



MCGRAW MORRIS P.C.

THOMAS J. MCGRAW
G. GUS MORRIS
CRAIG R. NOLAND
STACY J. BELISLE
KEVIN K. KILBY
CHARLES E. LOVELL
THOMAS D. LANDA
BOGOMIR RAJSIC III
JOHN T. GEMELLARO
ANNA M. KATZ
ANGELO L. BERLASI, JR.
TRACEY R. DeVRIES
RYAN A. PUBLISKI
NICHOLAS R. SCHNEIDER

44 CESAR E. CHAVEZ AVE SW
SUITE 200
GRAND RAPIDS, MI 49503
TELEPHONE: (616) 288-3700
FACSIMILE: (248) 502-4001

October 27, 2025

GLENN A. DIEGEL
OF COUNSEL

Clerk of the Court
Kent County Circuit Court
180 Ottawa Avenue NW
Grand Rapids, MI 49503

RE: Donna Brandenburg v. Byron Township
Case No.: 2025-20557-CK

Dear Clerk:

Please find enclosed "*Judge's copies*" of the following documents which have been electronically filed via the Kent County Circuit Court's e-filing system:

- Defendant's motion for summary disposition
- Brief in support of motion
- Notice of Hearing

Thank you for your kind assistance. Please contact me if you have any questions or concerns.

Very truly yours,

Beau Rajsic

Bogomir Rajsic, III
brajsic@mcgrawmorris.com
(616) 288-3703

BRIII/ed
Enclosures

cc: Donna Brandenburg via First Class Mail w/ **Certificate of Service**

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

DONNA BRANDENBURG,

Plaintiff,

Case No.: 2025-20557-CK

v.

Hon. Christina Mims

BYRON TOWNSHIP,

Defendant.

Donna Brandenburg
In Pro Per
6842 Byron Shores Court
Byron Center, MI 49315-8045
(616) 430-4410
info@brandenburgforgovernor.com
contact@donna4mi.com

Bogomir Rajsic, III (P79191)
Tracey R. DeVries (P84286)
McGRAW MORRIS P.C.
Attorneys for Defendant
44 Cesar E. Chavez Avenue, SW, Suite 200
Grand Rapids, MI 49503
(616) 288-3700/Fax (248) 502-4001
brajsic@mcgrawmorris.com
tdevries@mcgrawmorris.com

CERTIFICATE OF SERVICE

The undersigned certifies that on the 27th day of October, 2025 service of Defendant's Motion for Summary Disposition, Brief in support of Motion and Notice of Hearing was made via U.S. First Class mail, postage prepaid upon Pro Per Plaintiff at the address reflected on the pleadings.

I declare that the statements above are true to the best of my information, knowledge and belief.

/s/ Doreen Engel
Doreen Engel
Legal Assistant McGraw Morris PC

By electronic signature, I verify and affirm the accuracy of the document.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

DONNA BRANDENBURG,

Plaintiff,

Case No.: 2025-20557-CK

v.

Hon. Christina Mims

BYRON TOWNSHIP,

Defendant.

_____ /

Donna Brandenburg In Pro Per 6842 Byron Shores Court Byron Center, MI 49315-8045 (616) 430-4410	Bogomir Rajsic, III (P79191) Tracey R. DeVries (P84286) McGRAW MORRIS P.C. Attorneys for Defendant 44 Cesar E. Chavez Avenue, SW, Suite 200 Grand Rapids, MI 49503 (616) 288-3700/Fax (248) 502-4001 brajsic@mcgrawmorris.com tdevries@mcgrawmorris.com
---	--

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's motion for summary disposition will be heard before the Honorable Christina Mims, Circuit Judge, on Friday, December 4, 2025, at 9:00 a.m., or as soon thereafter as counsel may be heard.

McGRAW MORRIS, P.C.
Attorneys for Defendant

Dated: October 27, 2025

BY: /s/ Bogomir Rajsic, III

Bogomir Rajsic, III (P79191)
Tracey R. DeVries (P84286)
44 Cesar E. Chavez Avenue SW, Ste 200
Grand Rapids, MI 49503
(616) 288-3700
brajsic@mcgrawmorris.com
tdevries@mcgrawmorris.com

By electronic signature, I verify and affirm the accuracy of the document.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

DONNA BRANDENBURG,

Plaintiff,

Case No.: 2025-20557-CK

v.

Hon. Christina Mims

BYRON TOWNSHIP,

Defendant.

Donna Brandenburg In Pro Per 6842 Byron Shores Court Byron Center, MI 49315-8045 (616) 430-4410	Bogomir Rajsic, III (P79191) Tracey R. DeVries (P84286) McGRAW MORRIS P.C. Attorneys for Defendant 44 Cesar E. Chavez Avenue, SW, Suite 200 Grand Rapids, MI 49503 (616) 288-3700/Fax (248) 502-4001 brajsic@mcgrawmorris.com tdevries@mcgrawmorris.com
---	--

**DEFENDANT'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR
2.116(C)(7) AND (8)**

NOW COMES DEFENDANT, Byron Township, by and through its attorneys, McGraw Morris PC, and pursuant to MCR 2.116(C)(7) and (8), hereby moves that this Honorable Court enter an Order granting summary disposition pursuant to MCR 2.116(C)(7) and (8) in its favor and dismissing Plaintiff's Complaint with prejudice. In support of its motion, Defendant relies on the concurrently filed brief and exhibits in support of the same.

