

**Summary Comments  
of the  
Greater Lansing Home Builders Association  
On the  
Ingham County Drain Rules**

December 20, 2005

In the following narrative, GLHBA is used to refer to the Greater Lansing Home Builders Association, and County is used to refer to both Ingham County in general, and the Ingham County Drain Commissioner's office.

It should be noted that the County responded to the comments that GLHBA submitted with regard to the first DRAFT of the *Rules*. Many of the changes proposed by GLHBA were integrated into the document. GLHBA would like to thank the Drain office for acknowledging GLHBA member concerns and making those changes. At the same time, GLHBA understands from the Drain Commissioner that the *Rules* are an evolving set of documents.

In the spirit of cooperation the Ingham Drain Commissioner asked GLHBA to once again review this second DRAFT of the *Rules*. GLHBA submits the following comments on the current DRAFT of the *Rules*.

This report is divided into four parts:

- 1) **Executive Summary**—which summarizes major issues that GLHBA urges the County to address.
- 2) **Specific Comments**—which includes a section-by-section analysis of important issues and specifics for the County to consider.
- 3) **For Discussion**—which includes items for discussion at the meeting.
- 4) **Appendix**—which includes less important, yet otherwise observable issues in the *Rules*.

### **Executive Summary**

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The following list includes some of the most important items/issues that GLHBA encourages the County to consider in both writing the rules and implementing changes to current procedures. These are not listed in any particular order. GLHBA considers them all to be of equal importance, and urges the County to give these items careful consideration.

- A) **The Rules Are Overlapping and Duplicate Other Erosion and Sedimentation Control and Storm Water Discharge Regulations**—Michigan has several layers of regulations that address environmental impacts from construction/development projects. This overlap and duplication adds significant confusion to the development process, and adds to the cost of housing. GLHBA urges the County to simplify the permit process for builders/developers by doing a

side-by-side comparison of the three regulations to see how the *Rules* can be revised to remove overlap, duplication, and confusion.

- B) Standards For Low Impact Design**—These need to be defined. In addition, the County needs to remain flexible and recognize that not all sites can accommodate this approach.
- C) More Clarification Needed on Wetland Protection**—To demonstrate compliance by showing what will “not be affected” on the site is impossible to comply with. A lot more work needs to be done on this section of the *Rules*.
- D) Allow More Flexibility with Structural Controls**—GLHBA urges the County to remain open to creative approaches and designs submitted by the developer which may accomplish the intended ends. Consider a BMP that’s updated from time to time.

## **Specific Comments**

The comments below are listed in the order that they appear in the *Rules*. Page numbers are listed where the item can be found in the *Rules*. The section/part number of the rule that is referred to is shown **in bold**, while the GLHBA comments follow below an underlined heading.

### **PART 1: INTRODUCTION**

#### **SECTION 3: Framework for the Design of Stormwater Management Systems**

##### **A. Source Controls (Pg. 3)**

###### Low Impact Design Should be Optional

It is difficult to argue against source controls and the key practices presented because this approach is a valid one. GLHBA’s national affiliate, the National Association of Home Builders, have been actively involved for many years with initiatives that promote Low Impact Design (also referred to as Low Impact Development, Conservation Design, or Better Site Design). However, not all sites are appropriate for the approach. Builders/developers should have the flexibility to design a site using a variety of approaches, basing the design on the best professional judgment of engineering specialists.

##### **B. Site Controls**

###### **1. Preferred Ranking of Structural Site Controls (Pg. 4)**

###### Ranking of Structural Controls Is Inappropriate

Given the County's concerns regarding the long-term performance of structural infiltration devices are accurate and requirements for aggressive maintenance and pretreatment are warranted, the County should not give preference to these infiltration devices. Likewise there are pros and cons of using retention basins versus detention basins. GLHBA urges the County to revise the *Rules* by eliminating the ranking discussion of structural site controls and replace it with a list of structural controls along with the pros and cons of each or by referencing a BMP guidance manual that can be updated periodically. In this way, builders/developers will have more flexibility in site design while allowing the selection of controls that are less expensive, yet effective, for a given site.

