



GRETCHEN WHITMER
GOVERNOR

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



LIESL EICHLER CLARK
DIRECTOR

October 21, 2022

VIA EMAIL

Joy Schwarting

[REDACTED]
Interlochen, Michigan 49643

Dear Joy Schwarting:

After reviewing the enclosed Environmental Permit Panel's Meeting Summary and Recommendations regarding the Petition for Permit Application Review received on June 19, 2022, I have determined that I do not concur with the first recommendation by the Panel, but I do concur with the second and third recommendations by the Panel.

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 first that EGLE collect additional data toward establishment of the Ordinary High Water Mark (OHWM). It appears that resources already have 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 may elect to gather 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 as outlined in the Panel's second and third recommendations.

This decision, concurring in part but rejecting the first of the Environmental Permit Review Commission Panel's recommendations, and instead recommending that 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.

Joy Schwarting
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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.

Sincerely,



Liesl Eichler Clark
Director
517-284-6700

Enclosure

cc/enc: Robert Kaufman

Edwin Martel

Murray Borrello, Environmental Permit Review Commission

Bryan Burroughs, Environmental Permit Review Commission

Heather Dawson, Environmental Permit Review Commission

Robert Reichel, Michigan 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

Aimee Crouch, 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	
August 4, 2022	
2. MEETING LOCATION	
Michigan Department of Environment, Great Lakes, and Energy (EGLE), Constitution Hall, Lee Walker Conference Room, Lansing.	
3. PETITIONERS	
Joy Schwarting Robert Kaufman – Representative Edwin Martel – Representative	
4. ENVIRONMENTAL PERMIT PANEL MEMBERS	
Heather Dawson Murray Borrello Bryan Burroughs - Chair	
5. EGLE STAFF	
<u>Water Resources Division</u> Chris Conn 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. Schwarting Petition (includes several attachments submitted with the petition) 2. RE_ Joy Schwarting EPRC panel review 3. Schwarting 1 Final Statement 7-12-2022 4. Schwarting 2 OHWM Determination 7-12-2022 5. Schwarting 3 Zoning Statement 6. Schwarting 4 Photos

<p>Water Resources Division, EGLE</p>	<ol style="list-style-type: none"> 7. Schwarting 5 EGLE Photos 8. Schwarting 6 Riparian Rights 7-12-2022 9. Schwarting 7 Temperature April 12 2022 10. Schwarting 8 Sec 30101 b 11. Schwarting 9 Support Ltr <ol style="list-style-type: none"> 1. WRD Statement-Joy Schwarting 2. Email correspondence to applicant 3. MiWaters Application History 4. WRD-Minor-Project-Categories
<p>7. SUMMARY OF DISCUSSION</p> <p>The panel noted that the location of the OHWM was critical to how the applicant would move forward with EGLE in providing a seawall design that is agreeable to all parties.</p> <p>The category for the application may be a minor projects or an individual permit. There is some difference in cost.</p> <p>EGLE was responsive in trying to provide prudent alternatives and maintain flexibility in keeping the application open. We suggest that the applicant be responsive moving forward.</p>	
<p>8. PANEL RECOMMENDATIONS TO RESOLVE PERMIT APPLICATION CONCERNS</p> <p>The panel requests that the applicant and EGLE attempt to find a mutually-agreed solution via the following actions:</p> <ol style="list-style-type: none"> 1. Urge EGLE to conduct further, more stringent measurements of the OHWM taking into consideration changing site conditions and observations from multiple locations; 2. Utilize that information for applicant to create specific and acceptable proposals that either fit into the Minor Projects requirement or as an individual permit. If OHWM is confirmed to be as determined, it appears the current plan submitted by the applicant is more feasible under the individual permit category. 3. We urge the applicant to be flexible and timely in creating feasible and prudent alternatives as long as the ultimate goal is achieved, and applicant submit the appropriate permit fee commensurate with EGLE's determination. 	
<p>9. ADDITIONAL PANEL RECOMMENDATIONS <i>(Not required)</i></p>	