

**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Docket No.: 24-010898**

**PETITION OF MARK AND SHANNON  
TORZY ON THE PERMIT ISSUED TO  
RICHARD HOBIG,**

**Case No.: WRP040963 V 1**

**Part(s): 325 Great Lakes Submerged  
Lands**

**Agency: Department of Environment,  
Great Lakes, and Energy**

**Case Type: Water Resources Division**

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**Issued and entered  
this 9<sup>th</sup> day of May 2025  
by: Paul Smith  
Administrative Law Judge**

**FINAL DECISION AND ORDER**

This contested case concerns an after-the-fact permit issued to Richard Hobig under Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.32501, *et seq.* The permit authorized Mr. Hobig to install a 60-foot-long by 14-foot-wide bridge structure over a canal on Harsens Island in Clay Township, Michigan. On April 15, 2024, the Water Resources Division (WRD) of the Department of Environment, Great Lakes, and Energy (EGLE) issued the permit under Part 325. On April 30, 2024, Petitioners Mark and Shannon Torzy filed a Petition for Contested Case Hearing challenging issuance of the after-the-fact permit.

**JURISDICTION**

Rule 17(2) of the Administrative Rules to Part 325 grants the right to a contested case hearing to a person aggrieved by any action of the department. Mich Admin Code, R 322.1017(2). Petitioners are adjacent property owners. They claim they were

aggrieved by the issuance of the after-the-fact permit on April 15, 2024. Consistent with Rule 17(2), the contested case hearing on January 27, 2025, was conducted under the applicable provisions of the Administrative Procedures Act (APA), MCL 24.201, *et seq.*

### **PROPERTY RIGHTS PRESERVATION ACT**

Pursuant to the Property Rights Preservation Act, MCL 24.421, *et seq.*, the undersigned, in formulating this Final Decision and Order, reviewed the Takings Assessment Guidelines and considered the issue of whether this governmental action equates to a constitutional taking of property. See Const 1963, art 10, § 2.

### **PARTIES**

Petitioners were represented at the hearing by John A. MacKenzie of Warner Norcross and Judd LLP. Petitioners testified and also called Kevin Keck (real estate appraiser) and Kevin Zael (structural engineer) to testify.

The WRD, which administers Part 325, was represented at the hearing by Special Assistant Attorney General Eileen Whipple. The WRD offered the testimony of Alexis Gronda (the WRD Environmental Quality Analyst who issued the AFT permit at issue) and Andrew Hartz (WRD District Supervisor).

At the start of the hearing, the parties stipulated to the admission of Petitioners' Exhibits 1-17 and the WRD's Exhibits A-Z and ZA-ZG. The exhibits are described on pages 4-6 of the Transcript.

Mr. Hobig viewed portions of the hearing but was not a party to the contested case and did not testify.

### **STIPULATIONS ON THE RECORD**

At a prehearing conference held on October 23, 2024, the Parties stipulated as follows: (1) The proposed activity (for which Mr. Hobig sought a permit under Part 325) is regulated; (2) a permit was required for the proposed activity; (3) EGLE has

jurisdiction; and (4) the permit file was administratively complete. Stipulations by the parties are evidence and are binding on the parties. MCL 24.278. Since these stipulations are factual, I adopt them as Findings of Fact.

### **LEGAL ISSUES**

In addition to challenging the WRD's decision to issue the after-the-fact permit under the permitting criteria of Part 325, Petitioner's oppose application of the doctrine of collateral estoppel and assert that Mr. Hobig's bridge improperly impairs their right to an easement in the canal over which the bridge was constructed.

### **FINDINGS OF FACT**

This matter involves a longstanding matter of contention between Mr. Hobig and his adjacent neighbors over his desire to construct a vehicular bridge over the Seminole Canal. Mr. Hobig was first issued a permit to construct the bridge in 2006. Similar permits were also issued in 2011 and 2016. Mr. Hobig did not build the bridge in question until 2023, two years after his 2016 permit had expired. In 2024, the WRD issued an after-the-fact permit allowing the construction of the bridge.

#### **Layout of the Canals and Description of the Bridge**

Petitioners own a house on Harsens Island, in Clay Township (Tr., p 21). Mr. Hobig owns the parcel of property immediately adjacent to Petitioners' property. Petitioners' house and Mr. Hobig's house are located on a strip of land lying between the South Channel of the St. Clair River and the Seminole Canal. The Seminole Canal is connected to the Star Island Highway Canal. The Star Island Highway Canal, in turn, is connected to St. Clair River near the outlet to Lake St. Clair. For a boat to access the St. Clair River from the canal side of Petitioners' house, it must traverse Seminole Canal (passing under Mr. Hobig's bridge), before entering the Star Island Highway Canal, which leads to the St. Clair River. (Exhibit 6, p 193; Tr., p 145.)

