

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

JOHN DARISH, JOAN DARISH,
GAIL NICKLOWITZ,
MICHAEL NICKLOWITZ,
GRACE KIM and EUGENE KIM

Plaintiffs,

Case No. 25-002153-CE
Hon. Tracy Van Den Bergh

v.

WSG PROPERTIES, LLC, AMC-WSG,
LLC and AMC-MID MICHIGAN
MATERIALS LLC,

Defendants.

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Noah D. Hall (P66735)
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PLAINTIFFS' MOTION TO AMEND COMPLAINT

COMES NOW Plaintiffs, by and through counsel, Flood Law PLLC, pursuant to MCR 2.118, hereby respectfully requests this Honorable Court for leave to file an amended Complaint.

In support of this Motion, Plaintiffs state the following:

1. Plaintiffs filed the initial Complaint in this matter on December 15, 2026.

2. On January 16, 2026, EGLE issued a Draft Permit to Defendants in correspondence to Defendant. EGLE did not publicly post the Draft Permit at that time.
3. On January 20, 2026, Defendants filed a Motion for Summary Disposition. The Motion is currently set for hearing on July 15, 2026.
4. On January 23, 2026, Plaintiffs and other neighboring property owners filed a timely contested case petition regarding Groundwater Certificate of Coverage GW 1540096 with EGLE stating the facility is in violation of NREPA Part 31 (MCL 327.3101), Part 22 rules (R 323.2201) and General Permit GW1540000, Groundwater Discharge General Permit for Process Wastewater without Additives from Mining of Gravel, Sand, Limestone, or Dolomite (July 31, 2025).
5. On March 19, 2026, EGLE issued a “Second Draft Permit for Countersignature,” WRP047862 v1 in correspondence to Defendants.
6. On April 6, 2026, EGLE issued the “Permit with Countersignature (Corrected),” WRP047682 v1 and posted it publicly. However, the Permit document is stamped “Issued On: 01/16/2026.”
7. On May 20, 2026, the Michigan Department of Health and Human Services (MDHHS) informed Plaintiffs that it had recently performed drinking water sampling at each of their homes and provided the water test lab results. The results showed that Turbidity, Iron, and Manganese in Plaintiffs’ drinking water mostly exceeded the Environmental Protection Agency’s Maximum Contaminant Level for each substance.
8. On June 4, 2026, Plaintiffs submitted a Petition for a Contested Case hearing on Permit WRP047682 to EGLE challenging the permit that was issued to Defendants. (Exhibit 5).

The Contested Case, Docket No. 26-020107, is currently pending in the Michigan Office of Administrative Hearings.

9. Plaintiffs' Proposed Amended Complaint with amendments highlighted in red is attached to this Motion as **Exhibit 1**. Plaintiffs seek to amend to add new information that has developed after the filing of the initial Complaint. The amendments include additional information about EGLE's permit process, Plaintiffs' challenge of the permit, and scientific data on the groundwater in the areas around Defendants' mine that Plaintiffs have recently obtained through testing.
10. Plaintiffs sought concurrence in this Motion from Defense Counsel first on July 2, 2026. Plaintiffs' Counsel then spoke with Defense Counsel on July 6, 2026 but did not receive concurrence.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant Plaintiff leave to file an Amended Complaint.

Dated: July 7, 2026

Respectfully submitted

/s/ Todd F. Flood
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PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION TO AMEND COMPLAINT

I. Introduction

Since the filing of Plaintiffs' Complaint, major factual developments have occurred that have changed the nature of Plaintiffs' lawsuit. Plaintiffs' Amended Complaint includes factual developments in Defendants' permit applications as well as new information Plaintiffs have obtained through scientific testing to strengthen their claims against Defendants.

II. Relevant Facts

Plaintiffs filed the Complaint in this matter on December 15, 2025. In response, Defendants filed a Motion for Summary Disposition on January 20, 2026. In their Motion, Defendants presented a “draft permit” that they suggested would be finalized within 60 days and argued that the draft permit made Plaintiffs’ Complaint moot. **Ex. 2, Defs’ Mot. Summ. D., p. 3.** However, the draft permit Defendants presented was not a finalized, effective permit. Because Defendants still did not have an effective permit, Plaintiffs responded to the Motion and argued that the permit was not effective rather than amending their pleadings. Plaintiffs responded to the Motion for Summary Disposition on March 30, 2026.

On April 3, 2026, Defendants filed their Reply in Support of their Motion for Summary Disposition. **Ex. 3, Defs’ Reply in Support.** In their reply, Defendants announced that EGLE had issued a finalized permit. The permit has a stamp that states that it was issued on January 16, 2026, but the permit was not signed by the permittee until March 30, 2026. **Ex. 4, EGLE Permit.** This permit was new information to Plaintiffs, as EGLE did not announce the permit and post it to their website until April 6, 2026.

On May 20, 2026, the Michigan Department of Health and Human Services (MDHHS) informed Plaintiffs that it had recently performed drinking water sampling at each of their homes and provided the water test lab results. The results showed that Turbidity, Iron, and Manganese in Plaintiffs’ drinking water mostly exceeded the Environmental Protection Agency’s Maximum Contaminant Level for each substance.

Plaintiffs now move to amend their Complaint to address the issuance of a permit and the MDHHS test results, both of which did not become available to Plaintiffs until after they had responded to Defendants’ Motion for Summary Disposition.

III. Legal Standard

Under MCR 2.118, a party may amend a pleading by leave of the court, and “[l]eave shall be freely given when justice so requires.” MCR 2.118. “Because a court should freely grant leave to amend a complaint when justice so requires, a motion to amend should ordinarily be denied only for particularized reasons.” *Wormsbacher v. Seaver Title Co.*, 284 Mich.App. 1, 8, 772 N.W.2d 827 (Mich. Ct. App. 2009) (citing *Miller v. Chapman Contracting*, 477 Mich. 102, 105, 730 N.W.2d 462 (2007)).

IV. Argument

In the present case, most of the amendments many of the amendments Plaintiffs seek to make involve new information that Plaintiffs obtained after the initial filing on December 15, 2025. **Ex. 1.** The amendments do not constitute undue delay, bad faith, failure to cure deficiency, or undue prejudice to Defendants. See *Wormsbacher*, 284 Mich.App. at 8.

Plaintiffs’ initial Complaint discussed Defendants’ lack of a permit for their actions. When Defendants filed their initial Motion for Summary Disposition, they presented a “draft permit” issued by EGLE. At the time, the permit was not yet finalized, meaning that Defendants were still operating without a permit. Because the permit was not final, Plaintiffs chose not to amend their Complaint at that time and instead argued that the permit did not support Defendants’ arguments because it was not a final, effective permit. Since then, EGLE has issued a permit, requiring Plaintiffs to amend their allegations to conform to this new information and provide other evidence and bases for their claims.

Since Defendants’ filing of their Reply in Support of their Motion for Summary Disposition, Plaintiffs have challenged the issuance of their permit. Plaintiffs’ challenge counters Defendants’ argument that their finalized permit renders Plaintiffs’ claims moot. Through this challenge, Defendants’ permit could possibly be withdrawn, meaning that the permit issue has not yet been

fully resolved and is not yet moot. Because this information did not arise until after Plaintiffs' Response to the Motion for Summary Disposition, Plaintiffs seek to amend their Complaint to reflect the fact that the permit is currently being challenged.

New factual developments and information that became available to Plaintiffs after they responded to Defendants' Motion for Summary Disposition support Plaintiffs' claims in their Complaint and their arguments against Defendants' Motion for Summary Disposition. Defendants argued that EGLE's issuance of a permit renders Plaintiffs' claims moot. **Ex. 3.** However, MDHHS's May 20, 2026 test results show unsafe levels of several substances in the water of properties surrounding the mine, supporting a separate basis for Plaintiffs' claims regardless of whether a permit was granted. With the finalized permit being issued after the pleadings, Plaintiffs seek to add the MDHHS test results to their pleadings to further support their claims against Defendants.

Furthermore, Plaintiffs' proposed amendments are not futile. As discussed above, the amendments include newly available information that the groundwater around Defendants' property contains unsafe levels of turbidity, iron, and Manganese. This supports Plaintiffs' claims that Defendants are polluting the groundwater through their dredging operation in their lake that causes pollution and sediment to seep directly into the aquifer that the lake is connected to. In the interest of justice, this Court should grant Plaintiffs' Motion to Amend Complaint and allow Plaintiffs to add new, relevant information to their Complaint that was not available prior to Defendants' Motion for Summary Disposition.

V. Conclusion

For the reasons stated above, Plaintiffs respectfully request that this Honorable Court grant their Motion to Amend Complaint and allow Plaintiffs to file an Amended Complaint.

Dated: July 7, 2026

Respectfully submitted

/s/ Todd F. Flood

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Noah D. Hall (P66735)

Ryan E. Myers (P89429)

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all counsel of record on July 7, 2026 via MiFile.

I DECLARE THAT THE STATEMENT ABOVE IS TRUE TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

/s/ Amy Wells

EXHIBIT 1

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There is no civil action between these parties arising out of the same
transaction or occurrence as alleged in this Complaint pending in this Court,
nor has any such action been previously filed and dismissed or transferred
after having been assigned to a judge.

PROPOSED AMENDED COMPLAINT

Plaintiffs, by and through counsel, Flood Law PLLC, state for their Complaint for
declaratory, equitable, and injunctive relief:

Parties

1. Plaintiffs John and Joan Darish are resident property owners at 4715 Ridge Creek Lane, Ann Arbor Charter Township.
2. Plaintiffs John and Joan Darish's residential property is adjacent to the east side of Defendants' mine. (Exhibit 1 illustrates the locations of the Plaintiffs' properties relative to Defendants' mine.)
3. Plaintiffs John and Joan Darish have a residential drinking water well on their property, Well ID 81000024062.
4. Plaintiffs John and Joan Darish use their residential drinking water well to supply all their household natural uses.
5. Plaintiffs John and Joan Darish's residential property includes wetlands, an unnamed stream, and a portion of Massey Lake shoreline and bottomlands.
6. Plaintiff John Darish uses his residential property, including the stream and Massey Lake shoreline and bottomlands, for recreation, fishing, and canoeing.
7. Plaintiffs Gail and Michael Nicklowitz are residents at Nicklowitz Family Trust-owned property at 4460 Earhart Road, Ann Arbor Charter Township.
8. Plaintiffs Gail and Michael Nicklowitz's residential property is adjacent to the south side of Defendants' mine.
9. Plaintiffs Gail and Michael Nicklowitz have a residential drinking water well on their property, Well ID 81000004744.
10. Plaintiffs Gail and Michael Nicklowitz use their residential drinking water well to supply all their household natural uses.
11. Plaintiffs Gail and Michael Nicklowitz use their residential property for a horse stable and trotting grounds, deer hunting, and other outdoor recreation.

12. Plaintiffs Grace and Eugene Kim are resident property owners at 4823 Ridge Creek Lane, Ann Arbor Charter Township.
13. Plaintiffs Grace and Eugene Kim's residential property is east of Defendants' mine, adjacent to and east of Plaintiffs John and Joan Darish.
14. Plaintiffs Grace and Eugene Kim have a residential drinking water well on their property, Well ID 81000023187.
15. Plaintiffs Grace and Eugene Kim use their residential drinking water well to supply all their household natural uses.
16. Plaintiffs Grace and Eugene Kim's residential property includes a portion of Massey Lake shoreline and bottomlands.
17. Plaintiff Eugene Kim uses his residential property, including the Massey Lake shoreline and bottomlands, for recreation, fishing, and canoeing.
18. Defendant WSG Properties, LLC ("WSG Properties") is the real property owner of the Defendants' mine at 4984 Earhart Road, Ann Arbor Charter Township, Parcel ID I09-01-200-002.
19. Defendant WSG Properties, LLC's recorded tax address for the Ann Arbor Charter Township property is 6966 Fisher Road, Jeddo, Michigan.
20. Defendant WSG Properties, LLC has owned the mine property since 2020.
21. Defendant AMC-WSG, LLC is the lessee of Defendant WSG Properties, LLC's mine property.
22. On September 1, 2020, Defendant AMC-WSG, LLC and Defendant WSG Properties, LLC entered into a lease agreement for "operation of a mining [sic], marketing and selling sand, stone, gravel and other aggregates, and related activities."

23. The September 1, 2020, lease agreement provides the same address and contacts for both lessee Defendant WSG Properties, LLC and lessor Defendant AMC-WSG, LLC as “1957 Crooks, Suite 100, P.O. Box 7058, Troy, Michigan 48084, Attn: Jim Friel; James Jacob.”
24. Defendant AMC-WSG, LLC has held itself out as a permit applicant and property owner of the mine to EGLE for permitting and compliance since at least 2023.
25. Defendant AMC-WSG, LLC has provided a contact address of 4984 Earhart Road, Ann Arbor Charter Township, in its EGLE filings.
26. Defendant AMC-Mid-Michigan Materials LLC has held itself out as the mine operator to EGLE for permitting and compliance since at least 2023.
27. Defendant AMC-Mid-Michigan Materials LLC has provided a contact address of 4984 Earhart Road, Ann Arbor Charter Township, in its EGLE filings.

Jurisdiction, and Venue

28. This Court has jurisdiction to hear the claims in this Complaint and grant the relief requested under authorities including, but not limited to MCL 324.1701, *et seq.* (Actions for declaratory and equitable relief for environmental protection;); MCL 600.601 (Circuit court jurisdiction and power); MCL 600.605 (Circuit court original jurisdiction); MCR 2.605 (Declaratory judgments); and MCR 3.310 (Injunctions).
29. Venue is proper in this Court under MCL 600.1621(a) and 600.1627 because Washtenaw County is the county in which Defendants’ conduct their mining operation and all related business relevant to this dispute and Plaintiffs’ causes of action.