WHEREFORE, for the independent reasons outlined in its supporting brief, Defendant requests that this Honorable Court grant its motion and dismiss Plaintiff's Complaint with prejudice.

McGRAW MORRIS, P.C.
Attorneys for Defendant

Dated: October 27, 2025

BY: /s/ Bogomir Rajsic, III

Bogomir Rajsic, III (P79191)

Tracey R. DeVries (P84286)

44 Cesar E. Chavez Avenue SW, Ste 200

Grand Rapids, MI 49503

(616) 288-3700

brajsic@mcgrawmorris.com

tdevries@mcgrawmorris.com

By electronic signature, I verify and affirm the accuracy of the document.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

DONNA BRANDENBURG,

Plaintiff,

Case No.: 2025-20557-CK

v.

Hon. Christina Mims

BYRON TOWNSHIP,

Defendant.

Donna Brandenburg In Pro Per 6842 Byron Shores Court Byron Center, MI 49315-8045 (616) 430-4410	Bogomir Rajsic, III (P79191) Tracey R. DeVries (P84286) McGRAW MORRIS P.C. Attorneys for Defendant 44 Cesar E. Chavez Avenue, SW, Suite 200 Grand Rapids, MI 49503 (616) 288-3700/Fax (248) 502-4001 brajsic@mcgrawmorris.com tdevries@mcgrawmorris.com
---	--

**DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR
SUMMARY DISPOSITION**

Hearing Date: **December 4, 2025**

Hearing Time: **9:00 a.m.**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
EXHIBITS	iii
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS	2
LAW AND ARGUMENT	4
III. STANDARD OF REVIEW.....	4
ARGUMENT	5
IV. PLAINTIFF DOES NOT HAVE A PRIVATE RIGHT OF ACTION WHICH IS DISPOSITIVE OF CLAIMS I, II, AND III.....	5
V. PLAINTIFF’S CLAIMS FAIL AS A MATTER OF LAW	7
A. The Township did not Violate MCL 324.30304 because it Obtained Proper Permitting and because Plaintiff’s Factual Assertions are Patently False.	8
B. The Township did not Violate MCL 324.30312.....	10
C. The Township did not Violate MCL 324.32723 because the Project Received the Proper Permitting, and Plaintiff’s Factual Allegations are Patently False.	10
VI. PLAINTIFF’S NEGLIGENCE CLAIM UNDER IS BARRED BY GOVERNMENTAL IMMUNITY.	11
CONCLUSION AND REQUEST FOR RELIEF	12

TABLE OF AUTHORITIES

Cases

<i>Check Reporting Servs, Inc v Mich Nat Bank-Lansing</i> , 191 Mich App 614; 478 NW2d 893 (1991)	5
<i>Forster v Delton Sch Dist</i> , 176 Mich App 582; 440 NW2d 421 (1989).....	6, 7
<i>Hannay v Dep't of Transp.</i> , 497 Mich 45; 860 NW2d 67 (2014)	11
<i>In re Bradley Estate</i> , 491 Mich 367; 835 NW2d 545 (2013)	11
<i>Mack v City of Detroit</i> , 467 Mich 186; 649 NW2d 47 (2002).....	4, 11
<i>Maskery v Univ of Mich Bd of Regents</i> , 468 Mich 609; 664 NW2d 165 (2003).....	12
<i>Nawrocki v Macomb Co. Rd. Com'n</i> , 463 Mich 143; 615 NW2d 702 (2000).....	11
<i>Pompey v Gen Motors Corp</i> , 385 Mich 537; 189 NW2d 243 (1971).....	5
<i>Ray v Swager</i> , 501 Mich 52; 903 NW2d 366 (2017).....	11
<i>Stegall v Resource Technology Corp</i> , 514 Mich 327; 22 NW3d 410 (2024).....	5
<i>Summer v Southfield Bd of Ed</i> , 310 Mich App 660; 874 NW2d 150 (2015).....	5
<i>Wade v Dept of Corrections</i> , 439 Mich 158; 482 NW2d 26 (1992).....	4
<i>Wesche v Mecosta Co Rd. Comm</i> , 480 Mich 75, 84 n. 10; 746 NW2d 847 (2008).....	11, 12

Statutes

MCL 324.30301	1
MCL 324.30304	6, 8
MCL 324.30311d	6
MCL 324.30312	6, 8, 10
MCL 324.30316	1, 5, 6, 7
MCL 324.32723	7, 8, 10
MCL 691.1401(f)	12
MCL 691.1402	12
MCL 691.1405	12
MCL 691.1406	12
MCL 691.1407(1)	11, 12
MCL 691.1407(4)	12
MCL 691.1407(a)	11
MCL 691.1413	12
MCL 691.1417(2)	12

