

Waterways and Wetlands

Do I need a permit for that?

It's one of the more complicated questions farmers can ask about what should be straightforward practices: can you dig that pond, can you clean that ditch, can you build that barn, do you need a permit to farm?

In many ways the answer to those questions is "It depends," but some regulations are worth mentioning as a general guideline for farmers thinking about field or farmstead work. These regulations could help identify situations where farmers have an opportunity to ask questions and avoid future violations.

Location, Location, Location

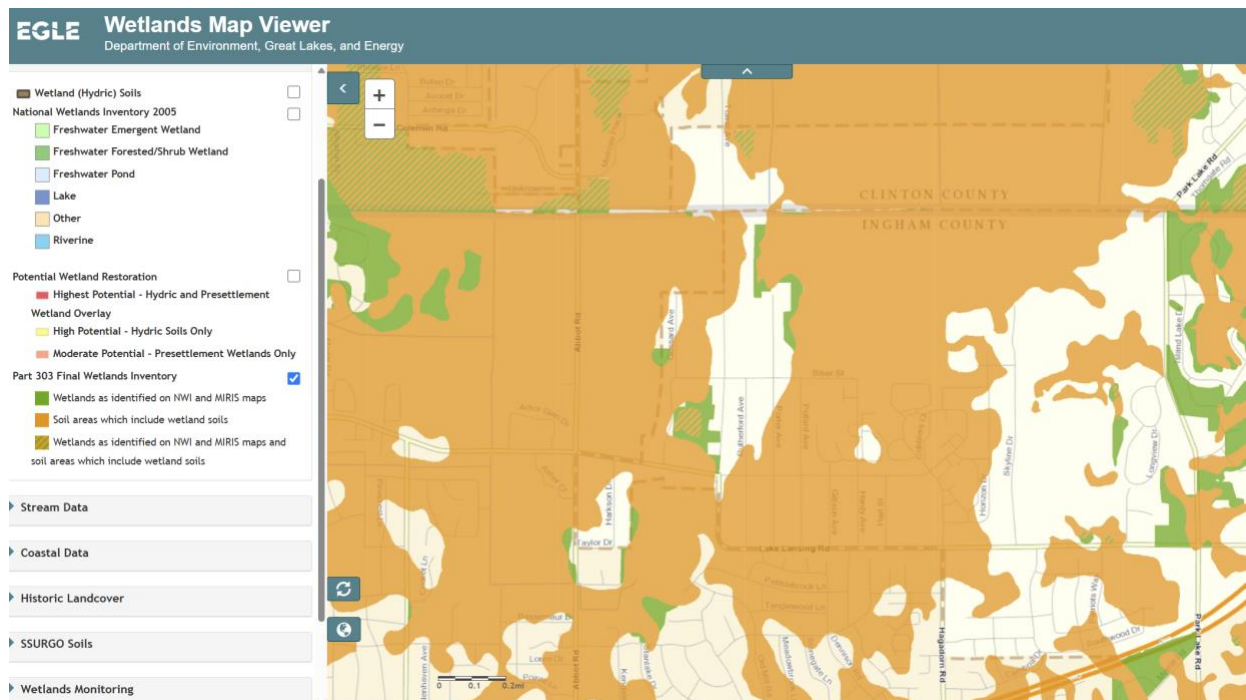
Most permit requirements for Michigan depend on a few factors:

- 1) Is the area you want to farm, move soil, build, dig, or drain in a wetland?

Farms do receive some exemptions from regulation by the Michigan Department of Environment, Great Lakes, and Energy (MDEGLE) for activities in wetlands:

- Farming that has been happening in a wetland since before October 1, 2013
- Constructing or maintaining a farm pond (for irrigation or livestock watering)
- Maintaining a ditch or drain to its original contours as of July 1, 2014

Many other activities, including new drains, buildings, and piling excavated soil, require permits. A good guide to whether you *might* need a wetland permit is Michigan's [Wetland Map Viewer](#), which can identify the general location of regulated wetlands:



Wetland Map Viewer image near the author's home in Ingham County

- 2) Is the area you want to farm, move soil, build, dig, or drain near an inland lake, stream, or county drain?

