



GRETCHEN WHITMER
GOVERNOR

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



LIESL EICHLER CLARK
DIRECTOR

June 17, 2022

VIA EMAIL AND U.S. MAIL

Ron Swick

[REDACTED]
Mears, Michigan 49436

Dear Ron Swick:

After reviewing the enclosed Environmental Permit Panel's Meeting Summary and Recommendations regarding the Petition for Permit Application Review received on February 10, 2022, I agree with the Panel's recommendations.

If you have any questions regarding this matter, please contact Aaron B. Keatley, Chief Deputy Director, Department of Environment, Great Lakes, and Energy (EGLE), at 517-284-6709 or KeatleyA@Michigan.gov.

Sincerely,

Liesl Eichler Clark
Director
517-284-6700

Enclosure

cc/enc: Robert K. Kaufman, Petitioner's Representative
Edwin C. Martel, Petitioner's Representative
Evan Pratt, Environmental Permit Review Commission
Emily Cord-DuThinh, Environmental Permit Review Commission
Bradley Venman, Environmental Permit Review Commission
Robert Reichel, Department of Attorney General
Aaron B. Keatley, Chief Deputy Director, EGLE
James Clift, 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 25, 2022	
2. MEETING LOCATION	
Michigan Department of Environment, Great Lakes, and Energy (EGLE), Constitution Hall, Lee Walker Conference Room, Lansing.	
3. PETITIONERS	
Ron Swick Edwin Martel – Representative Robert Kaufman - Representative	
4. ENVIRONMENTAL PERMIT PANEL MEMBERS	
Evan Pratt – Chair Emily Cord-DuThinh Bradley Venman	
5. EGLE STAFF	
<u>Water Resources Division</u> Christopher Conn Audrie Kirk Joshua Crane	
<u>Panel Staff:</u> Robert Reichel Brad Pagratis Dale Shaw Stephanie Fredline Meredith Prince	
6. DOCUMENTS SUBMITTED TO THE PANEL	
Submitter	Description
Petitioner	<ol style="list-style-type: none"> 1. EPRC Petition (includes several attachments) 2. Swick Brief 3. Swick Correction requests 4. Vertical Sea Walls 5. Vertical Sea Walls 2 6. WRP005883 Sheet with stone Louis S 7. Swick HPB-6BA1-BCZEV.msg

Water Resources Division, EGLE	<ol style="list-style-type: none"> 1. Swick EPRC Statement 2. WRD-Minor-Project-Categories
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7. SUMMARY OF DISCUSSION

The Petitioners submitted a permit application for replacement of the 30' long failing sea wall at the shoreline of their property on Silver Lake. The application proposed to install a vinyl sea wall in front of the existing wooden sea wall. Inclusive of this 30' portion, this lake has 1.39 miles of existing sea walls which were constructed prior to current regulations. The Petitioners say that scouring at the base of the sea walls has not been a problem on this lake, because sand blown in from the Lake Michigan sand dunes across the lake replenishes the lake bottom each year along the shoreline and reduces wildlife habitat. The Petitioner says that EGLE's suggested mitigation requirements would cause him to lose his historical access and use of the sea wall to moor his smaller boats.

As summarized during the hearing, EGLE's Water Resources Division (WRD) has only denied about 0.9% of the permit applications on a statewide basis in the past two years and has not yet reached a decision on this permit application. EGLE and the Petitioner are seeking guidance from EPRC. Lake bottom lands and the lake water are natural resources which belong to the state and the public and are protected by laws administered by EGLE. Construction and replacement of sea walls requires a permit under Part 301. The Panel discussed how Michigan's inland lakes provide many "ecosystem services" (benefits received from nature) to the lakefront riparian owners and all Michiganders. These ecosystem services include clean water, stormwater management, ground water recharge, and habitat for fish and other wildlife.

The Panel agreed that EGLE has the authority and obligation to regulate this replacement sea wall under Part 301. In the time since the existing sea walls were constructed, research has indicated that sea walls harm water quality and fish and wildlife populations and other natural resources, increase erosion and sedimentation and wave action. Objecting to incorporating BMPs into this project "because everyone else has sea walls" is like speeding "because everyone else is speeding".

EGLE and MSU Extension offer many resources to homeowners and small businesses to incorporate attractive BMPs into shoreline protection and landscaping. One example is discussed in Section 9 below. Best Management Practices (BMPs) suggested by EGLE staff for this construction project could include a combination of riprap and woody material to reduce scouring and provide wildlife habitat and egress, and shoreline landscaping with deep rooted native plants to improve water quality, increase terrestrial and aquatic habitat, and reduce erosion.

It was noted during the hearing that the approvable option offered by EGLE staff is not the only approvable solution, and it is the petitioner's responsibility to choose their proposed option.

Habitat on Silver Lake was lost when the existing sea walls were constructed. The Petitioner stated that fish populations are declining. EGLE stated that this shoreline lacks woody debris, which is essential habitat for fish to reproduce. EGLE expects fisheries will improve if woody debris is added to the shoreline to restore habitat. EGLE's mission is to "protect Michigan's environment and public health by managing water, land" and other natural resources, taking "a strategic approach that accounts for the impacts of today's actions on future generations." Thus, the Panel acknowledges EGLE has the authority to restore habitat "within the bounds of state and federal laws and informed by science" (<https://www.michigan.gov/egle/0,9429,7-135-3306-276848--,00.html>), to improve fisheries, other wildlife habitat and natural resources.