Rules

MCR 2.116(C)(7).....	4
MCR 2.116(C)(8).....	4, 5

EXHIBITS

- Exhibit 1 - Affidavit of Jeff Gritter
- Exhibit 2 - Project Phase 2 Map and Plans
- Exhibit 3 - WPA-related permits
- Exhibit 4 - Wetland impact sketch
- Exhibit 5 - Part 327 Approval

I. INTRODUCTION

This case relates to a multi-year sewer extension project (the “Project”) located in Byron Township (the “Township”) whereby dewatering was necessary to complete the construction. Plaintiff filed a Complaint for Emergency Injunctive Relief pursuant to MCL 324.30316 wherein she has asserted four legal theories. The Court previously denied Plaintiff’s request for a Temporary Restraining Order and, impliedly, Plaintiff’s Motion for Preliminary Injunction. In addition to seeking injunctive relief, Plaintiff’s Complaint asserts four causes of action against the Township. Plaintiff’s Count I alleges a violation of MCL 324.30304 (unauthorized wetland draining). Plaintiff’s Count II alleges failure to comply with wetland mitigation requirements. Plaintiff’s Count III alleges a violation of large quantity water withdrawal regulations and Count IV alleges negligence in oversight of authorized activities. None of Plaintiff’s pleaded causes of action are legally viable and the Township is entitled to summary disposition.

First, Plaintiff cannot file a private right of action because MCL 324.30316 is an enforcement provision located in the Wetlands Protection Act, MCL 324.30301 et. seq. (the “WPA” or “Part 303 of NREPA”). Under the WPA, Plaintiff lacks any sort of authority, capacity, or standing to pursue this matter. As Plaintiff lacks legal capacity, she also lacks the ability to seek emergency injunctive relief. MCL 324.30316 of the WPA provides that the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) and the Michigan Attorney General have exclusive authority to enforce this provision of the WPA. As acknowledged by Plaintiff in paragraph 10 of her Complaint, EGLE is aware of and has issued the required permits for the Project. Contrary to Plaintiff’s belief, she has no authority to supplant EGLE in the supervision of this Project.

However, even if the WPA did create a private right of action, Plaintiff is not entitled to relief because her claims still fail as a matter of law. The Township complied with all statutory requirements, obtained permits, and is complying with those permits. Finally, Plaintiff's negligence claim is without merit because the Township is immune under Michigan's Governmental Tort Liability Act.

Consequently, summary disposition pursuant to MCR 2.116(C)(7) and (8) is proper in this matter. The Township respectfully requests that Plaintiff's claims be dismissed with prejudice.

II. STATEMENT OF FACTS

For approximately 20 years, the Township has been engaged in a sewer extension improvement Project. **Exhibit 1**, Affidavit of Jeff Gritter, ¶ 4. In July 2025, this Project entered its second phase whereby the Township continues to extend the sewer system eastward from Ivanrest Ave, SW and 64th Street towards its population center. **Exhibit 2**, Project Phase 2 Map and Plans; Exhibit 1, ¶ 5. The goal of the sewer system extension is to improve the capacity of the Township sewer system to meet the community's needs, as the Goose Creek trunk sewer near the Township's population center is near capacity due to the increase of population and density in the Township. Exhibit 1, ¶ 6.

In advance of phase 2 of the Project, the Township and its contractors obtained all necessary approvals and permits for commencing construction of the sewer system extension. Exhibit 1, ¶ 7. The Township, its engineers, and contractors also acquired all necessary easements and licenses to perform the work to install phase 2 of the Project. *Id.* The particular sewer being installed—to service a larger quantity of sewage—must be installed at a depth of approximately 25 feet. Exhibit 1, ¶ 8. The water table in the area, however, is above this depth. Exhibit 1, ¶ 9. As such, temporary dewatering must occur in order to evacuate and provide for dry, firm bedding to

allow for the construction of sewer pipe at the required elevation. Exhibit 1, ¶¶ 8, 10. Here, the contractor needs to remove water approximately 2 feet below the elevation of sewer pipe for installation. Exhibit 1, ¶ 10.

The dewatering process is expensive. Exhibit 1, ¶ 16. Two types of wells are used during the dewatering process: PVC dewatering wells and Kelly wells. Exhibit 1, ¶ 12. PVC wells are placed at a depth of 27 feet, with a pump connected to the wells above the surface. Exhibit 1, ¶ 13. Kelly wells are steel casings that are dug into the ground. Kelly wells are approximately 40 feet in length with a bottom depth of approximately 35 to 37 feet below the surface. Exhibit 1, ¶ 14. The top of the Kelly well sticks above the surface by 3 to 5 feet. *Id.* A submersible pump is dropped into the Kelly well at a depth of 30 to 32 feet and pumps the water that enters the casing out of the casing. *Id.* The depth of dewatering that the contractor is attempting to achieve is the depth sufficient to temporarily lower the groundwater below a depth of approximately 27 feet so that the sewer pipe may be installed—nothing more. Exhibit 1, ¶¶ 10, 14, 21.

When groundwater is removed via the dewatering process, it is discharged into the adjacent drain—Knights Drain in this instance. See Exhibit 2, Project Phase 2 Map and Plans; Exhibit 1, ¶ 21. Otherwise put, once the groundwater is removed, the water is discharged into the adjacent County Drain where it will have the ability to recharge the groundwater. See Exhibit 1, ¶ 11. The dewatering of the groundwater is temporary and when installation of the sewer pipe is complete the dewatering system is turned off and removed. Exhibit 1, ¶ 11, 35.