The Seminole Canal is a man-made, dead-end canal. Petitioners are the only persons who own a house on the Seminole Canal between the end and Mr. Hobig's bridge. (Tr., pp 94-95, 138; Exhibit 6, p 193.) Although Petitioners' property also has frontage on the St. Clair River, boats cannot safely access that side of Petitioners' property because the St. Clair River is a dynamic waterway that can be rough at times. The side of Petitioners' property facing the St. Clair River is not protected from boat wakes or waves (Tr., pp 35-36, 133).

The after-the-fact permit at issue in this proceeding allowed Mr. Hobig to build his vehicular bridge over the Seminole Canal. As noted, because Mr. Hobig's parcel lies between Petitioners' parcel and the outlet to the South Channel by way of the Star Island Highway Canal, construction of the bridge had the effect of placing a physical limit on the size of boats that are able to access Petitioners' property on the canal side (where Petitioners have a boathouse). Before the construction of the bridge, large cruisers and center console boats could dock on the Seminole Canal beside Petitioners' property. After the bridge was built, boats of that size could no longer access the canal side of Petitioner's property. (Tr., p 22-23; Exhibit 7.)

Before the vehicular bridge was constructed, Mr. Hobig could not drive a vehicle over the Seminole Canal to his house. Instead, he accessed his house by parking his vehicle on the far side of the Seminole Canal and then walking across a footbridge over the Seminole Canal. Unlike Mr. Hobig's vehicular bridge, the footbridge did not block boats from accessing Petitioners' property because the footbridge is located on the other side of Petitioners' boathouse near the impassable dead end of the Seminole Canal. (Tr., pp 27-28.)

The type of vehicular bridge constructed by Mr. Hobig is common on Harsens Island (Tr. pp 88-89, 134). The bridge is supported by foundational pilings installed in the bottomland and 8-foot-wide by 1-foot-deep sloped rip rap abutments on the bottomland at each end (Exhibit 2; Exhibit ZA, p 2; Exhibit ZC, p 3; Tr., p 119). The

highest section of the bridge above the water, in the center, is 14 feet wide and 13 feet and 4 inches above the bottom of the Seminole Canal. The approved EGLE Plans associated with the 2024 permit show a water depth of 2 feet and 6 inches under the bridge, which would leave a clearance for boats in the amount of 10 feet and 10 inches above the water level. (Exhibit ZC; Tr., pp 87-88, 118.) Alexis Gronda testified credibly that the water level in the Seminole Canal can “change drastically” over time. (Tr., p 87). Given the fluctuating water levels, the extent of boat navigation available under Mr. Hobig’s bridge is dependent on water levels and will vary over time (Tr., pp 133-134). The elevation of the center part of the bridge is 580.7 feet (Ex. G, p 13). From 2008-2023, the lake level on nearby Lake St. Clair fluctuated up and down between an elevation of approximately 572.5 feet and 577.5 feet, with the level in 2023 being three feet higher than the level in 2008 (Exhibit 3; Tr., pp 9-10, 25). These figures indicate that the amount of clearance between the waterline and the top of the bridge would have varied over this period within a range of approximately three feet to eight feet. From the ordinary high-water mark of 574.7 feet above sea level (international Great Lakes datum of 1955), as set forth in MCL 324.32502, the amount of clearance would be six feet.<sup>1</sup>

#### Star Island Highway Canal Easement

A 40-foot-wide “highway” easement exists within the Star Island Highway Canal (Tr., pp 114-115; Exhibit 17). Unlike the Seminole Canal, which branches off from the Star Island Highway Canal, the Star Island Highway Canal is not a man-made canal structure (Tr., p 115).

#### History of Permit Activity and Litigation

In 2006, the Michigan Department of Environmental Quality (DEQ),<sup>2</sup> Land and Water Management Division issued a permit to Mr. Hobig under Part 325 allowing Mr.

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<sup>1</sup> The statutory ordinary high-water mark of 574.7 feet for Lake St. Clair (international Great Lakes datum of 1955) equates to 575.4 feet (international Great Lakes datum of 1985).

<sup>2</sup> Pursuant to Executive Order 2019-06, the DEQ was renamed the Department of Environment, Great Lakes, and Energy (EGLE) in 2019.

Hobig to construct a vehicular bridge across a canal to allow him to access his house by car. On March 8, 2006, David Fullington (Petitioner's predecessor in interest) filed a petition challenging the issuance of the permit. After a contested case hearing, an administrative law judge issued a proposal for decision on June 25, 2008, recommending that the permit be denied on the grounds that it adversely affected Mr. Fullington's riparian and navigation rights and that a feasible and prudent alternative (use of an existing footbridge) was available to allow Mr. Hobig to access his house. (Exhibit ZA, p 1; Exhibit C, pp 5-16.)

