STATE OF MICHIGAN

COURT OF CLAIMS

SHANNON TORZY and MARK TORZY,

Plaintiffs,

v

Case No. 25-000066-MZ

STATE OF MICHIGAN and MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY, WATER RESOURCES DIVISION,

Hon. Michael F. Gadola

Defendants.
_____ /

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

In this lawsuit involving the issuance of an after-the-fact (ATF) permit for a vehicular-access bridge constructed across a canal system located on Harsens Island, in St. Clair County, plaintiffs, Shannon and Mark Torzy, who own an adjacent property, raise constitutional-tort and nuisance claims against defendants, the State of Michigan and the Michigan Department of Environment, Great Lakes, and Energy, Water Resources Division (EGLE). Defendants move for summary disposition at the outset of the case under MCR 2.116(C)(7), (8), and (10), arguing that they are immune from liability, that plaintiffs' claims are barred by res judicata or collateral estoppel, and that plaintiffs' claims fail as a matter of law. Judge SWARTZLE, who was previously assigned to this matter, conducted a hearing on the motion in November 2025. The Court GRANTS defendants' motion for summary disposition and DISMISSES the complaint with prejudice.

I. BACKGROUND

In 2017, plaintiffs bought waterfront property on Harsens Island next to property owned by Richard Hobig. Plaintiffs' property borders two canals that provide access to Lake St. Clair and Lake Huron: the South Channel of the St. Clair River on one side and the Seminole Canal, which connects to the Star Island Highway Canal (collectively referred to as the "Canal System"), on the other side. The Canal System is a manmade canal system. The Hobig property sits between plaintiffs' property and the Star Island Highway Canal. Plaintiffs and Hobig also share ownership as tenants in common to two more parcels of land, collectively known as Lot 74.

Plaintiffs maintain that when they purchased their property, they had direct, unimpeded access to the South Channel via the Canal System, which they used for boat access and other recreational activities. They argue that unimpeded canal access is crucial to their use and enjoyment of their property and to maintaining their property's value. In 2023, Hobig constructed a bridge across the Seminole Canal to allow him to drive a vehicle directly onto his property. Plaintiffs argue that the bridge has caused them to lose access to the Canal System by boat and has impeded their access to a nearby boathouse.

Hobig's bridge has a lengthy permitting history. Previously, Hobig's property was not accessible by vehicle, and he and his family used a pedestrian bridge to access the property from a parking area across the Canal System. In 2006, the Michigan Department of Environmental Quality (MDEQ), the predecessor of EGLE, issued a permit to Hobig under Part 325 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.32501 *et seq*., to construct a vehicular-access bridge and ancillary structures over the Canal System. The owner of plaintiffs' property at the time challenged the issuance of this permit through a contested case hearing on the basis that it would interfere with his riparian rights. The Director of the MDEQ issued a Final

Determination and Order in 2008, allowing the permit to be issued. The St. Clair Circuit Court affirmed the MDEQ's decision in 2009. However, the bridge was not completed before the permit expired. The MDEQ issued new permits in 2011 and 2016 for the same project, but construction was not completed before the permits expired. The 2016 permit was in effect when plaintiffs purchased their property on January 13, 2017, until its expiration date in 2021.

According to plaintiffs, they were aware when they purchased their property that Hobig held a permit to build a vehicular-access bridge but knew that he never acted on that permit. Thus, as plaintiffs explain in their response brief, they "did not expect a bridge to be built as Hobig had not acted on his permit in nearly 20 years."[1] The parties dispute whether any part of the bridge was constructed before plaintiffs bought their property in 2017. However, there is no dispute that in 2023, Hobig completed construction of the bridge without a valid permit.

Plaintiffs argue that Hobig approached them in 2023 about building a retractable bridge that would not impede plaintiffs' boat access to the South Channel, suggesting that he had a site plan completed for the bridge and the pilings to install it. However, in July 2023, plaintiffs held a large social gathering at their residence during which their guests parked their boats on Hobig's seawall. According to plaintiffs, the incident angered Hobig, leading to a heated argument. Plaintiffs contend that, out of spite, Hobig constructed a nonretractable bridge instead of a retractable bridge to impede boat access to plaintiffs' property.