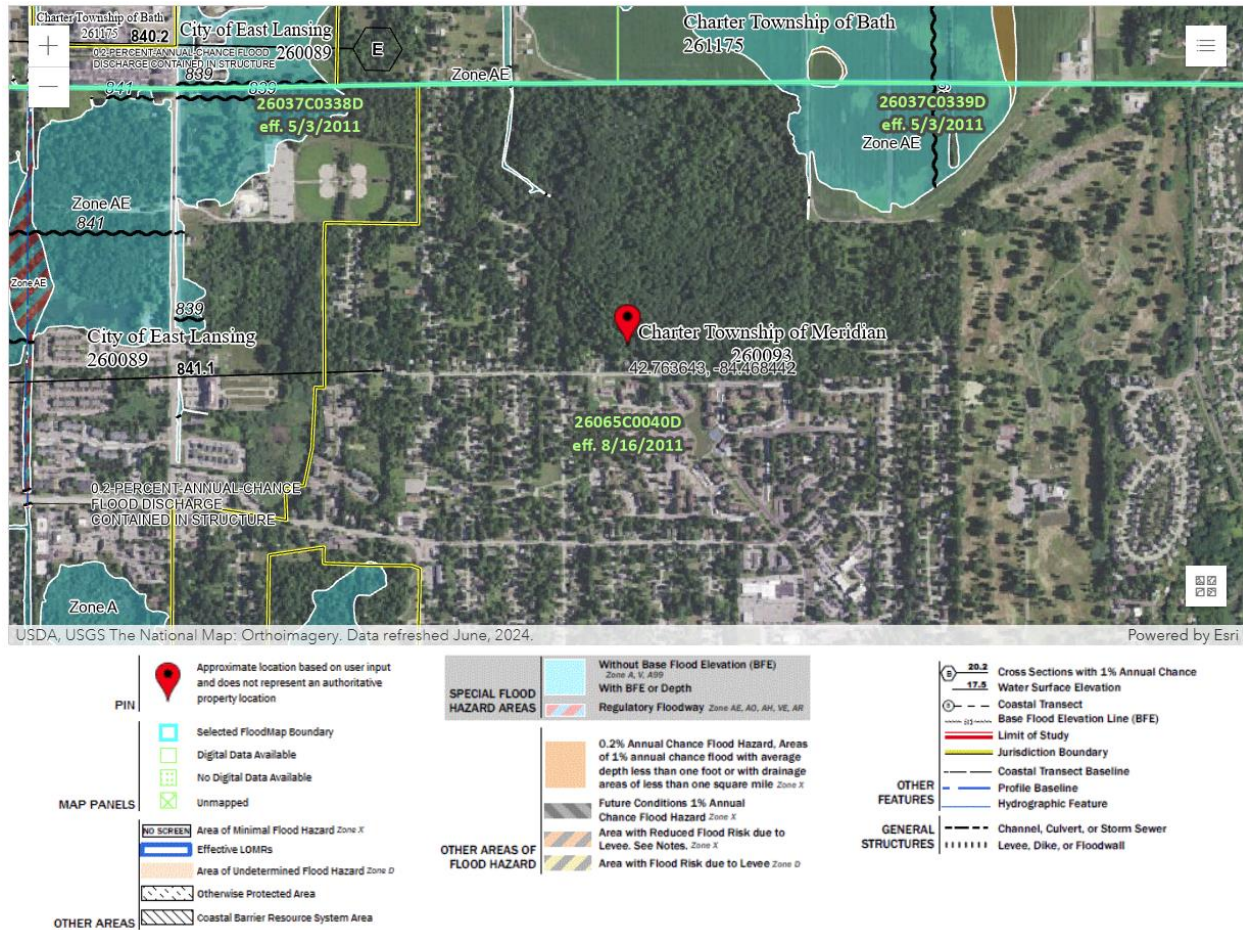
Michigan law requires MDEGLE permits for any dredging, filling, or altering any waterway, ditch, pond, or similar water feature within 500 feet of an inland lake, stream, or county drain, or within 1000 feet of the Great Lakes.

Farms do get exemptions for activities like maintaining drains to their original contours as of July 1, 2014, controlled access for livestock watering, and hand removal of nuisance or invasive vegetation. However, many farmers run into trouble thinking their wetland exemption for constructing or maintaining ponds extends to inland lakes, streams, and county drains – it does not, and a permit is still required.

- 3) Is the area you want to farm, move soil, build, dig, or drain in a floodplain?

This is probably the hardest to answer, because while state statute exempts most farming activities from permits in floodplains, federal floodplain insurance programs do not, so many farmers encounter violations for earth moving in a floodplain despite these state exemptions.

