

**WETLAND ADVISORY COUNCIL AGENDA
JANUARY 23, 2012**

**Michigan United Conservation Clubs
2101 Wood Street, East Lansing, Michigan**

REGULAR COUNCIL MEETING

1:30

Approve Minutes from December 16, 2011, meeting

Legislative Update, Senate Bill 744

Director Wyant - Discussion of DEQ's Wetland Reform proposal and draft
statutory language

Schedule Upcoming Meetings

4:30 Adjourn

WETLAND ADVISORY COUNCIL MEETING
MUCC FACILITY
JANUARY 23, 2012
Meeting Minutes

Council Members Present: Lee Schwartz, Dan Coffey, Joseph Rivet, Steve Shine, Scott Piggott, Jeff King, Susan Harley, Gary Dawson, John Niemela, and Amy Trotter sitting in for Erin McDonough, Dan Wyant

Council Members Absent: Andy Such, Russ Mason

Conference Call Participation: Grenetta Thomassey, Deena Bosworth, Sue Elston, Melanie Haveman, Donald Uzarski, Todd Wyett, John Konik

Others Present: Amy Lounds, Kim Fish, Todd Losee, Maggie Cox, Dave Forsberg, Jason Geer, Cindy Evans, two unidentified people

Approval of Minutes

The minutes from the December 16, 2011, Wetland Advisory Council (WAC) meeting were approved.

Legislative Update, Senate Bill 744

Senate Committee held hearing last Thursday. Jeff King was the only one that testified. They did vote on it. Several people had submitted cards in support of the bill. Kim said that she did not hear that any cards in opposition to the bill; the committee is scheduled to vote it out this Thursday.

A member had a question about Senate Bill 275 which limits the amount of additional information the department can condition permit approval on and how the WAC is going to mesh those new regulatory changes with the proposals that were already put forward. Kim responded that the department is looking at the new bills and working on updating our policies and procedures to comply with the new requirements.

The Director indicated that the WAC will be going over the whole reform package; if there are any issues, we'll come back and raise them. A member commented that they just wanted to make sure that the department had the appropriate time to determine whether an application was administratively complete and that all questions were answered before a permit was issued.

Reform Proposal

There was a question about a requirement in a sentence on page 4 of the Memorandum of Agreement (MOA), but Kim said that that requirement was in the original MOA, since the 80s; that is has always been there.

The Director then stated that we're here because the legislature put us in a position; and, two, because we have to introduce a budget that supports the Governor's intent and recommendation. The Governor will propose a budget that intends and recommends that we

keep the Wetlands Program in Michigan. He said that we came to this Council, put some concepts on the table, and at the last meeting, promised specific recommendations – and they are continuing to evolve and they are getting more specific each time. We fully intend to take recommendations to the legislature to start the legislative process and to run it simultaneously with the budget. It has to run on a parallel track. In his opinion, we will not have support unless it runs simultaneously with the budget. We are going to be asked our position and it is our responsibility to carve out a position and eventually, we will have one.

The Director then introduced Jamie Clover Adams and Maggie Cox and informed everyone of how their duties interact with the Council. He also stated that it is important to know who the face of DEQ is and who the decision makers are – they are him, Kim, Amy, Todd, Maggie, and Jamie.

A member asked if there were any legislators who were trying to give the program back. The Director said that historically Senator Conn, Senator Green, and Senator Casperson all had issues about the wetlands, and Senator Bumstead and Representative MacGregor, to some extent, has had issues and continue to talk to him; there are others.

The Director turned it over to Kim to talk about The Wetland Reform Document, which Amy and Todd put most of it together. The Table of Contents breaks it down into statutory sections; there are sections that clarify exemptions, Minor Permit/General Permit (MP/GP) fee corrections, local government assistance, and mitigation banking. Kim then turned it over to Amy.

The first section – 30301 – are changes to the Inland Lakes and Streams statute for the exemptions, which primarily relate to the drain commissioners. These are drains, private agricultural drains, and drain commissioners. The department has been working very closely with the Association of County Drain Commissioners but there hasn't been an agreement with them yet because they have to work through their Association.

Joseph commented that there has been a good faith effort on behalf of the subcommittee of the Association and thinks they are reasonably comfortable with this. Kim also commented that they have been working closely with the subcommittee and that they essentially asked for about five things and she thought they addressed each one of the five issues. The subcommittee's lawyers want to give us some comments and feedback on the language, but overall, they were pretty supportive. Amy also mentioned that the Environmental Protection Agency (EPA) has preliminarily reviewed this and sent to legal review; they're hoping to have feedback within the next couple of weeks.

30301, G. – Drain change that it is no longer maintenance improvement of drains; just maintenance.

