

## Article 22

# Natural Resource Protection

### Section 22.01 Intent

- (a) **Findings of Fact.** Natural resources of La Porte County, Indiana contain some of the richest biodiversity in the state and region. The two major watersheds in which La Porte County resides are the Little Calumet – Galien Basin, which drains to Lake Michigan, and the Kankakee River Basin, which drains to the Mississippi River. The watersheds are separated by the Valparaiso Moraine, a hilly region underlain by glacial till and sand deposited during the Wisconsin Glaciation. The Little Calumet – Galien Basin historically contained extensive sand dune/swale ecosystems, wetlands including the Great Marsh, and other ecosystems. The Kankakee River Basin was historically an extensive system of wetlands known as the ‘Grand Kankakee Marsh,’ one of the largest marsh-swamp river basins in the interior of the U.S.

The La Porte County region has been significantly impacted and fragmented by human activity. In the Little Calumet – Galien Basin, channelization of waterways, implementation of drainage tile, industrial development and pollution, mining of sand dunes and other impacts have significantly altered and reduced the extent of natural resources. Channelization of the Kankakee River and its tributaries drained the Kankakee River Basin, eliminating the majority of the wetlands in that region. Expanding population, industrial and agricultural activity, historical pollution and development pressures continue to threaten the viability of La Porte County’s natural resources. Piecemeal or cumulative losses have the potential, over time, to destroy remaining wetlands and other natural resources.

The wetlands and other natural resources of the County are indispensable and fragile ecosystems with significant development constraints due to flooding, erosion and soil limitations. In their natural state, wetlands and other natural resources function to serve people and nature. The multiple beneficial functions of La Porte County’s natural resources, when maintained in a substantially natural state, include:

- (1) Protection and improvement of surface and groundwater quality;
- (2) Recharge and discharge of groundwater;
- (3) Storage, conveyance and attenuation of floodwaters and storm waters;
- (4) Protection and improvement of air quality;
- (5) Habitat for fish, wildlife and vegetation;
- (6) Support of biodiversity, which serves as a basis for ecosystem stability;
- (7) Mitigation of floods and droughts;
- (8) Generation and renewal of soil and soil fertility;
- (9) Stabilization of soil and prevention of erosion;
- (10) Pollination of crops and natural vegetation;
- (11) Stabilization of micro and regional climate;
- (12) Natural resource education; scientific study; open space; and recreation opportunities; and

- (13) Preservation of aesthetic quality of the county, which is important to quality of life for county residents, and for recreational and tourism value.
- (b) Destruction of natural resources compromises the ability of the ecosystems to provide the functions listed above. The uncontrolled use and development of natural resources in La Porte County affects public health and general welfare. Therefore, it is in the best interest of La Porte County to provide for the wise, regulated use of its shared natural resources.
- (c) **Statement of Purpose.** The intended general purpose of this article is to require planning to avoid or minimize damage to natural resources of La Porte County, including the city of La Porte and city of Michigan City; to protect the rights of the residents of La Porte County to enjoy clean air, pure water and the natural, scenic, historic and aesthetic values of the environment; to restrict degradation of natural resources and to provide for their protection. Specific goals to be supported by this article include:
- (1) Protect land and water resource areas, including groundwater recharge zones (aquifers), springs, streams, wetlands, woodlands, prime wildlife habitats, and areas constituting high ecological, recreational and other amenity value that exist on developed or undeveloped land, and other protected natural resource areas as defined by this article;
  - (2) Direct growth away from areas with sensitive natural resources and toward those areas most suitable for development in terms of available infrastructure (i.e. sewer, water, transportation), compatible land uses, and least impact on protected resources.
  - (3) Promote sustainable land use practices that are consistent with the preservation or improvement of the quality of the existing environment and of natural amenities. Sustainable land use includes those practices that improve or preserve the economic, social, and ecological function of natural resources.
  - (4) Establish that any development plan (e.g. site plan, subdivision plat, site condominium plan), shall be designed and arranged to protect and minimize disturbance to priority natural resource protection areas.
  - (5) Allow compensatory mitigation for natural resource impacts compliant with state and federal standards and define additional local mitigation requirements for impacts to protected natural resource areas.
- (d) **Public Safety Purpose.** A further purpose of this article is to ensure that development activities in La Porte County, including the city of La Porte and city of Michigan City do not threaten public safety or cause nuisances by:
- (1) Blocking drainage flows, destroying flood storage areas, or destroying storm barriers, thereby raising flood heights or velocities on other land and increasing flood damages;
  - (2) Causing water pollution through any means, including location of septic systems in wet soils, unauthorized application of pesticides, herbicides and algicides; disposal of solid wastes or surface water runoff at inappropriate sites; or the creation of unstabilized fills;
  - (3) Increasing erosion; or
  - (4) Increasing runoff of sediment and surface water.
- (e) **Preservation Purpose.** A further purpose of this article is to ensure that development activities in La Porte County do not destroy natural resource functions important to the general welfare by:
- (1) Decreasing breeding, spawning, nesting, wintering, feeding, or other critical habitat for fish and wildlife, including rare, threatened and endangered plant and animal species and commercially and recreationally important wildlife;