Plaintiff allegedly owns property on the proposed line of phase 3 of the sewer extension Project. Exhibit 1, ¶ 31. This property is not immediately adjacent to phase 2 of the Project. When the Township and its contractors reached out to Brandenburg to investigate her claims that her well was rendered inoperable by the dewatering process, she refused to provide information

regarding the depth of her existing well, the name of the well company that was performing an evaluation of the existing well, or allow access to her property without her or her son being present. Exhibit 1, ¶¶ 37-42. Brandenburg later stated she was taking care of the well issue. Exhibit 1, ¶ 39. Further, when the Township and its contractors offered to provide temporary water services to her property, she declined. Exhibit 1, ¶ 38.

In her Complaint Plaintiff accuses the Township of (i) removing groundwater at a depth exceeding their approvals, and (ii), removing groundwater at a rate exceeding approvals. Plaintiff provides no support for such claims. Byron Township maintains that through the entirety of phase 2 it has complied with its applicable approvals. The Township will note, however, that Plaintiff has been trespassing on land owned by other property owners, causing the Township to receive complaints. Exhibit 1, ¶ 43.

LAW AND ARGUMENT

III. STANDARD OF REVIEW

A motion under MCR 2.116(C)(7) tests whether a claim is barred due to immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties. *Wade v Dept of Corrections*, 439 Mich 158, 162; 482 NW2d 26 (1992). To successfully defend against a motion for summary disposition brought on the basis of governmental immunity, the plaintiff must demonstrate facts justifying application of an exception to governmental immunity. *Id.* at 163. In other words, governmental immunity is not an affirmative defense but is, rather, a characteristic of government that the plaintiff must overcome to state a valid claim. *Mack v City of Detroit*, 467 Mich 186, 201-202; 649 NW2d 47 (2002).

Under MCR 2.116(C)(8), summary disposition should be granted when the “opposing party has failed to state a claim on which relief can be granted.” A motion brought under MCR

2.116(C)(8) is resolved with reference to the pleadings alone. *Summer v Southfield Bd of Ed*, 310 Mich App 660, 668; 874 NW2d 150 (2015). Summary disposition should be granted under MCR 2.116(C)(8) if the “claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right to recovery.” *Check Reporting Servs, Inc v Mich Nat Bank-Lansing*, 191 Mich App 614, 621; 478 NW2d 893 (1991).

ARGUMENT

Plaintiff’s Complaint fails at the outset. Even setting aside the lack of factual merit and accuracy of Plaintiff’s claims and taking them as true for the sole purpose of this motion, the claims fail as a matter of law. First, MCL 324.30316 provides no private right of action. MCL 324.30316 is an enforcement provision located in the WPA. Under the WPA, Plaintiff lacks any sort of authority, capacity, or standing to pursue this matter. However, even if the WPA did create a private right of action, Plaintiff’s claims fail as a matter of law because the Township complied with all statutory requirements, obtained permits, and is complying with those permits. Consequently, summary disposition pursuant to MCR 2.116(C)(7)(8) is proper in this matter.

IV. PLAINTIFF DOES NOT HAVE A PRIVATE RIGHT OF ACTION WHICH IS DISPOSITIVE OF CLAIMS I, II, AND III

“Generally, where a statute creates a new right or imposes a new duty not previously recognized under the common law, the remedies provided in the statute are presumed exclusive unless the remedies are plainly inadequate or there is a clear contrary intent.” *Stegall v Resource Technology Corp*, 514 Mich 327, 343; 22 NW3d 410 (2024), citing *Pompey v Gen Motors Corp*, 385 Mich 537, 552, 553 n 14; 189 NW2d 243 (1971). “Therefore, a private cause of action must be dismissed under a statute creating a new right or imposing a new duty unless the private cause of action was expressly created by the act or inferred from the fact that the act provides no adequate

means of enforcement of its provisions.” *Forster v Delton Sch Dist*, 176 Mich App 582, 584-85; 440 NW2d 421 (1989).

In *Forster*, the plaintiff alleged violations of various statutes, including the Campaign financing act. The plaintiff alleged that the campaign finance act put various duties on the defendants, and that defendants failed to perform said duties. These duties were “new in that there were no such duties or obligations under the common law.” *Id.* at 584. Further, the campaign financing act does not allow for enforcement by private individuals. “MCL 169.215 [of the campaign finance act]. . . provides an express remedy to enforce the duties imposed under the campaign financing act.” *Id.* at 585. “The campaign financing act also provides for criminal penalties for knowing violation of the act, and enforcement for such knowing violation may be prosecuted by the Attorney General or local prosecuting attorneys.” *Id.* at 585. As such, the *Forster* court determined that (1) since new duties are imposed by the act, the remedies in the act are the exclusive means of enforcement and (2) since there is an adequate remedy to enforce its provisions, no private right of action can be inferred. Therefore, the *Forster* appeals court determined that the plaintiff’s claims were appropriately dismissed.