## **PART 2: PROCEDURES FOR PLAN SUBMISSION, REVIEW, AND CONSTRUCTION**

### **SECTION 2: Preliminary Plan Submittal and Approval**

#### **A. Submittal Requirements (Pg. 7)**

##### Rules Should Not Apply to Small Developments

GLHBA commends the County for considering varying or waiving plan submittals for small developments (<1 acre), but the *Rules* should clearly state how a waiver or variance is granted. Thus, GLHBA urges the County to revise the *Rules* to state the procedure for such variances or waivers, so that these procedures are equitably applied.

#### **B. General Information Requirements for Plans Submitted for Review (Pg. 8)**

##### Requirements Are Duplicative, Yet Different Than The Soil Erosion and Sedimentation Control Permit and the NPDES, Making Compliance Difficult

The site and drainage plan information that is required is duplicative, yet different than the requirements of the Soil Erosion and Sedimentation Control Permit and the NPDES. As a result, it is difficult for builders/developers to sort out what they have to do to comply with the *Rules*, the Soil Erosion and Sedimentation Control Permit, and the NPDES. GLHBA urges the County to compare the requirements in this section with both the Soil Erosion and Control Permit and the NPDES and to revise the *Rules* by making it clear how the *Rules* are different, so compliance will not be burdensome. The County should be urged to revise the *Rules* using one of the existing permits as the baseline with additional requirements clearly indicated.

#### **C. Drainage Information Requirements**

**“1. Plans shall include Low Impact Design elements unless the site conditions are such that no elements can be incorporated, in such case a variance must be requested. For examples of Low Impact Design contact the Ingham County Drain Commissioner's Office.” (Pg. 8)**

##### Low Impact Design Requirements Go Beyond Phase II Stormwater Regulations

Requiring Low Impact Design elements goes way beyond the intent of the Phase II storm water regulations. Further, it is not appropriate to require such design elements without making it clear to the builders in the *Rules* exactly what site design elements are considered “Low Impact Design.” Builders should know ahead of time what is expected. Thus, GLHBA urges the County to revise the *Rules* by removing this requirement. At the very least, GLHBA urges the County to include a discussion within this section of the *Rules* that clearly delineates what design elements would satisfy this requirement for Low Impact Design or reference a BMP manual that has examples of Low Impact Design elements that would satisfy this requirement for Low Impact Design.

**“2. Plans must include calculations by a professional engineer, used in designing all components of the proposed storm water management systems. For Preliminary plats the calculation components must be sufficient to insure compliance with these standards on storage capacity and site runoff.” (Pg. 8)**

Professional Engineer Requirement Should Be Waived for  
Certain Small Sites (< 1 acre)

For small commercial office, and larger multi-family residential sites, it may make sense to require storm water management calculations. On the other hand, for single family home sites it does not make sense to incur the additional expense to have the calculations made. It adds unnecessary cost. If the County intends to apply the *Rules* to all types of small sites, GLHBA urges the County to waive the requirement for single family home sites, and revise the rules to accommodate the varying needs on a small site.

**“3.g. Provide calculations to show that the hydrology for all existing wetlands will *not be affected* by the proposed change, this would include water budget and hydro period for the wetland.” (Pg. 9)** (emphasis added by GLHBA)

Wetland Protection Compliance Impossible

This requirement is so vague that compliance would be impossible. GLHBA urges the Drain Commissioner to expand this section so that it is clear what is meant by “not affected.” GLHBA also needs to help members and the public understand where the County gets its authority to enforce wetlands issues that are state-regulated.

**D. Preliminary Plan Approval for Plats**

Paragraph 1, line 4: **If the proposed preliminary plat is approved subject to conditions or rejected, the reason for rejection and requirements for approval will be given in writing to the proprietor and each and every officer to which the proprietor was required to submit the preliminary plat. Approval of the preliminary plat is required before Ingham County Drain Commissioner will proceed with review of final construction plans. (Pg. 9)**

An Appeal Process Is Needed

While there is an appeal process (Section 6) for how the *Rules* are applied, it is not obvious from the *Rules* if this appeal process applies to preliminary plat approval. Given the importance of a stamp of approval for the preliminary plat, the proprietor should have an opportunity to appeal a rejection or to challenge conditions tied to approval. Thus, GLHBA urges the County to put into place an appeals process. If one is in place, the County should be urged to revise the *Rules* by including the appeal process in this subsection D or referring the reader to Section 6 (see page 15 of the *Rules*.)

