



G A B R I E L S E L A W P L C



April 8, 2024

Michigan Office of Administrative Hearings and Rules
Ottawa Building, Second Floor
611 West Ottawa Street
PO Box 30695
Lansing, MI 48909-8195
MOAHR-GA@Michigan.gov

Re: Petition for Contested Case Hearing

To Whom it May Concern:

I am enclosing a Petition for Contested Case Hearing on behalf of North Shores of Saugatuck, LLC along with a copy of EGLE's denial letter

Thank you in advance for your attention to this matter.

Yours Truly,

GABRIELSE LAW PLC

Carl J. Gabrielse



Permit or Application Number: (On permit or application as assigned by EGLE)
HPF-7A8A-RGC7Q

MICHIGAN DEPARTMENT OF ENVIRONMENT,
GREAT LAKES, AND ENERGY
PETITION FOR CONTESTED CASE HEARING



The procedural authority for a contested case hearing is the Michigan Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 *et seq.* Information requested on this form may be provided in an alternative written format or additional pages may be attached.

Petitioner's Name or Agent's Name Mailing Address (If different from street address)

Gabrielse Law Plc (Attn: Carl J. Gabrielse) _____

Street Address City State ZIP Code

240 E 8th Street _____

City State ZIP Code E-mail Address

Holland MI 49423 carl@gabrielselaw.com

Telephone No.

616-403-0374 _____

Statement of Authority:

I petition a contested case hearing be initiated under the authority of:

- Part 301 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*
- Part _____ of the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 *et seq.*
- Other statute:
Part 31, Part 353, and Part 13, as applicable

(Identify statute by popular name, the public act year and number, MCL, and if applicable, the part of the statute)

Administrative Rule, R _____; Title: _____

Order No. _____; Title: _____

Statement of matters asserted, including the site location and other pertinent facts:

Petitioner is North Shores of Saugatuck, LLC ("Petitioner").

On or about February 25, 2022, Petitioner filed an application for a permit to construct a boat basin on its property. The application is identified as HPF-7A8A-RGC7Q. The proposed project is located in Saugatuck Township, Allegan County, near Dugout Road and 6500 135th Avenue.

On February 9, 2024, EGLE issued a letter denying Petitioner's application. The denial letter indicates the application was denied for three reasons under Part 301 (Exhibit A).

Petitioner's proposed project satisfies all criteria and requirements for the issuance of a permit under all applicable rules and regulations, including Part 301, and therefore, Petitioner is entitled to a permit. Contrary to the assertions in the denial letter, and without limiting the scope of the statement above, (i) the proposed project will not have significant adverse effects on the natural resources associated with the Kalamazoo River, the uses of the Kalamazoo River, or the public trust; (ii) the proposed project will not have adverse temporary or permanent environmental impacts, and (iii) there are no feasible and prudent alternatives to the proposed project. EGLE erred in denying Petitioner's application.

Petitioner's relationship/interest to the activity or proposed project:

Petitioner is the applicant and owner of the property on which the proposed project will be located.

Relief sought by Petitioner:

Petitioner requests a determination that it is entitled to a permit for the proposed project.



Signature of Petitioner/Agent

4-8-24

Date

Submit this completed petition and attachments to:

Michigan Office of Administrative Hearings and Rules
Ottawa Building, Second Floor
611 West Ottawa Street
P.O. Box 30695
Lansing, MI 48909-8195
Telephone: 517-335-2484
Fax: 517-335-7535
E-mail: MOAHR-GA@Michigan.gov

NOTICE: A COPY OF EGLE'S FINAL ACTION ON AN APPLICATION OR PERMIT MUST BE ATTACHED TO THIS OR ANY ALTERNATIVE WRITTEN PETITION.

If you need this information in an alternate format, contact EGLE-Accessibility@Michigan.gov or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at EGLE-NondiscriminationCC@Michigan.gov or 517-249-0906.

This form and its contents are subject to the Freedom of Information Act and may be released to the public.

Exhibit A



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY
KALAMAZOO DISTRICT OFFICE



PHILLIP D. ROOS
DIRECTOR

February 9, 2024

VIA EMAIL

Scott Bosgraaf
North Shores of Saugatuck, LLC
148 South River Avenue
Holland, Michigan 49423

Dear Scott Bosgraaf:

SUBJECT: Application Denial
Submission Number: HPF-7A8A-RGC7Q
Site Name: 03-3574 Dugout Road & 6500 135th Avenue-Saugatuck;
County: Allegan
Project Name: New Marina Basin

This letter is to notify you that your application for a permit submitted under the authority of Part 31, Water Resources Protection (Floodplain Regulatory Authority), Part 301, Inland Lakes and Streams and Part 353, Sand Dune Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); and Part 13, Permits, of the NREPA, is hereby denied. The application was received by the Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), on February 25, 2022.

The purpose of the project, as shown in your application, is to construct a large marina basin within the critical dune areas measuring approximately 6.54 acres in size. The marina basin would be surrounded by sheet pile seawalls with accompanying large riprap and would be directly connected to the Kalamazoo River. The connection to the river would feature steel sheet piling with large armor stone riprap to minimize wave propagation into the basin. The marina would include docks and boat lifts to provide 50 boat slips.