On December 19, 2008, the Director of the DEQ issued a Final Determination and Order (FDO) concluding that Mr. Hobig was entitled to a permit under Part 325 to construct a vehicular bridge over the Seminole Canal to his house. In reaching this determination, the Director concluded that (1) the proposed bridge "would not pose an adverse effect to navigation on the canal", (2) no feasible and prudent alternative was available to carry vehicular traffic over the canal, and (3) no riparian rights were associated with the man-made canal at issue. (Exhibit C, pp 1-4.) The 2008 FDO was appealed to and affirmed by the St. Clair County Circuit Court on October 8, 2009 (Exhibit D, p 3).

In 2011, DEQ issued Permit No. 11-74-0040-P to Mr. Hobig under Part 325 allowing him to, among other things, "[c]onstruct a 60-foot span by 14-foot wide bridge" over the canal. This permit expired on May 25, 2016. (Exhibit E.)

On September 23, 2016, the WRD issued Permit No. WRP004432 to Mr. Hobig under Part 325 allowing Mr. Hobig to "[c]onstruct a 60-foot span by 14-foot wide bridge" over the canal. This permit expired on September 23, 2021. (Exhibit 1; Exhibit K.) On January 13, 2017, while the 2016 permit was still valid, Petitioners purchased from Mr. Fullington the house that is located next to Mr. Hobig's property (Exhibit D, p 4; Exhibit 14).

From 2017, when Petitioners bought the adjacent property, until 2023, Petitioners' invited guests were able to bring large boats into the canal behind their house because the bridge at issue was not yet built (Tr., pp 22-23). In April or May of 2023, Mr. Hobig began to construct the 60-foot span by 14-foot wide bridge described in Permit No. WRP004432 (Tr., p 31). On June 9, 2023, after receiving a complaint from Petitioners, the WRD conducted an inspection at Mr. Hobig's property and observed that he had completed work after the permit's September 23, 2021, expiration date. A review of aerial photography by the WRD showed that the previously permitted bridge structure had not been completed as of April 2, 2023. By June 9, 2023, however, the bridge was installed. (Exhibit 5; Exhibit R; Tr., p 32.)

On June 27, 2023, EGLE issued Violation Notice No. VN-014611 to Mr. Hobig for conducting unauthorized activities, "including completing work past the permit expiration date of September 23, 2021." The Violation Notice ordered him to stop all unauthorized activities. (Exhibit 5; Exhibit R.) On September 29, 2023, Mr. Hobig filed an application for an after-the-fact permit under Part 325 for the existing bridge (Exhibit U).

Alexis Gronda (WRD Environmental Quality Analyst) and Andrew Hartz (WRD District Supervisor) conducted a site inspection (Tr., p 86). On February 21, 2024, the WRD issued a Public Notice of Mr. Hobig's application, a copy of which was provided to Petitioners as adjoining property owners (Exhibit X). Petitioners, through their legal counsel, submitted a comment objecting to issuance of the after-the-fact permit asserting that construction of the bridge had damaged the environment and caused Petitioners more than \$200,000 in property damage. Another commenter objected to Mr. Hobig's use of unpermitted materials in the construction of the bridge. (Exhibit Y.)

On April 15, 2024, the WRD issued after-the-fact Permit No. WRP040963v1 to Mr. Hobig allowing the following, already-completed, construction:

Install one 1 60-foot-long by 14-foot-wide bridge structure affixed to one 1 40-foot-long by 8-foot-wide by 1-foot-deep riprap abutment and one 1 20-

foot-long by 8-foot-wide by 1-foot-deep riprap abutment. Install one 1 24-foot-long by 4-foot-wide dock structure with a 10-foot-long by 12-foot-wide platform structure to the waterward end.

(Exhibit 2; Exhibit ZB; Tr., p 105.)

In 2023, Petitioner brought a lawsuit against Mr. Hobig in the St. Clair County Circuit Court challenging his construction of the bridge at issue. On August 21, 2024, the circuit court issued an order granting summary disposition to Mr. Hobig on three counts of Petitioner's amended complaint. In the opinion and order granting partial summary disposition, the circuit court concluded that the doctrines of res judicata and collateral estoppel precluded Petitioner's from asserting, contrary to the 2008 FDO issued by the Director of DEQ, that the bridge interfered with their navigation and riparian rights. (Exhibit D.) As of the time of the contested case hearing, the circuit court litigation remained pending and subject to appeal.