- (2) Decreasing groundwater recharge;
- (3) Destroying sites needed for education and scientific research as outdoor biophysical laboratories, living classrooms and training areas;
- (4) Interfering with public rights in waters and the recreation opportunities for hunting, fishing, boating, hiking, bird watching, photography, camping and other activities in natural resource areas; or
- (5) Destroying aesthetic or property values.

### Section 22.02 Lands to which this Article Applies

- (a) **Lands and waters to which this Article applies.** The provisions of this article shall apply to all natural resources and associated buffers within jurisdiction of La Porte County, the city of La Porte and the city of Michigan City as mapped by the web-based GIS Database interactive mapping tool Local Decision Maker (LDM) at <http://ldm.agriculture.purdue.edu>. A listing of natural resource layers to be evaluated will be provided by the enforcement official, but at a minimum shall include::
- (1) Sensitive Areas;
  - (2) Steep Slopes (> 20%);
  - (3) Major Rivers and Lakes (USGS);
  - (4) Streams and Lakes (NHD);
  - (5) Recreational Facilities;
  - (6) Indiana Biodiversity Initiative (IBI) High Irreplaceability Sites;
  - (7) CrEAM diversity index – Species Rarity;
  - (8) Indiana Natural Regions;
  - (9) Floodplains;
  - (10) NWI Wetlands; and
  - (11) NHD Watersheds.
- (b) **Lands and waters to which this Article does not apply.** The provisions of this article shall not apply to the following lands and waters in La Porte County:
- (1) Artificially-constructed ponds, drainage ditches, stormwater collection basins, gravel pits, stone quarries or waste treatment systems or lagoons, except to the extent that such uses are restricted or prohibited in a natural resource protection area; and
  - (2) Wetlands and other natural resource areas for which local, state or federal permits for fill were issued prior to the adoption of this article or prior to the extension of the planning and zoning jurisdiction La Porte County over the areas for which the permits were issued.
- (c) In the event of a conflict between the provisions of this subchapter and those of any other part of the Zoning Ordinance that governs the management of natural resource areas, the more restrictive provision shall take precedence.

### Section 22.03 Activities Allowed by Right

The following uses are allowed in natural resource areas without a permit, providing they do not involve hydrologic or soil modifications, land disturbance or fills:

- (a) Private wildlife sanctuaries, natural resource preserves, scientific or educational research, provided that they do not harm the natural ecosystem;
- (b) Outdoor recreation including nature study, hiking, horseback riding, swimming, camping, trapping, hunting, fishing, shell fishing, cross-country skiing where otherwise legally permitted;
- (c) Open space uses incidental to the enjoyment and maintenance of adjacent residential, commercial and industrial property such as open space for subdivisions and building setback areas;
- (d) Maintenance and repair of existing ditches, watercourses, farm ponds, utilities, roadways providing the activity does not involve the expansion of roadways or related improvements into previously un-impacted areas; and
- (e) Removal of diseased or invasive exotic plant species as identified and quantified in writing by a qualified biologist and approved in writing by Natural Resources Enforcement Official, and removal of dead or detached plant material.

