

**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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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' Amended Complaint pursuant to MCR 2.116(C)(8) for the reasons stated below and the accompanying brief.

This lawsuit began with Plaintiffs alleging that Defendants were unlawfully mining because they lacked an EGLE permit authorizing the creation and dredging of a lake. That premise

no longer exists. Following extensive agency review, EGLE issued Permit WRP047682v1, expressly authorizing Defendants to excavate below the water table for sand and gravel mining and create an approximately 60-acre lake. Apparently recognizing the defects in their claims after the Permit was issued, Plaintiffs have shifted their focus in their Amended Complaint.

Plaintiffs now rely principally on a single round of testing of water from their private wells to try and resuscitate their claims. But the Amended Complaint pleads no facts connecting those test results to Defendants' conduct. Plaintiffs do not allege Defendants engaged in any specific conduct that caused the effects about which they complain. Rather, the study that Plaintiffs themselves cite found no sediment impacts to nearby Massey Lake and measured metal concentrations at or near background levels.

One test and repetitive conclusory statements cannot and does not support Plaintiffs' claims under MEPA, riparian rights, and private and public nuisance. Plaintiffs unreasonably request that this Court shut down a half-century-old mine that is presently operating subject to regular judicial, municipal, and regulatory oversight. The case should be dismissed.

WHEREFORE, Defendants respectfully request that the Court:

- A. Grant this Motion;
- B. Dismiss Plaintiffs' Amended 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'
RENEWED MOTION FOR SUMMARY DISPOSITION**

I. INTRODUCTION

This case has outlived the premise on which it was filed. Plaintiffs originally sued Defendants for creating a lake without an EGLE permit. They expressly sought to stop Defendants' mining operations "unless or until permitted by EGLE." (Compl., Relief Requested.)

But now Defendants have been permitted by EGLE. The Permit expressly authorizes excavation of approximately 7.3 million cubic yards of material below the water table for sand and gravel mining, subject to detailed monitoring and environmental-protection requirements. That should have ended Plaintiffs' case, instead they pivoted.¹

The Amended Complaint adds few new factual allegations but fundamentally shifts its legal theory and asks the Court to infer an environmental injury caused by Defendants based on a set of May 2026 private-well test results. Plaintiffs allege that water sampled from their homes contained elevated levels of turbidity, iron, and, for some Plaintiffs, manganese. But Plaintiffs fail to connect those test results to any activity or conduct undertaken by Defendants. Plaintiffs do not allege that Defendants add iron or manganese to the mining process. They do not identify any testing showing contaminants migrating from Defendants' property to Plaintiffs' wells. And they do not plead facts showing that the conditions measured in their wells were caused by Defendants rather than naturally occurring conditions or some other source. The Amended Complaint simply alleges test results, separately alleges permitted mining activity, and then asks the Court to infer the legal conclusion that one caused the other. MCR 2.116(C)(8) requires more.

Plaintiffs' own incorporated materials underscore the problem. A December 2025 LimnoTech study commissioned by Ann Arbor Charter Township specifically investigated impacts from the mine on Massey Lake, which is adjacent to certain Plaintiffs' properties. Its field investigation and laboratory analyses found no evidence of distinct sediment impacts at the sampled locations, and measured sediment-metal concentrations were at or near background levels. That is a far cry from factual support for the sweeping conclusory allegations in the

¹ As the Court previously noted, the Permit does not preclude otherwise viable civil claims against Defendants, however the Permit's issuance necessarily undermined the particular civil claim that Plaintiffs sought to bring which was based the premise that Defendants were engaged in unpermitted activity.

Amended Complaint that Defendants are presently “polluting, impairing, and destroying” groundwater, Massey Lake, and other natural resources.

Each cause of action therefore fails to state a claim. Plaintiffs’ MEPA claim pleads the statutory conclusion but not facts establishing environmental impairment of the character required for judicial intervention. The well-test allegations do not cure that defect because Plaintiffs do not plead facts connecting those tests to Defendants’ conduct. The riparian-rights claim is even more basic. Plaintiffs allege that certain Plaintiffs canoe, fish, and recreate on Massey Lake, then conclude that Defendants have “unreasonably interfered” with those rights. There is nothing else. A cause of action cannot be pleaded by stating the right and then reciting the conclusion that it was violated. The private-nuisance claim only alleges regular and expected noise, vibration, dust, and truck traffic associated with a longstanding mining operation, but does not allege facts showing the significant and unreasonable interference Michigan nuisance law requires. The public-nuisance claim similar only makes generalized statements about “air, water, and other natural resources,” without pleading either a substantial interference with a common public right or the distinct injury necessary for these private Plaintiffs to maintain such a claim.

The relief Plaintiffs seek confirms the true scope of this case. They ask this Court to declare the mining operation unlawful, shut it down, prohibit lake enlargement and mining, halt groundwater discharge, and ultimately require Defendants to reclaim and restore the site. In other words, Plaintiffs ask this Court to terminate an operation presently governed by orders entered in the longstanding Township litigation and by a permit issued by the State’s environmental regulator—even though their Amended Complaint does not plead the factual elements necessary for any of their asserted causes of action.

Plaintiffs have already amended after receiving Defendants’ original dispositive motion and after the very permitting development that eliminated the premise of their original Complaint. Yet, the Amended Complaint still only lists statutory labels, causal conclusions, and requests for extraordinary relief instead of the facts necessary to state a claim. The Amended Complaint adds no allegations directly to any of its legal counts nor does it connect any of its counts to the few new general allegations it pleads. In the end, Plaintiffs fail to identify any specific challenged conduct or any harm that it allegedly caused. Their generalized complaints about Defendants’ long-standing mining activity do not state a claim. The Court should grant Defendants’ Motion under MCR 2.116(C)(8) and dismiss the Amended Complaint in its entirety, with prejudice.

II. STATEMENT OF FACTS

This case concerns 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. (Am. Compl. ¶¶ 18–27, 30.) Plaintiffs are nearby residential property owners whose parcels are located adjacent to, or in the vicinity of, the Property. (*Id.* at ¶¶ 1–17.)

A. The 2023 Litigation

Defendants’ mining operation historically included groundwater pumping intended to control surface water accumulation. (*Id.* at ¶¶ 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. (Am. 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. (*Id.* at ¶¶ 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”). (Am. Compl. ¶¶ 44–45; Ex. 1.) The most recent order governing the Property is the Order Extending Administrative Stay, dated August 13, 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. (Am. Compl. ¶¶ 46–47; Ex. 3.) The Township case remains pending, and Defendants’ mining activities have been subject to ongoing judicial supervision through that action. (Am. 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 *id.* at ¶ 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. (*Id.* at ¶¶ 61–67.) Due to changes in EGLE’s permitting guidance and modelling requirements, Defendant submitted a revised permit application in May 2025. (*Id.* at ¶¶ 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 final permit to Defendants on April 6, 2026 (the “Permit”). (*Id.* at ¶ 113, Ex. 4.) After extensive review and modeling of the lake creation the Permit authorized 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.” (Ex. 4.) “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 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” *Id.*

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 was that Defendants did not have an EGLE permit to create a lake—even though Plaintiffs’ earlier

complaints to the Township led to the lake creation in the first place. (Am. Compl. ¶¶ 40, 60.) Indeed, in Plaintiffs original Complaint, the then lack of a permit appeared to be Plaintiffs’ only basis for filing. (See generally Compl. (failing to allege any facts except related to permitting and seeking an injunction “unless or until permitted by EGLE”).) Yet Defendants were actively in the process of obtaining such a permit, and in fact received a Permit on April 6, 2026, backdated to the date a draft permit was issued on January 16, 2026. (Am. Compl. at ¶¶ 113-14; Ex. 4.) Now that Defendants have obtained the permit and are mining pursuant to it, Plaintiffs simply want Defendants to stop mining. (Am. Compl., Request for Relief.)

Defendants filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(4), (7), and (8) on January 20, 2026. Plaintiffs’ Response, like their original Complaint, focused on Defendants’ lack of permit to create a lake, which at the time was issued as a draft permit. Following Defendants obtaining the final Permit, on July 7, 2026, Plaintiffs filed a Motion to Amend the Complaint. Following a hearing on July 15, 2026, the Court entered an order denying Defendants’ Motion for Summary Disposition as to MCR 2.116(C)(4) and (7) but did not address Defendants’ MCR 2.116(C)(8) arguments given the proposed amendment. Plaintiffs thereafter filed their Amended Complaint on July 28, 2026, and Defendants now file their Renewed Motion for Summary Disposition pursuant to MCR 2.116(C)(8).

In their Amended Complaint, Plaintiffs describe the extensive review performed by EGLE as part of the permitting decision. (Am. Compl. ¶¶ 102-14.) Plaintiffs also cite a public report titled “Impacts of Sediment Discharge on Massey Lake” prepared for Ann Arbor Charter Township dated December 8, 2025 (“Sediment Report”). (*Id.* at ¶ 100; Ex. 5.) The Sediment Report assessed “the impact of recent discharges on [Massey Lake].” (Ex. 5, Executive Summary.) “The investigation did not yield evidence of distinct impacts from recent dewatering operations on

Massey Lake” and found “[m]easured sediment concentrations are at or near background levels at all sites, suggesting no unnatural impacts from metal toxicity on the lake ecosystem’s health.” (*Id.*) Plaintiffs’ primary addition to the Amended Complaint is that on May 20, 2026, the Michigan Department of Health and Human Services (“MDHHS”) provided test results of Plaintiffs’ drinking water that showed levels of turbidity, iron, and manganese, higher than the EPA recommended amounts for public water systems (“Test Results”). (Am. Compl. ¶¶ 115-26.) It appears that Plaintiffs have abandoned their lack of permit theory since the Permit was obtained and now Plaintiffs try to save their case with one set of Test Results. Despite being the new primary allegation in the Amended Complaint, Plaintiffs did not include the Test Results as an exhibit.

Plaintiffs go on to make repetitive conclusory statements that Defendants’ “discharge” of mining wash water in contained ponds on Defendants’ property is polluting and impairing groundwater generally as well as distant surface waters including Massey Lake—despite the Sediment Report stating the opposite. (Am. Compl. ¶¶ 128-140.) Plaintiffs Amended Complaint makes no causal connection between the Test Results and any activity by Defendants. Plaintiffs do not allege *how* the existence or creation of a lake creates any actual environmental harm or affected Plaintiffs drinking water. Any such connection would be implausible. The mine operates in a closed loop system in which extracted aggregate from the site is washed with water from the site which is then returned to a settling pond on the site. This same fundamental process has existed for decades. (*See id.* at ¶¶ 75-83 (hydrological study indicates sand and gravel have been mined at the site since 1956).) The only change pursuant to the Injunction Order is that water is now retained—not discharged—on the Property, which passively creates a “lake.” Indeed, any potential causal connection is disclaimed by Plaintiffs’ own allegations which include the

Sediment Report. (*Id.* at ¶ 100.) As a result, all of Plaintiffs’ claims are merely conclusory and lacking a factual foundation including the alleged violations of MEPA, riparian rights, and public and private nuisance. (Am. Compl. ¶¶ 50, 154, 161, 163–166.) Plaintiffs seek relief under MEPA and common law theories, notwithstanding the now-issued Permit. (Am. Compl. ¶¶ 167–177.)

III. STANDARD

“A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). “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 Fail to State Any Claim Upon Which Relief Can Be Granted.

Plaintiffs’ Complaint 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

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.*

a) Lack of a Permit Does Not Support a MEPA Claim.

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. To the extent Plaintiffs are still alleging a MEPA claim based on Defendants’ previous lack of a permit, that portion of the claim fails.

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 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. *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. The only conduct Plaintiffs allege appears to be “dredging and mining” or “groundwater discharge.” (Am. Compl. 128-139.) The

allegation is intentionally vague because Plaintiffs have not connected any environmental harm to a specific act by Defendants.

Further, the permitting regime and statute violations Plaintiffs point to are insufficient to support a MEPA claim. (Am. Compl. ¶ 127.) Violation of an applicable pollution control standard may support a MEPA claim in certain circumstances; however, the Inland Lakes and Streams Act (“ILSA”) is not such a standard. *Michigan Citizens for Water Conservation v Nestle Waters North America Inc*, 269 Mich App 25, 93; 709 NW2d 174 (2005), *aff'd in part, rev'd in part on other grounds* 479 Mich 280; 737 NW2d 447 (2007). “The purpose of [ILSA] is not to prevent pollution or environmental degradation, but to protect the rights of current water users from potential harm.” *Id.* at 94. And “therefore, is not a pollution control standard, the violation of which can support a *prima facie* violation of MEPA.” *Id.*

a) Plaintiffs Fail to Identify any Conduct that Violates MEPA.

Plaintiffs do not make out a *prima facie* case for a MEPA violation under the standard articulated in *Rush*. 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., Am. Compl. ¶¶ 143.) Plaintiffs do not allege *any wrongful activity* on the environment *by Defendants* or connect *any* adverse impacts. Plaintiffs do not allege adverse impacts to wildlife, vegetation, or non-renewable resources. They make no allegations from which the Court could evaluate the environmental status quo before and after the alleged conduct. 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.” *Rush*, 143 Mich App at 680. Nothing similar exists here.

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 Permit. (Ex. 4, (EGLE certifies under Federal Clean Water Act “that the discharge from the activities authorized under this permit will comply with Michigan’s water quality requirements”.) In granting a permit, EGLE “is ordered not to issue a permit if the project will impair or destroy the waters or other natural resources.” *Nestle Waters*, 269 Mich App at 93. “A permit shall specify that a project completed in accordance with this part shall not cause unlawful pollution.” MCL 324.30106. Further, Plaintiffs’ own referenced and incorporated report plainly states that “[m]easured sediment concentrations are at or near background levels at all sites [around Massey Lake], suggesting no unnatural impacts from metal toxicity on the lake ecosystem’s health.” (Ex. 5.) Every professional organization and subject matter expert who has looked at the mining activities and contained closed-loop washing found no significant or likely environmental harm.

The Test Results alleged by Plaintiffs are also not sufficient to make out a MEPA claim. First, there is no allegation that connects the Test Result to any activity by Defendants. “In citizen MEPA suits, the allegations in the plaintiff’s complaint define the conduct at issue.” *In re Enbridge Energy*, __ Mich __, __; __NW3d __ (Docket No. 168335, July 31, 2026) slip op at 37. Here the conduct alleged is generally “dredging and mining” or “groundwater discharge.” (Am. Compl. 128-139.) That conduct must then be causally connected to the harm alleged. “MEPA’s text limits its scope by requiring both factual causation (i.e. the harm is an “effect” of conduct) and proximate causation (i.e., the harm is “likely”). *In re Enbridge*, __ Mich at __, slip op at 39. And proximate cause “requires more than speculation or conjecture and a mere possibility is not enough to establish but-for causation- let alone proximate causation.” *Id.* at 41. There is no causation alleged, only conclusory statements, which is fatal to any claims resting on the Test Results.

Further, the Test Results are from Plaintiffs' homes. (Am. Compl. 115-26.) There is no allegation that an individual Plaintiff's home drinking water is a natural resource as required under MEPA. The Test Results *are not* connected to the "groundwater, surface water, and other natural resources" on which Plaintiffs' MEPA counts relies. Plaintiffs also compare the Test Results to federal EPA maximum contamination level guidelines, which are neither controlling standards nor instructive given that they fail to account for testing procedures or any other variables. (Am. Compl. 115-26.) The EPA's maximum turbidity level of one turbidity unit is for a monthly average, not a single snapshot. 40 C.F.R. 141.13. And for any sample exceeding the maximum, "the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour." *Id.* at 141.22. Plaintiffs do not allege that they performed any test that complies with that standard. And in any event, the turbidity level maximums apply to public waters obtained from surface waters, not private wells that pull from underground aquifers. *Id.* Plaintiffs have not alleged their turbidity levels violate any *applicable* standard. Similarly, the maximum contaminant levels for Iron and Manganese apply to "public water systems." *Id.* at 143.2. Plaintiffs all draw their water from private wells, and the referenced standards are again not applicable. Further, the referenced maximum contaminant levels "primarily affect the aesthetic qualities relating to the public acceptance of drinking water." *Id.* at 143.1. That is, Plaintiffs alleged minor deviations from the maximum contaminant levels affect appearance only and not a "significant consequential effect" to support a MEPA claim. The referenced standards are mere "guidelines" and not enforceable, nor are they connected with "health implications." *Id.* And, Plaintiffs' incorporated report contradicts Plaintiffs' other allegations, assigning the presence of metals to most likely natural causes and only 'potentially' the mine. (Ex. 5.) 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. The Amended Complaint makes no effort to supplement this claim with additional facts. 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.

For example, where a defendant had dumped fill into a swamp land adjacent to a lake, an area "generally above the ordinary high water mark," the fill did not interfere "with the reasonable use of the surface water of [the] lake by other riparian owners [n]or 'necessarily constitute(d) an interference with (plaintiffs') rights of boating and fishing on the entire surface of [the] lake in its natural condition.'" *Henson v Gerlofs*, 13 Mich App 435, 447; 164 NW2d 533 (1968) (quoting *Burt v Munger* (1946), 314 Mich 659, 664; 23 NW2d 117, 120)). "The connecting stream remains navigable and therefore [t]his Court fails to find interference in an unreasonable manner by defendants." *Id.* And further, the "fill washing out into the Middle lake" did not change the result because it would not "substantially affect the total surface area of the lake used for boating and fishing." *Id.* In contrast, riparian interference was found where a plaintiff wished "to construct a cement retaining wall on the lake bottom a few feet from the water's edge and fill in between the wall and the shore line" and "fill in a portion of the lake bottom, approximately 50 by 150 feet in size." *Burt*, 314 Mich at 661. Plaintiffs have alleged nothing remotely close to the facts in *Burt*.

Plaintiffs allege, in conclusory fashion, that Defendants' mining operations "interfere with and violate" their riparian rights in Massey Lake. (Am. Compl. ¶¶ 155-161.) Plaintiffs do not allege 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. Here, Defendants’ mining activities are at least 1000 feet away from the lake, not adjacent. Plaintiffs have not alleged any change in surface area of the lake or *any* interference with riparian activities, let alone “unreasonable interference.”

Plaintiffs’ riparian-rights claim amounts to nothing more than a disagreement with Defendants’ land use. Plaintiffs’ allegations about the Test Results have no bearing on riparian rights. Riparian rights protect use and enjoyment of a waterbody, not the turbidity of ground wells and 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—ordinary operations incident to the long-standing use of the Property. (Am. Compl. ¶¶ 145–148.) 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. (Ex. 6.) This alone is reason to reject 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.

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. (Am. Compl. ¶¶ 145, 163, 166.) These allegations are irrelevant because Defendants have the necessary permits. Even if they didn't, those allegations would not make out a private nuisance claim. 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. At best, Plaintiffs make the same arguments that failed in *Adkins*.

Michigan cases routinely follow *Adkins* and dismiss cases for failure to allege "significant harm." A K-Mart constructed across the street from a plaintiffs' home that allegedly caused

increased traffic, exhaust fumes, excessive light that made it difficult to sleep, read, work or concentrate, trash blowing into plaintiffs' yard, and a noisier neighborhood was insufficient to show "significant harm as a result of defendants' unreasonable interference." *Childs v K-Mart Corp*, unpublished opinion of the Court of Appeals, issued October 9, 2001 (Docket No. 220870), 2001 WL 1199901, p *3, (Ex. 7.). The plaintiffs failed to claim "anything other than the ordinary operation of the Super K-Mart." *Id.* Ordinary operation of an asphalt plant was similarly insufficient to support a nuisance claim. *Jackson v Thompson-McCully Co*, 239 Mich App 482, 491; 608 NW2d 531 (2000) (would not "amount to an unreasonable and substantial interference"). Regular industrial trucking was also insufficient. *Zumbach v Detroit Edison Co*, unpublished opinion of the Court of Appeals, issued November 13, 2014 (Docket No. 316863), 2014 WL 6068381, p *2 (daily truck traffic was not "so inconsistent with their neighborhood as to rise to the level of a nuisance" and was "neither intentional and unreasonable or negligent"), (Ex. 8).

Nothing in the Amended Complaint can be fairly said to allege "significant harm" or to be an "intentional or unreasonable act" or an act of negligence by Defendants. 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, in particular there is no "unreasonable interference" and as repeated in all claims, there is no causation connected to any alleged harm. 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 make conclusory allegations that Defendants’ mining activities harm the public’s interest in air, water, and natural resources. (Am. Compl. ¶ 166.) But these allegations merely restate MEPA-style conclusory concerns and do not identify any special injury distinct from generalized environmental interests shared by the public at large. Additionally, in Michigan, “mineral extraction is undeniably one aspect of the overall ‘public interest.’” *Kyser v Twp*, 486 Mich 514, 532; 786 NW2d 543 (2010). 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 connected to Defendants mining—there are none—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 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.”). And apart from the relief not being warranted, neither is a substantive cause of action. “Although it has become commonplace in this state for a plaintiff to assert a request for declaratory relief as a separately labeled cause of action within his or her complaint, this is technically improper because declaratory relief is a remedy, not a claim.” *Wiggins v City of Burton*, 291 Mich App 532, 561; 805 NW2d 517 (2011). “[A]n injunction is a remedy, not a cause of action.” *Redmond v Heller*, 332 Mich App 415, 432; 957 NW2d 357

(2020); see also *Terlecki v Stewart*, 278 Mich App 644, 663; 754 NW2d 899 (2008) (“It is well settled that an injunction is an equitable remedy, not an independent cause of action.”). There is no legal basis for declaratory and injunctive relief to be brought as an independent count, Count V must be dismissed.

V. CONCLUSION

For these reasons, Defendants respectfully request that the Court dismiss Plaintiffs’ Complaint in its entirety with prejudice. Plaintiffs have already had ample opportunity to cure their pleading deficiencies and have failed to do so. As a result, no further amendment is appropriate. A Proposed Order attached as Exhibit 9.

Dated: August 18, 2026

Respectfully submitted,

HONIGMAN LLP

By: /s/ Andrew W. Clark /
Andrew W. Clark (P79165)
aclark@honigman.com
Brian R. Hamilton (P88135)
bhamilton@honigman.com
660 Woodward Ave. Ste. 2290,
Detroit, MI 48226
(313) 465-7000

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 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)

76639438.2

EXHIBIT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

ANN ARBOR CHARTER TOWNSHIP,
a Michigan municipal corporation,

Case No. 23-001234-CE
Hon. Timothy P. Connors

Plaintiff,

vs.

WSG PROPERTIES LLC, a Michigan limited liability
company, AMC-WSG LLC, a Michigan limited
liability company, AMC-MID MICHIGAN
MATERIALS LLC, a Michigan limited liability
company,

Defendants. /

Nathan D. Dupes (P75454)
Sarah J. Gabis (P67722)
Sinéad G. Redmond (P85718)
BODMAN PLC
6th Floor at Ford Field
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sredmond@bodmanlaw.com
Attorneys for Plaintiff

Michael P. Hindelang (P62900)
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313.465.7282
mhindelang@honigman.com
aclark@hoingman.com
jfarmer@honigman.com
Attorneys for Defendants

/

**STIPULATED CLARIFICATION TO ORDER GRANTING PRELIMINARY
INJUNCTION**

At a session of said Court, held in the City of Ann
Arbor, County of Washtenaw, State of Michigan
On October20, 2023

PRESENT: Timothy P. Connors
CIRCUIT COURT JUDGE

This matter comes before the Court upon the stipulation of the parties (as to form only) after they have conferred about the scope of the Court's October 10, 2023 Order Granting Preliminary Injunction in response to Plaintiff Ann Arbor Charter Township's (the "Township") Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion") and the Court having previously found that:

- A. Injunctive relief is appropriate to abate a nuisance per se.
- B. The Township will be irreparably injured unless an order is granted enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement;
- C. The Township is likely to prevail on the merits of its claims;
- D. An order enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement will not unjustly injure Defendants.
- E. The public interest will be served by enjoining Defendants' mining operation from violating the CUP, Township Zoning Ordinances, and the Development Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Township's Motion is granted.

IT IS FURTHER ORDERED that:

1. The Court's October 10, 2023 Order Granting Preliminary Injunction is vacated effective immediately and replaced with this clarified Order, except that the findings supporting the Court's October 10, 2023 Order, which are restated above, remain undisturbed.
2. Defendants, and those acting as agents or in concert with Defendants, are immediately enjoined from operating their mining operation, except in full compliance with (a) the Conditional Use Permit authorized by the Township's Board of Trustees on July 20, 2020 ("CUP"), (b) the Township Zoning Ordinances, and (c) the Development Agreement between the Township and Defendant AMC-WSG, LLC ("Development Agreement"). Without modifying or limiting the generality of the foregoing, (a) 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; (b) Defendants shall not use a dewatering process in order to access sand or gravel; (c) if Defendants mine, they shall do so without operating their wash plant, until such time as they are unable to mine further without operating the wash plant, currently estimated to be 2-3 weeks from the date of this Order ("Stage 1"); (d) After Stage 1, Defendants may resume operation of the wash plant by withdrawing water solely from Pond 2, as indicated on Exhibit A, until such time as they are unable to further operate the wash plant by withdrawing water solely from Pond 2, currently estimated to be 1 week from the end of Stage 1 ("Stage 2"); (e) After Stage 2, only as necessary for operation of the wash plant,

Defendants may operate the wash plant using Pond 1 to replenish Pond 2, but may only withdraw the minimum amount from Pond 1 necessary to operate the wash plant (“Stage 3”), subject to Paragraph 4, below; (f) Defendants shall notify the Township’s counsel prior to changing from one Stage to another, as described in this paragraph.

3. Defendants shall provide the Township daily measurements of the surface elevation of Pond 1, as indicated on Exhibit A, for the purpose of demonstrating recovery of the aquifer and water table. For the same purpose, subject to obtaining access, Defendants also shall regularly test (or pay for the cost of testing) the surface elevation of a reasonable number of off-site water features (e.g., residential wells) suggested by the Township.
4. Defendants shall cease operating under Stage 3, as described in Paragraph 2, above, if doing so adversely impacts the recovery of the aquifer and water table.
5. Once Defendants have demonstrated to the Township that the aquifer and water table have recovered to the natural levels existing prior to Defendants’ dewatering operations, Defendants may notify the Township that they wish to operate a “closed loop” system without following the staging process under Paragraph 2, above. The Township shall review Defendants’ proposed “closed loop” system to ensure it complies with the CUP, Township Zoning Ordinances, the Development Agreement, and this Order. If the Township approves, Defendants may operate such “closed loop” system, provided they

continue to fully comply with the remaining provisions of this Order. If there is a dispute between the parties under this paragraph, either party may submit the dispute to the Court for resolution.

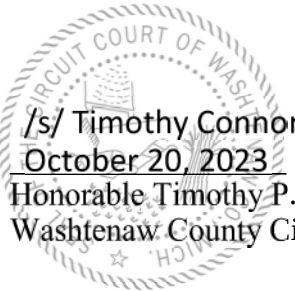
6. The Township may immediately enter the Vella Pit to ensure operations are being performed in compliance with this Order. If operations are not being performed as set forth herein, the Township may tag and padlock the Vella Pit against entry by any person or entity.

7. This Court has considered the requirements of MCR 3.310(D) and has determined that security is not required for entry of this Order.

This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

Dated: October ____, 2023.



/s/ Timothy Connors
October 20, 2023
Honorable Timothy P. Connors
Washtenaw County Circuit Court Judge

Stipulated as to form only by:

/s/ Nathan D. Dupes (P75454) (with consent)
BODMAN PLC
Attorneys for Plaintiff

/s/ Andrew W. Clark (P79165)
HONIGMAN LLP
Attorneys for Defendants

EXHIBIT A

Vella Pit - Operations



- ① Active mining area
- ② Reservoir of water for wash plant
- ③ Settling pond
- ⓧ NPDES outfall to wetlands
(further discharge prohibited)
- ⑤ Settling pond for wash plant
return water

→ Water flow direction



HALEY
ALDRICH

49800447.1

EXHIBIT 2

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

ANN ARBOR CHARTER TOWNSHIP, a
Michigan municipal corporation,

Plaintiff,

Case No. 23-001234-CE
Hon. Tracy E. Van den Bergh

v.

WSG PROPERTIES, LLC, a Michigan
limited liability company, AMC-WSG, LLC,
a Michigan limited liability company, AMC-
MID MICHIGAN MATERIALS LLC, a
Michigan limited liability company,

Defendants.

BODMAN PLC

By: Nathan D. Dupes (P75454)
Sarah J. Gabis (P67722)
Sinéad G. Redmond (P85718)

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Detroit, Michigan 48226
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ndupes@bodmanlaw.com
sgabis@bodmanlaw.com
sredmond@bodmanlaw.com
Attorneys for Plaintiff

HONIGMAN LLP

By: Michael P. Hindelang (P62900)
Andrew W. Clark (P79165)
Jalen R. Farmer (P86859)

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mhindelang@honigman.com
aclark@honigman.com
jfarmer@honigman.com
Attorneys for Defendant

STIPULATED ORDER EXTENDING ADMINISTRATIVE STAY

At a session of said Court, held in the
City of Ann Arbor, County of Washtenaw, State of Michigan
On 8/13/2026

PRESENT: Hon. Tracy E. Van den Bergh

This matter comes before the Court upon the stipulation of the parties to extend the administrative stay so the parties may continue settlement discussions. Per the parties' stipulation,

IT IS HEREBY ORDERED that the current administrative stay is extended until September 25, 2026. If any party wishes to end the stay prior to its expiration, it may do so by providing 3 days written notice to the other parties, after which the party wishing to end the stay may submit an order to the Court lifting the stay.

IT IS FURTHER ORDERED that Defendants shall answer or otherwise respond to the Complaint within 7 days after the end of the stay.

IT IS FURTHER ORDERED that, while the administrative stay remains in place, defendants may 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 Court's Stipulated Clarification to Order Granting Preliminary Injunction, entered October 20, 2023 ("Injunction Order"), notwithstanding the term of the CUP. For purposes of clarity, nothing herein shall impact the Injunction Order, which remains binding and enforceable.

IT IS FURTHER ORDERED that the August 12, 2026 status conference is adjourned, and counsel for the parties shall appear for a Zoom Status Conference (Zoom ID 275 740 8549) on September 30, 2026 at 1:00pm.

This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

A circular seal for the Washtenaw County Circuit Court. The outer ring contains the text "CIRCUIT COURT OF WASHTENAW COUNTY, MICHIGAN". The inner circle features a star and the text "JULY 18, 1831".
/s/ Tracy Van den Bergh
August 14, 2026
Honorable Tracy E. Van den Bergh
Washtenaw Court Circuit Court Judge

Approved as to Form and Content:

/s/ Nathan D. Dupes
Nathan D. Dupes (P75454)
Attorney for Plaintiff
ndupes@bodmanlaw.com

/s/ Andrew W. Clark (w/consent)
Andrew W. Clark (P79165)
Attorney for Defendants
aclark@honigman.com

EXHIBIT 3

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

ANN ARBOR CHARTER TOWNSHIP,
a Michigan municipal corporation,

Case No. 23-001234-CE
Hon. Timothy P. Connors

Plaintiff,

v.

WSG PROPERTIES, LLC, a Michigan
limited liability company, AMC-WSG, LLC,
a Michigan limited liability company, AMC-
MID MICHIGAN MATERIALS LLC, a
Michigan limited liability company,

Defendants.

BODMAN PLC

By: Nathan D. Dupes (P75454)
Sarah J. Gabis (P67722)
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sredmond@bodmanlaw.com
Attorneys for Plaintiff

HONIGMAN LLP

By: Michael P. Hindelang (P62900)
Andrew W. Clark (P79165)
Jalen R. Farmer (P86859)

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(313) 465-7282
mhindelang@honigman.com
aclark@honigman.com
jfarmer@honigman.com
Attorneys for Defendants

STIPULATED ORDER REGARDING TEMPORARY DREDGING OPERATIONS

At a session of said Court, held in the
City of Ann Arbor, County of Washtenaw, State of Michigan
On 7/3/24

PRESENT: Hon. Timothy P. Connors

This matter comes before the Court upon the stipulation of the parties to (1) implement a trial period during which Defendants may engage in dredging operations as specifically described below (the “Dredging Trial Period”), (2) partially reimburse Plaintiff for attorney fees, and (3)

extend the administrative stay so the parties may continue settlement discussions. Per the stipulation of the parties:

IT IS ORDERED that, for settlement purposes only, Defendants may conduct on a temporary basis a dragline dredging operation in Pond 1, as defined in the Court's October 20, 2023 Stipulated Clarification to Order Granting Preliminary Injunction ("Preliminary Injunction"), using a Skagit 747 dredge. The Dredging Trial Period will begin on or about August 1, 2024 and conclude on or about September 14, 2024, at which point Defendants shall remove the dredging equipment from their property. The parties recognize and agree that the exact start date for commencement of dragline dredging is subject to weather and equipment availability, and could be up to fifteen (15) days earlier or later than the August 1, 2024 start date specified in this Order. If Defendants request to modify the start date by up to fifteen days before or after August 1, 2024, the parties agree to submit an amended order confirming such modified start date and corresponding end date, 45 days after the modified start date. The parties further agree that neither this Order nor the Dredging Trial Period creates any right for Defendants to continue dredging after expiration of the Dredging Trial Period. The parties further agree that this Order is without prejudice to: (i) Plaintiff's rights and authority to review and approve or deny a more permanent change in site operations and to review and approve or deny any future applications for a renewed or new conditional use permit under Plaintiff's ordinances; or (ii) Defendants' rights, if any, to make modifications to site operations as allowed by the current CUP.