### **ISSUE PRECLUSION**

The questions that were put before the DEQ Director addressing Mr. Fullington's challenge to the 2006 permit are essentially the same as the questions that now must be answered to resolve Petitioners' challenge to the 2024 permit. Accordingly, the WRD argues that issues regarding the riparian rights surrounding Petitioners' property and impacts to navigability have already been settled. The preclusion doctrines of res judicata and collateral estoppel are intended to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation." *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 715-716; 848 NW2d 482 (2014).

When applicable, the doctrine of res judicata "bars a second action on the same claim." *Mecosta County Medical Center v Metropolitan Group Property and Casualty Ins Co*, 509 Mich 276, 282; 983 NW2d 401 (2022). Res judicata does not apply here, however, because two separate permits are involved. Strictly speaking, the present contested case hearing does not involve the "same claim" as Mr. Fullington opposition



to the 2006 permit. Collateral estoppel, on the other hand, focuses on specific issues within an action. *Id.* at 282-283. For collateral estoppel to apply: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment, (2) the parties or privies must have had a full and fair opportunity to litigate the issue, and (3) there must be mutuality of estoppel. *Id.* at 283.

The preclusion doctrines are applicable to administrative decisions (1) that are adjudicatory in nature, (2) when a method of appeal is provided, and (3) when it is clear that the Legislature intended to make the decision final absent an appeal. See *William Beaumont Hosp. v Wass*, 315 Mich App 392, 399; 889 NW2d 745 (2016), quoting *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995); see also *Minicuci v Scientific Data Management, Inc*, 243 Mich App 28, 38-39; 620 NW2d 657 (2000). The 2008 FDO issued by the DEQ Director after a contested case hearing before the ALJ meets these three requirements.

The preclusion doctrines do not apply “where a material change in circumstances occurs after a judgment has been rendered ....” See *Cloverlanes Bowl, Inc v Gordon*, 46 Mich App 518, 524; 208 NW2d 598 (1973); see also *Jackson Dist Library v Jackson County*, 428 Mich 371, 378-379; 408 NW2d 801 (1987) (“The [collateral estoppel] doctrine applies only when the issue to be decided is the same as an issue determined in previous litigation. If the issues are not the same, the doctrine of collateral estoppel is not applicable.”); *Local 98 v Flamegas Detroit Corp*, 52 Mich App 297, 303; 217 NW2d 131 (1974).

#### **A. Questions of Fact Actually Litigated in Valid and Final Judgment**

The contested case proceeding that led to the 2008 FDO involved a challenge by Mr. Fullington, then the owner of Petitioners’ property, to a 60-foot by 14-foot bridge that Mr. Hobig proposed to build over the Seminole Canal. The dimensions of the proposed bridge were the same as the dimensions of the bridge approved in the 2024 permit issued to Mr. Hobig. Mr. Fullington’s objections to the 2006 permit were the same as

Petitioners' objections to the 2024 permit. Mr. Fullington complained that his pontoon boat, which required 9 feet of clearance, would not be able to pass under the proposed bridge, which would have been 8 feet above water while the water was at a relatively low level. Mr. Fullington asserted that the water level had fluctuated by as much as five feet over the previous 30 years. Mr. Fullington argued that the bridge should not be permitted because of the adverse effects it would have on his riparian interests and his ability to navigate from his property, under the bridge, to the St. Clair River. Finally, Mr. Fullington also argued that the existence of a footbridge provided a feasible and prudent means for Mr. Hobig to access his house. (Exhibit C, pp 5-16.) Petitioners have made the same arguments in challenging the 2024 permit.

In his decision upholding issuance of the 2006 permit to Mr. Hobig, the DEQ Director concluded that Mr. Fullington's riparian interests would not be impacted by the bridge because Seminole Canal was a man-made canal to which riparian rights did not attach. With respect to Mr. Fullington's interest in navigating under the bridge, the DEQ Director found that the proposed bridge would be "quite a bit higher" than most bridges in the general location and that, as such, it would not interfere with navigation. In reaching this conclusion, the DEQ Director noted that Mr. Fullington's pontoon boat would be able to pass under the proposed bridge if Mr. Fullington took two minutes to lower the canopy. Finally, the DEQ Director concluded that the existing footbridge was not a feasible and prudent alternative because the purpose of the proposed bridge was to allow vehicular traffic to cross Seminole Canal, which could not be accomplished by the footbridge. (Exhibit C, pp 1-4.) Mr. Fullington's appeal to circuit court was unsuccessful (Exhibit D, p 3).