[1] At the time plaintiffs purchased the property, Hobig held the permit for closer to 10 years. However, the permit was issued nearly 20 years before plaintiffs filed this lawsuit.

Plaintiffs complained to EGLE about the construction of the bridge. EGLE inspected the property and determined that Hobig was engaged in unauthorized construction activities beyond the most recent permit's 2021 expiration date. Consequently, in June 2023, EGLE issued a violation notice for Hobig's unauthorized activities. Hobig applied for an ATF permit in September 2023. That same year, plaintiffs sued Hobig in St. Clair Circuit Court Case No. 23-00123-CH, challenging Hobig's construction of the bridge. Plaintiffs raised claims for nuisance, violation of the public trust doctrine, violation of Part 325 of NREPA, breach of quasi-contract, and contribution. Plaintiffs contended that, although small boats can pass under the bridge, they cannot navigate their larger boats through the Canal System. Nor can they safely dock their larger boats on the South Channel on the other side of their property.

In February 2024, EGLE issued a public notice to plaintiffs and other adjoining property owners regarding the ATF permit. Plaintiffs objected to the ATF permit pursuant to the notice. In April 2024, EGLE determined that the project met the criteria to issue a permit under Part 325 of NREPA. So the ATF permit was issued on April 15, 2024. Later that month, plaintiffs petitioned to contest EGLE's decision to issue the ATF Permit, claiming that the bridge obstructed their use and access of the Canal System and diminished their property's value by over $200,000.

In August 2024, the St. Clair Circuit Court granted partial summary disposition in Hobig's favor on three counts of plaintiffs' complaint. The circuit court concluded that doctrines of collateral estoppel and res judicata precluded plaintiffs from reasserting that the bridge interfered with their navigation and riparian rights considering that issue was resolved back in 2006 when the prior property owner challenged the MDEQ's bridge permit. The circuit court rejected plaintiffs' attempts to distinguish the situation in 2006 from the situation in 2024, finding that while there were some changes within that timeframe, the factual and legal issues remained the

same. The circuit court further found that plaintiffs were in privity with the prior property owners. The circuit court further concluded that Mark Torzy could navigate his boats under the bridge, and thus navigation access was not impeded. That case is currently pending on appeal with the Michigan Court of Appeals.

While the St. Clair Circuit Court case was pending, contested case proceedings occurred in relation to the ATF permit. Plaintiffs and representatives of EGLE were among those who testified at the hearing. In May 2025, Administrative Law Judge (ALJ) Paul Smith issued a Final Decision and Order. ALJ Smith described the legal issues as a challenge to EGLE's decision to issue the ATF permit, opposition to application of the doctrine of collateral estoppel, and an assertion that Hobig's bridge "improperly impairs [plaintiffs'] right to an easement in the canal over which the bridge was constructed."

ALJ Smith explained that the testimony presented at the hearing supported that the bridge Hobig constructed is common on Harsens Island, offers varying depths of clearance for boats depending on the water level in the canal, and was constructed in a manner comparable (if not identical) to that authorized by the permit. The EGLE employee who conducted a site visit issued a public notice of the application, with a copy to plaintiffs as adjacent property owners. Plaintiffs' comments in objection to the bridge mirrored those that they raise in this case. The ALJ concluded that plaintiffs' legal claims were barred by collateral estoppel. The ALJ explained that the MDEQ Director's decision addressing the 2006 permit addressed "essentially the same [questions] as the questions that now must be answered to resolve [plaintiffs'] challenge to the 2024 permit." The applicable legal standards had not changed since 2006. ALJ Smith found that it was known that the water levels would fluctuate over time and that plaintiffs failed to present evidence that they

owned a boat too large to fit under the bridge. The ALJ further concluded that no feasible alternative to the bridge existed on the basis of the testimony presented at the hearing.