IT IS FURTHER ORDERED that Defendants shall install two sound meters on their property prior to start of the Dredging Trial Period. One meter shall be installed near the southern boundary of Defendants' property in the vicinity of the neighboring single family home, and the other near the northern boundary, adjacent to Joy Road. Defendants shall use the meters to

continuously measure the decibel levels from their operations during all hours of operation for 7 days prior to and for the full duration of the Dredging Trial Period. Defendants shall provide Plaintiff with decibel level measurements from both sound meters on a daily basis.

IT IS FURTHER ORDERED that Defendants shall pay Plaintiff the amount of \$25,000.00 as a partial reimbursement of attorney fees. Said payment shall not operate as a release or satisfaction of any of Plaintiff's claims, except as to the specific amount paid.

IT IS FURTHER ORDERED that the current administrative stay is extended until October 31, 2024. If any party wishes to end the stay prior to its expiration, it may do so by providing 3 days' written notice to the other parties, after which the party wishing to end the stay may submit an order to the Court lifting the stay. Defendants shall answer or otherwise respond to the Complaint within 7 days after the end of the stay.

IT IS FURTHER ORDERED that, except as expressly modified by this Order, the Preliminary Injunction remains binding and enforceable and Defendants shall continue to comply with the terms and conditions of the CUP, Development Agreement (both as defined in the Preliminary Injunction), and Plaintiff's Zoning Ordinances.

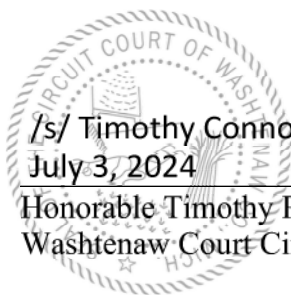
This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

Dated: _____

Approved as to Form and Content:

/s/ Nathan D. Dupes
Nathan D. Dupes (P75454)
Attorney for Plaintiff
ndupes@bodmanlaw.com

The seal of the Circuit Court of Washington County is circular, featuring a central emblem surrounded by the text "CIRCUIT COURT OF WASHINGTON COUNTY" and "JULY 1820".
/s/ Timothy Connors
July 3, 2024
Honorable Timothy P. Connors
Washtenaw County Circuit Court Judge

/s/ Andrew W. Clark with consent
Andrew W. Clark (P79165)
Attorney for Defendants
aclark@honigman.com

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

ANN ARBOR CHARTER TOWNSHIP,
a Michigan municipal corporation,

Plaintiff,

Case No. 23-001234-CE
Hon. Timothy P. Connors

v.

WSG PROPERTIES, LLC, a Michigan
limited liability company, AMC-WSG, LLC,
a Michigan limited liability company, AMC-
MID MICHIGAN MATERIALS LLC, a
Michigan limited liability company,

Defendants.

BODMAN PLC
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Attorneys for Plaintiff

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Attorneys for Defendants

**STIPULATED ORDER EXTENDING DATES OF TEMPORARY DREDGING
OPERATIONS**

At a session of said Court, held in the
City of Ann Arbor, County of Washtenaw, State of Michigan
On 9/30/2024

PRESENT: Hon. Timothy P. Connors

On July 3, 2024, the Court entered a Stipulated Order Regarding Temporary Dredging allowing Defendants to engage in dredging during a trial period (“Dredging Order”). On August 5, 2024, the Court entered a Stipulated Order Setting Dates of Temporary Dredging Operations,

which provided that the Dredging Trial Period (as defined in the Dredging Order) would commence on August 5, 2024 and end on September 19, 2024. The parties now wish to extend the Dredging Trial Period until October 15, 2024 and provide for the collection of additional sound data. Per the stipulation of the parties:

IT IS ORDERED that the Dredging Trial Period (as defined in the Dredging Order) shall end on October 15, 2024.

IT IS FURTHER ORDERED that, after the Dredging Trial Period ends, Defendants shall perform additional sound monitoring using the equipment described in the Dredging Order for at least two weeks of normal operations using standard excavators, and provide the data from same to Plaintiff on a daily basis in the same report format that Defendants are using at the time of submission of this Order.

IT IS FURTHER ORDERED that, except as expressly modified by this Order, the Dredging Order remains in full force and effect.

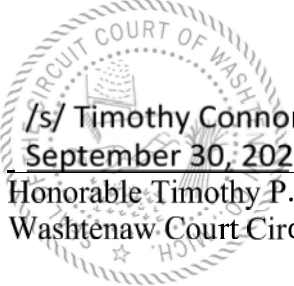
This is not a final order and does not resolve the last pending claim or otherwise close the case.

IT IS SO ORDERED.

Dated: _____

Approved as to form and content:

/s/Nathan D. Dupes
Nathan D. Dupes (P75454)
Attorney for Plaintiff
ndupes@bodmanlaw.com

A circular seal for the Circuit Court of Washtenaw County, Michigan. The seal features a central emblem with a book and a star, surrounded by the text "CIRCUIT COURT OF WASHTENAW COUNTY, MICHIGAN".
/s/ Timothy Connors
September 30, 2024
Honorable Timothy P. Connors
Washtenaw County Circuit Court Judge

/s/Andrew W. Clark (with consent)
Andrew W. Clark (P79165)
Attorney for Defendants
aclark@honigman.com

EXHIBIT 4

From: Coffey, Kristina (EGLE)
Sent: 4/6/2026 9:39:59 AM
To: "rwilson@midmichiganmaterials.com" <rwilson@midmichiganmaterials.com>
Cc: "clerk@aatwp.org" <clerk@aatwp.org>; "driskellg@ewashtenaw.org" <driskellg@ewashtenaw.org>; "millers@washtenaw.org" <millers@washtenaw.org>; "lnelson@haleyaldrich.com" <lnelson@haleyaldrich.com>; "Bales, James (EGLE)" <BalesJ@michigan.gov>; "Lounds, Amy (EGLE)" <LOUNDSA@michigan.gov>; "Alexander, Kyle (EGLE)" <AlexanderK7@michigan.gov>; "Bruursema, Elana (EGLE)" <BruursemaE@michigan.gov>; "Cameron, Megan (EGLE)" <CameronM6@michigan.gov>; "Pappas, Lena (EGLE)" <PappasL4@michigan.gov>; "Pennington, Michael (EGLE)" <PENNINGTONM@michigan.gov>; "Pierce, Jeff (EGLE)" <PierceJ2@michigan.gov>
Subject: CORRECTED: EGLE Countersigned Permit WRP047682 v1
Attachments: Resources Individual Permit - WRP047682 v1.pdf, Approved Plans - WRP047682 v1.pdf, Placard - WRP047682 v1.pdf

Dear Rob Wilson:

It was realized this morning that the incorrect version of the countersignature draft permit was finalized and issued. The correct one has now been finalized and issued and is attached to this email.

If you have any questions, please contact Jim Bales directly at BalesJ@Michigan.gov or 517-257-4532.

Kris Coffey, Secretary
Water Resources Division/Jackson District Office
Michigan Department of Environment, Great Lakes, and Energy
517-243-3109 | CoffeyK@Michigan.gov
[Follow Us](#) | Michigan.gov/EGLE

From: Pierce, Jeff (EGLE) <PierceJ2@michigan.gov>
Sent: Friday, April 3, 2026 12:53 PM
To: Robert Wilson <rwilson@midmichiganmaterials.com>
Cc: Clerk <clerk@aatwp.org>; driskellg@ewashtenaw.org; millers@washtenaw.org; Nelson, Leslie <lnelson@haleyaldrich.com>; Bales, James (EGLE) <BalesJ@michigan.gov>; Lounds, Amy (EGLE) <LOUNDSA@michigan.gov>; Alexander, Kyle (EGLE) <AlexanderK7@michigan.gov>; Bruursema, Elana (EGLE) <BruursemaE@michigan.gov>; Cameron, Megan (EGLE) <CameronM6@michigan.gov>; Pappas, Lena (EGLE) <PappasL4@michigan.gov>; Pennington, Michael (EGLE) <PENNINGTONM@michigan.gov>
Subject: EGLE Countersigned Permit WRP047682 v1

Dear Rob Wilson:

Attached is your EGLE issued countersigned permit and associated documents.

If you have any questions, please contact Jim Bales directly at BalesJ@Michigan.gov or 517-257-4532.

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

Jeff Pierce
District Supervisor
Water Resources Division, Water Resources Unit
Lansing and Jackson District Offices
Michigan Department of Environment, Great Lakes, and Energy

517-416-4297 | piercej2@Michigan.gov
[Follow Us](#) | Michigan.gov/EGLE

ATTACHMENT NAME:

Resources Individual Permit - WRP047682 v1.pdf

ATTACHMENT TYPE:

Adobe Portable Document Format (PDF) compound image



**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 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.

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 \$200,000 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 to protect adjacent wetland, lake, and stream resources outside of the authorized project 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. This permit does not authorize a discharge of mining process wastewater to surface water outside of the project footprint. If any water is extracted from the proposed lake for washing of sand and gravel, wash water shall be directed back to the proposed lake site during operations or discharged to groundwater in compliance with Part 31.
12. No connection of the lake to surface waters of the state is authorized by this permit.
13. 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.
14. 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.
15. 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.
16. 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

17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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".
24. 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.
25. This permit does not authorize or sanction work that has been completed in violation of applicable federal, state, or local statutes.
26. 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.
27. 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.

28. 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

ATTACHMENT NAME:

Approved Plans - WRP047682 v1.pdf

ATTACHMENT TYPE:

Adobe Portable Document Format (PDF) compound image

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



G-100
ECLE
WRP047682
Sheet: 1 of 8
Approved

Issued On:01/16/2026
Expires On:01/16/2031



- LEGEND**
- SITE BOUNDARY
 - PARCEL BOUNDARY
 - TOPOGRAPHIC CONTOURS 5-FT INTERVAL
 - UNGUARDY HIGH WATER MARK
 - CROSS SECTION

NOTES

1. LOCATIONS OF BUILDINGS AND STRUCTURES ARE APPROXIMATE.
2. TOPOGRAPHIC CONTOUR SOURCE: SURVEY PERFORMED BY PEA GROUP, 20 OCTOBER 2023. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT.
3. AERIAL IMAGERY SOURCE: NEARMAP, 2 OCTOBER 2023.
4. SLOPES AND BATHYMETRIC CONDITIONS OF PONDS 1 AND 2 ARE NOT EXPECTED TO CHANGE UNTIL FUTURE MINING OF THESE AREAS TO REACH FINAL EXTENT SHOWN IN SHEET C-105.
5. SLOPE AND BATHYMETRIC CONDITIONS OF PONDS 3 AND 4 ARE EXPECTED TO CHANGE DUE TO CURRENT MINING ACTIVITIES.

HALEY ALDRICH

HALEY & ALDRICH OF
MICHIGAN, INC.
455 E. Eisenhower Parkway,
Suite 210
Ann Arbor, MI 48108-3323
Tel: 734.867.8600
www.haleyaldrich.com

PREPARED FOR:
AMCARBOS LLC
6996 FISHER ROAD
JEDDO, MI

**FOR PERMITTING
PURPOSES
ONLY**

Project No.: 20230808_005
Scale: AS SHOWN
Date: 23 OCTOBER 2023
Drawn By: JG
Designed By: JG
Checked By: JG
Approved By: JG
Stamp:

VELLA PT PART 301
APPLICATION FOR PERMIT
4984 EARTH RD.
ANN ARBOR, MICHIGAN

**EXISTING
CONDITIONS**

C-100E
Sheet: 1 of 1

Drawn by: JELLYNNE
Checked by: JG
Approved by: JG
Date: 23 OCTOBER 2023
Scale: AS SHOWN
Project No.: 20230808_005
Sheet: 1 of 1



0 150 300 450 600
SCALE IN FEET

Issued On: 01/16/2026
Expires On: 01/16/2031



LEGEND

	SITE BOUNDARY
	PARCEL BOUNDARY
	TOPOGRAPHIC CONTOURS 5-FT INTERVAL
	ORDINARY HIGH WATER MARK
	CROSS SECTION

**HALEY
ALDRICH**

HALEY & ALDRICH OF
MICHIGAN, INC
455 E. Eisenhower Parkway,
Suite 210
Ann Arbor, MI 48108-3323
Tel: 734.887.8400
www.haleyaldrich.com

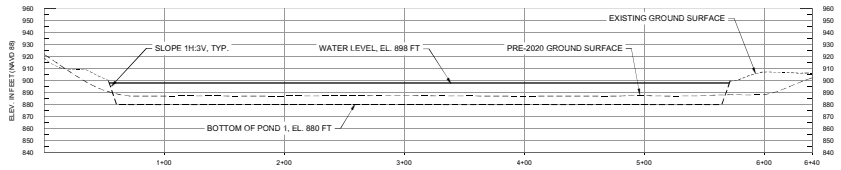
PREPARED FOR:

AMC-WYSG LLC
6966 FISHER ROAD
JEDDO, MI

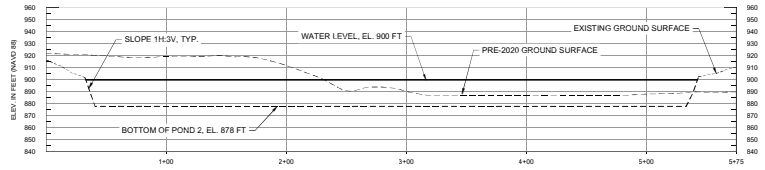
Project No.:	0207969	003
Scale:	AS SHOWN	
Date:	23 JULY 2018	
Drawn By:	JD	
Designed By:	JD	
Checked By:	CS	
Approved By:	LN	
Stamp:		

PRE-2020
CONDITIONS

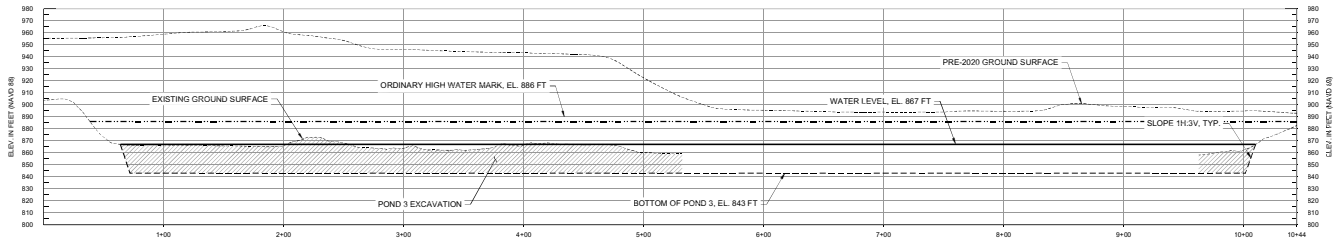
Issued On:01/16/2026
Expires On:01/16/2031



1 CROSS SECTION - POND 1
SCALE: AS SHOWN



2 CROSS SECTION - POND 2
SCALE: AS SHOWN



3 CROSS SECTION - POND 3
SCALE: AS SHOWN



NOTES

1. TOPOGRAPHIC CONTOUR SOURCE: SURVEY PERFORMED BY PEA GROUP, 20 OCTOBER 2023. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT.
2. PRE-2020 GROUND SURFACE DATA SOURCE: 2016 - 2017 NRCS 30 COUNTY M LIDAR. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT. VERTICAL DATUM IS NAVD83.
3. SLOPES AND BATHYMETRIC CONDITIONS OF PONDS 1 AND 2 ARE NOT EXPECTED TO CHANGE UNTIL FUTURE MINING OF THESE AREAS TO REACH FINAL EXTENT SHOWN IN SHEET C-105. SLOPE AND BATHYMETRIC CONDITIONS OF PONDS 3 AND 4 ARE EXPECTED TO CHANGE DUE TO CURRENT MINING ACTIVITIES.
4. POND 3 EXCAVATION VOLUME IS 158,406 CU YD.

HALEY ALDRICH

HALEY & ALDRICH OF
MICHIGAN, INC.
455 E. Eisenhower Parkway,
Suite 215
Ann Arbor, MI 48108-3323
Tel.: 734.867.8600
www.haleyaldrich.com

PREPARED FOR:
AMC-PRSD, LLC
6996 FISHER ROAD
JEDDO, MI

**FOR PERMITTING
PURPOSES
ONLY**

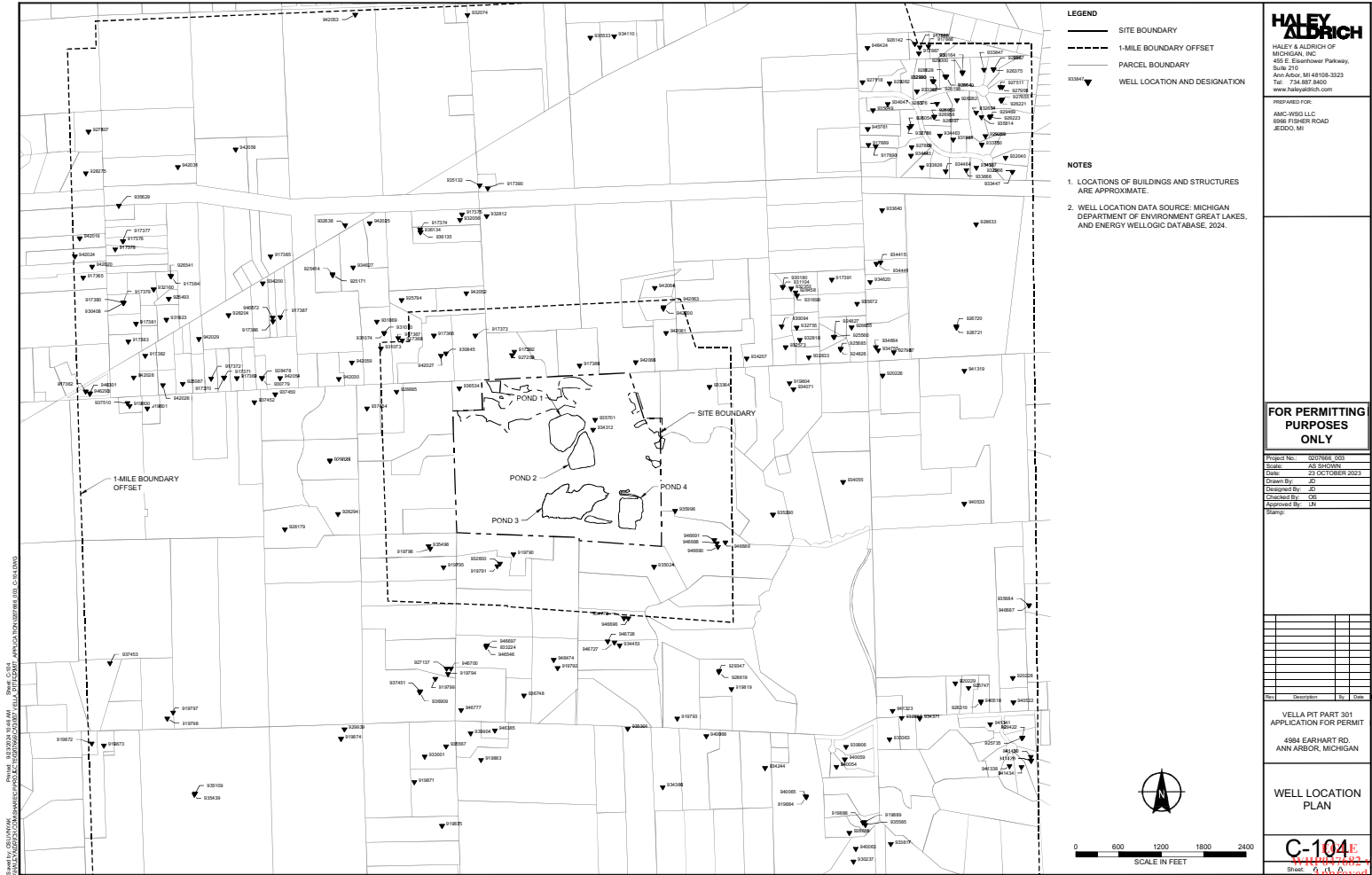
Project No.: 88PRSD-203
Scale: AS SHOWN
Date: 23 OCTOBER 2023
Drawn By: JF
Designed By: JF
Checked By: JF
Approved By: JF
Stamp:

VELLA P1T PART 301
APPLICATION FOR PERMIT
4984 EARHART RD.
ANN ARBOR, MICHIGAN

CROSS SECTIONS

C-102E
Sheet 1 of 1

Issued On: 01/16/2026
Expires On: 01/16/2031





1. TOPOGRAPHIC CONTOUR SOURCE: SURVEY PERFORMED BY PEA GROUP, 20 OCTOBER 2023. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT.
2. PRE-2020 GROUND SURFACE DATA SOURCE: 2016 - 2017 NRCS 30 COUNTY MI LIDAR. HORIZONTAL DATUM IS NAD83 MICHIGAN STATE PLANES, SOUTH ZONE, INTERNATIONAL FOOT. VERTICAL DATUM IS NAVD88.

RECLAMATION
CROSS SECTIONS

C-106

Issued On:01/16/2026
Expires On:01/16/2031

ATTACHMENT NAME:

Placard - WRP047682 v1.pdf

ATTACHMENT TYPE:

Adobe Portable Document Format (PDF) compound image



NOTICE OF AUTHORIZATION

Permit Number: WRP047682 v. 1
Site Name: AMC-WSG, LLC - Vella Pit

Date Issued: January 16, 2026
Expiration Date: January 16, 2031

The Michigan Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division, P.O. Box 30458, Lansing, Michigan 48909-7958, under provisions of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; specifically:

☒ Part 301, Inland Lakes and Streams.

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 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.

To be conducted at property located in: Washtenaw County, Waterbody: Lake Creation Section 01, Town 02S, Range 06E, Ann Arbor Township

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

A handwritten signature in blue ink, reading 'James E. Bales'.

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

*This notice must be displayed at the site of work.
Laminating this notice or utilizing sheet protectors is recommended.*
Please refer to the above permit number with any questions or concerns.

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

EXHIBIT 5

Impacts of Sediment Discharge on Massey Lake

Results from 2025 Investigation

Prepared for:

Ann Arbor Charter Township

December 8, 2025



Photo taken August 24, 2023

Cover image: drone photo of Massey Lake taken on August 24, 2023, showing turbid water entering the lake from gravel pit dewatering discharge upstream of the lake (photo credit: Michael Watts). Turbid conditions in the lake ceased after pit dewatering discharge stopped.



Impacts of Sediment Discharge on Massey Lake

Results from 2025 Investigation

Prepared by:

LimnoTech

December 8, 2025

Under contract to:

Ann Arbor Charter Township



EXECUTIVE SUMMARY

Ann Arbor Charter Township retained the consulting firm, LimnoTech, to conduct a study focused on Massey Lake. The primary objective was to document and assess any persistent environmental impacts resulting from the discharge of turbid water originating from recent (last three years) dewatering operations at an adjacent gravel pit. In the summer of 2025, LimnoTech performed a field investigation, collecting and analyzing bottom sediment samples. The analysis focused on concentrations of 10 metals, grain size distribution, and water column properties across six sites, including a reference location near the lake's center. These data, combined with a review of relevant scientific literature and hydrogeological reports, were used to assess the impact of recent discharges on the lake.

The investigation did not yield evidence of distinct impacts from recent dewatering operations on Massey Lake, although baseline data were not available for comparison with current conditions. Measured sediment concentrations are at or near background levels at all sites, suggesting no unnatural impacts from metal toxicity on the lake ecosystem's health. Comparisons between samples of the recent surface sediments and deeper, older sediments deposited prior to recent pit discharges revealed slightly higher average concentrations for 3 of the 10 metals analyzed (cadmium, chromium, and zinc). There were minimal differences in shallow and deep sediment grain sizes, although distinctive coarser sediment (i.e., sand) would not be carried as far into the lake as silt and clay. During sampling, the open lake waters were strongly stratified with respect to temperature and dissolved oxygen (higher at the surface).

While the metal concentrations and grain size data do not provide proof of distinct sediment impacts, the discharge likely resulted in the deposition of a higher-than-normal volume of sediment in the lake. This new sediment likely altered the lake's bathymetry (depth contours) slightly, though the absence of pre-discharge baseline data precludes quantification based on data from this study. Furthermore, available hydrogeological data are consistent with anecdotal reports of decreased groundwater discharge and subsequent relative warming of surface waters. These impacts would have been most acute during the active dewatering period.

The surface metals concentrations were below the established background soil concentration thresholds listed in State of Michigan guidance for soils and clay, except for slight exceedances for barium, copper, and zinc in a few isolated samples, including deep samples. The minor increase in surface relative to deep metal concentrations in sediments, when observed, can be attributed to several factors, including diagenesis (the natural chemical alteration of sediments after deposition, including impacts of low oxygen concentrations), seasonal variations (such as sediment disturbance by wind waves or biological activity), sediment focusing and water column scavenging (more deposition and higher concentrations in a deeper depression or offshore, as at ML-6) or, potentially, enrichment from the gravel pit's turbid discharge.

Options for mitigation include dredging to remove surface sediment, restocking impacted fauna and enhancing habitat, or the strategic installation of a weir or check dam at the creek inlet to reduce potential movement of remaining sediment in upstream wetlands into the lake. Based on available information and professional judgement, we recommend implementing biological measures (i.e., restocking and habitat enhancement) over more disruptive direct sediment mitigation. Expanded monitoring of groundwater between the lake and the gravel pit to track the recovery of natural flow would also be appropriate.



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1 BACKGROUND & INTRODUCTION

Massey Lake (Figure 1) in Ann Arbor Charter Township, Michigan, is a glacial kettle pond approximately 20 feet deep and covering about 12 acres, including a central basin on the eastern side with a small island, and a larger island and channels on the western side. A small dam in the southeast corner that discharges to an unnamed tributary of Fleming Creek regulates the lake level. Additional geological information and references are included in Appendix A.

Previous observations, investigations, and inspections have documented the discharge of turbid water into Massey Lake from the adjoining gravel pit to the west, as well as potential impacts on groundwater discharge to the lake. A berm failure at the gravel pit has also impacted the area near the lake. The turbid discharge to the lake, along with other issues, resulted in the issuance of a violation notice to the gravel pit operator, dated September 14, 2023, by the Michigan Department of Environment, Great Lakes, and Energy (EGLE). Separately, Ann Arbor Charter Township filed a lawsuit against the gravel pit operator, which resulted in an injunction issued in October 2023, prohibiting further dewatering and discharge from the pit.

LimnoTech was contracted by Ann Arbor Charter Township to investigate the impacts of sediment from the discharge of turbid water into the lake (see report cover photo). The LimnoTech investigation, which took place in the summer of 2025, consisted of collecting and analyzing sediment samples. Specifically, the study included the following elements:

- Sediment sampling using cores, grab samplers, and shovels to recover material from the submerged and exposed lake bed to investigate the thickness and areal extent of recent deposits.
- Chemical analysis to understand the composition of shallow, surficial sediment, in comparison with deeper natural sediment.
- Assessment of the impact of sedimentation on a reported underwater artesian spring that feeds Massey Lake, in addition to creek inflow.

Assessment of the impacts of pit-derived sediments and altered groundwater discharge on biology and aquatic life in Massey Lake, including in the benthic zone (lake bottom).



Figure 1. Massey Lake location map.

2 METHODS

Here, we provide an overview of the approach taken to collect and analyze sediment samples from the lake, establishing the potential impacts of gravel pit sediment discharges. We also document the methods used for water column measurements. LimnoTech developed a Sampling and Analysis Plan (SAP) that outlined the fieldwork, sampling activities, and sample analysis to be performed as part of the study. Additionally, the SAP outlined the procedural and analytical requirements of the sediment sampling survey. A table of the analytical results is attached as Appendix B, field photos are in Appendix C, and a copy of the SAP is included as Appendix D, along with copies of LimnoTech's Standard Operating Procedures for sediment sampling and the use of water quality sensors.

2.1 Sampling Locations

Sampling locations (Figure 2) were selected with consideration for where the signal of potential impacts would be strongest. That is, most samples were collected in the area of the lake west of the large island that received direct influx of sediment from the creek into which gravel pit effluent was discharged (see the report cover photo). Paired samples were collected at each site to compare recent sediments at the lake bed with older sediments that were more deeply buried and unlikely to be impacted by gravel pit discharges. Surface (S) and subsurface sediments (D for "deep") were sampled at six Massey Lake (ML) locations, with sediment depths, water depths, and site coordinates shown in Table 1 and depicted on Figure 2. Five of the sites were near the creek inlet (ML-1 through ML-5, Figure 2). A reference site, ML-6, was located in the center of the lake on the east side of the large island in an area less likely to be strongly influenced by sediment deposits from gravel pit discharges due to settling of particles closer to the inlet. This site was included for comparison purposes with sediment analyses from the other sites, as well as to provide information on the water column properties in the open lake.

Table 1. Sample locations.

Station ID and Sample Depth Intervals (Inches)	Water Depth (Feet)	Location Description	Approx. Longitude in Decimal Degrees	Approx. Latitude in Decimal Degrees
ML-1 S: 0-3", D: 12-15"	5.5'	Downstream of the inlet, upstream of the channel fork	83.67141°W	42.34284°N
ML-2 S: 2.4-5.4", D: 21-24"	NA	Near fork, on exposed lakebed (shore), submerged under high water conditions	83.67108°W	42.34297°N
ML-3 S: 0-3", D: 21-24"	5.2'	At the channel fork	83.67054°W	42.34279°N
ML-4 S: 0-3", D: 21-24"	8.3'	Northeastern channel downstream of the channel fork	83.67022°W	42.34306°N
ML-5 S: 0-3", D: 21-24"	7.2'	Southwestern channel downstream of the fork	83.67037°W	42.34242°N
ML-6 S: 0-1", D: 2-3"	18.4'	Open lake background reference site	83.66838°W	42.34203°N





Figure 2. 2025 sediment sampling locations (approximate).

2.2 Sediment Sample Collection

LimnoTech staff conducted the sediment sampling from a small boat (Appendix C) on August 21 and 22, 2025, after completing a prior site reconnaissance on July 3, 2025. Sites ML-4, ML-3, ML-5, and ML-6 were sampled on the 21st, and sites ML-1 and ML-2 were sampled on the 22nd. The field blank was collected on the 22nd after the sampling had been completed. A Ponar grab sampler deployed with a rope was used to collect sediment at site ML-6 due to the greater water depth, which made the collection of a push core challenging. The top 1" of the Ponar sample was composited and homogenized for the shallow sample, and the sediment between 2" and 3" in depth was similarly composited and homogenized as the deep sample. For sites ML-1, ML-3, ML-4, and ML-5, an acrylic core tube was inserted into the sediment approximately two feet and removed to collect an intact sediment core. Overlying water was decanted and the sediment was extruded from the core barrel. The extruded sediment between the surface and 0.25' was composited as the shallow sample, and the sediment from between 1.75' and 2.0' was composited as the deep sample. Site ML-2 was located on a portion of the lakebed that was exposed due to seasonally low water levels. A small hand shovel was used to collect sediment at this location. The shallow sample at ML-2 consisted of sediment from 0.2' to 0.45', and the deep portion was from 0.45' to 1.25'. Samples were stored on ice or refrigerated until they were delivered to the analytical laboratories on August 22.

2.3 Water Column Profiles

At ML-1, ML-3, ML-4, ML-5, and ML-6, a YSI EXO multi-parameter water quality sonde was used to measure dissolved oxygen, conductivity, temperature, turbidity, and pH throughout the water column. Vertical data profiles were developed by setting the sonde to take a measurement every second and slowly lowering and raising the sonde through the water column. An integrated depth sensor also recorded the sonde's vertical position in the water column.

2.4 Sample Analysis

Samples were received by the laboratories on August 22. Sediment was analyzed by Brighton Analytical for the "Michigan 10 metals": total arsenic, barium, cadmium, chromium, copper, lead, mercury, selenium, silver, and zinc, as well as percent solids, as described in the SAP. Additionally, sediment grain size was determined by Materials Testing Consultants (MTC) in Dexter, Michigan, using wet sieve analysis.



3 RESULTS

Here, we present the analytical results for sediment samples from the lake, which aim to document the potential impacts of gravel pit sediment discharges. We also summarize the results of the water column profiling.

