

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

DONNA BRANDENBURG,

Plaintiff,

Case No.: 25-20557-CK

v.

Hon. Christina Mims

BYRON TOWNSHIP,

Defendant.

Donna Brandenburg Pro Se 6842 Byron Shores Ct Byron Center, MI 49315 (616) 430-4410 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
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**PLAINTIFF's MOTION TO DISMISS DEFENDANT's REQUEST FOR SUMMARY
DISPOSITION**

NOW COMES Plaintiff, Donna Brandenburg, appearing pro se, and respectfully moves this Court pursuant to MCR 2.116(C)(9) and (10), that this honorable Court enter an order granting Plaintiff's motion to dismiss Defendant's Motion for Summary Disposition. The Complaint states valid claims, admitted to this honorable Court and deemed sufficient, which Plaintiff claims are also valid under the Michigan Environmental Protection Act (MEPA), MCL 324.1701 et seq., and the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 et seq. and MCL 324.30316, supported by undisputed evidence of irreparable environmental harm. Defendant's arguments mischaracterize the law, ignore factual disputes, and fail to overcome

Plaintiff's private right of action and the inapplicability of immunity to equitable relief. In support of its motion, Plaintiff relies on the concurrently filed Brief and Exhibits in support of the same.

WHEREFOR for the independent reasons outlined in its supporting Brief and Exhibits, Plaintiff requests that this honorable Court grant its motion to dismiss Defendant's Motion for Summary Disposition. Plaintiff requests costs and fees.

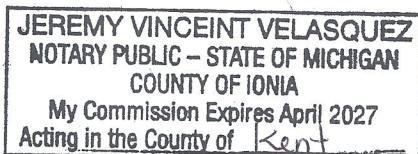
Respectfully submitted, this 7th day of November, 2025.

I declare under penalty of perjury that this Motion has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

11-7-2025

/s/ Donna Brandenburg

Donna Brandenburg, Plaintiff, Pro Se
6842 Byron Shores Ct
Byron Center, MI 49315
616-430-4410
contact@donna4mi.com
Pro Se Plaintiff
Date: November 7, 2025


11/7/2025

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DONNA BRANDENBURG,

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Case No.: 25-20557-CK

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**BRIEF IN SUPPORT OF PLAINTIFF's MOTION TO DISMISS DEFENDANT's
REQUEST FOR SUMMARY DISPOSITION**

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Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 60 (1987)

Dep't of Env't Quality v. Gomez, 318 Mich. App. 1 (2016)

Huggett v. Dep't of Nat. Res., 464 Mich. 711, 715 (2001)

DEQ v. Morley, unpublished per curiam opinion of the Court of Appeals, issued December 15, 2015 (Docket No. 323019)

Mich. Farm Bureau v. Dep't of Env't | SC 165166 (2024)

Statutes

33 U.S.C. § 1365

MCL 691.1407 - Governmental Tort Liability Act (GTLA)

MCL 324 - MEPA/NREPA Parts 303 and 327

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MCL 324.30312

MCL 324.32723

Clean Water Act

MCL 324.1701(1)

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Exhibit M - Water table replenishment

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I. Introduction

“Liar liar, pants on fire” is not a proper legal defense, and thus dismissal of Defense’s groundless motion is appropriate under MCR 2.116(C)(9). This honorable Court has already ruled that the pleadings were sufficient.

Material damage occurred, as per Exhibit E of the original Complaint and Exhibit K of this Brief, requiring a new well to be drilled, substantiating the dismissal of Defendant’s motion under MCR 2.116(C)(10). This honorable Court has already ruled that this was sufficient as part of the initial pleadings.

