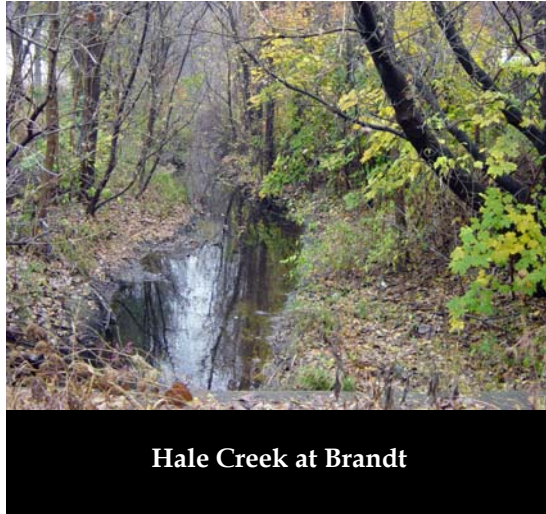


8. FUTURE ORGANIZATIONAL STRUCTURE



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Sustainability Recommendations

All or portions of the communities/entities within the Combined Downriver Watershed have been identified by the Environmental Protection Agency (EPA) and/or the Michigan Department of Environmental Quality (MDEQ) as being in urbanized areas requiring a National Pollutant Discharge Elimination System (NPDES) storm water discharge permit. A requirement of the permit is for these communities /entities to work together to develop a single watershed- based management plan (WMP) to pursue compliance. The WMP serves as a guide for the entities to understand the water quality and quantity concerns and actions needed to meet the goals of the watershed.

8.1 BACKGROUND

The Phase II Storm Water regulations provide for the entities to begin implementation of the WMP as enforceable compliance standards in their individual required Storm Water Pollution Prevention Initiative (SWPPI). The SWPPI's are to be designed to reduce the discharge of pollutants to the maximum extent practicable with guidance from the goals and objectives set forth in the WMP. The Combined Downriver Watershed entities created a formal watershed organization to cooperate on the development of the Combined Downriver Watershed Management Plan. Continuation of a formal Watershed Organization to facilitate implementation of the Plan is the focus of this Chapter. Available enabling legislation and/or models for forming and maintaining such watershed organizations are presented.

8.1.1 Combined Downriver WAG

In the fall of 2002, through the facilitation of Wayne County, a planning meeting was set up for the communities in the Frank & Poet Drain watershed, the Blakely Drain watershed and the Downriver portion of the Detroit River watershed. The initial meeting of the group was held on September 10, 2002. The purpose of the meeting was to begin dialog with the communities regarding the upcoming (March 10, 2003) deadline for filing of Phase II Storm Water Permit Coverage, and to begin discussions of working together on a watershed based permit approach. The group continued to meet approximately monthly, determined they would individually apply as a single watershed under the Michigan Watershed Based General Permit Storm Water Permit (MIG619000), and also decided to identify the three watersheds as "subwatersheds" of the "Combined Downriver Watershed".

Each of the Communities submitted their applications for coverage to the Michigan Department of Environmental Quality (MDEQ) by March 10, 2003.

On April 28, 2003, the Combined Downriver Watershed Advisory Group (CDRWAG) was officially formed, with voting membership consisting of: the Cities of Gibraltar, Riverview, Romulus, Southgate, Taylor, Woodhaven and Wyandotte; the townships of Brownstown, Grosse Ile and Huron; and Wayne County and the Wayne County Airport Authority. Operational Procedures for the CDRWAG were adopted, along with a mission statement and identification of responsibilities of the CDRWAG. The mission statement adopted by the CDRWAG was:

"A Combined Downriver Watershed and riparian corridor system that is aesthetically pleasant, clean, healthy and safe so that watershed residents and visitors can enjoy an improved quality of life, with reduced risk of flooding and better coordination of storm water management throughout the region."¹

The identified responsibilities of the CDRWAG were defined as:

- Coordinate actions between members to facilitate compliance with the watershed-based Michigan Department of Environmental Quality Storm Water Discharge Permit (MIG619000) including preparation and implementation of a joint watershed management plan for the Combined Downriver Watershed.