3.1 Metals in Sediment

The sediment samples were analyzed for metals at Brighton Analytical, and concentrations were reported in micrograms per kilogram of sediment ($\mu\text{g}/\text{Kg}$ or parts per billion [ppb]) and then converted to milligrams per kilogram (mg/Kg or parts per million [ppm]). On average, for the sites of interest (ML-1, ML-2, ML-3, ML-4, and ML-5), there were minor differences in metal concentrations between the surface and deep samples (see Figure 3; note the logarithmic vertical axis). Out of the ten metals analyzed, three had slightly higher concentrations on average in the surface samples (cadmium, chromium, and zinc) than in the deeper samples, which would not have been impacted by recent gravel pit discharges. Still, the differences were not deemed to be significant. Arsenic appears elevated in the surface sample relative to the deep sample at ML-5; chromium is elevated at ML-3, ML-4, and ML-5; and zinc is elevated at ML-5. Silver was not present above detection limits ($<0.10 \text{ mg}/\text{Kg}$) in any sample, and selenium in the deep ML-6 sample was also not detected ($<0.20 \text{ mg}/\text{Kg}$). Mercury was only detected in four of the twelve samples analyzed. The maximum detection, however, was only $0.064 \text{ mg}/\text{Kg}$ in the deep ML-6 sample, compared to the detection limit of $0.050 \text{ mg}/\text{Kg}$, which is well within the background range (Table 2). Tables of all analytical data for individual samples are included in Appendix B.

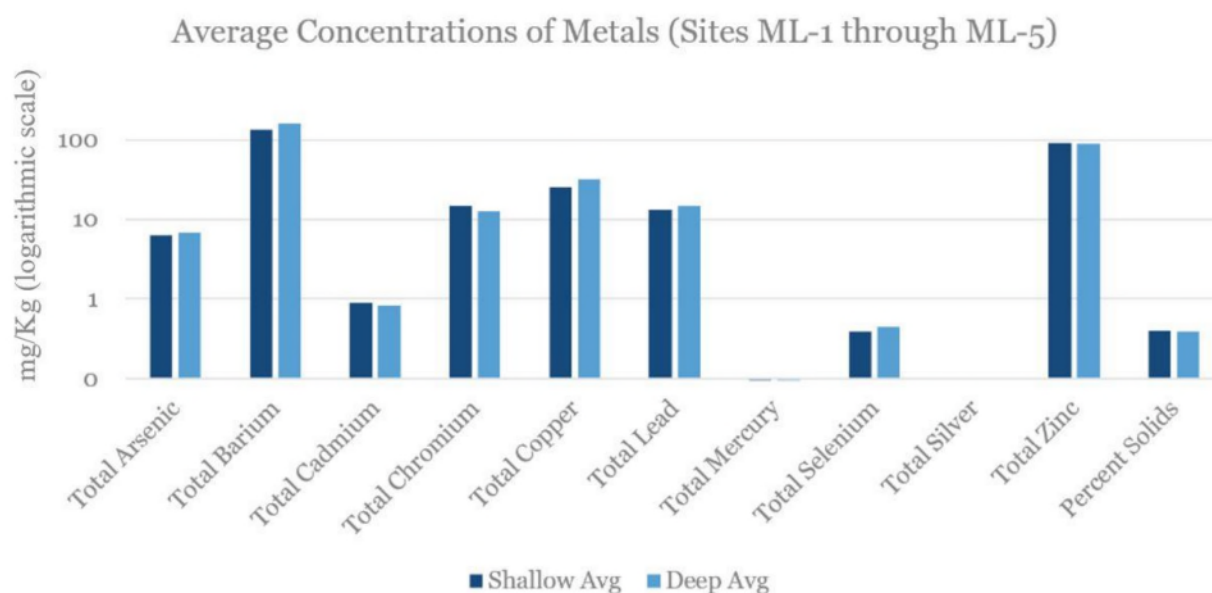


Figure 3. Average concentrations of metals in surface/shallow and deep samples for the sites of interest near the lake inlet (ML-1, ML-2, ML-3, ML-4, and ML-5).



For the reference site (Figure 4), there were minimal differences in metal concentrations between the surface and deep samples. Out of the ten metals analyzed, four had higher concentrations in the surface sample (arsenic, barium, cadmium, and chromium). For all sites, the metal concentrations fell within the range of background concentrations for metals in clay within southeast Michigan (Appendix A; EGLE, 2023a), with a few minor exceptions (Table 2): the ML-6S barium concentration was 230 mg/Kg (background limit in Appendix Table A-1 = 227 mg/Kg); the ML-4D copper value was 54.0 mg/Kg (background limit in Appendix Table A-1 = 46.9 mg/Kg); and the ML-6S and ML-6D zinc values were both 120 mg/Kg (Appendix Table A-1 limit = 102 mg/Kg). No metals exceeded direct contact cleanup criteria for residential soil (Table 2; EGLE, 2023b). All duplicate values were within 10% of the measured value, and no metals were detected in the field blank.

The sediment metal concentration data do not reveal patterns that indicate distinct impacts from gravel pit discharges, although they neither confirm nor exclude such impacts in terms of physical deposition. That is, sediment originating from the gravel pit is still likely present in the lakebed deposits. Still, it does not appear to be distinct in terms of metal concentrations from natural lake sediment. The concentrations are at or near background levels at all sites, suggesting no unnatural impacts from metal toxicity on the lake ecosystem's health. The relatively higher concentrations of several metals at the reference site, ML-6 (Figure 4), compared with the other sites, may indicate the influence of different natural geochemical processes associated with low oxygen concentrations during the summer at the reference site in the deep area of the lake (Section 3.3).

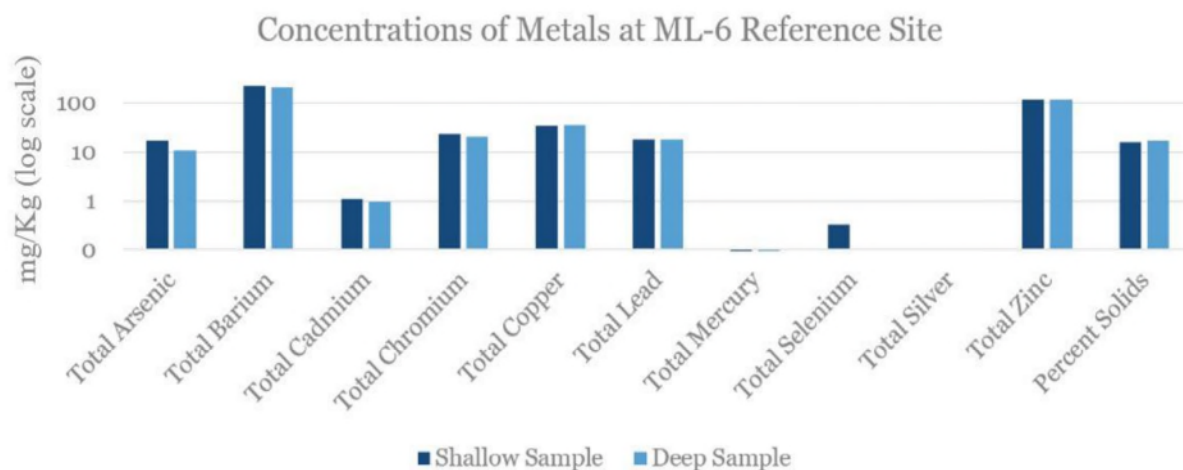


Figure 4. Surface (shallow) and subsurface (deep) metal concentrations in sediment from reference site, ML-6 (center of lake).

Table 2. Comparison of maximum and average sediment concentrations from Massey Lake with Michigan cleanup criteria for metals in contaminated soil and background values (see Appendix A). Results above background ranges are shaded.

Metal	Arsenic	Barium	Cadmium	Chromium	Copper	Lead	Mercury	Selenium	Silver	Zinc
Massey Lake Highest Sediment Concentrations (mg/Kg)	17.0 @ ML-6S	230.0 @ ML-6S	1.1 @ ML-4S and ML-6S	23.0 @ ML-6S	54.0 @ ML-4D	18.0 @ ML-4D and ML-6S/6D	0.064 @ ML-6D	0.50 @ ML-5D	All <0.10	120.0 @ ML-6S/6D
Average Sediment Concentrations for All Samples (mg/Kg) and Standard Deviation (SD = #)	7.6 (4.0)	156.9 (32.5)	0.9 (0.1)	14.8 (3.9)	29.4 (9.8)	14.6 (2.7)	0.056 (0.006)	0.39 (0.09)	NA	93.2 (21.2)
Average Sediment Concentrations for Surface Samples from Sites 1-5 (mg/Kg) and Standard Deviation (SD = #)	6.1 (3.4)	133.3 (12.1)	0.9 (0.1)	14.2 (3.1)	24.8 (5.5)	13.2 (2.0)	0.051 (NA)	0.36 (0.10)	NA	87.8 (21.7)
Average Sediment Concentrations for Deep Samples from Sites 1-5 (mg/Kg) and Standard Deviation (SD = #)	6.8 (1.7)	160.0 (10.0)	0.8 (0.1)	12.6 (1.1)	32.4 (13.8)	15.0 (2.7)	0.052 (NA)	0.45 (0.05)	NA	88.8 (18.5)
EGLE (2023b) Direct Contact* Residential Soil Criteria (mg/Kg)	37	130,000	2,100	1,000,000	73,000	900	160	9,600	9,000	630,000
Appendix Table A-1 Upper Background Limit (mg/Kg)	31.4	227.0	3.1	77.0	46.9	26.2	0.58	1.20	6.0	102.0
*"Direct contact" means exposure to hazardous substances through ingestion or dermal contact.										

3.2 Sediment Grain Size

The grain size and percent solids of sediments sampled showed few differences between shallow and deep samples, except at the sites closest to the lake inlet (Figures 5 and 6). Deeper sediments at sites ML-1 and ML-2 (exposed on shore) were slightly finer (i.e., greater percentages of silt and clay) than shallow sediments. The pattern at these sites is consistent with their location closer to the lake inlet, where flowing water would be expected to carry coarser sediment to the lake, which would subsequently drop out of the water once it encountered the low-energy lake environment. Finer particles would stay in suspension for days to weeks.

The lake area near the inlet will gradually fill with sediment in the vicinity of a “creek mouth delta”. In addition, wave winnowing would be expected at the exposed site, ML-2, removing finer sediment and leaving coarser sediment as the lake level dropped over the summer and the shoreline position migrated out from the spring shoreline contour. The sand fraction of sediment from the sampling sites is dominated by fine sand (Appendix B; 59-90% of the total sand fraction, except at ML-6), with lesser amounts of medium sand, and



little or no coarse sand. The trace amount of sand at ML-6 (0.2-0.7%) is coarser than at the other sites, suggesting possible ice rafting or wind transport. A trace of fine gravel (0.1-0.2%) was found in samples ML-1S, ML-2S, and ML-3D.

Without baseline data for comparison, it is not possible to determine whether the natural process of delta formation at the creek mouth has been accelerated by the input of gravel pit sediment based on the new grain size data. The percent solids value at site ML-2 was higher for the shallow sample than the deep sample due to evaporation from the exposed sediment surface and natural seasonal lowering of the water table over the summer as the lake surface dropped.

Most samples contained more than 90% silt and clay, with the values in samples from the center of the lake greater than 99% of the total sediment composition. The sediment color was consistently gray or tan in the shallow interval at sites ML-1, ML-2, ML-3, ML-4, and ML-5 (Appendix C), and dark gray to black in deeper sediments and at ML-6 (both shallow and deep). The black color is a result of the formation of iron sulfides in deeper, oxygen-free sediment layers and the accumulation of undecomposed organic debris, such as dead algae and leaf fragments (Wersin et al., 1991). The color difference between shallow and deep sediments at most sites is typical, and not necessarily indicative of a difference in recent sediment sources (e.g., the lighter gray color in surface sediments [Appendix C] is not likely diagnostic of sediment derived from gravel pit discharges versus natural sediment).

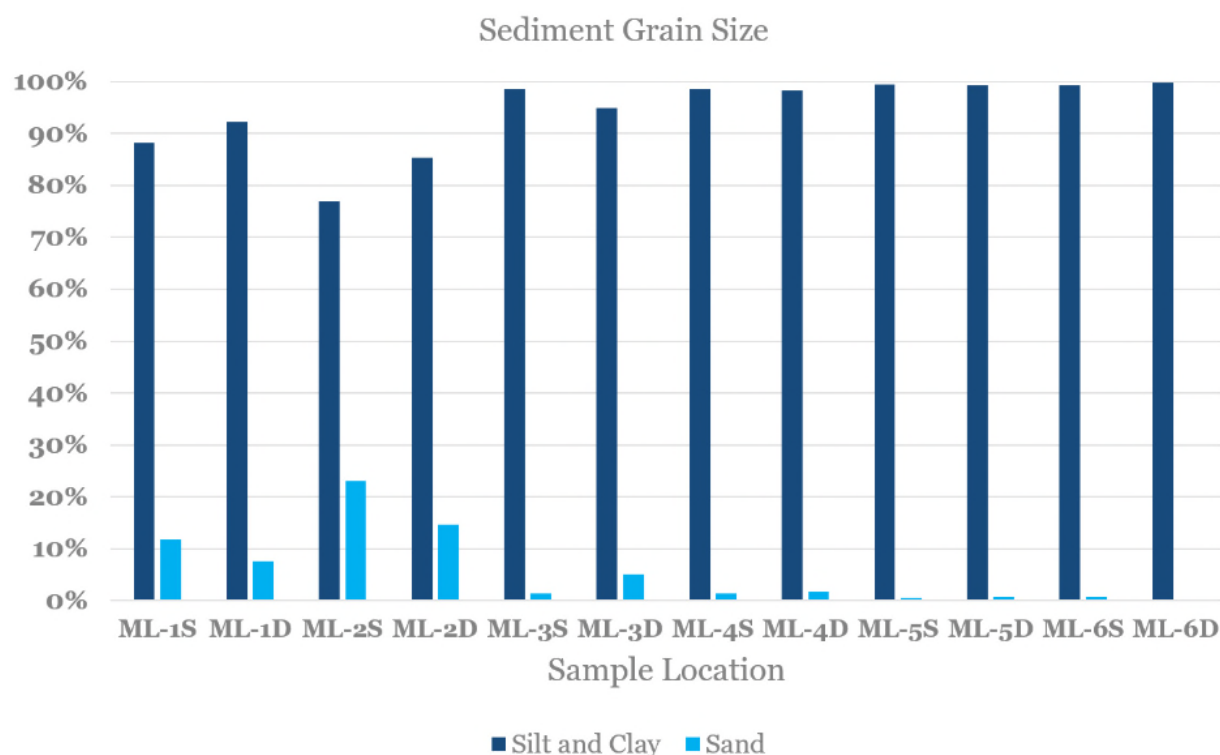


Figure 5. Results of sediment grain size analyses.



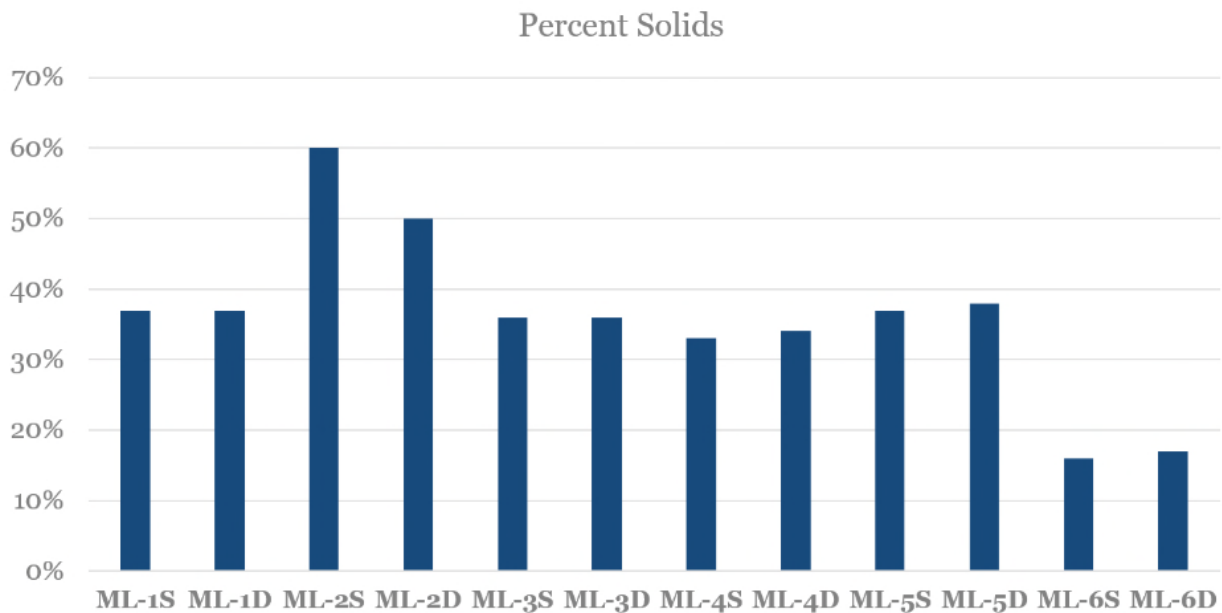


Figure 6. The results of the sediment percent solids analysis indicate that the water content exceeds 60% by weight in most samples.

3.3 Water Column Properties

Profiles of water quality parameters in the lake water column (Figures 7 and 8) were taken at all sampling sites except ML-2, which was located on shore above the water level during the sampling event. Water temperatures at the sites of interest (Figure 7) were typical for late summer, ranging from 20.1°C (68.2°F) to 22.3°C (72.3°F), with warmer water at the surface. The deepest core sampling site was ML-4 at 2.3 m (7.5 feet). The reference site (Figure 8, note different axis scales from Figure 7) was substantially deeper, 5.6 m (18.4 feet), and the bottom temperature was only 10.4 °C (50.7 °F), indicating stratification and likely groundwater influence. The mixed layer at the top of the ML-6 site was approximately 2.5 m (8.2 feet) thick, with elevated turbidity layers located just below the mixed layer and near the bottom, and a rapid decrease in oxygen saturation below the mixed layer.

The parameters other than temperature and oxygen concentration (not included in the figures below) generally exhibited less vertical variation in other water quality parameters (e.g., turbidity, specific conductance, pH) at the shallower sites (ML-1, ML-3, ML-4, and ML-5) compared to the deep reference site, ML-6. Water properties at these sites appeared to be influenced by the time of day when they were sampled, due to the varying hours of sunlight exposure they received, resulting in warming over time and oxygen production by macroalgae. Water column profiles were measured at the following times at these sites: ML-1, 9:45 AM; ML-3, 2:35 PM; ML-4, 2:01 PM; and ML-5, 4:02 PM. Site ML-1 profile data were collected early in the day on the second day of sampling. The site was also located closest to the point of creek discharge to the lake, which may have influenced the water temperature there. The oxygen saturation and pH were also higher at that site. Overall, water temperatures measured from top to bottom decreased by only 1 to 2°C at these sites. The ranges of water column values for the shallower sites above the deep turbidity layer or



“nepheloid layer” were as follows: oxygen saturation = 3-44%, oxygen concentration = 0.3-4.0 mg/L (low for most fish species), specific conductance = 420-560 $\mu\text{S}/\text{cm}$, turbidity = 1-8 NTU (light transmission measurements), and pH = 6.9-7.6. The lowest oxygen saturation and concentrations were observed near the surface of the ML-4 site.

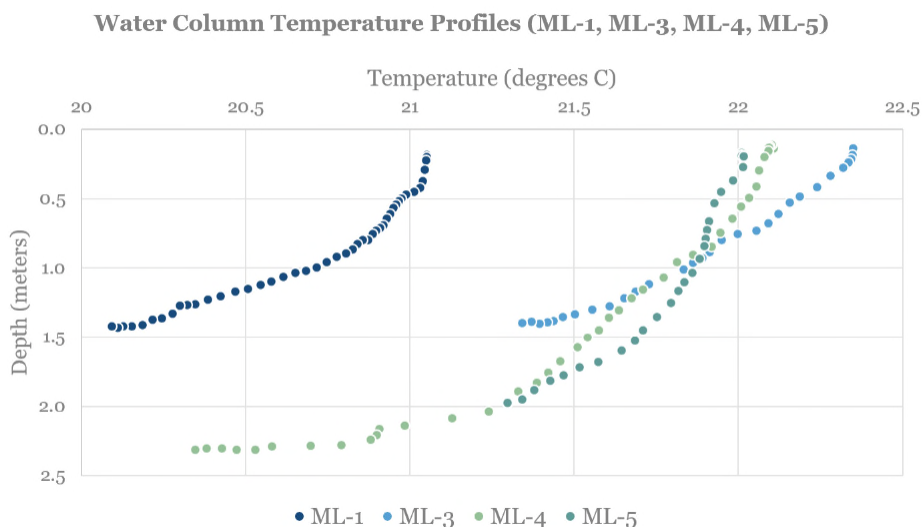


Figure 7. Water column temperature profiles for sites ML-1, ML-3, ML-4, and ML-5. Different profile lengths reflect differences in water depths among the four sites. Site ML-2 was on the exposed bank of the lake, so it has no water column profile. The observed temperatures are typical of late summer conditions in similar Michigan lakes.

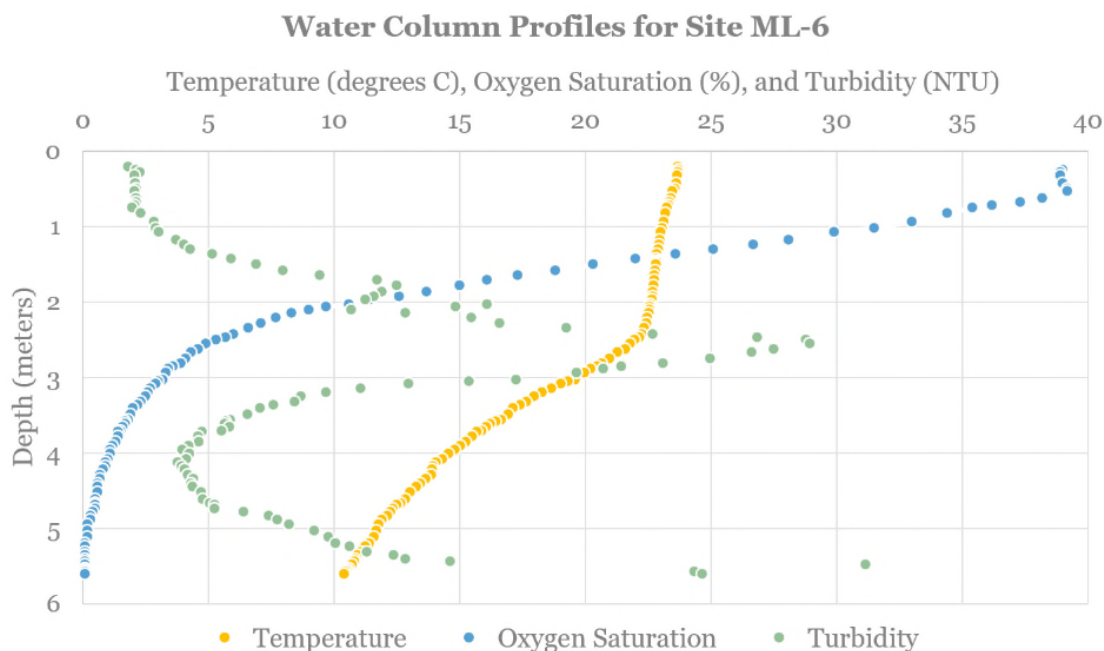


Figure 8. Water column profiles for reference site, ML-6. Turbidity units (NTU) are a measure of light transmission that is related to the amount of suspended solids and plankton in the water. Water temperatures in the deep part of the lake (10°C or 50°F) are similar to typical groundwater temperatures. Most fish require oxygen saturation over 64% or 5 mg/L for optimum health.



While water column profiles can be quite dynamic on daily and seasonal timeframes, the data collected are helpful in understanding certain aspects of how Massey Lake behaves. A primer on lake science and ecology is available at: https://mymlsa.org/wp-content/uploads/2011/06/Understanding_Lake_Ecology.pdf

The ML-6 profile provides a snapshot of summer conditions in the open lake, and the other profiles give a sense of the behavior of the channels near the lake's inlet. The open lake is strongly stratified (Boehrer and Schulze, 2008) into an upper oxygen-rich mixed layer (epilimnion, mixed by wind), where fish can thrive, and a lower unmixed layer (hypolimnion); however, the channels are not stratified. Oxygen concentrations are highest at the surface in the open lake, due to dissolved atmospheric oxygen and photosynthesis by phytoplankton. In contrast, the channels tend to have more oxygen near the bottom, primarily due to photosynthesis by benthic algae. There are no benthic algae in the deep parts of the lake due to low light penetration, and there are no fish due to the low oxygen concentrations. Oxygen declines rapidly with depth in the bottom layer of the open lake because it is consumed by decaying organic matter and is not renewed by atmospheric mixing or aquatic plants.

The turbidity maximum in the middle of the water column in the open lake around a depth of 2.5 meters (8 feet), near the sharp change in the temperature profile (the "thermocline"), is a natural phenomenon observed in many stratified lakes. This phenomenon is due to the trapping of sinking particles and chemical processes at this sharp change in water density and oxygen concentration. The lake likely mixes in the spring and fall due to density instabilities, as water has a maximum density at 4°C (39.2°F). These instabilities cause cooled surface water to sink in the fall and warmed surface water to sink in the spring, effectively "flipping" the lake. This overturning temporarily aerates the lake and disturbs the layering. Due to this seasonal mixing, it is unlikely that any lingering impacts on the water column from turbid water inputs to the lake from gravel pit sources in 2022 and 2023 remain. Ongoing groundwater impacts are less clear.



4 IMPACTS

Here, we briefly describe past impacts on Massey Lake from gravel mining operations.

4.1 Sediment Impacts

Except for runoff from the unpaved Joy Road, located to the north of the lake, the natural surface water inputs would be expected to be low in suspended sediment due to the small size of the creek that flows into the lake, the forested slopes and minimal development of the upstream watershed, and passage of the creek through wetlands before entering the lake. The input of turbid water to the lake from gravel pit dewatering discharge and berm failure has been documented by photographic and analytical evidence (see report cover). Turbid water discharges and lake inputs stopped approximately two years ago. However, fine-grained sediment deposited in the wetlands upstream of the lake, as well as sediment derived from the berm failure, could have continued to be mobilized into the lake for some time after pit discharge ceased.

Analytical data, as well as boat-based and land-based field observations, do not reveal distinct sediment deposits from gravel pit discharges. The two-year separation in time between the cessation of discharges and the sampling event reduces the likelihood that a distinct sediment layer can be recognized due to bioturbation of the sediment by organisms, sediment resuspension by storm waves and surface water inflows, and geochemical alteration of deposited sediments by interaction with underlying sediments. The upper layer sampled (typically 1 to 3 inches) may also have blended thinner sediment layers originating from settled gravel pit discharge (e.g., less than 1 inch thick) with older sediments or more recent sediments, diluting any gravel pit signature. Any deposition of sediments would likely be most substantial near the creek inlet, with decreasing deposition with distance, and transport across and out of the lake of much of the suspended silt and clay that discolored the lake surface water. Alternatively, less sediment may have reached the lake to date from pit discharges than some have suggested.

4.2 Groundwater Impacts

Based on anecdotal reports and a reasonable interpretation of available hydrogeological data, Massey Lake is fed by a combination of groundwater springs, seepage, and surface water inputs. Discharge of groundwater to the lake likely decreased during gravel pit dewatering operations, as indicated by anecdotal reports of lake water warming compared to prior years and other changes. These changes may have impacted lake biology (e.g., fish, wildlife, and plant communities). However, there is insufficient baseline data and information from during and after the dewatering period to make that determination.

Once dewatering operations ceased, groundwater inputs to the lake appear to have increased, based on anecdotal reports; however, it is unclear whether they have returned to their undisturbed state due to a lack of baseline data. As observed during LimnoTech's field activities, the water temperature of the deep layer in the lake below the surface mixed layer is consistent with that of regional groundwater (about 10 degrees C). Pre-2020 pond elevations in the gravel pit were reported as follows: Pond 1 @ 898 feet, Pond 2 @ 900 feet, and Pond 4 @ 892 feet (Haley & Aldrich, 2024; Sheet C-10). These same water levels, along with a water surface elevation for Pond 3 of 867 feet, are shown on an "Existing Conditions" figure dated October 23, 2023 (Haley & Aldrich, 2024; Sheet C-100). The water surface elevation of Massey Lake is approximately 865 feet



(Haley & Aldrich, 2024; Attachment 5, p. 2), or 27 feet below the reported baseline elevation of Pond 4 and 2 feet below the reported Pond 3 elevation in October 2023. These elevation data indicate that a variable hydraulic gradient has existed between the gravel pit ponds (at a higher elevation) and the lake.

There is limited information available on the seasonal fluctuations in lake and pond water level elevations. The elevations of water within the gravel pit ponds regularly change due to within-pit pumping. That said, the elevation difference of the ponds appears to be typically higher than the lake level. During field sampling, groundwater seepage along the lake's shoreline was observed at numerous sites, as evidenced by trickling water, iron staining, and bacterial films. This type of seepage is common during late summer, when lake levels are typically low, and shallow groundwater is flowing from surrounding saturated ground into the lake's depression. The iridescent bacterial films are sometimes mistaken for oil sheens, but they are harmless and behave differently when disturbed, breaking into angular pieces. For additional information, see this website: <https://www.michigan.gov/egle/about/organization/water-resources/glwarm/naturally-occurring-phenomena/bacteria> . Common and naturally occurring bacteria that produce these films, such as the genera *Gallionella*, *Leptothrix*, and *Crenothrix*, gain energy by the oxidation of reduced iron in groundwater, producing rusty iron oxides from iron sulfides, mixed with their slimy filaments.

There is some uncertainty about the degree of interconnection between the aquifer underlying the gravel pit and Massey Lake. No monitoring wells exist between the pit and the lake. Subsurface information compiled by Haley & Aldrich (2024), however, shows clear evidence of the extension of the upper aquifer to the east of the pit below and potentially around Massey Lake (Figures 9, 10, 11, and 12 below). The elevation of the base of the gravel layer at the east end of the pit appears to be approximately 855 feet (Figure 10), or 10 feet below the reported level of Massey Lake; the lower gravel-till contact, however, seems to be dipping upward to the east here based on limited data. Given the overall subsurface stratigraphic evidence, it is not surprising that past pit dewatering would impact groundwater discharge to Massey Lake, even if the hydraulic gradients between the pit and the lake were only reduced or made less steep rather than reversed (i.e., flow directed back toward the pit) during dewatering.

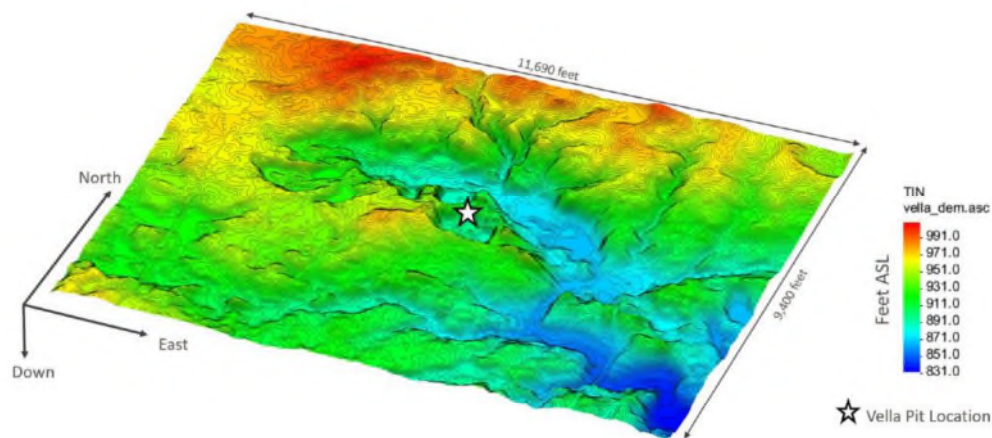


Figure 9. Reproduction of Figure 3 from the Haley & Aldrich (2024) report showing a three-dimensional perspective view of the topographic surface in the vicinity of the gravel pit and Massey Lake (to the right of the white star), with a vertical exaggeration of 5:1.

