



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
LANSING



LIESL EICHLER CLARK  
DIRECTOR

October 8, 2021

VIA EMAIL

Mr. William Brown

[REDACTED]  
Spring Lake, Michigan 49456

Dear Mr. Brown:

After reviewing the enclosed Environmental Permit Panel's (Panel) Meeting Summary and Recommendations regarding the Petition for Permit Application Review received on May 26, 2021, I have determined that I do not concur with the Panel's recommendations.

A review by the Panel was requested under the provisions of MCL 324.1315, which allows for a Panel review prior to a permit being approved or denied. The Panel's review under this portion of the statute results in a recommendation to the Director of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and is not binding on the agency.

The issue in dispute at this time is whether there is a difference in impact on aquatic resources between a dock with a width of 4 feet versus 5 feet and whether feasible and prudent alternatives exist.

In the Michigan Constitution and Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, the State of Michigan and EGLE are charged with protection of the Public Trust. Section 30106 of Part 301 prohibits EGLE from issuing a permit if it finds that the structure or project will adversely affect the public trust and requires EGLE to ensure that projects will not inhibit the public's right to navigation, hunting, and fishing in these waters. Rule 4 (R 281.814) of the administrative rules under Part 301 states:

Rule 4. 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.

Following the Panel's review, there does not appear to be a dispute that the proposed dock would create an additional 420 square feet of shaded area. It was the determination of the Panel that the impact from this increased shading would be minimal. This determination was made in contrast to studies that EGLE staff had submitted for the consideration of the Panel that "recommend restricting the size of dock structures" due to the impacts of shading. In addition, this determination was made in contrast to a Michigan Department of Natural Resources policy that states that marina siting and design are considered two of the most significant factors influencing water quality. The document goes on to list Best Management Practices to follow to reduce these impacts that include minimizing the disturbance to wetlands and submerged aquatic vegetation; limiting shading of aquatic vegetation; and minimizing dock width, length, and height.

Even if the Panel's determination of minimal impact is adopted, Rule 4 provides a two-part test for which both parts must apply in order for a permit to be issued. As a result, evaluating whether feasible and prudent alternatives exist is essential to this decision.

The record reflects that the most commonly issued permits by EGLE are pier widths of 3 feet or 4 feet and that 5-foot pier width approvals are rare. This is acknowledged by the Panel in their recommendation. In initial conversations with the applicant, EGLE had identified a 4-foot pier width as a reasonable alternative to a 5-foot pier width, which is an increase in width from the previously permitted 3-foot pier width.

It is the position of EGLE's Water Resources Division that feasible and prudent alternatives to the project, as proposed, are available that will minimize adverse impacts, including cumulative impacts and impacts to the public trust. These include:

- The installation of narrower, 4-foot wide, floating structures, which the applicant has identified as commercially available.
- Alternative hinge configurations to allow the attachment of narrower structures to the existing fixed head pier.
- Alternative finger pier designs, such open pile docks that would address the stability issues identified by the applicant with narrower floating structures.

All of these alternatives are consistent with designs authorized in other areas on permitted marina projects. Furthermore, 4-foot wide walkways (less than 200 feet in length) are Americans with Disabilities Act (ADA) compliant. EGLE has not received public comments regarding the safety of 4-foot docks during its numerous public comment periods for the Minor Project Category for Docks.

It is the applicant's responsibility to demonstrate they have evaluated prudent and feasible alternatives. It is the legal obligation of the department to not issue a permit if feasible and prudent alternatives are available. Because it has not been demonstrated by the applicant that potential alternatives, such as those identified above, are not

Mr. William Brown

Page 3

October 8, 2021

available, the Panel decision is rejected. This decision does not preclude the applicant from pursuing other applicable legal appeals processes afforded by law following a permitting decision made by EGLE.

If you have additional questions regarding this matter, please contact Ms. Amy Epkey, Senior Deputy Director, at 517-242-7407 or EpkeyA@Michigan.gov.

