

**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Docket No.: 17-027119**

**Petition of Judy Gentner and  
William Goossens**

**Agency No.: HN6-D480-6K7RD**

**Part(s): 301, Inland Lakes & Streams  
303, Wetlands Protection**

**Agency: Department of Environment,  
Great Lakes and Energy**

**Case Type: Water Resources Division**

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**Issued and entered  
this 21<sup>st</sup> day of October 2020  
by: Paul Smith  
Administrative Law Judge**

**FINAL DECISION AND ORDER**

This contested case concerns an Application submitted by Judy L. Gentner for a permit submitted under Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended. MCL 324.30101, *et seq.* The Water Resources Division (WRD) of the Department of Environment, Great Lakes, and Energy (EGLE)<sup>1</sup> denied the permit application on October 10, 2017. That agency action was challenged through a Petition for Contested Case Hearing filed by Judy Gentner on December 8, 2017.

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<sup>1</sup> The application was originally denied by the Department of Environmental Quality (DEQ). Pursuant to Executive Order 2019-06, the DEQ was renamed the Department of Environment, Great Lakes, and Energy (EGLE) in 2019.

## **JURISDICTION**

Parts 301 and 303 grant the right to a contested hearing to a person “aggrieved by any action ... of the department...” MCL 324.30110(2); MCL 324.30319(2). In her Petition, Ms. Gentner claimed she was aggrieved by the denial of her Application. Consistent with § 30110(2) and § 30319(2), the contested case hearing on March 10, 2020, was conducted under the applicable provisions of the Administrative Procedures Act (APA), 1969 PA 306, as amended. MCL 24.201, *et seq.*

## **PROPERTY RIGHTS PRESERVATION ACT**

Pursuant to the Property Rights Preservation Act, 1996 PA 101, MCL 24.421, *et seq.*, the undersigned, in formulating this Proposal for Decision (PFD), reviewed the Takings Assessment Guidelines and considered the issue of whether this governmental action equates to a constitutional taking of property. Const 1963, art 10, § 2.

## **PARTIES**

Ms. Gentner appeared *in propria persona* at the hearing. Ms. Gentner offered the testimony of William Goossens. Ms. Gentner entered Exhibits A through M.

The WRD, which administers Parts 301 and 303, was represented by Assistant Attorneys General Daniel Bock and Gillian Wener. The WRD offered the testimony of Teresa Sherwood (the employee who reviewed and denied the application) and Joseph

Haas (a district supervisor for the WRD). Through these witnesses, the WRD entered Exhibits 1-21 and 25.

### **FINDINGS OF FACT**

Ms. Gentner is the owner of real property located on Lake James in Denton Township, Roscommon County, Michigan. The property is a rectangular vacant lot located on Atwood Drive with 84 feet of water frontage on Lake James, an inland lake. To stop erosion on her property, Ms. Gentner seeks a permit to construct an 84-foot linear steel seawall along the shoreline of Lake James, place 7 cubic yards of riprap rock lakeward of the seawall, and backfill 16 cubic yards of sand landward of the seawall. (Tr. pp 15, 131; Exhibits 2-3 & 17.). The seawall would connect to existing wooden seawalls on either side of Ms. Gentner's property. A tall seawall to the east of Ms. Gentner's property has been in place since at least 1993. It was either built before a permit would have been required or built without a permit. A low-profile seawall to the west of Ms. Gentner's property, which is essentially a riprap rock shoreline, was built in 2007 pursuant to a permit issued by the WRD. (Tr. pp 17-18, 54-55; Exhibit 2.) Construction of the proposed seawall would result in an occupation of a small area of Lake James along the current shoreline of Ms. Gentner's property behind where the seawall would be built. (Tr. pp 46, 101; Exhibit 2.) The construction of the proposed seawall and the sand backfill would eliminate an emergent wetland area along the shoreline on Ms. Gentner's property. The emergent wetland is 0.01 acres in size.