¹ Operational Procedures for the Combined Downriver Watershed Advisory Group (CDRWAG) – approved by the Combined Downriver Watershed Advisory Group on April 28, 2003.



- Coordinate efforts to obtain funding for watershed management projects (e.g. Clean Michigan Initiative and other state and federal sources).
- Provide a forum to discuss common needs and share information among members, and to explore potential mechanisms to reduce the cost and time needed to implement the requirements of the General Permit and other watershed initiatives.
- Help build consensus among communities, public agencies, and the general public on the goals, objectives and priority actions required to improve and maintain the Frank and Poet Drain, the Blakely Drain and the Detroit River water resources as an asset to the residents within the Combined Downriver Watershed.
- Assist members in meeting the requirements of state and federal water quality laws and regulations.
- Provide watershed representation and/or input into regional water quality and flood control issues.

8.1.2 Combined Downriver Inter-Municipality Committee

Throughout 2003, the CDRWAG communities continued to meet regularly (every 4-8 weeks). During this time, discussions occurred regarding how to coordinate and fund the development of the Watershed Management Plan that would be required. Discussion included investigation of the idea of forming a Drainage District under Chapter 20 or 21 of the Michigan Drain Code, as well as other options. The CDRWAG concluded that formation of a committee of the Combined Downriver communities/entities, pursuant to the Inter-Municipality Committee Act (PA 200, 1957; MCL 123.631, et seq.), was the preferable and recommended approach. Included among the reasons was that:^{2,3}

- It is easy to form the inter-municipality committee; only a resolution is required.
- The committee's activities are limited to "studying of area governmental problems of mutual interest and concern, including such matters as facility studies on sewers and sewage disposal, water, drains ... and to formulate recommendations for and actions thereon."
- The "committee may employ personnel to coordinate and conduct all types of surveys and studies relating to the mutual problems of its member municipalities."
- As to funding the activities of the committee, "the member governing bodies, by resolution, may authorize the allocation of municipal funds for such purpose: The proportion of the total amount of funds to be provided by each member municipality shall be based on the recommendation of the inter-municipality committee ... which shall have been approved by the member governing bodies."
- A member's financial contribution may be of in kind services and the committee is authorized to accept gifts and grants in furtherance of the objectives for which the committee is established.



² April 14, 2003 Memo to Kelly Cave from Patrick B. McCauley summarizing a meeting of Legal Counsel from several of the ECWAG member communities.

³ Note: Information provided to Wayne County and Ecorse Creek Communities was shared by Wayne County with the CDRWAG. Also, several of the CDRWAG communities also are in the Ecorse Creek and were aware of the information.

A draft Memorandum of Agreement (MOA) and individual community/entity resolutions to officially form the Combined Downriver Watershed Inter-Municipality Committee (CDWIC) were developed and the individual communities/entities began the process of adopting them. On March 30, 2004, following adoption of the December 16, 2003 version of the MOA by a majority of the CDR communities, the CDWIC was officially formed. Huron Township was elected as the Chair, the City of Taylor as the Vice-Chair and the Brownstown Township as the Secretary. The Woodhaven-Brownstown School District agreed to act as the fiduciary for the CDWIC.

8.1.3 Watershed Management Plan Initiation

The CDWIC then set about the process of creating an RFP and soliciting a Consultant or Consultant Team to assist the CDWIC in development of the Combined Downriver Watershed Management Plan. On May 11, 2004 the CDWIC selected a Consultant, and on June 29, 2004 an agreement was signed between the CDWIC (through the Chair) and the Consultant, and work on development of the Watershed Management Plan officially began.

8.2 FUTURE SUSTAINABILITY OPPORTUNITIES

In late 2003, when the decision was made to pursue establishment of an Combined Downriver Inter-Municipality Committee under PA 200, it was noted "... after a watershed management plan is put in place, that another community organization may have to be formed for carrying out or implementing the study and plan."⁴ The current MOA defines formation of the CDWIC to "coordinate and facilitate the study, development, preparation and timely filing with the Michigan Department of Environmental Quality ("MDEQ") of a Combined Downriver Watershed Management Plan as part of the required NPDES Phase II storm water compliance."⁵ The current MOA does not address continuation of the CDWIC beyond the "timely filing...of the... Watershed Management Plan". As such, the CDWIC members (permitted communities / entities) within the Watershed need to consider how to continue to cooperatively work together to implement the Watershed Management Plan recommendations and their individual Storm Water Pollution Prevention Initiative (SWPPI) requirements.

