



MICHIGAN DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY

# Using Long-Term Management Plans, Stewardship Agreements, and Endowments to Preserve Wetlands

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Anne Garwood

Water Resources Division

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# Why are we here?

Provide a better understanding of preservation process

Start the conversation between potential stewards and consultants

Encourage successful and more comprehensive preservation projects

# Presentation Outline

- Brief Mitigation Introduction
- Preservation Criteria
- Old vs. New Preservation Process
- Tamarack Swamp Preserve Highlight



# Part 303, Wetlands Protection

Protects wetland functions and values by requiring permits for activities within wetlands.



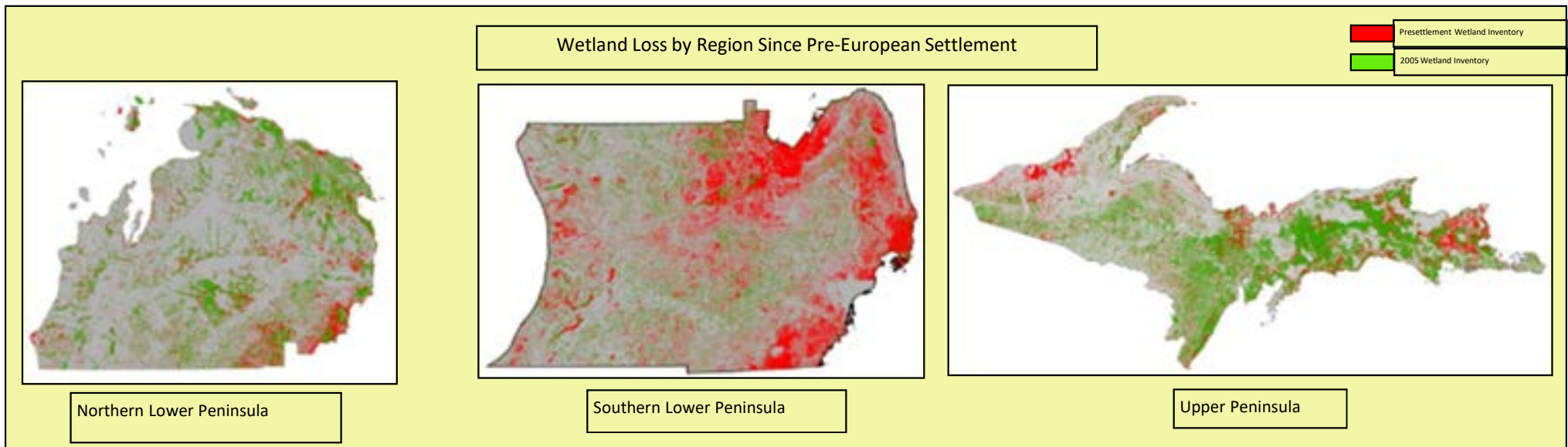
The Michigan Legislature clearly recognized the benefits of wetlands (functions and values) in legislative findings incorporated into Part 303.

A loss of a wetland may deprive the people of the state of some or all of the following benefits to be derived from the wetland:

- Flood and storm control
- Wildlife habitat
- Protection of subsurface water resources and recharging ground water supplies
- Pollution treatment
- Erosion control
- Nursery grounds and sanctuaries for fish



# Loss of wetland functions and values may have far reaching impacts



*Cumulative Impacts:* Historic cumulative loss of wetlands within a watershed contribute to loss of flood storage, water quality and pollution treatment, streamflow maintenance, sediment retention, and shoreline stabilization.

# Loss of wetland functions and values may have far reaching impacts

*Environmental Justice:* Environmental Justice communities may be disproportionately impacted by environmental hazards, including higher pollution burden and vulnerability. This can exacerbate the cumulative impacts of wetland losses within these communities.