Obligate plants growing in the wetland area include soft stem bulrush, common cattail, and sweet-scented waterlily. (Tr. pp 17-19, 43-44; Exhibits 4-5, 9, 20.) Although there are seawalls immediately to the east and west of Ms. Gentner's property, seawalls are not typical in the vicinity. Most of the shoreline of Lake James is natural. (Tr. pp 23-24.)

Ms. Gentner filed her Application on July 17, 2017 (Exhibit 2). Teresa Sherwood, an Environmental Quality Analyst for WRD, conducted a site inspection in August of 2017. Ms. Sherwood identified the presence of the emergent wetland during the site inspection. (Tr. pp 15-17, 23; Exhibit 20.) The WRD issued a public notice of the application on August 14, 2017 (Tr. pp 38-39, Exhibit 17). In response to the public notice, the WRD received comments in writing from Mark Boersen, a wildlife biologist employed by the Michigan Department of Natural Resources (DNR); and Scott Heintzelman, a DNR Fisheries Division Unit Manager. (Tr. pp 39-41; Exhibits 18 & 19.) After initially making a determination that the Application should be denied, Ms. Sherwood reached out to Mr. Goossens to discuss a possible modification that would alleviate her concerns. Ms. Gentner stated that she did not wish to consider a modification at that time. (Tr. pp 51-52.) The WRD denied the Application on October 10, 2017 (Tr. p 52; Exhibit 21).

## PART 301 – INLAND LAKES AND STREAMS

### The Statutory Requirements

#### I. Jurisdiction

Under Part 301, the definition of “inland lake or stream” means “a natural or artificial lake, pond, or impoundment....” MCL 324.30101(i). A permit is required when the proposed project involves the construction of a structure on the bottomland. MCL 324.30102(b). “Bottomland” means “the land area of an inland lake or stream that lies below the ordinary high-water mark....” MCL 324.30101(a). Here, the record is clear that the proposed seawall is to be constructed below the ordinary high-water mark (OHWM) (Exhibit 2). Because Ms. Gentner proposes to construct a seawall on the bottomland of Lake James, the proposed activity will be reviewed under the Part 301 permitting standards. MCL 324.30102(1)(b).

#### II. Section 30106

The issuance of a permit under Part 301 is governed by § 30106. MCL 324.30106. Section 30106 first provides that the WRD shall issue a permit if it finds that the project will not adversely affect the public trust or riparian rights. *Id.* The WRD must also consider the possible effects of the proposed activity upon the resource, including uses of the resource for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry. MCL 324.30106. Finally, the WRD must consider the environmental impacts of the proposed project. *Id.* Each of these factors is addressed below.

a. *Public Trust*

Under the common law, the public trust ensures the public's right to navigate, fish, and fowl on the waters of the state. See *Collins v Gerhardt*, 237 Mich 38; 211 NW 115 (1926). The "public-trust doctrine applies only to *navigable* waters and not to all waters of the State." *Bott v Natural Resources Comm'n*, 415 Mich 45, 71; 327 NW2d 838 (1982) (emphasis in original). None of the Parties contends that Lake James is non-navigable, and the record showed that boats use Lake James. Accordingly, I find, as a Matter of Fact, that Lake James is impressed with the public trust.

In analyzing Ms. Gentner's Application, the WRD concluded that the public trust would be adversely affected by the degradation of the water quality and the impact of that degradation on recreational uses such as fishing. Teresa Sherwood also noted that the proposed project would entail an occupation of a small area of Lake James that is currently available to the public for recreation. (Tr. pp 46-47.) This testimony was not rebutted in the record. Because I find that the proposed project would negatively impact both the natural resources of Lake James and the public's recreational use of Lake James, I find, as a Matter of Fact, that the public trust would be adversely affected by the proposed project.

This finding, however, does not end the inquiry on public trust. The Administrative Rules promulgated under Part 301 define "public trust" as follows:

- (i) The paramount right of the public to navigate and fish in all lakes and streams that are navigable.