General Allegations

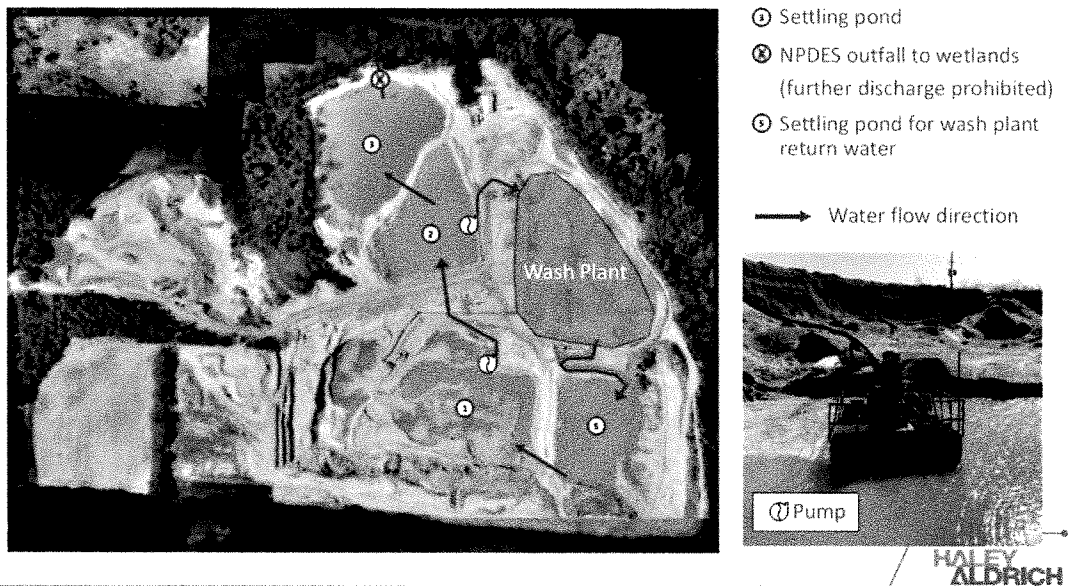
30. Defendants have owned and/or operated a gravel mine located at 4984 Earhart Road, Ann Arbor Charter Township since 2020.

31. Defendants began pumping groundwater and discharging the water offsite in April 2022.
32. Defendants' pump capacity was over 2 million gallons per day when pumping began in April 2022.
33. On September 14, 2023, the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") issued Violation Notice No. VN-014898 to Defendants for violations of the following provisions of the Michigan Natural Resources and Environmental Protection Act: Part 31, Water Resources Protection; Part 91, Soil Erosion and Sedimentation Control; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 327, Great Lakes Preservation.
34. The EGLE Violation Notice stated: "Mining of the Southern Lake: A review of aerial imagery has identified that a waterbody with an approximate area of 2.66 acres was present in the southwest of the site in 2020 when the site was purchased by MMM. This waterbody was expanded through mining operations by MMM in 2021 and 2022 and resulted in creation of approximately five (5) acres of surface water, which is considered a lake under Part 301, Inland Lakes and Streams, of the NREPA [MCL 324.30101 et. seq.]. Aerial imagery from 2021 and 2022 shows the presence of this approximate five (5) acre lake until pumping operations began in 2022. The subsequent pumping operation has now drawn down the surface water and drained the lake. The creation, enlargement or diminishment of a lake requires a permit under Part 301. No permits have been applied for nor issued for this activity and is therefore in violation of Part 301."
35. The EGLE Violation Notice also required Defendants to reduce their pump capacity or obtain a permit for their capacity pump pursuant to MCL 324.32701 et. seq. (Great Lakes Preservation).

36. The EGLE Violation Notice further stated that EGLE staff observed that Defendants' discharge polluted Massey Lake, Flemming Creek, wetlands, and an unnamed tributary stream.
37. The EGLE Violation Notice stated that the violations were "continuing."
38. On September 28, 2023, Ann Arbor Charter Township filed a lawsuit in this Court against the Defendants. See Washtenaw County Circuit Court Case No. 23-001234-CE, Ann Arbor Charter Township Verified Complaint.
39. Ann Arbor Charter Township's complaint alleged that Defendants' pumping of groundwater was harming residential wells.
40. Ann Arbor Charter Township's complaint alleged that "the wells at the following properties have been adversely impacted by Defendants' operations..." with a listing that included the residences of Plaintiffs John and Joan Darish and Gail and Michael Nicklowitz.
41. Ann Arbor Charter Township's complaint alleged that Defendants' mining operations were in violation of the Ann Arbor Charter Township's Conditional Use Permit.
42. On September 29, 2023, Ann Arbor Charter Township moved this Court for a preliminary injunction. See Case No. 23-001234-CE, Ann Arbor Charter Township's *Ex Parte* Motion for Temporary Restraining Order and Preliminary Injunction.
43. On October 10, 2023, this Court issued a preliminary injunction order against Defendants halting their mining operation. See Case No. 23-001234-CE, Order Granting Preliminary Injunction.
44. This Court's October 20, 2023, Stipulated Clarification to Order Granting Preliminary Injunction included an "Exhibit A" with Defendants' own illustration of their "Vella Pit

Operations” in 2023. This illustration of the Defendants’ mining site and operation in 2023 is reproduced below and attached as Exhibit 2.

Vella Pit - Operations



45. On October 20, 2023, this Court issued a stipulated clarification to its preliminary injunction to order that: “Defendants are prohibited from discharging process waste water or groundwater from the NPDES discharge pipe, as indicated on Exhibit A hereto, or otherwise causing a net loss of groundwater from the site.” See Case No. 23-001234-CE, Stipulated Clarification to Order Granting Preliminary Injunction.
46. On July 3, 2024, this Court issued a Stipulated Order allowing a limited “Dredging Trial Period.” See Case No. 23-001234-CE, Stipulated Order Regarding Temporary Dredging Operations.
47. On September 30, 2024, this Court issued a Stipulated Order extending the limited “Dredging Trial Period” to October 15, 2024. See Case No. 23-001234-CE, Stipulated Order Extending Dates of Temporary Dredging Operations.

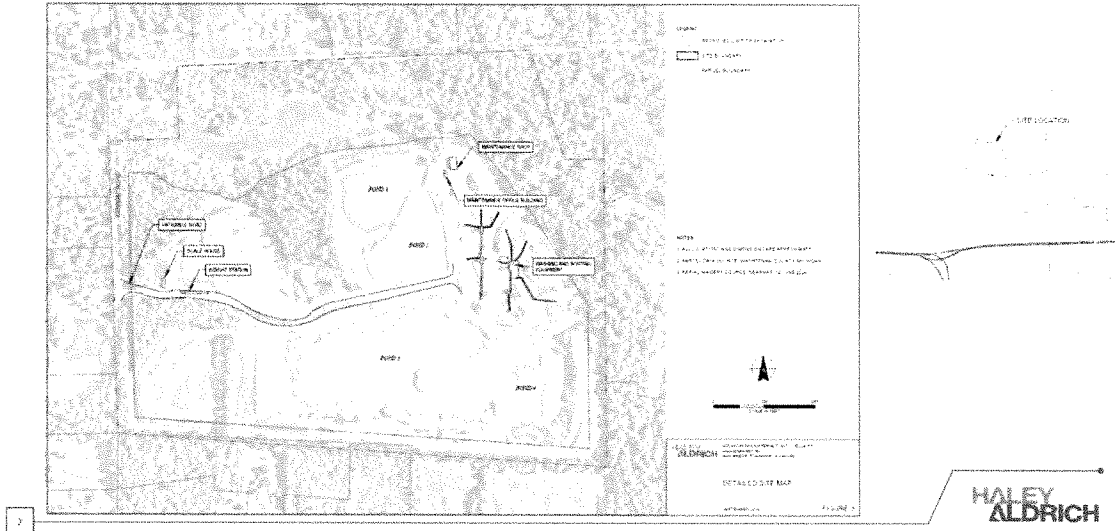
48. This Court has not issued any orders allowing any other extension or permission of a limited “Dredging Trial Period” beyond October 15, 2024.
49. The Ann Arbor Charter Township’s case before this Court is still ongoing. See Case No. 23-001234-CE, Stipulated Order Extending Administrative Stay.
50. After the EGLE Violation Notice and this Court’s prior preliminary injunction orders issued in 2023, Defendants changed their operation to create and enlarge a lake and mine its bottomlands instead of mining dry land.
51. Defendants created and enlarged the lake from nothing to approximately 2 acres in 2023.
52. Defendants have further enlarged the lake to approximately 15 acres in 2025.
53. Defendants have stated that they are continuing to enlarge the lake.
54. Defendants’ estimate that they will enlarge the lake to an eventual 59 acres.
55. Creating and enlarging a lake without a permit is expressly and clearly prohibited by Michigan’s Inland Lakes and Stream Act, MCL 324.30102(1)(d), which states “a person without a permit from the department shall not ... [c]reate, enlarge, or diminish an inland lake or stream.”
56. Defendants ~~do~~ did not ~~and~~ have ~~never had~~ an EGLE permit to create or enlarge the lake from 2023 through 2025.
57. Defendants ~~do~~ did not have a permit to create or enlarge the lake from 2023 through 2025, despite filing at least two “after-the-fact” permit requests since the EGLE violation notice in 2023.
58. Starting in October 2023, Defendants began mining the newly created and enlarged lake bottomland.

59. Dredging and mining the lake bottomland is expressly and clearly prohibited by Michigan's Inland Lakes and Stream Act, MCL 324.30102(1)(a)-(b), which states "a person without a permit from the department shall not ... [d]redge or fill bottomland; [c]onstruct, enlarge, extend, remove, or place a structure on bottomland."
60. Defendants ~~do~~ did not ~~and have never had~~ an EGLE permit to dredge the lake bottomlands or conduct any mining activity on the illegally created and enlarged lake's bottomlands from 2023 through 2025.
61. On December 21, 2023, Defendants submitted an application to EGLE for a permit pursuant to the Inland Lakes and Streams Act to enlarge a lake. (Defendants used the EGLE and U.S. Army Corps of Engineers' "Joint Permit Application" that covers numerous water protection and regulatory statutes.) See EGLE file no. HPB-72AQ-79WYR, Joint Permit Application, version 1.
62. Defendants' December 21, 2023 permit application was made *after* Defendants were already enlarging the lake without a permit.
63. In Defendants' December 21, 2023 permit application, Defendants affirm that they were submitting an "after-the-fact" application
64. In Defendants' December 21, 2023 permit application, Defendants affirm that they were "aware of [] unresolved violations of environmental law."
65. In Defendants' December 21, 2023 permit application, Defendants state: "Pond 3 [Defendants' label for the enlarged lake] surface water acreage has grown since pumping ceased in October 2023. While [Defendants have] an EGLE [] permit to discharge mining wastewater to a tributary of Fleming Creek north of Pond 1, on October 10, 2023 Ann Arbor Township claimed the discharge was in violation of the Conditional Use Permit

and required that pumping be discontinued immediately. As a result, Pond 3 has grown larger than five acres very quickly after pumping ceased.”

66. Defendants’ December 21, 2023 permit application did not disclose Defendants’ plan to mine and dredge the enlarged lake bottomlands.
67. On May 5, 2025, Defendants submitted a revised application to EGLE for a permit pursuant to the Inland Lakes and Streams Act to create and enlarge the lake to 59 acres. See EGLE file no. HPB-72AQ-79WYR, Joint Permit Application, version 2.
68. Defendants’ 2025 permit application includes an illustration of their mining operation in 2025, depicting the enlarged lake at about 15 acres. (Exhibit 3.)
69. Defendants’ 2025 permit application includes an illustration of their future site plan depicting the enlarged lake at 59 acres. (Exhibit 4.)
70. Illustrations of the Defendants’ mining site in 2025 (exhibit 3) and as planned in the future (exhibit 4) are reproduced below:

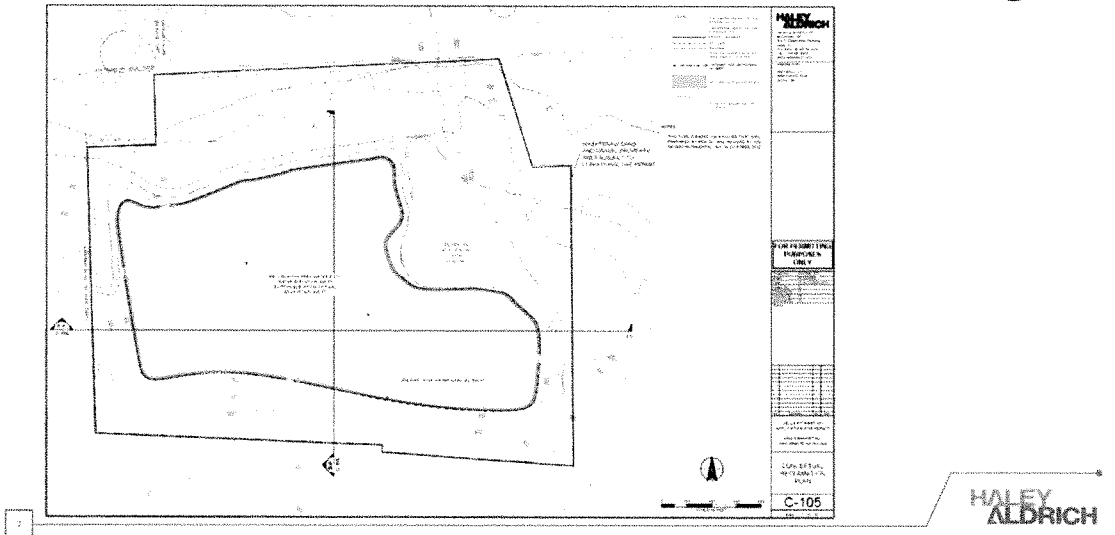
Vella Pit Layout



Above – Defendants’ site in 2025 with approximately 15 acres of enlarged lake. (Exhibit 3.)

Below – Defendants’ planned site with the lake enlarged to 59 acres. (Exhibit 4.)