The ALJ also confirmed the legality of the permit under MCL 324.32502. The ALJ found that Hobig's construction of the bridge was for private use, so "as a Matter of Fact, . . . the proposed private use of the bottomland will not substantially affect the public trust." The EGLE employees "testified credibly that the bridge did not have any adverse effect on the environment" and that the adverse effects on resources were "minimal." Finally, the ALJ found that plaintiffs did not present any documentary evidence of the existence of the claimed easement in Seminole Canal. ALJ Smith further reaffirmed the MDEQ Director's conclusion in 2008 that there was no riparian right to an artificial watercourse, concluding that issue was barred by collateral estoppel. Accordingly, the ALJ concluded that Hobig's permit application met the statutory and administrative requirements under Part 325 of NREPA. The ALJ did not, however, address any constitutional claims.

While the ALJ's Final Opinion and Order was pending final review by the Director of EGLE, plaintiffs filed this lawsuit.[2] The premise of plaintiffs' lawsuit is that EGLE's "custom and policy" allowing it to grant the ATF permit was unconstitutional and was applied in an arbitrary manner, causing a violation of plaintiffs' constitutional rights and interfering with their use and enjoyment of their property and the Canal System.

[2] Plaintiffs also sued an EGLE employee in the United States District Court for the Eastern District of Michigan, raising similar claims. Defendants have moved to dismiss the case under Fed R Civ P 12(b)(6). The federal court has not yet decided the motion.

Plaintiffs raise five claims in their complaint. Count I is a claim for violation of 42 USC 1983 and 1988 on the basis of EGLE's alleged deprivation of plaintiffs' property rights through its custom and policy for reviewing permit applications under NREPA. Count II raises a claim for violation of substantive and procedural due process on the basis that EGLE's custom and policy for reviewing and approving permit applications harmed plaintiffs' use and enjoyment of their property and the Canal System. Count III is an inverse-condemnation claim, in which plaintiffs assert that EGLE's custom and policy for reviewing and approving permit applications harmed plaintiffs' use and enjoyment of their property, as well as the marketability and value of the property. Plaintiffs allege that they are not able to use the Canal System "for the purpose in which it was created" or for which plaintiffs purchased their property. In Count IV, plaintiffs allege that EGLE's custom and policy on the issuance of permits amounted to a regulatory taking of their property. Finally, in Count V, plaintiffs assert a claim for nuisance for the intentional, arbitrary, and capricious authorization of the bridge that harmed plaintiffs' use and enjoyment of their property and the Canal System.

At the outset of the case, defendants moved for summary disposition under MCR 2.116(C)(7) (immunity; res judicata; collateral estoppel), (8), and (10). Defendants' position is that (1) they are immune from plaintiffs' constitutional claims because plaintiffs did not articulate any mandated policy or procedure that led to the alleged constitutional violations; (2) plaintiffs' claims are barred by res judicata and collateral estoppel considering that the legal and factual questions in this case were already resolved several times, including in the 2008 MDEQ Director's decision, the 2009 circuit court decision, and the ALJ's 2025 Final Decision; (3) plaintiffs' substantive and procedural due-process claims lack merit because plaintiffs had no riparian interests in the manmade canal, plaintiffs were provided notice and the opportunity to challenge

the permit, and plaintiffs continue to have boat access to their property; (4) the issuance of the permit did not amount to a taking for purposes of plaintiffs' inverse-condemnation claim; and (5) plaintiffs' nuisance claim lacks merit and defendants were immune from such a claim.

Plaintiffs respond that (1) EGLE is liable for plaintiffs' claims under 42 USC 1983 because it had an official policy or custom that caused plaintiffs to be deprived of their constitutional rights in their property, (2) EGLE's custom and policy violated plaintiffs' substantive due-process rights,[3] (3) plaintiffs pleaded a valid inverse-condemnation claim because the ATF permit and bridge damaged plaintiffs' property value, and (4) plaintiffs pleaded a valid nuisance claim against EGLE, which controlled the nuisance. No reply brief was filed. Following the hearing on the motion, this Court stayed proceedings pending the conclusion of the regulatory action via a final decision by the Director of EGLE regarding ALJ Smith's Final Decision and Order.[4]

Following the stay of this case, the Director of EGLE, Phillip D. Roos, issued an opinion adopting the ALJ's conclusions. Director Roos agreed with the ALJ that most of the issues were barred by collateral estoppel because of the contested case proceeding that took place in relation

[3] During the hearing on the motion, plaintiffs' counsel clarified that plaintiffs are only raising a claim for substantive due process; therefore, this Court will deem any procedural due-process claim waived. Even if the claim were not waived, plaintiffs and the prior owner of their property received numerous notices and at least two opportunities to be heard before both administrative and judicial tribunals. So even if plaintiffs had not waived this claim, their procedural due process claims would fail. See *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 213-214; 761 NW2d 293 (2008).