- (ii) The perpetual duty of a state to preserve and protect the public's right to navigate and fish in all inland lakes and streams that are navigable.
- (iii) The paramount concern of the public and the protection of the air, water, and other natural resources of this state against pollution, impairment, and destruction.
- (iv) The duty of the state to protect the air, water and other natural resources of this state against pollution, impairment, or destruction.

R 281.811(1)(f). Items (i) and (ii) of this Administrative Rule track the public trust standards under common law, as discussed *supra*, while the last two items implicate environmental considerations, which are addressed under the applicable criterion of §30106 and R 281.814, addressed *infra*.

*b. Riparian Rights*

The phrase “riparian rights” is defined in Part 301 as “those rights which are associated with the ownership of the bank or shore of an inland lake or stream.” MCL 324.30101(s). Under common law, riparian rights include the right to use the water for bathing and domestic use, the right to wharf out to navigability, and the right of access to navigable waters. *Hilt v Weber*, 252 Mich 198, 225; 233 NW 159 (1930). See also R 281.811(2).

The activity of constructing a seawall to armor the shoreline constitutes only a minimal occupation of bottomland that does not have any perceptible impact on navigation. *Petition of Clifford T. Riordan, Jr.*, 211 WL 983190, at \*6 (Mich.Dept.Nat.Res.). Here, Teresa Sherwood testified for the WRD that the proposed

project would not adversely affect riparian rights. (Tr. p 46). Therefore, I find, as a Matter of Fact, that the proposed project would not adversely affect riparian rights.

*c. Recreation*

Teresa Sherwood testified that the impact on the fishery of Lake James, brought about by the direct impact of a seawall on fish habitat as well as the degradation of water quality caused by erosion would have a negative effect on the recreational activity of fishing in Lake James (Tr. pp 46-47). This testimony was not rebutted in the record. Based on this testimony I find, as a Matter of Fact, that the proposed project would have a negative impact on the public's recreational use of Lake James.

*d. Fish and Wildlife*

The primary environmental impact of the proposed project would be on the fish and wildlife that use the habitat along the shoreline of Lake James. The evidence presented at the hearing established that the construction of a steel seawall along the shoreline of Lake James with a one foot clearance above the waterline as proposed would create a complete disconnect between the water and the land. Joseph Haas testified that only a very large and "ambitious" turtle would be able to navigate such an obstacle. During the site inspection, Teresa Sherwood observed wildlife actively using the ecologically important transition zone between the water and the land (two Northern Watersnakes and a Green Frog). The existing natural shoreline allows the wildlife to move from water to land and provides cover and protection from predators. Teresa Sherwood testified that eliminating the natural shoreline would eliminate breeding and



nesting areas, cover, and travel corridors. (Tr. pp 21-22, 26-31, 40, 45-46, 109, 122: Exhibits 9-11, 18-19.) This testimony was not rebutted by Ms. Gentner.

In addition to negatively impacting the wildlife, the elimination of the shallow water in the transition zone from water to land would have a negative impact on the fisheries of Lake James because the shallow areas right along the shoreline allow young fish a place to grow and hide from predators. (Tr. pp 40-42; Exhibit 19.) Finally, wave action against the seawall would exacerbate erosion directly in front of the seawall, which would degrade water quality, additionally impacting the fish and native vegetation. (Tr. pp 21-22, 41-42). Again, this testimony was not rebutted on the record.

Based on the evidence showing that the proposed project would have a negative impact on wildlife, the fish of Lake James, and native vegetation along the shoreline, I find, as a Matter of Fact, that it would negatively affect the public trust, which relies on the protection of the natural resources of this state. See R 281.811(1)(f)(iii) and (iv).

*e. Aesthetics*

As a general principal under Part 301, “[a]esthetics is inherently a subjective criterion.” *Petition of Clifford T. Riordan, Jr.*, 2011 WL 983190, at \*7 (Mich.Dept.Nat. Res.) None of the Parties have contended that the proposed seawall will be aesthetically displeasing. I find, as a Matter of Fact, that the proposed seawall is not aesthetically displeasing.