### **SECTION 3: Construction Plan Submittal and Approval**

#### **A. Submittal Requirements**

**5. Prior to construction approval, copies of any required state or local environmental permit shall be submitted to the Ingham County Drain Commissioner. (Pg. 10)**

#### Submission of Environmental Permits is Unwarranted.

It is unclear what the Commissioner will do with this information, if anything. While this requirement may encourage compliance with other regulations, such as the NPDES, it is unwarranted unless the County has some purpose for this requirement. Thus, GLHBA urges the County to revise the Rules by deleting this requirement or at a minimum require the proprietor to provide a list and not actual copies of the permits.

#### **B. Construction Plan Requirements**

**The Ingham County Drain Commissioner will review construction plans to assure that adequate storm drainage will be provided and that the proposed storm water management system provides adequately for water quantity and quality management to ensure protection of property owners, lands, and watercourses both within the proposed development and downstream. (Pg. 10)**

#### County Should Prepare A Checklist for Construction Plans

As stated above, the Drain Commissioner reviews the construction plans to assure that adequate storm drainage will be provided and that there is adequate protection of property owners, lands and watercourses. How “adequate” is measured is not clearly delineated and at best is a very complicated issue given the length of the *Rules*. It would be very helpful to builders/developers if a checklist or other summary could be developed by the County to help builders/developers understand how “adequate” is going to be measured by the Drain Commissioner. This would improve the review process, assure that plans are in line with the Commissioner’s expectations, and most importantly, make sure that plans are reviewed and judged in an equitable manner. GLHBA urges the County to prepare such a checklist and make it available to the public after the *Rules* have been finalized.

### **PART 3: DESIGN CRITERIA FOR STORMWATER MANAGEMENT SYSTEMS**

Second paragraph:

**A set of uniform standards as attached herein, may not accommodate unique site circumstances. In particular, it is recognized that these standards may be difficult to impose on small sites or sites that are being redeveloped. . . . (see Part 2, Section 5 on Variances.) (Pg. 17)**

Small Sites And Redevelopment Sites Should Be Exempted From The Rules Altogether Or Exempted From Selected Design Criteria

GLHBA commends the County for recognizing that not all sites can meet the design criteria. However, proprietors of small sites or redevelopment sites should not have to go through the variance process to get approval for alternative approaches to storm water management, a process that is time consuming with an uncertain outcome. If the County takes GLHBA's advice and exempts small sites from the *Rules*, this concern is mute, but if the County keeps small sites in the *Rules*, then the County is urged to work with GLHBA to develop a set of design criteria for small sites and redevelopment sites so that the variance process can be avoided by most proprietors.

**PART 4: SOIL EROSION, SEDIMENTATION AND POLLUTION CONTROL FOR COUNTY DRAINS (Pg. 35-39)**

Rules in Part 4 (Erosion, Sedimentation, and Pollution Control for County Drains) Should be Waived for NPDES Permittees

Part 4 of the Rules are duplicative of other environmental permits that address soil erosion, sedimentation, and pollution control from construction/development sites, namely the Soil Erosion and Sedimentation Control Permit and the NPDES. What the County should do is waive the requirements of Part 4 of the *Rules* if a builder/developer can prove that coverage under the NPDES is in place. This makes sense in view of the fact that to be eligible for the NPDES, a builder/developer has to have an approved Soil Erosion and Sedimentation Permit, which is issued by the Drain Commissioner. The County is strongly urged to consider this waiver. By doing so, the environmental protection would not suffer, the burden of duplicative regulations would be eliminated, and housing would be more affordable.

**For Discussion**

GLHBA has attempted to summarize all of the important and specific issues in the first two sections of this report. Here in this section, GLHBA has listed some items for discussion. Improvement on these items would contribute to better relations between all of the parties involved in the development process—from developer to engineer, to excavator to Drain office.

**Turnaround Times:** The first is a “certainty of time” issue. The builder/developer needs to know “by when” the County plans to fulfill its requirements for reviews, inspections, etc. That predictability allows the builders and developers to plan and

control their costs so that the public will benefit from affordable housing. Delays cost money which increase the cost of housing. It would be helpful if the Drain office could, where possible, define the turnaround times that the office expects to honor, and then do their best to follow them. Examples of problem areas include an assurance of a thirty-day turnaround on Plat approvals, which ends in denial of the approval, and the thirty days starts over again. As was noted earlier, the appeal process is not clearly spelled out for a denial on a Plat approval. This can send a project into an endless and frustrating loop.