### Section 22.04 Establishment of Setback Requirements

- (a) **Minimum setback of development activity from streams, lakes, ponds, and wetlands.** Absolutely no development activity (except as provided below) may occur within the minimum setback which is defined as 75 feet from the ordinary high water mark of streams, lakes, and ponds, and 50 feet from the edge of wetlands, or within a designated depressional area. In no case shall the setback be less than the boundary of the 100-year floodway as defined by FEMA. The enforcement official may require a larger setback based upon flooding, erosion, pollution, endangered species, riparian or wetland functions and values, or other relevant factors.
- (b) Where a development pattern exists, the setback for a proposed principal structure may be reduced to the average setback of the principal structure on each adjacent lot, but the setback may not be reduced to less than 35 feet from the ordinary high water mark of any navigable water.
- (c) These setback requirements do not apply to a stream in a culvert unless the stream is taken out of a culvert as part of development activity. If a culvert functions as a low-flow culvert, where water is intended to periodically flow over it, the setback requirements shall apply. Review waiver of this article for proposed development activity within the minimum setback area will consider the following:
  - (1) Only limited filling and excavating necessary for the development of public boat launching ramps, swimming beaches, or the development of park shelters or similar structures is allowed. The development and maintenance of roads, parking lots and other impervious surfaces necessary for permitted uses are allowed only on a very limited basis, and where no alternate location outside the setback area is available.
  - (2) Land surface modification within the minimum setback shall be permitted for development of stormwater drainage swales between the developed area of the site (including a stormwater detention facility on the site) and a stream, lake or pond, or wetland. Detention basins within the setback are generally discouraged, unless it can be shown that resultant modifications will not impair water quality, habitat, or flood storage functions.

- (d) The purpose of this protection offset is to preserve the natural resource areas themselves and the environmentally sensitive areas immediately around the natural resource areas. These protection setbacks are separate and different from any state or federal wetland requirements.

### Section 22.05 Requirement for Natural Resources Due Diligence Inventory

- (a) Provision shall be made for the identification, evaluation, review, and permitting of identified natural resources in conformance with the provisions of this article prior to the commencement of any regulated land disturbance activities in natural resource areas. Activities include filling; excavating; grading; dredging; construction; clear-cutting; removal of peat, sand or gravel; or alteration of the water table, of flood-retention characteristics, of surface drainage or of topographical characteristics.
- (b) Upon reviewing the project location and site plan, the enforcement official may require submittal of a Natural Resources Due Diligence Inventory to determine the presence or absence of identified natural resources requiring protection, mitigation and/or permitting. The Natural Resources Due Diligence Inventory shall be prepared by a professional wetland consultant employed by a professional ecological consulting firm included on the USACE Indiana Engineering and Environmental Consulting Firm list.

<http://www.lrc.usace.army.mil/co-r/consult-IN.pdf>

- (c) In addition, a Natural Resources Inventory Survey shall be required for any project directly adjacent to an existing nature preserve, including but not limited to, the Ambler Flatwoods Nature Preserve, Barker Woods Nature Preserve, Little Calumet Headwaters Nature Preserve, Wintergreen Woods Nature Preserve, and Spice Lake Nature Preserve (St. Joseph County). A delineation of all natural resources including wetlands and/or streams shall be completed on the project site. The wetland delineation shall be completed using methods and procedures most recently established by the USACE.
- (d) The Natural Resource Inventory Survey shall include correspondence with the United States Fish and Wildlife (FWS) and Indiana Department of Natural Resources (DNR) Division of Nature Preserves regarding Threatened, Endangered, or Rare (ETR) species. Additionally, the most recent, available list of ETR species shall be consulted. The project site shall be assessed to determine if potential habitat is present for any listed ETR noted in the region. A more exhaustive investigation may be warranted if it is determined that ETR species may exist on the project site.

IDNR ETR List: <http://www.in.gov/dnr/naturepreserve/4666.htm>

- (e) Submittal of a Natural Resources Due Diligence Inventory does not preclude the applicant from obtaining local, state, and federal permits for impacts to natural resources.

### Section 22.06 Compliance

- (a) No structure shall hereafter be located, extended, converted or structurally altered within identified natural resource areas without full compliance with the terms of this article and other applicable regulations. No natural resource area within La Porte County, the city of La Porte or the city of Michigan City shall hereafter be altered without full compliance with the terms of this article and other applicable regulations.
- (b) Any entity responsible for a premises, which is, or may be, the source of an impact to a protected natural resource area shall provide, at their own expense, reasonable protection from this impact through the use of acceptable best management practices (BMPs) and/or compensatory mitigation practices, as determined by the jurisdictional authority and outlined herein.