The statutes in *Forster* mirror the WPA, which is at issue in this case. As stated above, Plaintiff alleges that her Complaint is based upon the WPA (i.e. MCL 324.30316). Plaintiff further alleges that the Township violated various duties under the WPA, including (i) an alleged duty under MCL 324.30304 to not drain surface water from a wetland without a permit, (ii) an alleged duty under MCL 324.30312¹ to create a wetland mitigation plan in certain circumstances, and (iii)

¹ Plaintiff may have meant to cite MCL 324.30311d, which discusses the requirement of wetland mitigation under certain circumstances, as opposed to MCL 324.30312, which discusses minor project categories of activities. Nonetheless, MCL 324.30311d is inapplicable here.

an alleged duty under MCL 324.32723² to obtain certain permits from the State of Michigan for large quantity water withdrawals. Similar to *Forster*, these duties relating to permitting and mitigation plans do not arise from common law—they are new duties created by the WPA. The WPA provides express remedies to enforce the duties imposed by the Act, as detailed in MCL 324.30316 (the provision in which Plaintiff bases her Complaint). Similar to the statute in *Forster*, MCL 324.30316 permits the Attorney General to enforce violations of the WPA. MCL 324.30316 states, in the relevant part:

The attorney general may commence a civil action for appropriate relief, including injunctive relief **upon request of the department** under section 30315(1). An action under this subsection may be brought in the circuit court for the county of Ingham or for a county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance with this part. In addition to any other relief granted under this section, the court may impose a civil fine of not more than \$10,000.00 per day of violation. A person who violates an order of the court is subject to a civil fine not to exceed

\$10,000.00 for each day of violation.

Id. (emphasis added).

While the WPA creates a cause of action, it does not create a private right of action. The WPA creates new duties, and therefore the remedy provided by the statute is exclusive. The remedy is not plainly inadequate, as it expressly provides the Attorney General with the right to pursue an action. The ability of the Attorney General or a prosecutor to enforce statutory duties was an adequate remedy in *Forster*. Therefore, Plaintiff's claims should be dismissed.

V. PLAINTIFF'S CLAIMS FAIL AS A MATTER OF LAW

² This statute is located in Part 327 of NREPA—not the WPA. The section of the WPA in which Plaintiff bases her Complaint (MCL 324.30316) was not designed to remedy this provision. This is yet another reason why Plaintiff fails to state a claim.

Even if the WPA did create a private right of action, Plaintiff's claims I, II, and III fail as a matter of law. The Township did not violate MCL 324.30304 because it obtained proper permitting. The Township did not violate MCL 324.30312 by failing to have a wetland mitigation plan because MCL 324.30312 does not discuss or require mitigation plans, nor does the WPA require the Township to obtain a mitigation plan. The Township did not violate MCL 324.32723 because the Project received the proper permitting from EGLE which set the groundwater removal parameters for the Project.

A. The Township did not Violate MCL 324.30304 because it Obtained Proper Permitting and because Plaintiff's Factual Assertions are Patently False.

MCL 324.30304 prohibits removing soil from a wetland, operating in a wetland, and draining surface water from a wetland without a permit from EGLE. MCL 324.30304 provides:

Except as otherwise provided in this part or by a permit issued by the department under this part and pursuant to part 13, a person shall not do any of the following:

- (a) Deposit or permit the placing of fill material in a wetland.
- (b) Dredge, remove, or permit the removal of soil or minerals from a wetland.
- (c) Construct, operate, or maintain any use or development in a wetland.
- (d) Drain surface water from a wetland.

It is undisputed that the Township applied for Part 303 permitting (as acknowledged by Plaintiff in paragraph 20 of her Complaint) and obtained said permits. See **Exhibit 3**, WPA-related Permits; Exhibit 1, ¶ 25. In other words, the Township completely complied with the requirements of Part 303 and Plaintiff's claim has no merit.

Plaintiff also accuses the Township of exceeding the scope of the permit but does not attach or reference the permit in her Complaint. Rather, Plaintiff accuses the Township, without any evidence, of "draining 264 million gallons of surface water to a depth of 40 feet", claiming that this exceeds the scope of the Township's permit application. Plaintiff provides no explanation as to how she is formulating these numbers, nor how these numbers violate the permit. For support,

Plaintiff relies on Exhibits A, C, and D of her Complaint. Exhibit A is a wetland impact sketch. A more legible version of this exhibit is attached as **Exhibit 4**. Exhibit C to her Complaint appears to be another sketch but is illegible. Exhibit D to her Complaint appears to be an excerpt from a permit application. None of these exhibits establish the parameters set by EGLE on the Project but merely elaborate on the Township's Project plans. Further, these exhibits do not support her assertions that 264 million gallons are being removed, that groundwater is being removed to a depth of 40 feet, and that the removal of that amount of groundwater at that depth is not permitted in the first place. In fact, the Part 327 permit expressly allows the Township to withdraw approximately 264 million gallons. See **Exhibit 5**, Part 327 Approval, pg. 4.

