

## Michigan Wetland Protection and Mitigation



## Land and Water Management Division

Since the mid-1970's, resources that exist at the interface between land and water have been protected by programs in the Land and Water Management Division (LWMD).

## Land and Water Management Division

- These programs are based on several state laws enacted between 1955 and 1989 which are now codified as the following parts of the Natural Resources and Environmental Protection Act of 1994:
  - Part 31 –Floodplain Management
  - Part 301 –Inland Lakes and Streams
  - Part 303 –Wetlands Protection
  - Part 315 –Dam Safety
  - Part 323 –Shorelands Protection and Management
  - Part 325 –Great Lakes Submerged Lands
  - Part 353 –Sand Dune Protection and Management

## Permit Program

- LWMD's permit program combines multiple state and federal authorizations under one "joint" permit application. Not only does this joint permit process provide authorization under all statutes administered by LWMD, it typically carries with it the following authorizations:
  - Section 404 of the Federal Clean Water Act (CWA)
  - Water Quality Certification (Section 401 CWA)
  - Coastal Zone Consistency Certification
  - Coordination with endangered species programs
  - Coordination with the federal historic preservation program

## Permitting Requirements

In general, a permit applicant must follow this regulatory sequence:

1. Avoidance – “Feasible and Prudent Alternatives”
2. Minimization
3. Mitigation



## New Federal Mitigation Rule

April 2008 – 40CFR Part 230 Compensatory Mitigation for Losses of Aquatic Resources; Final Rule – (effective June 2008)

### Old Standards

1. On-site
2. Off-site – in watershed
3. Consolidated Mitigation – permittee responsible
4. Preservation
5. Mitigation Banks
6. In-Lieu Fee Mitigation

### New Standards

1. Mitigation Banks
2. In-Lieu Fee Mitigation
3. Off-site – in watershed
4. Consolidated Mitigation – permittee responsible
5. On-site
6. Preservation



## Federal Mitigation Preference

### Mitigation Banks

(Permittee Benefits)

- Expedited permit issuance
- No contracts
- Reduced delays to project
- Significant per acre cost savings (Lump sum per acre fee)
- Transfer of liability to Bank Sponsor
- No long term commitment



Below is a registry of established wetland mitigation banks.

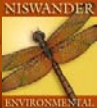
Bank No.	Name	Service Area	Credits approved by DOD	Credits Sold	Credits Used *	Credits Available	Bank Sponsor Contact
0001	Wayne Co. Government Bank Established October 20, 1999 Primary Goals: Water Quality Improvement	Rouge River Watershed Region V1.1.1	0.77 emergent	0.77 emergent	0.77 emergent		Wayne County Government 415 Colwell #9 Four Detroit, Michigan 48226 (313) 224-0915
0002	Green Heron Wetland Bank of Huron Township Established December 12, 2002 Primary Goals: Water Quality Improvement, Flood Storage, Habitat	Huron River Watershed Region V1.1.1	7.6 emergent 2.5 wet meadow 1.6 scrub-shrub 3.4 forested	6.16 emergent 0.96 wet meadow 1.35 scrub-shrub 2.42 forested	6.16 emergent 0.96 wet meadow 1.35 scrub-shrub 2.42 forested	1.44 emergent 1.02 wet meadow 0.25 scrub-shrub 0.98 forested	Mt. View Belcoiz 18 Helwada Development & Construction 41415 Copper Creek Drive Canton, Michigan 48107 734-364-1200
<b>Clinton River Wetland Mitigation Bank Credit Tracking Ledger</b>							
			<b>Proposed Credits</b>	<b>Approved Credits</b>	<b>Sold Credits</b>	<b>Remaining Credits</b>	
	<b>Type</b>						
	<b>Emergent</b>		4.59	0	0	0	
	<b>Scrub-shrub</b>		8.33	0	0	0	
	<b>Forested</b>		14.29	0	0	0	
	<b>TOTALS</b>		<b>27.21</b>	<b>0</b>	<b>0</b>	<b>0</b>	
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0010	Wabash Wetland and Aquatic Habitat Tributaries Watershed Wetland Mitigation Bank Established April 7, 2008 Primary Goals: Wetland Habitat and Flood Storage	Wabash River Watershed Region V1.6.2 Bay Lake Plain					039-873-0480 Michael Higgins Midland Ventures Capital, LLC 325 East Walker Midland, Michigan 48640 989-639-0541
0011	Michigan Department of Transportation Bank Upper Macatawa Wetland Mitigation Bank Established June 15, 2009 Primary Goals: Wildlife habitat and Flood and Storm Control	Macatawa River Watershed Region V1.3.2 Southern Lake Michigan Lake Plain					Environmental Section Project Planning Division Michigan Department of Transportation P.O. Box 30050 Lansing, Michigan 48909 517-373-8350

\* This column includes credits approved for use by DEO permits and purchased, and credits approved for use by DEO permits that have pending credit purchases.  
Last revised October 26, 2008

## What if Part 303 is Repealed? Jurisdictional Determinations

(BRIEFING PAPER Scope of Federal Jurisdiction under Section 404 of the Clean Water Act, MDEQ 2/24/09)

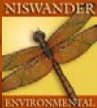
- **Isolated wetlands not physically connected to lakes or streams.**  
This category includes 930,856 acres, or 17 percent of Michigan's wetlands.
- **Wetlands adjacent to streams that are not relatively permanent.**  
36 percent of Michigan's streams are intermittent or ephemeral. No estimate exists of the acreage of wetlands that would be impacted.
- **Wetlands that are adjacent to, but not directly abutting, relatively permanent streams.** The USACE must determine whether wetlands are "abutting" or "adjacent to" a perennial stream based on an evaluation of site hydrology. No estimate of the acreage of wetlands impacted exists.
- **Wetlands that are adjacent to isolated lakes and ponds.**  
There are 26,384 isolated lakes and ponds in Michigan; wetlands adjacent to these ponds would be regulated only if an interstate connection were defined for the lake or pond.



## What if Part 303 is Repealed? MDEQ vs. ACOE

(Proposed Repeal of Michigan's Wetland Program and Return of Clean Water Act Section 404 Authority to Federal Agencies, MDEQ 2/4/09)

- **Coordination with other state and federal laws**  
The MDEQ currently provides, ACOE becomes the responsibility of the permit applicant
- **Inland Lakes and Streams Program**  
Any fill activity in an inland lake or stream will require separate state and federal permits.  
  
Approximately 3000 to 4000 permit applications annually fall into this category.
- **Water Quality Certification Section 401 of the Clean Water Act**  
New State Program
- **Local Wetland Protection**  
Eliminated, approximately 50 communities



## MI Senate Bill No. 785

### Amendment to MCL 324, Part 303 Wetlands Protection

- Use of Clean Water funding
- Mowing/Shoreline Management
- Cranberry Farming Provisions
- Sequencing of Permit Decisions
- Three Tiered Permitting System
- Adoption of Minor/General Permit Categories & Multi-Part Integrated Permitting
- State Adoption of Nationwide Regional Permits
- Reducing EPA Review Project Categories & Dual Federal Permitting
- Feasible & Prudent Alternative Definition Match Federal
- Establish Advisory Council to Report on Program
- Role of Local Government/Conservation Districts in Permitting
- Mitigation Banking funding through low interest loans in key urban/development areas
- Program ends October 1, 2012



## Questions