Conceptual Reclamation Plan



71. In Defendants' May 5, 2025 permit application, Defendants revised their project description to include mining the created and enlarged lake.
72. In Defendants' May 5, 2025 permit application, Defendants state: "Post mining/restoration activity includes creating a lake and future residential use. Planned operation will be a combination of dragline dredging and long arm excavating from the newly created Pond 3."
73. In Defendants' May 5, 2025, permit application, Defendants admit that their ongoing and planned operation is to mine the lake itself.
74. In Defendants' May 5, 2025, permit application, Defendants state: "MMM intends to continue mine activities for up to another 20 years. Mining will be conducted 'in the wet' using long arm excavators and dragline dredging."
75. In Defendants' May 5, 2025, permit application, Defendants submitted a required hydrological study prepared by Haley & Aldrich of Michigan, Inc. for Defendants (dated September 27, 2024).
76. Defendants' hydrological study estimated that the created and enlarged lake will eventually enlarge to 59 acres.
77. Defendants' hydrological study further described Defendants' lake mining operation as "pilot testing."
78. Defendants' hydrological study states: "While dewatering was previously performed to facilitate excavation in the dry, MMM is currently pilot testing removal via mechanical dredging beneath the surface of Pond 3."
79. Defendants' hydrological study observed that the enlarging lake is connected to groundwater.

80. Defendants' hydrological study concluded that the enlarging lake is being fed by groundwater.
81. Defendants' hydrological study concluded that the enlarging lake will be a source of pollution back into the aquifer from precipitation and surface water runoff.
82. Defendants' hydrological study states "Pond 3 is expected to reach equilibrium with the surrounding Upper Aquifer materials, with decreasing groundwater flow towards Pond 3 and potentially increased flow from Pond 3 into the Upper Aquifer as Pond 3 captures precipitation and surface water runoff. The Site is anticipated to continue to be a primary recharge area to the Upper Aquifer where the Upper Aquifer materials are exposed at the ground surface."
83. Defendants' hydrological study submitted with their May 5, 2025, permit application does not discuss the impacts to connected groundwater resulting from Defendants mining the lake bottomlands.
84. Defendants continued to dredge and mine the lake bottomlands throughout 2025.
85. EGLE completed a "Groundwater – Comprehensive Inspection" report of Defendants mine on May 20, 2025.
86. The May 20, 2025, EGLE Groundwater Comprehensive Inspection report described the Defendants' groundwater use, pollution, treatment, and discharge:

"The aggregate materials are extracted from land that encompasses an area about 40 acres that is east of the front office. The extraction process uses a front end loader to transport buckets of aggregate out of the ground to the wash plant. Wash water for the aggregate is obtained from ground water onsite that is held at a pond designated as pond 2. Based on a map dated September 2024 from Haley Aldrich and from information provided by the site manager, as well as from the Technical Services Coordinator the process for the washing of the mined materials and waste water production involves the following steps: a. Clean water is pumped from Pond 2 to the wash plant. See picture img_3935. The wash plant is approximately 100 feet from where the sand and gravel are extracted. b. At the wash plant, the clean water is used to wash the excavated material. c. A belt drive is started

and transports the material to a slurifier. The slurifier is designed to ensure the material is converted to a slurry. d. From the slurifier, the aggregate is transferred to a classification tank where the material is separated into different grades of sand and gravel based on particle size. See videos img_3940 and img_3942. From the classifying tank, the finished product is stockpiled on the ground in accordance to the grade. The wash water from the wash plant is transferred to a trench that leads to pond 4 which is a settling basin. See videos img_3949. Some settling of solids takes place at the trench. A culvert pipe leading from the north east side of the trench transfers the wash water to the settling pond, which is pond 4. See videos img_3949 and img_3950. The settling pond is designed to treat the wash water by allowing solids to settle out of the water and to the bottom of the pond. See video img_3950. When asked, what steps are taken to ensure the discharge is not or not likely to become injurious, the manager reported that the settling pond is used to remove solids from the wash water discharge. There is no set amount of time that the wash water must spend at the settling pond, as the determination of whether enough sediment has been removed from the wash water is not based on the time the water spends at the pond.

After pond 4, the water is discharged to pond 3. Based on the map dated September 2024, a pump is present at pond 3 to transfer the water to pond 2. On the map, pond two is listed as a settling pond. Pond 2 has an overflow connection to pond 1. Once at pond 1 or 2, the wash water is considered treated with respect to the removal of sediment or solids and it is pumped back from pond 2 to the wash plant to restart the process.”

87. The May 20, 2025, EGLE Groundwater Comprehensive Inspection report states the Defendants’ mine is authorized to discharge up to 3,048,480,000 gallons per day to groundwater via the “settling ponds” and overflows described above.

88. On May 20, 2025, EGLE issued a “Basis for Decision Memo – Facility Classification” to Defendants’ mine.

89. The May 20, 2025, EGLE “Basis for Decision Memo – Facility Classification” determined Defendants’ groundwater discharge is from:

“Groundwater, which was reported on the most recent reissuance application and the previous application as being from a source that meets state or federal criteria as potable water, is extracted from the ground and sent to a wash plant to wash gravel and sand of different particle sizes. The wash water is sent to a trench that leads to the discharge location which is a pond referred to as pond 4. The trench is several feet long and provides an opportunity for some of the solids and sediments to settle out of the wash water before reaching pond 4. Once at pond 4, the wash water is allowed to sit to allow sediment to settle to the bottom of the pond. Afterwards, the water is discharged to pond 3 with a pump. From pond 3 the water flows to pond 2 which was listed as a settling pond per schematics on file.

After pond 2, the water is transferred via a pump back to the wash plant to restart the cycle as per schematics on file.”

90. The May 20, 2025, EGLE “Basis for Decision Memo – Facility Classification” states:

“The nature of the groundwater at this facility is likely for the use as additional water for gravel washing or for dewatering if required for further mining. If connected to the same aquifer, the neighboring residents may also use the groundwater for drinking water.”

91. The May 20, 2025, EGLE “Basis for Decision Memo – Facility Classification” changed the Defendants wastewater classification to “A-1d Impoundment - A tank, basin, or reservoir intended to hold wastewater to allow for a controlled discharge; may or may not provide settling of solids.”

92. On July 21, 2025, Defendants presented a powerpoint slide at the public hearing regarding their permit application with an illustration of their mining operation in 2025 depicting the enlarged lake at about 15 acres. (Exhibit 3.)

93. On July 21, 2025, Defendants presented a powerpoint slide at the public hearing regarding their permit application with an illustration of their future site plan depicting the enlarged lake at 59 acres. (Exhibit 4.)

94. On July 21, 2025, Defendants stated at the public hearing regarding their permit application that they were “already” doing what they were seeking permission to do in their permit application.

~~95. EGLE has *not* granted the Defendants’ “after the fact” permit application for enlarging the lake.~~

~~96. EGLE has *not* granted the Defendants’ permit application for dredging and mining the lake bottomlands.~~

97. EGLE's ~~most recent public documentation~~ review of Defendants' hydrological study submitted with their May 5, 2025, permit application states that Defendants have not even been able to accurately model or predict the impacts of enlarging and mining a lake of this size on the groundwater that supplies local drinking water.
98. The enlarging lake sits on top of the area's groundwater that supplies Plaintiffs' residential drinking wells and many other residents in Ann Arbor Charter Township.
99. Defendants illegal and unpermitted mining of the lake bottomlands from 2023 through 2025 creates additional harm and significant risk to the residential groundwater users and groundwater dependent natural resources.
100. Despite this basic understanding of hydrology and risks to the community's water, Defendants have proceeded without the legally required permission from EGLE from 2023 through 2025.
101. On November 24, 2025, EGLE issued Certificate of Coverage GW1540096 to the Defendants mine.
102. The Certificate of Coverage was issued in lieu of an individual permit under General Permit GW1540000, Groundwater Discharge General Permit for Process Wastewater without Additives from Mining of Gravel, Sand, Limestone, or Dolomite (July 31, 2025).
103. On December 15, 2025, Plaintiffs filed their original complaint with this court.
104. On January 16, 2026, EGLE issued an undated "Draft Permit for Countersignature," WRP047682 v1 in correspondence with Defendant.
105. The January 16, 2026, EGLE draft permit would authorize the creation of a lake approximately 60 acres in size "for the purpose of sand and gravel mining" and allow "wet" mining under Part 301 of NREPA (Inland Lakes and Streams).

106. The January 16, 2026, draft permit and correspondence with Defendants was not posted publicly until April 3, 2026.
107. On January 23, 2026, Plaintiffs and other neighboring property owners filed a timely contested case petition regarding Groundwater Certificate of Coverage GW1540096 with EGLE stating the facility is in violation of NREPA Part 31 (MCL 327.3101 et seq.), Part 22 rules (R 323.2201 et seq.), and General Permit GW1540000, Groundwater Discharge General Permit for Process Wastewater without Additives from Mining of Gravel, Sand, Limestone, or Dolomite (July 31, 2025) because:
- The discharge is injurious to waters of the state.
 - The discharge is injurious to private property.
 - The discharge causes runoff and flooding of adjacent property.
 - The discharge causes erosion.
 - The discharge causes nuisance conditions.
 - The source of wash water is not from a water supply meeting state or federal criteria for use as potable water or another acceptable source.
 - Treatment and control facilities and systems are not maintained in good working order.
 - The facility is discharging wastewater to surface waters of the state.
108. On January 28, 2026, EGLE issued a notice of opening contested case docket number 26-002076 on Defendants' Groundwater Certificate of Coverage. The case is pending.
109. On February 27, 2026, Defendants submitted a Resource Monitoring Plan prepared by Haley & Aldrich of Michigan, Inc. for Draft Permit No. WRP047682 v.1; Permit Application HPB-72AQ-79WYR.
110. The February 27, 2026, Resource Monitoring Plan does not include any monitoring for groundwater discharged pollution or groundwater water quality.
111. The February 27, 2026, Resource Monitoring Plan, a requirement for the permit, was not posted publicly until April 3, 2026.

112. On March 19, 2026, EGLE issued a “Second Draft Permit for Countersignature,” WRP047682 v1 in correspondence to Defendants.
113. The March 19, 2026, second draft permit would authorize the creation of a lake approximately 60 acres in size “for the purpose of sand and gravel mining” and allow “wet” mining under Part 301 of NREPA (Inland Lakes and Streams).
114. The March 19, 2026, second draft permit and correspondence with Defendants was not posted publicly until April 3, 2026.
115. On April 6, 2026, EGLE issued the “Permit with Countersignature (Corrected),” WRP047682 v1 and posted it publicly.
116. The April 6, 2026, Permit document and all related permit documents (including the Defendants February 27, 2026, Resource Monitoring Plan) are backdated by EGLE with a stamp: “Issued On: 01/16/2026.”
117. In a written notice dated May 20, 2026, the Michigan Department of Health and Human Services (MDHHS) informed Plaintiffs John and Joan Darish that MDHHS recently performed drinking water sampling at their home and provided the water test lab results.
118. The May 20, 2026, MDHHS test result for turbidity in Plaintiffs John and Joan Darish’s home water was 46 FTU (the U.S. Environmental Protection Agency’s Maximum Contaminant Level for turbidity in drinking water is 1 FTU¹).
119. The May 20, 2026, MDHHS test result for iron in Plaintiffs John and Joan Darish’s home water was 4.71 mg/L (the EPA’s MCL for iron in drinking water is .3 mg/L²).

¹ See 40 CFR 141.13.

² See 40 CFR 143.3.

120. The May 20, 2026, MDHHS test result for manganese in Plaintiffs John and Joan Darish's home water was .098 mg/L (the EPA's MCL for manganese in drinking water is .05 mg/L³).

(A summary table of the MDHHS test results of Plaintiffs' drinking water for turbidity, iron, and manganese, as communicated on May 20, 2026, is provided below.)

<u>MDHHS Drinking Water Test Results (communicated May 20, 2026)</u>			
	Turbidity (FTU)	Iron (mg/L)	Manganese (mg/L)
Plaintiff John and Joan Darish	46	4.71	0.098
Plaintiff Gail and Michael Nicklowitz	27	3.35	0.085
Plaintiff Grace and Eugene Kim	15	1.66	0.041
US EPA maximum contaminant level	1	0.30	0.050

121. In a written notice dated May 20, 2026, the Michigan Department of Health and Human Services (MDHHS) informed Plaintiffs Gail and Michael Nicklowitz that MDHHS recently performed drinking water sampling at their home and provided the water test lab results.

122. The May 20, 2026, MDHHS test result for turbidity in Plaintiffs Gail and Michael Nicklowitz's home water was 27 FTU (the EPA's MCL for turbidity in drinking water is 1 FTU).

³ See 40 CFR 143.3.

123. The May 20, 2026, MDHHS test result for iron in Plaintiffs Gail and Michael Nicklowitz's home water was 3.35 mg/L (the EPA's MCL for iron in drinking water is .3 mg/L).
124. The May 20, 2026, MDHHS test result for manganese in Plaintiffs Gail and Michael Nicklowitz's home water was .085 mg/L (the EPA's MCL for manganese in drinking water is .05 mg/L).
125. In a written notice dated May 20, 2026, the Michigan Department of Health and Human Services (MDHHS) informed Plaintiffs Grace and Eugene Kim that MDHHS recently performed drinking water sampling at their home and provided the water test lab results.
126. The May 20, 2026, MDHHS test result for turbidity in Plaintiffs Grace and Eugene Kim's home water was 15 FTU (the EPA's MCL for turbidity in drinking water is 1 FTU).
127. The May 20, 2026, MDHHS test result for iron in Plaintiffs Grace and Eugene Kim's home water was 1.66 mg/L (the EPA's MCL for iron in drinking water is .3 mg/L).
128. The May 20, 2026, MDHHS test result for manganese in Plaintiffs Grace and Eugene Kim's home water was .041 mg/L (the EPA's MCL for manganese in drinking water is .05 mg/L).
129. On January 23, 2026, Plaintiffs and other neighboring property owners filed a contested case petition regarding Groundwater Certificate of Coverage GW1540096 with EGLE stating the facility is in violation of NREPA Part 31 (MCL 327.3101 et seq.), Part 22 rules (R 323.2201 et seq.), and General Permit GW1540000, Groundwater Discharge General Permit for Process Wastewater without Additives from Mining of Gravel, Sand, Limestone, or Dolomite (July 31, 2025) because:
- The discharge is injurious to waters of the state.
The discharge is injurious to private property.

