



GRETCHEN WHITMER  
GOVERNOR

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



LIESL EICHLER CLARK  
DIRECTOR

August 16, 2022

VIA EMAIL

David Hautamaki



Whitehall, Michigan 49461

Dear David Hautamaki:

After reviewing the enclosed Environmental Permit Panel's Meeting Summary and Recommendations regarding the Petition for Permit Application Review received on April 26, 2022, I have determined that I do not concur with the Panel's recommendation.

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.

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 the protection of the Public Trust.

The Panel recommended that the petitioner collect additional data toward establishment of the Ordinary High Water Mark (OHWM). It appears that extensive work has been invested by EGLE on-site to establish the OHWM. If EGLE's Water Resources Division (WRD) determines, based on hearing testimony, that an additional site visit with data collection is needed to verify or modify the previous determination, then the WRD, not the petitioner, should gather those additional measurements. However, if the WRD concludes that sufficient information already exists, then the petitioner should be directed to amend their application appropriately in order for the project review to progress.

This decision, rejecting the Environmental Permit Review Commission Panel's recommendations and instead recommending the WRD determine whether sufficient information exists to establish the OHWM, does not preclude the petitioner from pursuing other applicable legal appeals processes afforded by law following a permitting decision made by EGLE.

David Hautamaki

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If you have any questions regarding this matter, please contact Aaron B. Keatley, Chief Deputy Director, at 517-284-6709 or [KeatleyA@Michigan.gov](mailto:KeatleyA@Michigan.gov).

Sincerely,



Liesl Eichler Clark

Director

517-284-6700

Enclosure

cc/enc: David Hamilton, Environmental Permit Review Commission  
Dana Kirk, 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  
Aimee Crouch, 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*

<b>1. MEETING DATE</b>  June 9, 2022	
<b>2. MEETING LOCATION</b>  Michigan Department of Environment, Great Lakes, and Energy (EGLE), Constitution Hall, Lee Walker Conference Room, Lansing.	
<b>3. PETITIONER</b>  Dave Hautamaki	
<b>4. ENVIRONMENTAL PERMIT PANEL MEMBERS</b>  David Hamilton (Chair), Dana Kirk, and Carol Miller (absent)	
<b>5. EGLE STAFF</b>  <u>Water Resources Division</u> Chris Conn Audrie Kirk Nancy Cuncannan  <u>Panel Staff:</u> Robert Reichel Brad Pagratis Dale Shaw Stephanie Fredline Meredith Prince	
<b>6. DOCUMENTS SUBMITTED TO THE PANEL</b>	
<b>Submitter</b>	<b>Description</b>
Petitioner	<ol style="list-style-type: none"><li>1. Hautamaki Petition – includes several attachments submitted with the petition.</li><li>2. 1 of 3 Hautamaki Revised Key data and recommendation</li></ol>

Water Resources Division, EGLE	<ol style="list-style-type: none"> <li>3. 203 Site Photo 582 IGLD marked</li> <li>4. 3 of 3 USACE like levels May 2022</li> <li>1. WRD Statement-Hautamaki EPRC</li> <li>2. WRD-Minor-Project-Categories</li> </ol>
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**7. SUMMARY OF DISCUSSION**

The panel reviewed information presented by the applicant and the department, and listened to a summary of each party’s position. Using plans and photos, the panel asked many questions, and the positions of the two parties were clarified. The fundamental dispute is the location of the ordinary high water mark (OHWM) at the proposed sea wall site. There is agreement that if the proposed sea wall is below the OHWM, then an individual permit is required, but if it is above the OHWM, an individual permit is not required, and the process can proceed as a minor permit application.

The applicant argues the OHWM for Lake Michigan should be used here, and there are signs of water marks elsewhere on White Lake that can be “transferred” (e.g. nearby community park, other seawalls). However, a surveyor did not establish what their elevations would be at the site.

The department responded that the OHWM for Lake Michigan is unique, it is determined by law for Lake Michigan, and it does not apply to inland lakes, including drowned river mouth lakes. Further, the department field staff made a determination of the OHWM based on visual characteristics at the site.

The panel would like to see a more scientifically rigorous process applied at the site to determine the OHWM. The panel recommendation below is intended to help the parties obtain the necessary information, and develop the OHWM.

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

The panel recommends that the applicant collect a minimum of two, preferred three, data points from nearby locations to be used with site specific information to establish the OHWM. Nearby locations could include the beach at the community park, seawalls, the site itself, Lake Michigan elevations and other mutually agreeable locations.

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