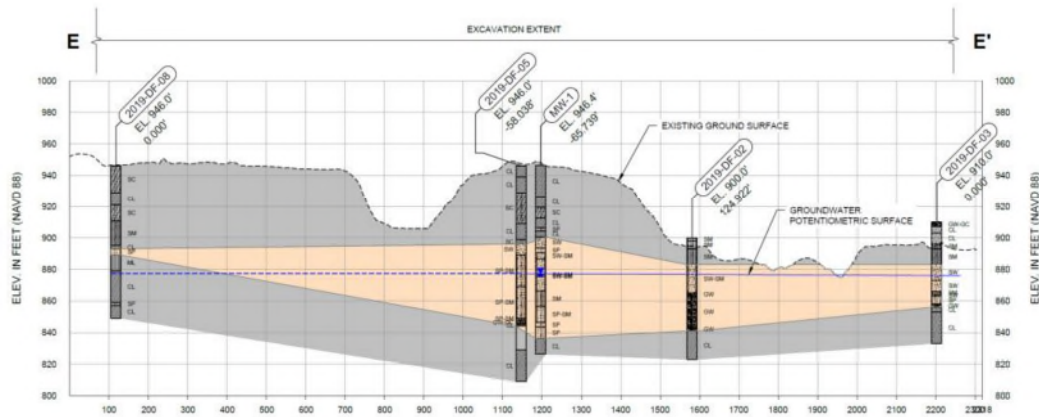


Figure 10. Reproduction of cross-section oriented from west (left side) to east (right side) from the Haley & Aldrich (2024) report, Figure 5E, showing the continuation of the sand and gravel layer (tan color) from the gravel pit toward Massey Lake.

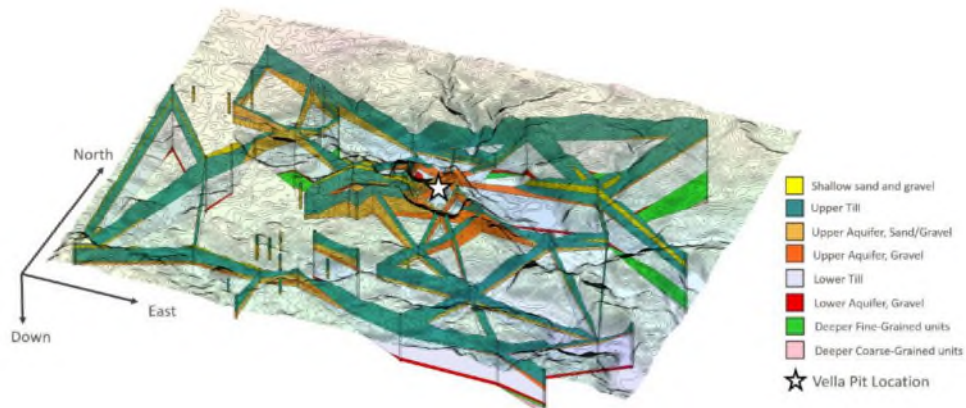


Figure 11. Reproduction of Figure 4 from the Haley & Aldrich (2024) report showing upper aquifer sand and gravel (orange layers) extending from the gravel pit beyond Massey Lake to the east (just right of the white star).

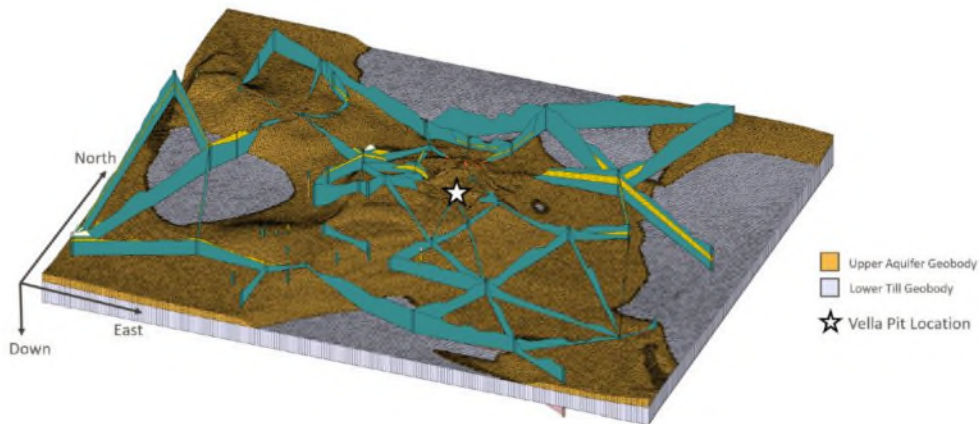


Figure 12. Reproduction of Figure 6 from the Haley & Aldrich (2024) report showing the upper aquifer "geobody" (orange layer) extending from the gravel pit beyond and beneath Massey Lake to the east (just right of the white star).



4.3 Biological Impacts

Increased turbidity and sediment deposition in Massey Lake, as well as decreased groundwater input, during the recent period of active gravel pit dewatering and discharge, would be expected to have a variety of impacts on the lake's ecosystem. Mobile lakebed organisms like crayfish, snails, clams, or worms that live in the sediment, could easily adapt to a slight increase in sediment deposition. Submerged aquatic vegetation would be impacted by sediment shading of leaves and reduced light penetration from feet to inches due to more turbid water, resulting in reduced photosynthesis and oxygen production, as well as plant death in deeper water. Lower oxygen levels in the water due to reduced photosynthesis and warmer water from reduced groundwater inflow (colder water can hold more dissolved oxygen) could impact mobile organisms like fish and tadpoles, which depend on gills for respiration. This would drive them to shallower water or surface water, where oxygen would be more abundant. Certain life stages of fish and amphibians, including eggs and juveniles, would be more vulnerable to changing water quality conditions and oxygen depletion, or thinning of the upper oxygenated zone in the lake. Turbid water could impact the feeding success of fish, birds, turtles, and other organisms that rely on clear water for effective hunting of prey.

Although the lake is naturally stratified in the summer, it is still subject to brief periods of lower water quality during the spring and fall when the lake overturns, and seasonal fluctuations in lake levels. Lake-dwelling organisms are adapted to these fluctuations. A sustained alteration of lake turbidity and dissolved oxygen, however, during the period of turbid water inflows from gravel pit discharges, would stress or kill some lake vegetation and organisms, as well as affecting their reproductive success due to impacts on eggs and juveniles. The net result would be a compression or thinning of the lake's oxygen-rich surface zone, where lake life is naturally concentrated, and potential longer-term effects on populations of fish, amphibians, and benthic organisms due to mortality, stress, and reduced reproduction during the turbid water discharge period. These stressors are consistent with anecdotal reports of declining frog and toad populations and with observations of fish concentrated near the lake surface.



5 RECOMMENDATIONS

Here, we briefly describe mitigation considerations for the lake impacts discussed above and provide our mitigation recommendations, summarized as follows:

We do not recommend dredging of sediment or upstream dam construction to reduce the input of new sediment from wetland areas that drain to the lake.

We recommend additional investigation of the influences of groundwater on Massey Lake.

We recommend enhancing Massey Lake habitat quality and populations of native fish, wildlife, and vegetation.

5.1 Sediment Mitigation

One way to address sediment deposited in a wetland or lake is to remove it, restoring the natural sediment contours and chemistry, and improving lake-aquifer interconnections. If removal of sediments deposited during the recent pit discharge period is desired for ecological, bathymetric, or other reasons, the associated work duration and expense can be estimated. As the deposited sediments do not appear to be distinct from underlying sediments in terms of chemical composition or grain size, one would need to assume a sediment thickness for removal. A typical minimum sediment thickness for dredging by either mechanical or hydraulic (suction) [methods](#) would be 12 inches. This would be an overdredging of deposited sediment from turbid water discharges to the lake, which would only be a thin surface layer, mixed with underlying native sediment.

Removal of this much sediment over an approximate area of 12 acres would equate to 19,000 cubic yards of sediment. Given the water content of the sediment exceeding 60%, dewatering would be necessary prior to off-site disposal using Geotubes, sludge presses, or other methods. Dewatering would reduce the volume by approximately 50%. The magnitude and duration of disturbances to the lake (likely project duration of 4 to 6 months) and surrounding properties of such an operation involving heavy equipment and operations on land and water would be substantial. Ecosystem impacts of sediment removal would also be severe, likely requiring restocking of fish and replanting of lake vegetation. These negative impacts are important considerations when weighing the potential benefits of dredging.

Mitigation measures for sediment that has been deposited upstream of the lake by recent gravel pit operations may also be appropriate, including removal, or trapping through the construction of a small dam, weir, or another type of barrier upstream of the lake. Like lake dredging, sediment removal, or dam construction, these would be expensive and disruptive, possibly resulting in the movement of new sediment into the lake.

5.2 Groundwater Mitigation

In addition to past impacts on the Massey Lake water budget and thermal conditions, it is worth noting that within-pit pumping and movement of water from one pond to another can also affect current groundwater flow to Massey Lake, even with no discharge of water outside the pit. Further consideration of the impacts of past and ongoing pit operations on Massey Lake groundwater-surface water interactions, including potential



installation of one or more monitoring wells between the pit and the lake, is warranted. Although fine-grained sediments in Massey Lake likely influence the degree of direct interactions between surface water in the lake and groundwater in the upper aquifer, the measured properties and geometry of the aquifer, along with anecdotal reports of springs in the lake, suggest that the two may be strongly linked. Hypothesized plugging of the spring or springs that discharge to Massey Lake during the period of dewatering and active discharge of turbid water to the lake from the pit is considered unlikely. Even moderate flow velocities of discharging groundwater from a spring in the lake bed would be sufficient to prevent fine-grained sediment from depositing in the spring vent and sealing it. A more comprehensive characterization of groundwater influences on Massey Lake would be necessary to quantify past and current impacts on the lake from gravel pit operations. We recommend a hydrogeological characterization of the upper aquifer near the lake through the installation and monitoring of one or more well clusters installed at different depths between the lake and the gravel pit.

5.3 Ecological Mitigation

Enhancing the existing habitat quality and populations of fish and wildlife in the lake and wetlands could address past biological impacts of gravel pit discharges. Examples of such actions would include stocking of young native fish (likely sunfish and bass), tadpoles, and frogs, and improving sand and gravel spawning substrate. A detailed plan laying out tiered ranges of habitat and species enhancements would be helpful in determining the level of effort desired and the goals of the stocking and enhancement program (i.e., what success would look like). Note that this type of mitigation would also be necessary for the sediment mitigation measures described above (dredging, dam construction), possibly on a larger scale.

5.4 Mitigation Recommendations

Based on field observations and reviewed data, the magnitude of past impacts on Massey Lake and upstream wetlands from turbid water inputs associated with gravel pit dewatering and berm failure would not justify intensive mitigation measures, such as dredging and upstream dam or barrier construction. A “no action” approach would be less disruptive of natural lake and wetland recovery, but it would also accept prior impacts to the lake without addressing concerns expressed by township residents about degraded conditions such as changes in water temperature, clarity, or populations of fish and frogs. Note that frog and toad populations in the Rouge River headwaters a few miles east of Massey Lake appear to be healthy, although some species that start calling earlier in the spring may be declining (Friends of the Rouge, 2025).

The additional disturbance of soil, sediment, vegetation, and surrounding properties that would be necessary to undertake such mitigation measures as dredging or dam construction would likely negatively impact the wetlands and lake for several years after construction activities were completed. In addition, the lack of baseline data would make it challenging to set restoration targets for ecosystem recovery. To be effective, a dam would have to be maintained and actively operated during storms to minimize sediment transport and prevent wetland destruction from extended periods of water ponding behind the dam. Permitting may also be an issue.

Instead of dredging or dam construction, a better approach is to enhance the existing habitat quality and populations as described above. This would consist of restocking aquatic organisms, and enhancing aquatic habitat for spawning, feeding, or protection from predators.



There are insufficient data available to quantify the impacts of past gravel pit dewatering on groundwater discharge to the lake, so appropriate mitigation measures are unclear. Regional recovery of the water table after the cessation of pit discharge appears to have led to a return of more natural groundwater discharge to the lake, according to anecdotal reports. Regarding the impacts of ongoing pumping within the gravel pit on the lake, the first step would be to delineate the hydrogeological connections between the lake and the gravel pit more thoroughly.

This type of delineation would involve, at a minimum, the installation of a closely logged soil boring and monitoring well between the lake and the pit, screened in the upper aquifer, which would allow for the measurement of water table elevations over time. Additional siting considerations would include avoiding areas that nearby domestic water supply wells may impact. A better approach than installing a single well is to install clusters of multiple wells, each screened at different depths, at two or more sites between the lake and the pit, along with a surveyed staff gauge in the lake. Ongoing within-pit pumping of water from one pond to another is likely to result in ongoing alteration of vertical and horizontal groundwater gradients between the lake and the pit, including mounding of groundwater under the northeast corner of the pit and surrounding areas, and depression of the water table in areas of active dewatering and excavation further south. If water table elevations and groundwater flow beyond the pit boundaries appear to be impacted by ongoing operations, it may be appropriate to negotiate stricter conditions on within-pit pumping.



6 CONCLUSIONS

The primary interest of Ann Arbor Charter Township in authorizing this study was to document the impacts of the discharge of turbid water to Massey Lake from the recent period of active dewatering discharge originating at the adjacent gravel pit. The LimnoTech investigation in the summer of 2025 collected and analyzed sediment samples from Massey Lake. The results of the field observations and laboratory analyses, as well as a review of scientific journal articles and other hydrogeological reports and studies, were used to assess the degree of impact from prior discharges on the lake. Water column properties were also measured to support interpretation of other data.

Results of metals concentration and grain size analyses from five sites near the creek inlet in the northwest corner of the lake, as well as a reference site near the center of the lake, showed no evidence of impacts. Comparisons of analyses of surface sediments with deeper samples at the six sites revealed evidence of slightly elevated average concentrations of a subset of the analyzed metals (i.e., cadmium, chromium, and zinc), and little contrast in sediment grain size between surface and deep samples. Concentrations of metals that were elevated in surface samples relative to deeper samples were still well below background concentration thresholds based on State of Michigan guidance.

Although metal and grain size data do not provide proof of distinct impacts of turbid water discharge on the lake, it is probable that the discharge did result in the deposition of higher-than-normal amounts of sediment in the lake. This sediment likely had a different composition than natural sediments from the undisturbed watershed upstream of the lake, even if the differences are minor or broadly within background thresholds. The sediments deposited also likely changed the bathymetry of the lake. However, the lack of a baseline bathymetric dataset for comparison and the probability that any changes were small make quantifying the changes difficult without more extensive sampling and analysis, or numerical modeling.

Prior analysis of the monitoring reports from the period of active gravel pit dewatering, July 2022 to October 2023, yielded an estimated sediment discharge mass of 76 tons (total monthly average flow x monthly average suspended solids). This estimate did not include mobilized berm failure material. Assuming a mass of approximately 2.25 tons per cubic yard of solids (sand, silt, clay), this equates to 33.8 cubic yards total. Assuming that none of the discharged sediment was trapped in the wetlands between the point of discharge and the lake, and that no discharged sediment passed through the lake and out the creek downstream, this would amount to approximately one 50th of an inch of new sediment over the 12-acre lakebed if it were evenly deposited. This is the thickness of 33.8 cubic yards of solids distributed over approximately 58,000 square yards. These rough calculations are overly conservative and simplified, but this estimate gives a sense of the potential magnitude of overall deposition from turbid water that reached the lake in the past from gravel pit discharges. Deposition could be much thicker near the lake inlet, and even thinner near the outlet, although distinctive deposition layers were not observed during sediment sampling activities.

The available hydrogeological data are consistent with anecdotal reports of decreased groundwater discharge to the lake and a relative warming of surface waters. These impacts would have been most significant during active dewatering at the adjacent gravel pit. They would have decreased (i.e., groundwater



discharge to the lake would have increased, approaching its normal state) during subsequent water table recovery after active dewatering ceased at the pit.

Beyond a “no action” alternative, we considered the following options for addressing the impacts of sediment from turbid water discharge to Massey:

Dredging and removal of surface sediment from the lake and upstream wetlands.

Habitat enhancement and restocking of fish and frogs that may have been impacted by water temperature and chemistry changes during the period of turbid water inputs to the lake and reduced groundwater discharge.

Installation of a weir or check dam at the creek inlet to the lake to help trap any additional sediment from recent gravel pit discharges and slope failures. Such sediment has likely been deposited in the wetlands upstream from the lake. It may be gradually being transported into the lake through normal creek flow and episodic storm pulses or snowmelt.

Of these options, we recommend habitat enhancement and restocking because they are the most effective approaches to minimizing future disturbance and maximizing ecosystem benefits.

Because past impacts on groundwater discharge to the lake from gravel pit dewatering are not well constrained, and regional water table recovery may be reducing any groundwater deficit over time, specific and practical mitigation measures are not obvious. That said, enhanced characterization and monitoring of hydrogeological conditions, including water table elevations between the lake and the pit, is warranted. Enhanced monitoring could track ongoing recovery from past dewatering, as well as detect current or future impacts of active within-pit pumping and movement of water. To accomplish this characterization, we recommend installation and monitoring of well clusters at two or more sites between the lake and the gravel pit, along with installation and monitoring of a surveyed staff gauge in the lake.



Appendices

- A. Supplemental Geological Information and References
- B. Sediment Analytical Data
- C. Field Photos
- D. Water Column Profile Data
- E. Sampling and Analysis Plan (SAP)

APPENDIX A

Supplemental Geological Information and References

Massey Lake is located within a larger northwest-southeast trending subglacial tunnel valley (Kehew et al., 1999 and 2013) within the Defiance Moraine. The moraine was deposited by the Huron-Erie Glacial Lobe of the Laurentide ice sheet about 14,000 years ago. The irregularly shaped island and the ridge to the northeast of the lake may be partial exposures of a subglacial esker.

Table A-1. A portion of Table 4 from EGLE (2023a) listing background concentration values for clay within the Huron-Erie Glacial Lobe area of Michigan, which includes the Massey Lake area. Clay would be expected to have higher concentrations of many metals than other grain sizes like sand or silt.

	Dist.	Part 201 Statewide Default Background	Table 1 Upper Range Value	HURON - ERIE		
				n	2 SD	97.5 Quantiles
Aluminum (Al)	L	6,900	16,014	56	19,049	#
Antimony (Sb)	Np	NA	11.5	42	#	13
Arsenic (As)	L	5.8	22.8	237	31.4	#
Barium (Ba)	L	75	172	166	227	#
Beryllium (Be)	V	NA	1	35	1.43	#
Cadmium (Cd)	Np	1.2	2	196	#	3.1
Chromium (Cr)	L	18	55.6	139	77	#
Cobalt (Co)	CL	6.8	26.8	98	27.4	#
Copper (Cu)	L	32	50.6	192	46.9	#
Iron (Fe)	L	12,000	34,311	59	36,908	#
Lead (Pb)	CL	21	38.9	196	26.2	#
Lithium (Li)	L	9.8	37.9	32	40.4	#
Magnesium (Mg)	L	NA	36,049	20	93,692	#
Manganese (Mn)	L	440	1,212	53	935	#
Mercury (Hg)	Np	0.13	0.5	168	#	0.58
Molybdenum (Mo)	Np	NA	5	14	#	5
Nickel (Ni)	V	20	55.2	140	43.4	#
Selenium (Se)	V	0.41	1.3	189	1.2	#
Silver (Ag)	Np	1	1.4	139	#	6
Sodium (Na)	V	NA	519	10	594	#
Strontium (Sr)	Np	NA	150	6	#	150
Thallium (Tl)	Np	NA	2.7	39	#	1.7
Titanium (Ti)	N	MNL	208	1	--	--
Vanadium (V)	L	NA	59.6	28	95.1	#
Zinc (Zn)	L	47	118	218	102	#

References

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- [EGLE, 2023b] Michigan Department of Environment, Great Lakes, and Energy, 2023. Table 2. Soil: Residential; Part 201 Generic Cleanup Criteria And Screening Levels/Part 213 Risk-Based Screening Levels. Accessed at <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/RRD/Remediation/Rules---Criteria/table-2-soil-residential-pdf.pdf?rev=8168e1208fc24ecda3b7caecee1d3732&hash=EE21014E931B41B397676FA2EC1ADC4F>
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APPENDIX B

Sediment Analytical Data

Sediment Metals Concentration and Percent Solids Data

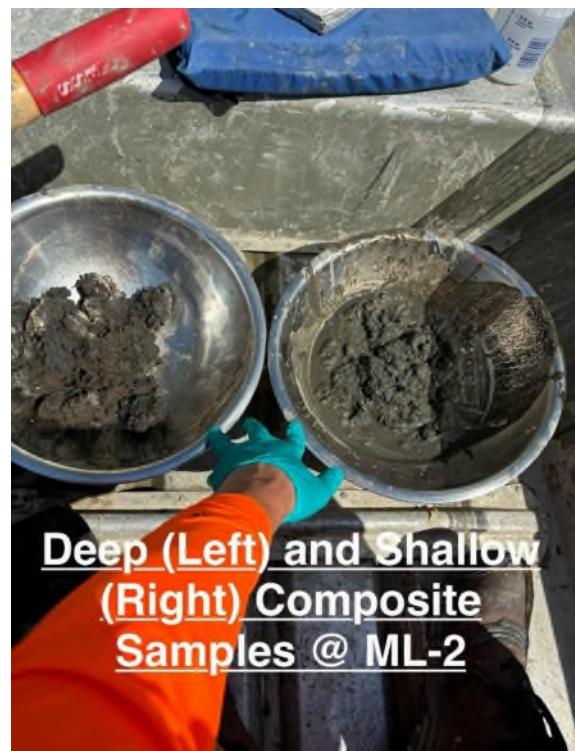
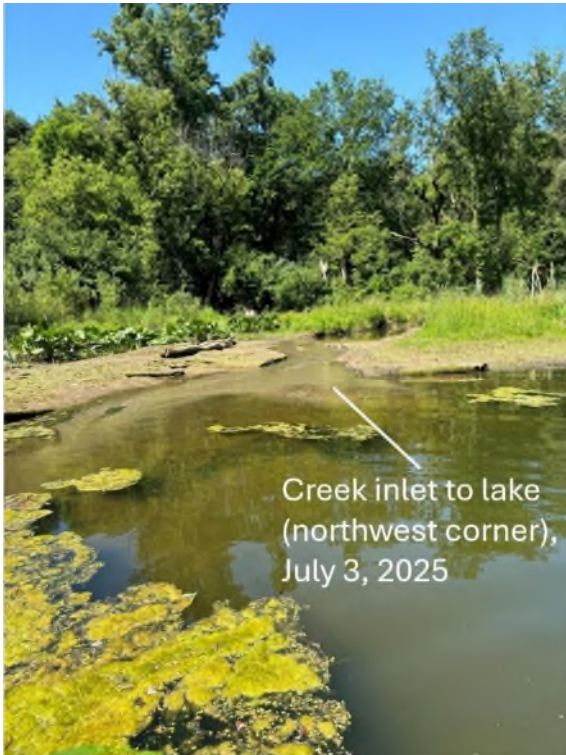
Sample ID	Total Arsenic (mg/Kg)	Total Barium (mg/Kg)	Total Cadmium (mg/Kg)	Total Chromium (mg/Kg)	Total Copper (mg/Kg)	Total Lead (mg/Kg)	Total Mercury (mg/Kg)	Total Selenium (mg/Kg)	Total Silver (mg/Kg)	Total Zinc (mg/Kg)	Percent Solids
ML-1S	5.9	130.0	0.78	12.0	21.0	11.0	Not Detected	Not Detected	Not Detected	74.0	37%
ML-1S Duplicate	5.4	120.0	0.77	11.0	21.0	12.0	Not Detected	0.25	Not Detected	74.0	39%
ML-1D	8.0	150.0	0.76	12.0	23.0	14.0	Not Detected	Not Detected	Not Detected	85.0	37%
ML-2S	4.4	150.0	0.73	11.0	18.0	11.0	Not Detected	0.46	Not Detected	59.0	60%
ML-2D	4.0	150.0	0.78	13.0	18.0	11.0	Not Detected	0.44	Not Detected	61.0	50%
ML-3S	8.7	140.0	0.93	17.0	28.0	15.0	0.051	Not Detected	Not Detected	100.0	36%
ML-3D	7.7	170.0	0.84	13.0	34.0	17.0	Not Detected	Not Detected	Not Detected	100.0	36%
ML-4S	1.1	140.0	1.10	17.0	31.0	15.0	Not Detected	0.30	Not Detected	110.0	33%
ML-4D	7.7	170.0	0.94	14.0	54.0	18.0	0.052	0.40	Not Detected	110.0	34%
ML-5S	11.0	120.0	0.96	17.0	30.0	15.0	Not Detected	0.43	Not Detected	110.0	37%
ML-5D	6.5	160.0	0.75	11.0	33.0	15.0	Not Detected	0.50	Not Detected	88.0	38%
ML-6S	17.0	230.0	1.10	23.0	35.0	18.0	0.055	0.33	Not Detected	120.0	16%
ML-6D	11.0	210.0	1.00	21.0	36.0	18.0	0.064	Not Detected	Not Detected	120.0	17%
Field Blank	Not Detected	Not Detected	Not Detected	Not Detected	Not Detected	Not Detected	Not Detected	Not Detected	Not Detected	Not Detected	Not Applicable
Detection Limit	0.10	1.00	0.05	0.50	1.00	1.00	0.050	0.20	0.10	1.00	Not Applicable

Sediment Grain Size Data

Sample ID	Fine Gravel (%)	Coarse Sand (%)	Medium Sand (%)	Fine Sand (%)	Total Sand (%)	Fines – Total Silt & Clay (%)
ML-1S	0.2	0.4	1.3	9.9	11.6	88.2
ML-1S dup	0.5	0.5	1.2	9.1	10.8	88.7
ML-1D	0.0	0.3	0.5	6.9	7.7	92.3
ML-2S	0.1	0.6	3.3	19.1	23.0	76.9
ML-2D	0.0	1.0	2.7	10.9	14.6	85.4
ML-3S	0.0	0.2	0.3	0.9	1.4	98.6
ML-3D	0.1	0.2	0.6	4.2	5.0	94.9
ML-4S	0.0	0.0	0.5	0.9	1.4	98.6
ML-4D	0.0	0.2	0.5	1.0	1.7	98.3
ML-5S	0.0	0.0	0.1	0.4	0.5	99.5
ML-5D	0.0	0.0	0.1	0.6	0.7	99.3
ML-6S	0.0	0.4	0.2	0.1	0.7	99.3
ML-6D	0.0	0.0	0.1	0.1	0.2	99.8

APPENDIX C

Field Photos





APPENDIX D

Water Column Profile Data

Water column profiling data from sites ML-1, ML-3, ML-4, ML-5, and ML-6 are included in the following table, along with combined plots of data from all five sites for dissolved oxygen (percent saturation and mg/L), specific conductance, turbidity, pH, and temperature. No water column data were collected from site ML-2, as this was an area of exposed lakebed.

2025 Date (MM/DD)	Time (H:m:s)	Site Name	Depth m	Diss. Ox. % sat	Diss. Ox. mg/L	Spec Cond. µS/cm	Turb. NTU	pH	Temp °C	GPS Lat. °	GPS Long. °	Barom. mmHg
8/22	9:45:27	ML-1	0.203	44.2	3.93	520.3	2.73	7.62	21.056	42.34285	-83.67141	741.2
8/22	9:45:28	ML-1	0.200	44.1	3.92	520.3	2.58	7.62	21.055	42.34285	-83.67141	741.2
8/22	9:45:29	ML-1	0.198	44.1	3.92	520.2	2.54	7.62	21.055	42.34285	-83.67141	741.3
8/22	9:45:30	ML-1	0.199	44.0	3.92	520.3	2.57	7.61	21.054	42.34285	-83.67141	741.3
8/22	9:45:31	ML-1	0.200	44.0	3.91	520.2	2.46	7.62	21.055	42.34285	-83.67141	741.2
8/22	9:45:32	ML-1	0.196	44	3.91	520.2	2.47	7.62	21.055	42.34285	-83.67141	741.3
8/22	9:45:33	ML-1	0.195	43.9	3.91	520.2	2.55	7.61	21.055	42.34285	-83.6714	741.4
8/22	9:45:34	ML-1	0.196	43.9	3.91	520.2	2.51	7.61	21.055	42.34284	-83.6714	741.3
8/22	9:45:35	ML-1	0.180	43.9	3.9	520	2.69	7.61	21.055	42.34284	-83.6714	741.2
8/22	9:45:36	ML-1	0.181	43.8	3.9	520.1	2.78	7.61	21.054	42.34284	-83.6714	741.2
8/22	9:45:37	ML-1	0.19	43.8	3.89	520.2	2.67	7.61	21.053	42.34284	-83.6714	741.3
8/22	9:45:38	ML-1	0.201	43.7	3.89	520.1	2.82	7.61	21.052	42.34284	-83.6714	741.2
8/22	9:45:39	ML-1	0.228	43.7	3.88	520	2.94	7.61	21.05	42.34284	-83.6714	741.3
8/22	9:45:40	ML-1	0.292	43.6	3.88	519.6	2.87	7.61	21.047	42.34284	-83.6714	741.3
8/22	9:45:41	ML-1	0.375	43.5	3.87	519.5	2.85	7.61	21.04	42.34284	-83.6714	741.3
8/22	9:45:42	ML-1	0.422	43.4	3.86	519.3	2.73	7.61	21.032	42.34284	-83.6714	741.3
8/22	9:45:43	ML-1	0.452	43.3	3.85	518.6	2.36	7.61	21.014	42.34284	-83.6714	741.3
8/22	9:45:44	ML-1	0.473	43.2	3.84	518.6	2.21	7.61	20.99	42.34284	-83.6714	741.2
8/22	9:45:45	ML-1	0.499	43.1	3.84	518.8	2.32	7.61	20.975	42.34284	-83.6714	741.3
8/22	9:45:46	ML-1	0.52	43	3.83	518.8	2.26	7.61	20.967	42.34284	-83.6714	741.4
8/22	9:45:47	ML-1	0.545	43	3.83	518.8	2.21	7.61	20.958	42.34284	-83.6714	741.3
8/22	9:45:48	ML-1	0.571	43	3.83	518.9	2.1	7.61	20.95	42.34284	-83.6714	741.3
8/22	9:45:49	ML-1	0.613	42.9	3.82	518.9	2.13	7.61	20.94	42.34284	-83.6714	741.2
8/22	9:45:50	ML-1	0.646	42.8	3.82	519.3	2.23	7.6	20.931	42.34284	-83.6714	741.2
8/22	9:45:51	ML-1	0.694	42.7	3.81	520.4	2.22	7.6	20.92	42.34284	-83.6714	741.3
8/22	9:45:52	ML-1	0.713	42.5	3.79	521.9	2.35	7.59	20.91	42.34284	-83.6714	741.2
8/22	9:45:53	ML-1	0.735	42.2	3.77	523	2.63	7.59	20.898	42.34284	-83.6714	741.3
8/22	9:45:54	ML-1	0.759	42	3.75	524.3	2.73	7.59	20.888	42.34284	-83.6714	741.2
8/22	9:45:55	ML-1	0.799	41.8	3.73	526.8	2.66	7.59	20.874	42.34284	-83.6714	741.3

