

Insights

New Indiana Wetlands Law Impact on Developers

February 19, 2024

By: Todd G. Relue and Caleb A. Perez

House Enrolled Act 1383 ("HEA 1383")

On February 12, 2024, Governor Holcomb signed HEA 1383 into law, significantly reducing state oversight of certain types of wetlands. Indiana law organizes wetlands into three classes with Class III receiving the most oversight. HEA 1383 limits the wetlands that can qualify as Class III.

Under HEA 1383, the following rare types of isolated wetlands will continue to merit Class III designation:

- acid bogs, acid seeps, circumneutral bogs, circumneutral seeps, cypress swamps, dunes and swales, fens, forested fens, marl beaches, muck flats, pannes, sand flats, sinkhole ponds, sinkhole swamps, wet floodplain forests, wet prairies, wet sand prairies, forested swamps, sedge meadows, and shrub swamps.

Starting July 1, 2024, the following types of wetlands will no longer qualify as Class III unless they are also (1) located in a setting that has been minimally disturbed by human activity or development and (2) support a significant wildlife, aquatic habitat, or hydrologic function:

- wet floodplain forests, wet prairies, wet sand prairies, forested swamps, sedge meadows, and shrub swamps.

Before HEA 1383, any isolated wetlands that supported significant wildlife, aquatic habitats, or hydrologic functions and were only minimally disturbed by human activity or development qualified as Class III wetlands. Many of these wetlands will now have lower classifications.

State and Federal Trends

On April 29, 2021, Governor Holcomb signed into law Senate Enrolled Act No. 389 ("SEA 389"). SEA 389 primarily concerned Class I and Class II wetlands. The law limited Class II wetlands to only those that support moderate habitat or hydrological functions. SEA 389 also exempted all Class I wetlands and certain Class II wetlands from

state regulation.

On May 25, 2023, the U.S. Supreme Court decided *Sackett v. Environmental Protection Agency*, reducing the scope of federal wetlands regulation. The Court substantially limited the EPA's authority over non-navigable wetlands to only those that have a "continuous surface connection" to federally regulated navigable waters. Under this revised standard, significantly fewer Indiana wetlands are subject to federal oversight.

Impact of HEA 1383

HEA 1383 continues the recent trend of federal and state deregulation of Indiana's wetlands. As a result, more wetlands are available for development across the State without requiring permits or mitigation.

If you have questions regarding wetlands or other environmental matters, please contact Todd G. Relue or Caleb A. Perez.

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