# Loss of wetland functions and values may have far reaching impacts

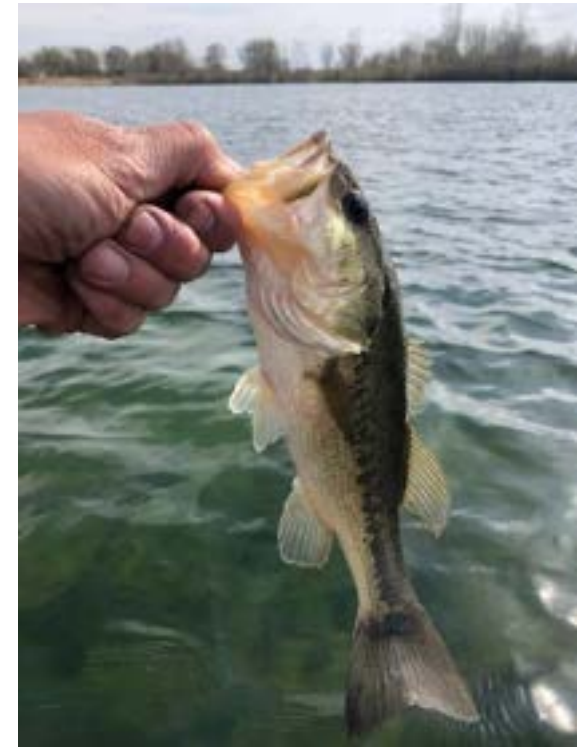
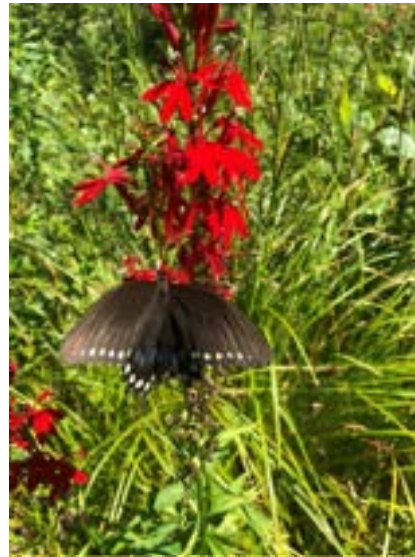
*Climate Change:* The effects of climate change in Michigan are likely to result in more severe storm events, flashier streams, and exacerbated flooding problems after storm events. Watersheds that have lost significant wetlands are not well suited to adapt to these changes, and protection and restoration of wetlands within these watersheds are recommended as some primary climate change adaptation priorities.





# What is wetland mitigation?

Replacement of unavoidably lost wetland resources ...in order to replace as fully as possible the functions and public benefits of the lost wetland



# Mitigation Sequencing



Avoid



Minimize



Compensatory Mitigation



This sequencing is considered “mitigation,” while replacement of wetlands is considered “compensatory mitigation.”

# When is Mitigation Required?

All projects impacting over 1/3  
acre of wetland



Projects under 1/3 acre of  
wetland if a reasonable  
opportunity for mitigation exists  
(i.e. wetland bank site available)

# Mitigation Hierarchy



The department may approve 1 or more of the following methods of compensatory mitigation:



Acquisition of approved wetland bank credits



Restoration of previously existing wetland



Creation of new wetlands



Preservation of “exceptional quality” wetland

When will EGLE  
accept  
preservation as  
mitigation?

No wetland bank  
credits are available

No suitable restoration  
or creation sites are  
available

The site meets  
preservation criteria

10:1 Ratio

## Criteria for Preservation

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Wetland performs exceptional physical or biological functions or is rare and endangered

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Wetland is under threat of loss or degradation outside of the applicant's control