**Section 22.07 Duties and Responsibilities of Enforcement Official**

- (a) The enforcement official and/or designee is hereby authorized and directed to enforce the provisions of this article. The enforcement official is further authorized to render interpretations of this article which are consistent with its spirit and purpose.
- (b) Duties and responsibilities of the enforcement official shall include, but are not limited to:
- (1) Review all due diligence inventory information pertaining to natural resource development to assure that the requirements of this article have been satisfied.
  - (2) Inspect and inventory damaged structures in natural resource areas and complete substantial damage determinations.
  - (3) Ensure that construction authorization has been granted by the US Army Corps of Engineers (USACE), Indiana Department of Natural Resources, (IDNR), and/or Indiana Department of Environmental Management (IDEM) for all development projects subject to Section 401 and Section 404 of the Clean Water Act, and maintain a record of such authorization (either copy of actual permit, water quality certification, jurisdictional determination, regional general permit notification or construction in a floodway).
  - (4) Ensure that all necessary federal or state permits have been received prior to issuance of the ILP. Copies of such permits are to be maintained on file.
  - (5) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notification to Federal Emergency Management Agency (FEMA).
  - (6) Maintain for public inspection, and furnish upon request, local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, copies of USACE and IDEM permits, jurisdictional determination and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevations and data for all structures and mitigated wetland areas constructed subject to this article.
  - (7) Assure that monitoring and maintenance is provided within any mitigated portion of the natural resource area in accordance with permit requirements.
  - (8) Review certified plans and specifications for compliance.
  - (9) Issue stop work orders:
    - a. Upon notice from the enforcement official, work on any building, structure or premises that is being done contrary to the provisions of this article shall immediately cease.
    - b. Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
  - (10) Revocation of approval.
    - a. The enforcement official may revoke approval issued under the provisions of this article, in cases where there has been any false statement or misrepresentation as to the material facts in the application or plans on which the approval was based.
    - b. The enforcement official may revoke approval upon determination by the enforcement official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this article or the conditions of the permit.

**Section 22.08 Inventory Procedures**

Prior to any development activities, the enforcement official shall review the LDM interactive GIS database map information, conduct an analysis of submitted project materials required in Article 23 of this ordinance and notify the applicant if a natural resource due diligence inventory will be required for the project.

If required, the applicant shall retain a qualified ecological engineering consultant to perform a Natural Resources Due Diligence Inventory, including a wetland delineation, an Endangered, Threatened, or Rare (ETR) Species Investigation of flora and fauna including a database search of U.S. Fish and Wildlife information and the Indiana Department of Natural Resources for ETR species documented within one-mile of the site, and a preliminary summary of any available regulatory information for floodway/floodplain identified within the proposed project boundaries to meet the requirements of Section 22.07.

The inventory survey shall include the following information:

**(a) Application stage.**

- (1) Name, address and contact information of property owner and applicant (if different);
- (2) A description of the proposed development activity;
- (3) Location of the proposed development activity sufficient to accurately locate property and structure in relation to existing roads, streams and other waterbodies;
- (4) A legal description of the property;
- (5) A site development plan showing identified natural resources, existing and proposed building and structure locations, existing and proposed land grades, and potential or proposed impact to wetlands;
- (6) A description of all grading, filling and vegetation removal proposed by the development plan;
- (7) An explanation of why this activity cannot be located at an upland site;
- (8) A description of all measures proposed to reduce or compensate for project impacts;
- (9) Photographs of the proposed project site showing the existing condition;
- (10) Elevation of the 100 year flood, and floodplain and floodway boundaries (if applicable) at the project site;
- (11) Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88;
- (12) Elevation (in NAVD 88) to which any non-residential structure will be floodproofed;
- (13) Description of the extent to which any wetland natural resource area will be altered or impacted as a result of proposed development;
- (14) Description of construction sequencing and timetable for proposed activities, including a description of future phases of the project.
- (15) Natural resource feature determination in accordance with this article L
- (16) Copies of approved permits from USACE, IDNR and/or IDEM.