[4] This Court's November 20, 2025 stay order indicated that the Court would schedule a status conference after the parties submitted a stipulation when the administrative decision was rendered. The parties have since filed a stipulation for a status conference. Having reviewed the Director's decision, which does not contain any novel information, the Court determines that a status conference is not necessary to resolve the motion for summary disposition, which has otherwise been fully briefed and argued.

to the 2006 permit, considering that proceeding involved "a proposed vehicular bridge with the same dimensions, in the same location, and involving the same issues raised by the Petitioners in this proceeding." Director Roos adopted the ALJ's conclusion that plaintiffs were in privity with the prior owner of their property for purposes of collateral estoppel. Additionally, the prior administrative proceeding resulted in the conclusion that the proposed bridge would not interfere with navigation in the Canal System because of the high clearance of the bridge and the finding that no reasonable alternatives existed. Moreover, the ALJ properly found that there were no material changes in circumstances between 2006 and 2024. Director Roos concluded that EGLE lacked jurisdiction to decide property rights. The parties provided this Court with the Director's Opinion, and the stay in this case was lifted.

II. STANDARD OF REVIEW

Defendants move for summary disposition under MCR 2.116(C)(7), (8), and (10). Summary disposition under MCR 2.116(C)(7) is properly granted when the plaintiff's claims are barred by immunity. *Milot v Dep't of Transp*, 318 Mich App 272, 275; 897 NW2d 248 (2016). The court will "accept as true all of the plaintiff's well-pleaded factual allegations and construe them in favor of the plaintiff unless disputed by documentary evidence submitted by the moving party." *Norman v Dep't of Transp*, 338 Mich App 141, 146; 979 NW2d 390 (2021). "The court must consider any affidavits, depositions, admissions, or other documentary evidence submitted, and the court must determine whether there are any genuine issues of material fact." *Id*. When

there are no facts in dispute, or reasonable minds could not disagree about the legal effect of the facts, then the question becomes one of law. *Id*. at 146-147.[5]

A motion under MCR 2.116(C)(8) examines the legal sufficiency of the claims on the basis of the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The court must accept the factual allegations in the complaint as true and will decide the motion on the pleadings alone. *Id*. at 160. The court will grant the motion if the claim is so clearly unenforceable as a matter of law that no factual development would justify recovery. *Id*. In contrast, a motion filed under MCR 2.116(C)(10) examines the factual sufficiency of the claim. *Id*. The court must consider all the submitted evidence in the light most favorable to the nonmoving party. *Id*. "A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *Id*.

III. ANALYSIS

A. COURT OF CLAIMS ACT

At the outset, the Court concludes that only plaintiff Mark Torzy filed a timely written claim or notice of intent to file a claim (NOI), as required under the Court of Claims Act, MCL 600.6431. Plaintiffs submitted an NOI with this Court on October 15, 2024, which was signed only by Mark Torzy before a notary public. Shannon Torzy submitted a "Verification of Complaint" on December 6, 2024. The NOI states that the claims arose on April 15, 2024, the day

[5] Defendants also move for summary disposition on the basis that plaintiffs' claims are precluded under principles of res judicata or collateral estoppel. However, as discussed later, the Court need not address the merits of defendants' preclusion arguments because each of plaintiffs' claims is either barred by immunity or fails as a matter of law.

that the ATF Permit was issued. The complaint was filed on April 17, 2025, i.e., over a year after the claims accrued.