2025 Date (MM/DD)	Time (H:m:s)	Site Name	Depth m	Diss. Ox. % sat	Diss. Ox. mg/L	Spec Cond. µS/cm	Turb. NTU	pH	Temp °C	GPS Lat. °	GPS Long. °	Barom. mmHg
8/22	9:45:56	ML-1	0.803	41.6	3.72	528.3	3.03	7.59	20.858	42.34284	-83.6714	741.3
8/22	9:45:57	ML-1	0.828	41.5	3.7	528.7	4.33	7.59	20.84	42.34284	-83.6714	741.3
8/22	9:45:58	ML-1	0.867	41.4	3.7	530	7.27	7.6	20.826	42.34284	-83.6714	741.2
8/22	9:45:59	ML-1	0.895	41.3	3.69	531.3	8.69	7.6	20.807	42.34285	-83.67141	741.3
8/22	9:46:00	ML-1	0.921	41.2	3.68	532.5	7.7	7.6	20.777	42.34285	-83.67141	741.3
8/22	9:46:01	ML-1	0.961	41.1	3.67	533.4	7.56	7.6	20.747	42.34285	-83.67141	741.2
8/22	9:46:02	ML-1	0.997	40.9	3.66	533.9	7.03	7.6	20.717	42.34285	-83.67141	741.3
8/22	9:46:03	ML-1	1.021	40.9	3.66	534.7	6.05	7.6	20.685	42.34285	-83.67141	741.3
8/22	9:46:04	ML-1	1.039	40.9	3.66	535.3	5.33	7.6	20.651	42.34285	-83.67141	741.3
8/22	9:46:05	ML-1	1.064	40.9	3.67	535.7	4.98	7.6	20.616	42.34285	-83.67141	741.2
8/22	9:46:06	ML-1	1.099	40.9	3.67	536.2	4.97	7.6	20.578	42.34285	-83.67141	741.3
8/22	9:46:07	ML-1	1.126	40.8	3.66	537.1	5.15	7.6	20.546	42.34285	-83.67141	741.3
8/22	9:46:08	ML-1	1.155	40.8	3.67	538.3	5.22	7.6	20.508	42.34285	-83.67141	741.2
8/22	9:46:09	ML-1	1.171	40.8	3.67	539.3	4.98	7.6	20.469	42.34285	-83.67141	741.3
8/22	9:46:10	ML-1	1.207	40.8	3.67	540.6	5.22	7.6	20.424	42.34285	-83.67141	741.3
8/22	9:46:11	ML-1	1.232	40.8	3.68	542.2	5.82	7.6	20.386	42.34285	-83.67141	741.3
8/22	9:46:12	ML-1	1.266	40.8	3.67	543.3	6.6	7.6	20.347	42.34284	-83.67142	741.3
8/22	9:46:13	ML-1	1.27	40.7	3.67	544.4	6.8	7.6	20.322	42.34284	-83.67141	741.2
8/22	9:46:14	ML-1	1.273	40.7	3.67	545.7	6.88	7.6	20.3	42.34284	-83.67141	741.3
8/22	9:46:15	ML-1	1.331	40.6	3.67	546.7	8.27	7.6	20.279	42.34284	-83.67141	741.3
8/22	9:46:16	ML-1	1.367	40.5	3.66	547.4	8.23	7.6	20.246	42.34284	-83.67141	741.3
8/22	9:46:17	ML-1	1.376	40.4	3.65	547.9	8.32	7.6	20.217	42.34284	-83.67141	741.3
8/22	9:46:18	ML-1	1.413	40.3	3.65	548.4	10.17	7.6	20.186	42.34284	-83.67141	741.2
8/22	9:46:19	ML-1	1.422	40.3	3.65	548.8	11.78	7.6	20.154	42.34284	-83.67141	741.2
8/22	9:46:20	ML-1	1.424	40.3	3.64	548.9	16.81	7.61	20.128	42.34284	-83.67141	741.2
8/22	9:46:21	ML-1	1.431	40.1	3.63	549.4	13.09	7.61	20.112	42.34284	-83.67141	741.2
8/21	14:34:12	ML-3	0.158	28.5	2.47	507.6	1.99	7.44	22.392	42.34277	-83.67057	740.6
8/21	14:34:13	ML-3	0.155	28.5	2.47	508.2	2.13	7.44	22.377	42.34277	-83.67057	740.6
8/21	14:34:14	ML-3	0.151	28.5	2.47	506.8	2.18	7.44	22.368	42.34277	-83.67057	740.6
8/21	14:34:15	ML-3	0.136	28.6	2.48	506.7	2	7.45	22.357	42.34277	-83.67057	740.6
8/21	14:34:16	ML-3	0.139	28.5	2.48	505.7	1.97	7.45	22.35	42.34277	-83.67057	740.6
8/21	14:34:17	ML-3	0.186	28.5	2.47	506.2	2	7.44	22.348	42.34277	-83.67057	740.6
8/21	14:34:18	ML-3	0.219	28.4	2.47	507.5	2.23	7.44	22.345	42.34277	-83.67057	740.6
8/21	14:34:19	ML-3	0.239	28.3	2.45	506.2	2.12	7.43	22.337	42.34278	-83.67057	740.6
8/21	14:34:20	ML-3	0.28	28.0	2.43	509	2.12	7.43	22.32	42.34278	-83.67058	740.6
8/21	14:34:21	ML-3	0.336	27.7	2.41	516	2.6	7.43	22.281	42.34278	-83.67058	740.6
8/21	14:34:22	ML-3	0.419	27.4	2.38	527.9	2.85	7.43	22.24	42.3428	-83.67059	740.6
8/21	14:34:23	ML-3	0.487	27.1	2.36	532.6	2.87	7.44	22.188	42.3428	-83.67059	740.6
8/21	14:34:24	ML-3	0.531	27.1	2.36	533.7	3.09	7.46	22.157	42.3428	-83.67058	740.6

2025 Date (MM/DD)	Time (H:m:s)	Site Name	Depth m	Diss. Ox. % sat	Diss. Ox. mg/L	Spec Cond. µS/cm	Turb. NTU	pH	Temp °C	GPS Lat. °	GPS Long. °	Barom. mmHg
8/21	14:34:25	ML-3	0.611	27.2	2.37	536.7	3.23	7.47	22.124	42.34279	-83.67058	740.6
8/21	14:34:26	ML-3	0.679	27.6	2.4	539.7	3.31	7.47	22.092	42.34279	-83.67057	740.6
8/21	14:34:27	ML-3	0.734	28.1	2.45	542.2	3.5	7.49	22.055	42.3428	-83.67057	740.6
8/21	14:34:28	ML-3	0.757	28.6	2.49	544.2	3.57	7.5	21.999	42.34279	-83.67057	740.5
8/21	14:34:29	ML-3	0.803	28.9	2.52	545.2	3.54	7.51	21.951	42.34279	-83.67056	740.6
8/21	14:34:30	ML-3	0.886	29.2	2.55	545.9	3.48	7.51	21.914	42.3428	-83.67056	740.6
8/21	14:34:31	ML-3	0.929	29.5	2.58	546.7	3.48	7.51	21.891	42.3428	-83.67056	740.6
8/21	14:34:32	ML-3	0.965	29.9	2.62	547.2	3.95	7.51	21.863	42.3428	-83.67056	740.6
8/21	14:34:33	ML-3	1.013	30.2	2.64	548.6	4.49	7.51	21.835	42.3428	-83.67056	740.6
8/21	14:34:34	ML-3	1.069	30.4	2.66	549.7	4.72	7.51	21.778	42.3428	-83.67055	740.6
8/21	14:34:35	ML-3	1.121	30.5	2.68	550.6	5.71	7.51	21.728	42.3428	-83.67055	740.6
8/21	14:34:36	ML-3	1.173	30.6	2.69	551.2	6.87	7.51	21.688	42.3428	-83.67055	740.6
8/21	14:34:37	ML-3	1.222	30.7	2.7	551.6	7.61	7.51	21.653	42.34279	-83.67056	740.6
8/21	14:34:38	ML-3	1.277	30.7	2.7	552	8.27	7.51	21.608	42.34279	-83.67056	740.6
8/21	14:34:39	ML-3	1.304	30.7	2.7	552.7	7.91	7.5	21.557	42.34278	-83.67056	740.6
8/21	14:34:40	ML-3	1.336	30.7	2.7	553.1	8.43	7.5	21.504	42.34277	-83.67056	740.6
8/21	14:34:41	ML-3	1.355	30.6	2.7	553.4	9.05	7.5	21.467	42.34277	-83.67057	740.6
8/21	14:34:42	ML-3	1.385	30.6	2.7	553.7	9.28	7.49	21.439	42.34276	-83.67057	740.6
8/21	14:34:43	ML-3	1.393	30.6	2.7	553.8	16.7	7.49	21.42	42.34276	-83.67057	740.7
8/21	14:01:04	ML-4	0.14	4.4	0.38	480.3	1.07	7.26	22.109	42.343	-83.67028	740.9
8/21	14:01:05	ML-4	0.116	4.1	0.36	480.1	1.18	7.26	22.103	42.343	-83.67028	740.9
8/21	14:01:06	ML-4	0.126	4.0	0.35	480.2	1.23	7.26	22.097	42.343	-83.67028	740.9
8/21	14:01:07	ML-4	0.137	3.8	0.34	480.6	1.15	7.26	22.095	42.343	-83.67027	740.9
8/21	14:01:08	ML-4	0.161	3.7	0.33	480.3	1.14	7.26	22.093	42.343	-83.67027	740.9
8/21	14:01:09	ML-4	0.201	3.7	0.32	479.3	1.19	7.26	22.081	42.34301	-83.67027	740.8
8/21	14:01:10	ML-4	0.298	3.5	0.3	479.4	1.24	7.25	22.065	42.34301	-83.67027	740.8
8/21	14:01:11	ML-4	0.414	3.3	0.29	480.7	1.36	7.25	22.057	42.343	-83.67027	740.8
8/21	14:01:12	ML-4	0.498	3.1	0.27	485.1	2.07	7.25	22.033	42.343	-83.67027	740.8
8/21	14:01:13	ML-4	0.558	3.1	0.27	500.6	2.93	7.26	22.01	42.343	-83.67027	740.8
8/21	14:01:14	ML-4	0.647	3.1	0.27	515.7	3.08	7.28	21.983	42.343	-83.67027	740.8
8/21	14:01:15	ML-4	0.746	3.4	0.29	526.1	4.41	7.33	21.946	42.34299	-83.67028	740.7
8/21	14:01:16	ML-4	0.847	4.1	0.36	539.1	4.67	7.38	21.92	42.34299	-83.67028	740.7
8/21	14:01:17	ML-4	0.909	5.2	0.45	544.1	4.51	7.39	21.863	42.343	-83.67028	740.8
8/21	14:01:18	ML-4	0.959	6.3	0.55	546.3	4.48	7.42	21.815	42.343	-83.67028	740.9
8/21	14:01:19	ML-4	1.073	7.1	0.62	550.6	4.62	7.43	21.774	42.343	-83.67028	740.8
8/21	14:01:20	ML-4	1.157	8.0	0.7	553.9	4.79	7.44	21.71	42.343	-83.67028	740.7
8/21	14:01:21	ML-4	1.221	8.7	0.77	554.3	4.93	7.44	21.676	42.343	-83.67028	740.8
8/21	14:01:22	ML-4	1.305	9.6	0.84	556.1	5.22	7.45	21.638	42.343	-83.67028	740.8
8/21	14:01:23	ML-4	1.362	10.2	0.90	556.4	5.23	7.45	21.607	42.343	-83.67028	740.8

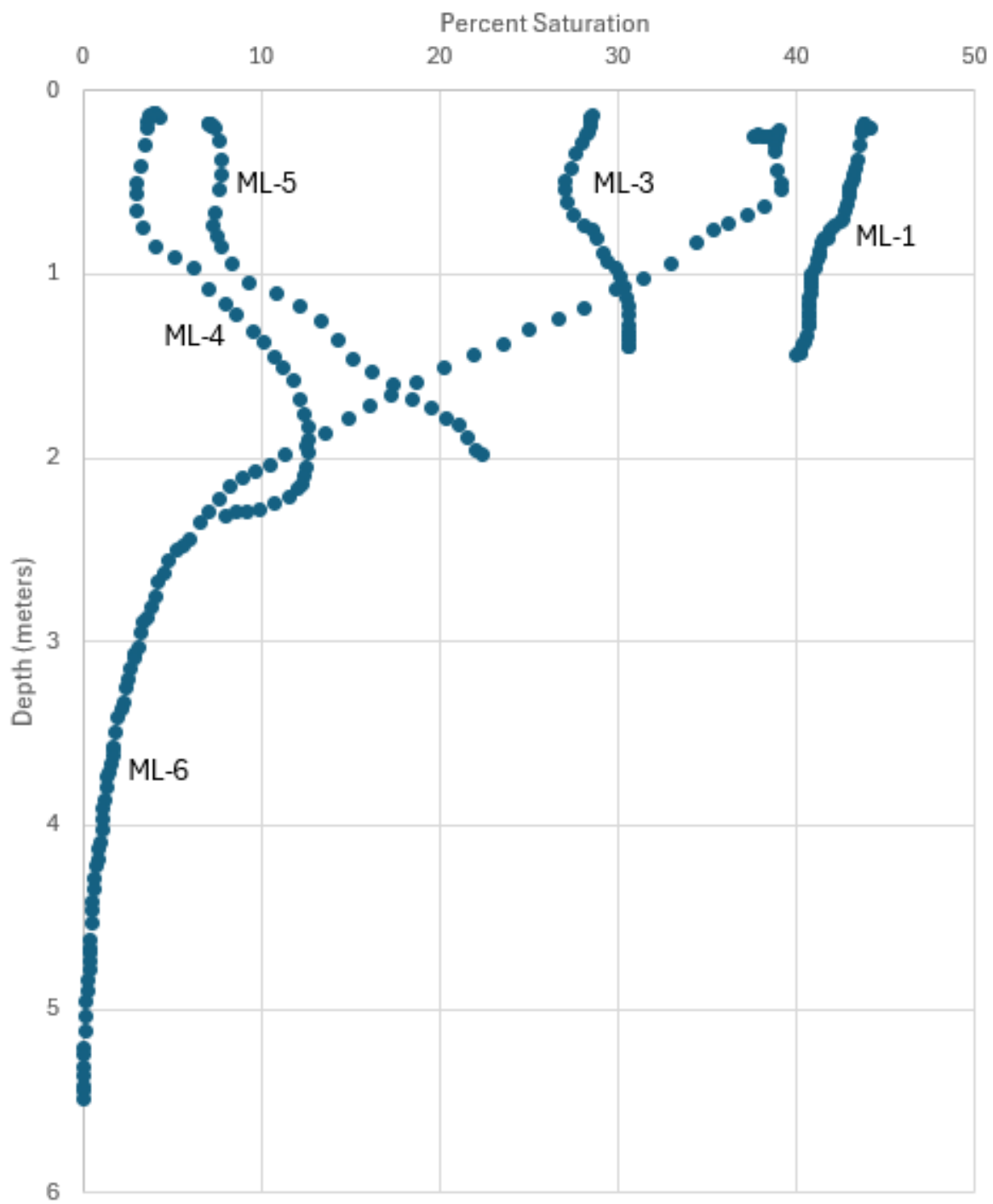
2025 Date (MM/DD)	Time (H:m:s)	Site Name	Depth m	Diss. Ox. % sat	Diss. Ox. mg/L	Spec Cond. µS/cm	Turb. NTU	pH	Temp °C	GPS Lat. °	GPS Long. °	Barom. mmHg
8/21	14:01:24	ML-4	1.451	10.8	0.95	556.9	5.19	7.46	21.577	42.343	-83.67028	740.8
8/21	14:01:25	ML-4	1.506	11.3	1.00	559.4	6.59	7.46	21.542	42.343	-83.67028	740.8
8/21	14:01:26	ML-4	1.577	11.8	1.04	560.9	7.18	7.46	21.511	42.343	-83.67028	740.8
8/21	14:01:27	ML-4	1.678	12.2	1.08	561.8	7.43	7.46	21.458	42.343	-83.67028	740.9
8/21	14:01:28	ML-4	1.759	12.5	1.1	562.2	9.08	7.45	21.423	42.343	-83.67028	740.8
8/21	14:01:29	ML-4	1.834	12.7	1.12	563	11.29	7.45	21.387	42.343	-83.67028	740.9
8/21	14:01:30	ML-4	1.895	12.7	1.12	567.9	12.73	7.44	21.331	42.343	-83.67028	740.9
8/21	14:01:31	ML-4	1.971	12.7	1.12	574.7	13.71	7.43	21.301	42.343	-83.67028	740.9
8/21	14:01:32	ML-4	2.042	12.6	1.11	589.4	16.21	7.28	21.241	42.343	-83.67028	740.7
8/21	14:01:33	ML-4	2.091	12.5	1.1	620.9	19.76	7.13	21.13	42.343	-83.67029	740.8
8/21	14:01:34	ML-4	2.143	12.3	1.1	630	20.45	7.03	20.985	42.343	-83.67029	740.8
8/21	14:01:35	ML-4	2.167	12.1	1.08	642.4	20.92	7.01	20.909	42.343	-83.67029	740.8
8/21	14:01:36	ML-4	2.211	11.6	1.04	660.9	22.42	6.96	20.899	42.343	-83.67029	740.8
8/21	14:01:37	ML-4	2.245	10.8	0.96	678.4	24.86	6.93	20.882	42.343	-83.67029	740.8
8/21	14:01:38	ML-4	2.284	10.0	0.89	680.4	25.55	6.92	20.793	42.343	-83.67029	740.8
8/21	14:01:39	ML-4	2.287	9.3	0.83	683.2	26.62	6.89	20.698	42.343	-83.67029	740.8
8/21	14:01:40	ML-4	2.29	8.7	0.78	697	27.45	6.89	20.581	42.34299	-83.67029	740.8
8/21	14:01:41	ML-4	2.317	8.0	0.71	704.2	27.53	6.89	20.531	42.34299	-83.67029	740.8
8/21	16:02:10	ML-5	0.174	7.1	0.62	419.2	1.72	7.38	22.013	42.34237	-83.67049	740.4
8/21	16:02:11	ML-5	0.174	7.1	0.62	419.5	1.72	7.38	22.012	42.34237	-83.67049	740.4
8/21	16:02:12	ML-5	0.175	7.2	0.63	419.8	1.8	7.38	22.011	42.34237	-83.67049	740.4
8/21	16:02:13	ML-5	0.186	7.2	0.63	419.8	2.01	7.38	22.011	42.34237	-83.67049	740.4
8/21	16:02:14	ML-5	0.194	7.3	0.64	420.5	1.94	7.37	22.011	42.34237	-83.67049	740.4
8/21	16:02:15	ML-5	0.196	7.5	0.65	420.4	1.8	7.37	22.018	42.34237	-83.67049	740.4
8/21	16:02:16	ML-5	0.276	7.7	0.68	420.3	1.73	7.37	22.015	42.34237	-83.67049	740.5
8/21	16:02:17	ML-5	0.37	7.8	0.69	421.8	1.57	7.36	21.984	42.34237	-83.67049	740.5
8/21	16:02:18	ML-5	0.452	7.8	0.68	428.8	1.9	7.35	21.949	42.34238	-83.6705	740.5
8/21	16:02:19	ML-5	0.534	7.7	0.67	444.9	2.69	7.35	21.927	42.34238	-83.6705	740.5
8/21	16:02:20	ML-5	0.667	7.5	0.66	530.4	3.74	7.36	21.911	42.34238	-83.6705	740.3
8/21	16:02:21	ML-5	0.73	7.4	0.65	521.1	3.91	7.37	21.905	42.34238	-83.67049	740.5
8/21	16:02:22	ML-5	0.791	7.6	0.66	504.9	3.77	7.39	21.901	42.34238	-83.67049	740.3
8/21	16:02:23	ML-5	0.844	7.8	0.69	539.7	3.76	7.42	21.897	42.34238	-83.67049	740.4
8/21	16:02:24	ML-5	0.936	8.4	0.74	538.9	3.91	7.45	21.884	42.34238	-83.67049	740.3
8/21	16:02:25	ML-5	1.038	9.4	0.82	540.2	3.93	7.47	21.86	42.34238	-83.67049	740.4
8/21	16:02:26	ML-5	1.107	10.9	0.95	544.4	4.08	7.48	21.837	42.34238	-83.67049	740.4
8/21	16:02:27	ML-5	1.168	12.2	1.06	546.1	4.27	7.48	21.818	42.34238	-83.67049	740.4
8/21	16:02:28	ML-5	1.253	13.4	1.17	549.2	4.57	7.49	21.795	42.34238	-83.67048	740.4
8/21	16:02:29	ML-5	1.354	14.3	1.25	552.1	4.69	7.5	21.754	42.34238	-83.67048	740.4
8/21	16:02:30	ML-5	1.454	15.2	1.34	552.4	4.78	7.51	21.711	42.34238	-83.67048	740.4

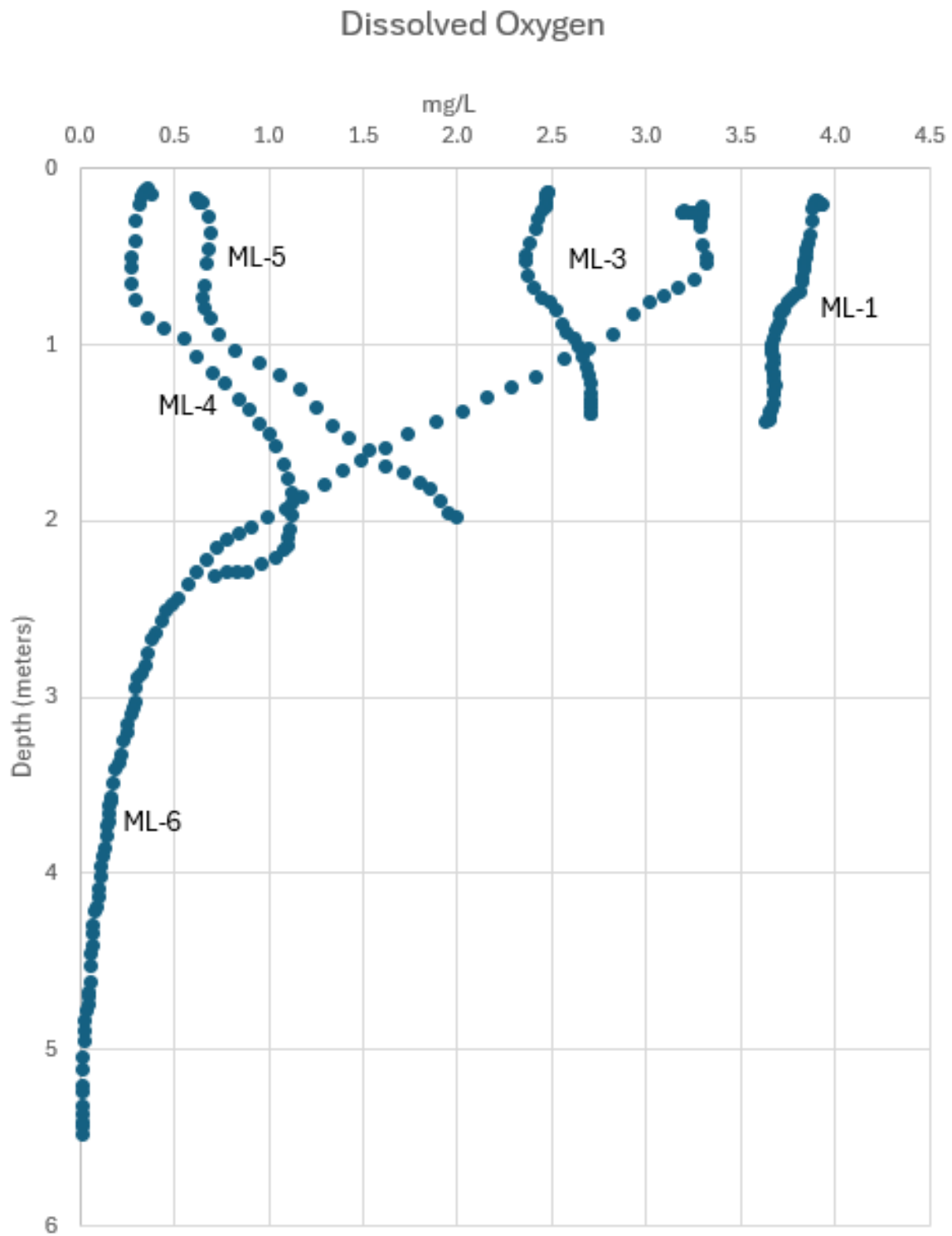
2025 Date (MM/DD)	Time (H:m:s)	Site Name	Depth m	Diss. Ox. % sat	Diss. Ox. mg/L	Spec Cond. µS/cm	Turb. NTU	pH	Temp °C	GPS Lat. °	GPS Long. °	Barom. mmHg
8/21	16:02:31	ML-5	1.527	16.2	1.42	552.4	5.37	7.51	21.686	42.34238	-83.67048	740.4
8/21	16:02:32	ML-5	1.601	17.4	1.53	550.8	5.67	7.51	21.645	42.34238	-83.67048	740.5
8/21	16:02:33	ML-5	1.684	18.5	1.62	550.4	5.9	7.51	21.574	42.34238	-83.67047	740.3
8/21	16:02:34	ML-5	1.721	19.6	1.72	550.5	6.42	7.51	21.517	42.34238	-83.67047	740.4
8/21	16:02:35	ML-5	1.781	20.4	1.8	549.9	7.16	7.51	21.469	42.34238	-83.67047	740.5
8/21	16:02:36	ML-5	1.821	21.1	1.86	549.8	8.25	7.51	21.428	42.34238	-83.67047	740.3
8/21	16:02:37	ML-5	1.886	21.6	1.91	550.7	10.75	7.5	21.379	42.34238	-83.67047	740.4
8/21	16:02:38	ML-5	1.954	22.1	1.95	551.9	14.24	7.5	21.343	42.34238	-83.67046	740.4
8/21	16:02:39	ML-5	1.98	22.5	1.99	553.1	18.59	7.49	21.298	42.34238	-83.67047	740.5
8/21	17:36:51	ML-6	0.244	37.7	3.19	475.3	2.07	7.56	23.673	42.34205	-83.66839	740.1
8/21	17:36:52	ML-6	0.253	37.8	3.19	474.9	1.84	7.55	23.672	42.34205	-83.66839	740.1
8/21	17:36:53	ML-6	0.236	37.9	3.2	474.9	1.74	7.55	23.672	42.34205	-83.66839	740.2
8/21	17:36:54	ML-6	0.244	38.1	3.22	475.3	1.95	7.55	23.671	42.34205	-83.66839	740.3
8/21	17:36:55	ML-6	0.25	38.3	3.24	475.6	2.12	7.55	23.667	42.34205	-83.66839	740.1
8/21	17:36:56	ML-6	0.25	38.5	3.26	475.9	1.88	7.54	23.664	42.34205	-83.66839	740.2
8/21	17:36:57	ML-6	0.244	38.6	3.27	476	1.9	7.54	23.666	42.34205	-83.66839	740.1
8/21	17:36:58	ML-6	0.24	38.9	3.29	476	1.85	7.54	23.671	42.34204	-83.66839	740.2
8/21	17:36:59	ML-6	0.231	39.0	3.3	476.2	1.82	7.54	23.679	42.34204	-83.66839	740.2
8/21	17:37:00	ML-6	0.216	39.1	3.3	476.4	1.81	7.55	23.696	42.34204	-83.66839	740.1
8/21	17:37:01	ML-6	0.259	39.0	3.3	475	2.12	7.55	23.711	42.34204	-83.66839	740.1
8/21	17:37:02	ML-6	0.29	38.9	3.29	474	2.27	7.55	23.698	42.34203	-83.66839	740.1
8/21	17:37:03	ML-6	0.328	38.9	3.29	473.2	2.07	7.56	23.666	42.34203	-83.66839	740.1
8/21	17:37:04	ML-6	0.432	39.0	3.3	470.8	2.1	7.58	23.625	42.34203	-83.66839	740.1
8/21	17:37:05	ML-6	0.506	39.2	3.32	465.4	2.13	7.57	23.554	42.34203	-83.66839	740.1
8/21	17:37:06	ML-6	0.541	39.2	3.32	464.1	2.06	7.55	23.465	42.34203	-83.66839	740.1
8/21	17:37:07	ML-6	0.625	38.2	3.25	462.3	2.13	7.53	23.409	42.34203	-83.66839	740.1
8/21	17:37:08	ML-6	0.68	37.3	3.17	461.6	2.11	7.51	23.347	42.34203	-83.66839	740.1
8/21	17:37:09	ML-6	0.724	36.2	3.09	461.1	2.07	7.5	23.297	42.34203	-83.66839	740.1
8/21	17:37:10	ML-6	0.752	35.4	3.02	460.9	1.97	7.49	23.238	42.34202	-83.66839	740.1
8/21	17:37:11	ML-6	0.829	34.4	2.93	461.4	2.32	7.48	23.19	42.34202	-83.66839	740.2
8/21	17:37:12	ML-6	0.942	33.0	2.82	462.7	2.84	7.46	23.121	42.34202	-83.66839	740.1
8/21	17:37:13	ML-6	1.021	31.5	2.69	463.9	2.9	7.44	23.058	42.34202	-83.66839	740.1
8/21	17:37:14	ML-6	1.081	29.9	2.56	464.3	3.02	7.43	23.002	42.34202	-83.66839	740.1
8/21	17:37:15	ML-6	1.18	28.1	2.41	465	3.72	7.42	22.964	42.34202	-83.66838	740.1
8/21	17:37:16	ML-6	1.241	26.7	2.29	466.3	4.02	7.41	22.924	42.34202	-83.66838	740.1
8/21	17:37:17	ML-6	1.302	25.1	2.16	471.1	4.29	7.38	22.895	42.34202	-83.66838	740.1
8/21	17:37:18	ML-6	1.374	23.6	2.03	476.9	5.15	7.35	22.854	42.34202	-83.66838	740.1
8/21	17:37:19	ML-6	1.434	22.0	1.89	480.1	5.89	7.34	22.822	42.34201	-83.66838	740
8/21	17:37:20	ML-6	1.508	20.3	1.74	487	6.89	7.31	22.796	42.34202	-83.66838	740.1

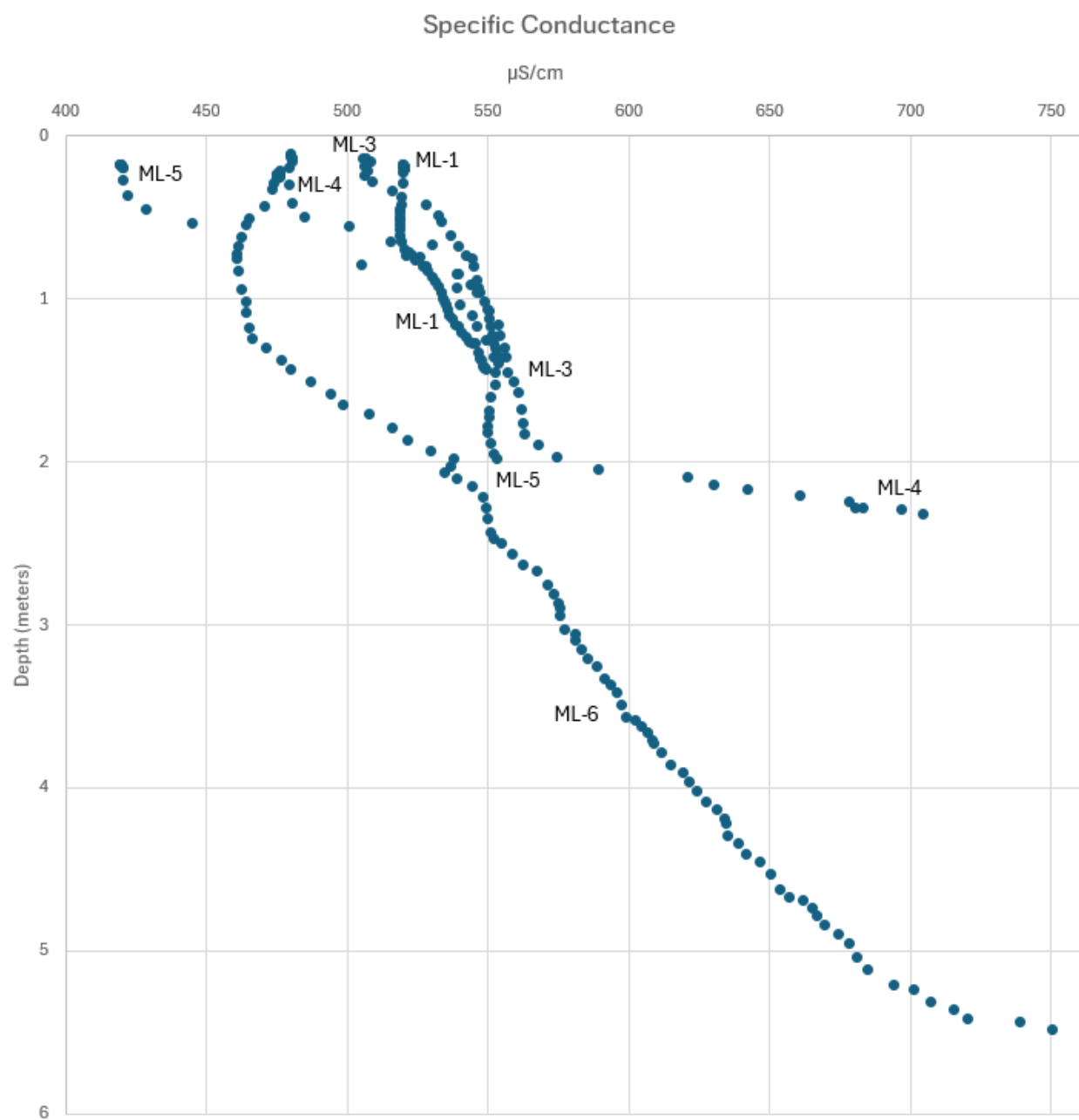
2025 Date (MM/DD)	Time (H:m:s)	Site Name	Depth m	Diss. Ox. % sat	Diss. Ox. mg/L	Spec Cond. µS/cm	Turb. NTU	pH	Temp °C	GPS Lat. °	GPS Long. °	Barom. mmHg
8/21	17:37:21	ML-6	1.585	18.8	1.62	493.9	7.98	7.29	22.774	42.34202	-83.66838	740.1
8/21	17:37:22	ML-6	1.651	17.3	1.49	498.5	9.42	7.28	22.756	42.34201	-83.66839	740.1
8/21	17:37:23	ML-6	1.711	16.1	1.39	507.8	11.71	7.27	22.739	42.34201	-83.66839	740.1
8/21	17:37:24	ML-6	1.788	15.0	1.29	516.1	12.49	7.26	22.72	42.34201	-83.66839	740.1
8/21	17:37:25	ML-6	1.865	13.7	1.18	521.4	11.9	7.24	22.696	42.34201	-83.66839	740.1
8/21	17:37:26	ML-6	1.932	12.6	1.09	529.4	11.59	7.22	22.676	42.34201	-83.66839	740.1
8/21	17:37:27	ML-6	1.976	11.4	0.99	537.9	11.24	7.22	22.639	42.34201	-83.66839	740.2
8/21	17:37:28	ML-6	2.032	10.6	0.91	536.8	16.08	7.23	22.592	42.34201	-83.66839	740.2
8/21	17:37:29	ML-6	2.068	9.7	0.84	534.7	14.83	7.24	22.563	42.34201	-83.66839	740.2
8/21	17:37:30	ML-6	2.106	9.0	0.78	538.7	10.67	7.23	22.547	42.34201	-83.66839	740.1
8/21	17:37:31	ML-6	2.154	8.3	0.72	544.2	12.84	7.17	22.516	42.34201	-83.6684	740
8/21	17:37:32	ML-6	2.216	7.7	0.67	548	15.47	7.12	22.477	42.34201	-83.6684	740.2
8/21	17:37:33	ML-6	2.287	7.1	0.62	549.2	16.6	7.07	22.428	42.34201	-83.6684	740.1
8/21	17:37:34	ML-6	2.353	6.6	0.57	549.9	19.24	7.02	22.35	42.34201	-83.6684	740.1
8/21	17:37:35	ML-6	2.436	6.0	0.52	550.7	22.67	6.98	22.258	42.34201	-83.6684	740.2
8/21	17:37:36	ML-6	2.472	5.7	0.49	552.3	26.83	6.95	22.15	42.34201	-83.6684	740.1
8/21	17:37:37	ML-6	2.503	5.3	0.46	554.7	28.78	6.93	21.955	42.34201	-83.6684	740.1
8/21	17:37:38	ML-6	2.561	4.9	0.43	558.7	28.95	6.92	21.794	42.34201	-83.6684	740.1
8/21	17:37:39	ML-6	2.629	4.6	0.4	562.5	27.5	6.89	21.585	42.34201	-83.6684	740.1
8/21	17:37:40	ML-6	2.673	4.3	0.38	567.1	26.63	6.87	21.271	42.34201	-83.6684	740.1
8/21	17:37:41	ML-6	2.751	4.1	0.36	571	24.96	6.85	20.962	42.34201	-83.6684	740.1
8/21	17:37:42	ML-6	2.815	3.9	0.35	573.1	23.08	6.85	20.665	42.34201	-83.6684	740.1
8/21	17:37:43	ML-6	2.863	3.6	0.33	574.8	21.42	6.85	20.458	42.34201	-83.6684	740.1
8/21	17:37:44	ML-6	2.892	3.4	0.31	575.6	20.72	6.84	20.219	42.34201	-83.6684	740.1
8/21	17:37:45	ML-6	2.945	3.3	0.3	575.6	19.66	6.84	19.956	42.34201	-83.6684	740.2
8/21	17:37:46	ML-6	3.032	3.2	0.29	577.3	17.26	6.83	19.607	42.34202	-83.6684	740.2
8/21	17:37:47	ML-6	3.06	3.0	0.28	580.9	15.36	6.82	19.326	42.34202	-83.6684	740.1
8/21	17:37:48	ML-6	3.091	2.9	0.27	581.2	12.98	6.82	19.026	42.34202	-83.6684	740.1
8/21	17:37:49	ML-6	3.149	2.7	0.25	583.2	11.07	6.82	18.663	42.34202	-83.6684	740.1
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8/21	17:37:51	ML-6	3.25	2.5	0.23	588.5	8.68	6.83	17.954	42.34202	-83.6684	740.1
8/21	17:37:52	ML-6	3.331	2.3	0.22	591.6	8.43	6.84	17.644	42.34202	-83.6684	740.2
8/21	17:37:53	ML-6	3.368	2.2	0.21	593.3	7.59	6.84	17.396	42.34202	-83.6684	740.1
8/21	17:37:54	ML-6	3.412	2	0.19	595.8	7.07	6.85	17.109	42.34202	-83.6684	740.1
8/21	17:37:55	ML-6	3.493	1.9	0.18	597.3	6.56	6.85	16.925	42.34202	-83.6684	740
8/21	17:37:56	ML-6	3.57	1.8	0.17	599.2	5.87	6.85	16.658	42.34202	-83.6684	740
8/21	17:37:57	ML-6	3.586	1.7	0.17	602.3	5.68	6.86	16.432	42.34202	-83.6684	740.1
8/21	17:37:58	ML-6	3.619	1.7	0.16	604.7	5.66	6.87	16.228	42.34202	-83.6684	740.1
8/21	17:37:59	ML-6	3.663	1.6	0.16	606.8	5.84	6.88	16.073	42.34202	-83.6684	740.1
8/21	17:38:00	ML-6	3.708	1.5	0.15	608.4	5.53	6.9	15.875	42.34203	-83.66839	740.1

