eight natural resources in Part II, have very restrictive conditions for the grant of variances.

In general, if communities adopt zoning measures to protect natural resources and prevent pollution, impairment

or destruction of the environment, they should consider variance requests very carefully and only grant them when not doing so would preclude the land owner from otherwise exercising a lawful property right. Even then, the community should first consult with an array of environmental professionals in the DEQ and with municipal attorneys familiar with zoning and environmental law to ensure the best decision is made.

NONCONFORMING USES

Uses of land that pre-date the zoning ordinance or an ordinance amendment that no longer comply with zoning regulations are called nonconforming uses. Essentially, these uses are protected from changes created by new zoning regulations. Local governments are permitted to restrict or prohibit expansion or structure additions of nonconforming land uses or structures, with the long-term goal of eventually phasing them out.

In coastal areas, even in areas regulated by the state as “critical dune areas” or “high risk erosion areas”, local planning officials have an opportunity to address the rapidly changing dynamic of their shoreline through the manner in which nonconforming uses are regulated. For example, if a nonconforming structure exists on a property and is demolished, a new structure cannot replace it without conforming to the current zoning or other applicable regulations. This situation has become increasingly common in recent years as small coastal cottages are torn down and replaced by much larger single family or multifamily dwellings. This presents an opportunity to gain conformance with ordinance requirements, which should be sensitive to natural resource protection considerations.

LAND DIVISION

LAND DIVISION AND SUBDIVISION ORDINANCES

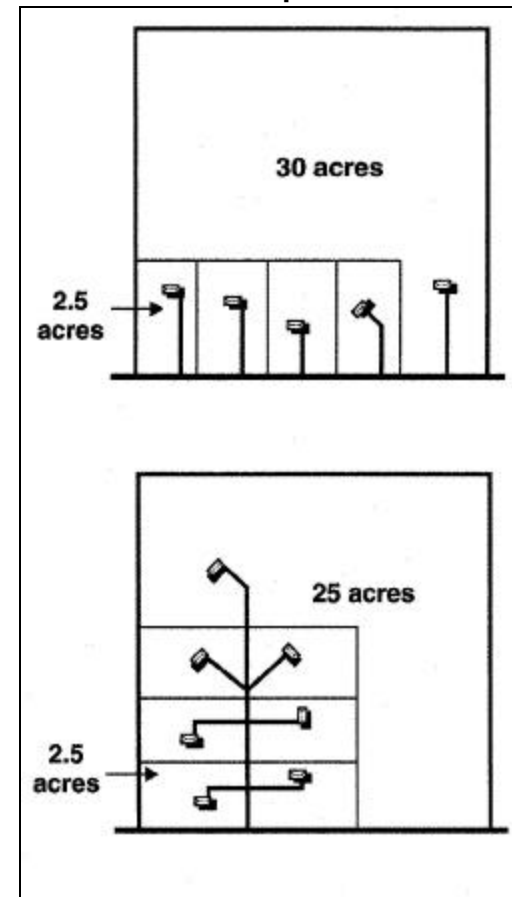
Two of the local regulatory tools with the greatest potential to minimize harm in sensitive environmental areas are regulations that apply to land divisions and subdivisions. These are usually two separate ordinances that are linked to the zoning ordinance, but because the authority for them derives from a statute different from the zoning enabling acts, they are adopted as separate ordinances. The first is usually known as a land division ordinance. The second is usually called a subdivision or plat ordinance.

A land division ordinance may be adopted by a local unit of government pursuant to Section 109 of the Land Division Act, Public Act 288 of 1967, as amended (MCL 560.109). A land division ordinance regulates the creation of metes and bounds splits of a parcel of land. See Figure 3.3. A statutory formula in Section 108 specifies the maximum number of splits that are permitted from a “parent parcel” without platting. Bonus lots are permitted for shared access and preservation of open space. Minimum standards for lot size, width-to-depth ratio and relationship to access are provided by statute. All parcel splits smaller than 40 acres in size are required to be reviewed and approved locally before they can be recorded with the county register of deeds. Land divisions being created must also conform with local zoning regulations, provided those regulations are not in conflict with the land division provisions of the Land Division Act.