A good reference to search for whether the area you want to work in is in a floodplain subject to permits is the Federal Emergency Management Agency's Flood Map Service Center that identifies areas within the 100-year floodplain in each state:



FEMA's Floodplain Map image near the author's home in Ingham County

For all of these activities, good resources to contact for permitting information include:

- [MDEGLE's voluntary pre-application meeting process](#), where farmers and landowners can schedule meetings with MDEGLE staff to discuss project goals and what permits might be needed at that location.
- Your local technician for the [Michigan Agriculture Environmental Assurance Program \(MAEAP\)](#), where you can receive voluntary, confidential advice on environmental stewardship across your farm.

What About County Drains?

Farmers are generally not allowed to perform work in County Drains, unless they work under the permission and supervision of the Drain/Water Resources Commissioner. Drain/Water Resources Commissioners have their own regulations to follow for drain construction and maintenance, so this coordination is important whether a farmer wants to maintain a portion of a county drain running through their property or connect their own

What About the US Department of Agriculture's (USDA) Farm Service Agency (FSA) and Natural Resources Conservation Service (NRCS)?

The [Food Security Act of 1985](#) established requirements for USDA to protect highly erodible lands and wetlands in provisions sometimes called “Sodbuster” and “Swampbuster.” They required anyone receiving benefits from USDA programs to use conservation practices if they produce agricultural commodities on highly erodible lands, and prohibited anyone receiving benefits from USDA programs from converting wetlands to cropland unless that land was “Prior Converted,” meaning converted before December 23, 1985.

The wetland protection provision, or Swampbuster, is the one that is often the most difficult to clarify for farmers in Michigan. A wetland is a wetland is a wetland, right? Every agency that performs wetland determinations uses the same manual: The 1987 [U.S. Army Corps Wetland Delineation Manual](#) and regional supplements.

However, the difficulty comes not from whether land is a wetland, it comes from whether the applicable law applies to it. Here is a brief, non-comprehensive comparison:

MDEGLE Wetland Regulations	USDA Swampbuster Provisions
Applicable to all dredge and fill activities, not just farming	Only applicable to farms cultivating a crop and receiving benefits from a USDA program
Violation carries civil AND criminal penalties	Violation results in loss of benefits received after violation is confirmed
Applies only to certain wetlands: <ul style="list-style-type: none"> • “Contiguous” to an inland lake, stream, county drain, or the Great Lakes (Michigan’s Administrative Rules define “contiguous” as having a direct surface connection or being within 500 feet of an inland water body, or 1000 feet of the Great Lakes) • More than 5 acres in size • Has documented presence of an endangered or threatened species • Is a “rare and imperiled” wetland under law 	Applies to ALL wetlands of any size and location on land being farmed by someone receiving USDA benefits, including: <ul style="list-style-type: none"> • USDA disaster programs • crop insurance benefits • conservation program payments • USDA-backed loans • price support payments Wetland compliance is required for ALL lands farmed by the USDA benefit recipient, and applies to both the landowner and the person farming the land, if they are not the same person
Land that reverts to having wetland characteristics due to lack of maintenance, repeated flooding, poor drainage, or other causes can be regulated as wetland again, even if previously converted under permit	Any lands converted before December 23, 1985 are considered “Prior Converted” and will always be considered “Prior Converted” as long as they are used to cultivate a crop, even if they regain wetland characteristics (but not if converted for non-agricultural uses)

Given the complexity of inland lake, stream, county drain, floodplain, and wetland provisions, a farmer's best bet is to seek professional guidance before starting any work that might impact those regulated waterways, and to be sure to check with any agency that might be involved: Drain/Water Resources Commissioners, MDEGLE, and USDA.

Additional Resources:

[MFB Policy #71 Agricultural Drainage](#)

[MFB Policy #81 Michigan Department of Environment, Great Lakes and Energy](#)

[MFB Policy #86 USDA Conservation Programs](#)

[MFB Policy #89 Wetlands Protection Act](#)

AFBF Policies:

- #237 National Conservation and Environmental Policy
- #462 Role of USDA
- #528 Sodbuster and Swampbuster
- #547 Water Quality

<https://www.michiganfarmnews.com/wetland-mitigation-woes-solutions>

<https://www.michiganfarmnews.com/consider-agricultural-wetland-mitigation-banking-to-regain-farm-program-eligibility>

<https://www.michiganfarmnews.com/there-s-no-one-stop-shop-protect-yourself-on-permitting>