

2.4 Existing Regulations, Plans, and Policies for Natural Resource Management & Land Development

Land use plans, policies and implementation, which are primarily carried out through regulatory means, impact the way land is used and influence the preservation, conservation and use of natural resources. This section will examine regulations and plans that affect the way land is used in Portage County in a general fashion starting at the federal and state levels and moving toward more local regulations and policies. This is not meant to be an exhaustive inventory or to explain the details of regulatory involvement, but is meant to act as an overview and introduction to the many agencies that have an impact on land use decisions and natural resource use with respect to the Watersheds Plan.

Federal Regulations

At the federal level the Clean Water Act (CWA) (1972) has given the Environmental Protection Agency (EPA) and/or the Army Corps of Engineers the primary regulatory control over the use of and impacts to streams, rivers, and wetlands in the United States. Much of this regulatory effort is implemented and enforced at the state level. The Clean Water Act enables the EPA to establish water quality criteria, to set wastewater standards for industry, and to address non-point source pollution among other duties.

Clean Water Act: Section 404 of the Clean Water Act gives the Army Corps of Engineers authority over all navigable waterways in the United States and this includes the wetlands associated with navigable waterways. The Army Corps issues permits for the discharge of “dredge or fill material” into jurisdictional areas. The local branches of the Environmental Protection Agency assist the Army Corps of Engineers in wetland oversight and help enforce regulations concerning wetlands and water quality. In Ohio, the EPA also regulates wetlands not associated with navigable waterways (referred to as isolated wetlands).

The Ohio EPA’s Total Maximum Daily Load (TMDL) program, established under Section 303(d) of the Clean Water Act, focuses on identifying and restoring polluted rivers, streams, lakes and other surface water bodies. A TMDL is a written, quantitative assessment of water quality problems in a water body and contributing sources of pollution. It specifies the amount a pollutant needs to be reduced to meet water quality standards (WQS), allocates pollutant load reductions, and provides the basis for taking actions needed to restore a water body. Because evaluated water bodies and streams provide base scientific data, the OEPA stresses the importance of TMDLs in the formation of watershed plans. Eight streams and seven water bodies have been evaluated so far in Portage County (see *Map 28, TMDL Streams & Water Bodies*). Modifications to the dams in Kent and Munroe Falls (Summit County) to improve water quality in the Cuyahoga River are attributable to the TMDL studies of the Middle Cuyahoga River. TMDL studies can affect land development in a watershed because expansion of a wastewater treatment plant to accommodate higher flows from new development is linked to findings of the TMDL.

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The Ohio EPA also fulfills Sections 303(d) and 305(b) of the Clean Water Act, which require every state to adopt water quality standards to protect, maintain and improve the quality of the nation's surface waters. The "Ohio 2004 Integrated Water Quality Monitoring and Assessment Report" provides a summary of the status of the surface waters in Ohio. Assessments are done at a watershed level and include:

- Assessment categories – Watershed assessment units (11-digit HUC code system) are evaluated to determine if they meet designated uses, which range from meeting use designation (Category 1, best) through impaired or threatened and a TMDL is needed (Category 5, worst)
- Use designations – Stream segments are assigned ratings applicable to attainment of standards necessary for the protection of aquatic life, recreational activities, water supplies
- Priority points – Ranking of priority for further study if a watershed assessment unit is rated Category 5 (worst)
- Projected TMDL study dates

The EPA has organized a sequential approach to monitoring surface waters using biological and water quality surveys. They also are monitoring fish consumption advisories and programming TMDLs to help meet water quality standards.

The EPA classifies certain rivers, streams or lakes as Outstanding State Waters, State Resource Waters, or Superior High Quality Waters to protect them from degradation. These designations are dependent on data collected concerning the presence of endangered or threatened species, the presence of viable fish populations that may be declining statewide, high biological integrity, and habitat quality, among other factors.

Source Water Assessment and Protection Program: Through the Source Water Assessment and Protection Program (SWAP), the Ohio EPA is also working with municipalities and counties to develop Source Water Protection Plans for every public water supply system in Ohio. Each community will be responsible for creating a source water protection plan using data supplied by the EPA in the assessment stage of the program. Assessments have been completed for most Portage County public water systems. The goal of the SWAP program is for 50% of the systems classified as "highly-susceptible" to have a protection plan implemented by 2008.