Based on the contested case proceeding resulting in the 2008 FDO, the following issues were actually litigated to a valid and final judgment: (1) the impact of Mr. Hobig's bridge on riparian interests of the adjacent landowner, (2) the impact of Mr. Hobig's bridge on navigation in the Seminole Canal by the adjacent landowner, and (3) the existence of feasible and prudent alternatives to Mr. Hobig's bridge.

**B. Same Parties or Privies**

As the owners of the same parcel of property that was owned by Mr. Fullington, Petitioners are in privity with Mr. Fullington with respect to the adjudication of issues regarding Mr. Hobig's permission to construct a bridge over the Seminole Canal. The "classic definition of privity" consists of a "mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right." See *Mecosta County Medical Center, supra*, 509 Mich at 283-284 & n 3, quoting *Sloan v Madison Hts*, 425 Mich. 288, 295, 389 N.W.2d 418 (1986), and citing Casad & Clermont, *Res Judicata: A Handbook on its Theory, Doctrine, and Practice*. Just as with Mr. Fullington, Petitioners' rights to object to the permit granted to Mr. Hobig arises from their status as owners of the adjacent parcel of property on the Seminole Canal.

**C. Full and Fair Opportunity to Litigate**

The parties to the dispute over the 2006 permit issued to Mr. Hobig had a full and fair opportunity to litigate the questions in a contested case hearing before an administrative law judge with an appeal from the DEQ Director's decision in the 2008 FDO. The arguments made by Mr. Fullington and addressed in those proceedings were substantially the same as the arguments that Petitioners have made in this contested case proceeding.

**D. Mutuality of Estoppel**

Mutuality of estoppel requires the advocate for the use of collateral estoppel to also be bound by the earlier decision, had it gone against him. *Monat v State Farm Ins Co*, 469 Mich 679, 684-685; 677 NW2d 843 (2004). Mutuality exists in this matter because DEQ would have been bound by the 2008 FDO had the Director reached the opposite conclusion.

E.

**Material Change in Circumstances**

The applicable legal standards set forth in Part 325 and in the administrative rules governing Great Lakes Submerged Lands, Mich Admin Code, R 322.1001 *et seq.*, have not been changed since the issuance of the 2006 permit to Mr. Hobig. Although the law remains the same, application of the doctrine of collateral estoppel would not be appropriate if the facts had changed in a material way since the issuance of the 2008 FDO.

In their post-hearing briefs, Petitioners contend that the facts have materially changed in three ways. First, they assert that the lake level was three feet higher in 2023 than it was in 2008.<sup>3</sup> This fact was not disputed by the WRD. It is not, however, a material change. The evidence is clear that water levels regularly fluctuate within a range of five feet (Exhibit 3). That was true when the permit was issued in 2006, and it was true when the after-the-fact permit was issued in 2024. In the 2008 contested case hearing, the administrative law judge heard evidence from Mr. Fullington that water levels in the Seminole Canal had “varied by as much as five feet” over the prior 30 years (Exhibit C, p 8). As a matter of law, for purposes of Part 325, the ordinary high-water mark for Lake St. Clair is 574.7 feet above sea level.<sup>4</sup> Because the statutory ordinary high-water mark and the expected amount of fluctuation remained constant between 2006 and 2024, the fact that the water level at some point in 2023 was three feet higher than it was at some point in 2008 was not material to the analysis of either permit.

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<sup>3</sup> Petitioners have presumably cited 2008 data, rather than data from 2006 (the year of the first permit), because the DEQ Director’s FDO was issued in 2008. Based on the water level chart admitted as Exhibit 3, the low point of the water level in 2008 was lower than the low point of the water level in 2006. Petitioners have presumably relied on 2023 data because it was the date of the bridge’s construction. Water levels in 2023 (the year of bridge construction) and 2024 (the year of the after-the-fact permit) were roughly the same (Exhibit 3).

<sup>4</sup> As noted, *supra*, The statutory ordinary high-water mark of Lake St. Clair at 574.7 feet (international Great Lakes datum of 1955) equates to 575.4 feet (international Great Lakes datum of 1985).

Second, Petitioners contend that their objection to the bridge was based on its impact on their ability to navigate large center console boats and cruisers in the Seminole Canal while Mr. Fullington was only concerned about the ability to navigate his pontoon boat under Mr. Hobig's proposed bridge. Unlike Mr. Fullington, Petitioners did not present any evidence that they own a boat that is too large to fit under Mr. Hobig's bridge. Mr. Torzy merely testified that they had, in the past, invited guests to visit by boat. These guests are now unable to access their property using the same large boats because they cannot pass underneath Mr. Hobig's bridge. Although the DEQ Director noted that Mr. Fullington would be able to navigate his boat under the bridge by lowering the canopy, the 2008 decision was not based on the size of Mr. Fullington's boat. The DEQ Director found in 2008 that Mr. Hobig's proposed bridge would "not interfere with navigation" because it would have a clearance "quite a bit higher than the average" of 26 other bridges surveyed in the "general location" (Exhibit C, p 2). No evidence has been presented that the navigation of boats, generally, within canals on Harsens Island, has changed in a material way between 2006 and 2024.