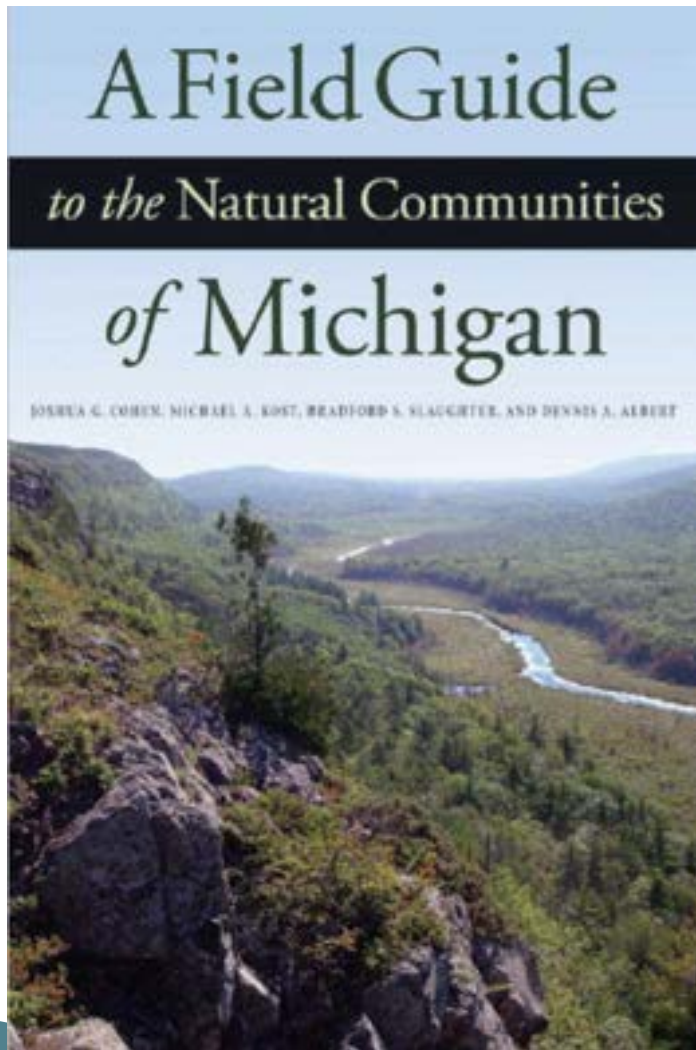
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Permanent protection  
(Conservation Easement)

# What is an exceptional wetland?

- 324.30301 Definitions; technical wetland delineation standards.
  - (c) "Exceptional wetland" means wetland that provides physical or biological functions essential to the natural resources of this state and that may be lost or degraded if not preserved through an approved site protection and management plan for the purposes of providing compensatory wetland mitigation.

# Exceptional Quality



Code Definitions

Global Ranks State Ranks

- S1** Critically imperiled in the state because of extreme rarity (5 or fewer occurrences or very few remaining individuals or acres) or because of some factor(s) making it especially vulnerable to extirpation in the state.
- S2** Imperiled in state because of rarity (6 to 20 occurrences or few remaining individuals or acres) or because of some factor(s) making it very vulnerable to extirpation from the state.
- S3** Rare or uncommon in state (on the order of 21 to 100 occurrences).
- S4** Apparently secure in state, with many occurrences.
- S5** Demonstrably secure in state and essentially ineradicable under present conditions.
- SX** Apparently extirpated from state.





# Threats

- Development
- Runoff
- Logging
- Invasive Species
- Non-Management





Permanent Protection

# AGREEMENT FOR CONSERVATION EASEMENT

(This instrument is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

This CONSERVATION EASEMENT is created on \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_ (name) married/single individual[s] (circle one), \_\_\_\_\_ (circle one) (Grantor) a corporation, partnership, municipality, or limited liability company (circle one), whose address is \_\_\_\_\_

\_\_\_\_\_ (Grantor) a Department of Environment, Great Lakes, and Energy (EGLE), whose address is P.O. Box \_\_\_\_\_ Michigan 48909-7958 or Constitution Hall, 3rd Floor South, 525 West Allegan Street, Lansing, Michigan (Grantee);

\_\_\_\_\_ the title holder of real property located in (circle one) the Township/City of \_\_\_\_\_ County, and State of Michigan, legally described in \_\_\_\_\_

\_\_\_\_\_ administering Part 303, Wetlands Protection, of the Natural Resources Code, Act No. 451, as amended (NREPA), and

