

STATE OF MICHIGAN
ENVIRONMENTAL PERMIT REVIEW COMMISSION

In the Matter of

The Petition of James Nairne
Petitioner,

MOAHR Docket No. 21-003354

DECISION OF ENVIRONMENTAL PERMIT REVIEW COMMISSION

January 18, 2023

This case is before the Environmental Permit Review Panel (Panel) of the Environmental Permit Review Commission as a result of the Petitioner's timely appeal of an Administrative Law Judge (ALJ) Final Decision and Order issued on June 17, 2022 (Order). The Order denied the application for a permit under Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

As set forth in MCL 324.1317(2), the Panel convened on August 17, 2022, December 5, 2022, and January 10, 2023. Meetings of the Panel were conducted consistent with the Open Meetings Act, 1976 PA 267, as amended, and framework provided in MCL 324.1317, incorporating MCL 324.1315.

Consistent with MCL 324.1317(3), the Panel invited the parties to file written briefs to identify areas of concern with the ALJ's Order. A written brief was filed by Petitioner. Written responsive pleadings were filed by the Department of Environment, Great Lakes, and Energy (EGLE) and Petitioner.

On December 5, 2022, the Panel listened to the parties' oral arguments and answers to questions from the Panel prior to beginning deliberations. The Panel determined more time was needed to review the administrative record prior to reaching a decision and voted to reconvene on January 10, 2023, to continue deliberations. On January 10, 2023, the Panel met and discussed in detail the ALJ's Conclusions of Law 1, 2, 4, 5, and 6.¹ Specifically, the Panel found that: Petitioner has attempted to overly narrow the project purpose; Petitioner has the burden to demonstrate that a feasible and prudent alternative does not exist; properties owned by a corporation, of which the Petitioner is the 100% shareholder, may be considered in the feasible and prudent alternative analysis; the proposed project is not in the public interest; and because there are feasible and prudent alternatives, the proposed project is not permissible.

Consistent with MCL 324.1317(4), after review and discussion of the brief, responsive pleadings, oral argument, and the administrative record in this matter, the Panel unanimously decided to ADOPT the ALJ's Conclusions of Law 1, 2, 4, 5, and 6 in whole on the grounds that they are consistent with the regulatory framework and based on sound factual information contained in the record.

This opinion is the final decision of the Department of Environment, Great Lakes, and Energy, and is subject to judicial review as provided under the Administrative Procedures Act, 1969 PA 306, MCL 24.201 to 24.328, and other applicable law.

¹ Conclusion of Law #3 was not challenged by the Petitioner.

Emily Cord DuThink

Emily Cord-DuThink, Chair

Bradley Venman

Bradley Venman, Commissioner

Matthew J. Germane

Matthew Germane, Commissioner