*f. Local Government, Agriculture, Industry and Commerce*

There is no contention that the proposed activity would cause any impact, adverse or otherwise, on local government, agriculture, industry and commerce. Therefore, I find, as a Matter of Fact, that the proposed seawall will not cause any impact on uses of the resource for local government, agriculture, industry and commerce.

*g. Environmental Impacts*

Section 30106 addresses environmental impacts by requiring consideration of a proposed project's "possible effects ... upon the inland lake or stream and upon waters from which or into which its waters flow..." MCL 324.30106. The statute further provides that the proposed project must not "unlawfully impair or destroy any of the waters or other natural resources" or "cause unlawful pollution..." *Id.*; see also R 281.811(1)(f)(iii) & (iv). The record does not support a finding that the proposed project would impair, destroy, or unlawfully pollute the waters of Lake James. Therefore, I find, as a matter of fact, that the proposed activity will not impair or destroy natural resources of the state.

III. R 281.814

In addition to the statutory standards addressed above, Rule 4 of the Administrative Rules also provides as follows:

In each application for a permit, all existing and potential adverse environmental effects shall be determined and the

department shall not issue a permit unless the department determines both of the following:

- (a) That the adverse impacts to the public trust, riparian rights, and the environment will be minimal.
- (b) That a feasible and prudent alternative is not available.

[R 281.814.]

The effects on the public trust, riparian rights and the environment have already been discussed. For the reason stated above, I find, as a Matter of Fact, that the adverse impacts on the environment, in particular the fish and wildlife actively using the habitat along the shoreline of Lake James, would not be minimal.

At the hearing, the WRD presented evidence of feasible and prudent alternatives to the proposed seawall. The stated purpose for constructing the seawall is to stop erosion from Ms. Gentner's property (Exhibit 2). Comparing screenshots from Google Earth taken in 2013 and 2016, the WRD revealed that no significant change in the shoreline contour had occurred during those years. Both photos depicted some slight erosion on the shoreline at the eastern edge of the property without any significant change from 2013 to 2016. The more recent screenshot showed that vegetation had increased along the shoreline. (Tr. pp 29-34, 44-45; Exhibits 12-13.) Using a shoreline energy calculator created by the Wisconsin DNR, Teresa Sherwood determined that Ms. Gentner's property fell into the "low energy" category considering the fetch at Ms. Gentner's shoreline and the lake depth (Tr. 34-39; Exhibits 14-16.) Based on these

calculations and the recent existence of only a slight amount of erosion and an increasing amount of vegetation, Ms. Sherwood testified that a feasible and prudent alternative to a steel seawall would be soft armoring with native vegetation or rock riprap without a seawall (Tr. pp 49-52). Joseph Haas testified that rock riprap would be a good alternative to the proposed seawall (Tr. pp 109, 112). In response to Petitioners' argument that soft vegetation would not be feasible because the Lake James Association treats the shoreline annually to control aquatic plants, Mr. Sherwood testified that the permit allowing for control of aquatic vegetation along the shoreline would only allow chemicals targeted specifically to control invasive species and would not impact native vegetation (Tr. pp 72, 95-98). Based on this record, I find, as a Matter of Fact, that feasible and prudent alternatives exist to address Ms. Gentner's concerns about shoreline erosion without the need to construct a steel seawall.

#### IV. Summary

To summarize the Finding of Facts under Part 301, the activity proposed in the Application adversely affects the public trust but does not adversely affect riparian rights. The proposed project will not cause adverse effects upon uses of the resource for aesthetics, local government, agriculture, commerce, and industry, but will cause adverse effects on uses of the resource for recreation and for fish and wildlife. The proposed activity will not impair, destroy, or unlawfully pollute the waters of the state, but it will impair or destroy natural resources of the state. Finally, the record shows that

feasible and prudent alternatives exist. Therefore, the Application should be denied under Part 301.