Defendant Byron Township moves for summary disposition, asserting no private right of action, failure of claims as a matter of law, and governmental immunity. These arguments are fundamentally flawed and must be rejected. First, MEPA explicitly authorizes “any person” to bring suit for environmental impairments, a provision analogous to the Clean Water Act’s (CWA) citizen suit mechanism under 33 U.S.C. § 1365, which empowers private enforcement to supplement governmental action. This citizen-driven enforcement is crucial where, as here, regulatory oversight has failed, resulting in unauthorized wetland draining that threatens public resources and Plaintiff’s property rights. Second, the claims do not fail as a matter of law; accepting the Complaint’s well-pled facts as true reveals clear violations of NREPA Parts 303 and 327, with exhibits documenting harms that create genuine factual disputes precluding dismissal. Third, the Governmental Tort Liability Act (GTLA) provides no shield for equitable remedies in environmental cases,

where irreparable harm demands injunctive relief. The Court's prior order mandating mediation and affirming the Complaint's propriety further underscores that dismissal is unwarranted. Dismissing Defendant's Motion for Summary Disposition protects vital public interests in wetland preservation, as well as preventing further Taking and infringement of Plaintiff's private property water rights as guaranteed by both US Constitution's Fifth Amendment and the Mich. Const. art X, § 2, and holds Defendant accountable for its egregious conduct.

Further, this honorable Court has already ruled that the case stands on its merits and form, has denied dismissal, and has already ordered mediation, discovery, and a jury trial. Therefor, such early dismissal as requested is inappropriate.

Plaintiff incorporates by reference all legations, exhibits, and authorities including the initial Complaint and all subsequent actions.

II. Statement of Facts

Plaintiff, a resident and upland wetland habitat property owner in Byron Township, filed this action on August 8, 2025, seeking emergency injunctive relief for Defendant's unauthorized draining of over 264 million gallons of water from regulated wetlands, exceeding permit limits and causing a catastrophic drop in Plaintiff's water table. As detailed in the Complaint and supported by Exhibits A-I, Defendant's actions—pumping to 40 feet at 1 million gallons per hour without mitigation or proper permits—violated

MCL 324.30304 (prohibiting unpermitted wetland draining), MCL 324.30312 (requiring compliance with the permit's mitigation requirements), and MCL 324.32723 (regulating large-quantity withdrawals exceeding 2 million gallons/day). This rendered Plaintiff's well inoperable, forcing her to haul water for livestock and household use, inflicting irreparable economic and environmental harm akin to trespass and nuisance, without notice, hearing, or compensation. The wetlands are regulated under Part 303, connected to inland waters and essential for aquifer recharge, as confirmed by Exhibits G and H. Defendant's negligent oversight of contractors (Exhibit B) exacerbated these violations, despite visual evidence of non-compliance (Exhibit F).

Defendant's motion and brief dismiss these allegations as "patently false" without evidentiary support, relying instead on unsubstantiated claims of proper permitting. This creates genuine factual disputes, as public records and Plaintiff's exhibits demonstrate scope exceedance and adverse impacts. The Court's prior order directing mediation and denying amendment confirms the Complaint's legal sufficiency and the need for merits resolution.

III. Standard of Review

Under MCR 2.116(C)(8), dismissal is warranted only if the pleadings fail to state a claim upon which relief can be granted, with all factual allegations accepted as true and construed in the plaintiff's favor. This standard has already been met in accordance with this honorable Court's scheduling order declaring the pleadings sufficient. *Maiden v.*

Rozwood, 461 Mich. 109, 119 (1999) (summary disposition is improper if any factual development could justify recovery). Nemeth v. Abonmarche Dev., Inc., 457 Mich. 16 (1998) (in environmental cases, courts liberally construe pleadings to advance public protection goals, denying dismissal where harms like wetland degradation are alleged).

IV. Argument

A. Plaintiff Has a Private Right of Action Under MEPA, Analogous to CWA Citizen Suits (Rebutting Defendant's Section IV).

Defendant erroneously claims no private right of action under NREPA Part 303, ignoring MEPA's broad authorization for "any person" to sue for declaratory and equitable relief against conduct impairing natural resources (MCL 324.1701(1)). MEPA supplements specific NREPA provisions, allowing private enforcement where violations of standards like wetland protections occur. Nemeth v. Abonmarche Dev., Inc., 457 Mich. 16 (1998) (MEPA creates independent cause of action for environmental harms, using other statutes as evidence of impairment). Preserve the Dunes v. DEQ, 471 Mich. 508, 517 (2004) ("The Court of Appeals concluded that (1) the DEQ's decision to grant a permit could be challenged at any time under MEPA and (2) TechniSand did not qualify for a permit under § 63702."). Anglers of the AuSable v. DEQ, 486 Mich. 982 (2010) ("and we further hold that the DEQ can be sustained as a defendant in a MEPA action when the DEQ has issued a permit for activity that it is alleged will cause environmental harm", showing the validity of private persons to hold permittees as well as environmental supervisory agencies accountable). Mich. Citizens for Water