After due consideration of the permit application, site conditions, and other pertinent materials, your application is denied for the following reasons:

- a. The proposed project will have significant adverse effects on the natural resources associated with the Kalamazoo River, the uses of the Kalamazoo River, and the public trust.
- b. The hydrologic groundwater modeling that was completed by your consultants and then provided to EGLE for review is inadequate and contains inconsistencies and other issues. Therefore, the application does not demonstrate that the project will not have adverse temporary or permanent environmental impacts.
- c. There are feasible and prudent alternatives.

Section 30106 of Part 301 prescribes that:

- EGLE shall not issue a permit if it finds that the structure or project will adversely affect the public trust or riparian rights.

- EGLE must consider the possible effects of the action upon the Kalamazoo River and the uses of its waters including for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry.
- EGLE shall not grant a permit if the structure or project will unlawfully impair or destroy any of the waters or natural resources of the state.

The Administrative Rules of Part 301 define "Public trust" as all of the following:

- (i) The paramount right of the public to navigate and fish in all inland lakes and streams that are navigable.
- (ii) The perpetual duty of the state to preserve and protect the public's right to navigate and fish in all inland lakes and streams that are navigable.
- (iii) The paramount concern of the public and the protection of the air, water, and other natural resources of this state against pollution, impairment, and destruction.
- (iv) The duty of the state to protect the air, water, and other natural resources of this state against pollution, impairment, or destruction.

Rule 281.814 of the Administrative Rules for Part 301 requires that in each application for permit, all existing and potential adverse environmental impacts shall be determined and EGLE shall not issue a permit unless it is determined that:

- a. Adverse impacts to the public trust, riparian rights, and the environment will be minimal.
- b. A feasible and prudent alternative is not available.

The proposed marina will likely have significant effects on the public and tribal uses of the river, and thus infringe on the public trust rights to navigate and fish. Other uses of the water, including recreation, fish and wildlife, and aesthetics, will also be affected. In particular, the Potawatomi communities have historically had, and continue to have, a direct cultural relationship to the Kalamazoo River, and in particular the area identified as the Kalamazoo River Mouth Traditional Cultural Property, within which this proposed project is located.

EGLE finds the proposed project would adversely impact the natural resources of the Kalamazoo River and the public's right to navigate and fish. The project would also permanently impact the critical dune area and result in the loss of a significant portion of the open dune habitat in Saugatuck Township. Furthermore, it appears there are feasible and prudent alternatives as outlined below.

The WRD believes that feasible and prudent alternatives exist that would lessen or eliminate the negative effects of the project as proposed. We suggest that you consider other alternatives such as mooring boats along the existing seawall that front the river and/or proposing a project that better balances private riparian interests with the public trust and public uses. There are several existing marinas within the Saugatuck area, as well as public and private boat launches (including the existing launch on this property), and other areas where new marinas could be constructed. The permit application does not consider any offsite alternatives for boat mooring or dry boat storage onsite.

If you choose to pursue this project in the future by incorporating any alternatives, it will be necessary to reapply for a permit by submitting a new application with all of the necessary information and application fees. Application fees are not transferable or refundable.

Scott Bosgraaf
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February 9, 2024

You have the right to appeal this denial by filing a petition for a formal administrative hearing. To preserve your right to an administrative hearing, a petition must be filed with the Michigan Office of Administrative Hearings and Rules within 60 days from the date of this denial letter. The petition can be found here: <https://www.michigan.gov/egle/regulatory-assistance/forms>; search for form EQP0201. To request a hearing, submit the petition to Michigan Office of Administrative Hearings and Rules, P.O. Box 30695, Lansing, Michigan 48909; or by fax to 517-335-7535.

If you would like to discuss project alternatives and plan modifications prior to filing a Petition for Contested Case, please contact me. Our discussions may continue during the informal review process after a Petition for Contested Case is filed, but your formal appeal must be filed within the 60-day deadline.

If you have any questions regarding this matter, please contact me at: 269-568-2680; BayhaJ@michigan.gov; or EGLE, WRD, Kalamazoo District Office, 7953 Adobe Road, Kalamazoo, Michigan 49009-5025. Please include your submission number: HPF-7A8A-RGC7Q, in your response.

Sincerely,



John Bayha, P.E., District Engineer
Kalamazoo District Office
Water Resources Division

JB:SE

cc: Saugatuck Township Clerk
Lynee Wells, Saugatuck Township
Allegan County SESC Agent
Katie Otanez, U.S. Army Corps of Engineers, Detroit District
Kerrie Kuhne, U.S. Army Corps of Engineers, Detroit District
Bob Peters, Gun Lake Tribe of Potawatomi
Matthew Bussler, Pokagon Band of Potawatomi
Carl Gabrielse, Agent
Martha MacFarlane-Faes, State Historic Preservation Office
Matt Diana, MDNR Fisheries Division
Jerrod Sanders, EGLE
Amy Lounds, EGLE
Kyle Alexander, EGLE
Anne Garwood, EGLE
Katherine Lambeth, EGLE
Jim Milne, EGLE
Lena Pappas, EGLE
Derek Haroldson, EGLE