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Cleared habitat prompts inquiry

State opens criminal probe after rare wetland destroyed along lake

By Gene Schabath / *The Detroit News*

HARRISON TOWNSHIP -- The state Department of Environmental Quality has launched a criminal investigation into the destruction of a rare 11-acre wooded wetland along Lake St. Clair.

The area off Jefferson and Emerick, next to Metropolitan Beach in Harrison Township, was cleared last year by Village Building Co. of Mt. Clemens, for construction of a subdivision.

Wetlands law violations typically are handled in civil court, where offenders face fines by the state. This investigation is being handled criminally, however, because with a criminal conviction the property owners can be ordered to restore the wetlands.

"It's the last wooded wetland on Lake St. Clair," said Todd Losee, an environmental analyst with the Michigan Department of Environmental Quality regional office. "It's very important to the environment. It's a rare habitat."

Joseph M. Polito, Village Building's attorney, contends the company did not violate any state or federal wetlands laws. He points to a 1985 case decided by the U.S. Supreme Court, which he says concluded the 11-acre tract of land was not a wetland.

The state disputes that interpretation of the ruling, and the case could end back in federal court.

Wetlands naturally filter out pollutants before they can reach waterways, such as Lake St. Clair. They also serve as nesting and feeding areas for migratory birds. They especially are vital around Lake St. Clair, which has been plagued with bacterial pollution, like E. coli, over the past decade.

Village Building cleared the area of trees and shrubs last year, but work on the project was suspended in November after the Macomb County Public Works office cited the company for violation of soil erosion requirements.

The state Department of Environmental Quality then moved in and cited Village Building for violating state wetland laws, which led to the current investigation.

The property was part of 80 acres once owned by the late George Short. Short wanted to fill in the 80 acres in the 1970s and build condominiums and a marina. The U.S. Army Corps of Engineers stopped the project, saying the area contained wetlands protected by federal law. A U.S. District judge in Detroit agreed.

Short appealed his case to the 6th U.S. Circuit Court of Appeals in Cincinnati. The court ruled that it wasn't a wetland, but the U.S. Supreme Court overturned that decision.

"The (Supreme) court drew a line and said on one side it is a wetland and on the other



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it is not wetland ... and we are on the side that is not a wetland," Polito said.

Mike Mattera, president of Village Building Co., bought the property in 1997 with the understanding it was not a wetland, Polito said.

"We have a wetlands expert who did a study and unequivocally said this is not a wetland. Why they would start a criminal investigation is beyond me."

Polito said Village Building will allow the state to inspect the property to show that the company didn't violate any wetlands laws. If the state decides laws were broken, the company could take the case to federal court, he said.

Losee maintains that the Supreme Court ruling classified only two acres as non-wetlands.

Hugh Horton, one of several Harrison Township residents involved in efforts to protect the community's marshes, said he watched trees on the property getting ripped from the ground.

"Those were old trees. I'd say 100 years old," said Horton, 59. "This is our worst nightmare. They bulldozed everything."

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