\_\_\_\_\_ (insert name and address of Permittee if other than Grantor) hereby (circle one) (Grantor) (Permittee), pursuant to Part 303, to authorize activities that have been evaluated the permit application and determined that a permit could be issued for the regulated wetlands provided certain conditions are met, and

\_\_\_\_\_ (Grantor) (on behalf of Permittee, if applicable) has agreed to execute and record a Conservation Easement that protects the wetland mitigation site and/or the remaining wetland and restricts further development to the area legally described in Exhibit B. The (the Easement Premises) consists of approximately \_\_\_\_\_ acre(s). A survey of the Easement Premises is attached as Exhibit C. The EGLE shall record this Agreement with the County of \_\_\_\_\_ of deeds.

HEREBY, Grantor hereby conveys unto the Grantee, forever and in perpetuity, this Conservation Easement as set forth in this Agreement pursuant to Subpart 11 of Part 21, Conservation and Historic Landmark Easement, of the NREPA, MCL 324.2140 et seq., on the terms and conditions stated below.

### COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

1. The purpose of this Agreement is to protect the functions and values of existing or established wetlands and its natural resource values on the Easement Premises, consistent with the Permit, and the protection of the benefits to the public derived from wetlands and integral habitat, by requiring Grantor to maintain the Easement Premises in its natural and undeveloped condition.

Old Way



# Old Way



New Way

Conservation Easement

Baseline Report

Management Plan

Stewardship Agreement

Endowment

# CONSERVATION EASEMENTS



# WHAT EXACTLY IS A CONSERVATION EASEMENT?!?

A Conservation Easement (CE) is a voluntary legal agreement between a landowner and a government agency or land trust that permanently restricts a property's uses to protect its ecologic value.

- Grantor (donor) – the landowner who is conveying CE
- Grantee – entity that holds the CE

# WHY THE NEED FOR A CE?

- Required to meet permanent protection preservation criteria
- Required under EGLE permit condition



# RESTRICTIONS

What is restricted in an EGLE conservation easement?

- Excavating
- Draining
- Filling
- Vegetation Removal
- Installation of Structures or Buildings
- Grading
- Clearing
- Dumping
- Pesticide Use