A subdivision ordinance is adopted by a local unit of government to regulate the creation of more splits than are permitted under the land division provisions of the Land Division Act. See Figure 3.4. Section 105 of P.A. 288 of 1967, as amended, provides authority for the adoption of local subdivision ordinances. Developers of platted subdivisions are required to put in public infrastructure such

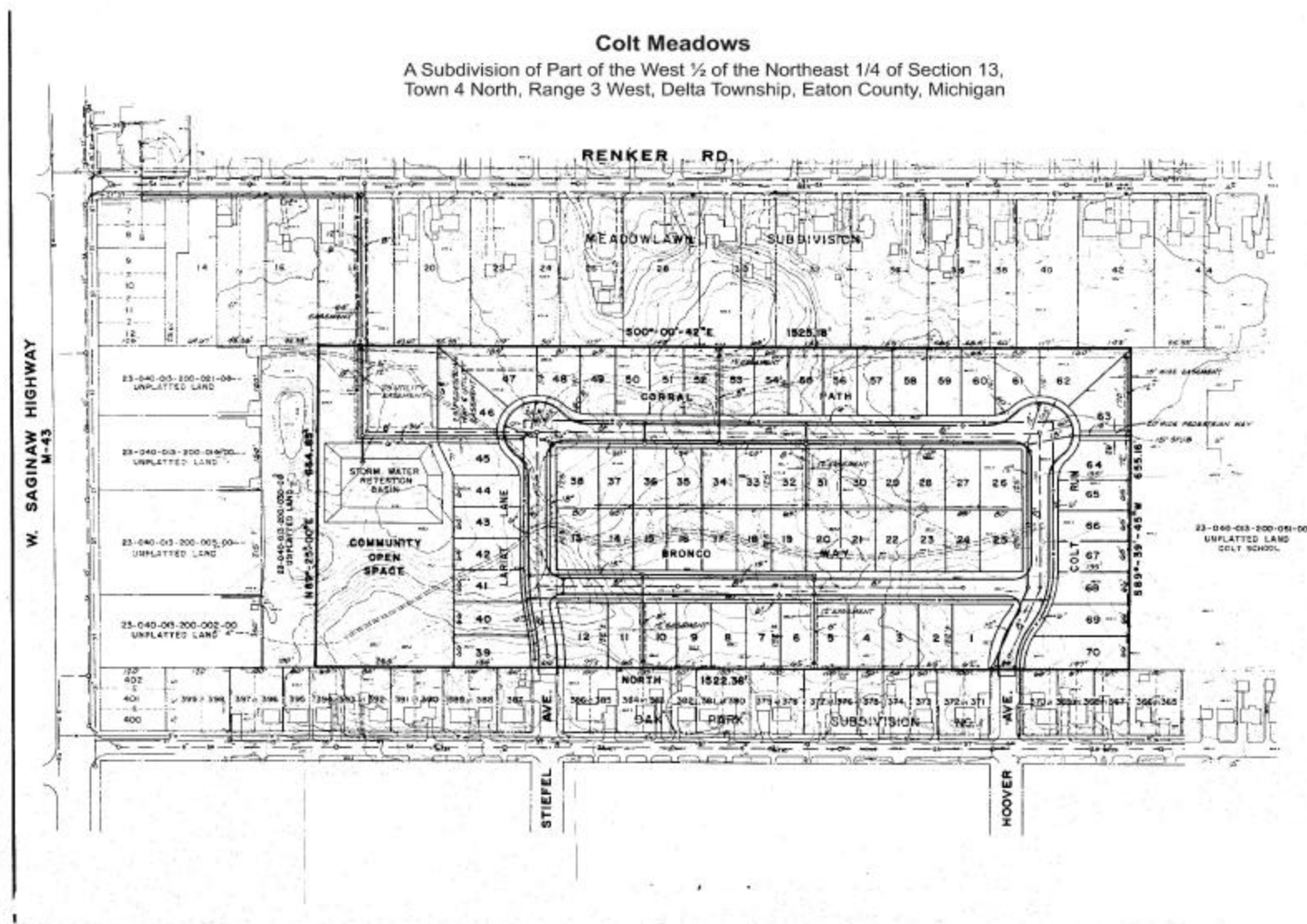
as paved streets, curb, gutter, stormwater, sewer and water pipe, unless exempted by local ordinance. Lots being created must also conform with local zoning regulations, provided those regulations are not in conflict with the platting provisions of the Land Division Act.