The pertinent date for purposes of MCL 600.6431 is not the date of the verification, notary, or signature, but rather, the date of filing of either the NOI or the complaint. MCL 600.6431 states that "a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files . . . either a written claim or a written notice of intention to file the claim." MCL 600.6431(1). Mark Torzy's verified NOI was filed on October 15, 2024, while the complaint was filed on April 17, 2025. Plaintiffs allege property damage from EGLE's decision to allow the permit for the bridge; accordingly, their claims are subject to the six-month notice period even though plaintiffs are also pleading constitutional violations. See MCL 600.6431(4); *Mays v Snyder*, 323 Mich App 1, 28; 916 NW2d 227 (2018) (*Mays I*), aff'd by equal division sub nom *Mays v Governor*, 506 Mich 157 (2020). Mark Torzy's verification for the NOI was filed within six months after the claim accrued. However, Shannon Torzy's verification was untimely under the six-month limitations period. So while Mark's claims are timely, Shannon's claims are not and therefore must be dismissed. Because Mark and Shannon raise identical claims against EGLE, the practical effect of the dismissal of Shannon's claims is minimal, and the Court will address the merits of each claim below.[6]

[6] For ease of review, the Court will continue to refer to both "plaintiffs" rather than solely plaintiff Mark Torzy, with the understanding that Shannon Torzy's claims are dismissed for lack of jurisdiction.

B. GOVERNMENTAL IMMUNITY

Defendants argue that summary disposition is appropriate under MCR 2.116(C)(7) because they are immune from liability. The State is immune from suit unless it consents to being sued, and any waiver of sovereign immunity should be interpreted strictly. *Pohutski v Allen Park*, 465 Mich 675, 681; 641 NW2d 219 (2002). The governmental tort liability act (GTLA), MCL 691.1407 *et seq*., provides that governmental entities are "immune from tort liability" for claims that arise from activities in which they are "engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). The only exceptions to this general rule are the exceptions expressly delineated in the GTLA, as well as constitutional torts. *Pohutski*, 465 Mich at 689-690. See also *Mays v Governor*, 506 Mich 157, 187; 954 NW2d 139 (2020) (opinion by BERNSTEIN, J.) (*Mays II*).

Count I of the complaint alleges a violation of 42 USC 1983 on the basis that EGLE had a "custom and policy of reviewing permit applications under NREPA" that interfered with and deprived plaintiffs of their property rights. 42 USC 1983 is an "all-purpose federal civil rights statute, providing a remedy for violations of the federal constitution and other federal law." *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 195; 761 NW2d 293 (2008). To recover under this statute, plaintiffs must prove that EGLE deprived them of "any rights, privileges, or immunities secured by the Constitution and laws." 42 USC 1983. For claims under § 1983, the statute "itself is not the source of substantive rights; it merely provides a remedy for the violation of rights guaranteed by the federal constitution or federal statute." *Carlton v Dep't of Corrections*, 215 Mich App 490, 502; 546 NW2d 671 (1996) (quotation marks and citation omitted). Thus, "[t]here must be an underlying violation of the federal constitution or a federal law, in order for a § 1983 claim to lie." *Mettler Walloon*, 281 Mich App at 196. And neither the State nor a state

official sued in his or her official capacity is a person able to be sued under § 1983. *Will v Mich Dep't of State Police*, 491 US 58, 65-66; 109 S Ct 2304; 105 L Ed 2d 45 (1989). For this reason, plaintiffs cannot raise a direct § 1983 claim against the State of Michigan or EGLE.

To the extent plaintiffs are using principles of § 1983 to support their substantive claims, the sole exceptions to governmental immunity in this context exist when the execution of an official state policy or custom caused an individual to be deprived of federal constitutional rights, or when there is an articulated claim for damages against the State arising from a violation of the Michigan Constitution that has been recognized. *Mays II*, 506 Mich at 187-189; *Carlton*, 215 Mich App at 504-505. For the former category, the plaintiff must establish that the state's "custom or policy *mandated* the official or employee's actions." *Carlton*, 215 Mich App at 505 (quotation marks and citation omitted; emphasis added). As the Michigan Supreme Court has explained, governmental customs must be accepted practices, even if not committed to writing, that "establish fixed plans of action to be followed under similar circumstances consistently and over time." *Johnson v Vanderkooi*, 502 Mich 751, 763-764; 918 NW2d 785 (2018) (quotation marks and citation omitted). The general principle that the plaintiff must establish a government custom or policy to overcome immunity has been applied to substantive due-process claims in the context of an alleged violation of bodily integrity. See *Mays II*, 506 Mich at 187; *Mays I*, 323 Mich App at 62-65.