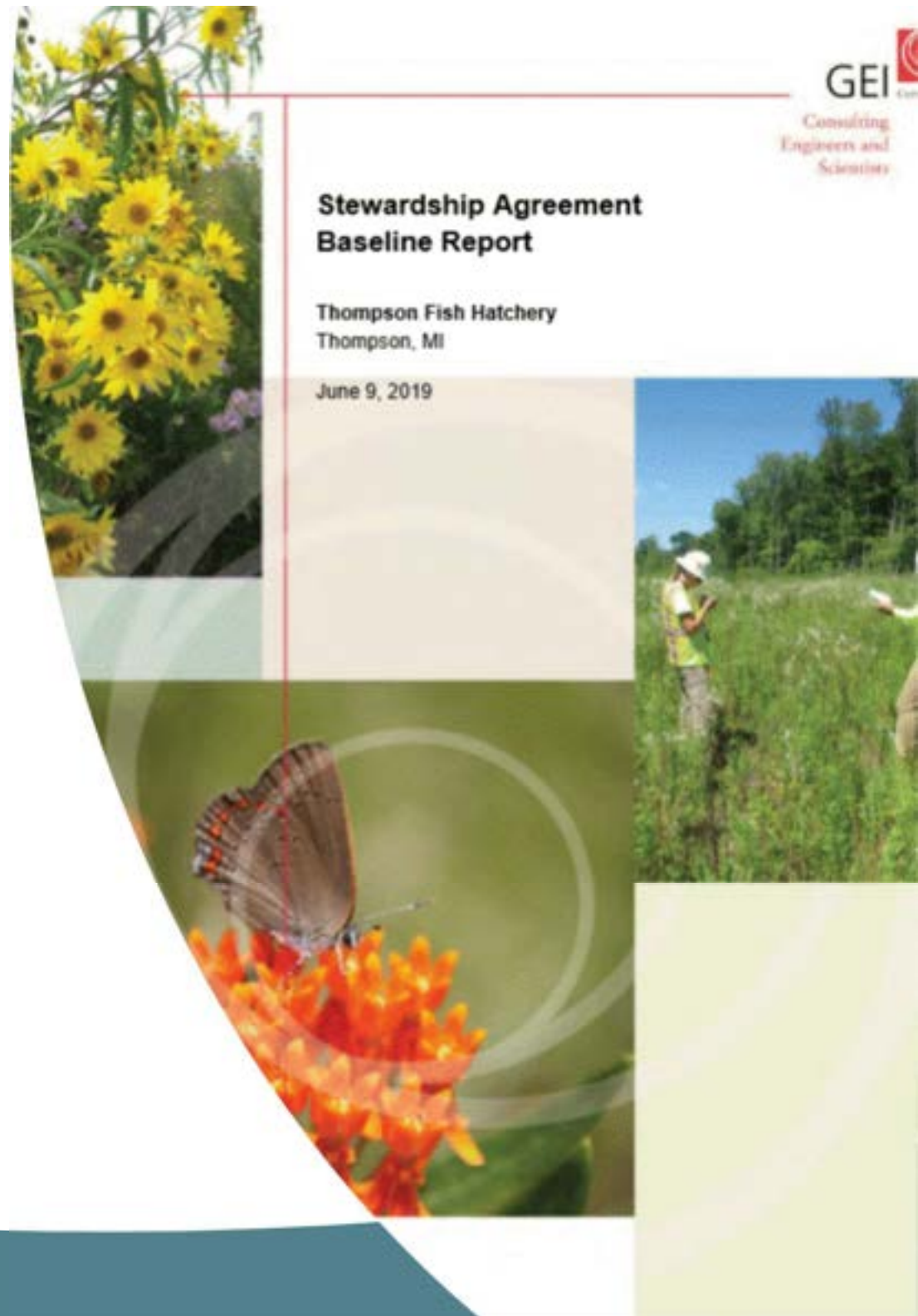


## WHAT ABOUT MANAGEMENT ACTIVITIES?

- Yes! Management activities are allowed if in Long-Term Management Plan
- Vegetation Removal – invasive species management or other reasons for vegetation removal if in Long-Term Management Plan
- ANC Treatments – often allowed, but will require a permit in standing water
- Trails, viewing platforms, etc. if in easement exhibits
- Other activities – case by case basis
- Need to plan ahead with conservancy!