A number of possible opportunities/models exist that could be implemented. Some of these are summarized in the following material.

8.2.1 Inter-Municipality Act - PA 200 (PA 200, 1957; MCL 123.631, et seq.)

The Inter-Municipality Act allows for "the creation by 2 or more municipalities of an inter-municipality committee for the purpose of studying area problems; and to provide authority for the committee to receive gifts and grants."⁶ As such, while it provided a useful vehicle for development of the Combined Downriver Watershed Management Plan (i.e. "studying area problems"), it does not appear to have good applicability for ongoing implementation of the Watershed Management Plan.

8.2.2 Watershed Wide Drainage District(s) - Michigan Drain Code

⁴ April 14, 2003 Memo to Kelly Cave from Patrick B. McCauley summarizing a meeting of Legal Counsel from several of the ECWAG member communities.

⁵ Memorandum of Agreement for Creation of The Combined Downriver Inter-Municipality Committee, December 16, 2003, page 1.

⁶ Michigan Legislature Website - PA 200, 1957; MCL 123.631, et. Seq.





The Michigan Drain Code (PA 40, 1956) is a codification of laws relating to the establishment, maintenance and improvements of drains, which can include natural watercourses and storm water systems. Chapters 20 and 21 of this Code permit the establishment of drainage districts for the purpose of protecting health. [Chapter 20 applies for intra-county drainage districts (e.g. where the district is only in one County). Chapter 21 applies to inter-county drainage districts.] Activities related to the construction, operation, maintenance and administration of a drain can be funded. Additional activities can also be funded by the Drainage District under agreements with the municipalities. Relative to using the Drain Code for watershed wide management activities, two or more public corporations within the watershed may file a petition with the County Drain Commissioner. If the drainage district does not already exist as a specifically established County Drainage District, the petition can also seek to establish the district. The specific process and procedures for establishing the Drainage District would need to be addressed and followed.

Once established, the Drainage District is “managed” by a Drainage Board consisting of, in Wayne County, the Wayne County Drain Commissioner (Director of Public Works), the County Commissioner whose district will be assessed for the greatest portion of the cost of the project(s), and a person appointed by the County Executive. Costs for the drainage district are assessed “at large” to the communities. The communities (subject to proper procedures) can pay their share of the costs with general funds or can decide to spread those costs to the properties within the community (within the drainage district).

One of the concerns sometimes espoused relative to using the Drain Code for funding watershed management activities is a concern by the Communities over “loss of local control” to the Drainage Board. Interagency agreements, (i.e. through Section 471, MCL 280.471 or Section 491) can be used to address some of this concern. The agreement(s) identify what work will be performed and by whom, how it will be paid for, and the steps necessary to expand or limit the authorities of the parties (similar is some respects to the Memorandum of Agreement used to establish the CDWIC). The watershed district established under the Drain Code petition process can be accompanied by a contract between the municipality(ies)/entities and the Drainage Board through a Section 471 agreement establishing a watershed committee. The watershed committee could consist of a representative from each municipality in the drainage district. Before a specific project/activity could go to the Drainage Board for consideration, it would need approval of the watershed committee. SEMCOG⁷ and Wayne County⁸ have published additional information regarding use of Chapter 20 and 21 of the Drain Code for watershed management, maintenance and improvements.

8.2.3 Watershed Alliance (Part 312, Act 517, PA 2004)

The Combined Downriver Watershed communities/entities could chose to form a Watershed Alliance. The Watershed Alliance legislation, Enrolled Senate Bill No. 1432, was passed by the Michigan House on December 8, 2004, and approved by the Governor and effective as of January 3, 2005. The Act, patterned largely after the Assembly of Rouge Communities organization from the Rouge River Watershed (which itself plans to form an Alliance), provides “an essential tool ... to ... watershed communities...to help

⁷ Options for Local Government Funding of Water Quality Activities, April 2003, SEMCOG.