## **PART 303 – WETLANDS PROTECTION**

### The Statutory Requirements

#### I. Jurisdiction

The Parties do not dispute that the area where the fill is proposed to be deposited is a wetland contiguous to an inland lake. Accordingly, the proposed activity is regulated under Part 303. MCL 324.30304(a). In Teresa Sherwood's expert opinion, which was unrefuted, the area in question is an emergent wetland present on the edge of Lake James. Because the emergent wetland is present at the water's edge, a permit is required before any fill may be placed on Ms. Gentner's property. MCL 324.30304(a).

#### II. Section 30311(1)

The first inquiry in determining what project can be permitted are the requirements in § 30311(1):

A permit for an activity listed in section 30304 shall not be approved unless the department determines that the issuance of a permit is in the public interest, that the permit is necessary to realize the benefits derived from the activity, and that the activity is otherwise lawful.

MCL 324.30311(1). Under § 30311(1) analysis, there are three requirements necessary for approval of the permit: (a) "the issuance of a permit is in the public interest," (b) "the permit is necessary to realize the benefits derived from the activity," and (c) "the activity

is otherwise lawful.” MCL 324.30311(1). The first requirement necessitates a finding that “the issuance of a permit is in the public interest....” MCL 324.30311(1). Because the general criteria for determining whether the project is in the public interest are contained in § 30311(2), this requirement will be addressed *infra*.

Under the second requirement, I must find that “the permit is necessary to realize the benefits derived from the activity....” MCL 324.30311(1). The benefits of the desired activity in this case are stopping erosion along Ms. Gentner’s shoreline. As discussed above in the analysis of Part 301, Ms. Gentner could realize this benefit through feasible and prudent alternatives, such as increasing the natural shoreline armoring that would not require her to obtain a permit under Part 303. However, a permit would be required even to obtain such alternative relief, because the riprap would be placed below the OHWM. Therefore, I find, as a Matter of Fact, that a permit is necessary to realize the benefits of the desired activity.

The third requirement necessitates a finding that “the activity is otherwise lawful.” MCL 324.30311(1). This standard asks whether the project is, assuming all requisite approval is obtained, lawful. Since no evidence was presented that the activity proposed in the wetland is unlawful, this criterion does not require the denial of the Application.

### III. Section 30311(2)

Determining whether the proposed activity is in the public interest requires a balancing of the benefit against the foreseeable detriments, keeping in mind the national and state concern with protecting wetlands from impairment. MCL 324.30311(2).

Section 30311(2) sets forth nine general criteria, each of which go to the benefit/detriment balancing test that must be considered:

- (a) The relevant extent of the public and private need for the proposed activity

The purpose of the proposed project is to prevent erosion along the shoreline of Ms. Gentner's property on Lake James. This activity is confined to Ms. Gentner's property, and no evidence has been presented of any public need. Because feasible and prudent alternative means exist to prevent the shoreline erosion, there is also no private need for the proposed activity.

- (b) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity

As noted above in the discussion of Part 301, feasible and prudent alternative methods exist to accomplish the expected benefits from the activity.

- (c) The extent and permanence of the beneficial or detrimental effects that the proposed activity may have on the public and private uses to which the area is suited, including the benefits the wetland provides

Construction of the proposed project would permanently eliminate the emergent wetlands on Ms. Gentner's property entirely eliminating their beneficial effect, including the role of the deep-root, native vegetation in protecting against shoreline erosion while providing a necessary habitat for fish and wildlife (Tr. pp 27, 30, 50-51).

- (d) The probable effects of each proposal in relation to the cumulative effects created by other existing and anticipated activities in the watershed

Teresa Sherwood testified that there are other similar emergent wetlands along the shoreline of Lake James in the vicinity of the proposed project and that allowing other similar projects around the lake would result in the elimination of a significant amount of wetlands (Tr. p 48).

- (e) The probable effects on recognized historic, cultural, scenic, ecological, or recreational values on the public health or fish or wildlife

As discussed above in the analysis of Part 301, the proposed project would have a detrimental effect on the health of fish and wildlife who now actively use the habitat along the natural shoreline of Lake James, including the emergent wetland.

