



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF  
ENVIRONMENT, GREAT LAKES, AND ENERGY  
WATER RESOURCES DIVISION



PHILLIP D. ROOS  
DIRECTOR

December 19, 2024

VIA EMAIL

Dave Thrasher  
Geddes Lake Condo Association  
3000 Lakehaven Drive  
Ann Arbor, Michigan 48105

Dear Dave Thrasher:

SUBJECT: Application Denial  
Submission Number: HQ3-M9N0-5MQE8  
Site Name: 81-3000 Lake Haven Drive-Ann Arbor  
Project Name: Culvert Repair

This letter is to notify you that your application for a permit submitted under the authority of Part 301; Inland Lakes and Streams; and Part 13, Permits, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), is hereby denied. The application was received by the Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD), on May 31, 2024.

The purpose of the project, as shown in your application, is to repair an existing, failing culvert on an unnamed tributary to Millers Creek with the installation of a 12-foot-wide, 12-foot-long concrete drop structure manhole and a new 16-foot-long, 6-foot-diameter section of round culvert.

After due consideration of the permit application, site conditions, and other pertinent materials, the WRD finds that the proposed project will have significant adverse effects on the natural resources associated with the unnamed tributary to Millers Creek, and that feasible and prudent alternatives are available. Therefore, EGLE cannot issue a permit for the proposed project and your application is hereby denied.

Section 30106 of Part 301, Inland Lakes and Streams, of the NREPA, supra, states in pertinent part, "The department shall issue a permit if it finds that the structure or project will not adversely affect the public trust or riparian rights. In passing upon an application, the department shall consider the possible effects of the proposed action upon the inland lake or stream and upon waters from which or into which its waters flow and the uses of all such waters, including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry. The department shall not grant a permit if the proposed project or structure will unlawfully impair or destroy any of the waters or other natural resources of the state.

The Administrative Rules of Part 301, Inland Lakes and Streams, of the NREPA, 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 4 (R281.814) of the Administrative Rules of Part 301, Inland Lakes and Streams, of the NREPA, supra, states in pertinent part, "...a permit shall not be issued unless...

- a) The adverse impacts to the public trust, riparian rights, and the environment will be minimal.
- b) That a feasible and prudent alternative is not available."

The WRD finds the following:

- The proposed project is not in the public interest in that it will have significant adverse effects on the natural resources associated with the unnamed tributary to Millers Creek by disrupting flow patterns and preventing upstream aquatic organism passage through the culvert.
- The proposed project will adversely affect the public trust, including degrading habitat for fish and wildlife.
- Feasible and prudent alternatives to the proposed design are available. These include installing a clear span bridge or a culvert that meets the conditions of Minor Project (MP) Category 11. Culverts and Bridges – Large, along with the use of instream structures to gradually modify the grade.

The installation of the proposed drop structure manhole would disrupt the natural flow of the stream. The proposed design will negatively impact aquatic organisms in the stream by preventing upstream passage through the proposed culvert. This impairment will permanently block any aquatic organisms from migrating upstream and thus reduce the stream's overall biological diversity over time. The drop structure does not follow best management practices that are incorporated into all culvert repair and replacement projects. Culverts that are replaced should be set to the same slope as the stream as referenced in MP 11 - referring to large culverts and bridges. These best management requirements are incorporated into all culvert replacement projects across the state and provide the minimum acceptable criteria to ensure long-term protection of our state's regulated streams at culvert crossings. By failing to incorporate the best management practice of matching the culvert slope to the stream slope, the applicant is not following EGLE's best management practices. When culverts are set at the stream slope, or if site constraints exist, utilize instream structures to gradually modify the grade, the stream is still able to function as best as possible despite the culvert present. A culvert that is not set to the stream's grade can disrupt geomorphic patterns, limit sediment transport, and alter hydraulic function. The impact of this proposal is one that that will result in more harm to the stream compared to the alternatives that are available.

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The WRD believes that feasible and prudent alternatives exist that would lessen or eliminate the negative effects of the project as proposed. As an alternative, we suggest that you consider installing a clear span bridge or a culvert that meets the conditions of MP 11, along with the use of instream structures to gradually modify the grade.

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.

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 (MOAHR) 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 517-257-4532; [BalesJ@Michigan.gov](mailto:BalesJ@Michigan.gov); or EGLE, JDO-WRD, P.O. Box 30458, Lansing, Michigan 48909-7958. Please include your submission number HQ3-M9N0-5MQE8, in your response.

Sincerely,



James Bales  
Environmental Quality Analyst  
Water Resources Division

cc: City of Ann Arbor Clerk (via email)  
Washtenaw County Drain Commissioner (via email)  
Adam Rychwalski, OHM Advisors (via email)  
Jeff Pierce, EGLE (via email)  
John Saltanovitz, EGLE (via email)