

Part IV
Article XXXIV

REGULATING DEVELOPMENT IN WETLANDS

Section 3400 Declaration of Policy

It is declared to be the public policy of the City of Valparaiso to preserve, protect and conserve freshwater wetlands and the benefits derived therefrom, to prevent the despoilation and destruction of freshwater wetlands, and to regulate use and development of such wetlands to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial to economic, social and agricultural development of the City of Valparaiso.

Section 3410 Statement of Findings

1. Acreage of freshwater wetlands in the jurisdiction of the City of Valparaiso has been lost, despoiled or impaired by unregulated draining, dredging, filling, excavating, building, pollution or other acts inconsistent with the natural uses of such areas. Other freshwater wetlands are in jeopardy of being lost, despoiled or impaired by such unrelated acts.
2. The preservation, protection and conservation of wetlands is of public concern because of the benefits they provide. These include:
 - a. Flood and stormwater control. Wetlands may slow water runoff and temporarily store water, thus helping to protect downstream areas from flooding. Public health and private property in one part of a watershed may be harmed if wetlands are destroyed in a different part of that watershed.
 - b. Wildlife habitat. Wetlands are of unparalleled value as wildlife habitat, and the perpetuation of scores of species depends upon them. Many of the species are migratory and must have nesting, migration, and wintering habitat. The destruction of one kind of wetland habitat in one place may reduce populations of wildlife elsewhere. Where specific wetlands support endangered species, destruction of those wetlands may threaten the presence of the endangered species for all time.
 - c. Water supply. Wetlands themselves are a source of surface water and may, under appropriate hydrological conditions, serve to recharge groundwater and aquifers and to maintain surface water flow.
 - d. Water quality. Many wetlands serve as chemical and biological oxidations basins that help cleanse water that flows through them. Wetlands can also serve as sedimentation areas and filtering basins that absorb silt and organic matter, thereby protecting channels and harbors and enhancing water quality.
 - e. Fisheries. Wetlands provide the spawning and nursery grounds for several species of fish. The availability of these fish in lakes and streams may be adversely affected by the loss of wetlands adjacent to those waters.
 - f. Food chains. Food and organic materials supplied by wetlands support the fish and wildlife of adjacent waters. Wetlands serve as sources of nutrients in freshwater food cycles and nursery grounds and sanctuaries for freshwater fish.
 - g. Recreation. Wetlands provide important hunting, fishing, boating, hiking, birdwatching, photography, camping, and other recreational opportunities. In addition, wetlands may

be critical to recreation beyond their own borders because of the ability to protect water quality and protect and produce wildlife and fish.

Section 3420 Authority

This section is adopted under the authority of Indiana Code s 36-1-3-1 et seq. (Home Rule) and Indiana Code s 36-7-4. (Local Planning and Zoning).

Section 3430 Definitions

Discharge of Dredged Materials - any addition of dredged material into the waters of the United States. This term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber and forest products nor does this term include de minimum incidental soil movement occurring during normal dredging operations. This definition shall be considered to be automatically amended to conform with the definition of discharge of dredged material established from time to time by the United States of America or United States Army Corp of Engineers.

Dredged Material - material that is excavated or dredged from waters of the United States. This definition shall be considered to be automatically amended to conform with the definition of dredged material established from time to time by ,the United States of America or United States Army Corp of Engineers

Fill Material - any material used for the primary purpose of replacing a wetland area with dry land or of changing the bottom elevation of a wetland or a water body. This definition ,shall be considered to be automatically amended to conform with the definition of fill material established from time to time by the United States of America or United States Army Corp of Engineers.

Indiana Department of Environmental Management -department within the executive branch of the government of the State of Indiana created pursuant to IC 13-7-2-11 et seq.

Indiana Department of Natural Resources - An agency of the government of the State of Indiana created pursuant to IC 14-3-3-2 et seq.

Metes and Bounds - all real estate which does not qualify as a subdivision or Planned Unit Development as defined by this Ordinance.

Person - shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, or any other legal entity or its legal representative, agents or assigns.

Regulated Drain - an open drain, a tile drain or a combination of the two as defined in IC 36-9-27-2 or by any subsequent amendment thereof.

Subdivision - as defined in Article XXVII of the City of Valparaiso Zoning Ordinance.

US Army Corp of Engineers - agency authorized by the USA government to issue permits for development in and/or around all wetlands.

Waters of the United States - 1) all waters which are currently used, or were used in the past, or may be susceptible for use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; 2) all interstate waters including interstate wetlands; and 3) all other waters such as interstate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, lakes or natural ponds. This definition shall be considered to be automatically amended to conform with the definition of waters of the United

States of America established from time to time by the United States of America or United States Army Corp of Engineers.

Wetlands - those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. This definition shall be considered to be automatically amended to conform with the definition of a wetlands established from time to time by the United States of America or United States Army Corp of Engineers.