- (f) The size of the wetland being considered

The wetland is 0.01 acres in size (Tr. p 43; Exhibit 20).

- (g) The amount of remaining wetland in the general area

The record shows that there are a substantial amount of other similar areas of emergent wetland around the shores of Lake James (Tr. p 48).

- (h) The proximity to any waterway

The wetland is contiguous to Lake James.

- (i) Economic value, both public and private, of the proposed land change to the general area

There is no evidence in the record of the economic value of the proposed land change to the general area.



Balancing § 30311(2) Criteria

Part 303's "public interest" test requires a balancing of the project's benefits against the detriments. MCL 324.30311(2). Along with consideration of the general criteria addressed supra, § 30311(2) mandates "[t]he decision shall reflect the national and state concern for the protection of natural resources from pollution, impairment, and destruction." Based on this record, and particularly the fact that the impacted wetlands area is so small in relation to the amount of other similar wetland areas in the vicinity, the foreseeable detriments do not outweigh the benefits that would accrue solely to Petitioners. Therefore, I find, as a Matter of Fact, that the proposed project is in the public interest.

IV. Section 30311(3)

Section 30311(3) requires that, "[i]n considering a permit application, the department shall give serious consideration to findings of necessity for the proposed activity which have been made by other state agencies." MCL 324.30311(3). There have been no such findings for the proposed activity.

V. Section 30311(4)

Section 30311(4) contains the final criteria, as follows:

A permit shall not be issued unless it is shown that an unacceptable disruption will not result to the aquatic resources. In determining whether the disruption to the aquatic resources is unacceptable, the criteria set forth in section 30302 and subsection (2) shall be considered. A permit shall not be issued unless the applicant also shows either of the following:

- (a) The proposed activity is primarily dependent upon being located in the wetland.
- (b) A feasible and prudent alternative does not exist.

MCL 324.30311(4). Thus, the three main factors for analysis under this statutory provision include a determination of whether (a) there is an unacceptable disruption to aquatic resources, (b) the proposed activity is wetland dependent, and (c) a feasible and prudent alternative does not exist.

*a. Aquatic Resources*

Section 30311(4) first focuses on the disruption to aquatic resources resulting from the proposed activity. To quantify that disruption, the statute requires consideration of the Legislative findings set forth in § 30302, which provides that “[a] loss of a wetland may deprive the people of the state of some or all of the following benefits to be derived from the wetland: ... (ii) Wildlife habitat by providing breeding, nesting, and feeding grounds and cover for many forms of wildlife, waterfowl, including migratory waterfowl, and rare, threatened, or engendered wildlife species.” MCL 324.30302(1)(b)(ii). In this case, Ms. Gentner failed to offer any evidence or argument that the elimination of the emergent wetland would not result in an unacceptable disruption to the aquatic resources. The record showed that the emergent wetland along the shoreline of Lake James was an important habitat for both fish and wildlife. Based on the record, I find, as a Matter of Fact, that the proposed project will cause an unacceptable disruption to the aquatic resource.

*b. Wetland Dependent*

The Administrative Rules provide guidance for the determination of whether the proposed activity is wetland dependent. Specifically, Rule 2a provides, in part, as follows:

The department shall consider a proposed activity as primarily dependent upon being located in the wetland only if the activity is the type that requires a location within the wetland and wetland conditions to fulfill its basic purpose; that is, it is wetland-dependent. Any activity that can be undertaken in a non-wetland location is not primarily dependent upon being located in the wetland.

[R 281.922a(5).]

Unlike a cranberry bog, for example, the construction of a seawall is not a wetland-dependent activity. Therefore, I find, as a Matter of Fact, that a seawall is not a wetland-dependent activity.

*c. Feasible and Prudent Alternatives*

As discussed above in the analysis of Part 301, there are feasible and prudent alternatives that would protect the shoreline from erosion without disturbing the emergent wetland, including natural shoreline armoring featuring additional native vegetation.