⁸ Use of Drain Code for Watershed and Drain Management, Maintenance and Improvements – A Guide to Understanding Chapter 20 of the Michigan Drain Code of 1956, November 2002, Wayne County Department of Environment.

them collectively address watershed management issues including new federally mandated storm water discharge requirements.”⁹ The Act allows two or more municipalities (either intra or inter-county), by resolution of their respective governing bodies, to establish a watershed alliance “for the purpose of studying problems and planning and implementing activities designed to address surface water quality or water flow issues of mutual concerns within a portion of a watershed located within their boundaries...”¹⁰ Once formed, the Alliance may accept into membership a “...municipality, county, county agency, public school district, public college or university, or other local or regional public agency established under state law with surface water management responsibility ...”¹¹ The Act provides the Alliance status as a “body corporate”, with legal standing and with authority to carry out its responsibilities under the Act. The Alliance can employ personnel, enter into agreements, seek and accept grants and other sources of funding, assess and collect fees from its members (with approval of the governing bodies of the members), expend funds and act on behalf of its members on activities authorized by the Alliance membership. According to Wayne County Director of Environment Kurt Heise, Senate Bill 1423 would increase the ability to capture federal funds and help with administrative functions of a watershed management plan.¹²

8.2.4 Other Models/Vehicles

Several other models for possible funding mechanisms are available. SEMCOG (Southeast Michigan Council of Governments), published a document entitled “Options for Local Government Funding of Water Quality Activities”.¹³ In it SEMCOG notes that “there are several laws in Michigan that allow municipalities to create or participate in multi-municipal agencies, such as sewer authorities, or contract with other municipal agencies, such as counties, acting through their authorized agencies or departments of public works, in order to provide water quality protection activities and services. While each of these laws allows the undertaking of specific types of activities, each also has limitations that may impede its use for certain water quality activities.” A few of the potential Acts are summarized below. (For more detail, including a listing of some of the advantages and disadvantages of each, see the SEMCOG publication, which can be found on the SEMCOG Website at www.semco.org/Products by doing a search for “Options for Local Government Funding”.)

8.2.4.1 Public Works Act (PA 185, 1957)

County departments of public works established under PA 185 have broad authority to provide a range of services, including the collection and transport of storm water. These county departments may also contract with other units of government to provide specific facilities or services. In Wayne County, the Director of Public Works is also the County Drain Commissioner. The watershed communities could investigate the possibility of contracting directly with the Wayne County DPW (Drain Commission) to provide some ongoing services required under the Phase II compliance.¹⁴

8.2.4.2 County Public Improvement Act (PA 342, 1939)

⁹ December 9, 2004 letter to Governor Granholm from Thomas Biasell, Chair, Assembly of Rouge Communities.

¹⁰ Enrolled Senate Bill No. 1432, Act No. 517, PA 2004, Effective 1-3-05.

¹¹ Ibid

¹² “Water Alliance Bill Introduced”, Kevin Elliot, Spinal Column Newsweekly. SCN Communications Group (www.spinalcolumnonline.com), October 6, 2004.

¹³ Options for Local Government Funding of Water Quality Activities, April 2003, SEMCOG.

¹⁴ Ibid





Similar to the Public Works Act, another potential legislative vehicle for purposes of water quality activities is the County Public Improvement Act. This Act authorizes the County Board of Commissioners to designate a county agency to provide specific services, including the collection and transport of storm water. Rates, charges, or assessments are paid based on the facilities or services provided and the agency can contract with other units of government for the cost of such facilities or services.¹⁵

8.2.4.3 Municipal Sewer and Water Authorities (PA 233, 1955)

Municipalities can jointly create an Authority that then contracts with individual municipalities to provide specific facilities or services. Once established, activities of the Authority are limited to those related to owning and operating a sewage disposal system, including storm sewers. Contracting municipalities use a variety of mechanisms to pay for the facilities or services they receive from the Authority, including property taxes, special assessments, and user charges/rates. PA 233 authorities can issue bonds for capital improvements.¹⁶