It is also worth noting that the wells and pumps used are not lowering the water table to a depth of 40 feet. Exhibit 1, ¶ 14, 22. The PVC wells being installed are approximately 27 feet in depth (*Id.* at ¶ 13), and the Kelly wells have pumps installed at approximately 30 to 32 feet below the surface. *Id.* at, ¶ 14. Put differently, the lowest pump is only going into the ground at a depth of 32 feet. This does not translate to the water table being lowered to a depth of 40 feet. Plaintiff claims the Township is not permitted to pump below 25 feet. There is no such restriction from EGLE. See Exhibit 5, Part 327 Approval.

The other exhibits to Plaintiff's Complaint also do not support or clarify her allegations. Exhibit B to the Complaint is an authorization from the Township to its engineers to apply for a permit; Exhibit E shows an invoice from a well drilling company, with notes stating that the water table decreasing may have impacted a well. As detailed above, and in Jeff Gritter's Affidavit, dewatering can temporarily impact the water table. Exhibit 1, ¶ 11. However, dewatering is necessary so that excavation can be performed to place the sewer pipe at the required elevation. *Id.* at, ¶¶ 8-10. Once the sewer pipe is constructed and the dewatering is turned off, groundwater

will typically return to the area it was removed near its prior levels. *Id.* at, ¶ 11. Exhibit F to Plaintiff's Complaint contains pictures which do not demonstrate any sort of violation of the Township's permits but do establish the Township's concerns that Plaintiff is trespassing on private property. Exhibits G through I are proffered to show that wetlands exist in the area, which the Township openly acknowledges. See *Id.* at, ¶ 25.

B. The Township did not Violate MCL 324.30312.

Plaintiff alleges that the Township violated MCL 324.30312 by failing to have a wetland mitigation plan. MCL 324.30312 does not discuss or require mitigation plans. Regardless, the WPA does not require the Township to obtain a mitigation plan in this instance. This is because the impact on the wetland areas is temporary, and the impacted areas will be restored once construction of the sewer is complete. *Id.* at, ¶ 28.

C. The Township did not Violate MCL 324.32723 because the Project Received the Proper Permitting, and Plaintiff's Factual Allegations are Patently False.

MCL 324.32723 is a provision within Part 327 of the Natural Resources and Environmental Protection Act (not Part 303, where the WPA is located). This provision requires a person to obtain a permit in certain instances where a project proposal would involve the withdrawal of either 2,000,000 or 1,000,000 gallons of water per day, depending on the purpose of the project. Plaintiff accuses the Township of not having a permit. See Compl. ¶ 27. This, however, is untrue. The Township's Part 327 Approval from EGLE is attached hereto as Exhibit 5. The Township obtained this approval in February of 2025. The Approval sets the parameters for the removal of groundwater on the Project. It also states that the withdrawal is not likely to cause an adverse resource impact. Further, Plaintiff's claims that the Township is withdrawing more than 24 million gallons per day are wholly unsupported by evidence, including the exhibits attached to her Complaint. As explained above, Plaintiff fails to describe the basis of her numbers. At all relevant

times, the Township and its agents have complied with all applicable approvals. See Exhibit 1, ¶¶ 23, 26, and 36.

VI. PLAINTIFF’S NEGLIGENCE CLAIM UNDER IS BARRED BY GOVERNMENTAL IMMUNITY.

The Township is immune from Plaintiff’s negligence claim under Michigan’s Government Tort Liability Act (“GTLA”). Through its nature as a governmental entity, the Township enjoys absolute immunity from all “tort liability”. This immunity is expressed and construed in the broadest possible fashion. *In re Bradley Estate*, 491 Mich 367; 835 NW2d 545 (2013). Specifically, MCL 691.1407(1) provides:

Except as otherwise provided in this Act, a governmental agency is immune from tort liability if the government agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this Act, this Act does not modify or restrict the immunity of the State from tort liability as it existed before July 1, 1965, which immunity is affirmed.

“Under the GTLA, governmental agencies and their employees are generally immune from tort liability when they are engaged in the exercise or discharge of a governmental function.” *Ray v Swager*, 501 Mich 52, 62; 903 NW2d 366 (2017); see also MCL 691.1407(a). There are six statutory exceptions to this broad grant of immunity, but these exceptions must be narrowly construed. *Nawrocki v Macomb Co. Rd. Com’n*, 463 Mich 143, 158; 615 NW2d 702 (2000); *Wesche v Mecosta Co. Rd. Com’n*, 480 Mich 75, 84 n 10; 746 NW2d 847 (2008). Further, “when a party files suit against a governmental agency, it is the burden of that party to plead his or her claim in avoidance of governmental immunity.” *Hannay v Dep’t of Transp.*, 497 Mich 45, 58; 860 NW2d 67 (2014). “A plaintiff pleads in avoidance of governmental immunity by stating a claim that fits within a statutory exception or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function.” *Mack v Detroit*, 467 Mich. 186, 204; 649 NW2d 47 (2002).