Finally, Petitioners argue that the fact that Mr. Hobig did not build his bridge until 2023, despite having prevailed in the contested case in 2008, demonstrates that he did not need the bridge, and that the existing footbridge provided sufficient access to his house. The relevant question is not whether Mr. Hobig can get by without the bridge. The relevant question is whether there is a "feasible and prudent alternative to the applicant's proposed activity." See Mich Admin Code, R Mich Admin Code, R 322.1015(b). In 2024, as in 2006, the proposed activity was the ability to bring a vehicle to the part of Mr. Hobig's property where his house is located. Neither the proposed activity (access by vehicle) nor the alleged alternative (the existing footbridge) has changed between 2006 and 2024.

In sum, Petitioners have not identified any material change in circumstances that would preclude application of the doctrine of collateral estoppel.

## **PART 325 – GREAT LAKES SUBMERGED LANDS**

### **Statutory Requirements**

#### **I. Jurisdiction**

Section 32512 of NREPA requires the issuance of a permit before any material may be placed on “bottomland.” MCL 324.32512(1)(c); see also Mich Admin Code, R 322.1008(1). The administrative rules governing Great Lakes Submerged Lands define “bottomland” as “lands in the Great Lakes, and bays and harbors thereof, lying below and lakeward of the ordinary high-water mark.” It is undisputed that Mr. Hobig’s construction of the bridge required the placement of materials in the Seminole Canal below the ordinary high-water mark. Accordingly, as the parties have stipulated, the WRD has jurisdiction and the proposed activity will be reviewed under the permitting standards set forth in Part 325.

#### **II. Section 32502**

The issuance of a permit under Part 325 is governed by § 32502, which provides, in pertinent part:

This part shall be construed so as to preserve and protect the interests of the general public in the lands and waters described in this section, ... and to permit the filling in of patented submerged lands whenever it is determined by the department that the private or public use of those lands and waters will not substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation or that the public trust in the state will not be impaired....

MCL 324.32502. Thus, there are two prerequisites for the issuance of a permit under § 32502: (1) the private or public use must not substantially affect the public use of the lands and waters for hunting, fishing, swimming, pleasure boating, and navigation; and (2) the private or public use must not substantially impair the public trust. A review of the evidence in this contested case, with respect to the strictures of § 32502, will be addressed *infra*.

### **A. Public and Private Use**

It is undisputed that Mr. Hobig's construction of the bridge over the Seminole Canal is for private use. Therefore, I find, as a matter of Fact, that the proposed construction of the bridge and placement of material upon bottomland is for a private use.

The first inquiry thus turns to whether the placement of material upon bottomland for private use will substantially affect the public use of those lands and waters for hunting, fishing, swimming, pleasure boating, or navigation. MCL 324.32502. The record does not evidence any public use of the canal. Because the Seminole Canal comes to a dead end and is impassable after the footbridge on Petitioners' property, it has only been used for navigation by Petitioners and their invited guests. Nothing in the record evidence any public use of the Seminole Canal for hunting, fishing, or swimming. Based on the application of the doctrine of collateral estoppel, the ability to navigate on the Seminole Canal was conclusively settled by the DEQ Director's conclusion in the 2008 FDO that "the proposed bridge will not pose an adverse effect to navigation on the canal." (Exhibit C, p 2). Therefore, I find, as a Matter of Fact, that the proposed private use of the bottomland will not substantially affect the public's use of those lands and waters for swimming, pleasure boating, and navigation.

### **B. Public Trust**

Under the common law, the public trust ensures the public's right to navigate, fish, and fowl on the waters of the state. See *Collins v Gerhardt*, 237 Mich 38; 211 NW 115 (1926). The public trust doctrine applies only to navigable waters. *Bott v Natural Resources Comm'n*, 415 Mich 45, 71 (1982). With respect to Great Lakes bottomlands, the Supreme Court has established that the occupation of bottomlands may be allowed if it does not substantially impair the public's interest in the lands and waters remaining. *Obrecht v National Gypsum Co*, 361 Mich 399, 413 (1960). See also *Superior Public Rights, Inc v Department of Natural Resources*, 80 Mich App 72, 84 (1977). As noted

*supra*, the proposed private use of the bottomland will not have a substantial impact upon the public's right to engage in hunting, fishing, swimming, pleasure boating, or navigation. Therefore, I find, as a Matter of Fact, that the proposed private use of the bottomland will not substantially affect the public trust.

