

STATE OF MICHIGAN
IN THE 7TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF GENESEE

JASON BALLANTYNE,
Plaintiff (In Pro Per),

v.

GENESEE COUNTY ROAD COMMISSION;
WADE TRIM; and NASHVILLE CONSTRUCTION,
Defendants.

Case No. 2026-63926-CZ · Hon. Elizabeth A. Kelly

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION**
(Hearing: July 27, 2026)

INTRODUCTION

Plaintiff Jason Ballantyne owns the home at 6385 Seymour Road in Gaines Township. Seymour Road's drainage system collects stormwater along the west side of the road and discharges it through a cross-road culvert onto private property on the east side, where it crosses four private parcels — flooding yards, a pond, a driveway, and threatening a basement — before being pumped back into the road right-of-way. The ongoing reconstruction of Seymour Road makes this worse: the cross-road culvert has been set lower, the west roadside ditch was not restored, and a driveway culvert on the west side (parcel 10-10-400-023) was removed. What remains of the project is the final lift of asphalt and pavement striping. Once that surface goes down, the defective drainage configuration is sealed beneath a finished road, and correcting it will require tearing up new work at far greater cost.

On July 15, 2026, this Court denied Plaintiff's request for an ex parte TRO but recognized that “the relief sought may be appropriate,” and set this motion for hearing. Plaintiff now asks for narrow, practical relief: a preliminary injunction pausing only the final surface completion and drainage-related work on the affected stretch until the drainage design is reviewed and corrected — a correction the project's own engineering firm indicated it could perform.

STATEMENT OF FACTS

1. The cross-road culvert — and a discharge off BOTH sides. Seymour Road's cross-road culvert takes stormwater collected in the west roadside ditch and discharges it onto private

property on the east side of the road, where it flows across the parcels of at least four owners in sequence — Guy, Mary (6463 Seymour Rd), Plaintiff (6385), and Somers — and is pumped back to the road ditch at the downstream end. Because the west ditch has been left filled-in and its driveway culvert removed, water is also forced off the WEST side of the road, sheeting across the western parcels and flowing north until both flows rejoin near the north end. Properties along the entire corridor between Hill Road and Reid Road — more than thirty owners — are in the water's path. (Exhibits D1–D2; water-flow map; owner-annotated aerial.)

2. The flooding predates the project and comes from the drain. Plaintiff's property flooded from this same drainage before the current project began — approximately one inch of rain produces roughly five inches of standing and flowing water across Plaintiff's front yard, with continuous flow five to six months of the year. (Exhibits A1–A2, B1–B4; video, Vimeo: vimeo.com/1201855236.)

3. The project makes it worse. During the 2026 reconstruction: (a) the cross-road culvert was installed lower than the prior culvert, directing more water east onto private land; (b) the west roadside ditch north of the cross-drain was left filled-in and was not re-ditched; and (c) the driveway culvert at parcel 10-10-400-023 was removed. Each change increases the volume and velocity of stormwater discharged onto the east-side parcels. (Exhibits E1–E4.)

4. Mary's basement. The sump-pump outlet for the home at 6463 Seymour Rd discharges at grade in the middle of the area where the increased water is being directed. Before construction, high water crested approximately one inch below that outlet. The lowered grade and increased flow place her basement at imminent risk. (Exhibit F1.)

5. Out-of-pocket losses already incurred. Plaintiff has spent approximately \$4,000 per year restoring his washed-out limestone driveway; paid to roughly double the outflow capacity of the culverts under his driveway at his pond in an attempt to keep up with the water (Exhibits C1–C4); and paid a neighbor out of his own pocket to cut down and clear his trees from the ditch line — trees that stood in and obstructed the drainage path (Exhibit I1) — after the project's tree contractor missed them because they were shown on plans printed too faintly to read. A delivery truck attempting to pass the moving water also left the flooded driveway, sank, and crushed newly installed drain tile.

6. The crushed driveway culvert — the cascade in one object. Because the cross-drain flooding washes out Plaintiff's limestone driveway every year, Plaintiff must bring in loaded trucks of repair stone annually. The project work left Plaintiff's driveway culvert with insufficient soil cover over it, and a loaded tractor-trailer delivering material to repair the flood damage crushed it — the culvert is collapsed to a fraction of its diameter, only a sliver of light passes through it,

and it remains unrepaired. (Exhibits H1–H4.) The flooding causes the repairs, the repairs require the trucks, the inadequately covered culvert could not bear them: each harm cascades into the next.