In addition to the various laws/Acts noted above, there are other other potential institutional models that could be considered for setting up an ongoing watershed organization. Four such examples include the Partnership Agreement Model, the Initiative Office Model, a Private 501(c)(3) Nonprofit Organization Model, and a Watershed Council/Coalition Model.¹⁷ Each is briefly summarized below:

8.2.4.4 Partnership Agreement Model¹⁸

A Partnership Agreement is a “concise document that unifies diverse groups around a common cause or project.” In-kind contributions from Agreement signatories and grants received by individual signatories provide the financial base for operations. It is a somewhat fragile model in that it depends on the motivation and cooperative spirit of Agreement signatories. It provides a forum for discussion and information sharing, but is dependent on individual Agreement signatories for action. Modifying the basic model structure to include formalizing a board of directors elected by the Agreement signatories might be one means of raising the profile of watershed management efforts and providing a sense of “ownership” for all Agreement signatories under this model. An “action agenda” that explicitly identifies one or more goals in the Partnership Agreement vision statement that each signatory commits to implement might also enhance the active support under this approach. This model option tends to primarily lend itself to coordination, information/education and advisory services.

8.2.4.5 Initiative Office Model¹⁹

The “Initiative Office” model is basically a further enhancement of the “Partnership Agreement” model. The Initiative Model approach is based upon establishment of a distinct “Watershed Initiative Office”. Such an office can lend a sense of identity, formality, and permanence to the initiative. The Watershed Initiative Office would be formed as the locus for coordinating watershed planning and management activities. A committee structure populated by Agreement signatories would serve as the primary vehicle for addressing the Watershed Initiative’s vision statement and goals. The Office could be located physically with another local agency or organization to share access to

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Upper Grand River Watershed Management Plan, December 1, 2003, prepared by TetraTech MPS for the Grand River Inter-County Drainage Board.

¹⁸ Ibid

¹⁹ Ibid



professional and support staff and to reduce costs. The Initiative Office however, should have its own identity, name, letterhead, logo, telephone number, core staff, and operating policies. Under this approach, the Watershed Initiative Office could seek 501(c)(3) nonprofit organization status in order to have access to competitive grant and philanthropic funding. A nominal membership dues arrangement with Partnership Agreement signatories could provide base support for a small staff and essential functions.

Like the Partnership Agreement Model, the Initiative Office Model option tends primarily to lend itself to coordination, information/education and advisory services. However, this model allows for programs specific to the Watershed Initiative Office to be developed since it provides opportunities to secure donation and grant funding through the 501(c)(3) option. The Initiative Office may be a useful transition model while laying the groundwork for a Watershed Council or one of the other models.

8.2.4.6 Independent, Private 501(c)(3) Nonprofit Organization²⁰

Creation of a nonprofit organization separate from existing agencies and organizations allows yet greater autonomy and a more independent organizational profile. Like the Initiative Office model, an independent nonprofit organization may develop specialized expertise in watershed planning, policy development, data analysis, or other services that local agencies/organizations might come to rely on. These services could provide a revenue stream for support of key staff and programs. Likewise, designation as a 501(c)(3) nonprofit organization provides opportunities to secure grant funding and allows individual and corporate donors to receive tax benefits for charitable contributions. Private nonprofits, like most models for watershed management institutionalization, have no regulatory or coercive power to ensure protection of watershed resources. The ability of an organization to be involved in decision-making is ultimately dependent on its standing and respect in the community, built over time, and the services it provides.

The Clinton River Watershed Council (CRWC), based in Rochester Hills, is an example of a private nonprofit organization in Michigan that focuses on watershed management. The CRWC was originally formed under the Michigan Local River Management Act. It later reorganized as a private not-for-profit, with a more diverse mix of governmental representatives, business interests, and interested individuals making up its Board of Directors.

8.2.4.7 Watershed Council/Coalition Model²¹

Michigan’s Local River Management Act (Act 253, P.A. 1964) was created as enabling legislation for watershed councils, districts, and authorities. (Of these three, only watershed councils, with voluntary membership, have been created since the law was enacted.) The Act allows local governmental units to “cooperate in planning and carrying out a coordinated water management program in the watershed in which they share.”