Sincerely,



Liesl Eichler Clark  
Director  
517-284-6700

Enclosure

cc/enc: Mr. Tony Anthony, Environmental Permit Review Commission  
Mr. Jeff King, Environmental Permit Review Commission  
Mr. Evan Pratt, Environmental Permit Review Commission  
Mr. Robert Reichel, Michigan Department of Attorney General  
Mr. Aaron B. Keatley, Chief Deputy Director, EGLE  
Ms. Amy Epkey, Senior Deputy Director, EGLE  
Ms. Teresa Seidel, EGLE  
Mr. Brad Pagratis, EGLE  
Mr. Jerrod Sanders, EGLE  
Mr. Luis Saldivia, EGLE  
Ms. Audrie Kirk, EGLE  
Ms. Dale Shaw, EGLE

**ENVIRONMENTAL PERMIT PANEL**  
 Petition for Permit Application Review  
 Meeting Summary and Recommendations

*This information is required by Section 1315 of Part 13 (Permits) of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended*

<b>1. MEETING DATE</b>	
July 12, 2021 July 31, 2021	
<b>2. MEETING LOCATION</b>	
7-12-21 – Virtual Teams Meeting 7-27-21 – Michigan Department of Environment, Great Lakes, and Energy (EGLE), Constitution Hall, ConCon A and B Conference Room, Atrium Level, South, Lansing	
<b>3. PETITIONER</b>	
Mr. William Brown – Petitioner Mr. John Cavedo – President of the Bayou Meadows II Condo Association	
<b>4. ENVIRONMENTAL PERMIT PANEL MEMBERS</b>	
Tony Anthony (Chair) Jeff King Evan Pratt	
<b>5. EGLE STAFF</b>	
<u>Panel Staff:</u> Amy Epkey – Senior Deputy Director - EGLE Brad Pagratis – Information Management Division, Director, EGLE Robert Reichel - Assistant Attorney General, OAG Dale Shaw – Regulatory Affairs Officer, EGLE  <u>Water Resources Division:</u> Luis Saldiva – Field Operations Manager Audire Kirk – Grand Rapids District Office Supervisor Bonnie Broadwater – Environmental Quality Analyst Christopher Conn – Environmental Quality Specialist	
<b>6. DOCUMENTS SUBMITTED TO THE PANEL</b>	
Submitter	Description
Petitioner	<ol style="list-style-type: none"> <li>1. Petition for Permit Application Review.</li> <li>2. Panel meeting presentation slides.</li> <li>3. Evaluation of Feasible and Prudent Alternatives, dated July 26, 2021.</li> </ol>
Water Resources Division	<ol style="list-style-type: none"> <li>1. Summary document on the status of the application attached to an email dated 7-7-21 with 4 additional attachments titled:</li> </ol>

- Summary and Citations, Application File, Additional Info Received After Petition and Email Correspondence After Petition.
2. Email titled: FW: ANC Permits in Petty's Bayou, Spring Lake, Ottawa County including the attachments titled: ANC9805134 Spring Lake, ANC9805134 Spring Lake Amendment 1, email titled FW: Petty's Bayou/Spring Lake, and Garrison et al 2005 Document.
  3. Email titled: Follow up to EPRC – William Brown-Bayou Meadows with the attachments titled: FW: ANC Permits in Petty's Bayou, Spring Lake, Ottawa County, wrd-policy-003-alternatives\_413715\_7, and prr-instructions-following-epa-review (01).

**7. SUMMARY OF DISCUSSION**

The panel discussed whether Part 303 applied, particularly with respect to alternatives analysis methodology. The panel and EGLE representatives agreed that the permit was strictly Part 301. EGLE clarified that 301 application Rules did not clearly address the nature/method of alternatives, therefore 303 was referenced as example guidance (for the petitioner).

Bob Reichel clarified the panel decision is typically to accept, modify, or reject an EGLE decision. Mr. King sought clarification on the panel role since a decision had not yet been made, though he noted EGLE had provided a position statement.

Further discussion led to the clarification that the role of the panel today would be to provide a recommendation to approve, modify or reject the permit. The statute allows a petitioner to request a hearing prior to a decision, with the EGLE Director's decision final. Therefore the panel is providing a recommendation to the EGLE Director that may or may not be implemented.