7. Not a floodplain. FEMA maps the affected parcels as Zone X — an Area of Minimal Flood Hazard, outside the 100- and 500-year floodplains (FIRM panel 26049C0290D). The property's independent mortgage appraisal confirms it is not in a Special Flood Hazard Area. The flooding at issue is produced by the road's drainage, not by any natural watercourse.

8. Community support. More than a dozen households signed the community-support petition that was filed with the Court, and canvassing since the filing has produced support from every household approached between Hill Road and Reid Road. More than thirty property owners along the corridor are affected. (Community Support Signature Packet, filed.)

9. Third-party and the County's own standards corroborate the defects. The culvert pipe manufacturer, Advanced Drainage Systems (ADS), has issued a formal letter through its Regional Engineer (Miguel D. Vargas, P.E., July 23, 2026) confirming that N-12 culverts on this project were installed with LESS THAN MINIMUM COVER and that ADS does not honor its warranty for such installations; ADS personnel reviewing the site described 'zero cover' and stated 'this pipe will fail.' (Exhibit 21.) The Road Commission's own published driveway-and-culvert brochure instructs: 'Provide sufficient cover over culvert... maintain the existing water flow' and 'Do not fill any ditches! They are a necessary part of the road system.' (Exhibit 22.) The project violated the County's own printed standards.

10. The contractor proposed the fix in writing — and the Road Commission denied it. The project contractor, Nashville Construction, submitted change orders proposing to re-ditch the west side of the road as it was before, reinstall the driveway culvert that was removed at parcel 10-10-400-023, and ditch the east side of the road — so that stormwater would continue down the road instead of across private property. The Road Commission denied those change orders. Nashville Construction's project manager, Matt, also indicated before suit that a corrective backslope of the affected stretch was feasible while equipment was mobilized. The equipment remains on site; all that remains of the project is the final asphalt lift and striping.

STANDARD FOR PRELIMINARY INJUNCTION

Under MCR 3.310, the Court weighs four factors: (1) the likelihood that the moving party will prevail on the merits; (2) whether the moving party will suffer irreparable harm without the injunction; (3) whether the harm to the moving party absent an injunction outweighs the harm an injunction would cause the opposing party; and (4) the public interest. *Detroit Fire Fighters Ass'n, IAFF Local 344 v City of Detroit*, 482 Mich 18, 34 (2008). Irreparable harm requires a

particularized showing of real and imminent — not speculative — injury. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1 (2008).

ARGUMENT

I. Plaintiff is likely to prevail on the merits.

Michigan follows the natural-flow doctrine: lower land must accept surface water's natural flow, but the dominant owner “may not, by changing conditions on his land, put a greater burden on the servient estate by increasing and concentrating the volume and velocity of the surface water.” *Wiggins v City of Burton*, 291 Mich App 532 (2011) (quoting *Lewallen v City of Niles*); accord *Kernen v Homestead Dev Co*; *Gregory v Bush*, 64 Mich 37 (1887). “It is beyond dispute that a defendant's unauthorized act of causing excess waters to flow onto another person's property constitutes a trespass” — including where the defendant is a county road commission. *Wiggins*, *supra* (quoting *Herro v Chippewa Co Rd Comm'rs*).

That is this case, literally: a road authority collecting stormwater in a ditch and discharging it through an artificial culvert, concentrated, onto private land — and now increasing that discharge by lowering the culvert, eliminating west-side conveyance (no re-ditching; driveway culvert removed), so that more water crosses onto the east-side parcels faster. Where deliberate public-improvement decisions direct water onto private property and damage it, the owner also states a claim for inverse condemnation. *Peterman v Dep't of Natural Resources*, 446 Mich 177 (1994); *Hart v City of Detroit*, 416 Mich 488 (1982); Mich Const 1963, art 10, § 2. FEMA's Zone X designation removes the “it's a natural floodplain” defense: the water is here because the road puts it here.

II. Without an injunction, the harm becomes locked in and irreparable.

The project is at its final stage: one asphalt lift and striping. Once the surface is finished and the project closed out, the defective drainage configuration is sealed beneath a completed road — correction would then require tearing up finished pavement, a remedy this Court could not practically order and Defendants would resist precisely because of its cost. The next significant rain event risks flooding the basement at 6463 Seymour Road (a harm to habitable living space that damages cannot adequately remedy), continued destruction of Plaintiff's land, driveway, and pond, and dangerous water crossing driveways and the road itself. Injury to land is the classic subject of equity; a continuing, recurring trespass cannot be fully remedied by successive damage awards. This is a particularized, imminent harm — documented by dated photographs, video, and the physical state of the site — not speculation. *Pontiac Fire Fighters*, *supra*.

