

Pennsylvania Municipalities Can Protect Wetlands

Wetlands are areas that are regularly saturated or covered by water for long periods of time. Wetlands occupy only a few percent of the land area of Pennsylvania, but they perform valuable functions much larger than their footprint on the landscape. Some wetlands are easily recognized; others have subtle boundaries. Wetlands are found in low, flat places where rainwater does not drain away quickly, as well as in sloping areas where seeps or springs provide extra moisture. Plants that grow in wetlands are capable of withstanding wet, oxygen-poor soil conditions.

Wetlands do not require maintenance, but function effectively without expenditure of human labor, fossil fuel energy, or money. Their benefits accrue not only to the owners of the land they occupy, but also to the public at large. Wetlands help keep streams clean by filtering out sediment and other water pollutants. They are places where floodwaters can collect without causing damage to people or to natural systems. Some wetlands support forests; others, scrub or herbaceous plant communities. They are attractive green spaces, offering an ever-changing seasonal display of foliage and blossoms, where much sunlight is converted to biomass. Wetlands provide habitat to many kinds of plants and animals, some of which are found nowhere else. They are biologically productive areas critical to the survival of fish, ducks, and other wildlife. They are also fragile ecosystems, easily damaged by fill and by rain-carried pollution running off the intensively managed areas used by people for mining, industry, farming, roads, and residences.

Left alone, wetlands tend to persist indefinitely, although their biological communities may vary over time. But wetland functions are highly vulnerable to changes in land use within and near them.

For a long time wetlands were considered to be waste places eligible for conversion into more directly “useful” land. Public policy in this country strongly favored the drainage of wetlands for farming and their filling for many purposes. During the late twentieth century, however, both Federal and State laws were enacted to protect remaining wetlands from the formerly widespread destruction that had eliminated at least half of the wetlands our ancestors found when settling in the conterminous United States. Now those who would convert wetlands into dry land must show a valid need to do so, must keep the conversion to a practicable minimum, and usually must provide some compensatory mitigation after undergoing a review by government agencies of their development plans. Securing permits and abiding by conditions of approval can be costly. Law enforcement efforts seek to remove the ever-present economic incentive to ignore wetland regulations in order to save construction time and money.

Only those wetlands known to exist and held in high esteem by people ever experience protection against land use conversion, whether undertaken for private gain or for public purposes. Available maps show only about half of the existing wetlands in Pennsylvania, and typically are not accurate in local detail. Given the variety of natural environments, the location and limits of wetlands may not be easily recognized in the landscape. If wetlands, streams, topography, and other onsite features are not identified accurately at the outset of planning for each land development project, the resulting project designs may encounter great difficulty during permit review. Conservation groups, wetland scientists, and professional regulators and consultants may oppose project plans if appropriate protective measures have not been included for wetlands and other environmental features.

In Pennsylvania the basic power to regulate land use is vested in local municipalities, which are the government units closest to the people who must live with the impacts of activities nearby. Land development must meet Federal and State requirements for protection of various resources, but how land is used is primarily a local matter. The Municipalities Planning Code authorizes municipal governments to enact ordinances that require measures to protect the environment when new construction is undertaken (<http://mpc.landuselawinpa.com/1.html>). Many municipalities regulate the subdivision of land and the approval of new development, but the ordinances affecting a development cannot be changed after the development plan has been filed. In Pennsylvania, municipalities can elect to be more stringent than Federal or State agencies when protecting wetland resources appreciated by local residents. Some Pennsylvania municipalities regulate activities in upland buffers next to wetlands, as well as in the wetlands themselves.

In practice, municipalities typically have limited access to expertise for wetland identification and regulation and little understanding of how to accomplish wetland protection in cooperation with Federal and State agencies. It makes little sense for any project to undergo municipal review and approval, only to encounter rejection at the State or Federal level because wetlands were not accurately identified and considered at the outset. Project plans can be revised, but time, effort, and money are wasted by the project sponsor, by the municipality, and by other reviewers. There is a practical, common-sense alternative by which municipalities can reduce their review burden, eliminate arguments over wetland boundaries, and do a favor for developers.

Every Pennsylvania municipality with interest in wetland protection should require that a landowner obtain a formal Jurisdictional Determination establishing the limits of wetlands and other bodies of water from the Army Corps of Engineers, prior to accepting any preliminary subdivision or land development plan as complete for municipal review. In Pennsylvania the Corps of Engineers is the agency with expertise and responsibility for establishing the limits of waters and wetlands. Its methods have been adopted by the Pennsylvania Department of Environmental Protection, which typically accepts the Corps' technical findings. After twenty years of practical use, the 1987 Corps Wetlands Delineation Manual currently is being augmented by regional supplements that incorporate advances in the science of recognizing wetland plants, soils, and hydrology in the field. On sites obviously lacking waters and wetlands, the absence of such features can be established quickly by office review. But for all other sites, the surveyed jurisdictional boundaries of wetlands and other waters should be clearly identified after field investigation and Corps field inspection---before local site plan review starts. For small lots the Corps will provide a Jurisdictional Determination upon request. For large properties and real estate developments the Corps requires technical information from the landowner's or project sponsor's experts and surveyors, but even for large projects there is no fee for jurisdictional determinations.