The discharge causes runoff and flooding of adjacent property.

The discharge causes erosion.

The discharge causes nuisance conditions.

The source of wash water is not from a water supply meeting state or federal criteria for use as potable water or another acceptable source.

Treatment and control facilities and systems are not maintained in good working order.

The facility is discharging wastewater to surface waters of the state.

130. On June 4, 2026, Plaintiffs and other neighboring property owners filed a contested case petition regarding Permit WRP047682 with EGLE stating permit issuance is unlawful and in violation of the Inland Lakes and Streams Act, MCL 327.30101 et seq., and the Inland Lakes and Streams Administrative Rules, R 281.811-281.846, because:

The department did not provide timely and adequate notice of the permit application and supporting materials.

The department did not provide timely and adequate notice of its permit decision.

The permitted activities will adversely and significantly affect the public trust.

The permitted activities will adversely and significantly affect riparian rights.

The permitted activities will adversely affect waters from which or into which its waters flow and the uses of all such waters, including uses for recreation, fish and wildlife, and aesthetics.

The permitted activities will unlawfully impair or destroy waters and other natural resources of the state.

The permitted activities will cause unlawful pollution as defined by part 31 of NREPA. will be minimal.

Neither the department nor the applicant have shown that a feasible and prudent alternative is not available.

131. Defendants are discharging mine waste and wash water waste with sediment, iron, and manganese to groundwater and connected surface waters.
132. Defendants' groundwater discharge of mine waste and wash water waste is polluting and impairing groundwater and connected surface waters, including pollution and impairment from turbidity, iron, and manganese.
133. Defendants' groundwater discharge of mine waste and wash water waste is harming, polluting, and impairing Plaintiffs' supply of household drinking water for domestic purposes.

134. Defendants' groundwater discharge of mine waste and wash water waste harms Plaintiffs' protected public interests.
135. Defendants' enlargement of the lake pollutes, impairs, and destroys Michigan's water and related natural resources.
136. Defendants' dredging and mining of the lake bottomland pollutes, impairs, and destroys Michigan's water and related natural resources.
137. Defendants' enlargement of the lake harms Plaintiffs' protected property interests including groundwater use.
138. Defendants' dredging and mining of the lake bottomland harms Plaintiffs' protected property interests including groundwater use.
139. Defendants' enlargement of the lake harms Plaintiffs' protected public interests.
140. Defendants' dredging and mining of the lake bottomland harms Plaintiffs' protected public interests.
141. Defendants' groundwater discharge of mine waste and wash water waste, enlargement of the lake, and dredging and mining of the lake bottomland after significant aquifer dewatering is creating a "turbidity plume" that pollutes, impairs, and destroys Michigan's water and related natural resources.
142. Defendants' groundwater discharge of mine waste and wash water waste, enlargement of the lake, and dredging and mining of the lake bottomland after significant aquifer dewatering is harming, polluting, and impairing Plaintiffs' supply of household drinking water for domestic purposes with unsafe levels of turbidity, iron, and manganese.
143. Defendants' groundwater discharge of mine waste and wash water waste warrants immediate injunctive relief by this Court.

144. Defendants' enlargement of the lake warrants immediate injunctive relief by this Court.
145. Defendants' dredging and mining of the lake bottomland warrants immediate injunctive relief by this Court.
146. Defendants' mining operation is likely to materially diminish, reduce, and adversely impact the quantity and quality of groundwater and connected surface waters and other natural resources of the Plaintiff properties.
147. Municipal water is not available to residents in this area.
148. Defendants' unlawful mining activities since 2023 cause excessive noise, vibrations, and dust.
149. Defendants' truck traffic deteriorates local dirt roads causing dust and other pollution.
150. Defendants' truck traffic creates excessive noise, vibrations, and risk of public injury operating prior to the township's allowed 7:00 a.m. start time.
151. Defendants' truck traffic harms water and other natural resources when trucks drive off the local dirt roads, tipping over and dumping the mined materials into wetlands, such as occurred on November 19, 2025.

COUNT I
MICHIGAN ENVIRONMENTAL PROTECTION ACT

152. Plaintiffs reallege and incorporate by reference the allegations contained in the previous and subsequent paragraphs.
153. The Michigan Constitution establishes the protection of public health, welfare, and the environment as a paramount concern for state government. Article IV, Section 52 of the Michigan Constitution provides:

“The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the

air, water and other natural resources of the state from pollution, impairment and destruction.”

154. The Legislature fulfilled its duty to protect the environment by passing the Michigan Environmental Protection Act (MEPA), MCL 324.1701 et seq.
155. MEPA provides that “any person” may bring an action in circuit court for the “protection of the air, water or other natural resources and the public trust in these resources from pollution, impairment or destruction.” MCL 324.1701(1).
156. MEPA provides that a circuit court “may grant temporary and permanent equitable relief or may impose conditions on the defendant that are required to protect” the State’s natural resources. MCL 324.1704(1).
157. Defendants’ mining operations are polluting, impairing, and destroying groundwater, surface water, and other natural resources.

COUNT II
VIOLATION OF RIPARIAN RIGHTS BY A NONRIPARIAN

158. Plaintiffs reallege and incorporate by reference the allegations contained in the previous and subsequent paragraphs.
159. Massey Lake in Washtenaw County is a natural body of surface water in Michigan that is subject to the common law of riparian rights.
160. Plaintiffs John and Joan Darish and Grace and Eugene Kim possess riparian rights to Massey Lake because they own parcels of land that are adjacent to the lake.
161. Defendants do not possess riparian rights to Massey Lake because their property located at 4984 Earhart Road is not adjacent to Massey Lake.
162. Plaintiff John Darish uses Massey Lake for reasonable recreational purposes, such as canoeing, fishing, and hiking along the banks.

163. Plaintiffs Eugene Kim uses Massey Lake for reasonable recreational purposes, such as canoeing, fishing, and hiking along the banks.

164. Defendants' mining operations are unreasonably interfering with and violating Plaintiffs' riparian rights.

COUNT III
PRIVATE NUISANCE

165. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the previous and subsequent paragraphs.

166. Defendants' unlawful mining activities have caused, and will continue to cause, vibrations, noise and dust.

167. Defendants' mining activities are creating and maintaining a nuisance that interferes with the quiet use and enjoyment of Plaintiffs' properties.

COUNT IV
PUBLIC NUISANCE

168. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the previous and subsequent paragraphs.

169. Defendants' unlawful mining activities have caused, and will continue to cause, harm to the public's general interest in air, water, and other natural resources.

COUNT V
DECLARATORY AND INJUNCTIVE RELIEF

170. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the previous and subsequent paragraphs.

171. There is an actual, justiciable controversy between the parties and a declaratory judgment under MCL 324.1701 and MCR 2.605 is appropriate.

172. Defendants' conduct has caused immediate and irreparable harm.
173. Defendants continue to pollute, impair, and destroy water and other natural resources.
174. Defendants have stated an intent to continue enlarging the lake ~~even without the required EGLE permit.~~
175. Defendants have stated an intent to continue mining the enlarged lake ~~even without the required EGLE permit.~~
176. Defendants have stated an intent to continue groundwater discharge of mine waste and wash water.
177. Plaintiffs will continue to suffer far more harm if an injunction is not granted than Defendants will suffer if an injunction is granted.
178. Plaintiffs have demonstrated a likelihood of success on the merits of their claims such that a preliminary injunction is proper. See MCL 324.1701 and MCR 3.310 (Injunctions).
179. MEPA provides that a court "may grant temporary and permanent equitable relief or may impose conditions on the defendant that are required to protect" the State's natural resources. MCL 324.1704(1).
180. Defendants' illegal mining operations must cease immediately and permanently to protect Michigan's natural resources.
181. Defendants must further be required to fully reclaim, remediate, and restore the site from all harm they have caused to protect Michigan's natural resources and Plaintiffs' rights and interests.

REQUEST FOR RELIEF

Based on these allegations, Plaintiffs John Darish, Joan Darish, Gail Nicklowitz, Michael Nicklowitz, Grace Kim, and Eugene Kim request this Honorable Court enter a judgment in their

favor against Defendants WSG Properties, LLC, AMC-WSG LLC, and AMC-Mid-Michigan Materials LLC.

Plaintiffs are not requesting monetary damages and are only requesting the following declaratory, equitable, and temporary and permanent injunctive relief:

- A. Declare that Defendants' mining operation is presently unlawful;
- B. Grant a temporary injunction that ceases Defendants' illegal mining operation, including discharging mine waste and wash water to groundwater, enlarging and mining a lake, ~~unless or until permitted by EGLE~~;
- C. Grant a permanent injunction against any pollution, impairment, and destruction of groundwater and other natural resources by Defendants;
- D. Grant a permanent injunction against Defendants' interference with quiet use and enjoyment of property and riparian uses of Massey Lake;
- E. Order Defendants to reclaim, remediate, and restore the site from all harm they have allowed and/or caused;
- F. Award Plaintiffs such other relief as this Court deems just and proper.

Respectfully submitted,

Dated: July 7, 2026

FLOOD LAW, PLLC

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EXHIBIT 2

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

JOHN DARISH, JOAN DARISH,
GAIL NICKLOWITZ,
MICHAEL NICKLOWITZ,
GRACE KIM and EUGENE KIM

Plaintiffs,

Case No. 25-002153-CE
Hon. Julia B. Owdziej

v.

WSG PROPERTIES, LLC, AMC-WSG,
LLC and AMC-MID MICHIGAN
MATERIALS LLC,

Defendants.

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DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Defendants WSG Properties, LLC, AMC-WSG, LLC, and AMC-Mid-Michigan Materials LLC (collectively "Defendants") move for an order dismissing Plaintiffs' Complaint pursuant to MCR 2.116(C)(4), (7), and (8) for the reasons stated below and the accompanying brief.

Plaintiffs filed this action to challenge Defendants' operation of a sand and gravel mine near their respective residences. Defendants are parties to a factually related, years-long litigation

(in another court of this Circuit) with Ann Arbor Charter Township. Plaintiffs' Complaint attempts to impose liability on Defendants for following the orders issued in that long-pending case. That is not a basis for liability because (1) The lack-of-permit issue that is the basis of Plaintiffs' claims is moot by way of Defendants obtaining the permit; (2) Defendants were obligated to follow a sister court's orders; and (3) Plaintiffs may not collaterally attack decisions of another court. Even in the absence of those dispositive obstacles, Plaintiffs have not stated any viable claim for relief. Plaintiffs fail to plead a factual basis to support their claims and offer only conclusory labels.

WHEREFORE, Defendants respectfully request that the Court:

- A. Grant this Motion;
- B. Dismiss Plaintiffs' Complaint in its entirety and with prejudice;
- C. Grant Defendants such other relief as the Court deems proper and just.

**BRIEF IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY DISPOSITION**

I. INTRODUCTION

Defendants own and operate a gravel mine in Ann Arbor Charter Township. For more than two years, Defendants have been involved in litigation in another court of this Circuit with the Township over use of the mine. Plaintiffs—individual property owners residing near the gravel mine—recently filed this case to create a parallel and inconsistent attack on Defendants' use of their property. The basis of Plaintiffs' Complaint is moot because Defendants have obtained the permit Plaintiffs alleges is lacking. To the extent any portion of the Complaint is not moot, Plaintiffs seek to impose liability solely because of the consequence of Defendants' compliance with long-standing court orders. They attempt to collaterally attack the rulings in a pending case. And they do all of this without pleading any facts that would entitle them to relief. Plaintiffs' Complaint should be dismissed for three independently sufficient reasons.

First, Plaintiffs' claims are moot. The gravamen of Plaintiffs' Complaint is that Defendants do not have a permit to enlarge and mine a lake. Since Plaintiffs' filing, Defendants have obtained such a draft permit, which is to be finalized within 60 days.

Second, Defendants cannot be sued for obeying court orders. Plaintiffs' theory depends on the opposite premise: that Defendants should be exposed to liability for doing what the court ordered them to do. Plaintiffs cannot put Defendants in an impossible position where compliance with the court's directives becomes the basis for a new lawsuit.

Third, Plaintiffs' Complaint is a collateral attack on another court within this Circuit. The relief Plaintiffs request would require this Court to second-guess or effectively negate the practical effect of injunctions and stipulated orders entered by a sister court in the *Ann Arbor* case. That is precisely what Michigan's collateral-bar rule prohibits. Plaintiffs cannot obtain indirectly through a new lawsuit what they chose not to pursue directly in the case that generated the operative orders.

Finally, even if the Court sets aside these threshold defects, Plaintiffs have not pled viable claims. The Complaint relies heavily on conclusions and statutory labels without the factual allegations necessary to state claims for MEPA relief, riparian interference, or nuisance. MEPA is not a procedural vehicle to litigate permitting disputes or to obtain perpetual judicial oversight of ongoing administrative review. Plaintiffs likewise plead no facts showing any concrete interference with riparian rights, and their nuisance counts rest on generalized complaints about dust, noise, vibration, and truck traffic untethered to any pleaded substantial and unreasonable interference with use and enjoyment of land.

Defendants respectfully request that the Court grant summary disposition under MCR 2.116(C)(4), (7), and (8) and dismiss the Complaint in its entirety with prejudice.

II. STATEMENT OF FACTS

This case arises out of a long-running dispute concerning an aggregate mining operation located at 4984 Earhart Road in Ann Arbor Charter Township (the “Property”). A sand and gravel mine has existed and operated on the Property for decades. Defendants WSG Properties, LLC, AMC-WSG, LLC, and AMC-Mid-Michigan Materials LLC (collectively, “Defendants”) have owned and/or operated the mine on the Property since approximately 2020. (Compl. ¶¶ 18–27, 30.) Plaintiffs are nearby residential property owners whose parcels are located adjacent to, or in the vicinity of, the Property. (Compl. ¶¶ 1–17.)