VI. Summary

To summarize the Findings of Fact under Part 303, the proposed project is in the public interest, a permit is necessary to realize the benefits derived from the activity, and the activity is otherwise lawful. MCL 324.30311(1). On the other hand, there is an

unacceptable disruption to aquatic resources, the proposed activity is not wetland dependent, and a feasible and prudent alternative to the project exists. MCL 324.30311(4).

### **CONCLUSIONS OF LAW**


Based on the Findings of Fact, I conclude as a matter of law:

1. Ms. Gentner is the proper applicant for the permit, and the application for a permit was properly processed.
2. Because the proposed project involves the construction of steel seawall on the bottomland of Lake James, the proposed project is regulated under Part 301, and a permit is required. MCL 324.30102(1)(b).
3. Because the area where the proposed project would deposit fill material into a regulated wetland, the proposed project is also regulated under Part 303, and a permit is required. MCL 324.30304(a).
4. The WRD has jurisdiction over projects regulated under Part 301 and under Part 303.
5. Lake James is a navigable inland lake impressed with the public trust, and the proposed project will adversely affect the public trust. MCL 324.30106; R 281.811(1)(f).
6. The proposed project will not adversely affect riparian rights. MCL 324.30106; R 281.811(2).
7. The proposed project will not have an adverse effect upon the waters of this state. MCL 324.30106.
8. The proposed project will not cause adverse effects upon uses of the resource for aesthetics, local government, agriculture, or industry and commerce. MCL 324.30106.

9. The proposed project will cause adverse effects upon the uses of the resource for recreation and for fish and wildlife. MCL 324.30106.
10. Feasible and prudent alternatives to the proposed project are available for purposes of both R 281.814(b) and MCL 324.30311(4)(b).
11. Because the foreseeable detriments do not outweigh the benefits of the proposed project, the proposed project is in the public interest. MCL 324.30311(1) & (2).
12. A permit is necessary to realize the benefits derived from the proposed project. MCL 324.30311(1).
13. The proposed project is otherwise lawful. MCL 324.30311(1).
14. The proposed project will cause an unacceptable disruption to aquatic resources. MCL 324.3011(4)
15. The proposed project is dependent on being located in a wetland. MCL 324.30311(4); R 281.922a(5).

### FINAL DECISION AND ORDER

Based on the Findings of Fact and Conclusions of Law, it is **DETERMINED** that the application for a permit submitted by Judy L. Gentner is **DENIED** under the permitting criteria of Part 301 and Part 303 of the NREPA.



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**Paul Smith**  
**Administrative Law Judge**

### PETITION FOR REVIEW

Consistent with § 1317 of the NREPA, this is a Final Decision and Order (FDO) for the EGLE. MCL 324.1317(1). The Parties have the right to file a Petition for Review of this FDO with the EGLE Director within 21 days of receiving this FDO. Upon the timely and

proper filing of a Petition for Review, the EGLE Director will convene an Environmental Permit Review Panel, and this FDO will be treated as a Proposal for Decision.

A Petition for Review must be filed with the EGLE Director in one of two manners: either by mail to Department of Environment, Great Lakes, and Energy at Executive Office, Attn: Director Clark, 525 West Allegan Street, P.O. Box 30473, Lansing, Michigan 48909-7973; or electronically at [EGLE-PermitAppeal@michigan.gov](mailto:EGLE-PermitAppeal@michigan.gov). (See form at [www.michigan.gov/egle](http://www.michigan.gov/egle) website). A copy of the Petition for Review must also be sent to the Michigan Office of Administrative Hearings and Rules (MOAHR) either by mail to: 611 West Ottawa Street, P.O. Box 30723, Lansing, Michigan 48909-7973, or electronically at [MOAHR-EGLE-PermitPanel@michigan.gov](mailto:MOAHR-EGLE-PermitPanel@michigan.gov).

**PROOF OF SERVICE**

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, by electronic delivery, unless indicated otherwise, this 21st day of October 2020.



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