

**Fiscal Year 2010 DEQ Fee Proposal
Land and Water Management Permit Fees
November 6, 2008**

Overview – Land and Water Management Division Programs

The Land and Water Management Division (LWMD) administers a multitude of planning and environmental protection programs. The goal of many of these programs is the promotion of appropriate use coupled with protection of land and water resources. Program efforts are conducted in conjunction with the increasing social and economic needs of the state and range from technical assistance to preservation and regulatory environmental protection. Protection of riparian rights, fish and wildlife habitat (especially breeding grounds), water quality, and personal property are among the issues addressed by LWMD programs.

Most of the regulatory environmental protection programs administered by LWMD overlap; therefore, the division operates a consolidated permit program. Under the consolidated process applicants can submit one application for all of the LWMD regulated activities for their project. LWMD staff review the entire project, coordinate with many other state, federal and local agencies, and issue one permit document which provides authorization under various Parts of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, as well as federal requirements.

The following are brief descriptions of the major regulatory programs within the LWMD:

- ◆ **Part 301, Inland Lakes and Streams:** The Inland Lakes and Streams Program is responsible for the protection of the natural resources and the public trust waters of the more than 11,000 inland lakes and over 36,000 miles of streams in the state. The program oversees activities including dredging, filling, constructing or placement of a structure on bottomlands, constructing a marina, interfering with natural flow of water or connecting a ditch or canal to an inland lake or stream. Program staff performs several duties, including:
 - Processing permit applications for regulated activities.
 - Investigating complaints.
 - Engaging in compliance and enforcement activities.
 - Communicating and coordinating with other governmental units.
 - Working with watershed groups and lake associations on voluntary improvement projects.

- ◆ **Part 303, Wetlands Protection:** The Wetlands Program focuses on the protection of Michigan's wetlands through implementation of a regulatory program, monitoring and assessment of wetland resources, and promoting wetland restoration. The regulatory program oversees activities including dredging, filling, draining surface water, or constructing a use or development in Michigan's 5.5 million acres of wetlands. Wetlands Program staff perform a variety of duties, including:
 - Identifying the location, type(s), size, and regulatory status of wetlands.

- Processing permit applications for regulated activities.
 - Investigating complaints and conducting compliance and enforcement activities.
 - Providing general assistance to the public regarding wetland concerns and partnering with the United States Environmental Protection Agency (USEPA) and national organizations to conduct wetland conferences.
 - Developing wetland inventories.
 - Working with local units of government to promote local wetland ordinances.
 - Providing assistance to landowners desiring to restore degraded wetlands and promoting voluntary protection and stewardship of wetlands.
 - Coordinating with federal, state, and local government units to ensure compliance with the Federal Clean Water Act.
 - Providing guidance and assistance with wetland mitigation requirements and the development of wetland mitigation banks.
- ◆ **Part 315, Dam Safety:** The Dam Safety Program is solely responsible for ensuring the safety of Michigan's approximately 1,050 state regulated dams. The program focuses on ensuring that dams are properly constructed, inspected and maintained, and that the owners have adequately prepared for potential emergencies. Program staff performs a variety of duties including:
- Responding to dam safety emergencies.
 - Reviewing various safety related reports, including dam inspection reports.
 - Reviewing the adequacy of dam construction or reconstruction plans.
 - Processing permit applications for regulated activities.
 - Inspecting dams owned by the Department of Natural Resources (DNR) and local municipalities, upon request.
 - Engaging in compliance and enforcement activities.
- ◆ **Part 323, Shorelands Protection and Management:** Shorelands Protection and Management is composed of three specific programs: the High Risk Erosion Area (HREA) Program, the Flood Risk Area (FRA) Program, and the Environmental Area (EA) Program. Each of these programs establishes regulations affecting development proposed within designated coastal areas.
- ❖ The HREA Program is a hazard mitigation program, responsible for identifying Great Lakes shoreland areas that are experiencing rapid erosion and, within those areas, establishing setback requirements that regulate placement of new construction.
 - ❖ The FRA Program is also a hazard mitigation program responsible for identifying Great Lakes shoreland communities where the coastal flood hazard is severe. Within areas prone to flooding in these communities, elevation standards and permit requirements are established for new construction.
 - ❖ The EA Program is responsible for identifying and designating coastal areas which have been determined to be necessary for the preservation and maintenance of

fish and wildlife. Within these areas, regulations are established for most development, including terrain and vegetation alteration activities.

A variety of duties have been performed by program staff, including:

- Conducting research to identify HREA, FRA, and EA areas.
- Providing written notification and holding meetings with property owners and local officials with designated areas within their jurisdiction to inform them of the research results and permit requirements.
- Processing permit applications for regulated activities.
- Conducting compliance and enforcement activities.
- Assisting communities interested in assuming local authority of the program through adoption of a zoning ordinance.
- Providing technical assistance to property owners and local officials.