National Pollutant Discharge Elimination System: After attaining significant results in controlling point source pollution in surface waters in the United States through the initial National Pollutant Discharge Elimination System (NPDES), the NPDES Storm Water Program was started in 1999 to further protect water quality. NPDES permits are required for any facility to discharge pollutants, including storm water, into waters of the United States. The storm water phase, typically referred to as "NPDES Phase II," targets non-point sources of pollution and requires regulated (urbanized) communities in the county to develop and implement a storm water management program in order to receive NPDES permits for projects in the county. The Portage County Board of Commissioners and the Portage Soil & Water Conservation District formed a task force with eight regulated communities (co-permittees) and submitted a storm water management plan in 2003 that addressed, among other items, illicit discharges, construction site runoff, post-construction storm water management, and best management

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practices with regards to storm water. Annual reports prepared by the Soil & Water Conservation District document the progress towards goals of the plan.

Flood Damage Prevention Regulations: Portage County’s Chief Building Official regulates development in flood hazard areas through a program initiated at the federal level. Participants in the National Flood Insurance Program must adopt building regulations for flood hazard areas, and in response, Portage County adopted Flood Damage Prevention Regulations that regulate development within the flood plain. These regulations keep citizens of Portage County eligible for flood insurance while minimizing potential losses of property and life due to flood conditions.

State Regulations/Enabling Legislation

Ohio Revised Code: The Ohio Revised Code (ORC) gives the authority to counties, cities, and townships to establish land use controls. Planning Commissions in municipalities are charged with making comprehensive plans, and creating and administering zoning and subdivision ordinances. Townships are given the authority to adopt a Zoning Resolution “in accordance with a comprehensive plan.” The ORC enables the formation of county or regional planning commissions who may prepare plans and adopt and administer subdivision regulations for the unincorporated areas of a county. Recent changes to subdivision laws in the Ohio Revised Code, referred to as “Large Lot Development Rules,” allow counties to adopt rules governing the division of lots from 4–20 acres in size.¹ Previous to the new law, only lots less than 5 acres (with some exceptions) were subject to subdivision regulations. Adoption of such rules could extend the oversight of Portage County Regional Planning Commission to parcel divisions that previously were exempt from review.

Changes are also being instituted at the state level to rules regarding household sewage treatment systems. “In accordance with HB 231, new rules will place much more emphasis on soil and site evaluation for individual properties as well as area wide risk considerations related to soil limiting conditions, drainage, and hydrogeology that may impact water resources. Coordination with local subdivision, planning, and watershed efforts will be promoted. A better understanding of local risk factors and site conditions will direct decisions on the siting, design, installation, and operation of sewage treatment systems permitted under new rules” (Source: Ohio Dept. of Health: <http://www.odh.state.oh.us/rules/odhrules.aspx>). The new rules will have significant impacts on the approval process for home sewage treatment systems and the types of systems permitted in the county.

Another bill (HB 411) has been introduced at the state level to make it easier for counties to enforce erosion and sediment control as well as storm water regulations by giving them authority to issue stop work orders for violations. This bill, if enacted, will enable counties to effectively implement their storm water management regulations and to better protect water resources.

¹ Most counties are already reviewing lots of less than 5 acres as minor subdivisions, so will adopt rules for divisions of greater than 5 acres which are currently exempt from such rules.

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Regional Plans

Clean Water Plans: Section 208 of the Clean Water Act mandates planning at regional levels to address municipal wastewater treatment issues as well as non-point source pollution management and control. The Northeast Ohio Four County Regional Planning and Development Organization (NEFCO), the state designated regional planning and development organization for Portage, Stark, Summit and Wayne counties, recently updated the Clean Water Plan for the Lake Erie Basin and is in the process of updating one for the Ohio River Basin. These plans define and coordinate the expansion of sanitary sewer systems, address household sewage treatment management, and make suggestions for implementing best management practices to protect water quality. The plans when completed are certified by the state and federal EPA agencies and changes to the plan must be reviewed by NEFCO prior to being adopted. All proposals to extend sewer services are evaluated by the Ohio EPA and local management agencies – in Portage County this is the Portage County Water Resources department or local sewer operators in incorporated areas. In addition to providing information about sewer expansion and managing home sewage and semi-public sewage disposal systems, the plans identify “regionally important” water resources, analyze stressors to water resources, and suggest measures to remedy these stressors. Many of the best management practices in the plans are linked to land use regulations and policies.

The ***Lake Erie Protection & Restoration Plan*** (2000) produced by the Ohio Lake Erie Commission, maps out the long-term strategy to achieve environmental, recreational and economic goals in the Lake Erie ecosystem. The Lake Erie Quality Index was used to gather data to measure the status of the ecosystem, establish goals, and devise scoring systems to communicate the current conditions of the Lake.