Section 3440 Wetlands Identification

In implementing the terms of this Ordinance, any of the following materials shall be prima facie evidence which may be relied upon by the agents and representatives of the City of Valparaiso, Indiana, for the identification, delineation and existence of a wetland:

- National wetlands inventory maps produced or maintained by the United States Fish and Wildlife Service.
- Maps produced or maintained and utilized by the United States Corp of Engineers for identification and/or delineation of wetlands
- Maps produced or maintained or utilized by the United States Soil Conservation Service for the identification and/or delineation of wetlands
- Field investigations performed by the United States
- Army Corps of Engineers or private consultants recognized by the Corps as authorities in wetland identification and delineation.

Section 3460 Subdivision of Land

- A. Any primary plat submitted for subdivision approval must show thereon the location to scale of any wetland or regulated drain located upon the property to be subdivided.
- B. No final plat shall be issued by the City of Valparaiso or any agency thereof for any proposed subdivision of land in the City of Valparaiso identified as containing wetlands until the owner thereof has obtained all required state and federal permits or releases related to the dredging or filling of wetlands or waters of the United States.
- C. All permits or releases relating to wetlands required in subpoint (B) above shall be submitted by the subdivision applicant to the Planning office prior to the occurrence of any site development involving the dredging of material, discharge of dredged material, construction of infrastructure, buildings, roads or other site improvements.

Section 3465 Metes and Bounds Property

- A. No dredging, discharge of dredged material or filling of wetlands or the waters of the United States in the City of Valparaiso shall be permitted or undertaken on Metes and bounds property by any person without having first obtained all required state and federal permits or releases.
- B. As a pre-condition to receiving a building permit for development of any metes and bounds property containing wetlands where the applicant for the permit does not intend to dredge, discharge dredged material or fill a wetland, such unaffected wetland shall defer to Section 3460 (A) and shall be submitted to the planning office along with a site plan showing the nature and location of the proposed development.

Section 3470 Administration

- A. Where a wetland will be affected by the dredging, discharge of dredged material or filling by a proposed subdivision of property or the development of any metes and bounds property as set forth in Sections 3460 and 3465 of this Ordinance, the Planning Department of the City of Valparaiso shall notify the Board of Directors of any Conservancy District within whose boundaries such wetlands exist, and the city/town or cities/towns closest to such wetlands, of the proposed subdivision or development of metes and bounds property.
- B. Complaints of alleged violations of this Ordinance are to be directed to the City Engineer office. The City Engineer shall be responsible for administering the investigation of complaints alleging the violation of this Ordinance and for initiating through the City Attorney the enforcement of this Ordinance as provided in Section 3480.
- C. Reports of alleged violations shall be reported to the Planning Office or the Engineering Office and the Engineering Office and/or the Building Commissioner will investigate. Either official may enter upon any real estate in the City of Valparaiso containing wetlands where dredging, the discharge of dredging materials, or fill material is being introduced to wetlands or waters of the United State for the purposes of inspecting such work or activity. If possible the owner or occupant of the property shall be given prior notice of the pendency of the inspection. However, the inability or omission to give prior notification to the owner or occupant of said property shall not adversely affect the terms, conditions, and enforcement of this Ordinance.

Section 3475 Violations

The following constitutes a violation of this Ordinance:

1. Failure to comply with the terms and conditions of this Ordinance
2. Failure to comply with state and federal laws relating to the dredging, discharge of dredged material, or filling of wetlands or waters of the United States or with the terms and conditions of any permits or releases relative thereto received by a person from any federal or state agency.

Section 3480 Enforcement and Penalties

This Ordinance may be enforced by implementing any or all of the following remedies or penalties:

- The issuance of a cease and desist order by the City of Valparaiso Building Commissioner or the City Engineer.
- The issuance of a fine by the City Engineer, of up to the maximum allowed by the provisions of the Ordinance Violations Bureau, Chapter 37 of the Municipal Code.
- The filing of a suit for injunctive relief.
- Notification of alleged violations of federal or state law to appropriate state or federal agencies.
- Institution of legal action seeking the imposition of a fine and reimbursement of costs and expenses for violations of this Ordinance.
- Upon a finding by a court of proper jurisdiction that a violation of this Ordinance by a person has occurred, a fine of up to two thousand five hundred dollars (\$2,500.00) per occurrence may be imposed. In addition, the City of Valparaiso shall be entitled to reimbursement from the person committing said violation of all out-of-pocket expenses which were incurred by the
- City of Valparaiso or any of its agencies as a result of the enforcement of this Ordinance. Said expenses include, but are not limited to, court costs, legal fees, administration fees, witness fees and consultant fees.

Section 3485 Severability

Every section, provision or part of this ordinance is severable from every other section, provision or part of this ordinance, and if any section, provision or part thereof shall be held invalid by any court of competent jurisdiction, it shall not affect any other section, provision or part of this ordinance and the remaining portion of this ordinance shall continue to be in full force and effect.