Figure 3.3
Lot Splits



Graphic by John Warbach, Planning & Zoning Center, Inc.

**Figure 3.4
Platted Subdivision**



Graphic courtesy of Delta Township Planning Department.

PROBLEMS THAT CAN BE PREVENTED

The primary environmental issues associated with land divisions and plats relate to lot width, depth, area, access and “buildability” of the lots. Proper review and approval of land divisions and plats can dramatically reduce future problems associated with use of the lots. The process is similar to site plan review described earlier, except that in the case of plats, there are many statutorily required reviews by different entities, including the local government, the county road commission, drain commissioner, State Department of Transportation, and State Department of Environmental Quality, depending on the location and characteristics of the parcel being platted.

For example, deep narrow frontage lots along shorelines will often result in long driveways and many structures close to the water. This often translates into considerable impervious surface and water runoff which can carry pollutants, nutrients and warm water into the lake, river, stream or pond. See Figure 3.5.

Shallow lots also often have considerable impervious surface and leave little room to site a structure farther from the shoreline. This may be critical in the case of a high risk erosion area, sand dune, or floodplain. See Figure 3.6.

A parcel size between the two types illustrated in Figures 3.5 and 3.6 is more desirable, especially if each lot is wider along the lake. This will result in less impervious surface and adequate room to locate a structure outside of a floodplain or away from a bluff at high risk of erosion.

Figure 3.5
Long Narrow Waterfront Lots

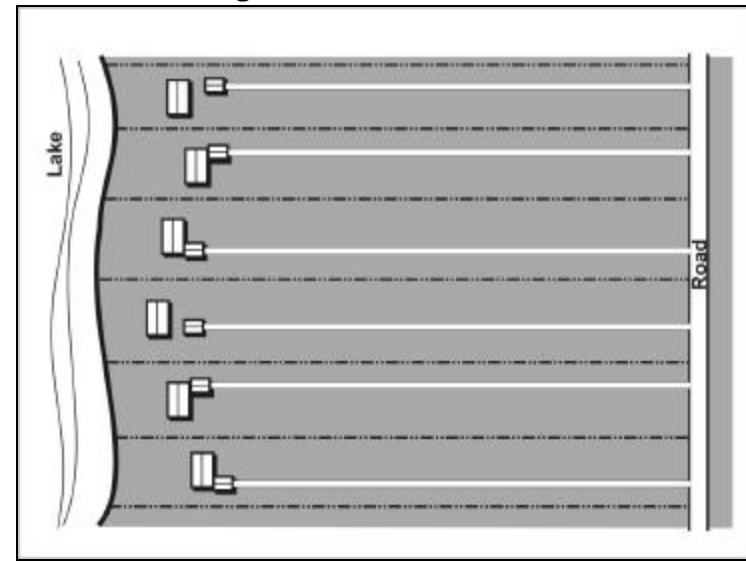
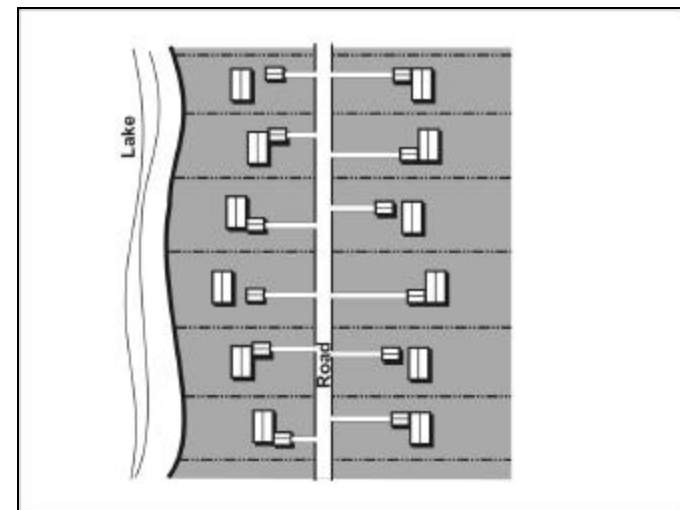


