



GRETCHEN WHITMER
GOVERNOR

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

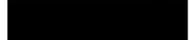


LIESL EICHLER CLARK
DIRECTOR

April 18, 2022

VIA E-MAIL

Jenifer Page



Whitehall, MI 49461

Dear Jenifer Page:

After reviewing the enclosed Environmental Permit Panel's Meeting Summary and Recommendations regarding the Petition for Permit Application Review received on January 26, 2022, I agree with the Panel's recommendations. I have directed the Department of Environment, Great Lakes, and Energy's (EGLE) Water Resources Division staff to continue to work on the resolution per the recommendations.

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

Sincerely,

Liesl Eichler Clark
Director
517-284-6700

Enclosure

cc/enc: Murray Borrello, Environmental Permit Review Commission
Lei Meng, Environmental Permit Review Commission
Evan Pratt, Environmental Permit Review Commission
Aaron B. Keatley, Chief Deputy Director, EGLE
Amy Epkey, Senior Deputy Director, EGLE
Teresa Seidel, EGLE
Brad Pagratis, EGLE
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

1. MEETING DATE	
March 11, 2022	
2. MEETING LOCATION	
Michigan Department of Environment, Great Lakes, and Energy (EGLE), Constitution Hall, Lee Walker Conference Room, Lansing.	
3. PETITIONERS	
Jennifer Page Ed Martel – Representative Ronald Kaufman - Representative	
4. ENVIRONMENTAL PERMIT PANEL MEMBERS	
Murray Borrello – Chair Evan Pratt Lei Meng	
5. EGLE STAFF	
<u>Water Resources Division</u> Christopher Conn Nancy Cuncannan Audrie Kirk Kate Lederle	
<u>Panel Staff:</u> Robert Reichel Brad Pagratis Dale Shaw Stephanie Fredline	
6. DOCUMENTS SUBMITTED TO THE PANEL	
Submitter	Description
Petitioner	1. EPRC Petition (includes several attachments) 2. Page Petition - Hearing Brief 3. Page Petition - Buford Case 4. Page HPC-CVTS-X3922 more exhibits email
Water Resources Division, EGLE	1. Statement to EPRC

7. SUMMARY OF DISCUSSION

This hearing focused on several points or questions as part of the complaint filed by the petitioners. First, was there effective and timely communication between EGLE and the petitioners? Second, what were the specific issues of concern related to the regulatory framework(s) outlined in this case? Third, what, if anything can be resolved given the testimony and documents presented?

The petitioners and EGLE were given an equal, specified amount of time to summarize their case and add any information not already available to the panel. Petitioners had a two-page document that was submitted, but not in time to be printed and dispersed at the hearing. Panel took a short recess, the document was copied and presented to the panel for their consideration.

A discussion then ensued in which panel members questioned both petitioners, their representatives, and EGLE representatives on specific issues. During this discussion, it was clear that one salient issue of agreement emerged - the preservation and stabilization of the dune. This was a common issue/goal for both petitioners and EGLE. The regulatory language EGLE must follow prevents a remedy commensurate with petitioners' plan. In short, a partial wall constructed on the lakeward side of the dune crest years ago cannot be extended without being in violation of the Critical Dunes Act, Part 353. Exceptions to this determination of the Critical Dunes Act based on case law were presented by petitioners' legal team, and were evaluated by the panel. Panel deferred to the decision made by EGLE's legal experts on this issue.

After significant discussion, it was clear that two questions emerged that the panel must try to resolve: 1. Does petitioners' proposed remedy exemplify need for a special exemption under the Critical Dunes Act, Part 353. 2. What, specifically is entailed in EGLE's proposed remedy about which petitioners are particularly apprehensive? Also pertinent is that the panel found that all of the frontage (bluff) is park property owned by the association and it is unclear as to what the association's opinion is on this dispute.

Through extensive discussion, it was obvious that, EGLE's interpretation of the Critical Dunes Act, Part 353 was salient. In short, despite the existence of an old, partial wall constructed lakeward of the dune crest, any additional construction of same would violate the language of the act under no uncertain terms, and possibly compromise the dune structure itself. Additionally, it was obvious to the panel that petitioners were unclear as to the specific manner (or ways) in which EGLE's proposed remedy may be executed. Therefore, it is possible that further visualization of EGLE's remedy - in which the wall would be buried and flush with the natural grade of the land may not pose the perceived obstacle petitioners' were envisioning.

The panel was in agreement with the petitioners in that improving dune stability is of utmost importance, and referred to EGLE's proposal (given in discussion), to study different ways in which this may be accomplished over and above the remedy in question.

8. PANEL RECOMMENDATIONS TO RESOLVE PERMIT APPLICATION CONCERNS

The panel is in agreement with EGLE's interpretation of the Critical Dunes Act Part 353, that in order to avoid special exception, petitioners would need to agree to a proposed remedy consistent with Part 353. Panel also recommends EGLE continue to work with the applicant on the alternate proposed and provide more detail of the construction to the petitioners, of a remedy towards a common goal of dune stability and minimization of impact to the property in question.

9. ADDITIONAL PANEL RECOMMENDATIONS *(Not required)*

The panel acknowledges the important fact that dune stability and preservation has been upset by over a century of construction, natural forces, and climate change. Therefore, finding a remedy

that both stabilizes the dune without further degrading the dune itself is of paramount importance. This is the reasoning behind the development and passing of the Critical Dunes Act.

Unfortunately, human intervention and lifestyle are many times at-odds with the Critical Dunes Act - by violating specific language, or the intent of the Act itself. We feel hopeful that with further discussion and cooperation between EGLE, the petitioners, and competent, qualified engineers, the suggested remedy proposed by EGLE may actually pose less obstacles to petitioners' lifestyle than originally thought and promote a more stable dune structure.