Conservation v. Nestlé Waters N. Am., Inc., 479 Mich. 280, 302 (2007) (“Plaintiffs indisputably have standing to bring a MEPA claim against Nestlé to protect their riparian property rights” - MEPA enables private suits for groundwater harms under NREPA).

This framework mirrors the CWA's citizen suit provision, 33 U.S.C. § 1365, which empowers “any citizen” to sue for violations of effluent standards or permits, filling enforcement gaps left by agencies. Federal courts emphasize that citizen suits promote compliance where government resources are limited, a principle directly applicable here.

Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49, 60 (1987) (CWA citizen suits address ongoing violations, including permit exceedances). Just as CWA allows suits for wetland discharges without permits, MEPA enables Plaintiff's action for unpermitted draining. Denying this right would undermine Michigan's constitutional mandate to protect natural resources (Mich. Const. art. IV, § 52), leaving citizens powerless against harms like aquifer depletion. As an upland wetland habitat property owner suffering direct injury (well failure, property devaluation), Plaintiff has standing, rebutting Defendant's baseless assertion.

B. Plaintiff's Claims Do Not Fail as a Matter of Law; Factual Disputes Abound (Rebutting Defendant's Section V).

Defendant's contention that the claims fail ignores the Complaint's detailed allegations, which must be accepted as true under MCR 2.116(C)(8) pursuant to the previous ruling by the Court that the Complaint was proper and had merit. The unauthorized draining to

40 feet (Exhibit F) violated MCL 324.30304's permit requirement for wetland alterations, as the application limited activities to 25 feet (Exhibits A, C, D) and maximum well casing depth on their permit limited to 30 feet (Defendant's Brief in Support of Summary Disposition, Exhibit 5). Dep't of Env't Quality v. Gomez, 318 Mich. App. 1 (2016) (unpermitted fill in wetlands violates Part 303, warranting restoration). The 24 million gallons/day withdrawal exceeded Part 327 thresholds without permits, causing adverse impacts like well interference. Defendant's "patently false" label introduces extrinsic disputes improper for (C)(8); courts reject such motions where exhibits support violations. Huggett v. Dep't of Nat. Res., 464 Mich. 711, 715 (2001) (strict compliance with requirements for obtaining wetland permits). DEQ v. Morley, unpublished per curiam opinion of the Court of Appeals, issued December 15, 2015 (Docket No. 323019) (dredging, filling, and draining of a wetlands without permit violates Part 303, justifying injunction). These facts, if proven, entitle Plaintiff to relief, precluding dismissal.

1. Plaintiff's rebuttal to Section V paragraph A "The Township did not Violate MCL 324.30304 because it Obtained Proper Permitting and because Plaintiff's Factual Assertions are Patently False."

Defense claims compliance with MCL 324.30304 belying the fact that a citation by Kent County was issued to the parties in question (Exhibit L).

2. Plaintiff's rebuttal to Section V paragraph B "The Township did not Violate MCL 324.30312"

Defense claims damages are temporary with remediation as early as December, however science contradicts this fact because rainfall accumulation data according to Kent County records only shows the potential recharge of aquifers to be calculable at approximately 1 million gallons per acre per year (Exhibit M). Defendant agreed with EGLE to mitigation measures outlined in their permit, numbered WRP044398v.1 as provided to the court as Exhibit 3 of Defendant's Motion for Summary Disposition. The mitigation measures required by the permit were not followed, leading to violation of the permit, breaching the requirement to act only under a valid permit under MCL 324.30312.

3. Plaintiff's rebuttal to Section V paragraph C "The Township did not Violate MCL 324.32723 because the Project Received the Proper Permitting, and Plaintiff's Factual Allegations are Patently False."