30104 is the corrections to the fee categories. All statutes – Wetlands; Inland Lakes and Streams; and Great Lakes - would have a GP fee of \$50 and a MP of \$100. This is lowering fees in some cases and raising one or two of them in other cases; but this is making them all the same. Todd explained that they took all the old MPs and split them into GPs and MPs; it is now a whole new system so the fees needed to be corrected for this new three tier system rather than the old two tier system.

30303 is the first wetland statute change adding language saying that the department may assist local governments in planning efforts. We are hoping to be able to help local governments identify where wetlands are within their jurisdiction and where their most important

wetlands are; help them look for potential mitigation areas either as regular mitigation or hopefully mitigation banks; and to help them look for potential economic development areas that avoided wetland areas. The last part is for the department to submit revised wetland mitigation banking rules by October 1st of this year that will increase the service areas of banks, to allow earlier release of credits, and to allow wetland preservation to be used for wetland where restoration opportunities do not exist.

A member asked if this was something that we currently do that is not within statute to re-affirm that it is needed. Amy said that it was a little bit of that, but some of the feedback from the legislators indicated they really wanted us to help people prioritize where wetland protection is most important and to also do a better job of picking out areas where economic development intersects.

A member commented that it appears you are saying that you are going to identify where it should be. Amy responded by saying that our hope with this language is that if a local government goes through a planning effort that they could provide the information in their permit application and it would be of better quality at that point. Todd added that this is meant for planning efforts towards a master plan.

Joseph commented that the key word is “may” as opposed to “shall” and that this is another tool in the toolbox; that the department may assist and he thought “assist” was a major word. Not regulate, but assist. The department is trying to provide a benefit that the townships could reject if they did not like what you said. He also mentioned that although the procedure has not changed, you have to submit a request for rules to the Office of Regulator Reform (ORR) before they get approved by the administration to go on to the next step.

A member asked if the WAC would have an opportunity to review those rules before they were submitted to the ORR. The Director responded that we have the opportunity to share it with you and that the process does require us to take it to public hearing for input. The member thought that the rules should be run by the WAC at every available opportunity so problems could be headed off at the start. Kim responded by saying stakeholder groups have always been used to develop rules for this program. And it was certainly our intention to have a stakeholders’ group, which would include this Council, to develop the actual rule language for the program.

A member wanted clarification of what was meant “by allowing earlier release of credit.” Amy responded that for private banks, we want to look at allowing at least some portion that could be released after construction. But for municipalities, we might actually allow some advanced credits in the programs. Then it was asked what would happen if the bank didn’t work. Amy responded by saying that if the bank was not successful, we would have a bond or letter-of-credit to be able to go in and correct it.

A member wanted to know how we are assuring no net loss for using preservation instead of restoration. Amy answered that we can use preservation under both our regular mitigation rules and our mitigation banking rules. But it has to be very high quality wetlands and at least for the banking rules, it is very strict as to when you can use it. What we would like to do is allow preservation proposed as part of banks but to do it where there are basically no restoration opportunities.

A member asked what was the latest in terms of how to draw investors in to actually invest in the bank. Amy said our hope is that if we have a revolving loan fund where municipalities can

partner with others and build banks, they can be a lot more patient about how quickly they have to sell credits.

Section 30305, “E” – Exemptions in the Wetlands statute. This is saying that farming has to be a part of a normal established operation. It was asked by a member if the word “normal” means anything. Sue E responded that it doesn’t. There is a list of activities like seeding, plowing, etc., she thought were somewhere in the regulatory letters. Amy indicated that we would look at the regulatory letter that Sue was referring to. It was also mentioned that if “normal” doesn’t have a definition, it could be used against you in court.

A member complimented the department on addressing their concerns about exempted activities but thought there was still work that needed to be done with those activities, particularly about the five-year timeframe with respect to farmland lying fallow. There was concern from other members as well that if a farmer is unable to go back after the five-year timeframe, the value of the land would diminish.

Amy continued to “H” – the Drain Exemption. The language for the Wetland statute and the Inland Lakes and Streams statute were basically kept the same to make it easier for everyone. “J” would add a new exemption for modification of drains that were built in upland for the sole purpose of removing water from upland agricultural areas. “K” is the road exemption clarifying that it is maintenance of the roads; not maintenance and improvement. A member commented that they thought the footprint of the road still needs to be better clarified.

“L” is the utility exemption for maintenance. “M” is an exemption for utilities for directional drilling or knifing in or placement of poles. This exemption basically replaced the previous exemptions. “O” needs to be deleted, per the EPA review, because it’s still been regulated under the Inland Lakes and Streams Act, so this isn’t really a major change in the overall policy.

303 Fees – GPs \$50, MPs \$100.

30311a is to delete the language on the feasible and prudent alternatives language guidance because that document has been completed.

30311d – Amy read through the list of items.

30325 is the removal of the language telling us to revise our MOA with the EPA because it’s been done.