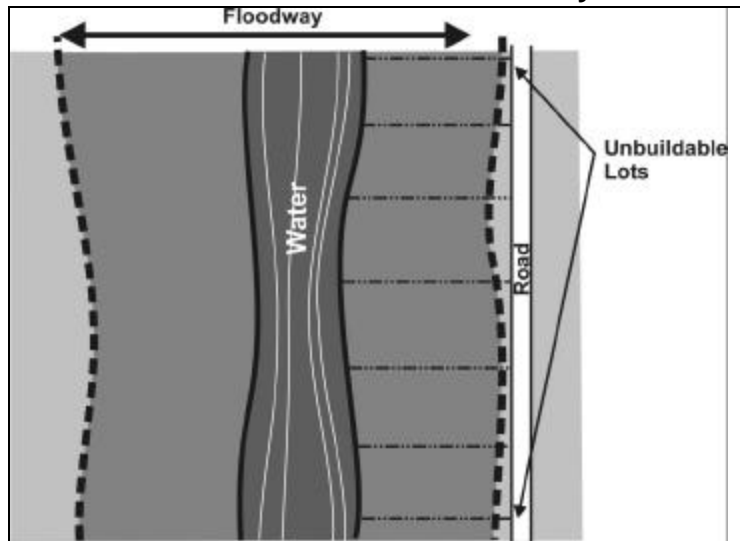
Figure 3.6
Short Narrow Waterfront Lots



Graphics 3.5 and 3.6 by John Warbach, Planning & Zoning Center, Inc.

Total area is a function of lot width and depth, so if one or both are short, then the total area of the parcel will often be small, leaving few options to mitigate potential environmental impacts, such as trying to avoid siting structures in a floodplain. See Figure 3.7.

Figure 3.7
Unbuildable Lots in a Floodway

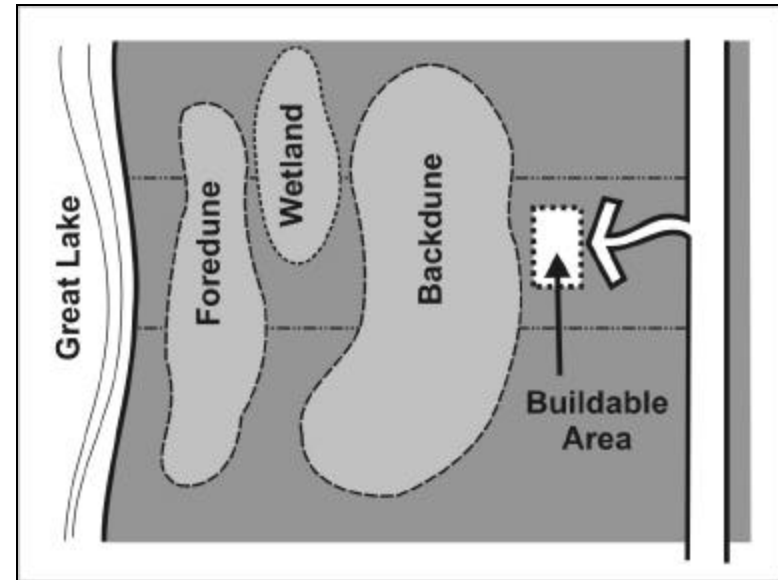


Graphic by John Warbach, Planning & Zoning Center, Inc.