Another example: Part 2, Sec. 3, #3, (P.10) Construction Plan approvals. The *Rules* say that these will be approved in the “shortest time possible.” This is too open-ended and should be a fixed amount of time to help GLHBA members plan their schedules.

**Using Outside Firms:** This issue involves the accountability of costs when the Drain office uses outside engineering firms. There exists some frustration on the part of builder/developers that the outside firm may not have enough clear guidelines for their role in fulfilling obligations to the Drain office. The only place in the Rules where this is addressed is in Part 2, Sec 3, D, 4.c. “Inspector must witness all pipe installations...” Without enough clarity here, an inspector might be expected to stand on a job site all day watching every single pipe installed. This has occurred, and is unrealistic or reasonable, especially in situations where the installing contractor is using a consistent level of quality on a daily basis. GLHBA urges the County to add more clarity to the role of those outside inspectors, and to consider a time/cost tracking system that demonstrates cost effective and reasonable solutions to the problem.

**Changes to the Rules:** It is the goal of GLHBA, in this review, to assist the Drain office in creating Rules that are constructive, reasonable and of benefit to all. The checklist mentioned earlier in this report was a suggestion that will help everyone. In addition to having *Rules* and a checklist, GLHBA would urge the Drain Commissioner to keep the Rules in place for some reasonable period of time before changes are made. This would contribute to creating stability, and predictability over time, as well as lead toward more educated builders, as they learn and follow the *Rules*. Once in place, it becomes reasonable and fair to then expect the Drain office to honor the rules they wrote.

**Definitions and Terms**—The mixing of terms throughout the document is still troubling. For example in state law, the words Preliminary Plat mean something. Yet in the *Rules*, the terms Preliminary Plat and Preliminary Plan are used interchangeably which creates confusion. GLHBA urges the Drain office to more tightly define certain key words, and then apply those definitions where appropriate throughout the *Rules*. Some of those words include: Preliminary Plat, Preliminary Plans, Conceptual, Special Conditions, (Sec 2.B.5.) adequate, and natural watercourse

**GLHBA would like to express thanks and appreciation to Ingham County for giving GLHBA an opportunity to review and comment on the *Rules*!**

# Appendix

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Listed and outlined here in the Appendix are some general observations that are less important to GLHBA, however, GLHBA feels obligated to point them out, simply because they were noted in the review.

## **1) The *Rules* Go Beyond the federal Phase II Clean Storm Water Regulations**

The storm water management approach taken in the *Rules* addresses the three main environmental concerns related to impacts from storm water runoff—flooding, stream bank erosion, and water quality degradation. While these concerns are legitimate and it makes sense to address them in a comprehensive manner, from a federal perspective, the *Rules* go way beyond what is required under the federal Phase II Storm Water Regulations.

## **2) The *Rules* Do Not Address All of the Requirements of the County’s *MS4 Permit***

Thus, while the *Rules* go beyond the federal requirements of the Phase II regulations, which focus on controlling pollutants in storm water runoff, the County is obligated to take a more comprehensive approach. The *Rules* generally do not go beyond the intent of the requirements of the County’s *MS4 permit* and requires the county to have a Storm Water Management Program that includes the following six minimum measures:

1. Education and Outreach On Storm Water Impacts – Public Education Program;
2. Public Involvement and Participation;
3. Illicit Discharge Elimination Program;
4. Post Construction Storm Water Management for New Development and Redevelopment Projects;
5. Construction Site Storm Water Runoff Control; and
6. Pollution Prevention/Good Housekeeping for Municipal Operations.

Under the *MS4 Permit* the County is required to “develop, implement and enforce a storm water management program designed to reduce the discharge of pollutants from the drainage system to the Maximum Extent Practicable (MEP), to protect the designated uses of the waters of the state, to protect water quality and to satisfy the appropriate water quality requirements of the Federal Act and the Michigan Act.” (Page 5 of 25, *MS4 permit*) Further, the County’s Storm Water Management Program must implement practices to comply with the six minimum measures shown above. As written, the *Rules* only address two of the six minimum measures, those that are relevant to new development and redevelopment, minimum measures #4 and 5.

It is not possible to tell from the *Rules* how the County intends to meet the other components of its Storm Water Management Program. While the other components don’t directly impact builders/developers, GLHBA still urges Ingham County to address

all of the requirements of the Storm Water Management Program simultaneously so that the public has a full understanding of the total cost to the community for the Storm Water Management Program.