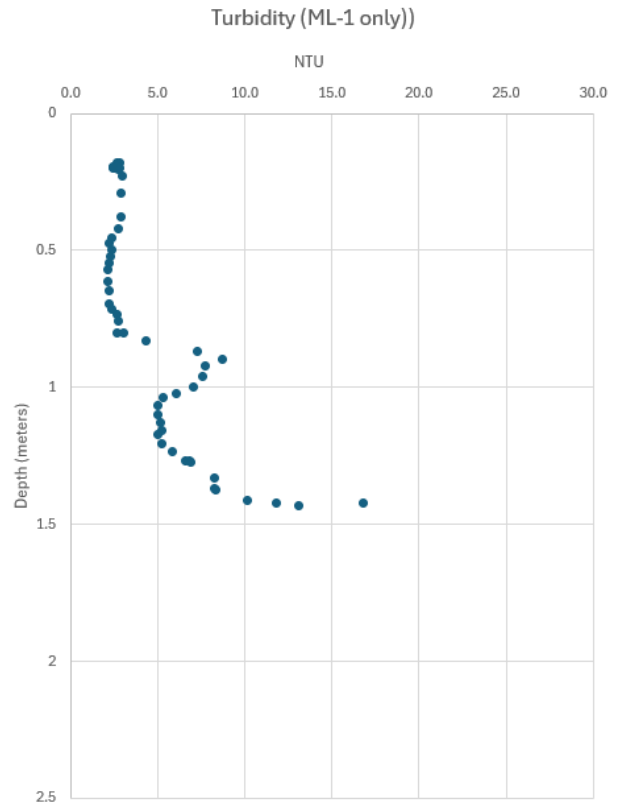
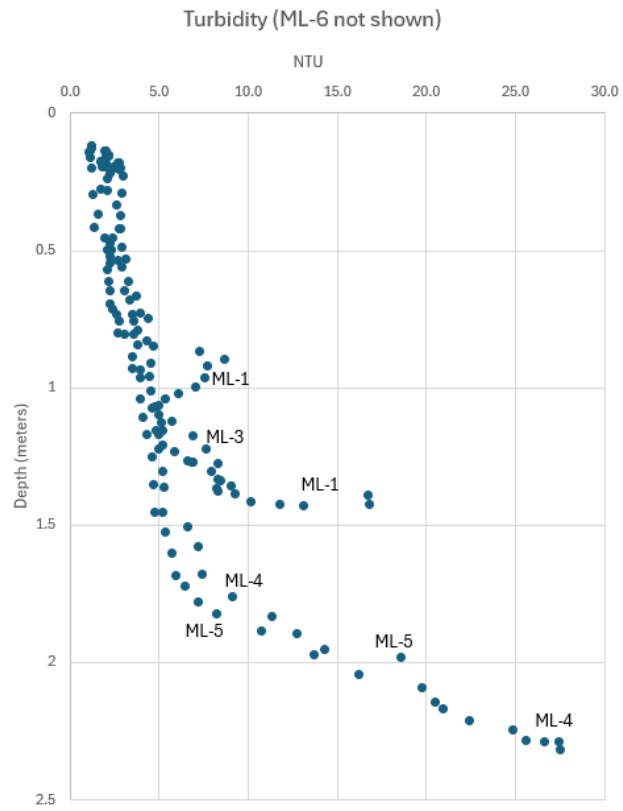
2025 Date (MM/DD)	Time (H:m:s)	Site Name	Depth m	Diss. Ox. % sat	Diss. Ox. mg/L	Spec Cond. µS/cm	Turb. NTU	pH	Temp °C	GPS Lat. °	GPS Long. °	Barom. mmHg
8/21	17:38:01	ML-6	3.728	1.4	0.14	609	4.75	6.92	15.674	42.34203	-83.66839	740.1
8/21	17:38:02	ML-6	3.787	1.4	0.14	611.8	4.6	6.93	15.484	42.34203	-83.66839	740.1
8/21	17:38:03	ML-6	3.856	1.3	0.13	615.1	4.61	6.94	15.249	42.34203	-83.66839	740.1
8/21	17:38:04	ML-6	3.906	1.2	0.12	619.2	4.22	6.95	15.027	42.34203	-83.66839	740.1
8/21	17:38:05	ML-6	3.964	1.1	0.11	621.2	3.98	6.96	14.797	42.34203	-83.66839	740.1
8/21	17:38:06	ML-6	4.018	1.1	0.11	624.4	4.25	6.97	14.569	42.34203	-83.6684	740
8/21	17:38:07	ML-6	4.085	1.0	0.1	627.4	4.11	6.98	14.299	42.34203	-83.6684	740.2
8/21	17:38:08	ML-6	4.128	0.9	0.1	631.2	3.79	6.99	14.072	42.34203	-83.6684	740.1
8/21	17:38:09	ML-6	4.187	0.9	0.09	634.2	3.93	7	13.927	42.34203	-83.6684	740.1
8/21	17:38:10	ML-6	4.219	0.8	0.08	634.6	4.06	7.02	13.902	42.34203	-83.6684	740.1
8/21	17:38:11	ML-6	4.292	0.7	0.07	635.1	4.19	7.03	13.861	42.34203	-83.6684	740.1
8/21	17:38:12	ML-6	4.344	0.7	0.07	638.7	4.4	7.04	13.651	42.34203	-83.6684	740.1
8/21	17:38:13	ML-6	4.408	0.6	0.07	641.9	4.31	7.06	13.447	42.34203	-83.6684	740.1
8/21	17:38:14	ML-6	4.455	0.6	0.06	646.3	4.36	7.07	13.275	42.34203	-83.6684	740.1
8/21	17:38:15	ML-6	4.525	0.6	0.06	650.5	4.73	7.07	13.031	42.34203	-83.6684	740.1
8/21	17:38:16	ML-6	4.622	0.5	0.06	653.7	4.78	7.05	12.846	42.34203	-83.6684	740.1
8/21	17:38:17	ML-6	4.67	0.5	0.05	657.2	5.07	7.04	12.647	42.34203	-83.6684	740.1
8/21	17:38:18	ML-6	4.694	0.5	0.05	661.6	5.24	7.04	12.483	42.34203	-83.6684	740.1
8/21	17:38:19	ML-6	4.74	0.5	0.05	665.1	5.25	7.04	12.335	42.34203	-83.66839	740.1
8/21	17:38:20	ML-6	4.783	0.4	0.04	666.6	6.39	7.05	12.253	42.34203	-83.6684	740.1
8/21	17:38:21	ML-6	4.84	0.3	0.03	669.6	7.41	7.05	12.112	42.34203	-83.6684	740.1
8/21	17:38:22	ML-6	4.893	0.3	0.03	674.4	7.76	7.06	11.915	42.34203	-83.6684	740.2
8/21	17:38:23	ML-6	4.95	0.2	0.03	678.1	8.21	7.06	11.782	42.34203	-83.6684	740.3
8/21	17:38:24	ML-6	5.04	0.2	0.02	680.9	9.23	7.07	11.681	42.34203	-83.6684	740.2
8/21	17:38:25	ML-6	5.118	0.2	0.02	684.8	9.78	7.07	11.577	42.34203	-83.66839	740.2
8/21	17:38:26	ML-6	5.207	0.1	0.01	693.9	10.06	7.06	11.405	42.34203	-83.66839	740.1
8/21	17:38:27	ML-6	5.24	0.1	0.01	700.9	10.62	7.05	11.25	42.34203	-83.66839	740
8/21	17:38:28	ML-6	5.316	0.1	0.02	707.3	11.31	7.05	11.066	42.34203	-83.66839	740.1
8/21	17:38:29	ML-6	5.362	0.1	0.02	715.3	12.37	7.06	10.941	42.34203	-83.66839	740.1
8/21	17:38:30	ML-6	5.415	0.1	0.01	720.3	12.83	7.06	10.849	42.34203	-83.66839	740
8/21	17:38:31	ML-6	5.438	0.1	0.01	738.7	14.61	7.05	10.802	42.34203	-83.66839	740.1
8/21	17:38:32	ML-6	5.485	0.1	0.01	750.1	31.16	6.98	10.708	42.34202	-83.6684	740.1

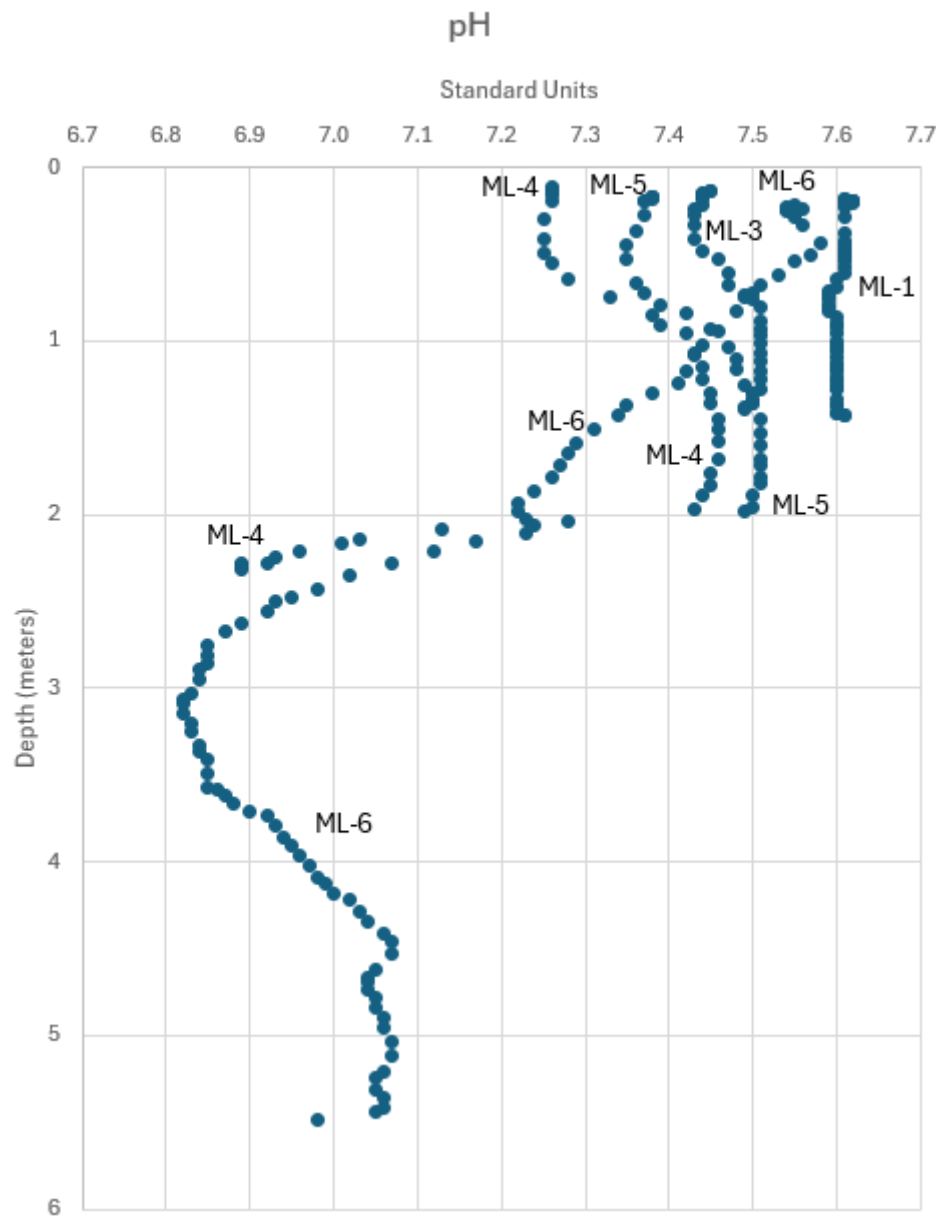
Dissolved Oxygen

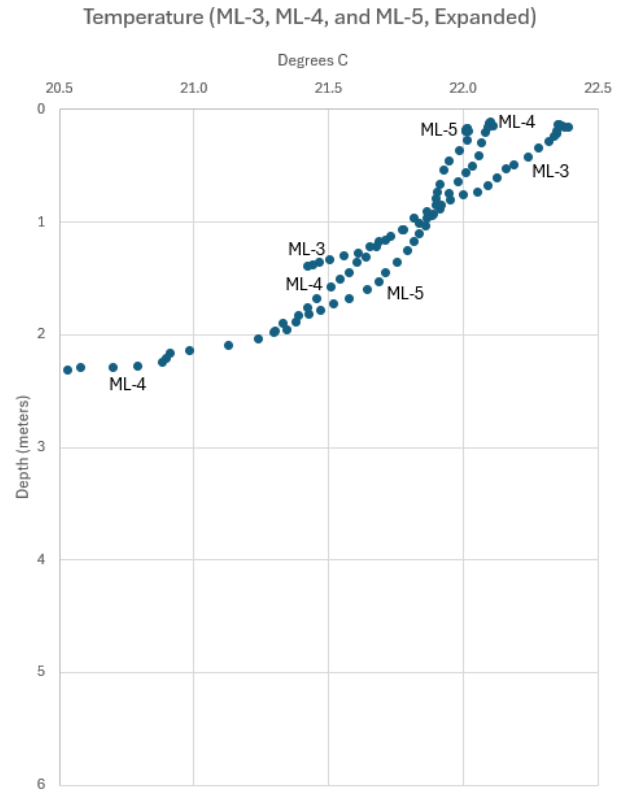
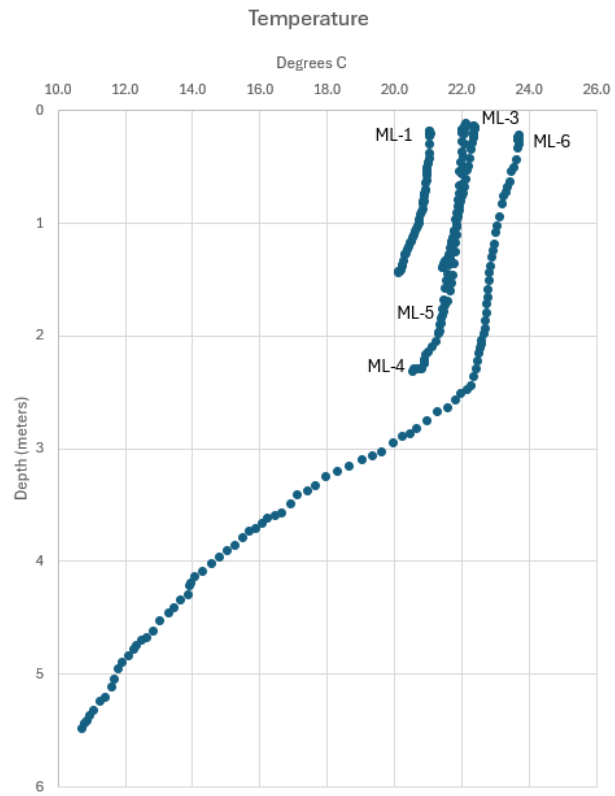












APPENDIX E

Sampling and Analysis Plan

Available under separate cover.

EXHIBIT 6

**TOWNSHIP BOARD OF TRUSTEES
CHARTER TOWNSHIP OF ANN ARBOR
WASHTENAW COUNTY, MICHIGAN
RESOLUTION APPROVING CONDITIONAL USE PERMIT FOR AMC-WSG, LLC
GRAVEL PIT
DATE: JULY 20, 2020**

Resolution adopted at a regular meeting of the Board of Trustees of the Charter Township of Ann Arbor, Washtenaw County, Michigan, held at the Township Hall, 3792 Pontiac Trail, Ann Arbor, Michigan, on January 20, 2020.

PRESENT: Diane O'Connell, Rena Basch, Michael Moran, Della DiPietro, Rodney Smith, John Allison, Randy Perry

ABSENT: None

Motion by Trustee: Basch; supported by Trustee: Perry.

I. RECITALS

A. Ann Arbor Charter Township ("Township") received an application dated February 11, 2020, as revised by submissions dated March 17, 2020 and April 20, 2020 (collectively the "Application") for a Conditional Use Permit for Mineral Mining ("CUP") for AMC-WSG, LLC, a Michigan limited liability company ("Applicant"). The Application is to expand the sand and gravel mining operations of an existing gravel pit on the property located at 4984 Earhart Road, Ann Arbor Township, Parcel Number I-09-01-200-002, Ann Arbor Charter Township, containing approximately 142 acres of property ("Property"), including, but not limited to, by increasing the amount of materials mined on the Property and upgrading tools and equipment on site.

B. The Application also includes a request for approval of a combined preliminary and final site plan initially dated February 11, 2020 and updated March 17, 2020 (collectively the "Site Plan"). Under the Township's Code of Ordinances (the "Code"), requests for conditional land uses are reviewed concurrently with site plans.

C. Applicant is currently under contract with Washtenaw Sand & Gravel Co., a Michigan corporation and the current owner of the Property ("Owner"), to purchase the Property. Owner has submitted correspondence to the Township consenting to the Application and to Applicant entering into all necessary agreements with the Township for approval of the Mining Activities (defined below). A copy of the correspondence was included in the Application.

D. The Application includes plans for expanding Owner's current sand and gravel mining operation currently in operation on the Property. The expanded operation will use front-end loaders, excavators, and dump trucks to mine the sand and gravel and carry it to a wash plant on site. The new operation will use approximately five (5) to seven (7) large pieces of equipment on a daily basis. Unlike the current operation by Owner, the Applicant has represented that no other materials (i.e. construction aggregates, used concrete and asphalt, or limestone) will be brought on the Property for re-sale. Mining activities will be conducted primarily March through November (referred to as the "peak season"), but there will be winter stockpiles depending on customer demand. Applicant has

indicated that winter mining could occur if conditions are favorable for mining. Applicant estimates that, initially, the average number of trucks that are expected to enter/exit the Property is approximately 40-50 per day during the peak season, and could go up to 80 per day during the peak season. In addition to the activities outlined in the Application and the Reports (as defined below), the foregoing activities shall be referred to as the "Mining Activities."

E. The Mining Activities do not constitute a permissible prior nonconforming extraction operation under Code Section 74-224.

F. Applicant represents to the Township that for the duration of any conditional use permit granted by the Township, Applicant will use Earhart Road consistent with, in accordance with the regulations of, and under the limits of, a Normal Route, sometimes referred to as a "Class B," or "medium volume" road under the Washtenaw County Road Commission ("WCRC") Procedures & Regulations for Permit Activities, meaning that no improvements will be required by WCRC to comply with a "Designated Route" and/or "Class A" road requirements. The Applicant represents that it will not seek a designated haul route permit from the WCRC to increase the number of trips or to allow for heavier loads for the duration of this CUP without first requesting an amendment to the CUP to allow for same.

G. The Township Planner and Township Engineer have reviewed the Application and Site Plan and provided detailed comments and reviews, the most recent being the Township Planner's reviews dated February 27, 2020, April 6, 2020 and April 27, 2020, and the Township Engineer's reviews dated February 27, 2020, April 2, 2020, April 30, 2020 and June 30, 2020 (together, the "Reports").

H. On April 13, 2020, the Planning Commission held a Special Meeting to consider the Application and to set a date for a public hearing. On May 4, 2020, the Planning Commission held a public hearing to consider the CUP. On June 1, 2020, July 6, 2020 and at a special meeting held on July 13, 2020, the Planning Commission extensively considered the application for CUP and requested additional information and clarifications from the Applicant.

I. The Township Planning Commission considered the Application and Site Plan, the reports and comments of the Township Planner and Township Engineer, and the comments of the public at the public hearing on the CUP as well as during public comment at each of the meetings described above, and adopted a resolution ("PC Resolution") approving the Site Plan and recommending approval of the CUP to the Township Board based on findings and subject to the conditions set forth in the PC Resolution. A copy of the PC Resolution is attached as Exhibit A.

II. STANDARDS AND FINDINGS – CONDITIONAL USE PERMIT

Section 74-137 of the Code states that any Conditional Land Use approval shall run with the land and shall remain unchanged except upon mutual consent of the Township Board and the landowner. The Planning Commission and Township Board must evaluate the proposed use to determine if it meets all the required standards listed in Code Sections 74-136 and 74-592.

Code Section 74-592 states that any approval of the CUP is conditioned upon Applicant's adherence to all of the performance standards set forth in Code Section 74-594, as well as the conditions of the PC Resolution and this Resolution.

Based on the foregoing and the PC Resolution, the Township Board adopts the standards and findings of the Planning Commission pertaining to the CUP pursuant to Code Sections 74-136 and 74-592 and, subject to the conditions of the Planning Commission as set forth in the PC Resolution (as modified and supplemented by the Township Board herein) approves the CUP for the Mining Activities on the Property.

III. CONDITIONS – CUP

Based on the foregoing, the Township Board approves the CUP as set forth in the PC Resolution, subject to the conditions set forth in the PC Resolution (as modified and supplemented by the Township Board herein), as follows, which conditions shall run with the Property and are required in order for no very serious consequences to occur in connection with the Mineral Activities on the Property:

1. Within one (1) year after approval of the CUP, Applicant shall plant evergreen trees within the 100-foot buffer adjacent to the existing single family home to the south of the Property so that a proper buffer will be established by the time that the Mining Activities will be located closer to the southern boundary line of the Property.
2. Applicant shall plant native species identified on the Bio-Retention Plant List described above for the 25-foot buffer around the lakes to be created in accordance with the reclamation plan included in the Application and approved Site Plan, except in those locations designated for boat launches or docks.
3. Applicant shall not revise or modify the Site Plan without prior written notice to and approval by the Township.
4. In the event Applicant or any subsequent owner ceases use of the Property as described in this Resolution for a period in excess of 24 months, the CUP may be revoked in accordance with the Code.
5. Applicant shall reapply for a new conditional use permit within five (5) years after final approval of this CUP by the Board of Trustees as required by Section 74-592 of the Code.
6. Applicant shall not (i) seek, apply for, or obtain approval for a designated Haul Route Permit from the WCRC for Earhart Road, (ii) utilize Earhart Road in a manner which exceeds County Normal Route or Class B vehicle axle weight, length or size limitations, and/or (iii) coordinate with the WCRC in any manner relating to improvements to Earhart Road prior to obtaining approval from the Township regarding the change in use. Applicant acknowledges and agrees that any change in the use of Earhart Road is a change in use under the CUP and will require an amendment to the CUP, or application for a new conditional use permit, in the sole discretion of the Township.
7. Applicant and Township must sign a Development Agreement in a form acceptable to the Township, as required by Section 74-177 of the Code, and Applicant must deposit the performance guarantees as required by Section 74-592 of the Code for restoration of the Property and to cover the costs of the Township Engineer in certifying conformance, as well as a cash escrow with the Township to allow the Township and WCRC to undertake additional dust control, grading and gravel application measures on Earhart Road.

8. Applicant shall remove all inoperable vehicles and equipment not used for Mining Activities from the Property within twelve (12) months after approval of the CUP.
9. In the event that a portion of the internal roadway located on the Property encroaches onto the neighboring property located at 4410 Earhart Road, Applicant shall move the portion of the road encroaching on the neighboring property to a location wholly located on the Property and which complies with the set-back and other requirements of the Code within thirty (30) days of approval of this CUP. Further, Applicant shall plant grass seed to restore the neighboring property in the location of the road encroachment. In the event that the road does need to be relocated, the Applicant shall work cooperatively with the neighbor to ensure access to the neighboring property at times reasonably convenient to the neighboring property owner to relocate the road and restore the area by planting grass seed.
10. Applicant shall not perform any concrete, cement or asphalt production on the Property in accordance with Code Section 74-592.
11. The Owner, Applicant and their tenants shall comply with all comments, conditions and recommendations set forth in this Resolution and the Reports related to the CUP and Site Plan and any reports and comments of the Township Building and Zoning Official, Township Fire Chief, Township attorney and Township Utilities Department.
12. Applicant shall limit truck entering and exiting the Property to an average of fifty (50) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day.
13. Applicant shall track, compile and submit to the Township, in the form of an annual report (unless requested more frequently by the Township), information regarding the vehicle traffic using Earhart Road and entering the Property. Specifically, the Applicant shall track the number of daily vehicle trips entering and exiting the site in relation to the Mining Activities and report those numbers, as well as the monthly daily average and monthly maximum counts.
14. Use of the Property shall be in accordance with this Resolution and other applicable laws and ordinances, including the Township noise, light and nuisance ordinances, and ordinances relating to hours of operation.
15. All truck staging shall be contained on the Property. Truck staging on Earhart or Joy Road is prohibited. Applicant shall assist the Township in enforcing this condition.
16. Crushing operations are prohibited within 300 feet of any neighboring residences.
17. Applicant shall not utilize chemicals in relation to the washing process of the Mining Activities (only water is permissible in relation to the washing process).
18. Prior to any Mining Activities, Applicant shall provide the Township (for administrative review) with updates of the Site Plan to address inconsistencies, requirements of the consultants' reports, and the terms of this Resolution.

19. Prior to creating a five (5) acre lake on Property, Applicant shall establish and submit a plan to the Township to ensure that the planned lake will not impact the water level of surrounding wells and wetlands.
20. Applicant shall comply with all state and federal requirements for mineral mining, including any and all requirements set forth in the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq.*, MCL §125.3205.

IV. TOWNSHIP BOARD APPROVAL

Based on the foregoing findings and standards and subject to the foregoing findings and conditions, the Township Board approves the CUP for the Mining Activities on the Property.

RESOLUTION DECLARED ADOPTED.



Diane O'Connell
Township Supervisor

I certify that the foregoing is a true and complete copy of a resolution adopted by Township Board of the Ann Arbor Charter Township, County of Washtenaw, State of Michigan, at a regular meeting held on July 20, 2020, that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.



Rena Basch
Township Clerk

Dated: July 29, 2020

EXHIBIT A

Planning Commission Resolution

AS RECOMMENDED 7/13/2020

**PLANNING COMMISSION
CHARTER TOWNSHIP OF ANN ARBOR
WASHTENAW COUNTY, MICHIGAN
RESOLUTION RECOMMENDING APPROVAL OF COMBINED PRELIMINARY AND
FINAL SITE PLAN AND CONDITIONAL USE PERMIT FOR MINERAL MINING
MID MICHIGAN MATERIALS GRAVEL PIT**

DATE: JULY 13, 2020

Resolution adopted at a special meeting of the Planning Commission of the Charter Township of Ann Arbor, Washtenaw County, Michigan, held at the Township Hall, 3792 Pontiac Trail, Ann Arbor, Michigan, on July 13, 2020.

PRESENT: Kris Olsson, Lee Gorman, Peter Kotila, Linda Young, John Allison, Karen Mendelson, David Gidley

ABSENT:

Motion by Commissioner: Olsson; supported by Commissioner: Gidley.

I. RECITALS

A. Ann Arbor Charter Township ("Township") received an application dated February 11, 2020, as revised by applications dated March 17, 2020 and April 20, 2020 (collectively the "Application") for a Conditional Use Permit for Mineral Mining ("CUP") for AMC-WSG, LLC, a Michigan limited liability company ("Applicant"). The Application is to expand the existing sand and gravel mining operations of an existing gravel pit on the property located at 4984 Earhart Road, Ann Arbor Township, Parcel Number I-09-01-200-002, Ann Arbor Charter Township, containing approximately 142 acres ("Property"), including, but not limited to, increasing the amount of materials mined on the Property and upgrading tools and equipment on site.

B. The Application also includes a request for approval of a combined preliminary and final site plan initially dated February 11, 2020 and updated March 17, 2020 (collectively the "Preliminary and Final Site Plan"). Under the Township Code, requests for conditional land uses are reviewed concurrently with site plans.

C. Applicant is currently under contract with Washtenaw Sand & Gravel Co., a Michigan corporation and the current owner of the Property ("Owner"), to purchase the Property. Owner has submitted correspondence to the Township consenting to the Application and to Applicant entering into all necessary agreements with the Township for approval of the Mining Activities. A copy of the correspondence was included in the Application.

D. The Application includes plans for expanding the current sand and gravel mining operation already operating on the Property by Owner. The expanded operation will use front-end loaders, excavators, and dump trucks to mine the sand and gravel and carry it to a wash plant on site. The new operation will use approximately 5-7 large pieces of equipment on a daily basis. Unlike the

previous operation by Owner, the Applicant has represented that no other materials (i.e. construction aggregates, used concrete and asphalt, or limestone) will be brought on the Property for re-sale. Mining activities will be conducted primarily March through November, but there will be winter stockpiles depending on customer demand. Applicant has indicated that winter mining could occur if conditions are favorable for mining. The Applicant estimates that initially, the average number of trucks that are expected to enter/exit the Property is approximately 40-50 per day, and could go up to 80 per day during the peak season. In addition to the activities outlined in the Application and the Reports (as defined below), the foregoing activities shall be referred to as the "Mining Activities."