Access is an issue linked to connecting a driveway between a structure and the public or private road leading to the lot. Especially on long narrow lots, such as those in a designated critical dune or environmental area, it may be difficult to site an access road without seriously and negatively impacting the dune or sensitive natural features in the area. See Figure 3.8.

“Buildability” relates to the issue of whether a proposed lot of a certain size and shape results in an area of land on which a permanent residence or other structure may be

Figure 3.8
Buildable Area on Lot in a Designated Critical Dune Area



Graphic by John Warbach, Planning & Zoning Center, Inc.

built under existing environmental regulations. For example, a proposed land division of a parcel that is largely wetland and that includes no high ground, may have no place on which a residence and a septic field could be legally sited. See Figure 3.9. Approval of such land divisions undermines the integrity of the environment, of environmental enforcement and sets up multiple governmental agencies for potential takings claims.

On the other hand, ensuring that a lot is “buildable” under all applicable regulations prior to approval, not only protects the environment, but also plays an important consumer protection function—people can buy a lot that is “buildable”. Unfortunately, the land division provisions of Section 109 of the Land Division Act can be read to prohibit a community from denying approval of a proposed land division on the

grounds it is not “buildable”, under local zoning or various environmental regulations. As a result, many communities feel obliged to approve such land divisions, but then file a notice with the County Register of Deeds that such a lot does not conform with other applicable regulations, and if it were purchased for a building use, such as for a residence or business, that such a request would be denied. This is a very awkward way to protect the consumer, but appears to be the only lawful way to do so under Section 109. Michigan appellate courts have upheld a township zoning regulation prohibiting counting unbuildable area on a site due to wetlands when calculating permitted density. See Frericks v.Highland Twp. 228 Mich App 575, appeal denied, 459 Mich 966 (1999).

Proactive Measures

The best proactive measures a community can take to prevent the creation of lots that do not undermine the integrity of the environment and are “buildable”, are listed below:

- Adopt and consistently administer land division regulations
- Adopt and consistently administer subdivision regulations
- Try to persuade landowners who propose to create “unbuildable” lots not to do so. If unsuccessful, file a notice with the County Register of Deeds that runs with “unbuildable” parcels that informs purchasers of the unique status of such lots

Figure 3.9
Division of Land With Wetlands Should Not Result in Creation of Unbuildable Lots