Plaintiffs assert that EGLE's custom or policy was to allow its enforcement officers to issue permits for bridges across a canal system on a " 'case by case' " basis (bolded emphasis omitted). In their response brief, plaintiffs summarize the parties' dispute as whether EGLE's alleged "custom and policy for issuing permits for land use development on the Great Lakes" and its "policy and procedures" ignored "the real property interest of adjacent [landowners] allowing for

the canal system to be foreclosed by a structure, simply because permitting criteria of NREPA Part 325 is met." In short, plaintiffs argue that the custom or policy was to ignore the private property interests of other individuals.

However, it is not EGLE's policy, custom or procedures, but rather, Michigan law that recognizes no riparian rights in a manmade channel, even when it offers access to a non-manmade waterway.[7] *Thompson v Enz*, 379 Mich 667, 679; 154 NW2d 473 (1967). See also *Persell v Wertz*, 287 Mich App 576, 580; 791 NW2d 494 (2010) (explaining that "*Thompson* relied on the very broad principle that the common law does not establish riparian rights in artificial bodies of water"). Additionally, plaintiffs' assertion that EGLE decided these issues on a case-by-case basis supports EGLE's position that there was no custom or policy mandating a fixed outcome in this case. Instead, the administrative and court documents reveal that the rights in plaintiffs' property were thoroughly considered, including during a 2006 contested case hearing and through a 2024 contested case hearing. Plaintiffs' example of a neighboring property owner who was denied a permit to build a proposed boathouse in the Canal System further undermines plaintiffs' claim that EGLE had a custom or policy to disregard the property rights of neighboring landowners. The fact that EGLE denied that permit shows that EGLE *does*, in fact, consider the rights of neighboring landowners on a case-by-case basis, as required under Part 325 of NREPA. It is apparent from the different outcomes in the two cases that EGLE's policy or custom is to decide each case on a case-by-case basis rather than imposing a blanket policy mandating a particular outcome.

[7] This conclusion is consistent with both the 2008 MDEQ Director's decision, as affirmed by the circuit court, and ALJ Smith's final decision and order, as affirmed by Director Roos.

For this reason, plaintiffs have not overcome the application of governmental immunity to proceed on their § 1983 claim, as articulated in Count I of the complaint (which, again, cannot form an independent claim), or the substantive due-process claim, as articulated in Count II of the complaint. The Court therefore grants summary disposition to defendants under MCR 2.116(C)(7). As discussed later, Michigan appellate courts have recognized the validity of claims for inverse condemnation and regulatory taking, so the Court will discuss those claims on the merits. And a separate immunity standard applies to plaintiffs' nuisance claim, as noted later.

C. MERITS OF CLAIMS

1. SUBSTANTIVE DUE PROCESS

Even assuming plaintiffs' substantive due-process claim could survive an immunity challenge, it also fails on the pleadings under MCR 2.116(C)(8). The Michigan Supreme Court has recognized the validity of a substantive due-process claim as it relates to claims against the government, and the "touchstone of due process" is the "protection of the individual against arbitrary action of government." *Bonner v City of Brighton*, 495 Mich 209, 223-224; 848 NW2d 380 (2014). Substantive due process "protects against the arbitrary exercise of governmental power, whereas the procedural component is fittingly aimed at ensuring constitutionally sufficient procedures for the protection of life, liberty, and property interests." *Id.* at 224. "Thus, when executive action is challenged in a substantive due process claim, the claimant must show that the action was so arbitrary (in the constitutional sense) as to shock the conscience." *Mettler Walloon*, 281 Mich App at 200.