Watershed Councils formed under this model are partnership-based, quasi-governmental organizations with core membership and base funding provided by member municipalities and counties. Voting power and funding responsibility are generally apportioned based on area within the watershed, population, or some mix of these factors. Watershed councils have their own separate identity, like private nonprofit

²⁰ Ibid

²¹ Ibid

organizations, with the ability to accept donations and grant funding or to provide services on a fee basis, in addition to receiving funding in the form of municipal dues.

The Huron River Watershed Council (HRWC), located in Ann Arbor, was the first watershed council in Michigan formed under the Local River Management Act, although the organization actually pre-dates the Local River Management Act. The group was first created in 1957 under the Inter-municipality Committees Act (Act 200, P.A. 1957). Subsequent to the passage of the Local River Management Act in 1964, the HRWC was established. It is a public, 501(c)(3) nonprofit organization. Membership was originally limited to municipalities on a voluntary basis, but both membership and board of directors representation has subsequently been opened to individuals and businesses in order to be more inclusive and to diversify involvement and funding. Primary funding sources include grant funding from Federal and State sources and private foundations, fee-for-service/consulting services, individual and corporate donations/membership dues and municipal government membership dues. The HRWC has found that its quasigovernmental but independent status affords it the ability to propose projects and plans that inter-community rivalries would often prohibit if similarly proposed by an individual government or agency.

8.3 SUSTAINABILITY RECOMMENDATIONS OF COMBINED DOWNRIVER WATERSHED

The CDWIC members (permitted communities / entities) within the Watershed need to consider how to continue to cooperatively work together to implement the Watershed Management Plan recommendations and their individual Storm Water Pollution Prevention Initiative (SWPPI) requirements. As previously noted, the need exists to identify and implement a model or process that will provide for continuity for watershed planning and implementation in the Combined Downriver Watershed after completion of the Watershed Management Plan development. The cooperative relationship established between the CDWIC members within the Watershed needs to be continued to most cost effectively begin implementation of the Watershed Management Plan recommendations and work to comply with Phase II Permit requirements.

A number of possible models and enabling legislations/Acts have been presented in the preceding material. One, or a combination of one or more, of these may be determined by the CDWIC members as a preferred approach. Of these, use of Chapter 20 or Chapter 21 drainage districts through the Wayne County Drain Commissioner, and/or the recently enacted Watershed Alliance Act are perhaps the more applicable for the Watershed. Many of the Communities in the Combined Downriver Watershed already have, or are familiar with, Chapter 20 drainage districts. Also, several of the CDWIC are becoming aware of the Watershed Alliance approach as it develops. Several of the Combined Downriver Watershed member communities/entities also are members of the Ecorse Creek Watershed. Accordingly, there may be opportunity for creation of a JOINT Combined Downriver and Ecorse Creek Watershed Alliance Organization in order for both watersheds to benefit from economies of scale and avoidance of duplicative efforts. Separate sub-committees could be formed within the Joint Alliance, if needed, to address issues that may be specific to only one or the other of the Watersheds.

The CDWIC should actively begin developing and implementing a process to sustain the Watershed organization beyond completion of the Watershed Management Plan.





UPDATE COMMENTS - APRIL, 2006:

In November 2005, the CDWIC communities and agencies, along with the Ecorse Creek Watershed Inter-municipality Committee (ECIC) and the Lower Huron River Watershed Inter-municipality Committee (LHRWIC) member communities and agencies, started the process for possible formation of an "Alliance of Downriver Watersheds" a joint Ecorse Creek - Combined Downriver -Lower Huron River Watershed Alliance Organization. A subcommittee was formed to develop draft bylaws for consideration. As of April 2006, a proposed draft of the bylaws has been prepared and provided to the ECIC, CDWIC and LHRWIC members for their review and consideration. Subject to support by a majority of the ECIC, CDWIC and LHRWIC members, the formation of the Combined Downriver Alliance organization could occur late summer/early fall 2006.