Defense claims they have a permit and are not in violation of it. To this day, they are continuing to pump beyond the permit window (Exhibit N), which concluded in October as produced by Defense as Exhibit 5 of the Defendant's Brief in Support of Summary Disposition. Additionally, no permit was posted on site for public examination, as required by the permit, until September 22, 2025. The permit was not available to the Plaintiff or general public until produced as a result of litigation in Defendant's Reply Brief. Coincidentally, this permit, available only after Plaintiff filed the Complaint, used

nearly the exact number of gallons calculated by Plaintiff to have been already discharged at the time of filing (August 8, 2025). Furthermore, Defendant sought to enter into a conspiracy to deprive the public due process rights by avoiding public notice (“no public notice. Very helpful.”), acting in bad faith, exposed in e-mails included on the EGLE website (Exhibit O).

C. The Negligence Claim Survives Immunity for Equitable Relief (Rebutting Defendant's Section VI).

GTLA immunizes governmental agencies from tort damages during governmental functions, but this bar does not extend to equitable or injunctive relief, especially in environmental cases where irreparable harm demands court intervention. Mich. Farm Bureau v. Dep't of Env't | SC 165166 (2024) (courts have consistently held that the GTLA does not provide immunity for environmental damages under NREPA, evidenced by the permit produced by Defendant). Dep't of Env't Quality v. Gomez, 318 Mich. App. 1 (2016) (equitable remedies available for NREPA violations). Even without exceptions, MEPA's equitable focus overrides GTLA for non-monetary relief, protecting constitutional environmental rights. Defendant's oversight negligence caused ongoing harms; immunity cannot shield such public threats.

V. Conclusion

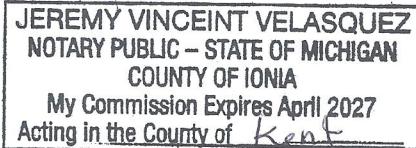
Defendant's motion lacks merit and must be dismissed. Plaintiff requests costs and fees.

Respectfully submitted, this 7th day of November, 2025.

I declare under penalty of perjury that this Brief has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

 11-7-2025

/s/ Donna Brandenburg
Donna Brandenburg, Plaintiff,
Pro Se
6842 Byron Shores Ct
Byron Center, MI 49315
616-430-4410
contact@donna4mi.com
Pro Se Plaintiff
Date: November 7, 2025



11/7/2025

Exhibit K

(Well invoice)

INVOICE

DATE

October 09, 2025

INVOICE NO

0002930

Donna Brandenburg

2930 64th Street

Byron Center, MI 49315

616-340-7625

INVOICE TO

Byron Center Township
8085 Byron Center Ave. SW
Byron Center, MI 49315

JOB**PAYMENT TERMS**

New 5" Well install 2930 64th

Due on Receipt

QUANTITY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	Invoice #19241	\$8,237.50	\$8,237.50
1	Invoice #19296	\$6,669.40	\$6,669.40
14	Individual Receipts	\$2,427.90	\$2,427.90
1	Invoice (Fred Baker)	\$243.89	\$243.89
1	Invoice (KYO Systems)	\$5,406.25	\$5,406.25
			TOTAL \$22,984.94

Exhibit L

(Citation from Kent County)

From: Marble, Kyler <kmarble@kentcountyroads.net>
Sent: 8/7/2025 11:01:44 AM
To: "CONNOR@MONTGOMERYEXCAVATING.COM"
<connor@montgomeryexcavating.com>
Cc: "Donald Tillema" <amos@byrontownship.org>; "peggy@byrontownship.org"
<peggy@byrontownship.org>; "ken.yonker@kentcountymi.gov" <ken.yonker@kentcountymi.gov>;
"joel.morgan@kentcountymi.gov" <joel.morgan@kentcountymi.gov>; "Reinhardt, Andrew"
<areinhardt@kentcountyroads.net>; "Easterly, Erik" <eeasterly@kentcountyroads.net>; "Bultsma,
Abigail (EGLE)" <BultsmaA@michigan.gov>; "Jeff Gritter" <jeff@vkcivil.com>; "Aaron Van Proyen"
<aaron@vkcivil.com>
Subject: SESC Permit 25-240 - 6400 Ivanrest Ave - Byron Center
Attachments: 25-240 NOV.pdf, 25-240 Report.pdf, Municipal Civil Infraction.pdf

**CAUTION: This is an External email. Please send suspicious emails to
abuse@michigan.gov**

Good morning,

Thank you for meeting today to go over the current issues on site. Attached you will find the notice of violation, municipal civil infraction, and supporting images (Image files exceeded the 36MB email limit and will be mailed to Byron Township instead) from 8/5/25.