32513 is the MP and GP fees under the Great Lakes statute. A member then asked if fees and funding of the program were going to be discussed. The Director indicated that what he has proposed gets us through next year, then the second is longer term fees. The fee piece is not meant to fund the program; a general fund request has been made for that. We need to find some federal support because we think they should contribute towards it because we are administering the federal program.

A member asked if the Public Sector Consultants project could be discussed. Joseph responded by saying that we met this morning and that he thinks the Public Sector is dead-on their approach on finding long-term funding solutions. Although they are in the information gathering state, the right questions are being asked, and he thought the meeting was very productive. He wanted to thank the MUCC and the Erb Family Foundation for their contribution

and urged the members to also express their thanks as that is the other piece of the funding part of it.

The discussion then moved on to mitigation banking and the Proposal for Mitigation Banking document. Amy wanted to comment that because this is a proposal, statutory language could not yet be provided, however, they wanted to talk a little about the concepts. This proposal includes not only loans to get the construction done, but also grants to help local municipalities put together their loan applications. The grant part would be to find a site, come up with design plans, start working on a banking agreement, and get them through that process for the grant; the DEQ is very interested in working with municipalities with this. They are the only entities that are eligible, municipalities - cities, villages, townships, counties, and states – because that is what the statute allows right now.

A member said they asked Cindy Evans to talk about the feedback from the SRF stakeholder group. She said the legislature passed an amendment in 2010, but she wasn't sure if what was being presented would be in any statutory language. The Director said that Cindy was also on a revolving fund reform committee and that this is where the two policies intersect – the work that the WAC has done and the work of this committee. Cindy asked to talk about the banks so they can stand behind the banking principle in a really strong way. Kim said it would be a revolving loan fund specifically for municipalities so they could partner with other entities like non-profits to create wetland banks within their community. Ideally, as part of the overall plan, they could look at what their needs are for storm water and flood control and incorporate that into the function of a mitigation bank. Then look at it at a landscaping prospective to find the best area, best influence, and the biggest bang for their buck. Amy said the loan part of the reforms is very critical to move the program in the right direction. Cindy said they could also use it to determine storm water utility districts. In a context of a storm water plan, wetland preservation and other wetland activities might end up being fundable under that, but that was one of the questions they had. They are recommending to not use the money for plan implementation because the money could quickly disappear. The SRF Committee is recommending that there be more flexibility on the grant side as long as it goes to planning, not necessary for implementation. A member commented that they noticed the ten percent forgiveness language was removed. Kim answered that the grants replaced the idea of the ten percent forgiveness.

A member asked if there was hierarchy of what you'd like with regards to mitigation. Amy responded that restoration would be the preferred method because it meets the no net less philosophy and it's more likely to be successful than going into an area that was never wetland before.

A member asked if there was a need to define "wetland mitigation bank" in the SRF legislation. Amy responded that in this proposal, we would define bank the same was as we defined it under Part 303. A member wanted to know if the specified timeframes are going to be decided on and included in the legislation. Kim said that it was ultimately our goal that if we move forward with this portion of the proposal, it would be done at the same time as the Wetland Reform Legislation. The member requested that a bullet be added under the location that gives timeframes, parameters being met, and other details.

A member then asked what the next step was. The Director responded that it is pretty important to get to bill drafting soon. We have to get all the statutory language into bill draft form, but that he wasn't sure if he's got it totally figured out yet.

A member wanted to talk about “normal” farming and the five-year issue. They said that to be clear, land can lay fallow for quite a while and if a farmer wants to go in and farm it again and plow it again; that is fine. What they cannot do is revert it to a wetland and go in and tile it without a permit or something like that. You can cut trees but what you cannot do is go and pull all the roots so that you can farm it.

Joseph said that takes us to “Next Steps.” We still have to write our report. For the most part, the subcommittees have completed their work. The only things left are cranberries, a recommendation for funding, and then legislation. The Director said that as chairman, he encourages you to write a report and get the funding study done and through the committees. We will take what we heard from you today, get bills drafted, and then bring them back to committee and share with everyone throughout.

Someone wanted to thank Amy, Todd, and Director Wyant for working with him. He has been working with the Director; and Amy and Todd stepped up and worked closely with us. We are not quite there yet, but it has come a long way. It has been great to work with them and I think we’re moving in the right direction.

Someone else said they wanted to echo a little bit of that too. He wanted to thank Director Wyant, Todd and Amy, Kim, and also Gary. He said they have been working a lot on this permit issue and he wanted to thank you for being open-minded about our issues and appreciates your hard work, Gary, Todd, Amy, and Kim.

The Director said he appreciates the Committee. And he wanted to recognize how far we have come and how much you realize the significant amount of work that has been going into this.

Meeting adjourned at 3:43 p.m.