### **III. Administrative Rule 15**

In reviewing an application for a permit for use of Great Lakes bottomlands, the WRD must also ensure that the activity complies with Rule 15 of the Administrative Rules promulgated under Part 325. Rule 15 provides:

In each application for a permit, lease, deed, or agreement for bottomland, existing and potential adverse environmental effects shall be determined. Approval shall not be granted unless the department has determined both of the following:

- (a) That the adverse effects to the environment, public trust, and riparian interests of adjacent owners are minimal and will be mitigated to the extent possible.
- (b) That there is no feasible and prudent alternative to the applicant's proposed activity which is consistent with the reasonable requirements of the public health, safety, and welfare.

Mich Admin Code, R 322.1015. The facts related to each of the requisite elements of Rule 15 will be reviewed *infra*.

#### **A. Environmental Effects**

Hartz testified credibly that the bridge did not have any adverse effect on the environment (Tr., p 140). Ms. Gronda testified credibly that she considered the adverse effects to resources to be minimal (Tr., p 119). Petitioners did not present any evidence or make any arguments about adverse environmental effects. Based on the entirety of the record, I find, as a Matter of Fact, that the construction of bridge and the placement of material on the bottomland would not cause significant adverse effects to the environment.



### **B. Public Trust**

The probable effects on the public trust were addressed under the § 32502 analysis *supra*, wherein it was determined that the proposed project will not substantially affect the public trust. I incorporate such findings into this criterion under Rule 15 analysis.

### **C. Riparian Rights**

As noted, *supra*, the DEQ Director concluded in the 2008 FDO (1) that Seminole Canal is a man-made canal and (2) that, as such, Mr. Fullington did not have any riparian interest in the waters of Seminole Canal (Exhibit C, pp 1-2). The DEQ Director relied on *Thompson v Enz*, 379 Mich 667, 679; 154 NW2d 473 (1966) (“Land abutting on an artificial watercourse has no riparian rights.”). See also *Kernen v Homestead Dev Co*, 232 Mich App 503, 511; 591 NW2d 369 (1998) (holding that riparian rights apply only to natural watercourses). Therefore, based on application of the doctrine of collateral estoppel, I find, as a Matter of Fact, that the bridge does not have an adverse effect on any riparian interests of Petitioners.

### **D. Feasible and Prudent Alternative**

While construing Part 303 of NREPA, the Court of Appeals held that a feasible alternative is one that is “capable of being put into effect or accomplished,” while a prudent alternative is one “exercising sound judgment.” See *Friends of Crystal River v Kuras Properties*, 218 Mich App 457, 466 (1996). Petitioners argue that the existing footbridge over Seminole Canal has for years provided a sufficient means for Mr. Hobig to access his house. Mr. Hobig’s proposed activity is to access his house by vehicle, which cannot be accomplished using the existing footbridge. As noted, *supra*, the DEQ Director concluded in the 2008 FDO that the existing footbridge was not a feasible and prudent alternative because the purpose of the proposed bridge was to allow vehicular traffic to cross Seminole Canal (Exhibit C, p 3). Therefore, based on application of the

doctrine of collateral estoppel, I find, as a Matter of Fact, that no feasible and prudent alternative to Mr. Hobig's bridge exists.

### **EASEMENT**

The St. Clair Flats Survey showing Petitioners' lot states that, "Lots lying along channels extend to said channels" (Exhibit 15). Based on this language, coupled with the existence of a "highway easement" in the Star Island Highway Canal, Petitioners claim that they have an easement right to access the St. Clair River by way of the Seminole Canal and the Star Island Highway Canal. This evidence does not appear establish the existence of the claimed easement. Petitioners have not presented any documentary evidence of the existence of the claimed easement in Seminole Canal.

In any event, this Tribunal does not have jurisdiction to adjudicate claims of title to real property. A basic tenant of administrative law is that an agency has only those powers provided to it by statute. See *York v Detroit*, 438 Mich 744; 475 NW2d 346 (1991); *Coffman v State Board of Examiners in Optometry*, 331 Mich 582; 50 NW2d 322 (1951). This proceeding is "an extension of the initial application process for the purpose of arriving at a single final agency decision on the application...." *National Wildlife Fed'n v Department of Env'tl Quality*, 306 Mich App 369, 379; 856 NW2d 394 (2014). In performing this function, the Tribunal must operate under the authority of a statute or administrative rule, because "doubtful power does not exist." See *In Re Quality Service Standard*, 204 Mich App 607, 611; 516 NW2d 142 (1994). The extent of this Tribunal's authority with respect to property questions is to determine whether Mr. Hobig was the proper applicant for the permit in question. Specifically, "the question is whether the applicant has a colorable interest in the real property sufficient to carry out the project for which a permit is sought." *Petition of Eldon E. Johnson*, 2009 WL 3380309, at \*4 (Mich.Dept.Nat.Res.). Here, Mr. Hobig's status as owner of the property upon which his bridge was constructed is not disputed. Any claims by Petitioners that they have an easement in the Seminole Canal and that their easement is unlawfully

impaired by Mr. Hobig's bridge would need to be raised in circuit court and not before this Tribunal.