- ◆ **Part 325, Great Lakes Submerged Lands:** The Great Lakes Submerged Lands Program is responsible for regulating construction activities along 3,288 miles of Great Lakes shorelands and over 38,000 square miles of Great Lakes bottomlands. The State of Michigan acts as trustee of these public trust bottomlands of the Great Lakes to maintain and manage the resources for its citizens. The program focuses on ensuring that the Great Lakes bottomlands and waters will not be impaired nor substantially affected by construction or use. The state may convey bottomlands by deeds, marina leases, or use agreements when the public's use of those lands will not be impaired. Program staff performs several duties, including:

- Processing permit applications for regulated activities
- Processing conveyance applications for bottomland occupations.
- Investigating complaints.
- Engaging in compliance and enforcement activities.
- Coordinating with federal, state, and local governmental units to assure that projects meet both state and national needs.

- ◆ **Part 31, Water Resources Protection (Floodplain Regulatory Program) and the Land Division Act, 1967 PA 288:** The Floodplain Regulatory Program addresses alteration and construction within channels and floodways of streams to ensure they are clear and uninhabited and that structures placed outside the floodway are properly protected from flood damage. This program also houses the State Coordinator for FEMA's National Flood Insurance Program (NFIP). Floodplain plans are approved for subdivision, condominium, and mobile home park developments. This program ensures that bridges and culverts will safely convey the water runoff of a 100-year flood without flooding upstream property. It also helps communities regulate commercial and private development in the floodplain. Staff in the program have duties that include:

- Reviewing permit applications to occupy, fill, or grade lands within the state's floodplains.

- Providing training, assistance, and technical oversight on NFIP issues to communities, lenders, realtors, insurance agents, and the general public.
- Reviewing the hydraulic analyses prepared as part of a Flood Insurance Study under the NFIP.
- Reviewing subdivision floodplain plans for plats to ensure the houses are protected from flood damage.

Program Funding

Funding for the LWMD programs comes from a variety of sources, most of which have been on a multi-year decline. These sources include Land and Water Permit Fee revenue, state General Funds, and several federal grant funds. The division also receives a small amount of funding from the Michigan Departments of Transportation and Natural Resources and other DEQ divisions.

It should be noted that in LWMD only the single highest application fee of up to six program areas is charged, even where a resultant permit will allow multiple program activities to take place. A person could get approval to conduct activities impacting wetlands, an inland lake or stream and a floodplain for a project and not have to pay an individual fee for each of the activities.

Proposed Program Funding Change

After evaluation of current division program levels, along with other efficiencies that have been realized, the LWMD is seeking to restore the programs back to 2005 staffing level of 130. This includes fully implementing the Value Stream Mapping (VSM) process, converting seasonal contractual staff into permanent positions, restoring staff loss due to declining funds and replacing the outdated databases used for permitting, compliance and other functions vital to the Division's programs.

In 2005 the LWMD conducted a rigorous, stakeholder inclusive review of how permits are evaluated through a Value Stream Mapping (VSM) process. While significant progress was made in incorporating the recommendations from the VSM process, LWMD has not been able to fully implement all of them. Through a pilot project in the Lansing District Office, the process has shown that making the recommended changes will allow for significant improvement in efficiencies and effectiveness. The current fee proposal will provide LWMD with the resources necessary to fully implement the recommendations of the process in other areas of the Division.

The Wetlands Identification Program (WIP) is valuable at assisting applicants with the permit process through an assessment of their project before applying for an actual permit. When an applicant has done a WIP, a Wetlands permit is obtained faster and staff time is significantly reduced. Historically, the LWMD has hired up to 6 contractual staff to perform WIP evaluations. These contracts must be evaluated yearly which requires working through the procurement and hiring processes, along with in-depth training to make contractors knowledgeable of the complex wetland laws. At times,

limits on contractor hiring has rendered the Division unable to complete all of the WIP's requested. This proposal will enable LWMD to hire 3 full time EQA's in place of contractual staff. Full time staff will eliminate the need for the hiring and training process and they will also be able to perform other LWMD related activities when WIP reviews are not a priority. Finally, whenever possible, it will allow the EQA who is responsible for the area in question to conduct both the WIP evaluation and any resultant wetland application review. The applicant would then have one full time EQA throughout their entire project development and application process, and allow the EQA to have knowledge of the project prior to receiving the application.

Beyond staff resource needs, the division's data management tools are also in need of significant funding support. The division's permitting database, the Coastal and Inland Waters Permit Information System (CIWPIS) is operating on a 20+ year old platform that is no longer supported by the state's Department of Information Technology (DIT). The same is true for the related compliance tracking database used by LWMD. Over the years independent desktop databases have been created to work around the limitations of CIWPIS. These databases are also of concern to DIT, and do not allow efficient data review due to their disjointed nature.