Please let me know what questions you have.

Thank you,
Kyler



Kyler Marble
Soil Erosion Inspector
O: 616-242-6901 ext.6915
C: 616-450-4183
kmarble@kentcountyroads.net

Kent County Road Commission
1900 4 Mile Rd NW, Grand Rapids, MI 49544
kentcountyroads.net

ATTACHMENT NAME:

25-240 NOV.pdf

ATTACHMENT TYPE:

Adobe Portable Document Format (PDF) compound image



Kent County Road Commission

Byron Township – Don Tillema
8085 Byron Center Ave, Byron Center, MI 49315
Ivanrest/64th St (Knights Drain)

8/5/25

Notice of Violation

Please be advised that the soil leaving the site at **Ivanrest/64th St, Byron Township, Section 5, Kent County, Michigan** is in violation of the Kent County Soil Erosion and Sedimentation Control Ordinance. You now have **5 days** from the receipt of this letter to install controls to prevent soil from leaving the site, to comply with the Kent County SESC Ordinance. EGLE has jurisdiction over the removal of soils that have entered the drain/wetland. Failure to respond to this request will result in a municipal civil infraction being issued.

The Kent County Road Commission is the enforcing agency for soil erosion in Kent County. If you have any questions, please call me at (616) 242-6900.

Penalties for not complying with the Kent County Soil Erosion and Sedimentation Control Ordinance:

1. A person who owns land that is not in conformance with the Ordinance is responsible for a municipal civil infraction subject to a civil fine.
 - a. Up to \$2,500 for violation of the provisions of the Ordinance.
 - b. Up to \$10,000 per day for knowingly violating the Ordinance.
 - c. Up to \$25,000 per day for knowingly violating the act after receiving notice of violation.
2. A stop work order may be issued until compliance is achieved.
3. The enforcing agency can install or maintain control measures to bring a nonconforming site into compliance with the Ordinance and bill the landowner for the costs incurred.

Thank you in advance for your cooperation.

Kyler Marble
Engineering/Soil Erosion
Inspector

ATTACHMENT NAME:

25-240 Report.pdf

ATTACHMENT TYPE:

Adobe Portable Document Format (PDF) compound image

KENT COUNTY ROAD COMMISSION

1900 4 MILE RD NW
WALKER, MI 49544
(616) 242-6910

SOIL EROSION AND SEDIMENTATION CONTROL SITE INSPECTION FIELD REPORT

Name BYRON TOWNSHIP- DONTILLEMA Permit Number: 25 / 240
 Address 8085 BYRON CENTER AVE Date Issued: 7/17/25 Open
 City BYRON CENTER State MI Zip 49315 Expiration Date: 2/1/26 Closed
 Telephone 616-878-9066 Fax E-mail Address AMOS@BYRONTOWNSHIP.ORG
 The project location is described as: IVANREST/64TH ST (KNIGHTS DRAIN)
 City or Township of BYRON Section 5 Surface Water KNIGHTS DRAIN
 Responsible On-Site Party MONTGOMERY EXCAVATING- CONNOR Telephone 616-902-5885 CONNOR@MONTGOMERYEXCAVATING.COM
 Project Description: SANITARY SEWER- 3.1 ACRE

Inspector's notes:

- Project not started.
- Earth change has begun, site is stable and erosion and sedimentation controls are correctly installed.
- Earth change has begun, controls **not** installed per plan. Location: _____
- Construction continues and the site is stable.
- There is potential for sediment to leave the site. Location: _____
- Sediment is leaving the site. Location: Knights Drain
- Slopes need final grading and seeding to stabilize soil surface.
- The earth change is complete but vegetation needs to be established. Location: _____
- The permit has expired and an extension is necessary, call (616) 242-6910
- Project is complete and growth is sufficient. Please remove all temporary soil erosion controls.
- Permit is closed

Additional comments:

Temporary controls have been damaged throughout the site.