The Petitioner expressed concerns that the toe stones suggested by EGLE could provide habitat for invasive zebra mussels. EGLE staff replied that available anecdotal information suggest that zebra mussels don't attach to rocks in high wave energy environments. The Panel suggests that it may be possible for the Petitioner to address this concern by considering using woody debris or deep-rooted native plants in place of some or all of the toe stones.

Part 301 allows EGLE to grant extensions for permit application modifications up to 120 days. EGLE suggested what was discussed during the hearing as an interim 30-day extension to move the project along. The Panel suggested EGLE modify its standard language regarding extensions to clarify that applicants have the right to extensions up to 120 days, but EGLE could respond more quickly to shorter extensions.

8. PANEL RECOMMENDATIONS TO RESOLVE PERMIT APPLICATION CONCERNS

The Panel supports EGLE's efforts to require appropriate best management practices (BMPs) on new and replacement seawall permit applications, toward a goal of protecting and restoring Michigan's natural resources, water quality and wildlife habitat, including fish populations.

The Panel encourages EGLE to be flexible with the BMPs referenced in the minor permit guidance document. EGLE may consider allowing for a portion of the seawall to be constructed with minimal to no toe stones allowing for some broadside mooring of small boats such as kayaks and rowboats. Rationale may include the unique site conditions discussed at the hearing on March 24, 2022, such as high sand sedimentation rate, minimal scouring, age, length and appropriate transitions with the existing adjacent seawalls.

The Panel recommends EGLE consider modifying the response language for extension requests that are consistent with statutory language requiring EGLE to grant up to 120 days extension, if requested. We suggest making clear the applicant has the right to request an extension but if the applicant is able to respond in a shorter time frame with a resubmittal, EGLE can provide a decision more quickly.

9. ADDITIONAL PANEL RECOMMENDATIONS *(Not required)*

As described in Natural Shoreline Landscapes on Michigan's Inland Lakes, A Guidebook for Property Owners (MSU Extension, 2011, https://miwaterstewardship.org/wp-content/uploads/2019/08/Natural_Shoreline_Landscapes_on_Michigans_Inland_Lakes_Guidebook_for_Property_Owners_WCAG.pdf), "With the state's abundance of inland lakes, waterfront property is important to both residents, the health of the lakes and the wildlife they support. The shoreline and shallow water areas of a lake provide essential habitat for many fish and wildlife species. Overdeveloped shorelines cannot support the fish, wildlife and clean water that attract Michigan property owners to the waterfront. High-impact lakefront landscaping, with lawn to the water's edge, creates problems for the lake ecosystem and waterfront owners. Rainwater carries lawn fertilizer, pet waste, leaves and grass clippings into the lake, which can promote algal growth and the seasonal blooms that cause "green water". Plants with shallow roots, including grass, allow the shoreline to erode easily. Perfectly manicured lawns attract nuisance wildlife species such as geese. Alternative landscaping solutions can create attractive waterfronts that allow the use of the shoreline while mimicking the wild shoreline of an undeveloped lake. Research indicates that high-impact shoreline development can negatively affect lake ecosystems and destroy fish and wildlife habitat....The two most destructive actions causing impacts on the lake ecosystem are native vegetation removal and hardening of the shoreline...."

"A lake's health is a reflection of how the [surrounding] land and the stormwater runoff into the lake are managed. The effects can either benefit or harm a lake. It is impossible to change one characteristic without altering another part of the ecosystem. For example, removing all rooted aquatic plants will have a negative impact on the fish population. ... A vegetated shoreline will provide the root structure that stabilizes soils against erosion, wave action and ice push... An often overlooked component of a natural shoreline is woody debris, such as downed trees and branches, in the water. The woody debris provides safe areas for fish and substrate for the aquatic life stages of insects, such as mayflies. Healthy Michigan inland lakes provide habitat for a very large number of fish and other wildlife species, so it is important to protect and/or re-create these areas..."

“Many shorelines already have significant sections of shoreline with hard-armored seawalls. Though these seawalls cause harm to the lake ecosystem, it is understandable that certain restrictions, such as wave energy and allowable space do not allow for their removal. If you already have a seawall that is in excellent condition, you can reduce its negative effects. A plant buffer adjacent to the seawall can offer many habitat benefits. Riprap placed in front of the seawall can help to dissipate wave energy and reduce the scour effects of waves. ...A seawall in poor condition could be replaced with a more natural solution.”

It is apparent that EGLE has authority to require BMPs for shoreline permits, including the Swick petition. The resources provided to the petitioner are consistent with EGLE guidance documents, specifically resources provided by MSU Extension and other research. Certified Natural Shoreline Professionals can design solutions that are the most time and cost effective. The Panel cannot dictate what combination of landscaping and hardscaping the owner may select to meet EGLE's statutory requirement to protect and restore Michigan's natural resources. The Panel encourages the applicant to design a solution using a combination of these BMPs of their choosing.