The substantive due-process claim fails on the pleadings because the action that plaintiffs contest is that of their neighbor building the bridge. EGLE approved an ATF Permit at Hobig's request, and after public notice, a hearing, and administrative proceedings. Even if the Court were

to disagree with the outcome of the permitting process on the merits (an issue that is not the subject of judicial review in this proceeding), there is no basis to conclude that EGLE's act of granting an ATF permit was so arbitrary in a constitutional sense that it shocks the judicial conscience. Plaintiffs acknowledge in their response brief that EGLE engaged in a contested case proceeding when the permit was issued in 2006. And there is no dispute that when plaintiffs again contested the bridge construction in 2024, the ALJ heard detailed testimony on plaintiffs' objections to the ATF permit and rendered detailed legal and factual findings. Again, the fact that EGLE has rejected permit applications in the same geographical area demonstrates that it is considering these applications on a case-by-case basis and not on the basis of an arbitrary exercise of its powers. No factual development would justify recovery on this claim. For these reasons, summary disposition is also appropriate on Count II of the complaint under MCR 2.116(C)(8).

2. INVERSE CONDEMNATION

In Count III of the complaint, plaintiffs assert that EGLE's decision to issue the ATF permit amounted to a taking of their property requiring just compensation. Michigan law recognizes a claim against the State for inverse condemnation as a method to enforce the constitutional prohibition of uncompensated takings of property. *Krieger v Dep't of Environment, Great Lakes, & Energy*, 348 Mich App 156, 171; 17 NW3d 700 (2023). The immunity provided to the state government from tort liability does not extend to inverse-condemnation claims. *Id*. at 171-172. Inverse condemnation may occur even when the property itself is not taken but the property's value is diminished. *Id*. at 182.

While "no precise formula" exists for a claim of inverse condemnation, a plaintiff alleging this claim must prove that "the government's actions were a *substantial* cause of the decline of his property's value" and that "the government abused its legitimate powers in affirmative actions

directly aimed at the plaintiff's property." *Hinojosa v Dep't of Natural Resources*, 263 Mich App 537, 548; 688 NW2d 550 (2004) (quotation marks and citation omitted). In other words, simply alleging that the government took some kind of action that had a collateral effect on the plaintiff's property value is not sufficient to establish inverse condemnation. See *id*. Critically, the Michigan Court of Appeals has held that the issuance of a license or permit does not, by itself, form the basis for an inverse condemnation claim. *Attorney General v Ankersen*, 148 Mich App 524, 560-562; 385 NW2d 658 (1986). Here, there was no direct action taken against plaintiffs' property. Because the only action allegedly taken by EGLE that amounted to inverse condemnation was the granting of the ATF permit, albeit in a manner plaintiffs assert was arbitrary and capricious, summary disposition in EGLE's favor is warranted on plaintiffs' inverse-condemnation claim under MCR 2.116(C)(8). See *id*.

3. REGULATORY TAKING

Count IV of plaintiffs' complaint is a claim for regulatory taking. Michigan law recognizes a claim against the State for regulatory taking, which occurs when the property becomes overburdened by regulations, leading to the "deprivation of *all* economically productive or beneficial use of property," and categorically requires payment of just compensation. *Gym 24/7 Fitness, LLC v Michigan*, 341 Mich App 238, 262-263; 989 NW2d 844 (2022). In addition, there is a "noncategorical taking" determined by application of a balancing test from *Penn Central Transp Co v New York City*, 438 US 104, 124, 98 S Ct 2646, 57 L Ed 2d 631 (1978). This standard requires the Court to evaluate three factors: "(1) the character of the government's actions, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations." *Cummins v Robinson Twp*, 283 Mich App 677, 707; 770 NW2d 421 (2009) (quotation marks and citation omitted). In each of these

analyses, the "common touchstone" is "regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Id.* at 707-708 (quotation marks and citation omitted).

Once again, plaintiffs have not identified a regulatory action or policy that overburdened their property to such an extent that it amounted to a taking of their property. They allege that EGLE's actions "significantly damage[d] the marketability, use, and value" of their property, but they do not allege a deprivation of all economically productive or beneficial use of the property. There is no dispute that before plaintiffs bought the property, Hobig applied for—and received—a permit authorizing him to build the bridge. Plaintiffs acknowledge they were aware of the existence of the permit before they purchased their property. The only action EGLE took after plaintiffs purchased their property was to continue to reissue the permit, including on an after-the-fact basis once Hobig began the process of completing the bridge. This action did not overburden plaintiffs' property with regulations such that it could be said that plaintiffs lost the beneficial use of their property. Once again, plaintiffs had no riparian rights in the manmade canal system. Nor can it be said that plaintiffs have been deprived of *all* economically productive or beneficial use of their property. They continue to have water access to their property via the South Channel and, by their own admission, can navigate certain boats under Hobig's bridge. Although they claim their property has lost some value, this is not a deprivation of all economically productive or beneficial uses of the property. Because factual development would not justify recovery, plaintiffs have not pleaded a valid claim for regulatory taking. Summary disposition in favor of defendants under MCR 2.116(C)(8) is warranted.