# Baseline Report

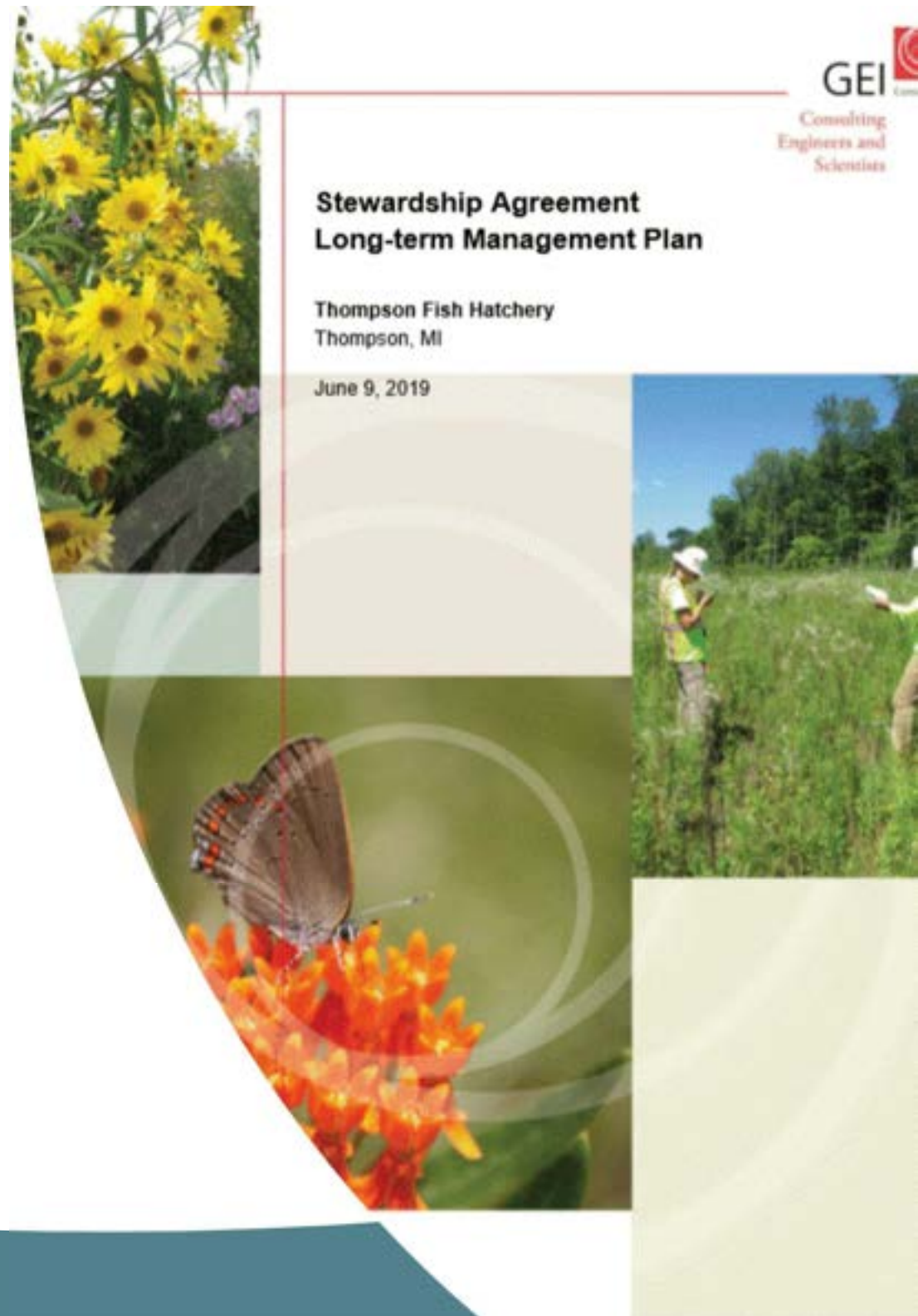
- Land use history
- Wetland Delineation
- Community Classification
- MiRAM and FQA
- Invasive Species
- Threats
- Short Term Management Plan
- Restoration Opportunities



# Management Plans

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- Short-term management based on baseline report
- Long-term plan includes monitoring and maintenance
- Invasive Species Control
- Other



# Stewardship Agreement

- 2-4 party agreement
- Agreement for long-term management
- EGLE Template
- Applicant needs to coordinate with steward
- Endowment amount determined by steward

## OPERATIVE STEWARDSHIP AGREEMENT FOR CONSERVATION EASEMENT

This Operative Stewardship Agreement for Conservation Easement (Agreement) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among:

PERMITEE \_\_\_\_\_ (name), a married / single individual(s) (circle one) or Michigan, corporation, partnership, municipality, limited liability company (circle one), whose address is:

The GRANTOR \_\_\_\_\_ (Easement Holder if not the Permittee), whose address is: \_\_\_\_\_

The STEWARD \_\_\_\_\_ (Name) whose address is: \_\_\_\_\_

The GRANTEE, MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY (EGLE) whose address is P.O. Box 30458, Lansing, Michigan 48909-7958 or Constitution Hall, 3<sup>rd</sup> Floor South, 525 West Allegan Street, Lansing, Michigan 48933.