**(b) Additional information.** The enforcement official may also require a permit applicant to submit additional information if the enforcement official deems such information necessary to determine the

compliance of a proposed activity with the standards and criteria set forth in the article. All plans, reports, calculations, and narratives shall be prepared in accordance with this article and signed and sealed by a professional engineer, registered by the State of Indiana. Such information may include:

- (1) Description of ecological communities and functions;
  - (2) Description of how the development activity will change, diminish, or enhance the ecological communities and functions;
  - (3) Name, address, professional status, license number, and phone number of the person who is to prepare the protected natural resource management or mitigation plan;
  - (4) More detailed site plans;
  - (5) Engineering reports and analyses where the proposed activity may be subject to flood or erosion hazards, or increase such hazards or other types;
  - (6) Mapping or description of soil types where onsite waste disposal is proposed; and
  - (7) Analysis of chemical or physical characteristics of any fill material.
- (c) **Construction stage.** Upon placement of improvements, it shall be the duty of the permit holder to submit to the enforcement official a certification of the improvements including NAVD 88 elevation, as built. This certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by that individual. When flood-proofing is utilized for a particular structure, the certification shall be prepared by or under the direct supervision of a professional engineer or licensed architect and certified by that individual. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. (The enforcement official shall review the lowest floor and flood-proofing elevation survey data submitted.) The permit holder shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make the corrections required hereby shall be cause to issue a stop work order for the project. All permits shall be valid for a period of one (1) year from the date of issuance, unless the enforcement official indicates otherwise.
- (d) **Erosion Control Standards.** This Erosion Control Standards section applies to the following types of development:
- (1) General: No changes shall be made in the contour of the land, nor shall grading, excavating, removal or destruction of the topsoil, trees, or other vegetative cover of the land be commenced, until a Storm Water Pollution Prevention Plan (SWP3) has been reviewed and approved by the enforcement official.
  - (2) The SWP3 shall meet the requirements of the MS4 Construction Activity Erosion and Sediment Control Program in accordance with Phase II Version of 327 IAC 15-5 (Rule 13)
  - (3) IDEM Review: Any development over one (1) acre shall be reviewed by IDEM. A copy of the submittal for approval shall be held in the office of the enforcement official.
  - (4) Off-site Sedimentation: Whenever sedimentation is caused by stripping of vegetation, re-grading, or other development activities, it shall be the responsibility of the petitioner to remove it from all adjoining surfaces, drainage systems, and watercourses, and to repair any damage at the petitioner's expense.
  - (5) Off-site Fill: Off-site fill material shall be free of environmentally hazardous materials. The petitioner shall ensure to the enforcement official's satisfaction that fill material hauled from an off-site location is free of environmental contaminants. The source of fill material shall be identified prior to application for a Grading Permit, Improvement Location Permit, or Subdivision Improvement Permit. If directed by the enforcement official, the petitioner shall have testing



performed on representative samples of the fill material to determine if environmentally hazardous materials are present in the fill.

(6) Other Fill:

- a. *Organic Material*: Detrimental amounts of organic material shall not be permitted in fills.
- b. *Irreducible Material*: No rock or similar irreducible material with a maximum dimension greater than twelve (12) inches shall be buried or placed in fills unless included and approved as part of a grading permit, improvement location permit, or subdivision improvement permit.

(7) Health, Safety and Welfare: If the enforcement official determines that any existing excavation, embankment or fill has become a hazard to life or limb, endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, a written notice shall be issued to the owner of the property upon which the hazard is located or other person or agent in control of the property, who shall repair or eliminate such excavation, fill or embankment within the period specified in the notice to eliminate the hazard.

(8) Disturbance of Protected Areas: If any “no disturb” areas are driven over, altered, disturbed or damaged in any way, the petitioner or property owner shall be subject to a stop work order as outlined in Section 22.07 of this article.

### Section 22.09 Basis for Protected Natural Resource Areas Determination

(a) Protected natural resource features include, but are not limited to, areas mapped and identified as such in Section 22.02 utilizing the LDM GIS interactive database map and the following reference materials and sources.

(1) **Wetlands:**

- a.
- b. U.S. Fish and Wildlife Service national wetland inventory (NWI) maps (for general location only)
- c. Natural Resource Conservation Service(NRCS) soil surveys indicating hydric soils
- d. Indiana Department of Natural Resources (IDNR) Indiana Natural Heritage Data Center
- e. USEPA Region 5 Critical Ecosystems Report
- f. Jurisdictional determination and delineation of the boundaries of “waters of the United States” and “waters of the State” in accordance with the Corps of Engineers Wetland Delineation Manual and electronic updates, to include field survey and mapping of plant material and hydric soils by a certified wetland specialist.
- g. La Porte County Soil & Water Conservation District

(2) **Floodplain/Floodways:** See Article 21

(3) **Riparian Areas:**

- a. La Porte County Surveyors Office
- b. La Porte County Soil & Water Conservation District

(b) Where published sources listed above conflict with field based determinations, the applicant must receive correspondence from the publishing source concurring with the determination.