A. The 2023 Litigation

Defendants’ mining operation historically included groundwater pumping intended to control surface water accumulation. (Compl. ¶¶ 31–32.) Although standing water had existed on the Property for decades, groundwater pumping had prevented the formation of a surface waterbody exceeding five acres, thus no “lake” permit was required. See MCL 324.30101(i) (excluding from definition and regulation any “lake or pond that has a surface area of less than 5 acres”). In 2023, several nearby residents—including Plaintiffs John and Joan Darish and Gail and Michael Nicklowitz—complained to Ann Arbor Charter Township (“Township”) that groundwater pumping at the mine had adversely affected their private wells by lowering the local water table. (Compl. ¶ 40.) In response, the Township sought a temporary restraining order and injunction against Defendants in Washtenaw County Circuit Court, alleging violations of the Township’s Conditional Use Permit and harm to residential wells. (Compl. ¶¶ 38–41; *Ann Arbor Charter Twp v WSG Properties, LLC*, Case No. 23-001234-CE (Mich Cir Ct, filed September 28, 2023).)

On October 20, 2023, the *Ann Arbor* court entered the Court’s Stipulated Clarification to Order Granting Preliminary Injunction, a stipulated clarification to its initial injunction, permitting Defendants to resume mining operations but prohibiting them from pumping or discharging

groundwater or processing wastewater in a manner that would cause a net loss of groundwater from the Property (“Injunction Order”). (Compl. ¶¶ 44–45; Ex. 1.) The most recent order governing the Property is the Order Extending Administrative Stay, dated January 7, 2026, (“Administrative Stay”), which permits Defendants to “engage in mining activities in accordance with the Conditional Use Permit authorized by the Township’s Board of Trustees on July 20, 2020 (“CUP”) and the Injunction Order, notwithstanding the term of the CUP.” (Ex. 2.)

During the *Ann Arbor* case, the court issued additional orders governing the manner and scope of Defendants’ activities, including a limited “dredging trial period” authorized by order dated July 3, 2024, and later extended through October 15, 2024. (Compl. ¶¶ 46–47; Ex. 3.) The Township case remains pending, and Defendants’ mining activities have been subject to ongoing judicial supervision through that action. (Compl. ¶ 49.)

As a direct result of being enjoined from pumping groundwater to reduce the groundwater elevation, groundwater levels immediately began to increase, resulting in the enlargement of the lake within the Property, soon exceeding the five-acre permitting threshold. (See Compl. ¶ 50.) This growth has been entirely passive and a direct result of the court’s ruling prohibiting Defendants from pumping groundwater. Defendants have not taken affirmative steps to create a larger lake within their Property—to the contrary, their preference is *not* to have any such lake.

Because the lake’s size had exceeded the permitting threshold, Defendants promptly met with the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) and agreed to submit a Joint Permit Application in December 2023 seeking “after-the-fact” approval for creation of a lake exceeding 5 acres. (Compl. ¶¶ 61–67.) Due to changes in EGLE’s permitting guidance and modelling requirements, Defendant submitted a revised permit application in May 2025. (Compl. ¶¶ 71–74.) After EGLE extended its permitting decision twice due to changes in guidance

and several requests for additional data and modelling revisions, EGLE issued a draft permit to Defendants on Friday, January 16, 2026 (the “Draft Permit”). (Ex. 4.) Defendants are now working with EGLE to develop a monitoring program requested by EGLE as a condition of the Draft Permit, which is expected to be approved, and the Draft Permit finalized within 60 days.

B. Plaintiffs’ Allegations

Plaintiffs initiated this action in December 2025—more than two years after the *Ann Arbor* litigation began and the Injunction Order issued.

Plaintiffs’ primary complaint is that Defendants do not have an EGLE permit for a lake. (Compl. ¶ 60.) Yet Defendants were actively in the process of obtaining such a permit, and in fact received a Draft Permit on January 16, 2026. (Compl. ¶ 61; Ex. 4.) Plaintiffs contend that the lake on the Property violates MEPA precisely—and exclusively—because it is not permitted. They do not allege that (let alone *how*) the existence of a lake creates any actual environmental harm. Instead, they effectively contend that absence of a permit is a proxy for environmental harm. As a result, Plaintiffs assert conclusory claims for violations of MEPA, nuisance, and (seemingly unrelated to the lake on the Property) violations of their ability to access Massey Lake on a *separate* property. (Compl. ¶¶ 50, 120, 122–125.) Plaintiffs seek relief under MEPA and common law theories, notwithstanding the ongoing regulatory proceedings, now-issued Draft Permit and the separate action already pending before the court. (Compl. ¶¶ 126–136.)

III. STANDARD

MCR 2.116(C)(4) controls motions for lack of subject matter jurisdiction.

MCR 2.116(C)(7) provides that summary disposition is appropriate if a claim is barred by a prior proceeding or judgment. MCR 2.116(C)(7). “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” *Maiden v*

Rozwood, 461 Mich 109, 119; 597 NW2d 817 (1999). “If such material is submitted, it must be considered.” *Id.* (citing MCR 2.116(G)(5)).

“A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint.” *Id.* “All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant.” *Id.* (citing *Wade v Dep’t of Corrections*, 439 Mich 158, 162, 483 NW2d 26 (1992)). However, “[m]ere conclusions, unsupported by allegation of fact, will not suffice to state a cause of action.” *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 534; 542 NW2d 912 (1995).

IV. ARGUMENT

A. Plaintiffs’ Claims Are Moot.

Plaintiffs’ Complaint is now moot because its central factual premise—that Defendants are operating without an EGLE permit for a lake—no longer exists. “It is well established that a court will not decide moot issues.” *People v Richmond*, 486 Mich 29, 34; 782 NW2d 187 (2010). A case is moot when it presents “abstract questions of law which do not rest upon existing facts or rights.” *Id.* at 35. Reviewing a moot question would be a “purposeless proceeding” and courts “refuse to hear cases they do not have the power to decide, including cases that are moot.” *Id.* “Whether a case is moot is a threshold issue that a court addresses before it reaches the substantive issues of the case itself.” *Id.*

Since the Complaint was filed, EGLE’s Water Resources Division has issued a Draft Permit authorizing the lake creation and associated mining activities at the Property, subject to final execution and standard administrative conditions. (Ex. 4.) The Draft Permit authorizes Defendants to “[e]xcavate approximately 7,300,000 cubic yards of material from below the water table to create a lake for the purpose of sand and gravel mining. The lake shall be approximately 60 acres in size upon project completion.” *Id.* In the Draft Permit EGLE certifies that the discharge from the authorized activities will comply with Michigan’s water quality requirements and

associated administrative rules. *Id.* Plaintiffs' claims all rest on the alleged absence of a permit and unlawfulness that supposedly flows from that absence. Since the permitting deficiency alleged in the Complaint is cured, there is no longer a live controversy for this Court to adjudicate.

Any ruling by this Court on whether Defendants must obtain a permit or whether their operations are unlawful due to the absence of one would be advisory only. Plaintiffs' requested relief would neither halt unpermitted activity nor compel regulatory compliance which has already been obtained. Because Plaintiffs' claims no longer rest on "existing facts or rights," and "a court should not hear moot issues" this action should be dismissed as moot. *Richmond*, 486 Mich at 41.

B. Defendants Cannot Be Held Liable for Compliance with Court Orders.

"A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date." *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998). This rule is not discretionary. It reflects the foundational principle that the orderly administration of justice depends on compliance with court orders. Parties are not free to disregard or selectively comply with judicial directives.

1. Plaintiffs' Alleged Harms are the Product of Court Orders

Plaintiffs' claims arise against the backdrop of a separate, still-pending enforcement action brought by Ann Arbor Charter Township. (Compl. ¶ 38; *Ann Arbor*, Case No. 23-001234-CE.) That case resulted in a preliminary injunction—issued more than two years ago—temporarily halting Defendants' mining operation, followed by a clarification prohibiting groundwater pumping and discharge, and later orders authorizing and regulating a limited dredging trial period. (Compl. ¶¶ 43–47.) Plaintiffs are fully aware of the *Ann Arbor* case as they have plainly laid out in the Complaint. Defendants were obligated to conform their conduct to the express terms of

those orders. Failure to do so would expose Defendants to contempt proceedings and judicial sanctions. Under *Kirby*, Defendants had no lawful option other than compliance.

Michigan courts have applied this principle to bar civil liability where a defendant's challenged conduct was compelled by a court order. In *Sharma v Metropolitan Life Insurance Co*, an analogous decision, the Court of Appeals held that the defendant could not be liable for releasing funds pursuant to a garnishment order, even where the plaintiff later contended the order was improper. Unpublished opinion of the Court of Appeals, issued December 14, 2004 (Docket No. 249314), 2004 WL 2875085, at *3 (Ex. 5). The court explained that a party subject to a court order cannot be expected to ignore it based on a belief or possibility that it is unlawful. "A person may not disregard a court order simply on the basis of his subjective view that the order is wrong or will be declared invalid on appeal." *Id.* at *4 (quoting *Johnson v White*, 261 Mich App 332, 346; 682 NW2d 505 (2004)).

The same reasoning applies here. Plaintiffs' alleged harms arise from Defendants' compliance with injunctions and stipulated orders entered by the court. According to Plaintiffs, "[a]fter the EGLE Violation Notice and this Court's prior preliminary injunction orders issued in 2023, Defendants changed their operation to create and enlarge a lake." (Compl. ¶ 50.) Plaintiffs themselves acknowledge that the injunction drove the conduct they now complain about. They allege, "[s]tarting in October 2023, [after the Injunction Order], Defendants began mining the newly created¹ and enlarged lake bottomland." (Compl. ¶ 58.) Defendants promptly moved to cure the permitting issue—an issue created by the Injunction Order, not by Defendants' independent conduct—by submitting an "after-the-fact" EGLE permit application. (Compl. ¶¶ 65,

¹ Defendants did not "create" a lake in the ordinary sense. Here the relevant definition of lake specifically excludes "a lake or pond that has a surface area of less than 5 acres." MCL 324.30101(i).

67.) The application stated the surface water acreage on the Property “has grown since pumping ceased in October 2023.” (Compl. ¶ 65.) “Ann Arbor Township claimed the discharge was in violation of the Conditional Use Permit and required that pumping be discontinued immediately. As a result, Pond 3 has grown larger than five acres very quickly after pumping ceased.” (*Id.*) Plaintiffs claim Defendants should be liable for the inadvertent accumulation of water. Those alleged harms cannot form the basis of liability against Defendants.

2. Plaintiffs Cannot Shift the Consequences of Their Own Inaction

Michigan places the burden on affected third parties to protect their interests through proper procedural channels. Instructive is *Sharma*’s emphasis on timing, notice, and the plaintiff’s failure to act. The court explained, “It was incumbent upon plaintiff to defend against the garnishment or contest the order that required defendant to relinquish the funds.” *Sharma*, 2004 WL 2875085, at *4. “Any error is solely attributable to plaintiff and fault cannot be assigned to defendant for simply complying with a valid court order.” *Id.* There, “it [was] undisputed that only after the issuance of a court order did defendant release the funds,” and that the plaintiff was “apprised by defendant, at each step in the process, of the action or position taken by defendant.” *Id.* at *3. By failing to take action to dispute the court order, the plaintiff “violated the basic tenet” that a party may not disregard a court order based on its own view of legality. *Id.* at *3–4.

The same sequence is alleged here. Plaintiffs’ claimed injury flows from conditions that arose only after the *Ann Arbor* court entered injunctions and stipulated orders governing Defendants’ groundwater pumping, discharge and mining operations. (Compl. ¶¶ 43–49.) Plaintiffs were aware of the Township’s enforcement action and resulting orders, which expressly directed Defendants to cease pumping and discharging groundwater. (Compl. ¶¶ 38–45.) Yet Plaintiffs took no action for years until filing this Complaint. Plaintiffs cannot shift liability onto

Defendants for Plaintiffs' own failure to act, particularly where Plaintiffs had notice and were fully apprised of the events in the Township's case.

"It was incumbent upon Plaintiffs" to challenge the Injunction Order directly and not to bring a later, separate action against Defendants who complied with it. Here, Plaintiffs could have sought to intervene in the *Ann Arbor* case, moved to modify or dissolve the Injunction Order, or pursued appellate relief. See *Shree, LLC v Lehman & Valentino*, PC, unpublished opinion of the Court of Appeals, issued December 14, 2004 (Docket No. 249321), 2004 WL 2889879, at *2 (with mirror facts to *Sharma, supra*) (Ex. 6):

Plaintiff knew of the issuance of the court order and the intent of [defendant] to comply with the order, yet it did nothing to contest the order in a timely manner. It was incumbent upon plaintiff to defend. . . or contest the order. . . Even after attempting to intervene in the garnishment proceeding, plaintiff merely abandoned its efforts by dismissing the action.

Plaintiffs did none of those things. Having failed to challenge the operative court orders, Plaintiffs may not now recast their objections as independent claims against Defendants for obeying them and cannot be heard to complain, years later, of the effects of the order in the *Ann Arbor* case.

3. Plaintiffs Seek to Impose Conflicting Standards on Defendants

Allowing Plaintiffs' claims to proceed would place Defendants in an untenable position. Under Plaintiffs' theory of liability, Defendants must either comply with court orders and face civil liability in this action or avoid civil liability here and face contempt proceedings in the Township's action. The rule articulated in *Kirby* exists precisely to avoid this dilemma. Until modified or vacated, the *Ann Arbor* injunctions must be obeyed, and compliance with them cannot give rise to tort, statutory, or equitable liability.

Because Plaintiffs' claims seek to impose liability for conduct undertaken in compliance with valid court orders, those claims fail as a matter of law and must be dismissed.

C. Plaintiffs' Claims Are an Impermissible Collateral Attack on Another Court.

Plaintiffs' Complaint is also barred for an independent and equally dispositive reason: it constitutes an impermissible collateral attack on injunctions and orders entered in the Township's enforcement action. Under the "collateral bar" rule, a litigant may not indirectly attack a prior judgment in a later, separate action unless the issuing court lacked jurisdiction over the person or subject matter. *In re Ferranti*, 504 Mich 1, 22 (2019). "Instead, the litigant must seek relief by reconsideration of the judgment from the issuing court or by direct appeal." *Id.* at 23.