4. NUISANCE

Plaintiffs also allege a nuisance claim in Count V of the complaint. Plaintiffs assert that EGLE "intentionally, arbitrar[ily], and capriciously authorized the erection of the Bridge and the ATF Permit, which has harmed [plaintiffs'] use and enjoyment of [their property and the Canal System]." They argue, in their response brief, that EGLE's "jurisdiction under NREPA part 325 to issue permits to develop water properties on the Great Lakes" constitutes control of the Canal System and "the ability to develop it, such [as] erecting the subject bridge." The Michigan Supreme Court has recognized that trespass-nuisance is not a claim falling under one of the GTLA's tort exceptions. *Pohutski*, 465 Mich at 689-690 ("Trespass-nuisance simply is not one of the five exceptions to immunity set forth in the [GTLA]."). Plaintiffs have not articulated a legal basis for allowing this claim to proceed in light of *Pohutski*. They cite *Sakorafos v Lyon Charter Twp*, 349 Mich App 176, 186; 27 NW3d 329 (2023), but that case involved nuisance claims against private parties premised on an alleged violation of a township ordinance and did not address the holding in *Pohutski*. Thus, plaintiffs' nuisance claim is subject to dismissal on the basis of governmental immunity.

Even assuming plaintiffs could plead in avoidance of governmental immunity, their nuisance claim fails on the pleadings.

> Nuisances are classified as nuisances at law or nuisances in fact. A nuisance at law is an act, occupation or structure which is a nuisance at all times and under any circumstances, regardless of location or surroundings. Nuisances in fact are those which become nuisances by reason of circumstances and surroundings, and an act may be found to be a nuisance as a matter of fact where the natural tendency of the act is to create danger and inflict injury on person or property. [*Radloff v Michigan*, 116 Mich App 745, 756; 323 NW2d 541 (1982), remanded on other grounds 417 Mich 894 (1983).]

Plaintiffs claim that the bridge is a nuisance because it blocks their canal access. Plaintiffs also claim that EGLE's conduct amounted to a private nuisance, which is a "nontrespassory invasion of another's interest in the private use and enjoyment of land." *Adkins v Thomas Solvent Co*, 440 Mich 293, 302; 487 NW2d 715 (1992). This "evolved as a doctrine to resolve conflicts between neighboring land uses" and the "gist" of this cause of action is "an interference with the occupation or use of land or an interference with servitudes relating to land." *Id*. at 303. "It involves not only a defect, but threatening or impending danger . . . to the property rights or health of persons sustaining peculiar relations to the same . . . ." *Id.* (quotation marks and citation omitted). In *Adkins*, the plaintiff failed to establish a claim for a private nuisance because the groundwater pollution at issue did not touch the plaintiff's property. *Id*. at 318. Likewise, in this case, the bridge does not touch plaintiffs' property or directly affect it in the way that a pollutant would. Moreover, this lawsuit is against EGLE—not the bridge owner or the bridge builder. Plaintiffs cite no caselaw that would permit the extension of the law of nuisance to a scenario in which a government entity merely grants a permit to an individual who later erects the structure plaintiffs assert is a nuisance. Thus, plaintiffs' nuisance claim also fails on the pleadings and is subject to summary disposition.[8]

[8] Because plaintiffs' claims are either barred by governmental immunity or fail on the pleadings, the Court need not address defendants' alternative argument that plaintiffs' claims are barred, in whole or in part, under principles of res judicata or collateral estoppel.

IV. CONCLUSION

For the reasons discussed in this Opinion and Order,

IT IS ORDERED that defendants' motion for summary disposition is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' complaint is DISMISSED with prejudice.

IT IS SO ORDERED. This is a final order that resolves the last pending claim and closes the case.

Date: March 19, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims