

THE LEGAL BASIS

Why the Road Commission should not route Seymour Road's stormwater across private property

A plain-language explanation with Michigan legal authority — for the residents of Seymour Road and the public

6385 Seymour Road, Swartz Creek, MI · Genesee County · June 2026

THE SHORT VERSION

- Michigan law lets water flow naturally downhill — but a road authority may NOT collect stormwater and dump it, concentrated and at greater volume and speed, onto private land through a culvert. That is exactly what the Seymour Road cross-culvert does.
- When a government deliberately channels water onto private property and damages it, that can be an unconstitutional “taking” — and the owner is owed compensation. Government immunity does not erase this; the constitution overrides it.
- The county’s “it just drains to a low area / the Snell Drain” explanation only works if there is a real, legally-established drain and easement for that route. If there isn’t, the water is simply being dumped on private land.
- Residents also have a direct tool: a petition to the Genesee County Drain Commissioner under the Michigan Drain Code.
- FEMA maps these properties as Zone X — OUTSIDE any natural floodplain. This flooding is man-made, caused by where the road sends its water.

1. The facts that the law cares about

- **The mechanism.** Seymour Road's cross-road culvert collects stormwater on the west side and discharges it, concentrated, onto private property on the east side — it does not carry the water down a road ditch to a lawful outlet.
- **The path.** From the culvert the water crosses private parcels in sequence — Guy → Mary → the Ballantyne property (front yard, pond, and over the limestone driveway) → the Somers property, which must pump it back to the road. The water makes a horseshoe off the road, across private land, and back to the road.
- **It is being made worse, on purpose, right now.** The reconstruction lowered the cross-culvert (more water east), left the west ditch un-re-ditched, and removed the driveway culvert at parcel 10-10-400-023 — increasing the volume and velocity of water forced onto private land.
- **It is not natural floodplain water.** FEMA maps the properties as Zone X (minimal flood hazard, outside the mapped floodplain), independently confirmed by the property's mortgage appraisal (FIRM panel 26049C0290D).

2. Michigan surface-water law: water may flow naturally — but you cannot concentrate it

Michigan follows the natural-flow doctrine for surface water. Lower land (the “servient” estate) must accept water that naturally drains onto it from higher land. That much favors no one here — water runs downhill.

But the doctrine has a hard limit that controls this case: an upper owner may not artificially collect, concentrate, or increase surface water and cast it onto a neighbor.

“the owner of the dominant estate 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.” —

Lewallen v. City of Niles, as quoted in Wiggins v. City of Burton, 291 Mich App 532 (2011)

“the owner of the upper estate has no right to increase the amount of water that would otherwise naturally flow onto the lower estate.” — Kernen v. Homestead Dev. Co., as quoted in Wiggins v. City of Burton (2011)

This is not new law. Michigan has prohibited concentrating surface water through an artificial channel onto a neighbor since the 1800s. See Gregory v. Bush, 64 Mich. 37 (1887). A cross-road culvert that gathers the road's stormwater and pours it, concentrated and at increased velocity, onto private parcels is the textbook violation of this rule — and the current construction increases exactly the “volume and velocity” the cases forbid.

3. Dumping water on private land is a trespass — and the doer here is a public road authority

Michigan courts are explicit that forcing excess water onto someone's land is a trespass:

“it is beyond dispute that a defendant's unauthorized act of causing excess waters to flow onto another person's property constitutes a trespass.” — Herro v. Chippewa Co. Rd. Comm'rs, as quoted in Wiggins v. City of Burton (2011)

That Herro case involved a county road commission — the same kind of defendant here. Flooding land is treated as a physical invasion of it. See also Adams v. Cleveland-Cliffs Iron Co. (flooding is “an unauthorized direct or immediate intrusion of a physical, tangible object onto land”), quoted in Wiggins.

One important wrinkle: in 2002 the Michigan Supreme Court eliminated the old “trespass-nuisance” exception that used to let people sue governments for this directly. See Pohutski v. City of Allen Park, 465 Mich 675 (2002). That does NOT mean the government can flood you for free — it means the right remedy shifts to the constitution: an unconstitutional taking (next section). The wrongful act is still a trespass; the avenue for relief against a government is inverse condemnation.

4. The constitutional claim: an uncompensated “taking” (inverse condemnation)

Both constitutions forbid taking private property for public use without paying for it:

“Private property shall not be taken for public use without just compensation.” — Mich. Const. 1963, art. 10, § 2; accord U.S. Const. amend. V

When the government takes or damages property without filing a condemnation case, the owner sues in “inverse condemnation.” Michigan recognizes that deliberately flooding or damaging private property as part of a public project can be a compensable de facto taking. See Peterman v. Dep't of Natural Resources, 446 Mich 177 (1994); Wiggins v. City of Burton (2011) (city's drainage project that channeled water onto a homeowner's land remanded to decide whether it was a taking).

What a property owner must show

- **(1)** the government's actions were a substantial cause of the decline in the property's value; and
- **(2)** the government abused its legitimate powers in affirmative actions directed at the property — “some action by the government specifically directed toward the plaintiff's property that has the effect of limiting the use of the property.”

(Standards from *Heinrich v. Detroit* and *Charles Murphy, MD, PC v. Detroit*, as quoted in *Wiggins*; causal connection required by *Hinojosa v. Dep't of Natural Resources*, 263 Mich App 537 (2004); see also *Hart v. City of Detroit*, 416 Mich 488 (1982).)