Turning to the present facts, the Township is clearly entitled to the protections of governmental immunity set forth in MCL 691.1407(1). As defined by statute, the Township constitutes a “governmental agency”. *See* MCL 691.1401(d). It is undisputed that the Township was engaged in the exercise of a governmental function during the dewatering of the sewer extension project. Under Michigan law, it is well settled that unless one of the six statutory exceptions applies, a governmental entity is “immune from tort liability if the governmental agency is engaged in the exercise or discharge of governmental function.” MCL 691.1407(1). “A government function is ‘an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law.’” *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609, 613-614; 664 NW2d 165 (2003) (quoting MCL 691.1401(f)). “The six statutory exceptions are: the highway exception, MCL 691.1402; the motor-vehicle exception, MCL 691.1405; the public-building exception, MCL 691.1406; the proprietary-function exception, MCL 691.1413; the governmental-hospital exception, MCL 691.1407(4); and the sewage-disposal-system-event exception, MCL 691.1417(2) and (3).” *Wesche v Mecosta Co Rd. Comm*, 480 Mich 75, 84 n. 10; 746 NW2d 847 (2008).

Plaintiff has not pled in avoidance of governmental immunity and, therefore, the Township is entitled to summary disposition of this claim under MCR 2.116(C)(7).

CONCLUSION AND REQUEST FOR RELIEF

Plaintiff’s Complaint fails to state a cause of action, and Defendant, Byron Township, respectfully requests that this Court grant summary disposition in its favor and dismiss Plaintiff’s Complaint with prejudice.

McGRAW MORRIS, P.C.
Attorney for Defendant

Dated: October 27, 2025

BY: /s/ Bogomir Rajsic, III

Bogomir Rajsic, III (P79191)

Tracey R. Devries (P84286)

44 Cesar E. Chavez Avenue SW, Ste 200

Grand Rapids, MI 49503

(616) 288-3703

brajsic@mcgrawmorris.com

tdevries@mcgrawmorris.com

By electronic signature, I verify and affirm the accuracy of the document.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

DONNA BRANDENBURG,

Plaintiff,

Case No.: 2025-20557-CK

v.

Hon. Christina Mims

BYRON TOWNSHIP,

Defendant.

**DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR
SUMMARY DISPOSITION**

EXHIBIT 1

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

DONNA BRANDENBURG,

Plaintiff,

v

BYRON TOWNSHIP,

Defendant.

Case No. 2025-20557-CK

Honorable Christina Mims

AFFIDAVIT OF JEFF GRITTER

Donna Brandenburg
In pro per
6842 Byron Shores Ct.
Byron Center, MI 49315-8045
(616) 430-4410

Ross A. Leisman (P41923)
Dominic T. Clolinger (P84705)
Mika Meyers PLC
Attorneys for Defendant
900 Monroe Avenue, N.W.
Grand Rapids, MI 49503
(616) 632-8000
rleisman@mikameyers.com
dclolinger@mikameyers.com

Jeff Gritter, being first duly sworn, deposes and states that he is a person of suitable age and discretion and if called to testify could testify to the following facts upon his own knowledge, and not on information and belief, except as otherwise stated herein:

1. I am a senior professional engineer and project manager at VK Civil, also known as Vriesman & Korhorn, which is a civil engineering firm specializing in private and public projects in the Midwest.
2. I have been an engineer for approximately 27 years.
3. I currently serve as one of Byron Township's (the "Township") engineers on the Northwest Byron Sanitary Sewer Extension project (the "Project").

PROJECT BACKGROUND

4. Byron Township has been engaged in studying and planning for a sewer extension project for approximately 20 years. Construction relating to Phase 2 of the Project began in July of 2025.

5. The goal of Phase 2 is to extend the sanitary sewer created in Phase 1 of the project eastward from Ivanrest Avenue and 64th Street toward the Township's population center. See the map attached to Exhibit 2, of the Township's TRO Response Brief.

6. The purpose of the Project is to provide capacity relief to the Township's Goose Creek trunk sewer, which is nearing capacity due to the growth and density of the area.

7. In advance of Phase 2 of the Project, VK Civil and the Township obtained all necessary approvals for commencing construction of the sewer system extension and obtained all necessary easements and permissions from property owners.

DEWATERING PROCESS

8. The Project requires constructing the sewer system at a depth of approximately 25 feet below the surface. To lay the sewer pipe at the specified grade, dry conditions are needed.

9. The water table in the vicinity of the Project, however, is at a depth above 25 feet. As a result, dewatering must occur in order for the installation of the sewer line to proceed.

10. To establish dry conditions for the installation process, contractors need to remove groundwater to a depth approximately 2 feet below the elevation of the sewer pipe. In this instance, groundwater must be removed to a depth of approximately 27 feet.

11. Dewatering is a process by which the groundwater is removed to a certain depth and pumped to another location (oftentimes the adjacent drain, where it will have the ability to recharge the groundwater). **The dewatering process is temporary.** Once the dewatering process is completed, groundwater levels often return to normal or near-normal levels.

12. Two different types of dewatering wells are being utilized for this Project: PVC dewatering wells and Kelly Wells.

13. PVC dewatering wells are placed at a depth of 27 feet. A pump is connected to the well above grade.

14. Kelly Wells are steel casings that are dug into the ground. The Kelly wells are 40 feet in length. However, they are placed at a depth of 35 to 37 feet below the surface, with the top of the casing sticking above the ground by 3 to 5 feet. A submersible pump is dropped into the casing to a depth of 30 to 32 feet. This pump removes water that enters the casing. The depth of the pump does not equate to the water table being lowered to that depth. As stated above, a contractor is only seeking to remove water to a depth of approximately 2 feet below the elevation of the sewer pipe installation.