Internal LWMD and DEQ reviews, as well as a review conducted by the Auditor General, have identified significant concerns with the security of CIWPIS relative to both protection of the data from data base failure and a lack of revenue controls. While a work flow analysis has been conducted to identify where any new database can assist LWMD staff in performance of their work, work needs to continue on the database upgrade and consolidation process. The proposed fees include funding for continuing the database consolidation and upgrade effort.

By gaining the efficiencies recognized through the VSM process, the consolidation of WIP contract staff, and the updates to the division's database structure and function will enhance the LWMD's ability to operate a fully functional permit program. By making the investment over the next two or three years to realize these additional improvements, the LWMD will be able to provide better public service with less staff than originally anticipated in 2005, at a savings of over \$1,350,000 per year in staff costs.

Evaluation of Need for Proposed Funding Change

Resource restrictions over the last several years have led the division to reduce services in many areas to allow staff to concentrate on permit processing. Limited time and effort have been placed on outreach to the public, support to the regulated community, complaint follow up, and staff training.

Even with the scaling back in many program areas and the efficiencies noted below, the LWMD resources fell to the point in Fiscal Year 2007 that a division Work Load Reduction Plan needed to be implemented to allow staff to concentrate their energies on projects with the most significant resource impact potential. Aspects of the plan included extending the length of permits to the maximum allowed, processing minor permits without conducting site inspections, deferring review of some projects to the U.S. Army Corps of Engineers, and no longer responding to any low priority complaints

of unauthorized activity. While these actions have resulted in some relief, LWMD is still not able to review all permits within statutory timeframes, and continues to ignore other program aspects.

To identify the level of resources necessary to conduct program responsibilities the division conducted an in depth work load evaluation. Both new work requirements and efficiencies gained were identified to make the evaluation as robust as possible. Although all division responsibilities were considered, the workload analysis focused on permit application processing and compliance/enforcement responsibilities since they are the primary objectives of the divisions core programs. Factors that were considered when determining the target workload were:

- Available work days
- Average permit processing times
- Compliance reviews
- Enforcement actions
- Public hearings
- Site meetings with applicants and citizens
- Response to public inquires
- Appeals and contested case hearings
- Staff training, administrative duties, staff meetings
- Travel time

LWMD has determined that 125 files per staff person is the necessary target workload. With workloads currently exceeding 125 files per staff per year (district files ranged from 155-251 in FY 2007), the number of application files exceeding statutory processing times has increased, compliance activities declined, and public outreach and the ability to respond to customer inquiries has become virtually non-existent.

The VSM evaluation determined that in order to meet the statutory requirements for permit processing timeframes and fulfill the other work responsibilities LWMD needed at least 140 staff if permit processing improvements were not made. However, with implementation of process improvements and efficiencies, including processing all permit applications from start to end in the field offices, the VSM process determined that LWMD needed 135 staff. This plan called for moving the existing 9 staff in the Permit Consolidation Unit to the Field Operations Section. With the recent implementation of the Work Load Reduction Plan, anticipated technology upgrades and a slight decline in permit applications, the need for staffing has been reduced to 130. With 130 staff in the division, LWMD could implement the VSM recommendation of moving all permit application reviews to the field offices and comply with the statutory application review timeframes while still conducting an acceptable level of compliance/enforcement actions, public outreach, and be responsive to public inquiries. The following chart shows a breakdown of existing and needed staff.

Section or Unit	Funding Source	Current Staff Status	Needed Staff
<u>Division Management</u> <i>Responsible for overall management and division program direction.</i>			
	GF, Federal	3 filled, 1 vacant	3
<u>Inland lakes and Shoreline Section.</u> <i>Responsible for program development and direction, staff training, and program expertise for Great Lakes, Wetlands, and Inland Lakes and Streams programs</i>			
Management and Program Direction	GF, Federal, LWMD Fees	3 filled	3
Wetland, Lakes and Streams Unit	GF, Federal, LWMD Fees	7 filled, 2 vacant	8
Permit Consolidation Unit	GF, Federal, LWMD Fees	6 filled, 3 vacant	0
Great Lakes Shorelands Unit	GF, Federal , LWMD Fees	4 filled, 1 vacant	5
<u>Water Management Section</u> <i>Responsible for program development and direction, staff training, and program expertise for Flood Management, and Dam Safety programs. Also responsible for processing of applications for public transportation agencies, and provides hydrologic expertise and data for LWMD permitting staff and other DEQ programs.</i>			
Management and Program Direction	GF, Federal, LWMD Fees	3 filled	3
Transportation Unit	MDOT funds	8 filled	8
Dam Safety and Floodplain Subdivision Unit	GF, DNR, Federal	4 filled, 1 vacant	5
Hydrologic Studies Unit	GF, Federal	8 filled	8
<u>Field Operation Section</u> <i>This section consists of ten field offices and the division Compliance & Enforcement Unit. Responsibilities include the processing of permit applications, compliance activities, and enforcement investigations and actions.</i>			
Management and Program Direction	GF, Federal, LWMD Fees	1 filled, 1 vacant	4
Compliance & Enforcement Unit	GF, Federal, LWMD Fees	5 filled	6
District Offices	GF, Federal, LWMD Fees	58 filled, 11 vacant	77
Totals		110 filled, 20 vacant	130