E. The Mining Activities do not constitute a permissible prior nonconforming extraction operation under Ann Arbor Township Code Section 74-224.

F. The Applicant represents to the Township that for the duration of any conditional use permit granted by the Township, the Applicant will use Earhart Road consistent with, and in accordance with the regulations of, and under the limits of a Normal Route, sometimes referred to as a "Class B," or "medium volume" road under the Washtenaw County Road Commission ("WCRC") Procedures & Regulations for Permit Activities, meaning that no improvements will be required by WCRC to comply with a "Designated Route" and/or "Class A" road requirements. The Applicant represents that it will not seek a designated haul route permit from the WCRC to increase the number of trips or to allow for heavier loads for the duration of this CUP.

G. The Township Planning and Engineering Consultants, have reviewed Applicant's Application and Site Plan and provided detailed comments and reviews, the most recent being the Township Planner's review dated February 27, 2020, April 6, 2020 and April 27, 2020, and the Township Engineer's review dated February 27, 2020, April 2, 2020, April 30, 2020 and June 30, 2020 (together, the "Reports").

H. On April 13, 2020, the Planning Commission held a Special Meeting to consider the Application and to set a date for a public hearing. On May 4, 2020, the Planning Commission held a public hearing to consider the CUP. On June 1, 2020, July 6, 2020 and at a special meeting held on July 13, 2020, the Planning Commission extensively considered the application for CUP and requested additional information and clarifications from the Applicant.

I. The Township Planning Commission considered the Application and Preliminary and Final Site Plan, the reports and comments of the Township Planning and Engineering Consultants, and the comments of the public at the public hearing on the CUP, and recommends approval by the Township Board of the Preliminary and Final Site Plan and the CUP based on the findings, and subject to the conditions set forth below pursuant to Section 74-136 of the Code pertaining to approval of a conditional use permit, Sections 74-174 through 74-176 of the Code pertaining to site plan review, and Section 74-592 of the Code pertaining to mineral mining (which is consistent with and subject to the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq.*, MCL §125.3205 regarding the mining of natural resources).

II. FINDINGS, CONDITIONS AND APPROVAL-COMBINED PRELIMINARY AND FINAL SITE PLAN

Based on the Preliminary and Final Site Plan submitted by the Applicant, review of the Reports, and review of approvals and reports from applicable governmental authorities, and pursuant to the Recitals and Reports which are incorporated into this Resolution, and the Township Code, the

Planning Commission finds that the proposed Preliminary and Final Site Plan meets the standards of the Township Code Sections 74-174 through 74-176, subject to Applicant completing all required revisions to the Preliminary and Final Site Plan as set forth in the Reports, any revisions requested by the Township consultants and as otherwise required by the Planning Commission herein.

III. STANDARDS AND FINDINGS – CONDITIONAL USE PERMIT

1. CUP. Based on the Applicant's submittals, the Reports and comments of the public at the public hearing, the Planning Commission makes the following findings pertaining to the CUP pursuant to Section 74-136 of the Code:

A. Standard: The project will be harmonious with and in accordance with the objectives, intent and purposes of the ordinance.

Finding 1: Upon compliance with the conditions set forth in this Resolution, the CUP is harmonious and in accordance with the objectives, intent and purposes of the Code, which states that the intent of the chapter is to ensure economical use of land. The Property can either continue use as a gravel pit, or be reclaimed and redeveloped into a residential development. The Applicant is proposing to continue the use on the Property as a gravel pit and submitted a market study in its Application, which discusses future profitability. Continued use as a gravel pit is consistent with an economical use of the land.

B. Standard: The project will be compatible with the natural environment and existing and future land uses in the vicinity.

Finding 2: Upon compliance with the conditions set forth in this Resolution, the Mining Activities will be compatible with the natural environment and existing and future land uses in the vicinity as the Applicant is proposing a continuation of the current use of the Property.

The Mining Activities are occurring away from the sensitive water features on the Property (wetlands and tributary) to avoid any physical impacts from the Mining Activities in the wetlands or tributary. Regarding Stormwater runoff to the wetlands to the north and the tributary to the east:

1. The Applicant has provided information that runoff will be filtered by a proposed stormwater diversion berm that will act as a sedimentation basin (on the north), and stormwater berms to the east before entering the wetland and wetland surrounding the tributary. Applicant shall revise the site plans to show improvements to the berms located on the east side of the Property to show that any runoff will either be detained and allowed to infiltrate into the ground, or will filter through the berm, pursuant to an administrative review. In either case, runoff will be directed away from the Fleming Creek tributary and wetlands and will be redirected back into the mine itself. As noted below, this berm shall be inspected in relation to the Soil Erosion Control Permit Process identified below.
2. A Soil Erosion and Sedimentation Control (SESC) Permit is required for the Mining Activities on the Property, which the Township will oversee for the duration of the CUP.

3. As further addressed below in relation to the mining ordinance, the CUP expires in five (5) years, after which time the Applicant will need to reapply for a new conditional use permit. Therefore, any erosion issues that are impacting the wetland and/or tributary will be addressed through the application process for a future conditional use permit.

Regarding the existing woodlands on site, the Applicant has offered, and the Township is requiring that the Applicant vegetate the 100-foot buffer that is currently used for a roadway (southeast corner of the Property) to contribute to the natural vegetation on the Property. Further, Applicant states that further vegetation will also occur where Area A is to be reclaimed in accordance with Applicant's Reclamation Plan, which is planned to occur in two (2) to five (5) years.

Regarding the Massasagua rattlesnake habitat, Applicant has provided information regarding the federally threatened species and its existing habitat on the Property. The Applicant has represented, and the Township requires that Applicant commit to producing a study on the existing habitat and strategies for reducing impact on any existing protected habitat on the Property. Any development of the Property in relation to the CUP shall be in compliance with federal law regarding federally protected and/or endangered species.

Regarding future land uses in the vicinity, Applicant represents that once mining on this Property is complete, which Applicant estimates will be between 16-40 years, reclamation of the Property will make it appropriate for agriculture, wildlife habitat, and/or large-lot residential uses. The Master Plan calls for Open Space Preservation on this property. This future land use category is characterized by mixed farmland and natural areas. The goals of this category include residential clustering, while preserving open space, enhancing rural character and enabling small-scale agricultural uses. Once the site is reclaimed, the proposed uses will be consistent with the Township Master Plan.

C. Standard: The project will be compatible with the Township Master Plan.

Finding 3: Upon compliance with the conditions set forth in this Resolution, the CUP will be compatible with the Township Master Plan designation of the area as mixed farmland and natural areas. As noted above, the Applicant represents that under the reclamation plan contained in the Application, the Property will be appropriate for agriculture, wildlife habitat, and/or large-lot residential uses in the future, which is consistent with the Master Plan.

D. Standard: The project will be served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainage ways, and structures, refuse disposal or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.

Finding 4: Upon compliance with the conditions set forth in this Resolution, the Mining Activities and Property will be served adequately by essential public facilities and services. The Property is accessible from Earhart Road. Applicant has provided information from the WCRC confirming that Earhart Road is currently being operated as a County Normal Route as defined by the Washtenaw County Truck Operators Map, hereafter known as a Class B Road or "medium volume" road in accordance with the Procedures and Regulations for Permit Activities for the WCRC and in accordance with the Michigan Vehicle Code. If transport of loads over Earhart Road by Applicant exceed the axle weight, length and size limitations for a Class B Road, the Applicants agrees that

Earhart Road may be classified as a Class A Road, and Applicant will be required to apply for and obtain a Haul Route Permit and make certain improvements to Earhart Road as required by the WCRC. Applicant has represented to the Township in the Application at the public hearing that the transport of sand, gravel and other materials in relation to the Mining Activities over Earhart Road will not exceed the Class B axle weight, length and size limitations, and Earhart Road will continue to be classified and operated as a Class B Road and all axle weight, length and size will be at or below the requirements of a County Normal Route. In the event that the Mining Activities, or Applicant's use of Earhart Road results in an increase of use of Earhart Road (over that of the Class B Road), the Applicant shall apply for an amendment to this CUP, or otherwise apply for a new conditional use permit to obtain a Haul Route Permit and to perform any and all improvements to Earhart Road as required by the WCRC. Approval of this CUP is conditioned upon the Applicant agreeing not to seek a designated Haul Route Permit, nor work in conjunction with the WCRC to improve Earhart Road unless and until Applicant obtains approval for the change in use from the Township in accordance with Code.

Further Earhart Road will provide adequate access for fire and police service vehicles, which such services will be provided by the Township. Applicant will use water, and if that is insufficient calcium chloride to mitigate dust as a result of truck traffic or the Mining Activities on site. The Planning Commission is recommending that the Township Board require Applicant to financially assist the Township and WCRC in assuring that truck traffic impacts to the integrity of Earhart Road will be mitigated by more frequent grading, application of gravel and dust control measures, as described herein.

The commercial septic system at the Property is adequate based on the report from the Washtenaw County Environmental Health Department ("WCEHD"). The trash disposal system proposed by the Applicant at the Property consists of an outdoor, covered, dumpster as indicated in the Preliminary and Final Site Plan.

E. Standard: The project will not be detrimental, hazardous or disturbing to existing or future neighboring uses, persons, property or the public welfare.

Finding 5: The adjacent land uses include two single-family residential homes on the south boundary, two single-family residential homes across Earhart Road to the west, and two single-family residential homes to the north on Joy Road (located in Northfield Township), as well as the school Spiritus Sanctus Academies. A lake and woodlands occupy the land located between the Property and the homes and building sites to the east. Land uses along Earhart and Joy Roads are primarily single family residences.

The Mining Activities are a continuation and expansion of the existing land use by Owner. The Planning Commission has found that the Mining Activities will be an increase over the current operation, with approximately 5-7 large pieces of equipment conducting the Mining Activities. There will be a wash plant and additional truck traffic entering and exiting the site each day. Applicant has represented that only water is utilized in the washing process. Applicant represents, and the Township requires, that Applicant shall not utilize chemicals in relation to the washing process on the Property.

As a condition to this Resolution, the Planning Commission requires that the Applicant show the 100-foot buffer along the perimeter of the Property as required by the Ordinance. In addition, the Applicant shall augment the vegetation located along the perimeter of the Property closest to the

neighboring residential properties and along the perimeter of the Property in order to reduce the impact of the Mining Activities on the surrounding area. Specifically, the Applicant will augment the existing buffer with evergreen trees along the southern boundary of the Property abutting the neighboring property containing a single family house in the twelve (12) months following the date of approval of the CUP to ensure that a sufficient perimeter buffer is established to reduce the impact of the Mining Activities. Additionally, the Applicant shall augment the vegetation within the 100 foot buffer located on the western side of the Property and Applicant shall not remove trees in the 100 foot buffer located on the western property line. Applicant shall revise the Site Plan to show all vegetative buffering, which may include trees, or other plantings acceptable to the Township Planner. Further, Applicant shall further vegetate the area located between the Mining Activities and the residence located to the southeast of the Property during the reclamation phase of Area A to ensure that the 100-foot vegetative buffer remains intact.

As a condition to this Resolution, the Planning Commission requires, that the hours of operation for the Mining Activities, as well as the noise from such Mining Activities will be within the limitations set forth in the Township Code. Subject to the Conditions set forth in this Resolution, the Planning Commission finds that the Project will not be detrimental, hazardous or disturbing to existing or future neighboring uses, persons, property or the public welfare.

Significant concerns were expressed in writing and in public testimony by members of the public regarding the impact of proposed increases in truck traffic from the Property in relation to the Mining Activities, which poses various serious consequences to pedestrian, bicycle, horseback riding and vehicular safety peaceful use of properties along Earhart and Joy Roads, and to the rural character of the Township in accordance with the Township's designated Master Plan. The Planning Commission received significant testimony and analysis regarding traffic counts and impacts and found that these concerns were valid, and if unregulated would be detrimental, hazardous and disturbing to neighboring uses and people. To mitigate these very serious consequences, as a condition to this Resolution, the Planning Commission finds limits on either truck traffic or daily load limits (that relate to truck traffic) to be appropriate and required as outlined in the conditions below.

F. Standard: The project will not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.

Finding 6: Upon compliance with the conditions of this Resolution, the CUP will not create additional requirements at public cost for public facilities and services that would be detrimental to the economic welfare of the community. Notwithstanding the foregoing, if the Applicant's use of Earhart Road exceeds the Class B limitations as set forth above, Applicant will be required to seek approval of the increased use of Earhart Road from the Township as a revision to the CUP or in relation to a new conditional use permit.

IV. STANDARDS AND FINDINGS-MINERAL MINING CONDITIONAL USE

Based on the Applicant's submittals, the Township Consultants' Reports and the comments of the public at the public hearing, the Planning Commission makes the following findings pertaining to the Mineral Mining Conditional Use pursuant to Section 74-592 of the Code:

A. Standard: The Township Board shall grant a conditional use permit if it finds that no very serious consequences would result from the operation of the mineral mining activity. If it

demonstrated that a very serious consequence to the Township would occur, the Township Board shall not grant a conditional use permit. In accordance with MCL 125.3205, Section (5), the following factors shall be considered in making that determination:

- 1) The relationship of extraction and associated activities with existing land uses.*
- 2) The impact on existing land uses in the vicinity of the property.*
- 3) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property.*
- 4) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.*
- 5) The impact on other identifiable health, safety and welfare interests in the local unit of government.*
- 6) The overall public interest in the extraction of the specific natural resources on the property.*

Finding 1: Upon compliance with the conditions of this Resolution and Township Code, the Planning Commission finds that no very serious consequences would result from the CUP. As noted above, the use of the Property as a sand and gravel mine has been occurring for decades.

Regarding the existing land uses, to the best of the Township's actual knowledge, the Township has not received any complaints about the existing mining activities. Provided that the Applicant comply with the terms of this Resolution and the Township Code, including augmenting the vegetative buffer located along the perimeter of the Property to shield the neighboring properties from disturbance, the Mining Activities are not inconsistent with the existing land uses.

Regarding property values, the Property has been used as a sand and gravel mining operation for decades. Continuation of sand and gravel mining as detailed in the Mining Activities should not result in a decrease in property values in the vicinity of the Property.

Regarding pedestrian and traffic safety, Earhart Road (north of M-14) is a narrow, gravel road with heavy vegetation on both sides of the road, and no pedestrian accommodations (such as a shoulder or sidewalk) and no speed limit posted (which means that the speed limit is 55 mph). Applicant states that the Mining Activities will result in approximately 40-50 trucks entering/exiting the site and using Earhart Road on an average day. The Planning Commission determined that this number of truck trips represents a significant increase over the current use of the Property and would be detrimental, hazardous and disturbing to neighboring uses and people and poses very serious consequences to pedestrian, bicycle, horseback riding and vehicular safety, peaceful use of properties along Earhart Road, and to the rural character of the Township as described in the Master Plan. As enumerated below daily truck traffic/daily tonnage limits are a condition of this recommendation for approval. In addition, all truck staging shall be contained on site and no truck staging shall be allowed on Earhart or Joy Roads. The Planning Commission determined that limiting the number of trucks entering and exiting the Property to an average of forty (40) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day was necessary to avoid serious adverse consequences.

B. Standard: *The applicant shall submit a report by a geologist or other experts with credentials satisfactory to the Township Board to demonstrate compliance with MCL 125.3205, Sections (3) and (4), that the natural resources to be extracted shall be considered valuable, and*

the applicant can receive revenue and reasonably expect to profit from the proposed mineral mining operation. The applicant shall also provide documentation to demonstrate that there is a need for the natural resources to be mined by either the applicant or in the market served by the applicant.

Finding 2: Applicant has submitted a study entitled "Market Study for Washtenaw Sand and Gravel" amended March 16, 2020. The Market Study was prepared by Anderson Economic Group, Inc., a consulting firm that states that it specializes in business valuation and market and industry analysis. The Market Study concludes that, based on this analysis, there is a significant and on-going need for construction sand and gravel in southeast Michigan, and that Applicant is reasonably expected to receive revenues and operate the Property in a profitable manner, similar to peers.

C. **Standard:** *Mineral Mining operations shall be subject to the following conditions set forth in Section 74-592(c) and as set forth in the Report of the Township Planner:*

Finding 3: Upon compliance with the conditions of this Resolution, the Planning Commission finds and the Applicant represents and warrants that the Mining Activities will be conducted in accordance with the requirements of Section 74-592(c) regarding mineral mining and as set forth in the Report of the Township Planner which is incorporated herein.

With regard to requirement of a 100 foot buffer along the perimeter of the Property, the Township is requiring, and the Applicant has agreed to increase the vegetation along the west, south and east lines of the Property and to confirm that the proposed areas of disturbance for the Mining Activities are not within 100 feet of any boundary line of the Property. As noted above, this augmentation will include augmenting the vegetative buffer along the southern and western lines of the Property, and in the southeast corner to reduce impact on the neighbors and the properties located to the west. Applicant shall begin augmenting the vegetation on the southern property boundary with evergreens within one year of approval of this CUP.

With regard to the impact of the Mining Activities on surrounding wetlands or watercourses, the Site Plan shows the boundary of a wetland and tributary along the north side of the Property. The Plans also show a tributary of Fleming Creek on the east side of the Property, which is approximately 25 feet from the lines of disturbance at the closest points. The Township is requiring and the Applicants agreed that that the berms along the east side of the Property must be inspected in relation to Applicant's Soil Erosion Control Permit and if necessary, improved so that they are constructed to adequately divert stormwater away from the tributary. There is a 50-foot buffer between the Mining Activity and the wetland boundary, which is sufficient, provided however, Applicant must install a seven (7) foot tall fence on the south side of the wetland, and on the west side of the Fleming Creek tributary to eliminate unintended impacts to the wetlands or tributary.

With regard to crushing operations, the Applicant has proposed, and the Township is requiring that no crushing activities occur within 300 feet of any neighboring residence in order to minimize potential noise impacts on the surrounding properties. Applicant shall revise its Site Plan to show that no crushing activities will occur within 300 feet of neighboring residences.

With regard to the required reclamation plan, the Site Plan shows two reclamation concepts. Concept 4A shows two large lakes, and one small lake, with the existing main road still intact

through the center. Concept 4B shows one large lake, with the main road re-routed to the north of the site along the wetland edge. The road leads to the existing parking/maintenance building area, which remains as uplands on the reclamation plan.

The narrative states that the initial revegetation will be a cover crop of rye, wheat, or oat, but the owner will attempt to negotiate agricultural leases for crop production. If this isn't successful, the site will be seeded for wildlife habitat consistent with the Michigan Department of Transportation's ("MDOT") standard specifications. The ultimate proposed uses of the site will be agricultural, wildlife habitat or residential.

The ordinance standard for a reclamation plan requires a sketch plan of the proposed use of the site once reclaimed. The two reclamation plans submitted by Applicant identify the areas that the applicant proposes as potential residential home sites. Concept 4A would provide for three lakes (one small lake and two large lakes, one being adjacent to the existing wetland), 14-acres of residential uses, plus an upland conservation area. The Planning Commission requires, and Applicant agrees that Applicant shall provide detailed reclamation plans for Sub-Areas A and B to be reviewed and approved by the Township consultants in relation to this Resolution. Applicant shall submit more detailed reclamation plans for the remaining Sub-Areas C-H in the future when Applicant must re-apply for a CUP in accordance with the Ordinance. The Township will review more detailed reclamation plans in the future re-application for CUP. Regardless of the reclamation plan discussed in the future, the Planning Commission is requiring that Applicant, during any initial reclamation phase, install native plantings as set forth on Bio-Retention Plant List (in Section VIII of the Washtenaw County Water Resources Commissioner's Rules & Design Standards) for a native 25-foot buffer around the created lakes, except in those areas identified by Applicant as inappropriate for native plantings which include boat launches and beaches for use by residences.

With regard to the requirement that Applicant provide performance guarantees related to reclamation, prior to any Mining Activities occurring on the Property, the Applicant shall provide the Township a letter of credit (or alternatively a cash escrow) in the amount designated by the Township Consultants to guarantee restoration of the Property and to reimburse the Township Consultants in certifying conformance with the Reclamation Plan.

Applicant, prior to conducting any Mining Activities on the Property shall also deposit a cash escrow with the Township in an amount to be determined by the Township in coordination with the Washtenaw County Road Commission to be used by the Township and County for providing additional dust control measures on Earhart Road, including, but not limited to periodic brining applications as well as periodic grading and gravel application. The Township Board shall set a reasonable escrow amount in consultation with the WCRC and the Applicant. When necessary, the Township and WCRC will coordinate to perform the additional dust control and grading and gravel application measures on Earhart. Such costs and expenses relating to the additional dust control, grading and gravel application measures shall be reimbursed to the Township from the cash escrow to be deposited by the Applicant pursuant to this Section.

Last, with regard to the performance standards set forth in Section 74-594 of the Township Zoning Code, approval of the CUP is conditioned upon Applicant's adherence to all performance standard set forth in Section 74-594, as well as the conditions set forth in this Resolution.

V. **CONDITIONS – CUP AND PRELIMINARY AND FINAL SITE PLAN**

Based on the foregoing Standards and Findings, the Planning Commission recommends approval by the Township Board of the CUP and finds that, subject to the conditions as set forth above, as well as the following conditions, which shall run with the Property, no serious consequences will occur upon approval of this CUP:

1. Within one (1) year of approval of the CUP, Applicant shall plant evergreen trees within the 100-foot buffer adjacent to the existing single family home to the south of the Property so that a proper buffer will be established by the time that the Mining Activities will be located closer to the southern boundary line of the Property.
2. Applicant shall plant native species identified on the Bio-Retention Plant List described above for the 25-foot buffer around the lakes to be created in accordance with the Reclamation Plan, except in those locations designated for boat launches or docks.
3. Applicant shall not revise or modify the Preliminary and Final Site Plan without prior written notice to and approval by the Township.
4. In the event the Applicant or any subsequent owner ceases use of the Property as described in this Resolution for a period in excess of 24 months, the CUP may be revoked in accordance with the Code.
5. Applicant shall reapply for a new conditional use permit within five (5) years of final approval of this CUP by the Board of Trustees as required by Section 74-592 of the Township Code.
6. Applicant shall not (i) seek, apply for, or obtain approval for a designated Haul Route Permit from the WCRC for Earhart Road, (ii) utilize Earhart Road in a manner which exceeds County Normal Route or Class B vehicle axle weight, length or size limitations, and/or (iii) coordinate with the WCRC in any manner relating to improvement to Earhart Road prior to obtaining approval from the Township regarding the change in use. Applicant acknowledges and agrees that any change in the use of Earhart Road is a change in use under the CUP and will require an amendment to the CUP, or application for a new conditional use permit, in the sole discretion of the Township.
7. The Applicant and Township must sign a Development Agreement in a form acceptable to the Township, as required by Section 74-177 of the Code, and Applicant must deposit the performance guarantees as required by Section 74-592 of the Code for restoration of the Property and to cover the costs of the Township Engineer in certifying conformance, as well as a cash escrow with the Township to allow the Township and County to undertake additional dust control, grading and gravel application measures on Earhart Road.
8. Applicant shall remove all inoperable vehicles and equipment not used for Mining Activities from the Property within twelve (12) months of approval of the CUP.
9. In the event that a portion of the internal roadway located on the Property encroaches onto the neighboring property located at 4410 Earhart Road, Applicant shall move the portion of the road encroaching on the neighboring property to a location wholly located on the Property and which complies with the set-back and other requirements of the Township's Ordinance within thirty (30) days of approval of this CUP. Further, Applicant shall plant

grass seed to restore the neighboring property in the location of the road encroachment. In the event that the road does need to be located, the Applicant shall work cooperatively with the neighbor to ensure access to the neighboring property at times reasonably convenient to the neighboring property owner to relocate the road and restore the area by planting grass seed.

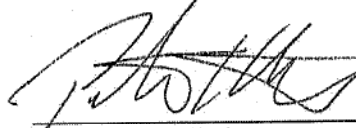
10. Applicant shall not perform any concrete, cement or asphalt production on the Property in accordance with the Section 74-592.
11. The Owner, Applicant and their tenants shall comply with all comments, conditions and recommendations set forth in this Resolution and the Reports related to the CUP and Preliminary and Final Site Plan and any reports and comments of the Township Building and Zoning Official, Township Fire Chief, Township attorney and Township Utilities Department.
12. Applicant shall limit truck entering and exiting the Property to an average of forty (40) trucks per day during peak season, with a maximum of eighty (80) trucks on any single day.
13. Applicant shall track, compile and submit to the Township in the form of an annual report (unless requested more frequently by the Township), information regarding the vehicle traffic using Earhart Road and entering the Property. Specifically, the Applicant shall track the number of daily vehicle trips entering and exiting the site in relation to the Mining Activities and report those numbers, as well as the monthly daily average and monthly maximum counts.
14. Use of the Property shall be in accordance with this Resolution and other applicable laws and ordinances, including the Township noise, light and nuisance ordinances, and ordinances relating to hours of operation.
15. All truck staging shall be contained on the Property. Truck staging on Earhart or Joy Road is prohibited. Applicant shall assist the Township in enforcing this condition.
16. Crushing operations are prohibited within 300 feet of any neighboring residences.
17. Applicant shall not utilize chemicals in relation to the washing process of the Mining Activities (only water is permissible in relation to the washing process).

18. Prior to any Mining Activities, Applicant shall provide the Township with updates of the Preliminary and Final Site Plan to address inconsistencies, requirements of the consultants' reports, and the terms of this Resolution.
19. Prior to creating a five acre lake on Property, Applicant shall establish and submit a plan to the Township to ensure that the planned lake will not impact the water level of surrounding wells and wetlands.
20. Applicant shall comply with all state and federal requirements for mineral mining, including any and all requirements set forth in the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq.*, MCL §125.3205.

VI. **RECOMMENDATION TO TOWNSHIP BOARD**

Based on the foregoing findings and standards and subject to the foregoing conditions, the Planning Commission recommends approval by the Township Board of the CUP for the Mining Activities and for approval of the Preliminary and Final Site Plan.

RESOLUTION DECLARED ADOPTED.



Peter Kotila, Chair
Planning Commission

I certify that the foregoing is a true and complete copy of a resolution adopted by the Ann Arbor Charter Township Planning Commission, County of Washtenaw, State of Michigan, at a special meeting held on July 13, 2020, that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Lee Gorman, Secretary
Planning Commission

Dated: _____, 2020

18. Prior to any Mining Activities, Applicant shall provide the Township with updates of the Preliminary and Final Site Plan to address inconsistencies, requirements of the consultants' reports, and the terms of this Resolution.
19. Prior to creating a five acre lake on Property, Applicant shall establish and submit a plan to the Township to ensure that the planned lake will not impact the water level of surrounding wells and wetlands.
20. Applicant shall comply with all state and federal requirements for mineral mining, including any and all requirements a set forth in the Michigan Zoning Enabling Act, Act 110 of 2006, *et. seq.*, MCL §125.3205.

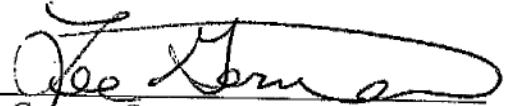
VI. RECOMMENDATION TO TOWNSHIP BOARD

Based on the foregoing findings and standards and subject to the foregoing conditions, the Planning Commission recommends approval by the Township Board of the CUP for the Mining Activities and for approval of the Preliminary and Final Site Plan.

RESOLUTION DECLARED ADOPTED.

Peter Kotila, Chair
Planning Commission

I certify that the foregoing is a true and complete copy of a resolution adopted by the Ann Arbor Charter Township Planning Commission, County of Washtenaw, State of Michigan, at a special meeting held on July 13, 2020, that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.



Lee Gorman, Secretary
Planning Commission

Dated: _____, 2020

EXHIBIT 7

2001 WL 1199901

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Evelyn **CHILDS**, Bonita Eileen **Childs**
and Anita **Childs**, Plaintiffs–Appellants,
v.

K–MART CORPORATION, 7/Meyer Limited
Partnership, American Realty **Corporation**
and Sobel Co., Defendants–Appellees,
and
WALKER DEVELOPMENTS, INC., Defendant.

No. 220870.

|

Oct. 9, 2001.

Before: **K.F. KELLY**, P.J., and **HOOD** and **ZAHRA**, JJ.

Opinion

PER CURIAM.

*1 Plaintiffs appeal as of right from an order granting summary disposition for defendants pursuant to [MCR 2.116\(C\)\(8\)](#). Plaintiffs' action sought injunctive relief and monetary damages for an alleged nuisance in fact. We affirm.

This case arises from the construction and operation of a Super **K–Mart** store located in the City of Detroit, directly across the street from plaintiffs' residence. Plaintiffs filed their complaint before the construction project was complete. Plaintiffs alleged that the Super **K–Mart**, which was being built in a primarily residential neighborhood, would interfere with plaintiffs' use and enjoyment of their land. Plaintiffs sought injunctive relief and damages in excess of \$10,000 for excavation work that had already begun at the Super **K–Mart** site. Defendants denied the allegations.¹

The Super **K–Mart** store was completed in November 1998, and remained open to the public twenty-four hours per day, seven days per week. On December 28, 1998, plaintiffs filed an amended complaint, again alleging that the completed Super **K–Mart** was an unreasonable interference

with plaintiffs' use and enjoyment of their land. In particular, plaintiffs alleged that the Super **K–Mart** was too large and busy for its residential location and that the construction of the store caused plaintiff, Evelyn **Childs**, to suffer respiratory problems. Plaintiffs asked the trial court to require defendants to take remedial actions to shield plaintiffs' property from the light, noise, pollution, traffic and crime that they alleged to originate from the Super **K–Mart** and sought money damages in excess of \$25,000.

Defendants filed a motion for summary disposition, arguing that plaintiffs failed to state a valid claim and that their action was barred by res judicata. The trial court concluded that plaintiffs failed to allege the elements of nuisance, particularly that the Super **K–Mart** caused significant harm to plaintiffs and that the operation of the Super **K–Mart** was unreasonable, and dismissed plaintiffs' claims pursuant to [MCR 2.116\(C\)\(8\)](#).²

I

Plaintiffs first argue that the trial court should not have dismissed their original complaint on the basis of res judicata or collateral estoppel. Plaintiffs claim that their complaint for injunctive relief was not barred by the trial court's decision in the NLDF case. See, *supra* n 1. However, in their brief on appeal, plaintiffs argue only that the trial court should not have dismissed their complaint pursuant to [MCR 2.116\(C\)\(8\)](#) because their complaint “sufficiently set forth a cause of action for a nuisance in fact.” In plaintiffs' reply brief on appeal, they argue that their claim was not barred by res judicata or collateral estoppel, but fail to provide any legal authority to support their conclusions that the NLDF lawsuit for an injunction against the construction of the Super **K–Mart** was not decided on the merits and that plaintiffs were not in privity with the parties in the NLDF litigation. Because this Court will not search for authority to support a plaintiffs' position, this issue is not properly presented for this Court's review. *Wilson v. Taylor*, 457 Mich. 232, 243; 577 NW2d 100 (1998); *McPeak v. McPeak*, 233 Mich.App 483, 495–496; 593 NW2d 180 (1999). Furthermore, we note that plaintiffs were permitted to amend their complaint following the trial court's grant of defendants' first motion for summary disposition. Thus, the trial court permitted plaintiffs to maintain their nuisance claim against defendants.

II

*2 Plaintiffs next argue that the trial court erred when it determined that plaintiffs failed to state a claim for nuisance. The grant or denial of a motion for summary disposition is a question of law that this Court reviews de novo on appeal. *Maiden v. Rozwood*, 461 Mich. 109, 120; 597 NW2d 817 (1999); *Spiek v. Dep't of Transportation*, 456 Mich. 331, 337; 572 NW2d 201 (1998). The trial court considered evidence outside the pleadings and, thus, we consider defendant's motion for summary disposition with respect to the nuisance issue as having been granted pursuant to MCR 2.116(C)(10). *Butler v. Western Waterproofing, Inc.*, 214 Mich.App 521, 524; 542 NW2d 912 (1996). When reviewing a grant of summary disposition pursuant to MCR 2.116(C)(10), this Court must consider the entire lower court record, including pleadings, affidavits, depositions, admissions and other documentary evidence submitted, in the light most favorable to the nonmoving party. *Ritchie-Gamester v. City of Berkley*, 461 Mich. 73, 75–76; 597 NW2d 517 (1999). Summary disposition is appropriate if the evidence shows that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v. Globe Life Ins Co*, 460 Mich. 446, 454–455; 597 NW2d 28 (1999).