1. Michigan Courts Prohibit Collateral Attacks on Injunctions

Court orders, including injunctions, cannot be challenged on their merits through collateral proceedings. See *State ex rel Prosecuting Attorney for Ingham County v American Amusement Co, Inc*, 71 Mich App 130, 133 (1976) (rejecting challenge to injunctions in a later proceeding, holding that the defendants were "impermissibly attempting to collaterally attack the injunctions").

The rule forecloses Plaintiffs' claims here. Plaintiffs seek to impose liability on Defendants precisely because Defendants complied with the *Ann Arbor* court's orders and because Plaintiffs disagree with their effects. Because Plaintiffs' theories of liability rest on a finding incompatible with *Ann Arbor*, the Complaint is an impermissible collateral attack.

Although styled as statutory and common-law claims, Plaintiffs' allegations target the consequences of the Injunction Order and Administrative Stay. The Injunction Order states "Defendants are prohibited from discharging process waste water or groundwater from the NPDES discharge pipe. . . or otherwise causing a net loss of groundwater from the site." (Compl. ¶ 45; Injunction Order, Ex. 1.) Plaintiffs allege that Defendants' compliance with the Injunction Order contributed to the creation or enlargement of surface water at the site and that this condition gives rise to environmental, riparian, and nuisance claims. (Compl. ¶ 50 (alleging that *after* the Court's preliminary injunction order Defendants changed their operation); Compl. ¶ 94 ("Defendants'

enlargement of the lake pollutes, impairs, and destroys Michigan's water.”.) Those allegations necessarily challenge the substance and effect of the Court's orders. If Plaintiffs are correct, then the relief they seek would require Defendants to act in contempt or would effectively declare the court's orders in the *Ann Arbor* case wrongful. Michigan law does not permit a second court, or the same court in a different action, to reach that result indirectly.

2. The Collateral Bar Rule is Regularly Applied in Land Use Cases

Michigan courts have repeatedly applied the collateral-attack doctrine in land-use and zoning disputes. In *Old EPI Building v Meridian Charter Township*, the court rejected a subsequent lawsuit challenging a consent judgment on the ground that ordinance procedures were not followed, holding that such arguments did not challenge subject matter jurisdiction but “were challenging the exercise of the court's jurisdiction” and were therefore “not subject to collateral attack.” *Old EPI Bldg v Meridian Charter Twp*, unpublished opinion of the Court of Appeals, issued April 17, 2008 (Docket No. 276713), 2008 WL 1765249 at *9 (Ex. 7).

Similarly, in *Cuson v Tallmadge Charter Township*, nearby property owners attempted to collaterally challenge a consent judgment that resolved rezoning litigation. *Cuson v Tallmadge Charter Twp*, unpublished opinion of the Court of Appeals, issued May 15, 2003 (Docket No. 234157), 2003 WL 2110847 at *1 (Ex. 8). The Court of Appeals emphasized that the plaintiffs' failure to intervene in the original case was “most important” and dispositive, concluding that a new lawsuit was not a permissible vehicle for challenging the judgment. *Id.* at *5 (citing *People v Ingram*, 439 Mich 288, 291; 484 NW2d 241 (1992) (“Collateral attacks, as opposed to direct appeals, require consideration of the interest of finality and of administrative consequences.”)). “For these reasons collateral attacks on prior judgments are disfavored.” *Id.*

Plaintiffs' collateral attack is similarly barred here. Plaintiffs were aware of the Township's enforcement action and the resulting Injunction Order and Administrative Stay.

(Compl. ¶¶ 38–49.) If Plaintiffs believed those years-old orders impaired environmental resources or private rights, their remedy was to challenge those orders—not to wait and file a separate lawsuit attacking the consequences. Permitting this action to go forward would invite precisely the mischief the collateral bar rule is designed to prevent. Any nonparty dissatisfied with the outcome of an injunction could simply wait and file a new lawsuit against the enjoined party, effectively relitigating the court’s orders under different legal theories.

D. Plaintiffs Fail to State Any Claim Upon Which Relief Can Be Granted.

Setting aside the dispositive defects discussed above, Plaintiffs’ Complaint independently fails because it does not plead legally sufficient claims under any of the asserted theories. Michigan law requires more than statutory labels, conclusory assertions, or disagreement with regulatory outcomes. Plaintiffs’ allegations, taken as true, do not state a viable claim under MEPA, riparian-rights doctrine, or nuisance law.

1. Plaintiffs Fail to State a Claim Under MEPA

MEPA does not create a free-standing cause of action for regulatory noncompliance, nor does it permit plaintiffs to bypass administrative processes by repackaging permitting disputes as environmental torts. To state a claim under MEPA, a plaintiff must make “a prima facie showing that the conduct of the defendant has polluted, impaired, or destroyed or is likely to pollute, impair, or destroy the air, water, or other natural resources.” MCL 324.1703(1). Plaintiffs have no such allegations. Merely alleging the absence of a permit or reciting statutory phrases does not suffice.²

The Michigan Supreme Court rejected a MEPA claim premised on an allegedly improper permitting decision, explaining that “an improper administrative decision, standing alone, does not

² EGLE has now issued the Draft Permit and necessarily found that Defendants’ past and intended future mining operation have not and are not expected to result in any harm to the environment. (Ex. 4.)

harm the environment.” *Preserve the Dunes, Inc v Department of Environmental Quality*, 471 Mich 508, 520; 684 NW2d 847 (2004). “Only wrongful conduct offends MEPA.” *Id.* MEPA “provides no private cause of action in circuit court for plaintiffs to challenge the [agency] determinations of permit eligibility.” *Id.* at 519.

Plaintiffs’ MEPA claim is built on the assertion that Defendants lack required EGLE permits to create, enlarge, or dredge a lake. (Compl. ¶¶ 88–89.) But *Preserve the Dunes* forecloses the notion that permitting status, by itself, establishes environmental harm. “The focus of MEPA is on the defendant’s conduct.” *Preserve the Dunes*, 471 Mich at 514. MEPA is not a vehicle to police permitting disputes. Plaintiffs repeatedly conflate alleged regulatory violations with an actual environmental injury, but MEPA requires factual allegations of actual or likely pollution, impairment, or destruction. Absence of a permit is not sufficient.

Plaintiffs’ allegations underscore that the subject matter of their dispute should be resolved within EGLE’s regulatory and technical expertise. Plaintiffs’ MEPA allegations focus on the status of pending permit applications and administrative review and amount to a second collateral attack on those proceedings. (Compl. ¶¶ 61–89.) As discussed above, Plaintiffs cannot be permitted to attack other outside actions in this Complaint. MEPA does not exist to allow plaintiffs to short-circuit the administrative process. When plaintiffs disagree with permitting decisions or the pace or outcome of permitting review, their remedy lies in intervention or administrative appeal, not in a collateral MEPA action filed months or years later. See *Preserve the Dunes*, 471 Mich at 520; MCL 324.1705(1). “If administrative, licensing, or other proceedings are required or available to determine the legality of the defendant’s conduct, the court may direct the parties to seek relief in such proceedings.” MCL 324.1704. This Court is not the proper place for Plaintiffs to address EGLE permitting processes or decisions.

Separate from the permit issue, in evaluating a claim under MEPA, a “trial court must conduct a dual inquiry to determine if a prima facie showing of pollution, impairment, or destruction of a natural resource has been made: (1) whether a natural resource is involved, and (2) whether the impact of the activity on the environment rises to the level of impairment to justify the trial court's intervention.” *Rush v Sterner*, 143 Mich App 672, 679; 373 NW2d 183 (1985) (citations omitted).

[T]he trial court should evaluate the environmental situation before the proposed action and compare it with the probable condition of the environment after. Among the factors to be considered are: (1) whether the natural resource involved is rare, unique, endangered, or has historical significance, (2) whether the resource is easily replaceable (for example, by replanting trees or restocking fish), (3) whether the proposed action will have any significant consequential effect on other natural resources (for example, whether wildlife will be lost if its habitat is impaired or destroyed), and (4) whether the direct or consequential impact on animals or vegetation will affect a critical number, considering the nature and location of the wildlife affected. Finally, esthetic considerations by themselves do not constitute significant environmental impact.

Id. In *Rush*, impoundment of a creek with a dam that would slow the speed of the creek, raise its temperature, increase sedimentation, shift biodiversity away from trout and towards warmer water fish, convert the flood plain into a permanent swamp, and generally have effects on the stream, trees, and other vegetation for a 20-mile stretch, was insufficient to show a prima facie MEPA claim. *Id.* at 680. Plaintiffs do not allege *any* factual details, let alone allegations that could exceed the facts that failed in *Rush*. This point is compounded now that EGLE has determined that there has been no environmental harm and that future operations are not likely to result in harm in granting the Draft Permit. (Ex. 4.)

Plaintiffs do not make out a prima facie case. They include only generalized and conclusory assertions that Defendants’ operations are “likely to materially diminish, reduce, and adversely impact” groundwater and connected surface waters. (See, e.g., Compl. ¶ 102.) Even

assuming groundwater in a man-made mine is a sufficient *natural* resource to state a claim—it is not—Plaintiffs do not allege *any wrongful activity* on the environment *by Defendants* or *any* adverse impacts. Plaintiffs do not allege *any* facts describing how groundwater quality has changed, how Plaintiffs’ wells have been impaired, or how natural resources have been polluted. Plaintiffs do not allege adverse impacts to wildlife, vegetation, or non-renewable resources. And clearly Plaintiffs do not allege a reduction or diminishment of water resources, rather they say Defendants are expanding the water! Plaintiffs fail to state a MEPA claim as a matter of law.

2. Plaintiffs Fail to State a Claim for Violation of Riparian Rights

Plaintiffs’ riparian-rights claim fails for the most basic failure to plead it. Riparian rights are “special rights to make use of water in a waterway adjoining the owner’s property,” including the right to reasonable use of the water, to construct and maintain a dock, and to use the water surface for recreational purposes. *Holton v Ward*, 303 Mich App 718, 725–26; 847 NW2d 1 (2014). A riparian-rights claim requires factual allegations showing unreasonable interference with those specific rights.

Plaintiffs allege, in conclusory fashion, that Defendants’ mining operations “interfere with and violate” their riparian rights in Massey Lake. (Compl. ¶¶ 115-117, 120.) What Plaintiffs do not allege is any factual interference with boating, fishing, canoeing, shoreline access, or any other recognized riparian use. There are no allegations that Plaintiffs cannot access the lake, use the lake for recreation, construct or maintain docks, or otherwise exercise riparian ownership rights. In short, there are no allegations whatsoever as to what rights Defendants are affecting or how Defendants are interfering with them. Absent such allegations, Plaintiffs’ riparian-rights claim amounts to nothing more than a disagreement with Defendants’ land use. Riparian rights protect use and enjoyment of a waterbody, not general objections to nearby activity—particularly activity that has been going on for decades. Plaintiffs’ failure to plead any concrete interference with their

riparian uses is fatal to this claim. See *A & C Engineering Co v Atherholt*, 355 Mich 677, 683; 95 NW2d 871 (1959) (“the plaintiff must allege all of the necessary facts upon which he bases his cause of action. Failure to state those facts, or others from which they might reasonably be inferred, is failure to state a cause of action.”).

3. Plaintiffs Fail to State a Claim for Private Nuisance

Plaintiffs’ private-nuisance claim fails because they do not allege facts establishing a “significant harm” or “unreasonable interference” with the use and enjoyment of their properties. For a private nuisance claim, Plaintiffs must allege: (1) an invasion of property interests; (2) resulting in significant harm; (3) caused by Defendants’ conduct; and (4) that the invasion was either intentional and unreasonable or otherwise actionable as negligence. *Capitol Properties Group, LLC v 1247 Center Street, LLC*, 283 Mich App 422, 428–32; 770 NW2d 105 (2009).

Plaintiffs allege that Defendants’ operations cause noise, vibration, dust, and truck traffic. (Compl. ¶¶ 104–106.) However, Defendants’ mining operation, along with the effects of vibrations, dust, and truck traffic, are permitted and have been specifically authorized under Defendants’ CUP that governs the Property granted by Ann Arbor Township. (Ex. 9.) This alone is reason to disregard Plaintiffs’ nuisance claims. See *Capitol Props Group*, 283 Mich App at 437 (rejecting nuisance claims for noise from a nightclub, where the ordinance included specific provisions for increased noise in public entertainment areas). Alleged nuisance conditions must be assessed in light of the character of the area, the permitted use of the property, and the reasonable expectations of neighboring landowners. See *Id.* at 433. Like loud noise in a nightclub, dust and traffic near a legally permitted mine should be an expectation, not a basis for a nuisance claim. Defendants’ actions have long since been considered and approved by the planning commission and the Township; Plaintiffs do not allege facts showing that these conditions rise above the level of ordinary, incidental impacts associated with lawful industrial or mining activity.

In *Adkins v Thomas Solvent Co*, the Michigan Supreme Court rejected nuisance claims premised on alleged regulatory violations and contamination concerns, emphasizing that “the fact that violations of the law may have occurred on the property does not make the conduct of the business a nuisance in fact.” 440 Mich 293, 314; 487 NW2d 715 (1992). “Only a substantial interference with the use and enjoyment of property” is actionable. *Id.* at 312. Plaintiffs make the same arguments that failed in *Adkins*. Plaintiffs repeatedly label Defendants’ operations “unlawful” based on the EGLE permitting and then treat the labels as substitutes for the required showing of substantial and unreasonable interference. (Compl. ¶¶ 104, 122, 125.) However, whether Defendants have a permit from EGLE is not dispositive of Plaintiffs’ nuisance claims, and moreover, as previously discussed, Defendants *do* now have the Draft Permit.

Plaintiffs do not allege that their homes are uninhabitable, that property values have been destroyed, or that daily life has been materially disrupted. They allege noise, dust, and truck traffic—conditions that, without more, do not establish a private nuisance, particularly where the activity complained of occurs in a location historically used for mining and industrial purposes. Plaintiffs’ private nuisance claim therefore fails as a matter of law.

4. Plaintiffs Fail to State a Claim for Public Nuisance

Plaintiffs’ public-nuisance claim suffers from the same defects as their private claim.

