

MICHIGAN ADMINISTRATIVE CODE
DEPARTMENT OF ENVIRONMENTAL QUALITY (R 281.21 THROUGH R 281.26)
LAND AND WATER MANAGEMENT DIVISION
GREAT LAKES SHORELANDS

Current through 2008 Register #5 (April 1, 2008)

R 281.23 Environmental areas.

Rule 3. (1) In determining whether an area is necessary for the preservation and maintenance of fish, all of the following uses shall be considered:

(a) Spawning, which is the placement and fertilization of eggs by fish for the propagation of young fish.

(b) Nursery, which is the utilization of an area by young fish as a sheltered habitat in which to feed and grow.

(c) Feeding, which is the process of obtaining and ingesting plant or animal matter necessary for maintaining growth and life functions.

(d) Protection, which is the utilization of an area as escape cover from predators or unsuitable environmental conditions.

(e) Migration, which is a daily or seasonal movement.

(2) In determining whether an area is necessary for the preservation and maintenance of wildlife, all of the following uses by wetland-oriented birds and wetland-oriented mammals shall be considered:

(a) Breeding, which is the process of courting, pairing, and mating.

(b) Nesting, which is the process of laying, incubating, and hatching eggs.

(c) Rearing of young, which is the feeding and protection of young.

(d) Feeding, which is the process of obtaining and ingesting plant or animal matter necessary for maintaining growth and life functions.

(e) Resting, which is a period of inactivity in the daily routine or seasonal migration.

(3) Not less than 30 days before designation of environmental areas, the department shall mail predesignation letters to affected landowners of record as shown in the last assessment rolls. The letter shall explain that the property is being considered for designation as an environmental area and shall invite comments from the affected landowners. The department shall schedule a meeting before designation to explain the proposed designation to property owners and local governmental agencies.

(4) The department shall designate environmental areas determined to be necessary for the preservation and maintenance of fish or wildlife, or both. The department shall personally deliver the notice of designation or send it by certified mail to the landowner of record at the address given in the last assessment roll and to the local governmental agency.

(5) The notice of designation to affected landowners and local governmental agencies shall include all of the following information:

(a) The authority and reasons for designation of environmental areas.

(b) A description or map of the limits of the environmental area.

(c) An explanation of any regulatory measures that may be required in environmental areas and the regulatory role of the local governmental agency.

(d) The procedure by which the designation may be appealed.

(6) The following shoreland uses in an environmental area require a permit from the department in accordance with these rules or from a local governmental agency under an ordinance approved by the department:

(a) Dredging, filling, grading, or other alterations of the soil.

(b) Alteration of natural drainage, but not including the reasonable care and maintenance of established drainage improvement works. A permit is not required for maintenance of existing dikes.

(c) Alteration of vegetation utilized by fish or wildlife, or both, for the uses covered in subrules (1) and (2) of this rule. A permit may be issued if the department finds that the alteration of vegetation is dependent upon being located in an environmental area, no other feasible and prudent alternatives exist, and that the alteration will not adversely impact essential fish or wildlife habitat. A permit is not required for the following:

(i) The removal of tree branches that threaten existing permanent structures or public safety.

(ii) The pruning of trees that have a diameter at breast height of 3 inches or more for a view of a Great Lake if the area being pruned does not exceed 40 feet in width and 10 feet above ground level.

(iii) Maintenance of previously permitted trails and boardwalks through environmental areas. Maintenance is limited to the trail or boardwalk surface to a height of 10 feet above the ground.

(d) The placement of permanent structures.

(7) Farming of lands within the environmental area is allowed without a permit if all of the following provisions are complied with:

(a) Artificial draining, diking, dredging, or filling is not used.

(b) The natural contour of the land is not altered.

(c) Only normal farming implements and generally accepted agricultural practices are used.

(d) The environmental area is utilized by a person who is engaged in the business of farming, and the land is to be used for the production and harvesting of agricultural products.

(8) The pumping of water into an environmental area is allowed without a permit.

(9) A structure zone that is not more than 12,000 square feet shall be delineated for all parcels of land which are totally included within the boundaries of an environmental area at the time of designation. Structure zones will typically be located adjacent to or in proximity to existing roadways, within upland ridges or previously disturbed areas, and to minimize human disturbance to surrounding fish and wildlife habitat. The structure zone shall be configured to minimize fragmentation of the environmental area. If a parcel has less than 12,000 square feet of land outside the environmental area, then a structure zone shall be delineated which, in conjunction with the land outside the environmental area, shall total 12,000 square feet. Use of a structure zone is subject to all other statutes, ordinances, and rules and regulations.

(10) The department shall consider additional environmental areas as may be proposed by local governmental agencies, citizens, or interested groups.

(11) In the absence of an approved zoning ordinance enacted under sections 7,8,9, and 10 of the act, any person or local governmental agency proposing 1 of the uses regulated in subrule (6) of this rule outside the structure zone or proposing a change in the location of a structure zone shall submit to the department a permit application for the proposed use. The permit application shall contain all of the following:

(a) A legal description of the property.

(b) A drawing of the site with the proposed project clearly shown.

(c) A detailed description of the proposed project.

(d) The signature and address of the applicant.

(12) A permit application, as described in subrule (11) of this rule, shall be approved if both of the following conditions are satisfied:

(a) The adverse effects to the uses described in subrules (1) and (2) of this rule are minimal and are mitigated to the maximum extent feasible.

(b) A feasible and prudent alternative to the proposed plan is not available.

(13) Not more than 60 days after receipt of a permit application, the department shall send to the applicant, by certified mail, a notice of its approval or disapproval. In case of disapproval, the department shall state the reasons for disapproval. The department shall process a permit application that does not require field investigation within 20 days.

(14) Approval of a permit does not exempt the applicant from complying with other statutes, ordinances, and rules and regulations.

(15) Any aggrieved party that contests the designation of an environmental area or the disapproval of a permit application shall be granted a hearing if the party files a petition with the department not more than 60 days after the designation letter or the notice of disapproval is sent. The party shall send the petition to the director of the Department of Environmental Quality, P.O. Box 30458, Lansing, Michigan 48909-7958. The department shall conduct the hearing in accordance with sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being [§§ 24.271 to 24.287 of the Michigan Compiled Laws](#), and [R. 299.3071 to R. 299.3081 of the Michigan Administrative Code](#).

(16) The department shall send the landowner of record and the local governmental agency a notice by certified mail if the environmental area designation is removed.

(17) All environmental area designations in existence on the effective date of these rules shall remain in full force and effect.

(By authority conferred on the natural resources commission by section 32312 of Act No. 451 of the Public Acts of 1994, as amended, and Executive Reorganization Order No. 1973-2, as amended, being [§§324.32312](#) and [299.11 of the Michigan Compiled Laws](#))

Mich. Admin. Code R. 281.23, MI ADC R. 281.23