STATE OF MICHIGAN

COURT OF CLAIMS

THOMAS M. PROSE,

Plaintiff/Counter-Defendant,

v

Case No. 19-000118-MZ

MICHIGAN DEPARTMENT OF NATURAL RESOURCES,

Hon. Sima G. Patel

Defendant/Counter-Plaintiff.
_____ /

OPINION AND ORDER REGARDING CLASSIFICATION OF THE EASEMENT AND ORDERING ADDITIONAL BRIEFING AND A HEARING

I

This matter is before the Court on remand from the Court of Appeals. On July 30, 2025, the Court asked the parties to file supplemental briefs addressing:

> (1) whether the easement to be granted under the consent judgment is an easement appurtenant or easement in gross; (2) what conditions the party seeks to impose on the easement; and (3) if the "dominant estate with easement rights is divided," would it impose "an unreasonable burden . . . upon the servient estate" to extend the easement to the owners of five additional parcels. *Morse v Colitti*, 317 Mich App 526, 538; 896 NW2d 15 (2016).

The Court finds that the consent judgment provides for an easement appurtenant. However, the Court requires additional information before reaching a final judgment. The Court DIRECTS the parties to provide additional supplemental briefs of no more than 10 pages in addition to supporting evidence or documentation limited to the issue of whether dividing plaintiff's parcel

into 5 individual lots for sale would unreasonably burden the easement within 21 days of entry of this order. Responsive briefs of no more than 5 pages must be filed within 14 days of the supplemental briefs. No replies will be permitted. The parties are DIRECTED to appear for an in-person hearing on Thursday, December 11, 2025, at 10:00 a.m., at the Michigan Court of Appeals Courtroom B located at One Cadillac Place, 3020 W. Grand Blvd., Suite 14-300, Detroit, Michigan.

II

There are two types of easements in Michigan: easements appurtenant and easements in gross. "An easement in gross is one benefiting a particular person and not a particular piece of land. An easement in gross is thus personal in nature." *Heydon v MediaOne of Southeast Mich, Inc*, 275 Mich App 267, 270; 739 NW2d 373 (2007) (cleaned up). It is an encumbrance against the burdened real estate that is held only by the named party. It is not assignable or inheritable. *Stockdale v Yerden*, 220 Mich 444, 447; 190 NW 225 (1922).

There is a presumption that easements are easements appurtenant, and not in gross. *Penrose v McCullough*, 308 Mich App 145, 148; 862 NW2d 674 (2014) ("Michigan law favors easements appurtenant over easements in gross, and 'an easement will never be presumed to be a mere personal right where it can fairly be construed to be appurtenant to some other estate.' " *Von Meding v Strahl*, 319 Mich 598, 610; 30 NW2d 363 (1948).) "An appurtenant easement attaches to the land and is incapable of existence apart from the land to which it is annexed. An easement appurtenant is necessarily connected with the use or enjoyment of the benefited parcel and may pass with the benefited property when the property is transferred." *Heydon*, 275 Mich App at 270 (cleaned up).

Easements can be either exclusive or nonexclusive. When the servient estate owner transfers an exclusive easement, only the owner of the dominant estate has the right to use the easement. The dominant estate owner can even exclude the servient estate holder from its use. *Id.* at 271-272. "A nonexclusive easement is established if the servient owner retains the privilege of sharing the benefit conferred by the easement." 28A CJA Easements, § 222. This means that the servient estate owner may use the easement, and may grant authority to use the easements to others as well.

The consent judgment provides for a non-exclusive easement, but does not expressly state whether that easement is to be in gross or appurtenant. Read in context, however, the consent judgment provides for an easement appurtenant. The consent judgment provides for an easement over roads and a bridge on land owned by the state as part of a state park. The easement leads not only to the land owned by plaintiff, but land owned by the state; Treasure Island is not completely privately owned. *Prose v Dep't of Natural Resources*, unpublished opinion and order, entered December 4, 2017 (Docket No. 17-000179-MZ), p 1. Plaintiff paid defendant for the bridge reconstruction and for the easement, providing additional support for the classification of the easement as appurtenant. If the easement is not appurtenant, plaintiff's property would be rendered worthless. Plaintiff would never be able to sell his property, even as a single parcel, because the purchaser would have no means of access. The easement must be inheritable and pass with the land.

IT IS SO ORDERED. This is not a final order resolving all issues in this case.

Date: October 21, 2025

Sima G. Patel
Judge, Court of Claims