County Plans and Regulations

Farmland Preservation Plan: The Portage County Board of Commissioners adopted the *Farmland Preservation Plan* (2000), which focuses on policies and strategies to preserve viable agricultural lands, retain and encourage farming in the county, enhance the economic viability of the agriculture industry and balance the need for sustainable growth of the County. The Portage County Farmland Preservation Advisory Board (appointed by the Commissioners) works to implement or facilitate implementation of the Plan. It assists local farmers in applying for permanent preservation of their farms using state funding (Agricultural Easement Purchase Program). To date three farms have been permanently preserved and two more have easements pending for a total of approximately 600 acres. The Advisory Board makes recommendations to any unit of government on policies, regulations or improvements that will impact agriculture. It focuses on economic development initiatives that will enhance the profitability of our agriculture industry such as compilation and dissemination of a brochure on farm market and products available throughout the County so people can readily find local products. The Board works to educate the public about the value of agriculture in our county through a variety of media.

Storm Water Management Plan: As mentioned earlier in this chapter, the EPA’s NPDES Storm Water Program requires regulated communities and municipalities to adopt a Storm Water Management Plan. Portage County adopted a Storm Water Management Plan for the regulated

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communities (City of Streetsboro, Brady Lake Village, Sugar Bush Knolls Village, and Brimfield, Franklin, Ravenna, Rootstown, and Suffield Townships). The cities of Aurora and Kent have their own storm water management plans. A Storm Water Ordinance Committee is currently drafting regulations to assist Portage County and its regulated communities in implementing their storm water management plan.

Subdivision Regulations: The Portage County Board of Commissioners and the Regional Planning Commission (RPC) adopted the current county Subdivision Regulations in 1982 for all townships and the Regional Planning Commission has the authority to administer the regulations. The regulations govern how land is subdivided and improved. The staff of Portage County Regional Planning attempts to coordinate the individual private development plans in the context of neighborhoods and communities. The RPC coordinates diverse regulations applicable to new subdivisions, compiles comments from other agencies and departments, and presents planning reviews and recommendations on major subdivisions at monthly meetings to Planning Commission members. The Planning Commission is the platting authority for the County. Areas covered by these regulations include drainage and storm water management, areas set aside for parks and open space, lot and road system layout and design, provisions for sewage disposal and water supply, and road construction standards.

The RPC staff conducts administrative reviews on subdivisions exempt from platting (minor subdivisions). Minor subdivisions are subject to all Subdivisions Regulations where applicable including design, treatment for wastewater and compliance with local zoning regulations with respect to lot size, width, and frontage.

An update of the subdivision regulations is in process with plans to possibly incorporate a setback from wetlands and streams for all development, a widely endorsed practice for preserving water quality.

The Regional Planning Commission performs a mandatory review (ORC 519.12) for all amendments to township zoning resolutions. The staff also provides assistance to townships or municipalities with site plan reviews, helps communities create plans and implement them using tools such as zoning regulations, and assists with grant applications and economic development initiatives. Data and map requests are also filled.

Local Plans and Regulations

Plans: Many townships, villages and cities in Portage County have adopted Comprehensive or Land Use Plans to guide their land use development and conservation decisions (see Appendix 4). These plans incorporate the values of the community and provide a foundation for land use and community development decisions. At a minimum, these plans have goals, policies and strategies that address the conservation and preservation of natural resources and critical natural areas such as wetlands, floodplains, or steep slopes and identify areas where the community desires development and/or redevelopment to occur.

Zoning & Site Plan Reviews: Incorporated areas have broader powers to implement plans and all incorporated areas in Portage County have zoning ordinances and subdivision regulations that

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regulate land use and development. A few municipal ordinances include environmental protection regulations and riparian setback regulations. The City of Kent Environmental Commission reviews development plans to determine if they are compliant with sustainability goals.

All townships in Portage County have adopted zoning resolutions that permit them to implement their Comprehensive or Land Use Plans and to exercise control over how land may be used. The regulations must be related to health and safety (and general welfare for non-residential uses) including the minimum dimensions of new parcels, the density of residential development, and the location of different types of land use. Many employ some type of low-density zoning for rural and environmentally sensitive areas to minimize negative impacts or allow planned unit developments or conservation developments that require more open space while allowing greater flexibility in design and clustering of units, often on smaller lots in order to preserve more open space (see Appendix 5). Site plan reviews at the township level provide local officials the opportunity to evaluate proposed residential, commercial, or industrial land uses against their zoning requirements and the capacity of infrastructure and services to accommodate the development.

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