Pratt provided a suggestion that the permit was warranted based on the history of this permit and the extent of human disturbance to the greater complex of waterways that are interconnected as well as Pettys Bayou, particularly in relation to the relatively small dock/pier areas in question.

Pratt noted that the applicant had made a good faith effort to address prudent and feasible alternatives in writing. He further noted that the particulars and context of this situation (including an original permit that allowed a second similar header dock and finger piers which were never constructed) appeared to present a weak legal case that could absorb valuable EGLE staff resources with little apparent benefit or consequence independent of potential outcomes. He stated that defending a denial would have a poor risk-reward profile for EGLE and the local environment.

Chair Anthony discussed the areas of concern raised by the 'Garrison' document (PUB-SS-1006-2005) regarding biota, macrophytes, and habitat. He also discussed the safety issues noted in the alternatives analysis. He then referred to the details of Garrison, (provided by EGLE) noting that the study did not support EGLE's concern that wider finger piers would have a negative impact on habitat or the environment. Specifically, Chair Anthony pointed out that Garrison concluded that the 4.3' wide piers in that study were found to have NO impact, rather the study asserted that 13' x13' "decks" attached to docks (or finger piers) were found to have a negative impact. Therefore he concluded that EGLE would have to provide different information to demonstrate impact to the public trust or the environment.

Pratt noted that the materials provided depicted the marina area with a red rectangular "box" around the header pier and finger piers. He noted that this generally depicted the area of impact to the public trust and that area was in no way increased or otherwise impacted by the use of 5' finger piers vs other sizes.

King noted that the panel should consider the “commensurate” nature of any potential impacts and indicated that impacts appeared “minimal”, if any. He supported Pratt’s comments toward not dedicating additional resources toward parsing out what the panel already found to be “minimal” impact and suggested EGLE look to find basis for approval in the submittal of the alternatives analysis. As noted above, Part 301 is not as specific as Part 303 for what constitutes an acceptable alternatives analysis.

Chair Anthony and King both acknowledged that the alternatives analysis was prepared by laypersons with reasonable intent and focus but not presented in the same manner that they (and likely EGLE staff) were familiar with from their consulting experience. However, as above, it was noted that the panel did not envision changing the recommendation below if this document was modified, as the document generally explained what alternatives had been explored and why the proposed alternative was selected. Revisions seemed somewhat onerous given the conclusion of the panel that based on the information provided by EGLE, the impact was “minimal”.

Pratt asked if requests for wider finger piers was common, and EGLE indicated that had not been the case to date. The panel briefly discussed the possibility that approving 5’ wide floating piers might set a precedent. The general agreement was first that the panel’s understanding was that permits were issued when in compliance with the statute, not by any precedent set in a different situation. And secondly that pricing of wider docks and piers likely meant smaller marinas would seek the smallest size/cost that would meet their needs, while commercial marinas would generally seek to maximize boat slips and are therefore also motivated to minimize finger pier widths. It was noted that 5’ wide piers are rare, with 3’ to 4’ being the most common widths and most typical in permit applications based on EGLE comments.

Based on this discussion, the panel generally agreed that the applicant had demonstrated minimal impact and otherwise met the intent and specific language of the statute.

#### **8. PANEL RECOMMENDATIONS TO RESOLVE PERMIT APPLICATION CONCERNS**

**The panel recommends approval of up to 5’ wide finger piers for the following reasons:**

- 1. EGLE presented a position for denial based on a concern of damage to the environment by additional shading. However, the document provided (Garrison, 2005) found no impact from the 4.3’ piers studies. See Discussion above for additional details.**
- 2. No additional information on impacts (site specific or otherwise) was provided such as:**
  - a. Comments by the DNR**
  - b. Actual field data for this location**
  - c. Other relevant research to support anything more than minimal impact**
- 3. The area of the piers does not extend beyond the pier area of the original permit. (no added impact to public trust)**

#### **9. ADDITIONAL PANEL RECOMMENDATIONS** *(Not required)*

