



STORMWATER MANAGEMENT COMMISSION

REGULATORY GUIDANCE MEMORANDUM #2024-01

June 20, 2024

To: Lake County Enforcement Officers (EO), Certified Wetland Specialists (CWS), and Other Interested Parties
From: Brian Frank, Chief Engineer, Lake County Stormwater Management Commission (SMC)
Subject: Permitting Guidance on Vegetation Removal

This memorandum is intended to provide guidance to property owners, developers, contractors, community officials, and EOs on the permitting requirements associated with the removal of vegetation on properties in Lake County, Illinois. The primary focus of this guidance is on the Lake County permitting requirements for vegetation removal projects; however, it is important to note that many communities have local regulations that require a separate permit or approval prior to removing trees of a certain size and type (species), and many homeowner associations (HOAs) have restrictions on vegetation removal in their declarations and covenants that require approval by the HOA board prior to undertaking the work.

1. When is a Lake County Watershed Development Permit (WDP) required for vegetation removal?

The definition of *development* in Appendix A of the Lake County Watershed Development Ordinance (WDO, as amended) includes two direct references to vegetation removal:

- A. Definition Part D: “Clearing of land as an adjunct of construction.” For the purpose of this guidance, aspects of clearing may be considered hydrological disturbance by the process of removal of vegetation, cutting, stump grinding, uprooting, grubbing, or other activities at the discretion of SMC or the EO in a WDO-certified community¹.
- B. Definition Part F: “Any other activity that might change the direction, height, volume, or velocity of flood or surface water, including the drainage of wetlands and removal of vegetation to the extent such that the wetland would no longer meet the criteria of supporting hydrophytic vegetation as defined in this Ordinance, except that which would be considered appropriate for management purposes.”
 - i. Part F includes activities that result in the land area being *hydrologically disturbed*, which means “An area where the land surface has been cleared, grubbed, compacted, or otherwise modified to alter stormwater runoff, volumes, rates, flow direction, or inundation duration.” (WDO Appendix A).
 - ii. The method of vegetation removal may determine whether the activity is considered hydrologic disturbance.
 - iii. Available mapping resources, such as the on-line Lake County Wetland Inventory, hydric soils, and Topographic Wetness Index, should be reviewed to identify potential wetland areas:
<https://maps.lakecountyil.gov/mapsonline/>.

The activities noted in 1.A. or 1.B. above require a WDP from the SMC or a WDO-certified community if the proposed activity is a *regulated development*, as outlined in WDO §300.01-§300.09, before commencing vegetation removal on a site. Failure to obtain a WDP before performing vegetation removal activities noted above is a violation of the WDO, and the property owner may be subject to the Penalties and Legal Actions for Non-Compliance under WDO Article 12, at the discretion of the SMC or the WDO-certified community EO.

2. When is a WDP not required for vegetation removal?

Activities that are not *regulated development* under the WDO do not require a WDP for vegetation removal. For example, removing less than 5,000 square feet of vegetation in an upland area (i.e., non-wetland, non-floodplain) to create a garden or erect a small structure would not require a WDP, nor would routine maintenance within constructed stormwater ditches and basins following an approved Operation and Maintenance Plan. However, as noted, separate permits/approvals may still be required from communities or HOAs for vegetation removal on small projects that do not require a WDP, as well as building permits for structures or other property additions.

3. Special permitting considerations for vegetation removal in wetlands and water bodies.

Removal of vegetation in “regulatory” wetlands and water bodies (e.g., streams, ponds) *may* require a WDP and possibly a separate permit from the U.S. Army Corps Engineers-Chicago District (USACE), depending primarily on the proposed method of removal and the jurisdiction of the wetlands or water bodies². The purpose of the activity is also an important consideration.

A. **Method of Removal:** SMC generally follows the approach used by USACE whereby careful, non-mechanized removal of vegetation using manual methods such as weed whacking, cutting with chain saws or hand saws/brush cutters, leaving stumps and roots intact, and not resulting in permanent adverse effects to the plant community type typically *does not* require a permit. Even so, notifying the SMC (or the EO in a WDO-certified community) of the proposed manual removal of vegetation in wetlands is highly recommended before starting the work to confirm no permit is required.

In contrast to the manual removal methods described above, mechanized clearing of vegetation with ground-disturbing machinery (e.g., skid steer, all-terrain vehicle, bulldozer, backhoe, etc.) requires a WDP and possibly a separate permit from the USACE prior to undertaking the activity. Dragging or removing dropped trunks in a manner that ‘plows’ or otherwise disturbs the soil would require a permit, even if the material was cut with a manual method. Failure to obtain a WDP (and USACE permit, if applicable) before performing mechanized clearing of vegetation in wetlands is a violation of the WDO and possibly Federal regulations and may be subject to enforcement action and fines. Note that SMC considers piling of cut vegetation within a wetland as fill and a wetland impact under the WDO (e.g., thick layers or piles of wood chips).

B. **Review Authority:** When a permit is required for vegetation removal, the location of the activity and jurisdiction of the wetland or water will dictate which regulatory agency(ies) will issue the permit and the type of permit(s) required. For example, if mechanized vegetation clearing is proposed in an *Isolated Water of Lake County* (IWLC), then a WDP and an IWLC impact approval will be required from the SMC or the WDO fully-certified community authorized by the SMC to perform IWLC reviews, as applicable. If mechanized vegetation clearing is proposed in a *Waters of the United States* (WOTUS), then a separate permit will be required from the USACE as well as a WDP from the applicable community.

C. **Level of Permit Review:** The type/category of permit also will vary with the ultimate purpose of the activity. For instance, clearing of vegetation in preparation for a residential or commercial development will require a higher category of wetland impact permit from the regulatory agencies, possibly including a requirement for mitigation. In comparison, removing invasive vegetation such as buckthorn and honeysuckle to improve (enhance) the functionality of wetlands will usually involve a lower category of wetland impact permit from the regulatory agencies, typically without a mitigation requirement.

Key Summary Points:

- ✓ Never assume you can remove vegetation without a permit or other approval. Contact the SMC or the WDO-certified community before starting work to inform them of the location and purpose of the activity and the proposed method(s) of vegetation removal and disposal. The regulatory agency will provide guidance on the possible need for a permit for the activity. Also contact your HOA, if applicable.
- ✓ If vegetation removal in wetlands/waters will be done in a manner that disturbs the soil (e.g., mechanized clearing), obtain a jurisdictional determination (JD) or preliminary jurisdictional determination (PJD) to determine which regulatory agency (SMC, WDO fully-certified community, or USACE) has permitting authority over the wetlands/waters. Coordinate with the applicable agency for the required wetland permit before starting work.
- ✓ The permitting guidance in this memorandum applies to the requirements of the WDO. Other resource protection agency requirements such as those of the U.S. Fish and Wildlife Service and the Illinois Department of Natural Resources may apply. We encourage consultation with these agencies prior to commencing the proposed vegetation removal activity, particularly for tree clearing.

If you have any questions concerning this guidance, please contact SMC's Chief Engineer, Brian Frank, at bfrank@lakecountyil.gov.

Notes:

1. WDO-certified communities list: <https://www.lakecountyil.gov/DocumentCenter/View/4239/Certified-and-Non-Certified-Communities-Oct-13-2023-PDF>.
2. A written JD from the USACE or a PJD from the SMC should be obtained for all wetlands/water bodies where mechanized clearing of vegetation is proposed.