III. The balance of harms tips decisively toward Plaintiff.

Plaintiff does not ask the Court to stop the road project. He asks only that the final surface completion and drainage-related work on the affected stretch pause until the drainage is reviewed and corrected. The correction is not hypothetical: the project contractor, Nashville Construction, proposed it in written change orders — restore the west ditch, reinstall the removed driveway culvert, ditch the east side so the water continues down the road — and the Road Commission denied them. Equipment is already mobilized. A short pause costs Defendants scheduling convenience. Completing the project without correction costs the residents their yards, driveways, a pond, and potentially a basement — and costs the public the far larger expense of tearing up a finished road later.

IV. The public interest favors the injunction.

The public interest lies in a road built right the first time; in stormwater kept within the public drainage system rather than cast onto private land; in the safety of residents and delivery drivers who cannot see driveway edges under moving water; and in avoiding the waste of public funds on rework. More than a dozen households along the project corridor have signed in support of exactly the review this motion requests. The Michigan Department of Transportation has also been contacted regarding the project's drainage compliance.

ANTICIPATED DEFENSES AND RESPONSES

As of this filing, Defendants have appeared through counsel but filed no opposition. Plaintiff addresses the arguments Defendants are expected to raise:

“Governmental immunity bars this action.” Immunity does not bar constitutional inverse-condemnation claims (Mich Const 1963, art 10, § 2), claims for injunctive relief against a continuing physical invasion, or the surface-water/trespass rules recognized in *Wiggins*. *Pohutski v City of Allen Park*, 465 Mich 675 (2002), redirected — not eliminated — the remedy.

“The area is a natural low-lying drainage course.” FEMA Zone X (FIRM 26049C0290D) and the property's appraisal say otherwise; the ‘low area’ was excavated ~25 years ago to fill a private pond; and Defendants can produce no established county drain or recorded easement across these parcels. If the route to the Snell Drain were lawful, there would be a drain and an easement. There is neither.

“Plaintiff cannot show irreparable harm; damages suffice.” The harm is a continuing trespass on land, an imminent basement flooding, and a defect about to be permanently sealed under new pavement. Successive damage suits are not an adequate remedy for recurring invasions of real property, and post-completion correction is impracticable.

“The injunction would delay a public project.” The requested relief pauses only the final lift/striping and drainage items on the affected stretch — while the contractor's own equipment is mobilized and the engineer's proposed fix (backslope) is on the table. The cheapest moment to correct the defect is now.

“Plaintiff seeks to redesign the road by court order.” Plaintiff seeks a pause and a review. The engineering solution already exists in Defendants' own paperwork: Nashville Construction's change orders proposed restoring the west ditch, reinstalling the removed culvert, and ditching the east side — the Road Commission denied them. The Court need only preserve the status quo before the defect becomes irreversible.

“The design was reasonable engineering judgment.” The contractor executing the design formally proposed correcting it, in change orders. The Road Commission's denial of that correction — with knowledge of the flooding — is precisely the deliberate, property-directed choice that supports both the surface-water claim and the taking claim.

RELIEF REQUESTED

Plaintiff respectfully requests that the Court: (1) enjoin Defendants, pending further order, from performing the final asphalt lift, surface striping, and final drainage completion or project close-out on Seymour Road between Hill Road and Reid Road; (2) order that the project's drainage design and as-built conditions for that stretch (cross-road culvert elevation, west-ditch restoration, driveway culvert at parcel 10-10-400-023, and east-side discharge) be reviewed and a corrective plan presented to the Court within fourteen (14) days — Defendants remaining free to implement immediately the corrective work Nashville Construction already proposed in its change orders (restore the west ditch, reinstall the removed driveway culvert, and ditch the east side so water continues down the road); (3) order Defendants to produce the Nashville Construction change orders and the Road Commission's denials in connection with that review; and (4) grant such other relief as is just, including preserving all of Plaintiff's claims for damages and just compensation.

Respectfully submitted,

/s/ Jason Ballantyne

Jason Ballantyne, Plaintiff In Pro Per

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Dated: July ___, 2026