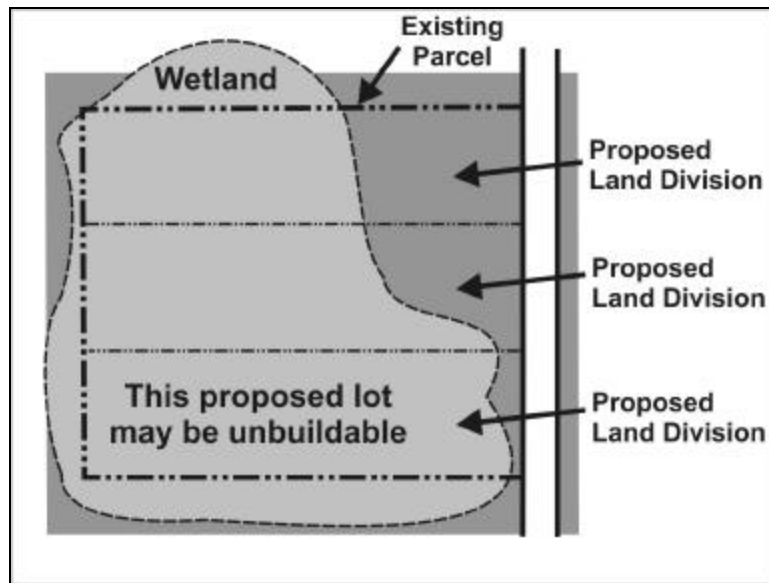
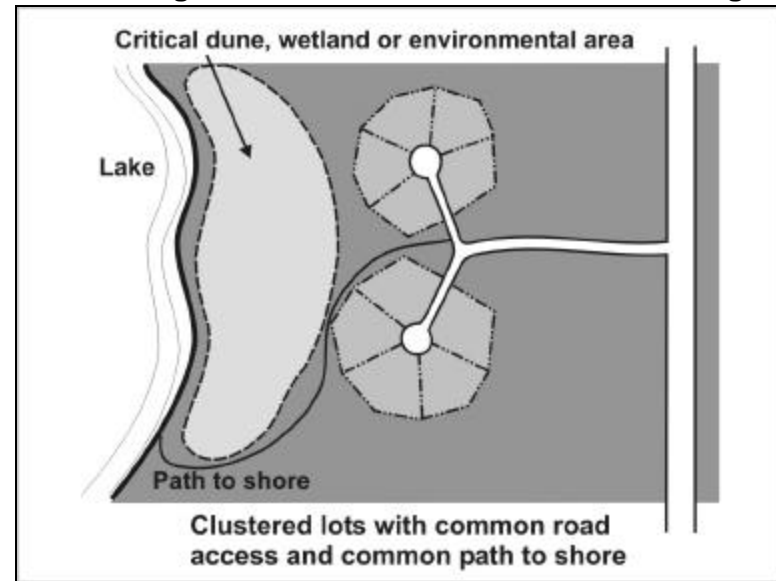


Figure 3.10
Clustering Lots to Minimize Environmental Damage



Graphics 3.9 and 3.10 by John Warbach, Planning & Zoning Center, Inc.

- Put provisions in the shoreline district provisions or shoreline overlay provisions of the zoning ordinance which:
 - Require wide and deep lots with shared access — unless;
 - Lots are clustered with all the common open space along the shoreline, sensitive environmental areas are avoided and all access is shared. See Figure 3.10.

PUBLIC SPENDING AND CAPITAL IMPROVEMENT PROGRAMS

Another important way to protect sensitive natural features is to watch how, where and when the public spends money on public facilities. Where new public facilities are constructed, and where they are not can have profound effects on natural resources. The extension of sewer and water lines into a sensitive environmental area, like a sand dune, or the construction of a new road along a large wetland complex will have significant long term impacts—many of which could be negative. At the same time, the construction of a sewer line around an inland lake being contaminated by leaking septic tanks can help restore water quality in the lake. Communities that work with nature avoid creating the conditions which promote intensive development in areas with a large area of sensitive natural features.

Large capital improvements should be planned to meet future needs and should be based on the future land use plan or master plan—just as zoning should be. When the master plan has a solid foundation on a natural features inventory, future land uses will be planned in locations to avoid negative impacts on sensitive natural features.

Subsequently, future capital improvements will then be located to accommodate needed community growth in locations that don't negatively affect sensitive natural features. The best tool for planning for future public improvements is the capital improvement program or CIP. This is a schedule of proposed capital improvements for the next 5-6 years. It specifies where the facilities are proposed to be located, what their cost will be, the means of financing and when they will be constructed. Each year the CIP is updated. This process permits plenty of time to examine the CIP for its environmental friendliness and to ensure that public investments aid, rather than diminish, the quality of local natural resources.

OTHER KEY SOURCES FOR MORE GUIDANCE

The interested reader is encouraged to consult the **Community Planning Handbook** available from the Michigan Society of Planning and **Land Use Tools and Techniques: A Handbook for Local Communities** published by the Southeast Michigan Council of Governments for additional information on the techniques in Part III. Detailed bibliographic citations for each publication and other useful references are found in the Appendices.