How it applies here

The Road Commission's choices are deliberate and aimed at this land: it built and maintains a cross-culvert that points the road's stormwater at these specific parcels; and during construction it lowered that culvert, removed the west-side driveway culvert, and left the west ditch un-re-ditched — each an affirmative engineering decision that increases the water forced onto private property. The flooding is recurring, documented for years, and now being made worse. That is the kind of deliberate, property-directed government action the taking cases describe.

5. A second, direct path: the Michigan Drain Code

Residents do not have to wait for a lawsuit. Under the Michigan Drain Code (Act 40 of 1956, MCL 280.1 et seq.), property owners can petition the Genesee County Drain Commissioner to locate/establish, clean out, deepen, or improve a county drain and provide a lawful outlet. A petition to clean out or maintain a drain may be filed by a group of affected freeholders (generally five, or a majority where there are fewer). See MCL 280.71 (petition to establish), MCL 280.121 and MCL 280.191–280.199 (cleaning out / maintenance).

This also exposes the weakness in the county's explanation. If the county says the water lawfully flows to the Snell Drain, then there should be an established county drain and a recorded drainage easement along that route. If no such drain and easement cross these private parcels, the “it drains to the Snell Drain” story does not hold — the water is simply being discharged onto private land. The Drain Code also provides that where the need for drain work “arises from the act or neglect” of a party, that is weighed in apportioning the cost.

6. “It's just a low-lying area” — and the FEMA answer

The county calls the east side a natural low area draining to the Snell Drain. The residents' position: that low area was excavated about 25 years ago to fill a neighbor's pond — it is not a natural watercourse, and it can be filled back in. Crucially, FEMA maps these parcels as Zone X — an Area of Minimal Flood Hazard, outside the 1% and 0.2% floodplains (FEMA National Flood Hazard Layer; FIRM panel 26049C0290D). In plain terms: this is not a river or a natural flood zone overflowing. The water is here because the road's drainage puts it here.

7. Challenge everything — the county's likely defenses, and the answers

The county may say...	The answer
“Lower land must accept water that flows downhill.”	True for the NATURAL flow. But a road authority may not artificially concentrate and increase the volume and velocity of that water through a culvert. <i>Lewallen</i> ; <i>Kernen</i> ; <i>Gregory v. Bush</i> ; <i>Wiggins</i> .

"It's a natural low-lying area that drains to the Snell Drain."	Then show the established county drain and the recorded easement for that route. The low area was dug ~25 years ago to fill a pond; FEMA maps it Zone X (not a floodplain). No lawful drain/easement = water dumped on private land.
"It's always been like this / you bought it this way."	Not a defense to a continuing trespass or taking — and the construction is making it materially worse now by lowering the culvert and removing the west culvert.
"Governmental immunity protects us."	Immunity ended the trespass-nuisance damages theory (Pohutski, 2002) — but it does NOT bar a constitutional taking (inverse condemnation) or equitable/injunctive relief, and it does not bar a Drain Code petition.
"This is discretionary engineering judgment."	A deliberate decision that directs water onto private property is precisely what supports a taking claim. Discretion does not authorize an uncompensated taking of private land.
"You never filed a proper notice/claim."	Inverse-condemnation (constitutional) claims are not subject to the 120-day highway-defect notice (MCL 691.1404). (Owners should still act promptly — limitations periods apply.)

8. What residents can do

- Ask first, together. A cooperative, documented request to approve the engineer's offered backslope is the fastest, cheapest fix — and a unified group of affected owners is far stronger than one voice.
- File a Drain Code petition. Affected freeholders can petition the Genesee County Drain Commissioner (Jeffrey Wright) to establish/clean out/improve a proper drain and outlet.
- Build the record. Keep dated photos and video, repair receipts, and a log of each flood event and cost. Inverse-condemnation value turns on documented, recurring harm.
- Request the plans. A FOIA request to the Road Commission for the project's drainage design and any drainage easements will show whether a lawful outlet/easement actually exists.
- Consult a Michigan attorney before deadlines. A taking/inverse-condemnation claim has time limits; a lawyer's letter also carries the most weight.

9. Sources & further reading

- Wiggins v. City of Burton, 291 Mich App 532 (2011) (surface water, trespass, taking) — <https://caselaw.findlaw.com/court/mi-court-of-appeals/1555349.html>
- Pohutski v. City of Allen Park, 465 Mich 675 (2002) (governmental immunity; trespass-nuisance) — <https://law.justia.com/cases/michigan/supreme-court/2002/20020402-s116949-51-pohutski-8-9oct01-op.html>
- Hart v. City of Detroit, 416 Mich 488 (1982) (inverse condemnation) — <https://law.justia.com/cases/michigan/supreme-court/1982/65370-3.html>
- Michigan Drain Code, Act 40 of 1956 (full text) — <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-40-of-1956.pdf>
- MCL 280.121 (cleaning out a drain) — <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-280-121>

- Michigan surface-water / natural-flow doctrine — overview (MSU) — https://www.canr.msu.edu/uploads/235/67987/lyndon/michigan_water_law.pdf
- How Michigan courts handle neighbor water-runoff (plain-language summary) — <https://daltontomich.com/how-michigan-courts-handle-neighbor-water-runoff-issues/>
- FEMA Flood Map Service Center (look up the Zone X designation) — <https://msc.fema.gov>

Important: This document explains publicly available Michigan law in plain language so residents can understand the issues. It is general information, not legal advice, and does not create an attorney-client relationship. Case outcomes depend on specific facts; consult a licensed Michigan attorney before relying on any of this for a legal claim, and note that legal deadlines may apply.