### Preamble:

The EGLE may in certain circumstances accept preservation of existing wetlands as mitigation for permitted wetland impacts, if the EGLE determines that all of the following conditions are met:

- The wetlands to be preserved perform exceptional physical or biological functions that are essential to the preservation of the natural resources of the state or the preserved wetlands are an ecological type that is rare or endangered.
- The wetlands to be preserved are under a demonstrable threat of loss or substantial degradation due to human activities that are not under the control of the applicant and that are not otherwise restricted by state law.
- The preservation of the wetlands as mitigation will ensure the permanent protection of the wetlands that would be otherwise lost or substantially degraded.

### Particulars:

WHEREAS, the Permittee, as a condition of EGLE Permit \_\_\_\_\_-P, (Exhibit A) granted a Conservation Easement (Exhibit B) to the EGLE over approximately \_\_\_\_ acre(s) of Property,

AND (For Wetland Banks only) The Bank Sponsor, pursuant to an EGLE Wetland Bank permit, submitted a Long-Term Management Plan that requires monitoring of the Easement premises, to ensure the Wetland Bank remains permanently protected and to evolve as a natural and undeveloped wetland area.

# Endowment

- Funding mechanism for long-term management
- Lump sum invested through a community foundation
- Provides annual grants to steward
  - 4.5% Return Per Year

## COMMUNITY FOUNDATION OF ST. CLAIR COUNTY DESIGNATED FUND AGREEMENT

### "The Belle River Wetland Mitigation Bank Endowment Fund"

County of St. Clair, MI, ("donor") wishes to create a new Donor Designated Fund. The donor hereby irrevocably grant, transfer and assign to the Community Foundation of St. Clair County ("Foundation") the property described in the attached Schedule " A " hereto subject to the terms and conditions contained herein.

The new fund will operate under the policies and procedures outlined below.

1. The name of the fund shall be the "The Belle River Wetland Mitigation Bank Endowment Fund" and will be so identified by the Foundation in all relevant literature, reports, promotional materials and other public documents
2. The Fund shall be considered a donor designated fund and will support the management of the Belle River Wetland Mitigation Bank ("Conservation Easement Area") as described in a certain Co-Operative Stewardship Agreement for Conservation Easement, entered into as a condition of State of Michigan, Department of Environment, Great Lakes and Energy (EGLE), formerly MDEQ, Banking Agreement ("Stewardship Agreement"), which shall be incorporated herein by this reference upon completion.

The initial Steward under the Stewardship Agreement is County of St. Clair, MI ("Steward"). The Foundation will make an annual grant to the then acting Steward in furtherance of the charitable purposes of the Stewardship Agreement.

The EGLE will also have the discretion to change the Steward or any successor Steward.

Nothing in this Agreement will be deemed to make a Steward, a successor Steward, their successors, agents, employees, assigns or other party as a beneficiary of this Agreement. The Foundation is not responsible to any party for the errors or omissions of any Steward or related party in the carrying out of the purposes of this Fund or the Stewardship Agreement.

3. The Fund will include any property which hereafter may be transferred to the Foundation by any source, including donations from the general public. Unless otherwise provided in an agreement governing additional contributions to the Fund, any property added to the Fund shall be subject to all of the terms and conditions of this Fund Agreement.

The Foundation shall have full legal and equitable title to the property held in the Fund, subject only to the terms of this Fund Agreement, and shall control the income and net appreciation. The Fund shall not be considered to be a separate trust and the Foundation shall not be considered to hold the Fund as a trustee. No specific individual or entity other than the Foundation shall be considered to have a beneficial interest in the Fund.

# How does it all fit together?

It depends!!!

Early coordination is important for a successful project

# In a perfect world...

- Applicant/Consultant identified suitable site (with conservancy input) prior to submitting application
- Baseline is conducted by consultant/conservancy and submitted with application
- CE is submitted within 60 days of permit issuance
- Short term management activities are performed
- Long-term management plan, stewardship agreement and endowment are established during active permit





# Tamarack Swamp Preserve

# Questions?



**Anne Garwood**

Wetland, Lakes and Streams Unit Supervisor

Water Resources Division

Michigan Department of Environment, Great Lakes, and Energy

517-388-4472

[GarwoodA@michigan.gov](mailto:GarwoodA@michigan.gov)