A public nuisance is an “unreasonable interference with a common right enjoyed by the general public.” *Capitol Properties Group*, 283 Mich App at 427 (quoting *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995)).

The term “unreasonable interference” includes conduct that (1) significantly interferes with the public’s health, safety, peace, comfort, or convenience, (2) is proscribed by law, or (3) is known or should have been known by the actor to be of a continuing nature that produces a permanent or long-lasting, significant effect on these rights. A private citizen may file an action for a public nuisance

against an actor where the individual can show he suffered a type of harm different from that of the general public. *Id.* at 427–428.

Plaintiffs allege that Defendants’ mining activities harm the public’s interest in air, water, and natural resources. (Compl. ¶ 125.) But these allegations merely restate MEPA-style concerns and do not identify any special injury distinct from generalized environmental interests shared by the public at large. Plaintiffs’ attempt to transform broad environmental policy concerns into a public-nuisance claim improperly collapses MEPA into nuisance law. Without factual allegations of a significant, long-lasting interference with public health, safety, or convenience and a distinct injury to Plaintiffs, this claim cannot proceed.

5. Plaintiffs’ Request for Declaratory and Injunctive Relief Also Fails

Finally, Plaintiffs’ count for declaratory and injunctive relief fails because it is entirely derivative of the defective substantive counts and it cannot stand on its own. Declaratory and injunctive remedies do not exist in the abstract; they require a viable underlying cause of action. See *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 455; 761 NW2d 846 (2008) (“Claims for declaratory relief must necessarily be based on an underlying substantive claim to satisfy the requirement that an ‘actual controversy’ exist.”). Because Plaintiffs’ other claims all fail, there is no legal basis for declaratory or injunctive relief.

V. CONCLUSION

For these reasons, Defendants respectfully request that the Court dismiss Plaintiffs’ Complaint in its entirety with prejudice.

Dated: January 20, 2026

Respectfully submitted,
HONIGMAN LLP

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed the foregoing paper(s) with the Clerk of the Court using the electronic filing system, which will provide electronic notice to all counsel of record.

By: /s/ Andrew W. Clark /
Andrew W. Clark (P79165)

EXHIBIT 3

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

JOHN DARISH, JOAN DARISH,
GAIL NICKLOWITZ,
MICHAEL NICKLOWITZ,
GRACE KIM and EUGENE KIM

Plaintiffs,

Case No. 25-002153-CE
Hon. Julia B. Owdziej

v.

WSG PROPERTIES, LLC, AMC-WSG,
LLC and AMC-MID MICHIGAN
MATERIALS LLC,

Defendants.

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**REPLY IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY DISPOSITION**

As EGLE has now issued a finalized permit for the “lake,” Plaintiffs’ Complaint is moot. Moreover, Plaintiffs do not meaningfully defend their failure to allege facts supporting their claims. They instead recite the unsubstantiated and unjustified conclusion that Defendants’ decades-old gravel mining operation has suddenly caused “pollution to seep into the aquifer,” hoping that repetition will make up for the absence of a factual basis for any claim or allegation of harm. Plaintiffs’ claims, which seek a *per se* (and therefore unlawful) ban on a long-standing operation, should be dismissed.

I. EGLE’s Water Resources Division Has Now Issued a Final Permit for the “Lake,” Which Moots Plaintiffs Claims

Plaintiffs’ Complaint rests almost entirely on the contention that an area within Defendants’ gravel mine has developed into a “lake” that requires an EGLE permit. Between the filing of Plaintiffs’ Complaint and Defendants’ Motion to Dismiss, EGLE’s Water Resources Division issued a Draft Permit authorizing the lake creation and associated mining activities at the Property.¹ (Def Mot, Ex. 4.) The draft permit was subject to the finalization of a monitoring plan, which includes the installation of a monitoring point near the water control structure at the southern end of Massey Lake, to monitor groundwater levels of adjacent wetlands and waterbodies. After a period of negotiations about the conditions of the draft permit and negotiated revisions regarding the substance of the monitoring plan, EGLE ***issued a finalized permit***, effective from January 16, 2026, through January 16, 2031. (Ex. 1.)

Plaintiffs’ Complaint is moot because its central factual premise—that Defendants are operating without an EGLE permit for a lake—no longer exists. (Def Mot at 7–8.) Plaintiffs’ response that “there is no such thing as a ‘permit shield’ to a MEPA action or common law claims”

¹ Unless otherwise indicated, capitalized terms have the same meaning ascribed to them in Defendants’ Motion to Dismiss.

is unavailing. (Resp at 7; Def Mot at 7–8.) Defendants are not claiming the permit as a “shield.” Instead, Plaintiffs are claiming the absence of a permit as the basis of their claims. Because Defendants now have the permit, any ruling on whether Defendants must obtain a permit or whether their actions are unlawful due to the absence of one would be advisory only. And although the issuance of a permit “does not modify the rights . . . of any riparian owner to the use of his or her riparian water,” EGLE, in issuing the finalized permit, found that Defendants’ “lake” is not causing pollution or adversely affecting riparian rights. *See* MCL 324.30106. In any event, Plaintiffs’ focus on the EGLE permit is a red herring. As a matter of law, Plaintiffs have no private right of action simply because they allege Defendants did not obtain a permit that they should have. *Preserve the Dunes, Inc v Dep’t of Env’t Quality*, 471 Mich 508; 684 NW2d 847 (2004).

II. Plaintiffs Fail to State Any Claim Upon Which Relief Can be Granted and Improperly Seek to Impose a *Per Se* Mining Ban

Setting aside the fact that EGLE’s issuance of the final permit renders Plaintiffs’ claims moot, Plaintiffs’ Complaint independently fails because it does not plead legally sufficient claims under any of its asserted theories. Plaintiffs demand the complete “halting of mining operations” for such generic reasons that their proposed standard would create a *per se* mining ban in violation of Michigan law and policy. (Resp at 10.)

A. Plaintiffs Fail to State a Claim Under MEPA

Plaintiffs have not made “a prima facie showing that the conduct of the defendant” has “or is likely to pollute, impair, or destroy the air, water, or other natural resources.” MCL 324.1703(1). Plaintiffs first suggest that the Inland Lakes and Streams Act (“ILSA”) constitutes an “impairment standard,” and that its violation may make out a prima facie MEPA violation. (Resp at 11.) But their cited authority *directly contradicts* that argument: “*ILSA . . . is not a pollution control standard, the violation of which can support a prima facie violation of MEPA.*” *Michigan*

Citizens for Water Conservation v Nestle Waters N Am Inc, 269 Mich App 25, 94, 97; 709 NW2d 174 (2005) (emphasis added), aff'd in part, rev'd in part on other grounds, 479 Mich 280; 737 NW2d 447 (2007). Contrary to Plaintiffs' assertion, any supposed "blatant violations of the [ILSA's] prohibitions on lake expansion and bottomlands mining" **do not** make out a "prima facie violation of MEPA." (Resp at 11.)

Plaintiffs' conclusory assertion that the Defendants' mining operation is allegedly "causing pollution to seep into the aquifer" does not come close to providing the "detailed and specific" basis necessary to find the existence of water pollution or a MEPA violation. (Resp at 10.) "Merely stat[ing] the conclusion [of pollution] without any facts to support it" does not establish a prima facie showing sufficient to survive dismissal. See *Dafter Sanitary Landfill v Michigan Dept of Nat Res*, 198 Mich App 499, 504; 499 NW2d 383 (1993) (affirming the trial court's dismissal of the plaintiff's MEPA claim). Plaintiffs do not make **any** factual allegations showing pollution, and their conclusory generalizations do not state a MEPA claim.

B. Plaintiffs' Generalized Complaints about the Mining Operation Do Not State any Common Law Claim

Plaintiffs' claims for violation of riparian rights, private nuisance, and public nuisance all rely on the conclusory assertion that Defendants' actions are "causing pollution to seep into the aquifer." (Resp at 12, 13, 14.) But "[m]ere conclusions, unsupported by allegations of fact, will not suffice to state a cause of action" sufficient to survive a MCR 2.116(C)(8) motion. *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 534; 542 NW2d 912 (1995) (citation omitted). Plaintiffs offer no facts to suggest that any pollution exists—nothing about the type of pollution, how it manifests, the effects it has, or the harm it has caused. Their failure to do so is fatal to their riparian rights and public nuisance claims. They do not (and cannot) explain how unspecified pollution interferes with recreational activities, such as "hiking." (Resp at 12.) They cannot

explain how it causes significant interference with a common law right enjoyed by the public, a distinct injury to them, or an invasion of their property interests causing significant harm. (Resp at 13, 14.) And they certainly do not explain how a gravel mine that has operated for decades has suddenly begun interfering with their property rights.

The Complaint also lacks facts showing that any alleged “noise, vibration, dust, and truck traffic” rises to the level of a private nuisance. (Resp at 13.) Plaintiffs merely contend that “dust, noise, vibration, and truck traffic, *could conceivably* reach a level where daily life becomes materially disrupted” and “dust . . . *can* cause a number of health problems.” (Resp at 13 (emphasis added).) Speculating about future hypotheticals does not state a viable legal claim. Indeed, by arguing that these activities “could conceivably” cause future disruptions, Plaintiffs tacitly admit that those same activities *are not actually causing disruptions now*. Moreover, Plaintiffs do not address longstanding authority that ordinary, incidental impacts associated with lawful industrial or mining activity do not constitute a private nuisance. See, e.g., *McMorran v Cleveland Cliffs Iron Co*, 253 Mich 65, 69; 234 NW2d 163 (1931) (“Whether [an activity] is a nuisance per se depends upon a showing that the dust, noise, and vibration are more than merely incident to the proper and skillful operation of the business.”); see also Def Mot at 18–19. Devoid of factual allegations, Plaintiffs’ claims for violation of riparian rights, public nuisance, and private nuisance should be dismissed.

C. Plaintiffs’ Proposed Standards Violate Michigan Law and Policy

Plaintiffs’ demand for the complete halting of mining operations is based on such broad reasoning that their proposed rule would create a *per se* mining ban in violation of Michigan law and policy. That is not allowed under Michigan law. MCL 125.3505.

This Court should heed the Township’s permitting authority, EGLE’s permitting authority, its sister court’s decisions, and Michigan’s public policy in support of mining, not the Plaintiffs’ subjective desires to effectively ban all mining in Ann Arbor Charter Township. Defendants’ mining operation has been in existence for *decades*. The operation, along with the effects of vibration, dust, and truck traffic, are permitted and have been specifically authorized and regulated by Defendants’ CUP. (Def Mot, Ex. 9.) Plaintiffs improperly seek to circumvent Ann Arbor Charter Township’s municipal permitting authority. They also seek to circumvent Michigan’s strong “public interest in extracting and using natural resources.” *Silva v Ada Twp*, 416 Mich 153, 158; 330 NW2d 663 (1982), overruled by *Kyser v Kasson Twp*, 486 Mich 514, 517; 786 NW2d 543 (2010). Reviving and codifying the policy set forth in *Silva*, Michigan law, MCL 125.3505(3), expressly prohibits municipalities from preventing “the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources.” Plaintiffs may not second guess the municipality’s and EGLE’s permitting decisions and they certainly may not use this litigation as an end-run around the statutory standards. This Court should dismiss Plaintiffs’ Complaint, which, properly read, effectively seeks a *per se* ban on mining in Ann Arbor Charter Township and thus contravenes statutory authority, municipal authority, and public policy to the contrary.

Dated: April 3, 2026

Respectfully submitted,
HONIGMAN LLP

By: /s/ Andrew W. Clark /
Andrew W. Clark (P79165)
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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, I electronically filed the foregoing paper(s) with the Clerk of the Court using the electronic filing system, which will provide electronic notice to all counsel of record.

By: /s/ Andrew W. Clark /
Andrew W. Clark (P79165)

EXHIBIT 4



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

Issued To:

**AMC-WSG LLC
Attn: Rob Wilson
1955 East Lakeville Road
Oxford, Michigan 48371**

**Permit No: WRP047682 v.1
Submission No.: HPB-72AQ-79WYR
Site Name: AMC-WSG, LLC - Vella Pit
Issued: January 16, 2026
Revised:
Expires: January 16, 2031**

This permit is being issued by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division, under the provisions of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); specifically:

- | | |
|---|--|
| ☒ Part 301, Inland Lakes and Streams | ☐ Part 323, Shorelands Protection and Management |
| ☐ Part 303, Wetlands Protection | ☐ Part 325, Great Lakes Submerged Lands |
| ☐ Part 315, Dam Safety | ☐ Part 353, Sand Dunes Protection and Management |
| ☐ Part 31, Water Resources Protection (Floodplain Regulatory Authority) | |

EGLE certifies that the activities authorized under this permit are in compliance with the State Coastal Zone Management Program and certifies without conditions under the Federal Clean Water Act, Section 401 that the discharge from the activities authorized under this permit will comply with Michigan's water quality requirements in Part 31, Water Resources Protection, of the NREPA and associated administrative rules, where applicable.

Permission is hereby granted, based on permittee assurance of adherence to State of Michigan requirements and permit conditions, to:

Authorized Activity:

Excavate approximately 7,300,000 cubic yards of material from below the water table to create a lake for the purpose of sand and gravel mining. The lake shall be approximately 60 acres in size upon project completion. The depth of the lake shall be approximately 50 feet deep upon completion. All excavation shall be done in the "wet" with no dewatering or pumping of groundwater/surface water. No surface water outlet from the lake shall be utilized.

All work shall be completed in accordance with the approved plans and the specifications of this permit.