A nuisance in fact is a nuisance by reason of the circumstances and surroundings, in contrast to a nuisance per se, which is a nuisance “at all times and under any circumstances.” *Wagner v. Regency Inn Corp.*, 186 Mich.App 158, 164; 463 NW2d 450 (1990). To survive summary disposition, a plaintiff must present sufficient evidence to raise an issue of fact in regard to whether a defendant created and maintained a nuisance in fact on its premises. *Id.*; see *Maiden, supra*. The elements of a nuisance in fact are: (1) the plaintiff has property rights and privileges with respect to the land alleged to be interfered with, (2) an invasion onto the property resulted in significant or substantial harm, (3) the defendant's conduct was the legal cause of the invasion, and (4) the invasion is either intentional and unreasonable, or is otherwise actionable as negligent, reckless or ultrahazardous conduct. *Adkins v. Thomas Solvent Co*, 440 Mich. 293, 304; 487 NW2d 715 (1992); *Cloverleaf Car Co v. Phillips Petroleum Co*, 213 Mich.App 186, 193; 540 NW2d 297 (1995); see also Taylor *et al.*, Michigan Practice Guide, Torts §§ 1:748–1:772. Thus, most significant to the instant case, plaintiffs must demonstrate that they suffered “significant harm resulting from [defendants'] unreasonable interference with the use or

enjoyment of [plaintiffs'] property.” *Jackson v. Thompson–McCully Co*, 239 Mich.App 482, 490; 608 NW2d 531 (2000); see also *Adams v. Cleveland–Cliffs Iron Co*, 237 Mich.App 51, 67, 72; 602 NW2d 215 (1999). To establish a claim of nuisance, “the plaintiff must prove all damages, which may be awarded only to the extent that the defendant's conduct was ‘unreasonable’ according to a public-policy assessment of its overall value.” *Id.* at 67. In making this assessment, this Court should balance the intrusion into the plaintiffs' enjoyment of their land with the degree to which the defendants' conduct is socially desirable. See *id.* at 62–63.

*3 Plaintiffs alleged that defendants' conduct, the construction and operation of the Super **K–Mart**, interfered with plaintiffs' use and enjoyment of land in which they had property rights. Plaintiffs' conclusory statement that such interference was “unreasonable ... i.e. a ‘nuisance in fact,’ ” is insufficient to support a cause of action for nuisance in fact. See *ETT Ambulance Service Corp v. Rockford Ambulance, Inc.*, 204 Mich.App 392, 395; 516 NW2d 498 (1994); *Freedman v. Oak Park*, 170 Mich.App 349, 355; 427 NW2d 557 (1988). Rather, plaintiffs must support the allegation with evidence of interference rising to the level of an unreasonable interference. Plaintiffs alleged:

- (a) [the Super **K–Mart**] is too large and busy to be situated on such a small site within a primarily residential neighborhood, to wit:
 - (i) retail store hours are 24 hours, 7 days per week;
 - (ii) freight delivery hours are not sufficiently limited;
 - (iii) there is insufficient parking;
 - (iv) there is insufficient traffic control;
 - (v) there is insufficient security;
 - (vi) there is light pollution inside Plaintiffs' home caused by, *inter alia*, automobile headlights in the parking lot, the parking lot lights, and the big “K” light;
 - (vii) there is *noise* pollution inside Plaintiffs' home caused by increased vehicles and pedestrians, e.g. honking horns, squealing brakes, loud radios, and freight delivery vehicles;
 - (viii) there are noxious *emissions* from the increased vehicles, e.g. making it difficult to breathe or entertain guests inside Plaintiffs' home;

(ix) there is increased vehicular (including semi-tractor trailers) and pedestrian traffic and illegal parking on Monte Vista; and

(x) there is increased auto theft near plaintiffs' residence.

(b) it has caused Plaintiff Evelyn Childs to experience respiratory problems as a result of air-borne material generated by Defendants' construction and use.

Plaintiffs supported their nuisance claim with little evidence other than their affidavits, which mirror the allegations in their amended complaint. In their affidavits, plaintiffs state that they reside at property directly across from the Super K-Mart and list their alleged harms. Each plaintiff complained of “substantial and unreasonable interference with the enjoyment of my property,” including (1) exhaust fumes that make it difficult to plant flowers and socialize outside, (2) excessive light that makes it “difficult to sleep, read, work, or concentrate,” (3) unsightly trash blowing into their yard, (4) increased traffic, (5) a belief that crime was increasing, and (6) a “much noisier” neighborhood. Plaintiffs stated that their “quality of ... life has been greatly diminished as a result of Defendants' operation of their Super Kmart Store,” and “Bonita and Anita Childs have taken some video which depicts conduct by Defendants which we believe is unreasonable, unwarranted, and infringes on our right to live quietly in a neighborhood we have enjoyed for 35 years.”³ The remainder of plaintiffs' evidence consisted of photographs of the houses in the area, which appear well maintained, and Evelyn Childs' medical records, which indicate that she complained of a slightly irritated voice, but that an examination of her neck and throat revealed nothing abnormal. For the reasons that follow, we conclude that such allegations and supporting evidence are insufficient to maintain a claim that plaintiffs suffered *significant* harm as a result of defendants' *unreasonable* interference in plaintiffs' property interests.

*4 Although plaintiffs recite numerous complaints, they fail to claim or to submit proof that any adverse consequences were caused by anything other than the ordinary operation of the Super K-Mart. Plaintiffs allege that harmful pollutants came from traffic and defendants' “use” of the property. Where plaintiffs fail to allege and provide evidence that the Super K-Mart does not comply with local zoning and ordinance requirements, the ordinary operation of a retail superstore and its associated traffic are not “unreasonable.” In *Thompson-McCully*, this Court concluded that the plaintiff

failed to establish a *prima facie* nuisance case against a proposed asphalt plant. *Thompson-McCully Co., supra* at 490–491. Like the instant case, the property designated for the asphalt plant had to be rezoned to permit construction of the offending business, in that case from agricultural to heavy industrial. *Id.* at 486. This Court stated that the asphalt plant would not “amount to an unreasonable and substantial interference with [the] plaintiffs' use and enjoyment of their properties that is practically certain, strongly probable, or inevitable.” *Id.* at 491. Although the plaintiffs in *Thompson-McCully* were seeking an injunction based on a theory of anticipatory nuisance, we consider the circumstances as guidance in the instant case. We cannot conclude that the problems plaintiffs allege to be caused by the Super K-Mart rise to the level of interference that an asphalt plant would cause. In contrast to the heavy pollution and noise associated with an asphalt plant, plaintiffs make only unsubstantiated allegations of increased traffic, unpleasant lighting and minor throat problems caused by dust.

Plaintiffs also failed to set forth any evidence that they suffered significant harm. The only harms alleged by plaintiffs were “respiratory problems” and “diminution of Plaintiffs' use and enjoyment of their residence, diminution or impairment of the value of plaintiff's personal property, and damages for Plaintiffs' personal injury, anxiety, and emotional distress.” Allegations of minimal harm will not support a nuisance claim. *Adkins, supra* at 309–310. By describing their alleged injuries merely as “problems” and “diminution” of the use, enjoyment and value of their property, plaintiffs failed to set their claims apart from minimal damages insufficient to support a claim of nuisance. Furthermore, plaintiffs failed to submit, and in fact admitted that they did not possess, evidence supporting their allegations of light pollution, increased crime, increased traffic, increased pollution and debris, or decreased property value.

In contrast, defendants submitted evidence indicating that the Detroit Planning and Development Department deemed the location appropriate for the Super K-Mart, as well as a traffic impact study indicating that the Super K-Mart would cause increased traffic delays and impede traffic movement, but that proposed improvements in the roads would result in improved traffic flow when compared to pre-construction traffic. Defendants also submitted the deposition of Detroit Police Officer Terrence Castelow, who was assigned to work out of the Super K-Mart facility. According to Officer Castelow, the area around the Super K-Mart was approximately seventy percent residential, with the remaining

thirty percent consisting of retail and industrial development. He did not notice an unreasonable increase in crime related to the Super **K-Mart**, but explained that five or six cars were been stolen out of the lot between November 1998 and April 1999. Officer Castelow stated that he perceived a decrease in local crime, which he attributed in part to the security lighting at the Super **K-Mart**. The area had previously been an unsafe, “car theft haven” with abandoned stores and crack houses in the neighborhood, one directly behind plaintiffs' house. According to defendants' evidence, the community found the store beneficial, and the local property values would most likely increase as a result of the Super **K-Mart's** construction and operation.

*5 Thus, the evidence before the trial court indicated that the Super **K-Mart** would provide a significant utility to the neighborhood. Furthermore, the uncontested evidence refuted plaintiffs' allegations that they suffered significant harms as a result of the Super **K-Mart's** operation. For the foregoing reasons, we conclude that the trial court properly dismissed plaintiffs' claims for nuisance.

Affirmed.

All Citations

Not Reported in N.W.2d, 2001 WL 1199901

Footnotes

- 1 Defendants argued that the instant case should be consolidated with a prior-filed case brought by others representing the neighborhood under the assumed name of the Neighborhood Legal Defense Fund (NLDF). The NLDF filed suit against the City of Detroit Planning and Development Department, the City of Detroit Planning Commission and City Council and the developer of the Super **K-Mart**, seeking to enjoin the construction of the Super **K-Mart**. The NLDF alleged that the Super **K-Mart** was contrary to the existing zoning ordinance and, therefore, a nuisance per se. Plaintiff, Evelyn **Childs**, testified in the NLDF litigation that the then-proposed Super **K-Mart** would be disruptive to the neighborhood, particularly in regard to traffic flow. On or about June 9, 1998, the trial court dismissed the NLDF case, finding that there was no evidence of an increase in crime related to the construction and operation of the Super **K-Mart**, that there was insufficient evidence of a diminution in property values, and that more people in the neighborhood favored the Super **K-Mart** than opposed its construction. Thereafter, defendants argued that the present case must be dismissed on the basis of res judicata and, alternatively, that there was no issue of material fact and defendants were entitled to judgment as a matter of law. The trial court granted defendants summary disposition and dismissed plaintiffs' claim for injunctive relief, but permitted plaintiffs to amend their complaint to plead a claim of nuisance and the jurisdictional amount of damages.
- 2 Also, the trial court denied reconsideration of the decision to grant defendants' motion for summary disposition regarding the injunction. See, *supra* n 1.
- 3 There is no indication that such a video was in evidence.

EXHIBIT 8

2014 WL 6068381

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED

Court of **Appeals** of Michigan.

Jeffrey **ZUMBACH**, Megan **Zumbach**, Michael
Zubrzycki, Elizabeth Zubrzycki, Randall Ykema,
Sarah Ykema, Jade Upchurch, Cathie McIntyre,
Jeffrey Gross, Amy Gross, Brian D. Etter, Terri Etter,
Geoffrey Burt, and Cheryl Burt, Plaintiffs–Appellants,
and

Timothy Upchurch, Plaintiff,

v.

Detroit Edison COMPANY, Defendant–Appellee.

Jeffrey **Zumbach**, Meghan **Zumbach**, Michael
Zubrzycki, Elizabeth Zubrzycki, Randall
Ykema, Sarah Ykema, Timothy Upchurch, Jade
Upchurch, Cathie McIntyre, Jeffrey Gross, Amy
Gross, Brian D. Etter, Terri Etter, Geoffrey
Burt, and Cheryl Burt, Plaintiffs–Appellees,

v.

Detroit Edison Company, Defendant–Appellant.

Docket Nos. 316863, 317928.

|

Nov. 13, 2014.

Oakland Circuit Court; LC No.2009–104350–CE.

Before **FITZGERALD**, P.J., and **WILDER** and **OWENS**, JJ.**Opinion**

PER CURIAM.

*1 In Docket No. 316863, plaintiffs-appellants appeal as of right the order granting summary disposition pursuant to **MCR 2.116(C)(10)** in this action alleging that defendant's activities at its Pontiac Service Center constituted a private nuisance. In Docket No. 317928, defendant appeals as of right the order denying its motion for case evaluation sanctions. We affirm in Docket No. 316863, and we reverse and remand in Docket No. 317928.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs are, or were, the owners of eight houses in the city of Sylvan Lake or Bloomfield Township who, since 1998 or later, began living in a residential neighborhood next to the industrial zone where defendant operates its Pontiac Service Center. The service center straddles the boundary line between Sylvan Lake and Bloomfield Township and parts of the service center lie in each municipality. Plaintiffs filed this lawsuit alleging that the noises, fumes, and lights from the service center invade and disturb the peace and quiet enjoyment of their homes and violate common law and township ordinances. They brought claims alleging nuisance¹ and negligent nuisance² and sought both equitable relief and damages. They alleged that their damages consisted of loss of the normal use and enjoyment of their homes; impairment of their health; annoyance, inconvenience and discomfort, including mental stress and anguish; damage to real and personal property and the expenses of attempts to mitigate such damages; and diminution in the value of their properties, real and personal. They sought money damages in excess of \$25,000 for each plaintiff, abatement of the nuisance, and interest, costs, and attorney fees.

After answering the complaint, defendant moved for summary disposition pursuant to **MCR 2.116(C)(10)** and for a declaratory judgment. First, defendant asserted that it was entitled to summary disposition because it was not in violation of any Bloomfield Township ordinance or law alleged by plaintiffs, because all of the plaintiffs admitted that they experienced no real or personal property damage, and 12 of the 13 plaintiffs admitted that they incurred no mitigation expenses, and because plaintiffs had no evidence that defendant's activities caused a diminution in the value of their real properties. Second, defendant asserted that it was entitled to summary disposition of plaintiffs' nuisance claims because plaintiffs could not show the required "significant harm." Third, defendant asserted that plaintiffs could not show that defendant's conduct was either intentional or unreasonable, or that it was negligent. It also asserted that it, through voluntary cooperative action, had already resolved significant aspects of plaintiffs' complaints and that it had worked cooperatively with Bloomfield Township and the city of Sylvan Lake to resolve concerns.

Following a hearing on the motion, the trial court granted summary disposition in favor of defendant. The court stated in a written opinion:

*2 The Court finds that summary disposition is appropriate. Plaintiffs have failed to establish the “significant harm” element of their private nuisance claims. The evidence shows that the noise complained of is either temporary and evanescent or appropriate in time of day and duration. Plaintiffs cannot show that the daily noises from loading vehicles or work trucks running in the morning or returning to the yard at the end of the day ever reach levels that are so inconsistent with their neighborhood as to rise to the level of nuisance. There is no evidence that the loud booming noises last for more than a few seconds, occur more than once a month or exceed the limit of short term noise under the Ordinance. In addition, there is no evidence that fumes from Defendant's vehicles violate any air quality standard or unreasonably interfere with the use of Plaintiff's properties. There is no admissible evidence that Defendant's activities have caused a diminution in the value of Plaintiff's properties. Plaintiffs have not shown that Defendant acted with the intent of interfering with the use and enjoyment of their land. Finally, the Court finds that there is no evidence that Defendant's conduct was either, intentional and unreasonable, or that it was negligent. The evidence shows that Defendant's industrial activities are conducted as permitted in the Bloomfield Township zoning district for ML and do not violate the noise ordinance. Therefore, the activities cannot be considered unreasonable in light of a public policy assessment of its overall value and Defendant's priority in time. The Court notes that during the pendency of this lawsuit, Defendant has voluntarily resolved several of the concerns

expressed by Plaintiffs and would encourage the parties to continue to work cooperatively to address any remaining issues.

II. DOCKET NO. 316863

Plaintiffs argue that the court committed palpable error by applying an incorrect test of liability with respect to defendant's conduct. We review de novo a trial court's grant of summary disposition under [MCR 2.116\(C\)\(10\)](#). *McLean v. Dearborn*, 302 Mich.App 68, 72; 836 NW2d 916 (2013). In reviewing a grant of summary disposition under [MCR 2.116\(C\)\(10\)](#), this Court considers the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Sallie v. Fifth Third Bank*, 297 Mich.App 115, 117–118; 824 NW2d 238 (2012). This Court is “limited to considering the evidence submitted to the trial court before its decision on the motions.” *Calhoun Co v. Blue Cross Blue Shield of Mich*, 297 Mich.App 1, 12; 824 NW2d 202 (2012). Summary disposition is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. [MCR 2.116\(C\)\(10\)](#); *Latham v. Barton Malow Co*, 480 Mich. 105, 111; 746 NW2d 868 (2008).

The trial court found that there was no evidence that defendant's “conduct was either intentional and unreasonable or that it was negligent” and that “the activities cannot be considered unreasonable.” Plaintiffs maintain that the “test in a nuisance case is not whether the defendant's *conduct* was unreasonable, but whether the degree of *interference* with the plaintiffs was unreasonable.” Plaintiffs maintain that the Supreme Court's definition of nuisance set forth in *Adkins v. Thomas Solvent Co*, 440 Mich. 293; 487 NW2d 715 (1992), is erroneous and is dicta. We disagree.

*3 By definition, a private nuisance refers to “a nontrespassory invasion of another's interest in the private use and enjoyment of land.” *Adkins*, 440 Mich. at 302. In other words, “the gist of a private nuisance action is an interference with the occupation or use of land or an interference with servitudes relating to land.” *Id.* at 303. An actor is liable for private nuisance involving a nontrespassory invasion of another's interest in the private use and enjoyment of land if:

(a) the other has property rights and privileges in respect to the use or enjoyment interfered with, (b) the invasion results in significant harm, (c) the actor's conduct is the legal cause of the invasion, and (d) the invasion is either (i) intentional and unreasonable, or (ii) unintentional and otherwise actionable under the rules governing liability for negligent, reckless, or ultrahazardous conduct. [*Adkins*, 440 Mich. at 304.]

This is precisely the standard that the trial court applied. Although plaintiffs assert that this is not the proper standard, a review of plaintiffs' first amended complaint reveals that plaintiffs alleged that defendant committed an invasion that was either (1) intentional and unreasonable or (2) unintentional and otherwise actionable under the rules governing liability for negligent, reckless, or ultrahazardous conduct. The trial court found that defendant's activities, which resulted in the alleged invasions, did not result in significant harm. The trial court additionally found that the activities, which resulted in the alleged invasions, were neither intentional and unreasonable, nor unintentional and otherwise negligent. Although the trial court used the term "activities," the court's reference to noise and fumes (the alleged invasions resulting from the activities) clearly shows that the trial court was referring to the invasion and not the activity causing the invasion. Thus, plaintiffs' argument that the trial court applied an incorrect legal standard is misplaced.

Plaintiffs contend in the alternative that, if *Adkins* provides the appropriate standard, "there is evidence from which a trier of fact must infer intent." However, plaintiffs offer no argument or analysis in support of this contention. Their sole statement with regard to this contention is that "The undisputed evidence of record is that in 2006 the defendant expanded the activities at its Bloomfield/Sylvan Lake facility by relocating operations there." This argument is considered abandoned. See *Berger v. Berger*, 277 Mich.App 700, 712; 747 NW2d 336 (2008). Additionally, the statement is not supported by the record. Plaintiffs presented no evidence, other than their own assertions, that the service center was expanded in 2006. Defendant, however, presented the affidavits of Michael J. Criss and Nick Pfeffer. Criss has

been employed by defendant for 35 years. He was the manager of the Pontiac Service Center from the first quarter of 2004 through the third quarter of 2005. He averred that the operations of the Pontiac Service Center were conducted on a 24-hour, 7-day-per-week basis as needed, and that the operations at the service center have always been conducted on a 24-hour, 7-day-per-week basis as needed. He averred that "Prior to November 2006, the operations at the Pontiac Service Center to restore electricity necessarily involved the utilization of journeymen and apprentice linemen, diesel trucks and equipment to restore electricity at locations within the Service Center territory in the same way as utilized after November 2006 at the Pontiac Service Center." Pfeffer averred that he was the Manager of the Northwest Region of Service Operations headquartered at the Pontiac Service Center from July 2006 to January 2011. He averred that the operations at the Pontiac Service center "were conducted on a 24-hour, 7-day-per-week basis as needed since electricity is a 24-hour business, and everyone wants their power restored as fast as possible." He further averred that "operations at the Pontiac Service Center have always been conducted on a 24-hour, 7-day-per-week basis as needed for the same reasons...."

*4 Plaintiffs also challenge the trial court's finding that plaintiffs failed to present evidence to establish the elements of their cause of action. This issue was not identified in plaintiffs' statement of questions presented.³ Issues must be raised in petitioner's statement of questions presented in order to be properly presented for this Court's review. *MCR 7.215(C)(5)*; see *Ypsilanti Fire Marshal v. Kircher (On Reconsideration)*, 273 Mich.App 496, 553; 730 NW2d 481 (2007). Additionally, plaintiffs' challenge is premised upon the common-law standard of nuisance, not the standard announced in *Adkins*.

Although plaintiffs' next argument is difficult to discern, it appears that they are arguing that the trial court erred by granting summary disposition in favor of defendant because plaintiffs presented "deposition summaries" and "a plethora of testimony collected in the Statement of Facts" to support their claims at trial. At the motion hearing, plaintiffs similarly argued that, under the common law, the issue was whether there was enough noise to cause an interruption in the sleep and normal household living, use, and enjoyment of the properties, and that "that's going to depend on the plaintiffs' own testimony. It's going to depend on the testimony of lay witnesses." Again, however, plaintiffs' argument is based on their misplaced assertion that the standard set forth in *Adkins*

is erroneous. Plaintiffs presented their own unsubstantiated allegations and presented no testimony or affidavits in support of their allegations in response to defendant's motion for summary disposition. Their purported noise expert, Eric W. Zwerling,⁴ merely instructed plaintiff Zubrzycki over the telephone how to use a device to measure sound, and it was Zubrzycki who took the measurements.

Plaintiffs have not demonstrated that the trial court ignored admissible evidence and improperly weighed other evidence. Once defendant presented documentary evidence to support its position that it did not violate any noise ordinances and that there was no diminution in property values in regard to its motion for summary disposition, plaintiffs did not submit any documentary evidence in their response to defendant's motion as required by [MCR 2.116\(G\)\(4\)](#). Rather, they simply quoted answers, not in context and without including the questions that were asked, from plaintiffs' deposition testimony. Plaintiffs' argument is without merit.

III. DOCKET NO. 317928

Defendant argues that the trial court erred by denying its motion for case evaluation sanctions. We review de novo the circuit court's decision whether to award case evaluation sanctions under [MCR 2.403\(O\)](#).⁵ *Smith v. Khouri*, 481 Mich. 519, 526; 751 NW2d 472 (2008). The circuit court's decision whether to apply the interest of justice exception of [MCR 2.403\(O\)\(11\)](#) is reviewed for an abuse of discretion. *Harbour v. Correctional Med Services, Inc.*, 266 Mich.App 452, 465; 702 NW2d 671 (2005). This Court reviews de novo the interpretation and application of the court rules. *In re Mason*, 486 Mich. 142, 152; 782 NW2d 747 (2010).

*5 The October 6, 2010, case evaluation in this case resulted in a unanimous evaluation totaling \$10,500.⁶ All parties, with the exception of plaintiff Amy Gross, rejected the case evaluation before the November 3, 2010, deadline for responding to the award.⁷ After the trial court granted summary disposition in favor of defendant on June 5, 2013, defendant moved on July 3, 2013, for case evaluation sanctions against plaintiffs. The motion sought \$380,648 in attorney fees and approximately \$49,000 in taxable costs.

On July 12, 2013, plaintiffs answered the motion. They asserted that defendant's motion was untimely because the court's February 24, 2011, opinion and order⁸ disposed of

the last pending claim and closed the case and, therefore, that order controlled the motion for case evaluation sanctions. They also asserted that they were primarily seeking equitable relief and that "equitable relief is beyond the powers of the case evaluators to recommend."

Following a hearing on the motion on July 24, 2013, the trial court denied defendant's motion for case evaluation sanctions. The court noted that several of the concerns expressed by plaintiffs had been addressed by defendant and that therefore there was no "clear prevailing or losing party in this lawsuit." The court also found that because the equitable relief sought was "for the benefit of the entire neighborhood ... even those that were nonparties to this lawsuit," that the interest of justice exception in [MCR 2.403\(O\)](#) warranted the denial of case evaluation sanctions.⁹

Michigan follows the American rule regarding payment of attorney fees and costs, meaning that attorney fees are not recoverable from the losing party as costs except in those instances where they are expressly authorized by statute or court rule. *Haliw v. Sterling Hts.*, 471 Mich. 700, 707; 691 NW2d 753 (2005); [MCL 600.2405\(6\)](#). Case evaluation sanctions are expressly provided for in [MCR 2.403\(O\)\(1\)](#), which states that:

If a party has rejected [a case] evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

The term "verdict" includes "a judgment entered as a result of a ruling on a motion after rejection of the case evaluation." [MCR 2.403\(O\)\(2\)\(c\)](#). In this case it is undisputed that the plaintiffs, with the exception of Amy Gross, rejected the case evaluation. Defendant also rejected the evaluation. Additionally, the action proceeded to a verdict (which was the result of a motion as provided by subrule (O)(2)(c)), and the verdict was more favorable to defendant than the case evaluation.

The use of the word “must” indicates that the imposition of case evaluation sanctions is mandatory in unanimous evaluation awards. *Allard v. State Farm Ins Co*, 271 Mich.App 394, 398–399; 722 NW2d 268 (2006). There are only three narrow exceptions to the mandatory imposition of case evaluation sanctions. Thus, the trial court's decision to *not* award case evaluation sanctions is very limited. As applicable to this case, “[i]f the ‘verdict’ is the result of a motion as provided by subrule (O)(2)(c), the court may, in the interest of justice, refuse to award actual costs.” MCR 2.403(O)(11). Analyzing MCR 2.403(O)(11), this Court has held: “The term ‘interest of justice’ ... must not be too broadly applied so as to swallow the general rule of subsection 1 and must not be too narrowly construed so as to abrogate the exception.” *Haliw v. City of Sterling Hts (On Remand)*, 266 Mich.App 444, 448; 702 NW2d 637 (2005), citing *Luidens v. 63rd Dist Court*, 219 Mich.App 24, 33; 555 NW2d 709 (1996). The trial court is required to articulate the basis of its discretionary decision when it invokes the interest of justice provision to deny sanctions. *Haliw*, 266 Mich.App at 449–450. The interest of justice provision should only be invoked in unusual circumstances, such as where there is (1) a legal issue of first impression, (2) unsettled law where substantial damages are at issue, (3) an indigent party and issue in a case that merits a decision by a trier of fact, (4) the prevailing party has engaged in misconduct, or (5) the effects on third parties may be significant. *Id.* at 448–449. “The common thread in these examples,” *Luidens* instructs, “is a public interest in having an issue judicially decided rather than merely settled by the parties.” *Id.* at 449, citing *Luidens*, 219 Mich.App at 36. While the Court noted that this list of unusual circumstances was not exclusive, the Court also stated “that factors normally present in litigation, such as a refusal to settle being viewed as ‘reasonable,’ or that the rejecting party's claims are ‘not frivolous,’ ... are insufficient ‘without more’ to justify not imposing sanctions in the ‘interest of justice.’ “ *Haliw*, 266 Mich.App at 448, citing *Luidens*, 219 Mich.App at 33–34, 36–37.

*6 Here, the trial court denied the motion for case evaluation sanctions under the interest of justice exception. The court opined that the lawsuit sought equitable relief that had a significant effect on third parties who lived in proximity to the service center. The court also opined that plaintiffs had received much of the equitable relief requested in the form of accommodations made by defendant to decrease the noises and fumes emanating from the service center and, therefore, “there was no clear prevailing or losing party in this lawsuit.” The court determined that these circumstances rendered it appropriate to deny case evaluation sanctions. We disagree.

None of the unusual circumstances articulated in *Haliw* and *Luidens* are present. The record reveals that approximately 178 citizens signed the “Petition to stop the expansion and unwanted noise and disturbances emanating from the DTE Pontiac Service Center at 1970 Orchard Lake Road” that was circulated by plaintiff Zubrzycki, but only 8 property owners opted to join in this lawsuit. Additionally, any accommodations made by defendants with regard to complaints regarding noise and fumes were voluntary, and despite those voluntary accommodations, plaintiffs proceeded with the lawsuit.¹⁰ Neither of these factors warrants imposition of the narrow interest of justice exception, and the trial court abused its discretion by applying the exception. Under the test set forth in MCR 2.403(O)(1), the verdict was more favorable to defendant.¹¹ Consequently, an award of case evaluation sanctions is mandatory. *Allard*, 271 Mich.App at 398–399. Accordingly, we reverse the order denying defendant's motion for case evaluation sanctions and remand to the trial court for a determination of the amount of case evaluation sanctions.

We affirm in Docket No. 316863. We reverse and remand for a determination of the amount of case evaluation sanctions in Docket No. 317928. Jurisdiction is not retained.

All Citations

Not Reported in N.W.2d, 2014 WL 6068381

Footnotes

- 1 Plaintiffs alleged that “These conditions at defendants' premises have been and continue to be so noxious, offensive and hazardous that they have and continue to constitute a nuisance to the plaintiffs.”

- 2 Plaintiffs alleged that “Plaintiffs have property rights and privileges with respect to the use and enjoyment of their lands.” “The invasion complained of results in significant harm.” “The defendant’s conduct is a legal cause of the invasion.” “The invasion is either (i) intentional and unreasonable or (ii) unintentional and otherwise actionable under the rules governing liability for negligent, reckless or ultrahazardous conduct.”
- 3 Rather, plaintiffs presented the issue of whether the trial court applied the correct legal standard.
- 4 Zwerling testified in his deposition that he took a 3–day community noise enforcement certification course in New Jersey on three occasions. He testified that he is not a professional engineer, and that he is not certified as an acoustical or noise engineer.
- 5 This appeal concerns only the decision *whether* to award case evaluation sanctions.
- 6 \$1,500 for each of seven households, and zero for plaintiff Upchurch.
- 7 Defendant did not seek case evaluation sanctions against Amy Gross.
- 8 Apparently, in February 2011, defendant moved to dismiss on the ground that the court did not have jurisdiction over this matter and that jurisdiction rested with the Public Service Commission. The trial court granted the motion, deferring to the PSC under the “Doctrine of Primary Jurisdiction.” The circuit court action was dismissed without prejudice so that the claims could be submitted to the PSC. The trial court denied plaintiffs’ motion for reconsideration. On August 18, 2011, plaintiffs petitioned the PSC for an administrative hearing and to grant them equitable relief. The following day, the PSC rejected their claim, stating that it had no jurisdiction over the facts alleged and relief requested. On October 18, 2012, plaintiffs filed a motion in the circuit court to reinstate the case. According to defendant, counsel for plaintiff and defendant stipulated to have the matter reinstated “so there was not a—a new lawsuit filed, it’s the same lawsuit, and based upon the case law the—the previous orders entered in this case including the prior grant of summary disposition on the issue of primary jurisdiction was incorporated into the February 24th—I’m sorry it was incorporated into the order reinstating this case which occurred on October 28, 2012.” “There had not been a final judgment for purposes of the case evaluation rule until this Court’s order granting summary disposition on June 5, 2013, um—that is clear from the Michigan Supreme Court that has stated that for purposes awarding sanctions under [MCR 2.403\(O\)](#) a verdict must represent a finding of the amount the prevailing party regarding **Detroit**—what **Detroit Edison** should be awarded, that is a no cause, until the—this Court’s June 5, two–13 (sic) order. And the case file also provides it’s the ultimate verdict that the parties are left with that should be measured against case evaluation to determine whether sanctions should be imposed on the rejecting party, in this case that would be the June 5, 2013, order.”
- 9 The court stated that “an award of costs against Plaintiffs would not be fair where the equitable relief sought was for the benefit of the entire neighborhood near the service center and all the neighbors, even those that were nonparties to this lawsuit, received relief ah—when Defendant made the changes.”
- 10 In its answer to plaintiffs amended complaint, defendant states that “All reasonably possible steps were taken to minimize the impact of any noise, emissions, or light.”
- 11 We reject the trial court’s finding that there was no clear prevailing party in this case as a result of defendant’s voluntary accommodations to address plaintiffs’ complaints. The factors that are relevant to the determination of a “prevailing party” are the case evaluation and the verdict. See [MCR 2.403\(O\)\(1\)](#) should be awarded.... Here there never was any determination

EXHIBIT 9

**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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**[PROPOSED] ORDER REGARDING DEFENDANTS' MOTION FOR SUMMARY
DISPOSITION**

At a session of said Court held in
the City of Ann Arbor, County of Washtenaw,
State of Michigan on _____

PRESENT: Hon. Tracy Van Den Bergh

This matter, having come before the Court upon the Defendants' Motion for Summary
Disposition pursuant to MCR 2.116(C)(8), the Court having had an opportunity to review the

Parties' briefs and hear argument on October 14, 2026, and the Court otherwise being advised in the premises,

For the reasons set forth on the record, IT IS HEREBY ORDERED:

Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(8) on the basis that Plaintiffs' have failed to state a claim under all counts is GRANTED.

IT IS FURTHER ORDERED, in light of the Court's rulings on Defendants' Motion for Summary Disposition that Plaintiffs' Amended Complaint is DISMISSED WITH PREJUDICE.

This is a final order and closes this case.

DATED:

Hon. Tracy Van Den Bergh