Efficiencies and Program Improvements

The LWMD is uniquely challenged, in that the majority of Michigan's wetlands and floodplains are located on private property, yet provide essential public benefits to all Michigan citizens, including flood storage and water quality protection. The division strives to meet two major goals through its consolidated permit program. First, we must provide an appropriate level of review and protection of sensitive natural resources from permanent alteration or loss. Second, we need to minimize the impact of state and federal regulatory programs on the private landowners who make up a significant number of our regulated community.

Many of the LWMD applicants are individuals who want to conduct an activity on their residential property and who would otherwise not have interaction with the department. This places an additional demand on the programs to make them as accessible and user friendly as possible.

The LWMD programs have already taken major steps in providing service to the regulated community by:

- ◆ Consolidating many state and federal regulatory requirements into a single, comprehensive permit application process.
- ◆ Providing a single, generally local, point of contact for these reviews by having the permit writers in the district offices.
- ◆ Expediting the permit review process, while relieving the applicant from having to seek authorizations from multiple state and federal agencies.
- ◆ Making electronic copies of permit application forms available and providing access to an on-line system to track the status of permit applications.
- ◆ Creating application "EZ Guides" for many of the small construction projects that are conducted by individual property owners.

More recent efforts include:

- ◆ Digitizing conservation easements to allow the public to determine where wetlands are protected from future development
- ◆ Creating a Compliance and Enforcement Unit to support staff and to assure that resources are better protected. This ensures that legitimate permit holders in Michigan are not at a competitive disadvantage to those who did not seek authorization for their work.
- ◆ Establishing eight wetland banks, with several more pending. These banks allow applicants with unavoidable wetland impacts to access wetland acreage through a bank instead of having to create or preserve wetlands independently.
- ◆ Working with the legislature to identify additional general permit categories to reduce the effort expended by the applicant and LWMD staff for approval of activities with minor resource impacts.

- ◆ Finding non-profit agencies or land conservancies to have available for applicants with large wetland easement protection responsibilities. These agencies can perform the baseline site documentation, invasive species management and long term monitoring activities that are needed on these easements. Most permit holders do not have the expertise, nor the in-house resources to conduct this work themselves.
- ◆ Relying more on remote sensing and other geographic information system (GIS) tools to evaluate sites at the desk top versus site visits.
- ◆ Using landscape level GIS evaluations to identify areas in watersheds that have the highest potential for wetland restoration, aiding local watershed groups in their effort to target their work and applicants to identify sites with good mitigation potential.
- ◆ Received a conditional reauthorization of the state's U.S. EPA's 404 program addressing LWMD's management of the wetlands and inland lakes and stream programs on behalf of the federal government in most of Michigan.
- ◆ Allowing applicants to pay for application fees by electronic means (credit card or Electronic Funds Transfer – EFT) through the web, fax or mail. The LWMD permit will be one of these available on the MBSii website for Michigan businesses.

The LWMD will continue to strive for improvements and efficiencies that can be used to enhance and protect our delicate resources.

The LWMD must obtain long term, stable funding in order to continue the objectives of the core programs administered by the division. Resource limitations have necessitated significant reductions in program effort and elimination of some program areas. This reality has caused frustration to the regulated community, the general public and to division staff. Should adequate funding not be realized, then programs will need to be evaluated for elimination so that the retained programs can be managed in a responsible manner. The marina operating program has already been recommended for elimination and work has not been conducted in the environmental areas program for several years. Other considerations are the high risk erosion, dam safety and wetland protection programs for possible elimination.

Adequately functioning LWMD programs serve the development community with efficient, consistent permit administration. Outdoor enthusiasts such as hunters, fishermen, bird watchers and boaters, all who contribute to our state's economy, will continue to have access to high quality resources. Local communities will continue to enjoy low rate flood insurance and decreased emergency response costs based on responsible floodplain and dam oversight. The public in general appreciates sustainable development and abundant, protected natural resources. The LWMD remains committed to preserving these Michigan resources.