Sediment-laden water is washing into the knights drain.

This project has not been set up per plan.

Diversified Dewatering seems to be the main contributor to these issues on site.

Please review the attached images showing the current issues on site.

- Corrections must be completed by: _____ / _____ / _____
- Violation notice recommended: _____
- Report mailed to: BYRON TOWNSHIP- DONTILLEMA
- Violation notice sent to: BYRON TOWNSHIP- DONTILLEMA
- Copies sent to: CONNOR@MONTGOMERYEXCAVATING.COM
- Permittee notified by telephone: Others participating during inspection _____

INSPECTOR'S NAME Kyler Marble DATE 08/05/2025 INSPECTION NO. 3

PERMITTEE'S COPY INSPECTOR'S COPY OFFICE COPY

ATTACHMENT NAME:

Municipal Civil Infraction.pdf

ATTACHMENT TYPE:

Adobe Portable Document Format (PDF) compound image



Kent County Road Commission

MUNICIPAL CIVIL INFRACTION

Alleged Violator:

Byron Township
Byron Center Ave
Byron Center, MI 49315

Date: 08-06-2025

Violation Site Address/ Location:

Ivanrest Ave - 64th St
Byron Center, MI
49315

FINE AMOUNT: \$\$1250.00

Under the Authority of the Kent County Soil Erosion and Sedimentation Control Ordinance No. 12-13-07-123, you are hereby ordered to pay the above mentioned fine for failure to comply with Ordinance requirements. You have 15 days from the receipt of this infraction to pay the fine and comply with the Ordinance. Fines shall be made payable to:

Kent County Road Commission
1900 4 Mile Rd NW
Walker, MI 49544

Unpaid Municipal Civil Infractions will be forwarded to the Kent County District Court System for further action. Fines paid in full at the Violations Bureau address listed above within the allotted time, will be considered fully resolved and will remain out of the Court System permanent records.

Questions about the Municipal Civil Infraction should be addressed to Erik Easterly at 616-242-1170.

Official's signature: _____

Official's name (printed): _____

Exhibit M

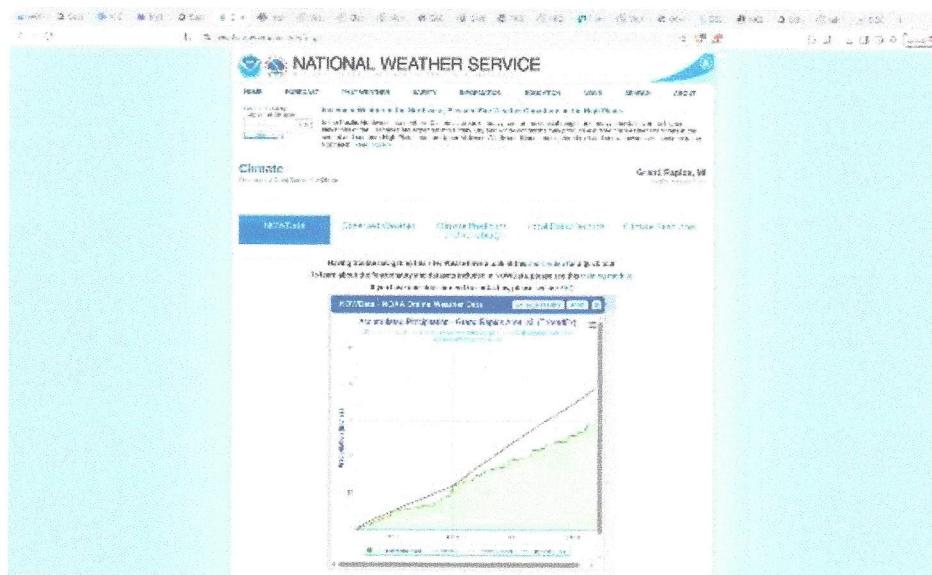
(Water table replenishment)