**Section 22.10 Standards for Subdivision Proposals**

- (a) The enforcement official shall review all proposed subdivisions to determine whether the subdivision contains natural resource areas, as defined in Section 22.02. If the enforcement official finds the subdivision to be so located, the enforcement official shall require appropriate changes and modifications in order to assure that:
- (1) The subdivision proposal is consistent with the need to minimize natural resource impacts;
  - (2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to prevent adverse impact;
  - (3) Adequate drainage is provided to reduce exposure to flood hazards;
  - (4) On-site waste disposal systems, if provided, will be located and designed to avoid their impairment, and to prevent them from being a source of contamination during the occurrence of the regulatory flood.
- (b) Developers shall record the delineated wetland boundaries on all subdivision plats containing lands identified elsewhere by ordinance as within a SFHA prior to submitting the plats for approval by the plan commission.

**Section 22.11 Riparian Management Plan**

- (a) The enforcement official may require that a permit applicant submit a riparian management plan if the enforcement official believes such a plan is needed to meet the standards of this article and shall provide written specific conditions of which items from Section 22.02(a) items 1-11 require attention, including conditions attached to permit issuance. Such a management plan must comply with procedures outlined in the Indiana Drainage Handbook and may include the procedures and timing of the proposed project, water level manipulation, removal of exotic species, replanting (if necessary) and other active management activities over time. The riparian management plan may also be combined with a compensatory mitigation plan as provided in Sections 21.12 of this article.
- (b) The riparian management plan shall be consistent with the following requirements:
- (1) The plan shall describe all conservation and/or land management techniques that will be used to conserve and restore the riparian area.
  - (2) The plan shall specify any management activities that will be carried out over time, and methods or techniques for implementing the activities.
  - (3) The plan shall specify the professional and personnel resources that will be committed to monitoring and managing the riparian area.
  - (4) The plan shall specify construction methods that identify and protect riparian habitat that is to be left unaltered.
  - (5) Site development shall accommodate the topography and soil so as to create the least potential for vegetation loss and site disturbance.
  - (6) Vegetation and soil removal shall be limited to the minimum amount necessary for the development of the site.
  - (7) Temporary vegetation, sufficient to stabilize the soil, may be required on all disturbed areas as necessary to prevent soil erosion. New plantings shall be given sufficient water and protection to insure reestablishment.

- (8) If the proposed development would affect the banks of the stream or river, bank stabilization techniques shall be required to prevent erosion.

### Section 22.12 Compensatory Mitigation

- (a) The applicant may be required to submit a compensatory mitigation plan developed by a qualified professional if it is determined that such a plan is needed to meet the standards of this article and IDEM, IDNR, and or USACE regulatory requirements. The standards of this article include no net loss of natural resource area functions, values, acreage and flood storage, and any conditions attached to the issuance of a wetland permit. Compensatory mitigation measures may take the form of protected natural resource area restoration, creation or enhancement. Compensatory mitigation plans shall comply with IDEM requirements and include design, implementation, maintenance, and monitoring elements. Plans shall include a description of the mitigation area, existing and proposed topography at one (1) foot contour intervals, any proposed fill (including source of the fill) or stockpiling, proposed excavation, planting plans (including source of plants) and erosion control measures.
- (b) A compensatory mitigation plan shall also include, at a minimum:
- (1) The restoration of vegetation that is native to the site;
  - (2) Periodic monitoring of mitigation features;
  - (3) Maintenance and replacement of damaged plants or other features; and
  - (4) A proposal for posting a performance bond or other financial assurances.
- (c) In general, compensatory mitigation shall meet jurisdictional requirements. However, the enforcement official may allow use of offsite and out of kind mitigation including the use of mitigation banks if such use will have net ecological benefits, will not cause nuisances, and will not violate other laws. Use of mitigation banks will be allowed to compensate for impacts only where onsite measures are applied to insure that flooding, water pollution, erosion, and other problems do not occur at the original site.
- (d) Where feasible, mitigation projects shall be completed prior to development activities. In other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity. There shall be no introduction into a mitigation project of any plant or wildlife that is not native to the area, unless authorized by a state or federal permit.
- (e) Minimum mitigation ratios shall be in compliance with current IDEM requirements for State Regulated Isolated Wetlands based on classification of the wetlands in accordance with IAC 13-18 or in compliance with USACE requirements for jurisdictional waters of the U.S.
- (f) In evaluating the adequacy of proposed compensatory mitigation, the enforcement official shall consider its effectiveness in avoiding impacts, minimizing impacts, rectifying the impacts, reducing or eliminating the impacts over time; and compensating for the impacts. The following shall be considered:
- (1) The risk of failure of the proposed mitigation project based upon the difficulty with which this type of protected natural resource area is restored, created, or enhanced; the experience and expertise of the individual or individuals proposing to carry out the mitigation; the proposed buffer and other protection measures; and the proposed management, monitoring and maintenance;