**EGLE
WRP047682 v1.0
Approved
Issued On:01/16/2026
Expires On:01/16/2031**

Waterbody Affected: Lake Creation

Property Location: Washtenaw County, Ann Arbor Township, T02S, R06E, Section 01

Property Tax No. I -09-01-200-002

Authority granted by this permit is subject to the following limitations:

- A. Initiation of any work on the permitted project confirms the permittee's acceptance and agreement to comply with all terms and conditions of this permit.
- B. The permittee, in exercising the authority granted by this permit, shall not cause unlawful pollution as defined by Part 31 of the NREPA.
- C. This permit shall be kept at the site of the work and available for inspection at all times during the duration of the project or until its date of expiration.
- D. All work shall be completed in accordance with the approved plans and specifications submitted with the application and/or plans and specifications attached to this permit.
- E. No attempt shall be made by the permittee to forbid the full and free use by the public of public waters at or adjacent to the structure or work approved.
- F. It is made a requirement of this permit that the permittee give notice to public utilities in accordance with 2013 PA 174 (Act 174) and comply with each of the requirements of Act 174.
- G. This permit does not convey property rights in either real estate or material, nor does it authorize any injury to private property or invasion of public or private rights, nor does it waive the necessity of seeking federal assent, all local permits, or complying with other state statutes.
- H. This permit does not prejudice or limit the right of a riparian owner or other person to institute proceedings in any circuit court of this state when necessary to protect his rights.
- I. Permittee shall notify EGLE within one week after the completion of the activity authorized by this permit by completing and forwarding the attached preaddressed postcard to the office addressed thereon.
- J. This permit shall not be assigned or transferred without the written approval of EGLE.
- K. Failure to comply with conditions of this permit may subject the permittee to revocation of permit and criminal and/or civil action as cited by the specific state act, federal act, and/or rule under which this permit is granted.
- L. All dredged or excavated materials shall be disposed of in an upland site (outside of floodplains, unless exempt under Part 31 of the NREPA, and wetlands).
- M. In issuing this permit, EGLE has relied on the information and data that the permittee has provided in connection with the submitted application for permit. If, subsequent to the issuance of a permit, such information and data prove to be false, incomplete, or inaccurate, EGLE may modify, revoke, or suspend the permit, in whole or in part, in accordance with the new information.
- N. The permittee shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, employees, agents, and representatives for any and all claims or causes of action arising from acts or omissions of the permittee, or employees, agents, or representative of the permittee, undertaken in connection with this permit. The permittee's obligation to indemnify the State of Michigan applies only if the state: (1) provides the permittee or its designated representative written notice of the claim or cause of action within 30 days after it is received by the state, and (2) consents to the permittee's participation in the proceeding on the claim or cause of action. It does not apply to contested case proceedings under the Administrative Procedures Act, 1969 PA 306, as amended, challenging the permit. This permit shall not be construed as an indemnity by the State of Michigan for the benefit of the permittee or any other person.

- O. Noncompliance with these terms and conditions and/or the initiation of other regulated activities not specifically authorized shall be cause for the modification, suspension, or revocation of this permit, in whole or in part. Further, EGLE may initiate criminal and/or civil proceedings as may be deemed necessary to correct project deficiencies, protect natural resource values, and secure compliance with statutes.
- P. If any change or deviation from the permitted activity becomes necessary, the permittee shall request, in writing, a revision of the permitted activity from EGLE. Such revision request shall include complete documentation supporting the modification and revised plans detailing the proposed modification. Proposed modifications must be approved, in writing, by EGLE prior to being implemented.
- Q. This permit may be transferred to another person upon written approval of EGLE. The permittee must submit a written request to EGLE to transfer the permit to the new owner. The new owner must also submit a written request to EGLE to accept transfer. The new owner must agree, in writing, to accept all conditions of the permit. A single letter signed by both parties that includes all the above information may be provided to EGLE. EGLE will review the request and, if approved, will provide written notification to the new owner.
- R. Prior to initiating permitted construction, the permittee is required to provide a copy of the permit to the contractor(s) for review. The property owner, contractor(s), and any agent involved in exercising the permit are held responsible to ensure that the project is constructed in accordance with all drawings and specifications. The contractor is required to provide a copy of the permit to all subcontractors doing work authorized by the permit.
- S. Construction must be undertaken and completed during the dry period of the wetland. If the area does not dry out, construction shall be done on equipment mats to prevent compaction of the soil.
- T. Authority granted by this permit does not waive permit requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA, or the need to acquire applicable permits from the County Enforcing Agent (CEA).
- U. Authority granted by this permit does not waive permit requirements under the authority of Part 305, Natural Rivers, of the NREPA. A Natural Rivers Zoning Permit may be required for construction, land alteration, streambank stabilization, or vegetation removal along or near a natural river.
- V. The permittee is cautioned that grade changes resulting in increased runoff onto adjacent property is subject to civil damage litigation.
- W. Unless specifically stated in this permit, construction pads, haul roads, temporary structures, or other structural appurtenances to be placed in a wetland or on bottomland of the water body are not authorized and shall not be constructed unless authorized by a separate permit or permit revision granted in accordance with the applicable law.
- X. For projects with potential impacts to fish spawning or migration, no work shall occur within fish spawning or migration timelines (i.e., windows) unless otherwise approved in writing by the Michigan Department of Natural Resources, Fisheries Division.
- Y. Work to be done under authority of this permit is further subject to the following special instructions and specifications:
 - 1. The property owner, contractor(s), and any agent involved in exercising this permit are held responsible to ensure the project is constructed in accordance with all drawings and specifications contained in this permit. The contractor is required to provide a copy of the permit to all subcontractors doing work authorized by this permit.

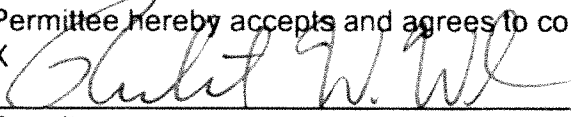
2. The permittee shall monitor wetlands and waterbodies adjacent to permitted activities (offsite) for measurable adverse impacts. Prior to commencing permitted activities, the permittee shall:
 - a. Within 90 days of draft permit issuance, the permittee shall prepare and submit an approvable resource monitoring plan to EGLE for review and approval. The approvable monitoring plan document will be provided and accepted by EGLE prior to signature of this permit by EGLE.
 - b. A monitoring report, which compiles and summarizes data collected during the monitoring period, shall be submitted annually by the permittee. Monitoring reports shall cover the period of January 1 through December 31 and be submitted to EGLE prior to January 31 of the following year.
3. If monitoring data reveals that adjacent wetlands or waterbodies have been measurably or adversely impacted, the permittee shall assess the extent of the wetland impacts and notify EGLE within 48 hours. Based on the extent of the impacts, EGLE may require the permittee to submit an adaptive management plan to eliminate measurable adverse impacts, and/or a mitigation plan that may include purchase of wetland bank credits, and/or require a permit modification. Depending on the extent of the offsite wetland or waterbody impacts, the permittee may be required to implement additional strategies to eliminate the potential for these impacts.
4. The permittee shall provide a surety bond or letter of credit to EGLE in a form identical to the financial assurance models on EGLE's Web site at www.michigan.gov/wetlands in an amount of \$XXX,XXX (to be determined) to ensure that monitoring is performed and the lake creation does not result in impacting nearby wetlands and waterbodies. The financial assurance document will be provided and accepted by EGLE prior to signature of this permit by EGLE.
 - a. The financial instrument will be released upon completion of the project following successful execution of the monitoring plan and monitoring demonstrates that the adjacent wetlands and waterbodies have not been adversely impacted, or mitigation bank credits have been purchased to mitigate for impacts.
5. Prior to the initiation of any permitted construction activities, a sedimentation barrier (e.g., silt fence, straw bale barrier, etc.) shall be constructed immediately downgradient of the construction site. Sedimentation barriers shall be specifically designed to handle the sediment type, load, water depth, and flow conditions of each construction site throughout the anticipated time of construction and unstable site conditions. The sedimentation barrier shall be maintained in good working order throughout the duration of the project. Upon project completion, the accumulated materials shall be removed and disposed of at an upland (i.e., non-wetland, non-floodplain, non-bottomland) site and stabilized with seed and mulch. The sedimentation barrier shall then be removed in its entirety and the area restored to its original configuration and cover. In the event there is a problem with the sedimentation barrier, and a failure to contain the sediments from leaving the project site, the project shall be immediately stopped, evaluated, and appropriate measures shall be taken to stop the release of sediments/turbidity. The permittee, agent, or contractor shall immediately notify the EGLE representative through MiEnviro Schedules of Compliance submission, or via phone or email at 517-257-4532 or BalesJ@Michigan.gov, on the turbidity curtain failure and the measures being taken to stop the release of sediments/turbidity.

6. All raw areas in uplands resulting from the permitted construction activity shall be effectively stabilized with sod and/or seed and mulch (or other technology specified by this permit or project plans) in a sufficient quantity and manner to prevent erosion and any potential siltation to surface waters or wetlands. Temporary stabilization measures shall be installed before or upon commencement of the permitted activity, and shall be maintained until permanent measures are in place. Permanent measures shall be in place within five (5) days of achieving final grade.
7. A stormwater discharge permit may be required under the Federal Clean Water Act for construction activities that disturb one or more acres of land and discharge to surface waters. For sites over five (5) acres, the permit coverage may be obtained by a Part 91, Soil Erosion and Sedimentation Control (SESC) permit, or coverage as an Authorized Public Agency (APA), and filing a "Notice of Coverage" form to EGLE's Water Resource Division. For sites with disturbance from one acre up to five acres, stormwater coverage is automatic once the SESC permit is obtained or if work is being conducted by an APA. These one to five acre sites are not required to apply for coverage but are required to comply with stormwater discharge permit requirements. Information on the stormwater discharge permit is available from the Water Resource Division's Stormwater Permit Program at www.michigan.gov/soilerosion under the "Construction Stormwater Info".
8. The permittee is cautioned that grade changes resulting in increased runoff onto adjacent property is subject to civil damage litigation.
9. The permittee is cautioned that impacts to the aquifers of adjacent properties as a result of this lake development are subject to civil damage litigations.
10. Dewatering is not authorized by this permit.
11. No connection of the lake to surface waters of the state is authorized by this permit.
12. No fill, excess soil, or other material shall be placed in the 100-year floodplain, or any wetland or surface water area not specifically authorized by this permit, its plans, and specifications.
13. In issuing this permit, EGLE has relied on the information and data which the permittee has provided in connection with the permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, or additional information demonstrates that the spoils are causing environmental contamination, or that new State or Federal regulations are promulgated which cause this disposal to be inappropriate, EGLE may modify, revoke, or suspend the permit, in whole or in part, in accordance with the new information.
14. Dredged material, including organic and inorganic sediment, vegetation, and other material removed from bottomlands, shall not be placed in any wetland, floodplain or critical dune, or below the ordinary high-water mark of any inland lake, Great Lake, or stream. Dredged material placed on upland shall be stabilized in such a manner to prevent erosion of any material into any waterbody, including wetlands, or floodplain.

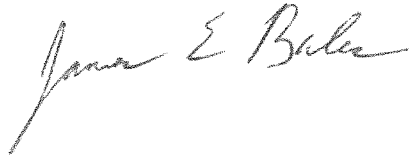
15. The permittee is advised of other potential requirements and legal liabilities under other statutes for placement of dredge material on upland and is responsible for compliance with all applicable local, state, and federal regulations. Please review the information under Dredging Documents at the attached link: https://www.michigan.gov/deq/0,4561,7-135-3312_4123-14201--,00.html
16. This permit does not authorize any future expansion of the mine or any extension of operations with the potential to result in additional direct, indirect or cumulative impacts to wetlands.
17. At the end of five (5) years, the permittee shall apply to EGLE for a new Part 301, Inland Lakes and Streams/Part 303, Wetlands Protection permit to continue sand and gravel mining at this site.
18. If the life of mine is projected to extend past the life of this permit, a new permit will be required for impacts to aquatic resources regulated under Part 301, Inland Lakes and Streams, of the NREPA, including, but not limited to, the drawdown or dewatering of regulated aquatic resources. All work authorized by this permit shall be completed in accordance with the approved plans and specifications.
19. This permit is limited to authorizing the construction as specified above and carries with it no assurances or implications that associated lake, stream, wetland, or floodplain areas can be developed and/or serviced by the structures authorized by this permit.
20. This permit is issued after-the-fact and authorizes only the construction as specified above. This permit does not authorize or sanction other work that has been completed in violation of applicable federal, state, or local statutes.
21. The local unit of government in which this project site is located has a wetland ordinance. Authority granted by this permit does not waive permit requirements or the need to obtain a separate permit from the local unit of government.
22. Authority granted by this permit does not waive permit or program requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA or the need to acquire applicable permits from the CEA. To locate the Soil Erosion Program Administrator for your county, visit <https://www.michigan.gov/egle/about/organization/water-resources/soil-erosion/sesc-overview> and select "Soil Erosion and Sedimentation Control Agencies".
23. The authority to conduct the activity as authorized by this permit is granted solely under the provisions of the governing act as identified above. This permit does not convey, provide, or otherwise imply approval of any other governing act, ordinance, or regulation, nor does it waive the permittee's obligation to acquire any local, county, state, or federal approval or authorization necessary to conduct the activity.
24. This permit does not authorize or sanction work that has been completed in violation of applicable federal, state, or local statutes.
25. The permit placard shall be kept posted at the work site in a prominent location at all times for the duration of the project or until permit expiration.

26. This permit is being issued for the maximum time allowed and no extensions of this permit will be granted. Initiation of the construction work authorized by this permit indicates the permittee's acceptance of this condition. The permit, when signed by EGLE, will be for a five-year period beginning on the date of issuance. If the project is not completed by the expiration date, a new permit must be sought.
27. Upon signing by the permittee named herein, this permit must be returned to EGLE's Water Resources Division, Jackson District Office for final execution. This permit shall become effective on the date of the EGLE representative's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

X  3-30-26
Permittee Date

X Robert W. Wilson President
Printed Name and Title of Permittee



Issued By: _____

James Bales
Jackson District Office
Water Resources Division
517-257-4532

cc: Ann Arbor Township Clerk
Washtenaw County Water Resources Commissioner
Leslie Nelson, Haley & Aldrich of Michigan, Inc.
Amy Lounds, EGLE
Kyle Alexander, EGLE
Jeff Pierce, EGLE
Elana Bruursema, EGLE
Megan Cameron, EGLE
Lena Pappas, EGLE
Mike Pennington, EGLE