### **CONCLUSIONS OF LAW**

Based on the Findings of Fact, I conclude, as a Matter of Law:

1. Richard Hobig is the proper applicant for a permit, and the application for a permit was properly processed.
2. The project proposed in the Application is regulated under Part 325, because the activity calls for material to be placed on a bottomland as defined by Mich Admin Code, R 322.1001(1)(e). Mich Admin Code, R 322.1008(1).
3. The proposed private use of the bottomland will not substantially affect the public's use of those lands and waters for hunting, fishing, swimming, pleasure boating, and navigation. MCL 324.32502.
4. The bottomland is impressed with the public trust. MCL 324.32502; *Bott v Natural Resources Comm'n*, 415 Mich 45, 71 (1982).
5. The proposed private use of the bottomland will not substantially affect the public trust. *Obrecht v National Gypsum Co*, 361 Mich 399, 413 (1960); Mich Admin Code, R 322.1015.
6. The project will not cause significant adverse effects on the environment. Mich Admin Code, R 322.1015.
7. There are no adverse effects from the proposed project on riparian interests of adjacent owners. Mich Admin Code, R 322.1015.
8. No feasible and prudent alternative to the project exists. Mich Admin Code, R 322.1015.

### FINAL DECISION AND ORDER

Based upon the Findings of Fact and Conclusions of Law, it is **DETERMINED** that the application for a permit submitted by Richard Hobig (Exhibit U) is **GRANTED** under the permitting criteria of Part 325 of the NREPA, consistent with the after-the-fact permit issued on April 15, 2024 (Exhibit 2).



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**Paul Smith**  
**Administrative Law Judge**

### **OPPORTUNITY TO PETITION FOR REVIEW**

Consistent with MCL 324.1317 (Section 1317 of the NREPA), the parties may file a petition for review of this Final Decision and Order within twenty-one (21) days after it is issued and entered.

For any petition for review, a party must:

1. Submit the petition for review to the Director of the Michigan Department of Environment, Great Lakes and Energy (EGLE) through the department website (<https://www.michigan.gov/egle>) using the online form at: [Environmental Permit Review Commission - Petition for Review of a Final Decision of a Contested Case](#) and include a copy of this Final Decision and Order;
2. Send a copy of the petition for review to the Michigan Office of Administrative Hearings and Rules-General Adjudication (MOAHR-GA) by e-mail: [MOAHR-GA@michigan.gov](mailto:MOAHR-GA@michigan.gov) or regular mail: MOAHR-GA, P.O. Box 30695, Lansing, MI 48909-8195, referencing the case name and docket number; and
3. Serve a copy of the petition for review on all parties to the proceeding at the email/regular mail addresses shown on the attached Proof of Service.

**PROOF OF SERVICE**

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 9<sup>th</sup> day of May 2025.

*T. Harris*

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**T. Harris**

**Michigan Office of Administrative  
Hearings and Rules**

**VIA ELECTRONIC MAIL**

CHRISTOPHER CONN  
WATER RESOURCES DIVISION,  
ENFORCEMENT UNIT  
WATER RESOURCES DIVISION  
PO BOX 30458  
LANSING, MI 48909  
**CONN@MICHIGAN.GOV**

EGLE-LEGAL  
EGLE  
PO BOX 30458  
LANSING, MI 48909  
**EGLE-LEGAL@MICHIGAN.GOV**

EILEEN C. WHIPPLE  
DEPARTMENT OF THE ATTORNEY  
GENERAL  
P.O. BOX 30755  
LANSING, MI 48909  
**WHIPPLE1@MICHIGAN.GOV**

JOHN A MACKENZIE  
WARNER NORCROSS AND JUDD  
LLP  
12900 HALL RD STE 200  
STERLING HEIGHTS, MI 48313  
**JMACKENZIE@WNJ.COM**

NATHAN DOLLAR  
POST OFFICE BOX 30458  
LANSING, MI 48909  
**DOLLARN@MICHIGAN.GOV**

**VIA FIRST CLASS MAIL**

RICHARD HOBIG  
8460 S. CHANNEL DRIVE  
HARSENS ISLAND, MI 48028