- (2) The societal and natural resources value of protected natural resource functions provided by the mitigation plan in comparison to the societal and natural resources value of the functions of the original protected natural resource area;
- (3) Whether the proposed mitigation will require long term maintenance and, if so, the adequacy of any proposed maintenance; and
- (4) The need for long term monitoring and how such monitoring will be provided.

### Section 22.13 Variances

- (a) **Board of Zoning Appeals.** The board of zoning appeals shall hear and decide appeals and requests for variances from the requirements of this article in accordance with the procedures of article 28.
- (b) **Variance Procedures.** In passing upon such applications, the board of zoning appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
  - (1) The danger to life and property due to flooding or erosion damage;
  - (2) The importance of the services provided by the proposed facility to the community;
  - (3) The necessity of the proposed location to the success of the facility, where applicable;
  - (4) The availability of alternative locations for the proposed use which are not subject to degradation of natural resources;
  - (5) The compatibility of the proposed use with existing and anticipated development;
  - (6) The relationship of the proposed use to the comprehensive plan and development regulations for that area;
  - (7) The safety of access to the property in times of flood for ordinary and emergency vehicles; and
  - (8) The additional impact on natural resources for providing governmental services to the facility, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (c) **Variances.** Variances shall only be issued when there is:
  - (1) A showing of good and sufficient cause;
  - (2) A determination that failure to grant the variance would result in exceptional hardship; and
  - (3) A determination that the granting of a variance will not result in increased natural resource degradation, additional threats to public safety, extraordinary public expense, or creation of nuisances, will not cause fraud, or victimization of the public, and will not conflict with existing laws or ordinances.
- (d) **Permits.** Any variances granted in a natural resource area subject to this article will require applicable permits from USACE, IDNR and or IDEM.
- (e) **Historic Structures.** Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum activity necessary to preserve the historic character and design of the structure.
- (f) **Special Conditions.** The board of zoning appeals may conditionally approve permits or variances for development activities in natural resource areas. Examples of the types of conditions that may be attached to permits or variances include, but are not limited to:

- (1) Design measures to reduce project impacts;
- (2) Relocation of the proposed activity to reduce project impacts;
- (3) Flood and erosion reduction measures to prevent hazard losses to activities or natural resources on other lands;
- (4) Compensatory mitigation measures to offset losses to protected natural resource area acreage, functions, and values;
- (5) Inclusion of a warning in the property deed that the property contains a protected natural resource area and that any activities in the protected natural resource areas are subject to the protected natural resource, wetland, floodplain and other regulatory requirements;
- (6) Setbacks from the river, stream, or other water body of a size appropriate for the proposed activity and the particular protected natural resource area;
- (7) Deed restrictions, covenants, or execution of conservation easements regarding the future use of lands including but not limited to preservation of undeveloped areas and restrictions on vegetation removal;
- (8) Erosion control and storm water management measures;
- (9) The clustering of structures or development;
- (10) Long term monitoring and management requirements including control of exotic plant and animal species; and
- (11) Other conditions necessary to protect protected natural resource area functions, offset losses, and prevent increased natural hazard losses in the community.

#### **Section 22.14 Enforcement and Penalties**

In addition to the enforcement and penalties provided for in article 26, the enforcement official shall have the power to order the restoration of any natural resource area impacted in violation of this article. If the responsible person or agent does not submit a restoration plan to the enforcement official in accordance with the requirements outlined herein within 120 days following the order, the authorized local government shall have the authority to restore the affected wetlands to the prior condition and the person or agent responsible for the violation shall be held liable to the city or county for the cost of restoration.

(This page intentionally left blank)