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Protecting Part 303, Wetlands Protection Act – The Natural and Beneficial aspects to Stormwater and Flood Protection

This is a position paper prepared by the Michigan Stormwater and Floodplain Association (MSFA), a non-profit organization dedicated to encouraging effective and innovative approaches to managing the State of Michigan's floodplain and stormwater management systems.

On February 3, 2009 in Governor Granholm's State of the State address, she indicated that there is going to be a major change in how wetlands are protected in the State of Michigan. This plan calls for repealing the state's authority to administer the federal wetland protection program under Section 404 of the Clean Water Act.

With the passage of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act of 1994, as amended (NREPA) three decades ago, the State of Michigan established a means for protecting the State's natural resources in the face of rapidly increasing development. In Section 324.30302 of the Act, the Legislature found that

.....wetland conservation is a matter of state concern since a wetland of one county may be affected by acts on a river, lake, stream, or wetland in other counties. And, a loss of a wetland may deprive the people of the state of the benefits to be derived from a wetland, including **flood and stormwater control** by the hydrologic absorption and storage capacity of the wetland.

Flood losses in the United States have continued to rise every year while environmental degradation, including wetland losses, has also continued to

increase. **Floods are the number one natural hazard in the state of Michigan.** It is all too important to protect our wetland resources and in doing so, mitigate and reduce the losses that flooding brings to our residents.

The Michigan Stormwater and Floodplain Association (MSFA) has two goals, flood loss reduction and conservation and protection of the natural and beneficial functions of our water resources. Human activity and development alters the natural processes and impacts the functions and health of the ecosystem. Preserving the riverine wetlands in Michigan can result in reduced flood flows downstream and reduced flood losses for the residents of the State. Floodplain and riverine wetland vegetation help stabilize our river banks, provides habitat for terrestrial and aquatic wildlife, control erosion and sedimentation, and improve water quality by filtering pollutants. Healthy wetland/floodplain river corridors often provide the highest concentrations of plant and animal communities in a watershed, providing a stable source of biodiversity. The devastating effect that the loss of wetlands can have on the ecosystem was clearly demonstrated during Hurricane Katrina.

Michigan is one of only two states in America with the authority to administer the Federal wetland program. Having this authority allows for better integration between other water resource programs in Michigan, such as the Floodplain Regulatory authority, and gives Michigan an advantage in protecting the quality of our lakes and streams and reducing the flood losses in the State.

The entire savings from eliminating the state's wetland protection act is reported to be 2 million dollars out of a 1.6 billion dollar deficit. The savings that would be generated by this proposal do not offset the loss of benefits that the residents of Michigan realize from having this permitting authority. Beyond the natural resource benefits outlined above, there are economic benefits provided by the state administered program. The permitting process would slow if the US Army Corps of Engineers (Corps) took over the wetland permitting. The Corps, who handle the 404 permitting for the US Environmental Protection Agency (EPA) has a limited number of staff in Michigan. The MDEQ has 10 offices in the state, which employ 35 district field staff for wetland permitting and 8 supervisors that deal specifically with wetlands. The Detroit District of the Corps has 6 field staff and 2 supervisors that deal with wetlands in Michigan and Northern Indiana. This is contrary to what Governor Granholm stated in her 2009 State of the State address: *"...will recommend returning enforcement of wetlands protections to the federal government where more staff exists to effectively safeguard our natural resources."* The Corps is understaffed and not equipped to handle the additional wetland permitting load in Michigan. In addition, the DEQ staff is more familiar with local resources, more accessible and provides the ability for applicants and community government officials to work locally.

In addition, the federal government does not have any time requirements for review and decision making of applications. Most permits under the State's

wetland regulations are issued within 90 to 120 days, while the Corps has no mandated time frames to review and issue permits. A formal decision of federal jurisdiction is often required by the Corps prior to the start of the federal permit application process (this can take over a year). In addition, if a project will impact a lake, stream or floodplain, a permit would still be required from the DEQ under the authority of the Inland Lakes and Stream Act (Part 301) and/or the Water Resources Protection Act (Part 31). Currently, a single DEQ application will cover all development that that could impact lakes, streams, floodplains and wetlands. Returning the wetland protection permitting authority to the Corps would lead to additional paperwork and additional cost which could delay or kill a project that could potentially stimulate the state's economy.

Michigan's wetland protection act regulates isolated wetlands whereas the federal 404 program does not regulate the areas. This will result in leaving many smaller wetland systems without protection. Approximately 930,000 acres or 17 percent of all state wetlands are "isolated" wetlands – those not adjacent to the Great Lakes or streams – that are not clearly protected under the Federal Clean Water Act. These small wetland systems are critical in controlling flooding in the state's highly developed urban areas, as well as reducing pollution and runoff entering the lakes and streams. The MSFA fears that these additional **wetland losses and increased stormwater volumes will lead to increased flood losses** (property damage) for the residents of that State of Michigan.

With the loss of state protection of our wetlands through Part 303, the burden will fall on local government to protect these wetlands and reducing flooding losses through local ordinances. Most local governments do not have the resources to do this. It has been estimated that natural wetlands provide approximately \$15,000 per acre worth of stormwater storage. To create a wetland or restore a wetland, the cost is estimated to be \$50,000 to \$100,000 per acre¹. These increased stormwater management costs will become the burden of local governments or developers.

In Summary

Increased permitting time, increasing the number of permits required and increased loss of wetlands resources, thus increasing flood damages and the ecological benefits of wetlands do not benefit the residents of Michigan.

The Michigan Stormwater and Floodplain Association recommends that the Michigan legislature not repeal Part 303. The MSFA recommends that the State of Michigan does not repeal its authority to administer the federal wetland protection program under Section 404 of the Clean Water Act. Maintaining this authority and maintaining Part 303 supports MSFA goal of flood loss reduction (property damage) and conservation and protection of the natural and beneficial functions of our water resources.

¹ Michigan Department of Transportation, real estate appraiser