Based on conservative estimates it would take between 335 and 460 years to replenish the aquifer. If no further development over the last year 29.5 in of precipitation fell in Kent County, recharge is calculated at approximately 20-30% of rainfall recharging groundwater

Parameter	Low (8 in/yr)	Average (9.5 in/yr)	High (11 in/yr)
Depth (ft/year)	0.667	0.792	0.917
Annual Volume (acre-ft/year)	$10 \times 0.667 = 6.67$	$10 \times 0.792 = 7.92$	$10 \times 0.917 = 9.17$
Time (years)	$3,069 / 6.67 \approx 460$ years	$3,069 / 7.92 \approx 388$ years	$3,069 / 9.17 \approx 335$ years

<https://training.weather.gov/nwstc/Hydrology/HYDRO/BHModule/BH-unit4.HTML>

<https://www.weather.gov/wrh/climate?wfo=grr>



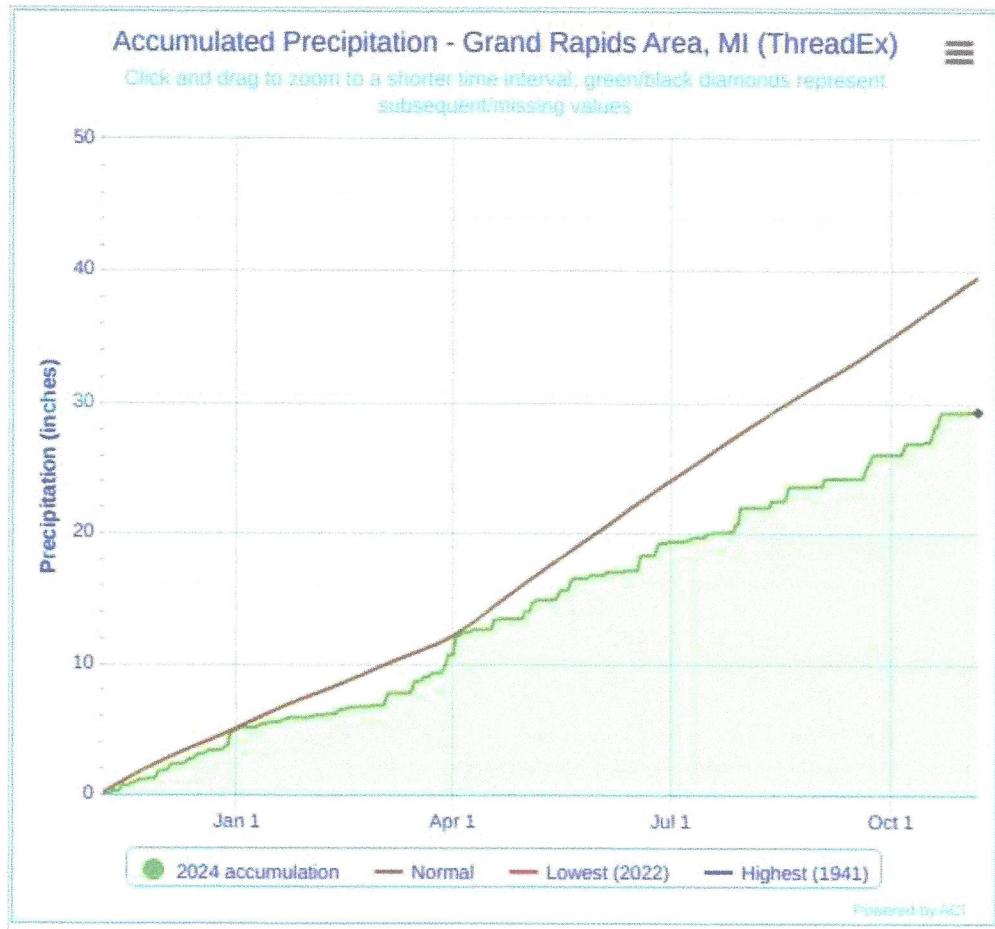


Exhibit N

(Photos of site from November 6, 2025)



IMG_1845

Thursday, November 6, 2025, 12:38:23 PM



IMG_1850

Thursday, November 6, 2025, 12:40:37 PM