15. On occasion, dewatering can create issues with local wells. These issues, however, are almost always temporary. This is, however, a fact-intensive inquiry and depends on the particular well, whether the well is up to code, and groundwater hydrology.

16. Generally, the dewatering process is very expensive, and contractors only remove the amount of water absolutely necessary.

17. Anticipating that dewatering would have to occur during Phase 2 of this Project, VK Civil, on behalf of the Township, obtained Part 327 approvals from the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") to remove the applicable groundwater. See Exhibit 5 to the Township's TRO Response Brief, Part 327 Approval.

18. Removal of groundwater for the Project necessitated a permit from EGLE because the Township was required to dewater approximately 1,000 gallons per minute or 1.44 million gallons per day.

19. As stated in the Part 327 approval, the Township was permitted to remove 1,000 gallons of water per minute, 24 hours per day, 7 days a week as needed.

20. The Part 327 approval permitted a total annual withdrawal of 263,934,720 gallons.

21. Here, we estimate groundwater was temporarily removed to a depth of 27 feet and discharged into Knights Drain.

22. Donna Brandenburg ("Brandenburg") alleges the Township removed groundwater and lowered the water table to a depth of 40 feet. This is untrue. The depth of the well and pump do not equate to the level the water table will be lowered.

23. To the best of our knowledge, the Contractor has fully complied with the requirements of Part 327 and with the Part 327 approval letter.

CONSTRUCTION ACTIVITIES IN WETLANDS

24. Part 303 requires a permit to perform certain activities in a protected wetland area. See MCL 324.30304.

25. The Project requires extending the sewer into areas considered wetlands. As such, VK Civil, on behalf of the Township, obtained Part 301 and Part 303 (Part 303 is also referred to the Wetlands Protection Act ("WPA")) approvals prior to commencing Phase 2 of the Project. Those approvals are attached to the Township's Response Brief as Exhibit 3.

26. At all relevant times, the Contractor, to the knowledge of VK Civil, acting on behalf of the Township, complied with the restrictions listed on the permits.

27. The WPA, in certain instances, also requires a mitigation plan to be submitted to EGLE. See MCL 324.30311d.

28. A mitigation plan, however, was not created here because (i) the impact to the wetland areas is temporary and (ii) the impacted areas are to be restored once construction of the sewer is complete.

29. EGLE did not require a mitigation plan.

DONNA BRANDENBURG ALLEGATIONS

30. As the Township's engineer, I was asked to review allegations raised by Donna Brandenburg ("Brandenburg") in Case No. 20557-CK.

31. Brandenburg owns property located on the proposed line of Phase 3 of the Project.

32. Brandenburg accuses the Township of draining 264 million gallons of surface water to a depth of 40 feet at a rate of 24 million gallons per day.

33. Brandenburg does not explain, nor does VK Civil understand, the basis for the above numbers. The dewatering activities have a maximum annual withdrawal limit of 264 million gallons per year.

34. The Contractor is restricted in the amount of water it can remove by the Part 327 approval letter. The Part 303 approvals do not set such limitations.

35. Dewatering activities can pump water at a maximum rate of 1.44 million gallons per day in ideal conditions. The dewatering pumps are not continuously operated at maximum output as this is inefficient and is not cost effective. Rather, the dewatering pumps are operated as efficiently as possible to only dewater the groundwater to sufficient depths to allow for the sewer pipe to be constructed in dry conditions to meet the design requirements of the sewer pipe. The dewatering pumps are then deactivated and moved in a linear manner to allow for the sewer construction to advance along the planned route of the sewer project.

36. To the best of our knowledge, acting on behalf of the Township, the Contractor has complied with the EGLE permits and approvals at all relevant times.

37. Brandenburg informed VK Civil and the Township that the Project rendered her well inoperable.

38. In response, VK Civil attempted to evaluate her well and provide temporary water to her property until the issue could be resolved. She rejected this offer.

39. We also requested access to her property and her well so we could further ascertain the issues relating to her well. Again, Brandenburg initially required her presence or her sons presence and then refused our attempt to help stating that she was taking care of the well.

40. In an attempt to assist Brandenburg, we attempted to pull the property's well records from Kent County and from EGLE. However, at the time we looked, Kent County and EGLE did not have any record of a well on this property on file.

41. In support of her allegations, Brandenburg attaches an invoice from a well drilling company which states that a well located at 2930 64th St SW, Byron Center, Michigan "was working properly" but is no longer capable of producing efficient water due to the water table decreasing.

42. VK Civil could not find the records for this particular well in the County records or with EGLE. However, VK did discover that Brandenburg drilled an additional well on the property and that the old well is "still in use for non-drinking water purposes." See Exhibit 6 to the Township's TRO Response Brief.

43. VK Civil has received complaints from property owners in the area regarding Brandenburg, particularly relating to her trespassing on private property where the sewer extension is being installed.

COST OF AN INJUNCTION

44. If an injunction is entered in this case halting the Project, the monetary damages would be significant.