



GRETCHEN WHITMER
GOVERNOR

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



LIESL EICHLER CLARK
DIRECTOR

June 30, 2022

VIA EMAIL

David Slikkers



Holland, Michigan 49243

Dear David Slikkers:

After reviewing the enclosed Environmental Permit Panel's Meeting Summary and Recommendations regarding the Petition for Permit Application Review received on February 25, 2022, I agree with the Panel's recommendations. I have directed Department of Environment, Great Lakes, and Energy's (EGLE) Water Resources Division staff to start work on the resolution per the recommendations.

If you have additional questions regarding this matter, please contact Aaron Keatley, Chief Deputy Director, at 517-284-6709 or KeatleyA@Michigan.gov.

Sincerely,

Liesl Eichler Clark
Director
517-284-6700

Enclosure

cc/enc: Bryan Burroughs, Environmental Permit Review Commission
Lori Myott, 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

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

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 April 7, 2022	
2. MEETING LOCATION Michigan Department of Environment, Great Lakes, and Energy (EGLE), Constitution Hall, Lee Walker Conference Room, Lansing.	
3. PETITIONER David Slikkers	
4. ENVIRONMENTAL PERMIT PANEL MEMBERS Bryan Burroughs (Chair), Lori Myott, Tony Anthony (absent)	
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. Slikkers Petition - includes several attachments submitted with the petition and a video.2. 21201480RIPARIAN1.pdf3. 21201480RIPARIAN2.pdf

<p>Water Resources Division, EGLE</p>	<ol style="list-style-type: none"> 4. Lake Macatawa No Wake Zone.1969.2019.pdf 5. Wave Action.docx 1. Slikkers EPRC Statement Final.pdf 2. Lake_Mac_Wave_Atts_V2.pdf 3. Padnos Comment Letter (3).pdf 4. Park Twp response letter – 2077 Lakeway Dr – 202-03-2022 (2).pdf
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7. SUMMARY OF DISCUSSION

The panel heard statements from the petitioners and from EGLE staff concerning the pending permit application for dock expansion for commercial use by Tiara Yachts, on Lake Macatawa. Panelists asked numerous questions of both parties to clarify information presented and to further clarify their understanding of key elements or perspectives of both parties.

The proposed project represents the best interests of the applicant, for the preferred commercial uses of the site, current and anticipated. The site is intended to serve as dockage for relatively large boats (40-60' length and up to 5' draft) for purposes of performance testing and display, and for convenient on-the-water access for staff and clients. The project proposes to enlarge the existing structure both in surface area of the lake occupied and length of the site extending into the lake from shore, expanding widths of the docks, adding wave attenuator features, enclosing the dockage except for one opening, and dredging the entirety of the proposed dock area to relatively deep water depths. The petitioner has asserted that all of those elements are necessary to provide a safe environment for its employees and customers. The panel did not ascertain or find for itself formally, the extent to which each of those proposed elements are truly necessary as opposed to preferred.

EGLE staff reviewed the required elements of review under the relevant permitting framework, including individual and cumulative impacts to lakes, as well as natural resource impacts, public trust rights, and neighboring riparian rights. EGLE staff presented the nature of their concerns for many individual elements of the proposed design, in light of the general review criteria. Panelists did not ascertain, from the information presented, EGLE's anticipated permitting decision, nor a clear and specific understanding of how EGLE would interpret specific individual proposed design elements as permissible or non-permissible.

Riparian Rights/Interests. The panel received information and public comments that identify asserted claims of riparian rights interference caused by the proposed project design. Riparian interest area surveys were provided which indicate surveyors interpretations of how a court might delineate those areas. Surveys indicated discrepancies between these interpreted boundary delineations, and comments and objections from possibly affected riparians. It's the panel's understanding from what was provided, that only a court can formally

delineate and clarify these boundaries and that has not been done in this case. Further, EGLE lacks jurisdiction to delineate those. Given the claims presented, it is likely that one of two pathways is possible; 1.) petitioner seeks a court determination of these boundaries, or 2.) the petitioner reaches an agreement with the possibly affected riparians to resolve the disputes.

Public Trust rights and uses. Two key issues with the proposed project design related to public trust considerations include the extension of the dock further out into the lake, and the proposed enclosed nature of the new dock configuration. The extension further lakeward, would occupy a greater amount of lake area, and possibly restrict public navigation and use of that area. The current dock is a fairly traditional configuration with main branches with secondary docks radiating from it. This configuration allows angling public to still reasonably be able to maneuver around it, and cast close to it, continuing to fish the lake area even if modified. The proposed closed configuration, would pose navigability, safety, and liability issues for public anglers wishing to access and fish the interior portions of the enclosed dockage, thus restricting their use of that public water for angling.

Natural resource concerns were raised, largely arising from the extent of the proposed structure, underwater structures associated with wave attenuators, and the proposed dredging depths throughout the entirety of the proposed dock area. Cumulative impacts of existing and future permit requests on these lake resources must be considered, and assessment of prudent and feasible alternatives is required, where increased impacts would be predicted due to the proposed project. Panelists did not identify the permissibility conditions for each individual aspect of the proposed project (dock size, slip number, configuration, wave attenuating physics, or how much of the dock needs to be dredged to which depths to reasonably accommodate the desire for cleaning boats in water at the site). The panel did find that the concerns generally identified by EGLE had merit. If the petitioner is unwilling to identify prudent and feasible alternatives to some proposed project design elements, EGLE will have to determine their decision on the permit application as it was proposed. The panel did feel that "room for compromise" was evident, and that those opportunities were likely significant enough to reach a permissible project that still benefits the petitioner.

The panel did not make recommendations specifically addressing project design elements, but one component is a useful illustration. The petitioner proposes to dredge the entirety of the dock area to a depth that would allow 5' draft of boats, plus 4' of additional water depth for safe underwater cleaning of boats, plus their anticipated future drops in Lake Michigan water levels anticipated, to facilitate cleaning of the boat hulls without removing them from the water. A potential compromise reflecting a prudent and feasible alternative to minimize resource impacts, might involve only dredging to those depth at a few of the most lakeward boat slips (where boats could be moved to those positions for the periodic hull cleaning), thus reducing the extent of the lake shore area dredged to the most extensive depths proposed throughout the entire dock area.

The panel was presented information from the petitioner indicating that the proposed design is the only acceptable design at this time. EGLE presented numerous valid concerns it has with different elements of the design, and several

elements required as part of the permit review process that were not adequately addressed by the petitioner. The panel did not hear from EGLE staff on their anticipated permit decision, nor on specific restrictions it might impose on specific design components (the permit decision had not been entered at the time of this petition). From the presentation of information and positions, the panel did not dismiss any of the concerns of EGLE based on its interpretations of their merit. The panel was also not the appropriate venue to facilitate mediation of the remaining points of conflict, it did not have jurisdiction to resolve the disputed riparian rights issues, nor to compel the petitioner to further pursue prudent and feasible alternatives with EGLE. The panel did recommend that to the extent possible, this permit decision would be aided by EGLE staff trying to identify and communicate specific design components and modifications of them that would be individually or cumulatively critical to a permit approval for this project.

8. PANEL RECOMMENDATIONS TO RESOLVE PERMIT APPLICATION CONCERNS

The panel recommends that EGLE continues with their inquiry as part of the permit review process and facilitate a clear and open discussion with the petitioner regarding the six issues identified in the petition, and the feasible and prudent alternatives.

9. ADDITIONAL PANEL RECOMMENDATIONS *(Not required)*